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H.R. 884, "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT," AND H.R. 1409,
"EASTERN BAND OF CHEROKEE INDIANS LAND EXCHANGE ACT OF 2003."

LEGISLATIVE HEARING

before the

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Wednesday, June 18, 2003

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LEGISLATIVE HEARING ON H.R. 884, TO PROVIDE FOR THE USE AND DISTRIBUTION OF THE FUNDS AWARDED TO THE WESTERN SHOSHONE IDENTIFIABLE GROUP UNDER INDIAN CLAIMS COMMISSION DOCKET NUMBERS 326-A-1, 326-A-3, AND 326-K, AND FOR OTHER PURPOSES, "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT;" AND H.R. 1409, TO PROVIDE FOR A FEDERAL LAND EXCHANGE FOR THE ENVIRONMENTAL, EDUCATIONAL, AND CULTURAL BENEFIT OF THE AMERICAN PUBLIC AND THE EASTERN BAND OF CHEROKEE INDIANS, AND FOR OTHER PURPOSES. "eastern band of cherokee indians land exchange act of 2003."

 Wednesday, June 18, 2003

U.S. House of Representatives

Committee on Resources

Washington, DC

The Committee met, pursuant to notice, at 10:09 a.m., in room 1324, Longworth House Office Building, Hon. Richard W. Pombo (Chairman of the Committee) presiding.

Present: Representatives Pombo, Duncan, Jones, Gibbons, Rayworth, Kildee, Faleomavaega, Pallone, Christensen, Insler, Napolitano, Tom Udall, Bordallo, and Baca.

STATEMENT OF THE HON. RICHARD W. POMBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

The Chairman. The Committee will come to order.

The Committee is meeting today to hear testimony on H.R. 1409, a bill to provide for Federal land exchange for the environmental, educational, and cultural benefit of the American public and the Eastern Band of Cherokee Indians; and H.R. 884, to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under the Indian Claims Commission Docket Numbers 326-A-1, 326-A-3, and 326-K.

Under Rule 45 of the Committee rules, any oral opening statements at hearings are limited to the Chairman and Ranking Minority Member. This will allow us to hear from our witnesses sooner and help members keep to their schedules. Therefore, if other members have statements, they can be included in the hearing record under unanimous consent.

Today's hearing concerns two bills affecting two groups of Native Americans. They are H.R. 1409, sponsored by Congressman Charles Taylor of North Carolina, and H.R. 884 by the Vice Chairman of the Committee, Jim Gibbons of Nevada.

H.R. 1409 provides a land exchange between the National Park Service and the Eastern Band of Cherokee Indians whose reservation is located in western North Carolina. The purpose of the land swap is to facilitate the construction of a new school badly needed by the Cherokee people. Under the legislation, the Eastern Band would give the American public high-value, pristine land along the Blue Ridge Parkway in exchange for lower-value land called the Ravensford tract, which is adjacent to the Cherokee Reservation called the Qualla

Boundary. The Ravensford Tract would be held in trust and added to the reservation. The amount of land the Eastern Band acquires is only 143 acres, but it has attractive features making it ideal for locating a new school. The witnesses from the Eastern Band will explain the need for a new school and why this tract is a logical site for it.

It should also be noted that the Ravensford tract was supposed to be conveyed to the Eastern Band in the 1940's as part of a deal which enabled the construction of the Blue Ridge Parkway through their reservation. This tract is part of the ancestral homeland of the Cherokee people, but the Congress, for no known reason, decided to delete this part of the deal after it was agreed to. That was wrong, and I am puzzled why anyone today would reject the moral right of the Cherokee to reacquire their ancestral land through an exchange which adds more value to the National Park System.

Under this bill, the Park Service will add 218 acres of pristine land to the Blue Ridge Parkway. Many of the nearby lands are being developed. Adding this parcel to the parkway would preserve a pristine view from an overlook on the road. I think Congressman Taylor has written an outstanding bill that will benefit the American public which uses the Blue Ridge Parkway and the Eastern Band of Cherokees who need a new school for future leaders of the Indian country, North Carolina, and the United States of America.

The Chairman. The second bill which is the subject of this hearing is H.R. 884, sponsored by the gentleman from Nevada and the Vice Chairman of the Committee. This bill provides for the distribution of more than \$140 million to the Western Shoshone people. This is money which was awarded to the Indian Claims Commission over two decades ago to Western Shoshone people who sought compensation for a taking of their aboriginal lands in Nevada, California, Idaho, and Utah. The bulk of this money, \$143 million, would be distributed on a per capita share basis to the Western Shoshone of at least one-quarter degree blood. About \$1.9 million would be placed in an educational trust fund for the benefit of the Shoshone people. The judgment fund has been sitting in a treasury account gathering interest for over 20 years because no plan for distributing it has ever been implemented. This simply provides for distribution of the funds. Without this legislation, over \$140 million will continue to be out of reach of the people to whom it rightfully belongs. While there are some people who continue to pursue the Shoshone land claim, it is not right to hold these funds hostage in the meantime.

[The prepared statement of Mr. Pombo follows:]

Statement of The Honorable Richard W. Pombo, Chairman,
Committee on Resources, on H.R. 1409 and H.R. 884

The Committee will receive testimony on two bills affecting Native Americans. They are H.R. 1409, sponsored by Congressman Charles Taylor of North Carolina, and H.R. 884, by the Vice-Chairman of the Committee, Jim Gibbons of Nevada.

H.R. 1409 provides a land exchange between the National Park Service and the Eastern Band of Cherokee Indians, whose reservation is located in western North Carolina. The purpose of the land swap is to facilitate the construction of a new school badly needed by the Cherokee people.

Under the legislation, the Eastern Band would give the American public high-value, pristine land along the Blue Ridge Parkway in exchange for lower-value land called the "Ravensford Tract," which is adjacent to the Cherokee Reservation, called the Qualla Boundary. The Ravensford Tract would be held in trust and added to the Reservation.

The amount of land the Eastern Band acquires is only 143 acres, but it has attractive features making it ideal for locating a new school. The witnesses from the Eastern Band will explain the need for a new school and why this tract is the logical site for it.

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Under this bill, the Park Service will add 218 acres of pristine land to the Blue Ridge Parkway. Many of the nearby lands are being developed. Adding this parcel to the Parkway would preserve a pristine view from an overlook on the road.

I think Congressman Taylor has written an outstanding bill that will benefit the American public which uses the Blue Ridge Parkway ... and the Eastern Band of Cherokees who need a new school for future leaders of Indian Country, North Carolina, and the United States of America.

The second bill which is the subject of this hearing is H.R. 884, sponsored by the gentleman from Nevada and Vice Chairman of the Committee.

This bill provides for the distribution of more than \$140 million to the Western Shoshone people. This is money that was awarded by the Indian Claims Commission over two decades ago to Western Shoshone people who sought compensation for a taking of their aboriginal lands in Nevada, California, Idaho and Utah.

The bulk of this money--\$142 million--would be distributed on a per capita share basis to Western Shoshone of at least 1/4 degree blood. About \$1.9 million would be placed in an education trust fund for the benefit of the Shoshone people.

This judgment fund has been sitting in a Treasury account gathering interest for over 26 years because no plan for distributing it has ever been implemented. This bill simply provides for a distribution of the funds.

Without this legislation, over \$140 million will continue to be out of reach of the people to whom it rightfully belongs. While there are some people who continue to pursue the Shoshone land claim, it isn't right to hold these funds hostage in the meantime.

The Chairman. I would like to now recognize the Ranking Minority Member, Mr. Kildee, for any statement he may make.

STATEMENT OF THE HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Kildee. Well, thank you very much, Mr. Chairman. I want to thank you for holding this hearing today on H.R. 1409 and H.R. 884.

H.R. 1409 is a land exchange bill which will allow the Eastern Band of Cherokee to build new schools for their children. I also want to welcome my friend, Chief Leon Jones, Principal Chief of the Eastern Band of Cherokee Indians, who is here to testify on behalf of this legislation.

One of the central promises the U.S. Government made to the Indian Nations in their treaties was the promise of education for their people. Time and time again, our Government has failed to live up to that promise.

Mr. Chairman, I have visited several of the tribal schools in my 26 years here in Congress, and I can honestly say that when the Federal Government has run those schools, they have not always done a very good job. I have visited schools that a Federal judge would not let us keep prisoners in. As a matter of fact, we had to destroy a jail in Flint, Michigan, because the Federal judge said it was unfit for human habitation, and that jail was in better shape than some of the Indian schools I have visited.

So the Federal Government has not done a good job. This nation, the Cherokee Nation, wants to build schools for their children, and I think we should work with them.

It is unacceptable that we do not encourage them by legislation to do that which they choose to do under their sovereignty. In my years of elective office, I have enjoyed the support of the environmental community for my commitment to protecting our Nation's precious resources. That is something of which I am very proud. In fact, I wrote the law establishing one of the largest Federal wilderness areas east of the Mississippi River. I have also drafted laws protecting some of our Nation's most threatened wild and scenic rivers. I have set aside a thousand miles of rivers in Michigan as wild and scenic rivers. And I know that some of my environmental friends oppose this legislation and feel that no land should ever be exchanged from the National Park Service. But in this instance, I must disagree. We have made commitments to this tribe, this sovereign nation, and we should keep that commitment.

One fact remains indisputable in this case. Before there was a park on the Ravenator tract, that land belonged to the sovereign Cherokee Nation, and thousands of Cherokee people were forcibly removed from this land during the infamous Trail of Tears, which, in my view, is one of the most shameful acts in our country's history.

Mr. Chairman, I support this legislation because I believe it will give back to the tribe what was traditionally theirs and unite their reservation which has significant cultural and historic meaning to the Cherokee people. I have seen pictures of this land, and I am convinced that the land exchange will not endanger the integrity of this park. As a matter of fact, I think the park will be enhanced by this exchange.

I understand that the tribe has agreed to exchange some other valuable property that was identified by the National Park Service, and this is a very reasonable approach. And when we find this type of reasonable approach, I think Congress should give its imprimatur to that.

Mr. Chairman, I also would like to speak on H.R. 884, a bill which would provide for the use and distribution of funds awarded the Western Shoshone Indians under a 1979 ruling by the Indian Claims Commission. The award, which today includes over \$130 million, is compensation for what is called an encroachment by the United States onto Western Shoshone ancestral lands. Considering the riches in much of the land, I do not think anyone could characterize this as a good deal for the Western Shoshone. But it was what was litigated and determined to be legal. Disputes and disagreement among the Western Shoshone and between the bands in the United States has kept the monies from being distributed. Congress has also clearly played a part in holding up the distribution of these judgment awards.

I have served on this Committee now for over two decades, and during this time several proposals have been submitted providing for distribution of these funds. We have seen everything from a total straight per capita payment to several funds being set up for specific purposes, to proposals with overly generous attorneys' fees attached. Each proposal came with a promise of wide support throughout the Western Shoshone. And each proposal failed to be enacted because ultimately not enough members were comfortable with the provisions and the support behind them.

Many Western Shoshone Indians want these awards distributed and are frustrated with the delay. They want to receive the funds so they can pay a few bills and move onto their lives. However, for many other Western Shoshone Indians, no monetary compensation can satisfy their hope for the return of some of the Western Shoshone ancestral lands.

Many on this side of the issue believe that accepting the awards money would be supporting the Federal actions that took

their land. Today, we are again faced with a proposal to distribute judgment award funds to the Western Shoshone Indians. I look forward to hearing from our witnesses and learning more about the activities which have brought us up to this point.

I want to thank you, Mr. Chairman, for bringing this bill up for a hearing at this time. Because of the long and somewhat tumultuous history, I believe we must move carefully and deliberately on this bill. Bringing the bill up during the first session gives us time to study the issue and fully understand its ramifications.

Again, Mr. Chairman, I thank you for the time.

[The prepared statements of Mr. Kildee follow:]

Statement of The Honorable Dale Kildee, a Representative in Congress from the State of Michigan, on H.R. 884

MR. CHAIRMAN, THANK YOU FOR HOLDING THIS HEARING TODAY ON H.R. 884, A BILL WHICH WOULD PROVIDE FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE WESTERN SHOSHONE INDIANS UNDER A 1979 RULING BY THE INDIAN CLAIMS COMMISSION. THE AWARD, WHICH TODAY INCLUDES OVER \$130 MILLION, IS COMPENSATION FOR WHAT IS CALLED AN "ENCROACHMENT" BY THE UNITED STATES ONTO WESTERN SHOSHONE ANCESTRAL LANDS.

CONSIDERING THE RIGHTS IN MUCH OF THE LAND, I DON'T THINK ANYONE WOULD CHARACTERIZE THIS AS A GOOD DEAL FOR THE WESTERN SHOSHONE BUT IT IS WHAT WAS LITIGATED AND DETERMINED TO BE LEGAL.

DISPUTES AND DISAGREEMENTS AMONG THE WESTERN SHOSHONE AND BETWEEN THE BANDS AND THE UNITED STATES HAS KEPT THE MONIES FROM BEING DISTRIBUTED. CONGRESS HAS ALSO CLEARLY PLAYED A PART IN HOLDING UP THE DISTRIBUTION OF THESE JUDGMENT AWARDS.

I'VE SERVED ON THIS COMMITTEE FOR OVER TWO DECADES AND DURING THIS TIME SEVERAL PROPOSALS HAVE BEEN SUBMITTED PROVIDING FOR DISTRIBUTION OF THESE FUNDS. WE'VE SEEN EVERYTHING FROM A TOTAL STRAIGHT PER CAPITA PAYMENT, TO SEVERAL FUNDS BEING SET UP FOR SPECIFIC PURPOSES, TO PROPOSALS WITH OVERLY GENEROUS ATTORNEY'S FEES ATTACHED. EACH PROPOSAL CAME WITH THE PROMISE OF WIDE SUPPORT THROUGHOUT THE WESTERN SHOSHONE.

YET EACH PROPOSAL FAILED TO BE ENACTED BECAUSE ULTIMATELY NOT ENOUGH MEMBERS WERE COMFORTABLE WITH THE PROVISIONS AND THE SUPPORT BEHIND THEM.

MANY WESTERN SHOSHONE INDIANS WANT THESE AWARDS DISTRIBUTED AND ARE FRUSTRATED WITH THE DELAY. THEY WANT TO RECEIVE THE FUNDS SO THEY CAN PAY A FEW BILLS AND MOVE ON WITH THEIR LIVES.

HOWEVER, FOR MANY OTHER WESTERN SHOSHONE INDIANS, NO MONETARY COMPENSATION CAN SATISFY THEIR HOPE FOR THE RETURN OF SOME OF THE WESTERN SHOSHONE ANCESTRAL LANDS. MANY ON THIS SIDE OF THE ISSUE BELIEVE THAT ACCEPTING THE AWARD MONIES WOULD BE SUPPORTING THE FEDERAL ACTIONS THAT TOOK THEIR LAND.

TODAY WE ARE AGAIN FACED WITH A PROPOSAL TO DISTRIBUTE JUDGMENT AWARD FUNDS TO THE WESTERN SHOSHONE INDIANS. I LOOK FORWARD TO HEARING FROM OUR WITNESSES AND LEARNING MORE ABOUT THE ACTIVITIES WHICH HAVE BROUGHT U.S. TO THIS POINT.

I WANT TO THANK CHAIRMAN POMBO FOR BRINGING THIS BILL UP FOR A HEARING AT THIS TIME.

BECAUSE OF THE LONG AND SOMEWHAT TUMULTUOUS HISTORY, I BELIEVE WE MUST MOVE CAREFULLY AND DELIBERATIVELY ON THIS LEGISLATION. BRINGING THE BILL UP DURING THE FIRST SESSION GIVES U.S. TIME TO STUDY THE ISSUE AND FULLY UNDERSTAND ITS RAMIFICATIONS.

THANK YOU.

Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan, on H.R. 1409

MR. CHAIRMAN, I WANT TO THANK YOU FOR HOLDING THIS HEARING TODAY ON H.R. 1409, A LAND EXCHANGE BILL WHICH WILL ALLOW THE EASTERN BAND OF CHEROKEES TO BUILD NEW SCHOOLS FOR THEIR CHILDREN. I ALSO WANT TO WELCOME MY FRIEND, CHIEF LEON JONES, PRINCIPAL CHIEF OF THE EASTERN

BAND OF CHEROKEE INDIANS, WHO IS HERE TO TESTIFY ON BEHALF OF THIS LEGISLATION.

ONE OF THE CENTRAL PROMISES THE U.S. GOVERNMENT MADE TO THE INDIAN NATIONS IN THEIR TREATIES WAS THE PROMISE OF EDUCATION FOR THEIR PEOPLE. TIME AND TIME AGAIN, OUR GOVERNMENT HAS FAILED TO LIVE UP TO THAT PROMISE.

MR. CHAIRMAN, I HAVE VISITED SEVERAL OF THE TRIBAL SCHOOLS IN MY 26 YEARS IN CONGRESS, AND I CAN HONESTLY SAY THAT SO MANY OF THESE SCHOOLS WERE IN SUCH DISREPAIR THAT A JUDGE WOULDN'T ALLOW CRIMINALS TO STAY IN THEM.

THIS IS THE KIND OF ENVIRONMENT IN WHICH MANY OF OUR INDIAN CHILDREN HAVE BEEN FORCED TO LEARN.

THAT IS UNACCEPTABLE. THROUGH THIS LEGISLATION WE CAN HELP THE EASTERN BAND OF CHEROKEE MOVE FORWARD WITH ITS COMMITMENT TO EDUCATE ITS CHILDREN.

IN MY YEARS OF ELECTED OFFICE, I HAVE ENJOYED THE SUPPORT OF THE ENVIRONMENTAL COMMUNITY FOR MY COMMITMENT TO PROTECTING OUR NATION'S PRECIOUS RESOURCES. THAT IS SOMETHING FOR WHICH I AM VERY PROUD.

IN FACT, I WROTE THE LAW ESTABLISHING ONE OF THE LARGEST FEDERAL WILDERNESS AREAS EAST OF THE MISSISSIPPI RIVER.

I HAVE ALSO DRAFTED LAWS PROTECTING SOME OF OUR NATION'S MOST THREATENED WILD AND SCENIC RIVERS. MY COMMITMENT OF THE ENVIRONMENT IS SECOND TO NONE.

I KNOW THAT SOME OF MY ENVIRONMENTAL FRIENDS OPPOSE THIS LEGISLATION AND FEEL THAT NO LAND SHOULD EVER BE EXCHANGED FROM THE NATIONAL PARK SERVICE. BUT IN THIS INSTANCE, I MUST DISAGREE.

ONE FACT REMAINS INDISPUTABLE IN THIS CASE. BEFORE THERE WAS A PARK ON THE RAVENSPOND TRACT, THAT LAND BELONGED TO THE SOVEREIGN CHEROKEE NATION. AND THOUSANDS OF CHEROKEE PEOPLE WERE FORCIBLY REMOVED FROM THIS LAND DURING THE INFAMOUS TRAIL OF TEARS, WHICH IN MY VIEW, IS ONE OF THE MOST SHAMEFUL ACTS IN OUR COUNTRY'S HISTORY.

MR. CHAIRMAN, I SUPPORT THIS LEGISLATION BECAUSE I BELIEVE IT WILL GIVE BACK TO THE TRIBE WHAT WAS TRADITIONALLY THEIRS AND UNITE THEIR RESERVATION WHICH HAS SIGNIFICANT CULTURAL AND HISTORIC MEANING TO THE CHEROKEE PEOPLE.

I HAVE SEEN PICTURES OF THIS LAND AND I AM CONVINCED THAT THIS LAND EXCHANGE WILL NOT ENDANGER THE INTEGRITY OF THIS PARK.

I UNDERSTAND THAT THE TRIBE HAS AGREED TO EXCHANGE SOME OTHER VALUABLE PROPERTY THAT WAS IDENTIFIED BY THE NATIONAL PARK SERVICE. THIS IS A REASONABLE APPROACH TO THIS ISSUE.

I LOOK FORWARD TO HEARING FROM THE WITNESSES TODAY AND MOVING FORWARD ON THIS LEGISLATION. THANK YOU.

The Chairman. Thank you.

I would now like to welcome our first panel. Panel one consists of Mr. Mike Olsen, Counselor to the Assistant Secretary for Indian Affairs of the Department of Interior. He is providing testimony on both bills today.

Please come up. Before you sit down, you forgot.

[Witness sworn.]

The Chairman. Let the record show he answered in the affirmative.

Michael, remember that under the Committee rules you must limit the oral testimony to 5 minutes, but the entire written statement will appear in the record.

STATEMENT OF MICHAEL OLSEN, COUNSELOR TO THE ASSISTANT SECRETARY OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ON H.R. 1409

Mr. Olsen. OK. Thank you. If you can hear me OK?

The Chairman. Go ahead.

Mr. Olsen. OK. I appreciate the opportunity to present the views of the Department of the Interior on H.R. 1409. Is that OK that we start there? OK. My name is Mike Olsen. I am a Counselor to the Assistant Secretary for Indian Affairs. It is nice to be back with the Committee, even if it on the other

side of this table all by myself.

The Eastern Band of Cherokee Indian Reservation is located in western North Carolina and is home to 12,500 enrolled members. The reservation is adjacent to both the Great Smoky Mountains National Park and the Blue Ridge Parkway, which are both under the jurisdiction of the National Park Service.

H.R. 1409 would direct the Secretary of the Interior to exchange with the Eastern Band of Cherokee Indians approximately 143 acres of the Great Smoky Mountains National Park for 218 acres of tribal land. Just to clarify, the 143-acre tract is referred to as the Ravensford tract; the 218 acres that the tribe would be giving up is referred to as the Yellow Face tract. The Ravensford tract would be held in trust by the United States for the benefit of the tribe, and the Yellow Face tract would be added to the parkway.

The Department has no objection to action by Congress on this legislation. We are, however, moving forward with an administrative process for evaluation of the environmental effects of the proposed exchange and alternatives.

In the report that accompanied the Department of the Interior and Related Agencies Appropriations Act of 2001, the House Committee on Appropriations expressed support for a land exchange between the tribe and the Park Service so the tribe could obtain land suitable for a new school complex. The Committee urged the cooperation of the Park Service to ensure the exchange with the tribe takes place expeditiously. The Park Service held a series of initial scoping meetings in early 2002. The compilation of the public comments, evaluations, and appraisals are contained in a Draft Environmental Impact Statement, which was available for public review starting on June 13th and extending through August 15th. And the Department will update the Committee on the issues raised in this public review.

The tribe has been seeking flat land on which to build a new school for over 20 years. The tribe plans to use a portion of the Ravensford tract for the construction of an educational campus. The bill's findings point out that over 40 years ago, the Department of the Interior built the existing Cherokee Elementary School which has a capacity of 480 students. The school now hosts 794 students in dilapidated buildings and mobile classrooms at a dangerous highway intersection in downtown Cherokee, North Carolina.

Under the legislation, the Park Service and the tribe would enter into consultations to develop mutually agreed upon standards for size, impact, and design of the educational facilities in order to minimize or mitigate any adverse impacts on natural or cultural resources. The Park Service would also be authorized to enter into cooperative agreements to provide training, management, and protection of the natural and cultural resources on the tract. The development of the tract would be restricted to a road and utility corridor, and an educational campus and support infrastructure.

The legislation simply authorizes a land exchange for a site for a school. The tribe will still have to go through the process necessary for using BIA funds under the school cost share demonstration project or replacement priority. In addition, while the Park Service will mutually agree on the standards for size, impact, and design, the tribe will still have to follow BIA requirements with regard to design and planning.

The Ravensford tract is rich in biodiversity and in historical artifacts and Cherokee history. The tribe's Historic Preservation Office, in consultation with the Park Service, the State Historic Preservation Office, and an independent expert review panel, has developed a cultural resource mitigation plan to ensure the preservation of these properties.

Finally, the land exchange contemplated in H.R. 1409 presents an extremely unique situation. The Department does not