typically support land exchanges that establish restrictions, such as those contained in Section 4 of the legislation, on tribal trust land. We understand, however, that there was mutual agreement between the tribe and the bill's sponsor to include these provisions in the bill in order to ensure the least amount of impact on the adjoining park property.

This concludes my testimony, and I would certainly be happy to answer questions that you may have.

[The prepared statement of Mr. Olsen follows:]

Statement of Michael D. Olsen, Counselor to the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, on H.R. 1409

Mr. Chairman, thank you for the opportunity to present the views of the Department of the Interior on H.R. 1409, a bill 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.

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 (Park) and Blue Ridge Parkway (Parkway), which are under the jurisdiction of the National Park Service (NPS). Congress established the Great Smoky Mountains National Park on June 15, 1934. President Franklin Delano Roosevelt officially dedicated the Park on September 2, 1940.

H.R. 1409 would direct the Secretary of the Interior to exchange approximately 143 acres of the Park and Parkway, known as the Ravensford tract, to the Eastern Band of Cherokee Indians (Tribe) for approximately 218 acres of land, known as the Yellow Face tract, to the NPS. 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.

We have no objection to action by Congress in this matter. On the administrative front, we are moving forward with a process for evaluation of the environmental effects of the proposed exchange and alternatives. House Report 106-646, which accompanied the Department of the Interior and Related Agencies Appropriations Act of 2001 (P.L. 106-291), the House Committee on Appropriations expressed its support of the Tribe's efforts to enter into a land exchange with the NPS for purposes of obtaining land suitable for building a new school complex. The Committee urged ``the cooperation of the NPS to ensure the exchange with the Tribe takes place expeditiously.'' In response, in January 2000 the NPS committed to begin this process and on June 14, 2000, a general agreement was executed between the NPS and the Tribe to identify the resource evaluations and appraisals required to be carried out by law. The NPS held initial scoping meetings in Knoxville (TN), Asheville (NC), and Cherokee (NC) in early 2002. The compilation of the public comments, evaluations and appraisals are contained in a Draft Environmental Impact Statement, which is available for public review from June 13th through August 15th. The Department will update the Committee on the issues raised in this public review.

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

Under the legislation, the NPS and Tribe would enter into consultations to review the planned construction allowing the NPS and Tribe to develop mutually agreed upon standards for size, impact, and design of construction of the educational facilities in order to minimize or mitigate any adverse impacts on natural or cultural resources. The NPS would also be authorized to enter into cooperative agreements to provide training, management, protection, preservation,

and interpretation of the natural and cultural resources on the tract. The development of the tract would be restricted to road and utility corridor, and an educational campus and support infrastructure. No new structures would be constructed on the portion of the tract north of the point where the Big Cove Road crosses the Raven Fork River.

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 NPS 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.

During the 2002 National Tribal Historic Preservation Officers meeting, the Bureau of Indian Affairs (BIA) was given a tour of the lands proposed in this exchange. The Ravensford Tract is rich in biodiversity and in historical artifacts and Cherokee history. There is evidence that this property has more intact archeological properties that are historically significant to the Cherokee than any place other than a place known as Katoogah, which is considered the birthplace of the Cherokee. The Tribe's Historic Preservation Office in consultation with the NPS, the State Historic Preservation Office, and an independent expert peer review panel has developed a cultural resource mitigation plan to ensure the preservation of these properties.

The land exchange contemplated in H.R. 1409 presents an extremely unique situation. The Department does not typically support land exchanges that establish restrictions, such as the ones contained in section 4, on tribal trust land. We understand, however, there was mutual agreement between the tribe and the sponsor to include these provisions in the bill in order to ensure the least amount of impact on the adjoining park property. This concludes my testimony. I would be happy to answer any questions that you may have.

The Chairman. Mr. Olsen, you may as well do the testimony on both bills.

Mr. Olsen. OK.

The Chairman. And we will open it up for questions at that point.

STATEMENT OF MICHAEL OLSEN, COUNSELOR TO THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ON H.R. 884

Mr. Olsen. Very good. H.R. 884, the Western Shoshone Claims Distribution Act.

Taking a step back, the Western Shoshone judgment funds that are discussed, contemplated in this legislation originated with two claims filed in 1951 by the Te-Moak Bands of Western Shoshone in the Indian Claims Commission. One is an aboriginal land claim that was concluded in 1979 for $26.1 million. The other is an accounting claim that resulted in two awards. The first was for approximately $823,000, which Congress appropriated in 1992, and the second award was for $29,000, which was appropriated in 1995.

Section 2 of H.R. 884 proposes to distribute the Western Shoshone land claim funds 100 percent per capita to approximately 6,500 individuals who have at least one-quarter degree of Western Shoshone blood. The balance of this fund, including interest, as of June 11, 2003, is $142,472,644.

Section 3 of the legislation proposes to use the principal portion of the Western Shoshone accounting claims funds for a non-expendable trust fund. The interest and investment income will be available for educational grants and other forms of educational assistance to individual Western Shoshone members that are enrolled under Section 2 of the legislation and to their lineal descendants. The principal fund totals $754,136. The interest fund, as of June 11, 2003, totals $632,583.

Since 1980, numerous attempts have been made to reach agreement on the disposition of the Western Shoshone judgment

funds. Moreover, a large segment of the Western Shoshone people have indicated that they support the judgment fund distribution. However, the tribal councils of the four successor Western Shoshone tribes, which are the Te-Moak, Ely, Duckwater, and Yomba, have mostly opposed the distribution of the judgment funds because they wanted Western Shoshone aboriginal lands returned.

Now, although the tribal governments were unanimous in their opposition in the early 1990's, since 1997 three of the four tribal councils have modified their position to support the distribution of the judgment funds.

The Te-Moak Tribal Council enacted a resolution on March 6, 1997, adopting a plan for the distribution of the funds and asked the Department of the Interior to support that plan. The next tribal council rescinded that resolution in the summer of 2000, but the current tribal council rescinded that action in January of 2002 and reinstated the 1997 resolution supporting distribution.

The Duckwater Shoshone Tribal Council enacted a resolution on March 10, 1998, supporting the Western Shoshone claims distribution proposal. On March 10, 1999, the council reaffirmed the earlier resolution supporting the distribution proposal, and within the last month of 2003, it enacted another resolution reconfirming its support of the proposal.

The Ely Tribal Council enacted a resolution on October 9, 2001, supporting the bills of the 107th Congress dealing with this issue. It, too, has enacted another resolution reconfirming its previous support.

We have been advised that the Yomba Tribal Council continues to oppose the distribution. However, Duck Valley, Fallon, and Fort McDermitt, three tribes with enrolled members that would be eligible to share in the distribution, in the judgment fund distribution under this legislation, have also enacted resolutions supporting the distribution.

We testified during the 107th Congress before the Senate Committee on Indian Affairs that the Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support by resolution dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the legislative language and have taken no action to rescind the resolutions.

The Department supports the enactment of H.R. 884 because we believe that it reflects the wishes of the vast majority of the Western Shoshone people. We are also pleased that three of the four successor tribes have expressed their support of the distribution as well as two other tribes with a significant number of tribal members of Western Shoshone descent.

We understand that many of the beneficiaries continue to believe in their rights under the Treaty of Ruby Valley. Subsection (2)(9) of the legislation acts as a savings clause for whatever rights remain in effect.

This concludes my prepared statement. We are submitting a report to be included in the record that gives more of a detailed history of the Western Shoshone claims, and I will be happy to answer any of your questions.

[The prepared statement of Mr. Olsen follows:]

Statement of Michael D. Olsen, Counselor to the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, on H.R. 884

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Department of the Interior on H.R. 884, a bill entitled ``The Western Shoshone Claims Distribution Act.''

The distribution of the Western Shoshone judgment funds is a long-standing issue that needs to be settled. The judgment funds stem from two claims that were filed by the Te-Moak Bands of Western Shoshone in the Indian Claims Commission in 1951. One is an aboriginal land claim that was concluded in 1979 in Docket 326-K for $26.1 million. The other

is an accounting claim. Several issues in the accounting claim were handled separately and resulted in two awards. The first award in the accounting claim was for approximately $823,000, and Congress appropriated funds to pay the claim in 1992. The second award was for $29,000, and funds were appropriated in 1995 to pay the claim. The accounting claims were in Dockets 326-A-1 and 326-A-3.

Since 1980, numerous attempts have been made to reach agreement on the disposition of the Western Shoshone judgment funds. The most recent attempt began in March 1998, the Western Shoshone Steering Committee (WSSC), which is composed of individuals that are tribal members at various reservations in Nevada. With the approval of the Te-Moak Tribal Council, the WSSC has worked over the past four years investigating if the Western Shoshone people were in favor of a judgment fund distribution.

Since 1980, when the BIA held its first Hearing of Record on the distribution of the land claims judgment funds, a large segment of the Western Shoshone people have indicated that they are in favor of the judgment fund distribution. In the meantime, it's important to note that the tribal councils of the four successor Western Shoshone tribes (Te-Moak, Ely, Duckwater and Yomba) have mostly opposed the distribution of the judgment funds because they wanted the Western Shoshone aboriginal lands returned. Although the tribal governments were unanimous in their opposition in the early 1990's, since 1997, three of the four tribal councils have modified their position to support the distribution of the judgment funds.

The Te-Moak Tribal Council enacted Resolution No. 97-TM-10 on March 6, 1997, adopting a plan for the distribution of these funds and requested the Department to support it. That resolution was rescinded by the next tribal council in the summer of 2000, but the current tribal council rescinded that action in January of 2002 and reinstated the 1997 resolution, supporting distribution. It too, has not been rescinded. The Duckwater Shoshone Tribal Council enacted Resolution No. 98-D-12 on March 18, 1998, supporting the Western Shoshone claims distribution proposal. On March 10, 1999, they enacted Resolution No. 99-D-07 reaffirming the earlier resolution supporting the Western Shoshone Claims distribution proposal and within the last month of 2003, they enacted another resolution reconfirming their support of the proposal. The Ely Tribal Council enacted Resolution No. 2001-EST-44 on October 9, 2001, supporting the bills of the 107th Congress. They, too, have enacted another resolution that reconfirms their previous support. We have been advised that the Yomba Tribal Council continues to oppose the distribution. Several other tribes with enrolled tribal members that would be eligible to share in the judgment fund distribution under H.R. 884 have also enacted resolutions supporting the distribution. Those tribes are Duck Valley, Fallon and Fort McDermitt. We testified during the 107th Congress before the Senate Committee on Indian Affairs that the Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support by Resolution No. 2002-SPR-012, dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the legislative language and have taken no action to rescind the resolutions.

We support the enactment of H.R. 884 because we believe that it reflects the wishes of the vast majority of the Western Shoshone people. We are also pleased that three of the four successor tribes have expressed their support of the distribution, as well as two other tribes with a significant number of tribal members of Western Shoshone descent.

Section 2 of H.R. 884 proposes to distribute the Western Shoshone land claims funds that were awarded in Docket 326-K, one hundred percent (100%) per capita to approximately 6,500 individuals who have at least one-quarter (1/4) degree of Western Shoshone Blood. The current balance of this fund, including interest, as of June 11, 2003 is $142,472,644. This section appears to be in accord with the wishes of the Western Shoshone people.

Section 3 proposes to use the principal portion of the Western Shoshone accounting claims funds awarded in Dockets 326-A-1 and 326-A-3 for a non-expendable Trust fund. The interest and investment income will be available for educational grants and other forms of educational

assistance to individual Western Shoshone members that are enrolled under Section 2 of this Act, and to their lineal descendants. The principal fund totals $754,136. The interest fund, as of June 21, 2003 totals $632,582. This section appears to be in accord with the wishes of the Western Shoshone people.

We understand that many of the beneficiaries of this treaty continue to believe in their rights under the Treaty of Ruby Valley and this subsection acts as a savings clause for whatever rights remain in effect. We are concerned that some tribes or individuals may believe that Article 5 of the Treaty (land provisions) remains in effect. To be safe, the clause should read, ''Receipt of a share of the funds under this subsection shall not alter any treaty rights, or the final decisions of the Federal Courts regarding those rights, pursuant to the `1863 Treaty of Ruby Valley,' inclusive...''

This concludes my prepared statement. We are submitting a report to be included into the record that gives a detailed history of the Western Shoshone claims. I will be happy to answer any questions the Committee may have.

Western Shoshone Claims - Background Information

In 1935, the Western Shoshone started pursuing their claims against the United States by seeking legislation (S. 2510 - 74th Congress, 1st Session) to grant jurisdiction to the Court of Claims to hear the Western Shoshone claims arising under the Treaty of October 1, 1863, 18 Stat. 689 (1863 Treaty of Ruby Valley). This bill, and several others that were introduced in Congress between 1935 and 1946, did not result in legislation. The last bill, S. 2278, was introduced on May 31, 1946. The primary reason Congress did not enact this legislation was because it deferred action on all special jurisdictional bills for individual tribes so that it could pass legislation to create an Indian Claims Commission (ICC) with the authority to consider the claims of all Indian tribes. The ICC was created under the Act of August 13, 1946, 60 Stat. 1049.

The Shoshone claims in Docket 326 were filed before the ICC on August 10, 1951. Docket 326 included multiple claims involving the Eastern Bands of Shoshone, the Northwestern Bands of Shoshone, the Western Shoshone, the Shoshone-Goship Bands, and the mixed Bands of Bannock and Shoshone Indians. The ICC closed Docket 326 in 1967 when it severed all of the claims into separate Dockets numbering from 326-A through 326-K. The Western Shoshone land claims were transferred to Docket 326-K and their accounting claims were transferred to Docket 326-A. 40 Ind. Cl. Comm. 318, 453

On August 15, 1977, the ICC granted a final award of $26,145,189.89 in Docket 326-K to the Western Shoshone Identifiable Group as represented by the Temoak Bands of Western Shoshone Indians, Nevada. See 219 Ct. Cl. 346 (1979) Crt. Denied 444 U.S. 973 (1979) Litigation and other actions initiated by some Western Shoshone entities, including the Te-Moak Bands (aka Temoak) delayed until December 19, 1979, the appropriation of funds to satisfy the award.

The ICC concluded that the Western Shoshone Identifiable Group aboriginally exclusively used and occupied a large tract of land located principally in Nevada with a small portion extending into California. The tract formed roughly a wedge from near the northeast corner of Nevada extending south, southwest, with the point of the wedge in California, including Death Valley.

The ICC found that the Western Shoshone California lands were acquired by the United States by statute on March 3, 1853, and that Indian title to the Nevada lands was extinguished gradually by the United States which treated the tract as public lands. On February 11, 1966, the ICC approved a joint stipulation between the United States and the Western Shoshone plaintiff that established July 1, 1872, as the aggregate valuation date for the encroachment upon and taking of the Nevada lands.

Prior to the agreement of the Nevada evaluation date the ICC had established that the Nevada tract consisted of 22,211,753 acres and the

California tract consisted of 2,184,650 acres. On October 11, 1972, the ICC awarded in an Interlocutory Order $21,350,000 for the Nevada land, $200,000 for the California land, and $4,604,600 for the removal of minerals from the Nevada tract prior to the 1872 taking date. The ICC deducted $9,410.11 as payment on the claim, but nothing for offsets, resulting in the 1977 award of $26,145,189.89. See 29 Ind. Cl. Comm. 5.

Pertinent Aspects Concerning the Western Shoshone Land Claims

Controversy surrounds any discussion concerning the Western Shoshone land claims and the distribution of the judgment funds awarded in Docket 326-K. The disputed issues include the size and location of the claimed land area, whether the 1863 Treaty of Ruby Valley grants the Western Shoshone recognized title to the lands described in the 1863 Treaty of Ruby Valley, and effect the distribution of the judgment funds will have on the remaining claims of the Western Shoshone and on individual Western Shoshone people.

The issue concerning the size and location of the claimed land area first surfaced in 1935 when the Department of the Interior issued a report on S. 2510, dated June 12, 1935, and stated that the Duck Valley Indian Reservation was within the country described in the treaty and that the contention of the Indians to the contrary was not supported by Royce's Indian Land Cessions (Eighteenth Annual Report of the Bureau of American Ethnology). In a later report on S. 23 (Senate Report No. 79, dated March 5, 1943), the Department of the Interior acknowledged that its earlier statement concerning the Duck Valley Reservation was erroneous. The report further states that:

> In recent years, there has been discovered a map that was prepared by James Duane Doty, one of the Commissioners who negotiated the treaties with the Western and four other bands of Shoshone Indians in 1863. The map accompanied the treaties concluded by Commissioner Doty with these Indians and roughly depicted the boundaries of the lands claimed by them as described in the separate treaties. An examination of the map discloses that the Duck Valley Reservation is not within the country described in the treaty with the Western Shoshones, but, as contended by them for many years, is situated a considerable number of miles north of their country. Further support is given to the contention of the Indians by a map prepared by the General Land Office of this Department in May, 1939, showing the boundaries of the lands claimed by the various bands of Shoshone Indians in the treaties of 1863 and the acreage of such lands in each State. This map also shows that the Duck Valley Reservation is far north of the lands described in the Western Shoshone Treaty of 1863. The map shows in addition that the lands described in the Western Shoshone Treaty comprised approximately 15,811,000 acres situated entirely within the State of Nevada.

This same issue is discussed in ICC Finding of Fact No. 73 (40 Ind. Cl. Comm. 318, 400-403). The ICC found that:

- The locations of the boundaries of the Western Shoshone country, described by metes and bounds in Article V of the Treaty of Ruby Valley, are not free from doubt. The decision in the valuation proceeding herein noted that the territorial claim of the Western Shoshones, as described in the Treaty of Ruby Valley and depicted by Royce, Indian Land Cessions in the United States, supra, was larger than the area of the claim in Docket 326-K (29 Ind. Cl. Comm. 5, 47, note 5). The Western Shoshone lands are shown as Area 444 on Royce's maps of Nevada, California, Utah, Oregon, and Idaho. Royce Area 444 extends far north into Idaho, northwest into Oregon, east into Utah, and covers more Nevada land than is included in the Docket 326-K claim. According to Royce's maps and cession schedules, the Lemhi reserve, established by Executive Order of February 12, 1875 (for the Shoshoni, Bannocks, and Sheepeaters), the Carlin Farms reserve, established by Executive Order of May 10, 1877, and the Duck Valley reserve, established by Executive Order of April 16, 1877, were all located within the boundaries of the Western Shoshone country as described in the Treaty of Ruby Valley.
- Leaders of the Western Shoshones who lived near the area of the Duck Valley Reservation suggested that the Duck Valley land be

set aside for all Western Shoshones, but the Temoak bands, who lived in the Ruby Valley area south of Duck Valley objected because the reservation was not within their country. The Temoak bands believed that the treaty promised them a reservation in Ruby Valley. This disagreement is consistent with the observations of Powell and Ingalls who reported in 1873 that each local group wanted a separate reservation in its particular aboriginal area.

* Royce relied on data and information of the Bureau of Indian Affairs and the General Land Office in preparing his material. (Royce, supra, p. 644.)

* The Royce maps, in an official publication of the United States (as is the 18th Annual Report of the Bureau of American Ethnology), show the Duck Valley Reservation as being within the lands described in Article V of the Treaty of Ruby Valley and within the aboriginal area of the Western Shoshones. These maps and the notes in the Land Cession Schedules . . . indicate that officers of the United States believed in 1877 when the reservation was established that it was within the Western Shoshone aboriginal area. However, plaintiff's exhibit 72 in the offsets proceeding includes a report accompanying a letter of July 11, 1941, of the Department of the Interior to the Chairman of the Committee on Indian Affairs of the House of Representatives which states that according to maps available to the Department in 1941, the country of the Western Shoshones, as described in the Treaty of Ruby Valley, was much less extensive than that shown as Area 444 on the Royce maps, and that according to the then recently discovered maps, the Duck Valley Reservation was outside of the Western Shoshone aboriginal lands. In 1935, before the discovery of the maps referred to in the 1941 report, the Department of the Interior reported to Congress that the reservation was within the Western Shoshone aboriginal area.

* In sum, from about 1869 through 1877, the United States assisted some Western Shoshones in maintaining small farms and one or more reservations within the aboriginal areas, and in 1877, set aside the Duck Valley Reservation for all Western Shoshones. Between 1877 and 1941, the Department of the Interior records indicated that the reservation was within the plaintiff's aboriginal area, but since 1941 the matter has been open to doubt.

We are mentioning this issue because we note that the map used by the Western Shoshone National Council to show the claimed area is different than the maps used by the United States and the ICC in Docket 326-K. The Western Shoshone aboriginal land area was established in 1962 by the ICC, and it is much larger than the land area described in the 1863 Treaty of Ruby Valley. We have attached copies of the maps to this report. The first map is a portion of a larger map that was included with the Final Report of the Indian Claims Commission that was issued in 1978. The second map shows the boundaries of the Western Shoshone aboriginal land area and the 1863 Treaty area.

The second issue concerns whether the Western Shoshone have recognized title to the lands described in the 1863 Treaty of Ruby Valley. This issue was discussed by the United States Supreme Court in its decision in Northwestern Bands of Shoshone Indians v. The United States, 324 U.S. 335 (1945). The decision specifically pertains to the claims of the Northwestern Bands of Shoshone under the 1863 Box Elder Treaty, but it also discusses the five treaties entered into with the Shoshones, including the 1863 Ruby Valley Treaty. The following are excerpts from the Supreme Court decision:

> On July 5, 1862, 12 Stat. 512, 529, Congress appropriated $20,000 for defraying the expenses of negotiating a treaty with the Shoshones. The appropriation followed a letter from the Secretary of the Interior to the chairman of the House Committee on Indian Affairs expressing the view that the lands owned by the Indians of Utah were largely unfit for cultivation and that it was ``not probable that any considerable portion of them will be required for settlement for many years.'' A special commission was promptly appointed and instructed that it was not expected that the proposed treaty would extinguish Indian title to the lands but only secure freedom from molestation for the routes of travel and ``also a definite

acknowledgment as well of the boundaries of the entire country they claim as of the limits within which they will confine themselves, which limits it is hardly necessary to state should be as remote from said routes as practicable.''

As the distances made it impracticable to gather the Shoshone Nation into one council for treaty purposes, the commissioners made five treaties in an endeavor to clear up the difficulties in the Shoshone country. These are set out in full in the report below, 95 Ct. Cl. 642. Four will be found also in 13 Stat. 663, 681, and 18 Stat. 685, 689. . . Northwestern Bands, 324 U.S. 335, 341-343 (1935)

Later in the opinion the Court stated:

Without seeking any cession or relinquishment of claim from the Shoshone, except the Eastern Shoshone relinquishment of July 3, 1868, just referred to, the United States has treated the rest of the Shoshone territory as a part of the public domain. School lands were granted. . . National forests were freely created. . . The lands were opened to public settlement under the homestead laws. . . Thus we have administration of this territory by the United States proceeding as though no Indian land titles were involved.

The Court of Claims examined the evidence adduced before it and reached the conclusion as a finding of fact that the United States ``did not intend that it [the treaty] should be a stipulation of recognition and acknowledgment of any exclusive use and occupancy right or title of the Indians, parties thereto . . . The treaty was intended to be, and was, a treaty of peace and amity with stipulated annuities for the purposes of accomplishing those objects and achieving that end.'' . . . 324 U.S. 335, 346 (1945)

In its conclusion, the Supreme Court held that:

It seems to us clear that the circumstances leading up to and following the execution of the Box Elder Treaty that the parties did not intend to recognize or acknowledge by that treaty the Indian title to the lands in question. Whether the lands were in fact held by the Shoshones by Indian title from occupancy or otherwise or what rights flow to the Indians from such title is not involved. Since the rights if any the Shoshones have, did not arise under or grow out of the Box Elder treaty, no recovery may be had under the jurisdictional act. 324 U.S. 335, 354 (1945)

The Supreme Court decision caused an uproar. Congressman Karl E. Mundt of South Dakota was critical of the decision and his comments were included in the Extension of Remarks portion of the Congressional Record. Congressman Mundt's remarks, dated March 14, 1945, were included in the Appendix to the Congressional Record, 79th Congress, 1st Session, page A1185. Copies of Congressman Mundt's remarks and the Supreme Court decision are attached.

The controversy escalated in the 1970's when the Bureau of Land Management filed suit against Mary and Carrie Dann for trespass violations on public domain lands. Given a choice, some of the Western Shoshone would prefer to acquire additional trust lands within their aboriginal land areas rather than accept compensation for the loss of those lands.

In 1974 the United States filed a complaint against Mary and Carrie Dann alleging that they had trespassed on public lands by grazing their cattle there without a permit from the Bureau of Land Management. The government sought an injunction and damages. The Danns based their defense on the grounds that they were members of the Western Shoshone Tribe of Indians, and that the Western Shoshone held aboriginal title to the lands in question.

Meanwhile, the Western Shoshone Legal Defense and Education Association (Association) filed a petition before the ICC requesting it to suspend further action in the proceedings in Docket 326-K until the United States District Court for the Nevada District had decided the trespass action brought by the United States in the case of United