

Supreme Court ruled on this issue nearly 20 years ago.

The Supreme Court ruling is so clear that it made the need for the ICC report obsolete.

In the U.S. v. Dann case, the Supreme Court held that payment of the ICC award had occurred when the \$26 million was placed in the Western Shoshones' trust account, therefore giving the Western Shoshone Claim finality.

It is important to note that H.R. 004 specifically ensures that the funds distribution is not a waiver of existing treaty rights, nor will it prevent the Tribe, Band or individual Shoshone Indians from pursuing other rights guaranteed by law.

Lastly, H.R. 884 is a bipartisan effort in both the House and the Senate, and it is supported by the Nevada Delegation.

The opposition has fought this issue in the courts all the way to the Supreme Court without success.

They are now fighting it in the Legislative branch.

The time is long overdue for the will of the majority of the Western Shoshone people to prevail!

I urge each member of this Committee to support the Western Shoshone people in their endeavor to put this issue to rest once and for all.

Mr. Gibbons. Mr. Olsen, do you know, since you have related the historical process by which various different nations or tribes within the Indians have voted up or down on this agreement to accept this money, do you know what the vote was on what the support level is for the distribution of this money?

Mr. Olsen. I cannot give you exact numbers, but it is-- based on what we know, it is a significant amount of-- I mean, a vast majority of the Western Shoshone people are in support of the distribution.

Mr. Gibbons. In fact, it is about 90 percent of the population there that supports the distribution of this money?

Mr. Olsen. Yes, that is what I have been told.

Mr. Gibbons. So it would be a rather small number of individuals who are opposed to this on the presumption that if accepting this money precludes any further claim or settlement that may come from any claim they have for future land?

Mr. Olsen. Correct.

Mr. Gibbons. But the majority do accept and do wish to have this money distributed to them.

Mr. Olsen. Yes.

Mr. Gibbons. Thank you, Mr. Olsen.

Mr. Chairman, I have no further questions.

The Chairman. Mrs. Christensen?

Mrs. Christensen. Thank you, Mr. Chairman.

Attorney Olson, I think in response to the question of supporting the legislation, I just wanted to follow up on that. I think you said you did not have--the Department or the Bureau had no objection to the legislation?

Mr. Olsen. Yes. On H.R. 1409?

Mrs. Christensen. 1409.

Mr. Olsen. Yes.

Mrs. Christensen. But does the Department support--by passing the EIS or by doing legislation to accomplish this exchange, is that a policy of the Department to--for us to legislate while the process is going on?

Mr. Olsen. Would you answer that one?

Mr. Durand Jones. Well, of course, as the delegate knows, we do not control the timetable or the desires of this Committee or the Congress in how it proceeds. We, at the direction of our appropriations bill, prepared the Environmental Impact Statement. It was released to the public last week, and we are now in the public comment period. There will be public hearings on the EIS process. And that is one of the reasons why at this point we do not take a more definitive

status on the legislation because we still are going through the NEPA process. But we have been in negotiations with the members of the tribe concerning the restrictive covenants that are in the legislation, which we think go a long way toward protecting the values that the park is interested in, and also in defining the acreage involved in that the acreage is a little over 20 acres less than their original request. And that is a result of ongoing discussions and negotiations.

Mrs. Christensen. I guess my main concern, I really am leaning toward supporting this bill, but my main concern is really setting a precedent or opening some doors that we might not want to open for the future by doing this piece of legislation.

Mr. Duward Jones. Looking back, I believe there are numerous examples of the Congress acting for the sake of making good public policy before we in the executive branch have completed all of our bureaucratic steps.

Mrs. Christensen. Do you believe that the Park Service has the authority to complete the exchange administratively without legislation?

Mr. Duward Jones. I think it is not totally clear. The legislation for Blue Ridge Parkway has flexible boundary authority in that once lands are acquired, the boundary can be automatically expanded. However, the lands to be added to Blue Ridge are clearly outside the existing boundary as it exists today. And, therefore, we think it is best that this be accomplished by legislation rather than trying to look at it administratively.

Mrs. Christensen. OK. I think I still have some time.

Mr. Olsen, is it the case that the BIA currently has approximately \$8 million in Fiscal Year 2003 in Federal funds for improvements to the school that has not been spent? And is that \$8 million is there and has not been spent--I have seen some pictures of the school and I share the Administration's concern about the education of our children and the environment in which they are educated. Why has it not been spent? Or could you tell us what the immediate plans are for spending that \$8 million?

Mr. Olsen. Certainly, I am not entirely certain. I know that the tribe is planning to use that money in order to put--use that money and put it toward the construction of the new educational facility that this legislation contemplates.

Mrs. Christensen. But it is my understanding that is going to take about 7 years.

Mr. Olsen. To construct the school?

Mrs. Christensen. Yes.

Mr. Olsen. That very well could be. I don't know exactly what the timeframe is. I know that the tribe and the Park Service have engaged in the discussions that the legislation requires and have been doing that over the course of several months. And the tribe is ready to begin work once the exchange is approved.

Mrs. Christensen. I would just like to respectfully suggest that the \$8 million be spent--if it is going to take that long to get a school, I don't think the children should be in some of the conditions I saw for the next 7 years.

My last question would be: In your testimony, I think you said--or in the preliminary report of the EIS, it says that certain alternatives were eliminated from further study. I wonder if you would just--alternatives for the school site. I wonder if you would just respond to that. Did the alternatives that were excluded include the north end of the Cherokee business district and an area by the Access Road?

Mr. Olsen. You want comment on why that was excluded?

Mrs. Christensen. Yes.

Mr. Olsen. I do not know and would certainly be more than happy to provide you an answer in writing. But we can certainly address that question.

Mrs. Christensen. Mr. Chairman, I would appreciate some further information on those specific sites.

The Chairman. The record will remain open in order to allow the Administration the opportunity to provide a written response to you.

Mrs. Christensen. And I also have an opening statement that I would like to submit for the record.

The Chairman. Without objection.

Mrs. Christensen. Thank you.

The prepared statement of Mrs. Christensen follows:

Statement of The Honorable Donna Christensen, a Delegate to Congress from the Virgin Islands, on H.R. 1409

Mr. Chairman, as the Ranking Member on the Subcommittee on National Parks, Recreation and Public Lands, I would like to make a few, brief comments regarding one of the bills before the Full Committee today.

H.R. 1409 would require the Secretary of the Interior to exchange approximately 143 acres of Federal land currently located within the Great Smokey Mountains National Park, known as the Ravenstord Tract, for approximately 218 acres, currently owned by the Eastern Band of Cherokee Indians, known as the Yellowface Tract.

Upon completion of the exchange, the Ravenstord Tract would be held in trust for the benefit of the Tribe and the boundary of the Park would be altered to exclude the land. The Yellowface tract, located some thirty miles from the Park, would be added to the Blue Ridge Parkway.

It is our understanding that the Eastern Band is pursuing this exchange to provide the Tribe with land on which to build three new school facilities, an obviously worthy goal. Furthermore, this proposed exchange appears to include lands to which the Tribe has a historical claim. We are very interested in hearing from our witnesses today regarding both of these issues.

However, it must be noted that transferring lands located within a National Park to private ownership, regardless of the use to which those lands may be put, is exceedingly rare and raises a number of serious questions. Furthermore, to approve legislation which will short-circuit an ongoing BIA process designed to address these questions, would be problematic.

It is our hope that today's hearing might provide sufficient information that, in working with the Tribe, the National Park Service and Mr. Taylor, we might be able to craft a solution that addresses the Tribe's needs without negatively impacting one of our most visited National Parks.

We would like to thank the witnesses for their time and effort to be here today and look forward to their insights on both of the measures before the Committee today.

The Chairman. Mr. Hayworth?

Mr. Hayworth. Thank you, Mr. Chairman. Mr. Chairman, thank you for holding this hearing. And I have more than passing interest in H.R. 1409. I am pleased to be a cosponsor of this legislation, and I just wanted to take time--it is a common affliction that certainly my co-Chair on the Native American Caucus knows, indeed all Members of Congress here, of having to be three places at one time during the course of a day. But I wanted to stop by, and, Mr. Chairman, I have an opening statement for the record which I would like to submit. And I also just wanted to thank Chief Lynn Jones and others from the Eastern Band of Cherokee Indians for being here to discuss what is transpiring there. I believe this is an innovative win-win solution that the Park Service and the Eastern Band has worked out. And as mention was made in previous testimony, this is not uncommon, but this legislative solution is needed. So I look forward to reviewing the record. I thank my friends from the Eastern Band for being here. And again, Chairman and colleagues, thank you for holding the hearing.

Mr. Kildee. Would the gentleman yield?

Mr. Hayworth. I would gladly yield to my good friend from Michigan.

Mr. Kildee. I want to thank the co-Chair of the Native American Caucus because our staffs have worked together, studied this very, very thoroughly, and have concluded last, this is a very, very good exchange. And I appreciate your continuing good work on this and other issues.

Mr. Hayworth. I thank my friend from Michigan. As this illustrates, though we divide my part for purposes of the rules of the House, it is interesting that in the case of the first Americans, there are only two types of people who serve in Congress: those who represent what we now call Indian country and those who represent what was once Indian country.

And with that acknowledgment, I would yield back to the balance of my time with thanks to the Chair.

The Chairman. Thank you.

Mrs. Napolitano?

Mrs. Napolitano. Thank you, Mr. Chair.

Mr. Olsen, there are several questions that I have, and part of it is a little bit of my inquisitive nature on what happens if the tribe decides to use it for gaming. Are there covenant restrictions?

Mr. Olsen. We are talking about H.R. 1499, the Eastern Band of Cherokee bill?

Mrs. Napolitano. Right.

Mr. Olsen. OK. Well, gaming is explicitly prohibited in the legislation. I don't believe that there is a remedy provided in the legislation, but it is explicitly prohibited. And our understanding is that the tribe has no intent to construct any sort of gaming facility on that land.

Mrs. Napolitano. Well, the Federal Government has long ignored my Indian brothers and sisters, and I think it is time we owned up to some of the responsibilities that have been ignored for many, many, many generations.

I am concerned that it may begin not only setting a precedent, but if there is such a covenant that prohibits gaming, that we are sure that there is--sometimes there is no other way for the tribes to be able to survive, if you will. They need help and we certainly should be able to provide them, which leads to the question of how old is the school on the other bill--oh, no, on that one, that these deplorable conditions are found, that the Department of Interior or Park Service or the agencies, whoever's jurisdiction it falls under, have not taken action to be able to assist in the construction or reconstruction or putting them in a condition that they will be usable.

When I look at some of the information about they are using a condemned building, that sends shivers up my spine. As a grandmother, I would not tolerate it, and I don't see why we should allow the Federal Government not to take action to remedy those conditions.

Mr. Olsen. Understood, and as I stated before, we certainly feel that it is in the best interest of this tribe for the legislation to move forward, and--

Mrs. Christensen. OK, but this has not happened yesterday. Why has action not been taken to remedy the conditions under which these children go to school?

Mr. Olsen. I don't know. We are faced--again, I mean, it is the same answer that I gave before. We are faced with a significant backlog. I understand that it is a problem, and it is a priority to correct, and we are doing what we can little by little to correct those problems.

Mrs. Christensen. Mr. Chair, maybe we should have a hearing, Mr. Chair, Chairman Pombo, I suggest, to see what the condition of the Indian schools are in so that we may not hear it in this Committee room at the time we are trying to work on legislation to address some of the substantial that we have had

in those areas.

The Chairman. If the lady will yield to me, we are actively looking at that. This is obviously part of that process.

I am told that this particular school is at least 40 years old. That is 40 years of mismanagement that has occurred over the years that has allowed this to happen. I don't think there is any possible way that Mr. Olsen can explain to you why in the last couple of months that he has been on the job that over 40 years this school was mismanaged and things happened in the BIA. But if you want to get serious about taking care of these problems, we have got to seriously look at the entire issue of how we have dealt with the BIA over the last 100 years. That is where the real problem is.

Mrs. Christensen. Let's do so, sir.

My next question will be on the distribution on RD4. How many members will receive those dollars? Because I was looking at your report, and it says 1,230 voted, 3 opposed, but that is just the voting members. How many members are there in the tribes that are getting reimbursed? And are the ones opposing going to be receiving remuneration?

Mr. Olsen. There are approximately 6,000 to 6,500 who would be receiving money through the distribution, and those who are opposed are included.

Mrs. Christensen. OK. The next question--

Mr. Olsen. They can choose to apply, but they are eligible as everyone else.

Mrs. Christensen. But does accepting the funding prevent their ability to litigate in the future toward the return of their land?

Mr. Olsen. I am sorry. I did not hear your question.

Mrs. Christensen. Would their accepting money preclude them from enjoining to get back their tribal lands that they are seeking, those that are opposed because of that?

Mr. Olsen. No, it would not. But we feel that pursuant to the Treaty of Ruby Valley, which is the treaty at issue, that was a treaty of peace and friendship, and there is some question about whether the Western Shoshone people had title to that land, recognized title to that land.

Mrs. Christensen. Thank you, Mr. Chair.

Mr. Kildee. Mr. Chairman, parliamentary inquiry. I have a markup over on my other committee. Are we under general leave to submit additional questions in writing to the witnesses today?

The Chairman. Yes, all the witnesses will be asked to respond to any questions that are submitted in writing, to answer those in writing so that they can be included in the hearing record.

Mr. Kildee. Thank you, Mr. Chairman.

The Chairman. Mr. Jones?

Mr. Jones of North Carolina. Mr. Chairman, thank you very much, and I want to say to Mr. Kildee before he leaves, thank you for your statement regarding your longevity and trying to help the Indians who have certainly not been treated fairly in the history of our country. So I thank you as well as the Chairman for his comments.

Mr. Chairman, thank you for bringing both these bills up. It is nice to see the bipartisan support for this legislation as well as others. H.R. 1409 was introduced by Congressman Charles Taylor. The Cherokees live in his district, and this has been an issue that, when Chief Leon Jones is on the next panel, I think he can tell the Committee as well as myself the long history of trying to get this land exchange accomplished.

Regarding Mrs. Christensen's statement about taking 7 years, that possibly could be if it went through the administrative process. I don't know, and I would like for Mr. Olsen in a moment to answer that question.

The beauty of this is that we all get on the floor of the House from time to time and talk about our children and wanting

them to have the best education possible so they can compete in the world. And when you see what the Indian children have to deal with--I want my staffer if he would, to hold up just four enlargements so you can really see just how bad the school is.

The first one is the steel beam rusting through the ceiling at the school. That in itself--if it is not condemned, it should be condemned.

Then the next photograph is a major crack in the wall of the school.

The third photograph is cracks in the gymnasium.

I think those three photographs are deplorable. The last photograph would be the temporary building that the students are trying to learn in and become successful.

This is a situation that I think requires this legislation, and I am delighted, Mr. Chairman, that you are holding this hearing.

The problem is I do not understand those that will be in opposition to this land exchange. Mr. Olsen, would you say that the land swap--what the taxpayers will be receiving from the Cherokee Indians--is an excellent deal for the taxpayers of this country?

Mr. Olsen. The tribe would be giving up 218 acres of pristine land that, arguably, would--it would go under Park Service protection, would arguably provide for a better--or provide for protection of the view shed. The tribe would be obtaining 143 acres, which, comparing the two, obviously there is a 70-acre difference that the tribe is giving up to the park.

Mr. Jones of North Carolina. Mr. Chairman, with that, I think many points have been made before I had my opportunity, and I hope showing the photographs to the members of the Committee will re-emphasize the need for this land exchange. So, with that, I yield back my time.

Mr. Gabbots. [Presiding.] Thank you, Mr. Jones.

The gentleman from American Samoa, Mr. Palomaveaga.

Mr. Palomaveaga. Boy, that was quick. Thank you, Mr. Chairman. I just want to offer my full support of the gentleman's bill from North Carolina, Mr. Taylor, and, of course, to my colleague, Mr. Jones. This is in reference to H.R. 1409, and I want the gentlemen to know that he certainly has my full support on this land exchange proposal.

Mr. Chairman, as you know, it is always coming and practicing as a matter of courtesy to members and our colleagues. Given the fact that you had introduced this legislation with reference to Shoshone Tribe, presumably predominantly in your State of Nevada, I would be the last person to second-guess your wisdom and expertise and understanding of what has been the problem for all these years.

At the same time, I don't think there is any negative connotation in terms of your participation. You are just simply trying to implement what has been decided by the Indian Claims Commission and also in reference to what the Supreme Court had ruled.

But I had also read that there are some real strong feelings among some of the Shoshone members, tribal members, on how the Supreme Court ruling came about, the fact that you have got the Te-Max, the Duckwater, the Ely, the Fallon, the Fort McDowell, the Yomba, these are all different clans that make up the Shoshone Tribe, if I am to understand it correctly. This is my understanding of the bill.

What are we talking about, Mr. Olsen, in terms of the principal that is to be distributed if this bill passes? I read here \$26 million, with interest, \$730 million, but then I hear someone else, it is only \$900,000. Can you clarify what exactly we are talking about?

Mr. Olsen. Refreshing my recollection here, the distribution that would take place as a per capita payment to the approximately 6,500 Western Shoshone people would be

\$142,472,844, which works out to be roughly \$30,000 per person.

Mr. Faleomavaega. Well, right now I am going to register as a member of the Shoshone Tribe.

(Laughter.)

Mr. Faleomavaega. The first opportunity I have, I found out that some of my ancestors settled among the Paiutes and the Shoshones in Nevada a thousand years ago.

Mr. Olsen, there is one concern, I think, with some of the tribal members in raising the question how the U.S. Government got to obtain the land that belonged to the Shoshone. Was there a treaty agreement or relationship between the Shoshone Tribe and the U.S.? Because we have sisters here by the name of the Dann sisters that had their cattle got taken by the BLM with no reason whatsoever, I mean, this is ridiculous.

Could you explain how the Federal Government ended up owning the so-called Shoshone tribal lands?

Mr. Olsen. One of the claims is, as I mentioned before, for the taking of land, and it was a result of the gradual encroachment of the United States on the Shoshone land.

Mr. Faleomavaega. Was it the United States or the ranchers?

Mr. Olsen. Both.

Mr. Faleomavaega. Both. And we are talking about how much was taken by the Federal Government that belongs to the Shoshone people? Acreage. Half of Nevada?

Mr. Olsen. Well, there is a difference between what is being claimed by some who are opposed to this distribution and what is described, basically. And I cannot give you an exact number of acreage, but, again, certainly will be happy to--

Mr. Faleomavaega. My colleague from Nevada tells me one-third of the State of Nevada belonged to the Shoshone people.

Mr. Olsen. That is a big piece of land.

Mr. Faleomavaega. Big piece of land. And it was taken by the Federal Government with no treaty agreements, nothing. This is what you might call adversary possession of the land. I go back to my original question. Was there a treaty relationship between the Federal Government and the Shoshone people allowing the Federal Government to take the land?

Mr. Olsen. Referring back to the treaty, the treaty allowed people to pass through the land, but, you know, going back to what I had said before, we are talking about it is a taking, the gradual encroachment on the land. And that is about the best answer I can provide you now, and we will certainly, you know, provide a better historical perspective if that is what you are after.

Mr. Faleomavaega. So what we are looking at in this proposed bill is the distribution of funds of approximately \$140 million.

Mr. Olsen. Correct.

Mr. Faleomavaega. Among some 6,500 Shoshone.

Mr. Olsen. That is right.

Mr. Faleomavaega. Among the four different clans that make up the Shoshone Tribe.

Mr. Olsen. Among the four successor bands as well as others who would be entitled to that distribution.

Mr. Faleomavaega. I see. And if by chance there is no agreement, the interest continues to buildup on this fund.

Mr. Olsen. It will continue to grow.

Mr. Faleomavaega. Are the Shoshone people so anxious that they really want the money or do they not care about the money? I get the impression from Mr. Yowell's testimony here that it is not the money, but the principle involved here on how the Federal Government ended up owning what is known as Shoshone territory. I think maybe this is where we are having problems and where some of the tribal members have very strong feelings about this issue because once we establish the foundation of how this came about in the first place, then the funds become relevant in terms of what else needs to be done.

Is there any portion of this one-third of the State of

Nevada that was used for nuclear testing?

Mr. Olsen. I am not in a position to--

Mr. Faleomavaega. Have you been to Nevada?

Mr. Olsen. I have been to Nevada, certainly.

Mr. Faleomavaega. But what portion of the State of Nevada are you aware of that we are talking about?

Mr. Olsen. Congressman, can you--

[Laughter.]

Mr. Gibbons. Predominantly the Shoshone area would be the eastern part of Nevada.

Mr. Faleomavaega. Eastern part, I see.

Mr. Olsen. I am not aware--I cannot answer whether there has been nuclear testing on that.

Mr. Faleomavaega. Mr. Chairman, I think my time is up. I will wait for the second round. Thank you.

Mr. Gibbons. The gentleman from Tennessee?

Mr. Duncan. I have no questions, Mr. Gibbons. I thank you for calling this hearing, but since I did not hear the testimony, I will not ask any questions at this point, and I will listen to the next panel.

Mr. Gibbons. Ms. Bordallo is next.

Ms. Bordallo. Thank you, Mr. Chairman.

Mr. Olsen. I have a question on H.R. 884. How many trespass violations have been issued on Western Shoshone ancestral lands? Is the use of the land an ongoing concern to the Department? I believe it was approximately 3 years ago when a trespassing violation was issued for grazing on the BLM land without a permit. But I wanted to know if this is an isolated issue, or are there other land-use violations?

Mr. Olsen. There have been trespass violations issued to both Western Shoshone and non-Indian people.

Ms. Bordallo. You don't have a number?

Mr. Olsen. I don't have a number.

Ms. Bordallo. Has it been frequent?

Mr. Olsen. Well, I know that it is more than one. I don't know how frequent it is, but we can certainly obtain that information and get that back to you.

Ms. Bordallo. All right. And my other question, Mr. Chairman, does the treaty preclude a land settlement?

Mr. Olsen. No, the treaty does not preclude a land settlement.

Ms. Bordallo. All right. I have no further questions, Mr. Chairman.

Mr. Gibbons. Mr. Udall?

Mr. Tom Udall. Thank you, Mr. Chairman.

Mr. Olsen. Your testimony refers to the support for the distribution of lands by three of the four successor tribes. What documentation is there that shows this support?

Mr. Olsen. Well, tribal resolutions, basically, the resolutions that I referenced before in my testimony.

Mr. Tom Udall. Was there an election or anything like that that was supervised by the BIA?

Mr. Olsen. Over the course of a number of years, there have been various referendum votes, surveys, but they were not supervised by the Bureau of Indian Affairs.

Mr. Tom Udall. So this was not an official election supervised by the BIA and then officially accepted as an election held by a sovereign Indian tribe?

Mr. Olsen. It was not supervised by the Bureau of Indian Affairs.

Mr. Tom Udall. And yet you are willing to testify today that 90 percent--is that the figure you have used--90 percent of the tribe support this bill and support the distribution?

Mr. Olsen. Ninety percent is the number that I have heard. I used "vast majority"--

Mr. Tom Udall. That is your figure? That is the Interior Department's figure?

Mr. Olsen. That is the number that Congressman Gibbons