S. HRG. 107–763

WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

S. 958

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, 326–K

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WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT

FRIDAY, AUGUST 2, 2002

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m. in room 106, Senate Dirksen Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye and Reid.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The first order of business is to close yesterday's hearing on Native American youth. Now, that hearing is adjourned.

This afternoon the committee meets to receive testimony on S. 958, the Western Shoshone Claims Distribution Act.

There is a long history of events that provides the background and text for the measure that is before us today. Judging from the volume of mail that the committee has received on this matter, I presume there is some controversy.

There are many who have called upon the committee for an opportunity to provide their views to the committee on this measure and so as chairman of the committee, in order to make certain that all interested persons would be properly accommodated, the hearing record will be kept open until the Senate returns to duty in September.

I can assure one and all that your written statements will be read very carefully and studied by me and your written testimony will be a part of the hearing record and therefore form a part of the legislative history of this act.

[Text of S. 958 follows:]

II

107TH CONGRESS
1ST SESSION

S. 958

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, 326–K, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2001

Mr. REID (for himself and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

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, 326–K, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Western Shoshone Claims Distribution Act''.

SEC. 2. DISTRIBUTION OF DOCKET 326–K FUNDS.

The funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Indians in

Docket Number 326–K before the Indian Claims Commission, including all earned interest, shall be distributed as follows:

(1) The Secretary shall establish a Western Shoshone Judgment Roll consisting of all Western Shoshones who—

(A) have at least ¼ degree of Western Shoshone Blood;

(B) are citizens of the United States; and

(C) are living on the date of enactment of this Act.

(2) Any individual determined or certified as eligible by the Secretary to receive a per capita payment from any other judgment fund awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before the date of enactment of this Act, shall not be eligible for enrollment under this Act.

(3) The Secretary shall publish in the Federal Register rules and regulations governing the establishment of the Western Shoshone Judgment Roll and shall utilize any documents acceptable to the Secretary in establishing proof of eligibility. The

Secretary's determination on all applications for enrollment under this paragraph shall be final.

(4) Upon completing the Western Shoshone Judgment Roll under paragraph (1), the Secretary shall make a per capita distribution of 100 percent of the funds described in this section, in a sum as equal as possible, to each person listed on the Roll.

(5)(A) With respect to the distribution of funds under this section, the per capita shares of living competent adults who have reached the age of 19 years on the date of the distribution provided for under paragraph (4), shall be paid directly to them.

(B) The per capita shares of deceased individuals shall be distributed to their heirs and legatees in accordance with regulations prescribed by the Secretary.

(C) The shares of legally incompetent individuals shall be administered pursuant to regulations and procedures established by the Secretary under section 3(b)(3) of Public Law 93–134 (25 U.S.C. 1403(b)(3)).

(D) The shares of minors and individuals who are under the age of 19 years on the date of the distribution provided for under paragraph (4) shall be held by the Secretary in supervised individual Indian

money accounts. The funds from such accounts shall be disbursed over a period of 4 years in payments equaling 25 percent of the principal, plus the interest earned on that portion of the per capita share. The first payment shall be disbursed to individuals who have reached the age of 18 years if such individuals are deemed legally competent. Subsequent payments shall be disbursed within 90 days of the individual's following 3 birthdays.

(6) All funds distributed under this Act are subject to the provisions of section 7 of Public Law 93–134 (25 U.S.C. 1407).

(7) All per capita shares belonging to living competent adults certified as eligible to share in the judgment fund distribution under this section, and the interest earned on those shares, that remain unpaid for a period of 6-years shall be added to the principal funds that are held and invested in accordance with section 3, except that in the case of a minor, such 6-year period shall not begin to run until the minor reaches the age of majority.

(8) Any other residual principal and interest funds remaining after the distribution under paragraph (4) is complete shall be added to the principal

funds that are held and invested in accordance with section 3.

(9) Receipt of a share of the judgment funds under this section shall not be construed as a waiver of any existing treaty rights pursuant to the ''1863 Treaty of Ruby Valley'', inclusive of all Articles I through VIII, and shall not prevent any Western Shoshone Tribe or Band or individual Shoshone Indian from pursuing other rights guaranteed by law.

SEC. 3. DISTRIBUTION OF DOCKETS 326–A–1 AND 326–A–3.

The funds appropriated in satisfaction of the judgment awards granted to the Western Shoshone Indians in Docket Numbers 326–A–1 and 326–A–3 before the United States Court of Claims, and the funds referred to under paragraphs (7) and (8) of section 2, together with all earned interest, shall be distributed as follows:

(1)(A) Not later than 120 days after the date of enactment of this Act, the Secretary shall establish in the Treasury of the United States a trust fund to be known as the ''Western Shoshone Educational Trust Fund'' for the benefit of the Western Shoshone members. There shall be credited to the Trust Fund the funds described in the matter preceding this paragraph.

(B) The principal in the Trust Fund shall not be expended or disbursed. The Trust Fund shall be invested as provided for in section 1 of the Act of June 24, 1938 (25 U.S.C. 162a).

(C)(i) All accumulated and future interest and income from the Trust Fund shall be distributed, subject to clause (ii)—

(I) as educational grants and as other forms of educational assistance determined appropriate by the Administrative Committee established under paragraph (2) to individual Western Shoshone members as required under this Act; and

(II) to pay the reasonable and necessary expenses of such Administrative Committee (as defined in the written rules and procedures of such Committee).

(ii) Funds shall not be distributed under this paragraph on a per capita basis.

(2)(A) An Administrative Committee to oversee the distribution of the educational grants and assistance authorized under paragraph (1)(C) shall be established as provided for in this paragraph.

(B) The Administrative Committee shall consist of 1 representative from each of the following organizations:

(i) The Western Shoshone Te-Moak Tribe.

(ii) The Duckwater Shoshone Tribe.

(iii) The Yomba Shoshone Tribe.

(iv) The Ely Shoshone Tribe.

(v) The Western Shoshone Business Council of the Duck Valley Reservation.

(vi) The Fallon Band of Western Shoshone.

(vii) The at large community.

(C) Each member of the Committee shall serve for a term of 4 years. If a vacancy remains unfilled in the membership of the Committee for a period in excess of 60 days, the Committee shall appoint a replacement from among qualified members of the organization for which the replacement is being made and such member shall serve until the organization to be represented designates a replacement.

(D) The Secretary shall consult with the Committee on the management and investment of the funds subject to distribution under this section.

(E) The Committee shall have the authority to disburse the accumulated interest fund under this

Act in accordance with the terms of this Act. The Committee shall be responsible for ensuring that the funds provided through grants and assistance under paragraph (1)(C) are utilized in a manner consistent with the terms of this Act. In accordance with paragraph (1)(C)(i)(II), the Committee may use a portion of the interest funds to pay all of the reasonable and necessary expenses of the Committee, including per diem rates for attendance at meetings that are the same as those paid to Federal employees in the same geographic location.

(F) The Committee shall develop written rules and procedures that include such matters as operating procedures, rules of conduct, eligibility criteria for receipt of educational grants or assistance (such criteria to be consistent with this Act), application selection procedures, appeal procedures, fund disbursement procedures, and fund recoupment procedures. Such rules and procedures shall be subject to the approval of the Secretary. A portion of the interest funds in the Trust Fund, not to exceed $100,000, may be used by the Committee to pay the expenses associated with developing such rules and procedures. At the discretion of the Committee, and with the approval of the appropriate tribal governing

body, jurisdiction to hear appeals of the Committee's decisions may be exercised by a tribal court, or a court of Indian offenses operated under section 11 of title 25, Code of Federal Regulations.

(G) The Committee shall employ an independent certified public accountant to prepare an annual financial statement that includes the operating expenses of the Committee and the total amount of educational grants or assistance disbursed for the fiscal year for which the statement is being prepared under this section. The Committee shall compile a list of names of all individuals approved to receive such grants or assistance during such fiscal year. The financial statement and the list shall be distributed to each organization represented on the Committee and the Secretary and copies shall be made available to the Western Shoshone members upon request.

SEC. 4. DEFINITIONS.

In this Act:

(1) ADMINISTRATIVE COMMITTEE; COMMITTEE.—The terms ''Administrative Committee'' and ''Committee'' mean the Administrative Committee established under section 3(2).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) TRUST FUND.—The term ''Trust Fund'' means the Western Shoshone Educational Trust Fund established under section 3(1).

(4) WESTERN SHOSHONE MEMBERS.—The term ''Western Shoshone members'' means an individual who appears on the Western Shoshone Judgment Roll established under section 2(1), or an individual who is the lineal descendant of an individual appearing on the roll, and who—

(A) satisfies all eligibility criteria established by the Administrative Committee under section 3(F);

(B) fulfills all application requirements established by the Committee; and

(C) agrees to utilize funds distributed in accordance with section 3(1)(C)(i)(I) in a manner approved by the Committee for educational purposes.

SEC. 5. REGULATIONS.

The Secretary may promulgate such regulations as are necessary to carry out this Act.

○

The CHAIRMAN. Senator Reid.

STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Senator REID. You're absolutely right, this has been an issue going on for some time. The hearing is on a bill to provide for the use and distribution of funds awarded to the Western Shoshone under Indian Claims Commission Docket numbers such and such, a long list of numbers.

We have had two separate elections to determine how the eligible Native Americans wanted the money distributed and on both occasions, far over 90 percent voted to have the money distributed.

I want to make sure everyone understands that I believe and I think most would agree if there's other issues that any of the Shoshones in Nevada feel they have been aggrieved and need some realignment of their boundaries of the land they are on or anything like that, legislatively I know this committee would be happy to take a look at that.

I have some significant concern that we have thousands of Native Americans in Nevada that feel this money should be distributed. The money is now about $135 million, a lot of money. There are some who feel, and I certainly cannot criticize how they feel. They have a right in this country we live in to feel they have been aggrieved, that there should have been things done in the past.

The problem we have is that there are courts of competent jurisdiction, have listed these claims, and made certain determinations and made certain determinations. That's why we have this money to distribute to somebody sometime. I think it should be now rather than later.

I reaffirm that if there are situations where we can help this committee, I would be happy along with any other committees of competent jurisdiction in the Senate to take a look at this and listen to the grievances they have but I don't think that should stand in the way of these people who determined they want their money to get their money. Then we can go on and look at whatever land problems they have which some say have already been adjudicated in courts of competent jurisdiction.

If there is legal authority or equity that determines that isn't the case, knowing you and what this committee does, and I certainly would weigh in any way I could, to see what help I could be.

The CHAIRMAN. Thank you very much, sir.

Our first witness is supposed to be the Assistant Secretary for Indian Affairs, Neal McCaleb. Is he here? If not, may I call upon the second panel: the chairman of the Te-Moak Tribal Council of Elko, NV, Felix Ike; the chairman of the Wells Indian Colony Band Council of Wells, NV, Willie Johnny; and the Western Shoshone Claims Distribution Steering Committee member, Nancy Stewart.

Mr. Secretary, you're just in time, sir. As always, you are welcome to our committee, sir. Secretary McCaleb.

STATEMENT OF NEAL A. MCCALEB, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. MCCALEB. My apologies, Mr. Chairman. Not unlike the rest of the story of my life, I was at the wrong place at the at the right time.

I'm privileged to be able to address you this afternoon on the Department's views of S. 958, a bill entitled the Western Shoshone Claims Distribution Act. The distribution of Western Shoshone judgment funds is a longstanding issue that needs to be settled. The judgment funds stem from two claims that were filed by the Te-Moak Tribe and Bands of Western Shoshone in the Indian Claims Commission in 1951. One is an aboriginal land claim that was concluded in 1979 in Docket No. 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 $823,000 and Congress appropriated funds to pay that claim in 1992. The second award was for $29,000 and the funds were appropriated in 1995 to pay the claim. The accounting claims were in Docket Nos. 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 in March 1998, was with the Western Shoshone Steering Committee, composed of individuals that are tribal members at various reservations in Nevada.

With the approval of the Te–Moak Tribal Council, the Western Shoshone Steering Committee has worked over the past 4 years investigating if the Western Shoshone people were in favor of a judgment fund distribution.

In 1980, the BIA held its first hearing of record on the distribution of land claims judgment funds. A large segment of the Western Shoshone people have indicated they are in favor of the judgment fund distribution. In the meantime, it is important to note that the tribal councils of the four successor Western Shoshone tribes, the 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 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. The current tribal council rescinded that action in January of this year and reinstated the 1997 resolution.

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.

The Ely Tribal Council enacted Resolution No. 2001–EST–44 on October 9, 2001 supporting S. 958 and H.R. 2851.

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 S. 958 have also enacted resolutions supporting the distribution. These tribes are: Duck Valley, Fallon, and Fort McDermitt. The Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support of S. 958 by Resolution No. 2002–SPR–012, dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the bill.

We support the enactment of S. 958 because we believe it reflects the wishes of the vast majority of the Western Shoshone people. We also are 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 S. 958 proposes to distribute the Western Shoshone land claim funds that were awarded in Docket No. 326–K, 100 percent per capita to approximately 6,500 individuals who have at least one-quarter degree of Western Shoshone blood.

The current balance of this fund including interest is $137,286,774. This section appears to be in accordance with the wishes of the Western Shoshone people.

Section 3 proposes to use the principal portion of the Western Shoshone accounting claims for non-expendable trust funds. The interest and investment income would be available for educational grants and other forms of educational assistance to the individual Western Shoshone members that are enrolled under section 2 of this act and their lineal descendants.

The principal fund totals $754,136. The interest fund totals $591,845. This section appears to be in accord with the wishes of the Western Shoshone people also.

We understand that many of the beneficiaries of this treaty continue to believe their rights under the treaty of the Ruby Valley in 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 remain 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.

Senator REID. Would you read that again, please?

Mr. MCCALEB. To be safe, the clause should read, "receipt of a share of the funds under this subsection shall not alter any treaty rights"—that's basically what it says right now and we add—"or the final decisions of the Federal courts regarding those rights"—that's what we've added, our final decisions by the court for clarity, that this in no way modifies the court decisions.

Senator REID. You're saying the language says that now but you think it should be clarified?

Mr. MCCALEB. No; I don't have the bill in front of me. It's my understanding the language does not make reference to the Federal courts decisions.

Senator REID. And you would add "or the final decisions of the Federal courts"?

Mr. MCCALEB. Yes; right now it just says receipt of the funds under this subsection shall not alter any treaty rights and it doesn't, but the issue as it relates to the land, those treaty rights have been extinguished by the Federal court and the Supreme Court decision, in our judgment.

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

Thank you, Mr. Chairman.

[Prepared statement of Mr. McCaleb appears in appendix.]

The CHAIRMAN. By your response are you suggesting that article V of the Treaty of Ruby Valley is still in effect on the matter of the land?

Mr. MCCALEB. No; I'm hoping to make it clear that article V of the treaty is not in effect as it relates to the land.

The CHAIRMAN. Does the Department believe from your response that the Western Shoshone people have a claim to lands under the treaty?

Mr. MCCALEB. No.

The CHAIRMAN. Equitable claim?

Mr. MCCALEB. No.

The CHAIRMAN. Mr. Secretary, as you have indicated, there is much controversy.

Mr. MCCALEB. Just 1 moment, Mr. Chairman. If I may, Mr. Chairman, this is Daisy West who is the resident expert on this subject.

The CHAIRMAN. Will you identify yourself?

STATEMENT OF DAISY WEST, BIA BRANCH OF TRIBAL GOVERNMENT SERVICES

Ms. WEST. My name is Daisy West and I work in the Bureau of Indian Affairs Branch of Tribal Government Services.

From the research that I have done on this, the Treaty of Ruby Valley is a treaty of peace and friendship, not a treaty that recognized aboriginal title or gave recognized title to land in Western Shoshone country. This is an issue that was addressed in a similar case in the 1930's with the Treaty of Box Elder which is one of the five Shoshone treaties that was negotiated by Commissioner Doughty back in 1863.

That case was originally brought under a special jurisdiction act and, in that case, the Supreme Court held that those treaties were not treaties of recognition of land. Since they were not when they went to the Indian Claims Commission, they could only determine aboriginal title. So the title was never given under the Treaty of Ruby Valley.

The CHAIRMAN. Do you agree with the Secretary's statement that the 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?

Ms. WEST. I agree.

The CHAIRMAN. Then you also agree with the statement of the Secretary that article V of the Treaty of Ruby Valley is not in effect?

Ms. WEST. Right now I'm not sure what article V says. I don't have a copy of the treaty with me.

The CHAIRMAN. It is on land.

Ms. WEST. And it describes the boundaries. My understanding is that according to the case that was in Northwestern Shoshone, that describes the land that was claimed by the Shoshone, so I'm sure that since it wasn't a treaty of recognition, nothing would change that, that is what they claimed.

The CHAIRMAN. Is it your position that the Treaty of Ruby Valley is still in force?

Ms. WEST. I would say that it is still in force.

The CHAIRMAN. Why don't you stay there and bring up the Secretary also.

Mr. MCCALEB. I think what I'm trying to convey is that there is an impression that the Treaty of Ruby Valley under Section V retains some legal claim to land rights. The vote that was held seems to indicate it reserves those rights. The point I'm trying to make is our opinion, the opinion of the Department, that no land rights still reside in the treaty as a result of the court decisions.

The CHAIRMAN. You speak of the referenda. I presume that the Department of the Interior was involved?

Mr. MCCALEB. NO; WE WERE NOT.

The CHAIRMAN. You did not supervise the referendum?

Mr. MCCALEB. That's correct.

The CHAIRMAN. Were you notified of it?

Ms. WEST. We were aware of it occurring. We were notified of the date that it would occur.

The CHAIRMAN. You were notified after the conclusion of the referendum?

Ms. WEST. We were notified first of the date it would be held which was June 3 and we were also notified of the results after the election count had been certified.

The CHAIRMAN. When you were notified of the referendum, did you take steps to involve yourself?

Ms. WEST. No; I'm not sure what that means.

The CHAIRMAN. To monitor the referendum?

Ms. WEST. No; no one attended from the Bureau of Indian Affairs [BIA] in their capacity as a Bureau official.

The CHAIRMAN. Is that the usual practice?

Ms. WEST. We considered this an internal Shoshone matter, one they had not requested our assistance for.

The CHAIRMAN. You stated that the results of the referenda were certified. Who certified them?

Ms. WEST. I'm thinking that it was the Western Shoshone Claims Committee.

The CHAIRMAN. It's not certified by the Department?

Ms. WEST. No.

The CHAIRMAN. Mr. Secretary, do you have any views on the findings of the preliminary report of the Inter-American Commission?

Mr. MCCALEB. Yes; I do, relative to their observation that there has been a violation of the rights of the Dann family. The position of the United States, as well as the Department, is the Commission's report is in error for several reasons. No. 1, the Danns' con-

tentions regarding the alleged lack of due process in the Indian Claims Commission proceedings were fully and fairly litigated in the United States courts and should not be reconsidered here. No. 2, the Commission lacks jurisdiction to evaluate the process established under the 1946 Indian Land Claims Commission Act since the act predates the U.S. ratification of the OAS Charter. Three, the Commission erred in interpreting the principles of the American Declaration in light of article 18 of the not yet adopted OAS draft Declaration of Indigenous Rights.

The CHAIRMAN. So you find the preliminary report to be in error?

Mr. MCCALEB. Correct.

The CHAIRMAN. You do not concur with it?

Mr. MCCALEB. Yes, sir; that's correct.

The CHAIRMAN. What is the history of negotiations of your department and the Western Shoshone with regard to the settlement of land rights? You have had negotiations?

Mr. MCCALEB. Yes; as early as 1980 and several times over the 22 years intervening, including 1984 negotiations in which we actually provided $240,000 to assist in the negotiations, provide staff, and facilitated negotiations on the distribution, and again in 1994 when Congress requested the Department of the Interior to reopen negotiations on the distribution. Along this process there have been numerous indications of popular support for the distribution of these funds on a per capita basis, the most recent being the election I made reference to earlier.

The CHAIRMAN. But you have not reached a settlement yet?

Mr. MCCALEB. There are members of the Western Shoshone Tribe that do not think there should be a distribution of the funds, they feel that additional distribution of the funds will somehow adversely affect their land claims but according to the vote they are in a substantial minority.

For your edification, I have the results of that vote if you are interested in it. There were three issues. The first was on the acceptance of the payment and the vote was 647 for, 156 against. On the next issue, the limiting of the distribution to those members of the Western Shoshone Tribe who are a quarter or more blood quantum, 1,601 for, 1,906 against. On the third question, the use of the accounting funds for educational purposes, 1,024 for and 769 against.

The CHAIRMAN. Thank you.

Do you have any questions?

Senator REID. I have a couple.

Daisy, tell me what your job is at the Bureau?

Ms. WEST. My title is Tribal Relations Officer and I have several different functions. One is to prepare judgment fund distribution plans. In order to do that, I have to do historical research on the tribes and the claims and work with the tribes in developing the plan or, if necessary, in developing the draft legislation.

Senator REID. How long have you been with the Bureau?

Ms. WEST. I've been with the Bureau since 1972.

Senator REID. What is your educational background?

Ms. WEST. Most of my education in this area has occurred on the job. I graduated from high school and attended a number of classes that were preparing me for a future in accounting.

Senator REID. Thank you.

Mr. Secretary, what I've heard you say is that if this money is distributed, whatever claims that exist, valid or invalid, would not be extinguished as a result of these moneys being distributed. Is that right?

Mr. MCCALEB. That's correct.

Senator REID. I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Secretary. If you wish to leave, you may be excused.

Mr. MCCALEB. Thank you. I appreciate that.

The CHAIRMAN. Now may I call upon the Honorable Chairman Ike.

STATEMENT OF FELIX IKE, CHAIRMAN, TE-MOAK TRIBAL COUNCIL, ELKO, NV

Mr. IKE. My name is Felix Ike. I am the chairman of the Te-Moak Tribe of Western Shoshone Indians of Nevada. Te-Moak represents the four Te-Moak Band communities of Elko, Battle Mountain, South Fork, and Wells.

The Western Shoshone Nation once occupied a large area of the western part of the United States, including parts of Nevada, Idaho, California, and Utah. Our traditional way of life was closely connected with nature. Our land was abundant in resources, including springs, streams, rivers, snow covered mountains, rich valleys, and even the desert areas which were full of plant and animal life.

When the non-Indians came into our land, they depleted the natural resources, destroyed our way of life and forced us to adopt their ways. Of the vast territory that was once our homeland, only a few colonies, ranches and reservations have been set aside for our use. In the interest of future generations, we need to expand our land base to support our tribal population and provide a base from which we can develop greater self sufficiency. It is our understanding that this legislation will not prevent us from expanding our land bases in the future.

The Western Shoshone always had a strong attachment to our land which encompassed many millions of acres as described in article V of the Treaty of Ruby Valley. Our people traditionally knew every valley and spring in our vast territory and our land has always been at the center of our cultural identity and way of life. Expanding our meager land base is essential for our health and vitality of our communities and for the survival of our culture.

We ask Congress to consider the expansion of our land base to establish a permanent homeland for the Western Shoshone. Subsistence hunting, fishing, and gathering lives are of great importance to the Western Shoshone people. Our people hunt, fish and gather traditional food sources to supplement their diet. It is very important that the Western Shoshones continue to have access to traditional hunting, fishing and gathering areas and that we continue to be able to hunt, fish and gather traditional food sources which are part of our culture and our diet, a part of who we are.

Many tribal members rely on these traditional food sources as a subsistence basis. Many traditional medicines are made from native plant sources gathered throughout our aboriginal territory and

these are also important for our people for health, culture and religious reasons.

Our aboriginal lands are being destroyed and poisoned by mining, toxic wastes and other forms of abuse. The native animals and plants are disappearing from lands that have suffered so much from these abuses.

Shoshones are guardians of their environment. We traditionally practiced a way of life that was in harmony with the earth. It is part of our religion and the way of life to respect all forms of life—the land, the air, the water, the animals, the birds and plants are all interconnected and all depend upon each other for existence. We want our important hunting, fishing and gathering traditional areas to be set aside for us so that we can preserve them. In accepting the claims money, we are not giving up any hunting, fishing and gathering rights.

Northeastern Nevada economy is in a period of decline with unemployment rising in and near the Te-Moak tribal communities. Economic development to increase our self sufficiency is very important to our communities but our opportunities are limited. Our need for federally funded services will continue in the areas of education, health, housing, community development, social services, judicial services, law enforcement, cultural resource, environmental protection, and other services necessary for a vibrant community.

It is our understanding this legislation to compensate the Western Shoshone for pass wrongs will in no way diminish the U.S. Government's obligation to continue to provide all these services as needed for health and the well being of our people.

In order to determine whether acceptance of this claim money is truly the wishes of the majority of the Western Shoshone people, another vote on the issue was held on June 3, 2002. Tribal members voted on three questions: Whether or not to accept claims money from Docket 326–K; whether the tribal members of at least one-quarter degree Western Shoshone blood should be able to participate in the settlement; and whether or not 326–A–1 and 326–A–3 should be placed in an educational trust fund. The vote was 1,647 to 156 in favor of distribution; 1,601 to 196 in favor of tribal members of at least one-quarter degree Western Shoshone blood participating; and 1,020 to 769 in favor of the educational trust fund. The majority of Western Shoshone voters clearly support distribution as described in the Western Shoshone Claims Distribution Act.

It is the mandate of the people that we move forward with this process. The people have waited long enough. It would be incumbent upon this committee and Congress to also make a decision whether up or down in regard to our issue.

I am asking you to support the Western Shoshone Claims Distribution Act to distribute the claims awarded in Docket 326–K, 326–A–1, and 326–A–3. The money was awarded so many years ago in attempt to compensate the people for some of the wrongs that have been done to us. The committee of our tribal members has passed away without benefiting from this money that was set aside for them. Although it cannot fully compensate us for the loss of our land and way of life, the claims money will help make life better for the tribal members who would receive a share.

[Prepared statement of Mr. Ike appears in appendix.]

The CHAIRMAN. Thank you very much, Chairman Ike.

May I recognize Chairman Johnny.

STATEMENT OF WILLIE JOHNNY, CHAIRMAN, WELLS INDIAN COLONY BAND COUNCIL, WELLS, NV

Mr. JOHNNY. I, Willie Johnny am chairman of the Wells Band Colony of the Western Shoshone Nation of Nevada.

The Wells Band is one of four colonies that make up the Te-Moak Shoshone Tribe. I am giving testimony on behalf of the Wells Band Colony and not for the Te-Moak Council. Te-Moak chairman, Felix Ike, does not represent the four bands. He is only the chairman of the Te-Moak Council and representative of the tribe by approval of the Te-Moak Council.

The Wells Band Colony and surrounding areas have used this land we call home to be self supportive for centuries. Our people roamed all over the western portion of the United States which today we call Nevada, Idaho, Utah, and California. There were no boundaries, this was our way of life.

The Treaty of Ruby Valley of 1863 allowed settlers and immigrants to migrate through our territory. Railways were built on the land and stage lines were operated through our boundaries, mines were built to take minerals, and mills were made to take our timber from mountains. The natural resources we had depended upon for centuries were drastically depleted and our way of life was forever changed. We hunted and fished to provide our people with food. We gathered wood for shelter and warmth and picked berries and herbs for medicine.

Today, our people are deprived of the traditional ways of life. Today we are facing an epidemic called diabetes caused by diet we are not accustomed to. We no longer have the freedom or resources to be self supportive.

I have read the Treaty of Ruby Valley and believe it only benefits the United States and the State of Nevada. As in the first four articles of the treaty that the Band allowed, at that time, the only thing that might have benefited our people then and now is a reservation which is nonexistent today.

Referring back to the Treaty of Ruby Valley, article VI:

> The said Bands agree that whenever the President of the United States shall deem them to abandon the roaming life which they now lead and become herdsmen and agriculturists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described. They also do hereby agree to remove their camps and such reservations as he may indicate and reside and remain therein.

The colonies we live on today are by treaty, executive order or statutes and are too small and not enough land for our traditional ways or economic development. Today, there are other tribes around us that have reservations, that had treaties similar to ours. Through their negotiations they asked for extra land and have obtained reservations plus monetary settlements.

We as Native Americans have been pushed aside for many years. Our tribal members have endured hardships, we obey, the laws and what was asked of us. We, the Western Shoshone did not break the Treaty of Ruby Valley, we did not cede land to the United States or the State of Nevada and if we did when?

We believe this treaty is enforceable today. Our rights are still secured, ownership to this land by treaty, statutes and executive agreements.

This is a brief summary of our proposal. No. 1, at the present time, we have 80 acres for the Wells Band Colony and only one-half of that acreage is used for housing and the other half according to environmental assessment is waste land.

No. 2, we are asking for a $25-million settlement fund for the purpose of establishing economic development.

No. 3, we are asking for a land expansion of a 60-mile radius of the Wells area.

No. 4, we are asking for hunting, fishing and gathering rights.

No. 5, to provide future generations with territorial base to call home, and

No. 6, to increase our self sufficiency in taking care of our people.

The Wells Band Colony is in support of the Western Shoshone Distribution Act, 326–K, 326–A–1 and 326–A–3 only if S. 958 is amended to include both land base expansion and monetary settlement.

In closing, I would like to thank the Senators and committee members for the time and attention you have given me today in presenting my testimony and proposal to you. I hope we can come to a negotiation and better understanding which will benefit us all.

Chairman Ike is our Te-Moak Chairman but we do have four other bands that make up Te-Moak. I feel the other three bands should give their testimonies today. To me it is different in language than seeing it on paper.

[Prepared statement of Mr. Johnny appears in appendix.]

The CHAIRMAN. Mr. Chairman, as I have indicated to the group here, the record will be kept open so that the chairmen and others if they wish may submit statements to become part of the committee record. I can assure you I will read every one of them.

Ms. Stewart.

STATEMENT OF NANCY STEWART ON BEHALF OF THE WESTERN SHOSHONE CLAIMS DISTRIBUTION STEERING COMMITTEE, FALLON, NV

Ms. STEWART. First of all, I am Nancy Stewart, cochairman of the Western Shoshone Steering Committee. Thank you for allowing us to appear here today. It has been a long time coming awaiting a hearing. This testimony is in support of S. 958.

Our committee speaks for the 1,647 Shoshones who voted "yes" in favor of receiving their 1977 court award versus 156 opposed. The vote reconfirmed the 1998 poll. These, the majority, are some of the faces we represent an enlarged picture. Approximately 65 percent of the eligible adults voted, 65 percent. Of those voting, 91 percent favored distribution.

The majority supports the bill and they support the direction of our committee. In two public meetings after a division of the house was called for, only 3 people stood against the bill and the direction of our committee. We held these two meetings both in Elko, Nevada, northern Nevada and mid-Nevada, which is in Fallon. In Fallon, nobody stood against the bill or against the direction of the committee.

We do have one suggested amendment to the bill. It was a simple oversight. We would like to make our suggestions under the educational, section III. Under 2(A) we need to have the words added that say "exclusively comprised of Western Shoshone" after the words "the administration committee." In other words, "the administration committee should be exclusively comprised of Western Shoshone."

On 2(B), the words "Western Shoshone" were omitted and in section 2(B), under (v), we would like that to be revised that the other member of that committee should be "the Western Shoshone Committee of the Duck Valley Indian Reservation." That's the committee that comprises all the educational members. Each tribal community gets one member on that committee. We would like to add those amendments.

The 1973 Distribution Act provided that a tribe has 180 days after appropriation to submit a plan. That was 22 years ago. The timeframe was not met under the 1973 Distribution Act. Therefore, the "recognized spokesmen or representatives of any descendant group" may submit a plan as their civil right, thus the birth of our steering committee.

Following 25 years of failed tribal/Federal negotiations and the failure to produce a "good faith plan" the people realized there was a need to band together and take action. In 1990 and 1992, the promised action by the councils and the WSNC, the Western Shoshone National Council, who was involved at that time, they promised to resolve an impasse on another bill before the House of Representatives' Resource Committee. It never came to fruition; 12 years later, nothing.

Even a 1993—I believe Mr. Ike alluded to this—$1 million ANA grant was awarded to the land claimants and a 1994 meeting with the Secretary of the Interior, Bruce Babbitt, at the time, to solve the land issue problem failed. The tribal governments let the opportunity for concrete negotiations slip by due to ill advised political maneuvering.

A small group calling themselves the Western Shoshone National Council has been involved in stopping distribution for years. Their lawyers operate quietly to influence councilmen. Decisions are then made without the knowledge or the support of the people such as the recent attempted land title amendment to S. 958. This targeting of elected chairmen promotes their clients' interests and acts to repress the voice of the people. One million dollars and an offer of several million acres by the Secretary of the Interior—again, nothing. Therefore, our committee feels that any land needs should be addressed through other available governmental procedures as other reservations have done.

It took 15 years for the cattlemen's case to reach the U.S. Supreme Court in 1985. It was determined that the deposit of the award in trust for the Shoshones effectuated full settlement of all claims. This decision is not debatable, it's not debatable. It ended the claims to title in the court system. Yet, the litigants continued to tout ownership of two-thirds of Nevada.

Because of this, some cattlemen have not paid their BLM fees for years. Other Shoshone cattlemen on the South Fork Reservation that paid their BLM fees have had their cattle shot and have not

been allowed to use tribal pastures. This is an article that appeared in the Elko daily news and I spoke personally to the person whose cattle were shot. This is what I was told.

Telling the Shoshones they still own the land is a shameful deceit perpetuated by the minority. The people see the improbability of all of this, this all or nothing attitude versus State or Federal interests. Although I can agree with Mr. Johnny when he says there are some reservations that need land, but the attitude of two-thirds of the State of Nevada—that is improbable and the Shoshone people see that.

The minority's 1993 quest for support to the Organization of American States Commission on Human Rights, claiming discrimination and to avoid the impoundment of their livestock, has resulted in another report. A report to which we do not have access at this time, so we will not comment on it. The United States is not bound to international law that the Commission applies, especially given the years of due process this particular case received through this country's own court system.

My testimony attempts to reveal the subtle factors that contributed to the peoples support of this bill, the good, the bad and the ugly. The majority view the award as good, an apology of substance. The 1946 act gave Indian people their day in court to air grievances suffered across the United States. The limitation was that no one should be allowed to litigate a claim forever. It was not the intent of Congress to leave claims hanging in limbo for over 51 years and that is what happened to our Shoshone people, 51 years.

This claim is the last in Nevada and it is the last of the five Shoshone groups to be distributed. As for the Bad, the death of elders whose hopes and health needs were pushed aside. The problem is as we people have seen it—by the way, I am not a political person, I have never run for a political office so I can appreciate some of the pressures brought upon our tribal officials and others—but the problem is elected leaders who do not represent their own tribal members but the interests of others outside of their own tribe. We have seen that for years.

The ugly, what should have been easy, the disbursement of this money, this court award to our Shoshone people—turned into back door politics to override the peoples choice by a few Shoshones and some non-Indians working for their organization's objectives.

Their use of the Western Shoshone name in newspapers as though they represent the majority is misleading and a lot of people have said it is a sham. The majority of Western Shoshone people do not like that.

In conclusion, every day Senators are called upon to make decisions; 100 percent agreement is a rarity. The people have been told there may be changes in S. 958 in markup, a chance we have to take. The majority which our committee represents respectfully requests that the committee act decisively in expediting S. 958 in the interest of the long sought closure our people deserve.

Thank you.

[Prepared statement of Ms. Stewart appears in appendix.]

The CHAIRMAN. Thank you, Ms. Stewart.

Senator Reid, would you like to proceed with questioning?

Senator REID. I really don't have questions. I believe that the record is very clear that everyone believes the rights, whether they are valid or invalid, are not changed as a result of distributing the money. That is what I have heard here today.

I understand Willie Johnny, you only have 80 acres in Wells. My math may not be absolutely right but he wants 1.5 million acres. To me at first glance, that sounds like a lot of land but a long time ago, you had a lot more land than that. These are things we can take a look at but the money should be distributed as said by Chairman Ike and Ms. Stewart.

It is clear that people are dying every week who should have had the benefit of this money after all this many years. I would hope we could move quickly and get these people their money and have this committee look at any other inequities that are in existence.

The CHAIRMAN. Thank you.

Chairman Ike, you indicated you favor the distribution of funds. However, you are very much concerned about a land base. May I ask a general question? I gather there are six tribes or bands in the Western Shoshone Nation?

Mr. IKE. I'll answer the first question. You said I favor the distribution. I have my own opinions in regard to that, I'm only one person and I had one vote. What I'm representing here today are those individuals that voted on the issue and that's the message I bring here today. I'm voicing the majority of the Western Shoshones in favor of this distribution. That's my overall position.

My overall position is also in regards to my testimony an expansion of Western Shoshone lands. I've asked for that.

The CHAIRMAN. You indicated that the Congress should address this issue. How do you propose we do that?

Mr. IKE. Through legislative action in regards to it. Each individual community has their own wants and needs in regards to this. I have a letter from the Duck Water Council. They have asked me to also be their spokesman and their representative here. Each individual community already has their plan in place for expansion of their reservations.

The only thing I could ask is if they were to consider expansion of those reservations as requested by those communities.

The CHAIRMAN. Chairman Ike, Ms. Stewart of the Western Shoshone Claims Distribution Steering Committee, is that part of the Shoshone Nation organization?

Mr. IKE. That was created by council action by Te-Moak in 1997 or 1996, previous to my administration. That was created because of the interest in regards to the inactivity at that particular time on the distribution act itself.

Chairman Johnny, as Senator Reid indicated, you are very concerned about land base.

Mr. JOHNNY. Yes; I am.

The CHAIRMAN. You wish the Congress to address this?

Mr. JOHNNY. Yes; I would. It's not in the bill, it's something we hope to get amended into the bill to have a land base.

The CHAIRMAN. However, you are not opposed to the money distribution or are you?

Mr. JOHNNY. I'm only opposed to it, like I said in my testimony, if it doesn't state land or money. It just states in here it's pretty

much for the distribution. We feel land should be an issue in this bill.

The CHAIRMAN. In other words, if land were made part of this, you would be in favor?

Mr. JOHNNY. Yes.

The CHAIRMAN. Ms. Stewart, who is the chairperson of your committee? Are you the chairperson?

Ms. STEWART. I am a cochair. Our lead chairman, Larry Piffero, is in the hospital at this point, so I am speaking in his stead.

The CHAIRMAN. Am I correct to assume that your membership is made up of representatives from all of the clans?

Ms. STEWART. We have tribal community representatives on all reservations, yes, and committees. For example, on the reservation I come from in Fallon, we have about 20 committee members just in Fallon. Each of the other tribal communities has their own committee representatives. We come together under the umbrella of the steering committee.

The CHAIRMAN. This goes back to ancient times when the State of Nevada was known as Ruby Valley and I can assure you that I will not only study this but I hope we can bring this to a resolution.

It may interest you to know that this is a very busy and active committee. We have held as of this day, 49 hearings. This committee has held more hearings and passed more bills than any other committee in the United States Congress. So we are an action people.

Ms. Stewart, the people in the back were shaking their heads when you said all members are represented somehow.

Ms. STEWART. That is correct.

Mr. IKE. I would like to reiterate that position. There was a draft letter that was drafted by the Assistant Secretary of the Bureau of Indian Affairs to Al Gore who was the Vice President of the United States and also the President of the Senate, a letter was drafted to him with the names of every one of those members in regards to that claims committee. I believe there are 32 members that were named in that committee. That research was done and that was submitted, so those names are part of the record that I have submitted.

The CHAIRMAN. I'd like to thank all of you for having traveled long distances to be with us today. As I stated earlier, the record will be kept open until September 8. That is a Sunday. If you wish to amend your testimony or to add to it, or if there are others in the audience or at home who wish to send a statement, please feel free to do so.

Senator REID. This is very unusual to have on a Friday afternoon after 3 o'clock a hearing going on. We adjourned the Senate last night. Senator Inouye has a trip planned to go to Hawaii, he scheduled this hearing sometime ago recognizing we may even be in session today but this is the way he has chaired this Indian Affairs Committee since he took over. It's been a tremendous imposition to him to have this hearing. For me, it was fine, I'm not on the Senate floor today and it makes it very nice for me.

I want you to know for all these people who traveled such a distance, how much they appreciate your scheduling this hearing and I personally appreciate it also.

Ms. STEWART. Yes; thank you very much.

The CHAIRMAN. I can assure you that it is no imposition. It is my responsibility and my obligation to the Native Americans of this land.

With that, the hearing is in recess. The record will be kept open until September 8.

[Whereupon, at 3:05 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF NEAL A. MCCALEB, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

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 S. 958, 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 4 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 this year and reinstated the 1997 resolution. 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. The Ely Tribal Council enacted Resolution No. 2001-EST-44 on October 9, 2001, supporting S. 958 and H.R. 2851. 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 S. 958 have also enacted resolutions supporting the distribution.

Those tribes are Duck Valley, Fallon and Fort McDermitt. The Shoshone-Paiute Tribal Business Council of Duck Valley withdrew its support of S. 958 by Resolution No. 2002-SPR-012, dated November 13, 2001. However, the Western Shoshones of Duck Valley continue to support the bill.

We support the enactment of S. 958 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 S. 958 proposes to distribute the Western Shoshone land claims funds that were awarded in Docket 326-K, 100 percent per capita to approximately 6,500 individuals who have at least one-quarter degree of Western Shoshone Blood. The current balance of this fund, including interest, is $137,286,774. 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 totals $591,845. 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 underthis 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.

PREPARED STATEMENT OF BONNIE EBERHARDT BOBB

My name is Dr. Bonnie Eberhardt Bobb. I am married to Johnnie L. Bobb, a Western Shoshone spiritual person, and I am the step-mother to two Western Shoshone children. I have been associated with Western Shoshone people since 1986. I am now the Director of the Office of Environmental Protection for Yomba Shoshone Tribe. However, I am submitting this testimony as an individual.

The Senate Committee on Indian Affairs has received much testimony concerning perceived illegalities concerning the Western Shoshone land claims, so I will not discuss these. Rather I will discuss differences that I see between Western, Shoshone beliefs and customs regarding land and the beliefs of typical Euroamerican society.

In 1999 I completed my doctoral dissertation in cross-cultural psychology at The Pennsylvania State University researching the acculturation of Western Shoshone sense of self and spirituality. I assumed that Western Shoshone from three typical living situations would have different degrees of exposure to Euroamerican culture and thus different degrees of acculturation: (1) reservation dwellers in isolated areas e.g. Yomba Shoshone Tribe, (2) colony dwellers living in segregated communities close to or within towns e.g Fallon, and (3) urban dwellers, e.g. those who lived in cities like Reno or Las Vegas. Using standard scales of individualism vs collectivism, I found that Western Shoshone people actually were more collective in their belief system than most Asian cultures. I found that approximately 70 percent of Western Shoshone people felt more comfortable going to traditional Indian doctors than to clinics or hospitals, About 86 percent still retained some of the language. While approximately 10 percent of Euroamericans hunt on a regular basis (96 percent men, 4 percent women), over 50 percent of Western Shoshone, except for elders, still hunt to supplement their diet (52 percent men, 48 percent women). Over 90 percent still harvest and eat pinenuts in the traditional methods. Most surprisingly, there was no significant level of acculturation of self-concept across exposure levels.

What does this mean? The Western Shoshone are a very different culture. The Shoshone are still collective people. Rather than thinking of the earth as a thing to exploit, to seek personal gain, Shoshone think more in terms of the extended family and hold the earth as a sacred thing that must be passed to future generations of all people. They took to benefit the family through their actions rather than to what is beneficial to themselves personally. They are less competitive and not ex-

ploitative. They think of their land as owned by all. We might call this concept a joint tenancy in real estate. Everyone has equal share to all land. Therefore land cannot be sold without the consent of all of the others. All own all the land. They are still living off the land and using the land for food and spirituality. In short, the Western Shoshone people are very different from Euroamerican cultural groups.

It is also obvious to me that this illegal vote is taking place at this particular time to hasten the process of acquiring the Yucca Mountain Nuclear Waste Repository. Yucca Mountain and the Nevada Nuclear Weapons Test Site are both on Western Shoshone ancesteral territory. The NRC requires clear title to the land to proceed with licensing Yucca Mountain, and the Ruby Valley Treaty of 1863 is a cloud on this title.

In addition, the Ruby Valley Treaty of 1863 is very different from most of the other Indian treaties. The Ruby Valley Treaty ceded no land. It was one of the few in which there was no land cession. Also, the parties of interest included the western bands of Shoshone and "the people and government of the U.S." We are all parties to the injustice that is being perpetrated through S. 958.

My husband was one of the individuals to go to Geneva for the Human Rights cases. The U.S. had findings tendered against it. They were to be made public in January or February of this year, 2002. Instead, the U.S. appears to have kept those violations secret. They would be an embarassment to the U.S. if disclosed during this hearing process. If they arc not disclosed, this is but another human rights violation against the Western Shoshone people. And, as citizens of the United States, party to the Treaty, we are in violation if we do not stop this further insult.

Congress must seek to investigate the illegalities and violations that have occurred in the past and recently. The traditional government of the Western Shoshone people, the Western Shoshone National Council, should be full party to any negotiation. The Constitution of the United States holds treaty to be the "supreme law of the land." As parties to the treaty and citizens of the United States, we must see that the divine intentions of the framers of the Constitution be honored.

PREPARED STATEMENT OF WINONA CHARLES, CHAIRPERSON, SHOSHONE CLAIMS COMMITTEE

Good afternoon Mr. Chairman and Honorable Senators of the Senate Committee of Indian Affairs.

I am here before you today on behalf of our Western Shoshone Claims Committee of Duck Valley Reservation regarding Docket numbers, 326-A-1, 326-A-3, and 326-K.

I extend our sincere appreciation for the opportunity to be heard this afternoon.

My name is Winona Charles, Chairperson of Shoshone Claims Committee, full blood Shoshone, a great-grandmother, and proud mother of two (2) sons who served in the United States Armed Forces.

It has been a long struggle for the Western Shoshones to the present time today, with much historical background.

Four treaties were signed with the Shoshone Nation in 1863. One of these was the Treaty of Ruby Valley, Western Shoshones of Nevada. Under this treaty, Executive Order dated April 16, 1877, established Western Shoshone Reservation on public domain land lying partly in Nevada and Idaho. This land was set aside for Captain Sam and his group of Shoshones who expressed their desires as well as their needs and traditional ways of life. The ancestral homelands of the Western Shoshone people since time immemorial have deep religious roots and cultural significance in our aboriginal territories of Nevada and Idaho, extending into California. We continuously exercise our rights in hunting, fishing, gathering, protecting and preserving the natural resources and environment, for survival of the indigenous people who are the keepers of the treasures of Mother Earth. We continue to carry on our traditional way of life—the teachings of our old ones who passed on oral histories and beliefs.

In 1885, Paddy Cap's band of Paiutes arrived at Duck Valley and, by Executive Order of May 4, 1886, the land was withdrawn and set aside in addition to the Western Shoshone Reservation. As a result of the Reorganization Act of 1936, the Western Shoshone Reservation became federally recognized as the Shoshone-Paiute Tribes of Duck Valley.

The Shoshone-Paiute Tribes Council enacted Resolution 97-SPR-63. This resolution granted recognition to the Shoshone Claims Committee of Duck Valley for the purpose of handling all matters relating to the Western Shoshone Claims until finalization of all negotiations.

We oppose the Shoshone-Paiute Tribes Council action to intervene in a negative manner because five of seven council members were recipients of funds from Northern Paiute Claims Award.

The leadership of the Western Shoshones of Duck Valley will not tolerate the recipients of the Northern Paiute Claim Award to represent any Shoshones in these proposed legislations. Our committees speaks solely for our Western Shoshone band of Duck Valley to have a voice for our people in this process.

It is clear to the majority of the Western Shoshone that the claims distributed with due haste of 326 K at 100 percent to those who meet the requirement of one-quarter degree blood quantum. We strongly support our perpetual education plan using 326A-1 and 326A-3.

Thank you, Mr. Chairman and Honorable Senators of the Senate Committee of Indian Affairs, for the opportunity to be heard today on behalf of the Western Shoshones of Duck Valley, Owyhee, NV.

PREPARED STATEMENT OF APRIL T. GEORGE

I am a Western Shoshone person whom this Senate bill personally affects and will affect the rights of my grandchildren and their children. I am not privileged to stand before you and make my testimony opposing this bill.

A confidential report was issued to the Bush administration pertaining the case of *Carrie and Mary Dann of the Dann Band of Western Shoshone* v. *United States (LACHR, No. 11.140),* as the report has direct bearing on the Western Shoshone land rights that are put in jeopardy by S. 958. I encourage you and other members of the Senate Committee obtain a copy and review the report before the hearing of March 21, 2002.

S. 958 is deceptive and fraudulent in its context to extinguish title to the Western Shoshone territory of the 1863 Treaty of Ruby Valley by using Section 2(9) which states, "Receipt of a share of the judgment funds under this section shall not be construed as a waiver of any existing treaty rights pursuant to the 1863 Treaty of Ruby Valley; inclusive of all articles I through VIII." The Indian Claims Commission Act states differently:

"The payment of any claim . . . shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy. §22(a).60 Stat. 1055, 25 U.S.C. §70u(a) (1976 ed.)." It is very important that the Senate Committee address and clarify this deceptive language.

The Western Shoshone Steering Committee are a group of individual people headed by Larry Piffero and Nancy Stewart, and are not the official tribal government. To my knowledge have not been authorized, sponsored, or endorsed by any of the recognized tribal governments. The officials of the Bureau of Indian Affairs are affiliated with this group, which in my opinion is in violation of the Government-to-Government policy.

The straw poll vote of May 1998 is based on a deceptive ballot and illegal voting, as testimony and voting were held simultaneously (again with Bureau of Indian Affairs participation, which was conducted by the Western Shoshone Steering Committee). I was there and I was appalled at the manner it was conducted. I refused to vote because the ballot did not present any other options other than distribution of funds.

The Western Shoshone Distribution Claims Committee along with Bureau of Indian Affairs official, Daisy West, Tribal Relations Specialist, Washington DC and Fred Drye, Western Nevada Agency, submitted a finalized draft copy of the bill to Senator Reid's Reno Office July 30, 1999. There is no provision for land or other treaty rights. This committee, who is not a governmental body, drafted the bill.

Their only motive is for distribution. This committee is telling the people they will receive twenty thousand dollars, which is purely fictional amount. This is a drop in a bucket, especially after the Federal Government and the State of Nevada have benefited from all the natural resources taken from the Western Shoshone territory.

I oppose this bill in its entirety and pray that S. 958 be defeated.

PREPARED STATEMENT OF LARRY GREENE

Any hope that justice will derive from this Indian recognition hearing is misplaced for a number of reasons. One reason is the historical bias of key members of the Senate Indian Affairs Committee, namely Senators Inouye, Campbell, and McCain. Another reason, and more importantly, is the failure of the Federal Government to provide a rational explanation as to the purpose of Indian recognition and a clear definition of what an Indian tribe is.

Allegedly, the purpose of Indian recognition is to make tribes self-determining sovereign nations. Yet, as long as Congress wields plenary power over all tribal affairs, including the existence of tribes, it is impossible for tribes to become self-determining sovereign nations. There exists no means testing, or any other criteria, indicating when tribes may be cut from the paternal umbilical cord of the Federal Government. This leads to only one rational conclusion: There is no true intent by the Federal Government to make tribes self-determining sovereign nations.

The most popular attempt to define what an Indian tribe is was coined by Chief Justice John Marshall in the 1831 *Cherokee Native* v. *Georgia.* He noted that the U.S. Constitution did recognize entities called "Indian tribes." He wrote that perhaps tribes could be denominated domestic, dependent nations. He meant maybe they were and maybe they weren't. Also, he gave no definition what he meant by a domestic, dependent nation, except that whatever rights which may have belonged to the Cherokee Nation, and thus all other tribes, that "this is not the tribunal in which those rights are to be asserted." Tribes had no right to petition for a redress of grievances before the Supreme Court in 1831. Today they do.

Once all Indians were made American citizens in 1924, they became entitled to the "equal protection of the laws" guarantee of the constitution's 14th Amendment. American citizenship for Indians made all constitutional references of "Indians" obsolete.

The 1934 Indian Reorganization Act determines the recognition of tribes today. The recognition criteria per the 1934 IRA boils down to whomever the Interior Secretary deems is an Indian tribe, and Congress has recognized tribes on the fly. The socialistic intent of the 1934 IRA was to separate Indians from the rest of American society and, thus, negating the constitutional protections of Indians when on trust land, in spite of their being American citizens. Such separation is racist and unconstitutional.

The unsurprising result of this racist, unconstitutional policy is that Indians, as an ethnic group in America, easily ranks first in almost every category of social ills: Unemployment, alcoholism, high school dropouts, domestic violence, etc. The BIA has bilked tribes out of one-half billion trust fund dollars. Another result is impacts on non-Indian communities due to land annexation, casino gambling, liability immunity, etc. Last is the corrupting effect of campaign finance donations and who knows what funds are being transferred under the table.

There is a lack of courage and/or wisdom by every local, state and Federal official in this nation to address whether or not the basic idea of Indian recognition is racist and unconstitutional. Because Indian recognition is racist and unconstitutional, it is impossible to correct the perceived flaws in the criteria or any other aspect of such a deplorable, arbitrary policy. The only proper option is the immediate termination of government recognition of Indian tribes.

PREPARED STATEMENT OF JOHN ST. CLAIR, ENROLLED MEMBER, EASTERN SHOSHONE TRIBE, WIND RIVER INDIAN RESERVATION

Good afternoon Chairman Inouye and distinguished members of the Senate Indian Affairs Committee. Thank you for the invitation to come before you today to testify about a topic that has had a major impact upon the powers and authorities of Indian tribal governments.

My name is John St. Clair. I am an enrolled member of the Eastern Shoshone Tribe of the Wind River Indian Reservation located in west central Wyoming. I am an attorney licensed in Wyoming and have been sitting as Chief Judge of the Shoshone and Arapahoe Tribal Court since 1983. 1 am President of Wyoming Legal Services, President of Montana-Wyoming Tribal Judges Association and a member of the Board of Directors of the National American Indian Court Judges Association (NAICJA).

The Wind River Indian Reservation is jointly owned by the Eastern Shoshone and Northern Arapahoe Tribes (the Tribes). It is approximately 3500 square miles in area inhabited by about 12,000 members of both tribes and other tribes, along with about 25,000 non-Indians.

The Shoshone and Arapahoe Tribal Court through a comprehensive Law and Order Code extends jurisdiction over all Indians who commit offenses prohibited in the Code and over all persons who have significant contacts with the reservation. The Court consists of a Chief Judge who must be a professional attorney and three Associate Judges. There is a Court of Appeals comprised of the remaining three judges who did not hear the case. Jurisdiction is limited by applicable Federal law. Total case load for 2001 was approximately 3,500.

Recent United States Supreme Court decisions have become a major concern to the Tribes due to their intensified passion to limit the sovereignty of Indian Tribes. In particular, within the Past ten (10) years tribes have lost 23 of 28 cases argued before the Court. Since the case of *Oliphant* v. *Squamish Tribe,* 435 U.S. 191 (1978), where the Court held by implication that tribes are without inherent jurisdiction to try non-Indians for crimes, a new doctrine has emerged that tribes lack certain powers that are inconsistent with their dependant status even when Congress has not acted to curtail those powers. This new doctrine has been extended to the civil regulatory area by *Montana* v. *United States,* 450 U.S. 544 (1981), the adjudicatory area by *States* v. *A–1 Contractors,* 520 U.S. 438 (1997) and in 2001, in *Atkinson Trading Post* v. Shirley, 531 U.S. 1009 (2001) to a hotel occupancy tax imposed by the Navajo Nation. The most recent extension of the doctrine is *Nevada* v. *Hicks,* 121 S. Ct. 2304 (2001) where it was held that tribes lack jurisdiction over civil suits against State officials for violating the rights of Indians on Indian land within a reservation.

The impact of and its progeny on the powers and authorities of Indian tribal governments is that it severely restricts the ability to exercise basic regulatory and adjudicatory functions when dealing with everyday activities on reservations. When both Indians and non-Indians are involved in domestic violence, alcohol and/or drug related disturbances or a other criminal activity, tribes can adjudicate only Indians while non-Indians, even when detained and turned over to state authorities, go unpunished. This double standard of justice creates resentment and projects an image that non-Indians are above the law in the area where they choose to reside or enter into.

The affect on tribes of not being able to regulate taxing, hunting and fishing, the environment, zoning, traffic, etc. placed limitations on economic development and self-sufficiency. Without the ability to generate revenues to fund basic governmental functions, tribes become more and more dependant on Federal grants, contracts and compacts, as a sole source of funding. This results in an increased economic burden that ultimately falls on the Federal Government.

Tribal courts constitute one of the frontline institutions confronted with the issues involving sovereignty? while charged with providing reliable and equitable adjudication of increased numbers of criminal matters and complex civil litigation. Tribes and their court agonize over the same issues State and Federal courts confront. Child sexual abuse, alcohol and substance abuse, gang violence, violence against women, child neglect, pollution of the air, water, and earth, are just some of these common yet complicated problems that arise on Indian reservations. The vast panarama of cases handled by the 500 plus tribes in their courts would significantly increase the caseloads of Federal District Courts and also local State courts, if tribal courts no longer existed. The increased cost to Federal and State courts would also result in major budget short falls.

The recent trend of the United States Supreme Court toward judicial termination poses the greatest threat to tribes since the allotment era of the 1 91h Century and Congressional termination of the mid-20th Century. This trend runs counter to the proclaimed Federal policy of self-determination that has repudiated the allotment and termination policies.

America's Third Sovereign, the Indian tribes, occupying Indian Country come before this distinguished body to ask that you utilize the plenary power of Congress in Indian affairs conferred upon you by the Indian Commence Clause, article 1, Section 8, clause 3, of the Untied States Constitution. We request that you restore and reaffirm the inherent regulatory and adjudicatory authority of tribes over all persons and all land within Indian Country as defined in 18 U.S.C. Sec. 1151. This approach would place the exercise of jurisdiction in the hands of the? Tribes and the extent of it within their organic documents and case law making it a question of tribal law.

Again I want to thank you for this unique opportunity that you have provided on behalf of my tribes and all the Indian tribes.

TE-MOAK TRIBE OF WESTERN SHOSHONE
525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
FAX - (775) 738-2345

My name is Felix Ike and I am the Chairman of the Te-Moak Tribe of Western Shoshone Indians of Nevada. Te-Moak represents the four Te-Moak Band communities of Elko, Battle Mountain, South Fork, and Wells.

The Western Shoshone Nation once occupied a large area of the western part of the United States, including parts of Nevada, Idaho, California and Utah. Our traditional way of life was closely connected with nature. Our land was abundant in resources, including springs, streams and rivers, snow-covered mountains and rich valleys, and even the desert areas which were full of plant and animal life. When the non-Indians came into our land, they depleted the natural resources, destroyed our way of life, and forced us to adopt their ways. Of the vast territory that was once our homeland, only a few small colonies, ranches and reservations have been set aside for our use. In the interests of our future generations, we need to expand our land base to support our tribal population and provide a base from which we can develop greater self-sufficiency. It is our understanding that this legislation will not prevent us from expanding our land base in the future.

The Western Shoshone have always had a strong attachment to our land, which encompassed many millions of acres as described in Article V of the Treaty of Ruby Valley. Our people traditionally knew every valley and spring in our vast territory, and our land has always been at the center of our cultural identity and way of life. Expanding our meager land base is essential for the health and vitality of our communities and for the survival of our culture. We ask Congress to consider the expansion of our land base to establish a permanent homeland for the Western Shoshone.

Subsistence hunting, fishing and gathering rights are of great importance to the Western Shoshone people. Our people hunt, fish and gather traditional food sources to supplement their diet. It is very important that Western Shoshones continue to have access to traditional hunting, fishing, and gathering areas, and that we continue to be able to hunt, fish and gather the

traditional food sources which are part of our culture and our diet, a part of who we are. Many tribal members rely on these traditional food sources on a subsistence basis. Many traditional medicines are made from native plant sources gathered throughout our aboriginal territory, and these are also important to our people for health, cultural, and religious reasons.

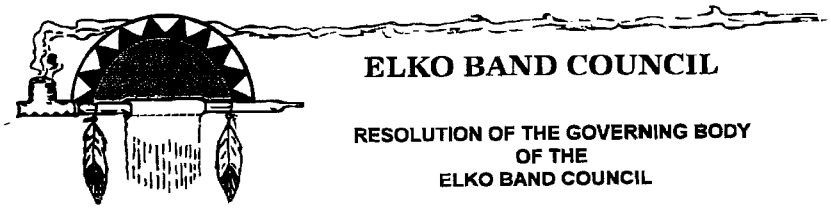
Our aboriginal lands are being destroyed and poisoned by mining, toxic waste, and other forms of abuse. The native animals and plants are disappearing from lands that have suffered from so much abuse. Shoshones are the guardians of our environment. We traditionally practiced a way of life that was in harmony with the earth. It is a part of our religion and way of life to respect all forms of life. The land, the air, the water, the animals, the birds and plants are all interconnected and all depend upon each other for existence. We want our important hunting, fishing, gathering, and spiritual areas to be set aside for us so that we can preserve them. In accepting the claims money, we are not giving up any hunting, fishing or gathering rights.

Northeastern Nevada's economy is in a period of decline, with unemployment rising in and near the Te-Moak Tribal communities. Economic development to increase our self-sufficiency is very important for our communities, but our opportunities are very limited. Our need for federally funded services will continue in the areas of education, health, housing, community development, social services, judicial services, law enforcement, cultural resources, environmental protection, and other services necessary for a viable community. It is our understanding that this legislation to compensate the Western Shoshone for past wrongs will in no way diminish the United States government's obligation to continue to provide all these services as needed for the health and well-being of our people.

In order to determine whether acceptance of this claims money is truly the wish of the majority of Western Shoshone people, another vote on the issue was held on June 3, 2002. Tribal members voted on three questions: whether or not to accept the claims money from Docket 326 K, whether tribal members of at least 1/4 degree of Western Shoshone Blood should be able to participate in the settlement, and whether or not 326 A-1 and A-3 should be placed in an educational trust fund. The vote was 1,647 to 156 in favor of distribution, 1,601 to 196 in favor of tribal members with at least 1/4 degree of Western Shoshone Blood participating, and 1,020 to 769 in favor of the educational trust fund. The majority of Western Shoshone voters clearly

support distribution as described in the Western Shoshone Claims Distribution Act. It is the mandate of the people that we move forward with this process. The people have waited long enough.

I am asking you to support the Western Shoshone Claims Distribution Act to distribute the claims awarded through Docket 326 K, 326 A-1 and 326 A-3. This money was awarded so many years ago in an attempt to compensate the people for some of the wrongs that have been done to us. Too many of our tribal members have passed away without benefitting from this money that was set aside for them. Although it cannot fully compensate us for the loss of our land and way of life, the claims money will help to make life better for the tribal members who receive a share.



ELKO BAND COUNCIL

RESOLUTION OF THE GOVERNING BODY OF THE ELKO BAND COUNCIL

RESOLUTION NO. 2002-EBC-09

BE IT RESOLVED BY THE ELKO BAND COUNCIL, THAT

WHEREAS, this organization is an Indian Organization known as the Elko Band Council, as defined by the Indian Reorganization Act of June 18, 1934, as amended to exercise certain rights of home rule and to be responsible for the promotion of the social and economic welfare of its tribal members, and

WHEREAS, the Elko Band Council is the governing body of the Elko Indian Colony as prescribed in Article 4 - "EXECUTIVE AND LEGISLATIVE BRANCH of GOVERNMENT: , Section 1, Governing Bodies and to exercise its authority pursuant to Article 4; Section 12, "POWERS OF BAND COUNCILS", of the Te-Moak Tribes Constitution, and

WHEREAS, in 1977, the Indian Claims Commission awarded the Western Shoshone Indians $26 million dollars, and the United States Court of Claims affirmed the award. The payment was made in 1979 to the Te-Moak Band of Western Shoshone Indians v. United States identified as Docket 326-K, and

WHEREAS, the Western Shoshone Claims Distribution Act is only for past damages and trespass, and this does not prohibit nor restrict the Western Shoshone to further pursue claims, [e.g.; hunting and fishing rights; religious and burial issues; land restoration; and other elements relative to the Treaty of Ruby Valley of 1863, and

WHEREAS, the Elko Band Council is a constituent Band with five elected representatives to the Te-Moak Tribal Council, representing the largest population of 1,595 enrolled members, and the largest group of Western Shoshone people in Nevada, and

WHEREAS, on May 23, 1998, in Elko, Nevada, and on May 24, 1998 in Fallon, Nevada, under the observation of the Bureau of Indian Affairs, Eastern and Western Agencies, Phoenix Area Office and Tribal Government Services - Washington D.C. and the Western Shoshone Claims Committee by referendum ascertained the overwhelming sentiment of the Western Shoshone people for the distribution of the monetary settlement the basis will be at 100% per capita payment to 1/4 or more Shoshone Blood by a landslide of 1,230 votes in favor of, and 53 voters in opposition of distribution, and

Page 2, Resolution No. 2002-EBC-09

WHEREAS, the Elko Band Council fully supports and endorse the Western Shoshone perpetual Education Plan as a result arising from Dockets 326-A-1 and 326-A-3 which was approved at the two public meetings, and

NOW, THEREFORE BE IT RESOLVED, that the Elko Band Council reaffirms and endorse the proposed Legislation for Monetary Distribution by the enactment of this Resolution. We request this document be made a part of the record in the forthcoming Congressional Hearing on the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT", and be transmitted to all the Nevada Congressional Delegation and to all appropriate agencies of the Bureau of Indian Affairs.

BE IT FURTHER RESOLVED, that the Elko Band Council hereby recommends an approval of the Department of Interior, Nevada Congressional delegation, and Congress to expeditiously bring a solution to the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" in accordance with the consensus of the Western Shoshone people.

BE IT FURTHER RESOLVED, that this resolution ratifies resolutions identified as Resolution No. 99-EBC-11, Resolution No. 98-EC-12, and Resolution No. 98-EC-16.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned as Chairman of the Elko Band Council do hereby certify that the Elko Band Council is composed of seven members of whom 6 members constitution a quorum were present at a duly held meeting on the 13th day of March, 2002, and that the foregoing Resolution was duly adopted at such meeting by a Vote of 6 for, 0 Against, 0 Abstained, pursuant to Article 4, Section 12 (b) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Fermina Stevens

Fermina Stevens, Chairman
ELKO BAND COUNCIL

ATTESTED BY:

Recording Secretary

DUCKWATER SHOSHONE TRIBE
Post Office Box 140068
Duckwater, Nevada 89314
(775) 863-0227

Date: July 31, 2002

To Whom It May Concern:

We, the Duckwater Shoshone Tribal Council Members: Rodney Mike, Chairman, Perline Thompson, Vice-Chairman, Alfreda Walker, Secretary, Beverly Cota, Member and Alissa Thompson, Member of the Duckwater Shoshone Indian Reservation, Duckwater, Nevada. At the Regular Scheduled Council Meeting held on Monday July 29, 2002 the Tribal Council by CONSENSUS agreed to send a letter of support for the Distribution.

We fully support the wishes of our tribal members for the Distribution of the Western Shoshone Claims Act. It is our people's wish to move forward with this process.

We, the members of the Duckwater Shoshone Tribal Council are asking you to support the Western Shoshone Claim Distribution Act to distribute claim award through Docket 326 K, 326 A-1 and 326 A-3.

We, the Duckwater Shoshone Tribal Council members have asked Te-Moak Chairman Felix Ike to speak on our behalf.

Thank you,

Perline Thompson

Perline Thompson, Vice-Chairperson
Duckwater Shoshone Tribe

TE-MOAK TRIBE OF WESTERN SHOSHONE
525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
FAX - (775) 738-2345

July 31, 2002

Fax To: The Honorable Harry Reid, United States Senate

From: Felix Ike, Chairman, Te-Moak Tribe of Western Shoshone

Dear Senator Reid:

The Western Shoshone people of two groups and five Federally recognized tribes held a referendum election on June 3, 2002 regarding the distribution of Dockets 326-K, 326-A-1 and 326-A-3. A referendum was used because it best served the needs of five sovereign nations and two Western Shoshone groups residing on recognized reservations. The results were an overwhelming 91% in favor of the distribution of 326-K, and 89% in favor of one quarter degree Western Shoshone blood. The Educational Trust Fund was approved by 57%.

Only the designated representative of the two groups and the five Federally recognized tribes should be allowed to appear before the Senate Indian Affairs Committee on August 2, 2002. I am the Chairman of the Te-Moak Tribe, and have been asked to represent the people of Duckwater at the meeting. Duckvalley, Ely, Fallon, Timbisha and Yomba are also sending representatives.

Within the four constituent Bands of the Te-Moak Tribe, the distribution carried by 84%. As always happens, there is a small vocal opposition group heavily influenced and financed by the purported Western Shoshone National Council. Raymond Yowell claims status as the Chief, yet he is an enrolled member of the South Fork Band of the Te-Moak Tribe. That organization does not have authorization from any of the Federally recognized tribes with Shoshone membership. We ask that the Western Shoshone National Council and any one of their representatives not be allowed to appear before the Committee unless they can establish recognition through the Federal Register as an approved tribal organization.

Regarding the Te-Moak structure and its Bands, the Constitution designates that the Chairman of Te-Moak is the primary representative the Tribe. The Chairpersons of the constituent Bands have specific duties that are all limited to Band functions.

Copies of the Federally approved Te-Moak Constitution and the Federal Register listing of recognized tribes follow.

Thank you. If there are any questions, please call me.

ARTICLE 15 - APPROVAL

In that this Constitution was duly adopted as evidenced by Article 14, I, John W. Frite, Deputy Assistant Secretary - Indian Affairs (Operations), by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 209 DM 8.3, do hereby approve this Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada. It is effective as of this date; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

Deputy Assistant Secretary - Indian Affairs
(Operations)

Washington, D.C.

Date: 26 August 1982

(g) To establish agencies for and otherwise to provide for, law enforcement within the territory and jurisdiction of the Tribe;

(h) To levy assessments for the use of Tribal privileges and property;

(i) To spend Tribal funds in accordance with an annual budget approved by the Tribal Council; provided, that when required by Federal Law, such budget shall also be approved by the Secretary of the Interior or his authorized representative;

(j) To promote and protect the health, peace, morals, education, safety and welfare of the Tribe, its members and all other persons within its jurisdiction, and govern the conduct of Tribal members;

(k) To regulate all administrative and legislative bodies of the Tribe, Tribal agencies, officers and organizations;

(l) To recognize as constitutent Bands of the Tribe, additional groups of Western Shoshone Indians pursuant to Section 2(a) of Article 3. Each newly recognized Band shall have the same power and authority as exists in the Bands mentioned in Section 1 of Article 3;

(m) To provide for the exclusion of non-members from the territory of the Tribe for good cause;

(n) To enact all ordinances and resolutions which shall be necessary and proper for carrying into effect the foregoing powers; and

(o) To exercise all powers vested in it by existing law, and such further powers as may in the future be granted to the Tribal Council by members of the Tribe or by the United States or the State of Nevada.

Sec. 4. Powers Reserved to Tribal Members. Any powers, not delegated to the Tribal Council by this Constitution or the Secretary of the Interior are retained by the members of the Tribe and may be exercised through appropriate constitutional amendments.

Sec. 5. Duties of Tribal Officers.

(a) Tribal Chairperson. The Tribal Chairperson shall have the following duties, powers, and restrictions:

(1) Shall be the primary representative of the Tribe;

(2) Shall call and preside over meetings of the Tribal Council;

(3) Shall sign all negotiable instruments, contracts, applications for Federal, or other funds, and all other obligations of the Bands, all as designated by the Tribal Council;

(4) Shall not vote except in case of a tie;

(5) Shall make written and oral reports at all Tribal Council meetings of all of his or her activities;

(f) Make contracts under its own name;

(g) Exercise such further powers as may be delegated by the Tribal Council or this Constitution;

(h) Recommend any changes in the Constitution; and

(i) Select its representatives to the Tribal Council and remove them for any good cause by majority vote, except as provided in Article 4, Sections 7 and 17.

Sec. 13. Kinds of Band Enactments. Band Councils shall have no authority to enact ordinances, but shall conduct all business by resolutions or motions.

Sec. 14. Band Council Actions Consistent With Law. No action of any Band Council shall be inconsistent with Federal Law, this Constitution, or ordinances and resolutions of the Tribe.

Sec. 15. Duties of Band Officers.

(a) Band Chairperson. The Chairperson of each Band Council:

(1) Shall call and preside over meetings of the Band Council and Band membership;

(2) May consult with representatives of all Federal or local Governments on all matters of local interest;

(3) Shall be co-signer of Band Council checks;

(4) Shall sign all other negotiable instruments, contracts, applications for Federal or other funds, and all other obligations relating to the Band;

(5) Shall be a voting member of the Band Council;

(6) Shall make written or oral reports at all Band Council meetings of all his or her Band activities;

(7) Shall not obligate the Band without the prior written approval of the Band Council.

(b) Band Vice-Chairperson. The Band Vice-Chairperson shall assist the Chairperson and in the absence of the Chairperson shall assume the duties and powers of the Chairperson.

(c) Band Secretary. The Band Secretary shall preserve all resolutions and minutes of the Band Council and shall make the same available to all Band members during regular business hours.

(d) Band Treasurer. The Band Treasurer:

(1) Shall be responsible for all funds of the Band;

March 14, 2002

Dear Senators and Committee Members,

The Te-Moak Tribal Council represents four areas, Wells, Elko, South Fork, and Battle Mountain. I am the Chairman of the Wells Band Colony of the Western Shoshone Nation of Nevada. My name is Willie Johnny.

The Wells Band Colony and surrounding areas have used this land that we call home to be self supported for centuries. Our people roamed all over the Western portion of the United States, which today we call Nevada, Idaho, Utah and California, there were no boundaries, this was our way of life.

The Treaty of Ruby Valley 1863 allowed settlers and immigrants to migrate through our territory. Railways were built on the land, stage lines were operated through our boundaries and mines were built with the timber of our woodlands and our land was stripped of her minerals. The natural resources we had depended upon for centuries which took care of our people, were drastically depleted and our way of life was forever changed.

I have read the Treaty of Ruby Valley and I believe it only benefits the United States, and the State of Nevada. As in the first Four Articles of the Treaty that the Band allowed at that time, the only thing that might have benefited our people then, and now, is a reservation, which is non-existent even today. The colonies we live on today are by Executive Order or Public Law, which are to small and not enough land to allow for our traditional ways or for economical development. Today, there are other tribes around us in other states, that have reservations, that had treaties similar to ours, and through their negotiations they asked for extra land or have obtained reservations, plus monetary settlements.

We hunted and fished to provide our people with food. We gathered wood for shelter and warmth and picked berries and herbs for medicine. Today our Native People are deprived of the traditional way of life. Today we are facing an epidemic called diabetes caused by a diet we are not accustomed to. We no longer have the freedom or the resources to be self supportive. We as Native Americans have been pushed aside for

many years. Our tribal members have endured hardships, we obeyed the laws and what was asked of us, we the Western Shoshone Nation did not break the Treaty of Ruby Valley. We did not cede land to the United States, or the State of Nevada. We believe this treaty is enforceable even today. Once, our rights **were** secured ownership to this land, hunting, fishing, education, health and other entitlements, etc. but our rights today are only secured by statues, or executive agreements.

The Wells Band Colony is in support of the Western Shoshone distribution act Docket 326-K, 326-A1, and 326-A3. Where it is only for compensation for past damages. Along with damages that have occurred since the Treaty of Ruby Valley 1863.

We are asking for a land base expansion of a 60 mile radius for the following reasons:

1. At the present time we have 80 acres for the Wells Band Colony and only half of that acreage can be used for housing and the rest is wasteland.
2. We are asking for a $25,000,000.00 settlement fund for the purpose of establishing economic development, so we may become more self-sufficient in taking care of our Native people.
3. We are asking for hunting, fishing and gathering rights so that our people can have the ability to once again live off the land, without stipulations.
4. To provide future generations with a territorial base to call home.
5. To increase our self-sufficiency.

By excepting the Western Shoshone Distribution Act Docket 326K, 326-A1, and 326-A3, we are not selling our land or our rights as Native Americans, this is ONLY compensation for past damages caused by the government and the State of Nevada. If the United States and the State of Nevada have benefited from this treaty, we would like the same too. As I understand in 1946, the Indian Claims Commission determined that the Indians be compensated for land and other resource, and only that.

I read in the dictionary to see what this word "Compensation" meant and this is the meaning. Compensation: something given, or received as an equivalent for services, debt, loss, injury, etc.

I chairman of the Wells Band Colony support the surrounding areas for what they are proposing as long as they **are not selling our land**, and that the members of the Wells Colony and bands are in support of the Western Shoshone Distribution. And by excepting this distribution it will not effect our land because it is not for sale.

In closing, I would like to Thank the Senators and Committee Members for this time and attention that you have given to me today, to present my testimony and proposal to you. I hope we can come to a negotiation and a better understanding which will benefit us all.

Once again thank you for your time.

Sincerely,

/s/Willie Johnny

Willie Johnny, Chairman
Wells Band Council

Enclosures: Testimony
Ruby Valley Treaty 1863
Map
Letter
Resolution
Treaty of Guadeloupe Hidalgo 1848, 9 Statue 922
Ordinance of 1787: The Northwest Territorial Government Article III
Act of Congress Organizing the Territory of Nevada, approved March 3, 1861, Section 1- Excerpt

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled.

SECTION 1. SHORT TITLE

This Act may be cited as the "Western Shoshone Claims Disbursement and Land Rights Act"

A. NATURE AND PURPOSE OF COMPENSATION

The judgment award in the amount of $26,145,189.89 by the United States Court of Claims in Western Shoshone Identifiable Group vs. United States in Docket 326-K, is hereby characterized as compensation for damages and trespass purposes only and not for the taking of or extinguishments of Title to Western Shoshone Aboriginal lands. To reaffirm the 1863 Treaty of Ruby Valley, (18 Stat. 689-1869), between the United States and the Western Shoshone of Nevada; to confirm Western Shoshone hunting, fishing, trapping, roaming and gathering rights, and for religious purposes throughout the Western Shoshone Ancestral lands for the Wells Band of the Te-Moak Tribe; to provide for social and economic development and to promote welfare for its members; for resource protection and to preserve and conserve the natural environment; and to enhance the implementation of self-determination and governance for its tribal members; and for other purposes as deemed necessary.

B. FINDINGS

Congress finds and declares- -

1. The Western Shoshone Nation entered into a treaty with the United States on October 1, 1863, at Ruby Valley, Nevada known as the "Treaty of Ruby Valley" which treaty was ratified by the United States Senate on June 17, 1869; and proclaimed by the President of the United States on October 21, 1869; and
2. The Treaty of Ruby Valley did not cede any Western Shoshone lands to the United States, but conceded certain rights to the United States for its citizens to pass through Western Shoshone land provided for

certain types of temporary occupancy by citizens of the United States; and

3. The Treaty of Ruby Valley delineated a portion of the ancestral lands of the Western Shoshone Nation, including the area surrounding the present Te-Moak Tribe of Western Shoshone Wells Indian Colony, and recognized Western Shoshone occupancy of such lands; and
4. The ancestral homelands of the Western Shoshone Nation since time began have deep religious roots and cultural significance in the aboriginal territories of Nevada, California, Idaho, and Utah; and
5. The Congress of the United States recognizes the right of the Western Shoshone people to continue to hold and occupy their ancestral homelands, and the right of the Western Shoshone people to economic and political self-determination; and
6. Western Shoshone Indians have continuously asserted their ownership of Western Shoshone lands, and such lands have never been legally abandoned by the Western Shoshone; and
7. Western Shoshone Indians continue to exercise aboriginal hunting, fishing, trapping, roaming and gathering rights throughout the ancestral territory of the Shoshone Nation and are presently utilizing those areas pursuant to ownership rights of the Ruby Valley Treaty of 1863; and
8. Western Shoshone title to the larger part of the ancestral lands of the Western Shoshone Nation remained unimpaired until December 19, 1979 when the judgment in Western Shoshone Identified Group v. United States, Docket 326-K, was set aside; and
9. The amount of the judgment, $26,145,189.89, constitutes woefully inadequate compensation for the loss of Western Shoshone land rights as of December 19, 1979; and
10. The Western Shoshone Nation has refused to accept the judgment awarded in Docket 326-K as compensation for extinguishments of title

to its lands and will not accept money in exchange for extinguishments of title to such lands; and

11. The United States desires to dispose of the fund created by the final judgment in Western Shoshone Identifiable group v. United State, Docket 326-K; and
12. Article VI of the Treaty of Ruby Valley Provides for the establishment of Western Shoshone Indian Reservations where Western Shoshone Indians may become economically self-sufficient, but which Reservations have never been established; and
13. The courts of the United States, in United States v. Dann, have held that certain long-standing Western Shoshone rights of occupancy are enforceable against the United States; and
14. There is an immediate need for a fair and just resolution of Western Shoshone lands rights and money claims against the United States, and an immediate need to provide an adequate land base for the Wells Western Shoshone Community and claim of right based on Western Shoshone aboriginal Indian title and the Treaty of Ruby Valley; and
15. No provision of this Act shall constitute a precedent for reopening, renegotiating, legislating upon any past settlement involving land rights or other matters with any tribe, band, or identifiable group of American Indians; and
16. There is an immediate need for a fair and just resolution of Western Shoshone land rights and money claim against the United States and an immediate need to provide additional land base for the Wells Band.

SECTION 2. APPORTIONMENT OF AWARD

A. Establishment of Judgment Roll - - (1) The Secretary shall establish a judgment roll for the purposes of apportioning and distribution, in consultation with Western Shoshone, according to the provisions contained in this Act to funds on deposit in the Treasury of the United States in the sum amount of $26,145,189.89 entered by the Indians Claims Commission in Docket 326-K, together with interest accrued.

B. Eligibility and Membership

1. A person is eligible to be listed on the judgment roll established by the Te-Moak Tribe and the Secretary, if the person

   a. Was born prior to and was alive on the date of the enactment of this Act;

   b. Is a quarter (1/4) or more and a member of the Te-Moak Tribe's constituent Band as defined in the Indian Claims Docket 326-K and as determined by the secretary;

   c. Has not received or not entitled to receive, as of this date of the enactment of this Act, any other settlement or payment of any other claim under the Indian Claims Act of 1946, (ch. 959, 60 stat. 1049.);

   d. Persons in the following categories shall not be entitled to participate in the Western Shoshone distribution;

      i. Those who participated in the Shoshone award in Docket 326-D, E, F, G, H, 366 AND 367 or who are members of the Shoshone Tribe of the Wind River Reservation or of the Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Northwestern Band of the Shoshone Indians;

      ii. Those who's Shoshone ancestry is derived solely from the Boise or Bruneau Bands;

      iii. Those who participated in the Confederated Tribes of the Goshute Reservation in Dockets 326-B and J, or the

Lemhi Shoshone Award in Docket 326-I at the Skull Valley Goshute Tribe;

iv. Those who participated in the Indians of California award in Dockets 31, 37, 80, 80-D and 347;

v. Those who participated in the Northern Paiute award Docket 87;

vi. Those who participated in the Southern Paiute award in Docket 88 or who are members of the Moapa Paiute Tribe or of the Kaibab Pauite Tribe;

vii. Those who are found eligible to participate in the Mojave award Dockets 283 and 295 or who are member of the Fort Mojave Tribe

viii. Those who participated in award Docket 288 or who are members of the Washoe Tribe of Nevada-California, or members of the Quechan Tribe in Docket 319;

ix. Those who participated in the Chemehuevi award in Docket 351;

x. Those who participated in the Klamath award in Docket 100 or who's Indian ancestry is derived solely for Yahooskin Snakes or Walpapi Paiutes;

xi. Any other Shoshone who already received per capita in any other areas.

2. For the purpose of determining the apportionment of the award under this Act and membership on the Judgment Roll, the Te-Moak Tribe with assistance of the Secretary shall bring current membership rolls and shall include all persons born prior to and alive on the date of the enactment of this Act who are enrolled or eligible to be enrolled in accordance to the Te-Moak Tribal Enrollment Ordinance adopted on August 19, 1986, and approved by the Bureau of Indian Affairs.

3. In addition to tribal rolls, the Secretary will prepare a supplement roll with the consultation and / or assistance with the Te-Moak Tribal Council / Enrollment Committee (shall be included on the judgment roll, if approved by the Tribe), consisting of individuals who are not members of the Te-Moak Tribe but otherwise meets other enrollment standards set forth by the Tribe.

C. PUBLICATION AND APPEALS

1. Not later than 120 days after enactment of this Act, the Secretary shall publish the proposed judgment roll in the Federal Register and three newspapers in Nevada, Idaho, Utah, and California.
2. Any Persons which was denied as eligible to participate may file an appeal with the Secretary documenting reasons for claiming an interest, no later than 60 days after the date of publication in the Federal Register and newspaper.
3. The final decision shall be made by the Secretary within 90 days after the receipt of such appeal and published in the Federal Register of changes no later than 60 days as a final notice.

SECTION 3. DISTRIBUTION OF FUNDS

A. IN GENERAL

1. Not later then 120 days upon the official notification of final Judgment Roll, the Secretary shall provide a determine amount to be awarded per-capita based on equal division to eligible beneficiaries of Western Shoshone.

B. DISTRIBUTION TO MEMBERS OF TRIBE

1. The Te-Moak Tribal Council or constituent Band of Wells shall notify the Secretary in writing of their official decision to participate in the award and make the following distributions:

    a. The Wells Band as represented by its governing body, the Wells Band Council, a constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada hereby goes on record for a 100% per-capita payment to eligible members residing on and near the Wells Indian Colony, Wells, Nevada, and payment of distribution and share be paid directly to them. The funds deposited shall not be expended or disbursed without the approval of the Secretary.

C. DISTRIBUTIONS TO UNAFFILIATED PERSONS

Not applicable – the Te-Moak Tribe in behalf of the Wells Band elects to receive 100% per-capita payment based on Enrollment Laws to enrolled or eligible for enrollment (and on a one quarter degree basis)

D. PER-CAPITA DISTRIBUTION

1. 100% per-capita shares will be paid directly to:

    a. living distributee in one lump sum amount

    b. a distributee or such distributee's estate, heirs, or legatees who is less than 18 years of age or who is under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect the best interest of the distributee.

E. EXEMPTION FROM INCOME TAX AND FEDERAL SERVICES DETERMINATIONS

None of the funds distributed under this Act on a 100% per capita basis or made available from the accounts established shall be:

1. subject to Federal or State income tax; or
2. considered as income or resources or otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which the distributee or household of the distributee should otherwise be entitled under the Social Security Act or any other Federal or Federally assisted program including tribal programs.

SECTION 4. EFFECT OF EXISTING RIGHTS / NO EFFECT ON VALID EXISTING LAND RIGHTS.

A. HUNTING, FISHING, TRAPPING, AND GATHERING

1. The aboriginal hunting, fishing, trapping, and gathering rights of the Western Shoshone Nation and its individual members are hereby fully recognized and preserved throughout the Western Shoshone ancestral territory. All Western Shoshone Indians, as herein defined, shall be entitled to exercise Western Shoshone hunting, fishing, trapping, roaming and gathering rights, in behalf of the Wells Band by any and all persons, whether or not they are members of the Western Shoshone Nation, on all lands, lakes, and streams held in trust by the United States for Western Shoshone tribe, band, and individuals, and on all lands, lakes and streams wherein the surface estate is confirmed pursuant to this Act, the Wells Band to regulate all hunting, fishing, trapping, roaming and gathering by the Western Shoshone Indians, as herein defined, on all Western Shoshone ancestral lands, lakes, and streams not held in trust by the United States for the benefit of Western Shoshone Indians, Wells Band by Western Shoshone Indians or Indian Tribes.

B. Receipt of a share of the judgment under Section 3 shall not:

1. be construed as a waiver of any existing treaty, specifically, "The Treaty of Ruby Valley of 1863", or any existing rights arising under any compact with a state or local entity, but only as a partial compensation for past damages prior to 1872, or future Western Shoshone rights currently pending before court systems:
2. be construed as a sale of ancestral or aboriginal lands by any persons or entity of a Federal, State, or Local Government.
3. Nothing in this Act shall deprive any person or government of any valid existing right of use or possession, or any contract right, which that person or government may have in any of the lands herby confirmed to the Wells Band of the Te-Moak Tribe, or of any existing

right of access over and across such lands in accordance with the provisions of such contracts or the terms of such existing rights. All existing mineral leases involving lands the title to which were issued or approved pursuant to federal law prior to the enactment of this Act, shall remain in full force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law, applications for mineral leases under federal law involving such lands, including oil and gas leases, pending on the date of enactment of the Act shall be rejected and advanced rental payment returned to the applicants. The treaty of Ruby Valley, to the extent not inconsistent with this Act, is continued in full force and effect. All rights and exemptions, both political and territorial, not expressly delegated to the federal or state governments by this Act or of the Treaty of Ruby Valley are hereby reserved to the Western Shoshone Nation and its constituent tribes and bands. The provisions of the Act supersede all laws of the United States which are inconsistent herewith, including laws generally applicable to "Indians".

4. Not withstanding any other provision of law or doctrine of equity, all land and interests in land confirmed or conveyed to the Wells Band of the Te-Moak Tribal ownership pursuant to the provisions of this Act shall be exempt, so long as such land and interests are not sold to third parties, from - -
    a. Adverse possession and similar claims based upon estoppel or laches; (for this purpose, definition of estoppel or laches means; preventing, bar, stopping)
    b. Real property taxes by any governmental entity; condemnation pursuant to State law;
    c. Judgments resulting from a claim based upon or arising under
        i. Title II of the United State Code or any successor statute,

ii. Other insolvency or moratorium laws, or other laws generally affecting acclaim's rights;

d. judgments in any action at law or in equity to recover sums owned or penalties incurred by the Wells Band and any of its agencies, enterprises, or individual members, unless this exemption is contractually waived prior to the commencement of such action.

e. Except as otherwise specifically provided, the exemptions described subparagraph (a) shall apply to any claim or judgment existing on, or arising after, the date of the enactment of this Act.

f. No land or interests in land confirmed or conveyed to Wells Band Tribal ownership pursuant to the provisions of this Act may be sold; provided that such land or interests in land may be sold if such sale has been approved by a vote of two-thirds (2/3) of the eligible voters of the Wells Band in a supervised Band election held not more than one year subsequent to the actual conveyance of such land or interests in the land.

SECTION 5. LAND RIGHTS ACT

A. Physical Identification of Lands

"Western Shoshone Lands" is all lands contained within the exterior boundaries of the Western Shoshone Aboriginal Territory, as defined in the Indian Claims Commission of 1946, throughout Nevada, Southern California, Southern Idaho, and Utah. The land title confirmation also includes the legal description pursuant to Article 5, of the " Ruby Valley Treaty of 1863". It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows: On the north by Wong-goga-da Mountains and Shoshone River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains on the south by Wi-co-bah the Colorado Desert; on the east by Po-ho-no-be Valley on Steptoe Valley and great Salt Lake Valley. The Wells Band of the Te-Moak Tribe of Western Shoshone thereby confirms land title to the following description and directs the Director of Bureau of Land Management to identify, withdraw, transfer, convey, to the Wells Band within 60 mile radius customarily used by the Band for hunting, fishing, roaming and gathering, and religious purposes and to promote for the advancement of economic development, housing, and additional reservation for its members with the sole goal of self determination and to become self sufficient for its community.

B. LEGAL LAND DESCRIPTION

1. Land Title Confirmed

Title in fee simple to the following described ancestral Western Shoshone lands in herby confirmed in the Wells Band of the Te-Moak Tribe, subject to valid existing rights; legal description of area using Public Land Rectangular surveys terminology are as follows:

MOUNT DIABLO MERIDIAN

T. 35 N., R. 60 E.,	T. 35 N., R. 64 E.,
T. 36 N., R. 60 E.,	T. 36 N., R. 64 E.,
T. 37 N., R. 60 E.,	T. 37 N., R. 64.E.,

T. 38 N., R. 60 E.,
T. 39 N., R. 60 E.,
T. 40 N., R. 60 E.,
T. 41 N., R. 60 E.,
T. 42 N., R. 60 E.,
T. 43 N., R. 60 E.,
T. 44 N., R. 60 E.,
T. 45 N., R. 60 E.,
T. 35 N., R. 61 E.,
T. 36 N., R. 61 E.,
T. 37 N., R. 61 E.,
T. 38 N., R. 61 E.,
T. 39 N., R. 61 E.,
T. 40 N., R. 61 E.,
T. 41 N., R. 61 E.,
T. 42 N., R. 61 E.,
T. 43 N., R. 61 E.,
T. 44 N., R. 61 E.,
T. 45 N., R. 61 E.,
T. 35 N., R. 61 E.,
T. 34 N., R. 62 E.,
T. 36 N., R. 62 E.,
T. 37 N., R. 62 E.,
T. 38 N., R. 62 E.,
T. 39 N., R. 62 E.,
T. 40 N., R. 62 E.,
T. 41 N., R. 62 E.,
T. 42 N., R. 62 E.,
T. 43 N., R. 62 E.,
T. 44 N., R. 62 E.,
T. 45 N., R. 62 E.,
T. 38 N., R. 64 E.,
T. 38 N., 1/2 R. 64 E.,
T. 39 N., R. 64 E.,
T. 40 N., R. 64 E.,
T. 41 N., R. 64 E.,
T. 42 N., R. 64 E.,
T. 43 N., R. 64 E.,
T. 44 N., R. 64 E.,
T. 45 N., R. 64 E.,
T. 35 N., R. 65 E.,
T. 36 N., R. 65 E.,
T. 37 N., R. 65 E.,
T. 38 N., R. 65 E.,
T. 39 N., R. 65 E.,
T. 40 N., R. 65 E.,
T. 41 N., R. 65 E.,
T. 42 N., R. 65 E.,
T. 43 N., R. 65 E.,
T. 44 N., R. 65 E.,
T. 45 N., R. 65 E.,
T. 35 N., R. 66 E.,
T. 36 N., R. 66 E.,
T. 37 N., R. 66 E.,
T. 38 N., R. 66 E.,
T. 39 N., R. 66 E.,
T. 40 N., R. 66 E.,
T. 41 N., R. 66 E.,
T. 42 N., R. 66 E.,
T. 43 N., R. 66 E.,
T. 44 N., R. 66 E.,
T. 45 N., R. 66 E.,

T. 35 N., R. 63 E.,
T. 36 N., R. 63 E.,
T. 37 N., R. 63 E.,
T. 38 N., R. 63 E.,
T. 39 N., R. 63 E.,
T. 40 N., R. 63 E.,
T. 41 N., R. 63 E.,
T. 42 N., R. 63 E.,
T. 43 N., R. 63 E.,
T. 44 N., R. 63 E.,
T. 45 N., R. 63 E.,

The subsurface estate only in and to all lands within the outer boundaries of the Wells Band of the Te-Moak Tribe Territory is hereby confirmed in the Wells Band of the Te-Moak Tribe; subject however, to all valid existing rights acquired by third parties pursuant to the public land laws of the United States prior to the effective date of this Act. All unbranded horses and other livestock existing on the above-described lands as of the effective date of this Act shall be deemed to belong to the Wells Band of Te-Moak Tribe and shall be subject to disposition by the Wells Band of the Te-Moak Tribe. Land usage and justification will be as follows: 20 % of total land received will be used for economic development based upon natural resources, (geothermal, mountainous area for resort / secluded training camps, elderly & youth retreats, food- lodging- fuel stops, etc.), 60% leased back to the United States Government for usage for the betterment of all people subject to strict guidelines to protect, people, land, air, water and natural environment as subjected to Western Shoshone traditional law and 20 % of total land base have already been identified as having sacred cultural and religious significance as well as wild game, fishing, pine nut and berry picking areas and protection of Indian Burial

sites / historic areas and the traditional Western Shoshone lifestyle of roaming and wandering for all eternity.

2. LAND WITHDRAWAL
    a. All lands within Wells Band of the Te-Moak Tribe Territory are herby withdrawn, subject to valid existing rights, from all forms of appropriation under the public lands laws of the United States, including mining and mineral leasing laws, as of the date of enactment of this Act.
3. SURVEYS
    a. Within two years following the effective date of this Act the Secretary shall cause to be surveyed the surface and subsurface estates title to which is hereby confirmed to the Wells Band of the Te-Moak Tribe. The exterior boundary of the Wells Band of the Te-Moak Tribe Territory and exterior intervals of one mile on straight lines.
    b. All withdrawals and conveyances pursuant to this Act shall be as shown on current plats of survey or protraction diagrams of the Bureau of Land management, and shall confirm as nearly as practicable to the United States Land Survey System.
4. CONVEYANCE OF LANDS

    Immediately upon completion and approval of the surveys of all lands confirmed to the ownership of the Wells Band of the Te-Moak Tribe pursuant to this Act, the Secretary shall issue to the Tribe fee patents to the surface and subsurface estates of such lands.
5. LAND ACQUIRED
    a. Mineral Royalties and Lease Payments. Mineral royalties and lease payments previously payable to the effective date of this Act covering lands lying with the Wells band of the Te-Moak Tribe Territory shall be payable to and shall be the

property of the Wells band of the Te-Moak Tribe Territory shall be payable to and shall be the property of the Wells Band of the Te-Moak Tribe as of the effective date of this Act. Such royalties and lease payment shall be collected, received, and disbursed by the Secretary in the same and shall be subject to the same laws and regulations as similar payments in connection with mineral leases and agreements on Indian trust lands.

b. No Liability For Trespass

Wells Band of the Te-Moak Tribe shall not be liable to the United States under the Taylor Grazing Act of 1934, (Pg. 31-32) or pursuant to any other provision of law or doctrine to any other provision of law or doctrine of equity, for trespass to lands belonging to or claimed by the United States within Western Shoshone ancestral territory, which trespass occurred prior to the effective date of this Act.

c. WATER RIGHTS

i. All Waters - -

a. Which are within, flow through or arise of lands confirmed to the Wells Band of Te-Moak Tribe pursuant to this Act, and

b. As to which there is no valid, outstanding appropriation under Nevada State Law, and

c. Which would be deemed abandoned pursuant to Nevada State Law on the day prior to the date of enactment of this Act, and

d. Which are not otherwise previously reserved by the United States shall, on the effective date of this Act, shall be deemed the property of the Wells Band of the Te-Moak Tribe.

ii. All water rights confirmed to the Wells Band of the Te-Moak Tribe of Western Shoshone pursuant to this Act which would otherwise be considered the property of the federal government—

a. Shall retain the same quantity and date of priority that such rights would have if the federal government were deemed to have reserved such rights.

b. Shall not be subject to abandonment pursuant to Nevada State Law,

c. Shall be treated as permanent present perfected rights under federal law, and State law,

d. Shall not be limited to the uses for which such rights were deemed reserved by the federal government, and

e. May be used or allocated for any purpose within or without the boundaries of lands belonging to the Wells Band of the Te-Moak Tribe may determine.

iii. All water rights other than water rights described in subsection 8. (b) hereof which may be deemed the property of the Wells band of the Te-Moak Tribe pursuant to this Act - -

a. Shall have a priority date 1492, as of the date of this act

b. Shall be treated as permanent present perfected rights under federal law,

c. Shall not be subject to abandonment pursuant to Nevada State Law.

iv. All water rights appurtenant (definition of appurtenant; right or privilege belonging to a property), to lands

belonging to, or held in trust by the United States for the benefit of, the Wells Band, including water rights subject to this Act and water rights appurtenant to lands acquired by or for the Wells Band prior to the effective date of this Act, shall be subject to the sole and exclusive jurisdiction of the Wells Band for purposes of determining use and allocation.

6. (1) The Secretary is authorized and directed to expand, at the request of the Wells Band, the principal and income accruing to the Wells Band of the Te-Moak Tribal Land Acquisition Fund for the purpose of acquiring land or natural resources for such Band; provided, however, that any lands and natural resources so acquired must lie within the boundaries of the Wells Band of the Te-Moak Tribal Territory as defined herein. Lands acquired by the Band pursuant to this Act shall be held by the Band in fee simple subject to the provisions of Section (4) hereof.

   (2) Whenever lands and natural resources acquired by the Wells band pursuant to this Act include livestock grazing permits or rights administered by the United States Bureau of land Management or the United States Forest Service, the land area subject to rights shall be deemed to be lands confirmed to Wells Band of the Te-Moak Tribal ownership pursuant to Section (4) hereof. Such lands shall be withdrawn, surveyed, and conveyed to the Wells Band pursuant to the procedures set forth in Section (5); provided that any such lands which lay within a Wilderness Area previously established by an Act of Congress Shall not be withdrawn, surveyed, and conveyed to the Band

   (3) Establishment of the Wells Band of the Te-Moak Tribe Claims Settlement Fund; Amount. There is hereby established in the united State Treasury a fund to be known as the Wells band of the Te-Moak Tribe Claims Settlement Fund in which $25 million shall be deposited. $25 million is hereby authorized and appropriated for immediate

transfer to this fund and shall be held in trust by the Secretary for the Wells Band and made available to the Tribe as required for economic development purposes.

7. JURISDICTION
    a. Notwithstanding that it is one of the constituent bands of the larger Western Shoshone Nation, and that certain tribal governmental powers and attributes, including tribal sovereignty, may be exercised by the Wells Band of the Te-Moak Tribe is hereby acknowledged as an historically recognized Indian tribe possessing full Indian tribal sovereignty and powers of self-government as recognized by the laws of the United States, including tribal sovereign immunity.
    b. All lands the title to which is to act in accordance to the Wells Band of the Te-Moak Tribe pursuant to this Act, and all lands hereafter acquired by the Wells Band in accordance with the provisions of this Act, shall be subject to Wells Band of the Te-Moak tribe jurisdiction.

SECTION 6. REGULATION:

Not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe rules and regulations to carry out the provisions of this Act.

SECTION 7. DEFINITIONS:

For the purpose of this Act

A. the term "Secretary" means the Secretary of Interior

B. the term "distributee" means a person who is included on the final roll established pursuant to this Act.

C. The term "Te-Moak Tribe of Western Shoshone of Nevada" is a federally recognized Tribe established under the authority of IRA in 1934 and as amended, for and in behalf of the Wells Band at Wells, Nevada

D. "Wells Band" area means the area represented by a local governing body known as the Wells Band Council, a constituent Band of the Te-Moak Tribe which operates under the Tribal Constitution with certain delegated authorities as provided;

E. the term "Western Shoshone Tribe" means any federally recognized tribe located within the Western Shoshone Aboriginal area, as determined by the Indians Claims Commission in Docket numbered 326-K (II Indian Claims Commission Docket No. 37, 413-19, finding 23, 1962.

F. "Te-Moak Tribe of Western Shoshone member" means an individual or person of one-quarter or more of Western Shoshone descent who is an enrolled member in the Te-Moak Tribe of Western Shoshone or is eligible for enrollment in the Western Shoshone Tribe in accordance to its approved Enrollment Ordinance;

G. "Western Shoshone Nation" refers collectively to those sovereign and independent Bands of Western Shoshone Indians who entered into the two-party Treaty of Ruby Valley, 18 Stat. (1869 – ratification) in Nevada, Southern California, Southern Idaho, and Utah and all other Western Shoshone Indians as defined by the Indian Claim Commission of 1946 and Bureau of Indian Affairs research documents'

H. "Wells Western Shoshone community" means all lands lying within the following boundaries; on the northeast, form southwest of Collager Mountain; on the northwest, from southeast of Jarbridge and Jarbridge Peak; on the

southwest form northwest to Arthur; and on the southeast, from west of Shafter.

I. "Western Shoshone Nation" refers collectively to those sovereign and independent bands of Western Shoshone Indians who entered into the two party-two sides 1863 treaty of Ruby Valley; 18 Stat. 689 (1869) and the two-party Tu-tu-wai Treaty, with their chiefs and headman acting as ministers, the Dann Band of Crescent Valley, Nevada and all other Western Shoshone Indians as defined above;

J. "Private Land" means land held in fee simple by and person or entity other than the United States and its agencies and instrumentalities;

K. "Federal Lands" and "federally claimed lands" means lands held or claimed to be held in fee simply by the United States that are not held in trust for Indians; Such terms include lands subject to the administration of the United States Department of Agriculture and Interior, including all of the sub-agencies of those departments;

L. "Land(s)", means surface rights, sub-surface rights and mineral estates, and water rights appurtenant to land, whether state, federally or privately held;

M. "Western Shoshone Judgment Fund" means the proceeds of the $26,145,189.89 judgment awarded by the United States Court of Claims in Western Shoshone Identifiable Group v. United States, Docket 326-K, on December 6, 1979, plus accumulated interest and investment income.

SECTION 8. WENDOVER WESTERN SHOSHONE COMMUNITY

The Wendover Western Shoshone community consists of ten (10) families in and around this Nevada-Utah border town. The Wendover Western Shoshone people do not have a land base and are having to travel to Elko, Nevada, on hundred (100) miles west to receive services such as health services, tribal service or other tribal programs. Western Shoshone People who live in and around the Wendover area do not have a land base in which to build Tribal or H.U.D. homes and are having to survive by competing for hosing in this area as there are six (6) casinos and the population is 52 percent Hispanic and also have a large amount of transits competing for the jobs available. If the Wendover Western Shoshone community had additional housing through Tribal or Indian Housing, this would bring more Shoshone families to this area. Other reasons that the Wendover Shoshone community would like a land base is so they could also have a Trailer park and spaces for members of the Shoshone Tribe. It is the wishes of the Wendover Western Shoshone residents that this portion be included in the Wells Western Shoshone Claims Disbursement and Land Rights Act and it is now hereby part of the Wells packet and is in their 60 mile radius.

LEGAL LAND DISCRIPTION: MOUNT DIABLO MERIDIAN

T. 33 N. R. 69 E.

T. 34 N. R. 69 E.

T. 34 N. R. 70 E.

REVISION – UPDATE 4 pages

WESTERN SHOSHONE CLAIMS DISTRIBUTION STEERING COMMITTEE
1799 Weyumb Street, Elko, Nevada 89801

SENATE INDIAN AFFAIRS COMMITTEE – TESTIMONY (S.958)
107th CONGRESS

Nancy Stewart, Vice Chairman

Mr., Chairman, committee members, I am Nancy Stewart, member of the Western Shoshone Claims Distribution Steering Committee, representing the chairman of the Steering Committee who is Mr. Larry Piffero. My role on the volunteer non-paid Committee was to serve as a center for information in mid-Nevada to interested Shoshones seeking news. I am also the chairman of the Fallon Shoshone Claims Distribution Committee that represents the Fallon Band of Western Shoshones[1]. We are grateful to the Senate Committee on Indian Affairs for authorizing this hearing and for the support of Nevada's congressional delegation in the Senate, Senator Harry Reid and Senator John Ensign, and in the House, Congressman Jim Gibbons.

I am here to present testimony for the Steering Committee in favor of S.958, the "Western Shoshone Claims Distribution Act". The Shoshone people are aware that the Senate Indian Affairs Committee will have "mark-up" on the Bill and are prepared for this event. The Steering Committee in a simple oversight would like to propose a suggested AMENDMENT to the Educational Section, Section III, as follows:

- Under 2(A): after the words "An Administrative Committee" add the words, "exclusively comprised of Western Shoshone"…
- On 2(B): after the word "The" add the words "Western Shoshone" Administrative Committee…
- Under 2(B), (v) to be revised from "The Western Shoshone Business Council of the Duck Valley Reservation" to "The Western Shoshone Committee of the Duck Valley Duck Reservation".

As others will address various issues – I will speak about that which is not always so apparent to people on the fringes of a problem, the subtle factors that has lead to the people's support of this Bill and factors in the past that have acted to delay support for distribution – the good, the bad, and the ugly. I hope this will give you some insight about the people for whom you are about to make a very important decision … either to vote in favor of S. 958 as is, or to change, or to allow to die in committee.

First, **THE GOOD:**

- **THE SHOSHONES ALLEGIANCE TO THE UNITED STATES.** Despite "minority" news reports to the contrary that draws attention to issues of discrimination[2], the Shoshone people are thankful that they live in this country and are proud of their participation in various global military conflicts to promote and preserve freedom and peace. Yes, there does exist a dark period in the history of the displacement of the Shoshones to reservation in the late 1800's, as part of Indian removal acts across the United States that were repeated 53 times by 1868. Unfortunately, in a conflict of cultures the five 1863 Shoshone treaties of "Peace and Friendship" were eventually and gradually taken advantage of by unscrupulous individuals, both non-governmental and governmental. In regard to Indian title to the land, the U.S. Supreme Court observed that "such extinguishments raise political, not justiciable, issues"[3]. Likewise, in another case, it was further stated that "…its justness is not open to inquiry in the courts", that "the exclusive right of the United States to extinguish" Indian title has never been doubted" [4]. Concerning "recognized title", in the Sac and Fox Tribe v. United States the court stated, "….Congress, acting through a treaty…must grant

[1] "Fallon Shoshone Claims Committee, Resolution, 97-F-063" Official Representative Body; Powers to Negotiate. FPST, 1997
[2] Las Vegas Review Journal, "Indians Ask U.N. to Protect Rights" Las Vegas, Nevada. 2000.
[3] United States V. Santa Fe Pacific Ry., 314 U.S. 339, 347 (1947)
[4] Beecher v. Wetherby, 95 U.S. 517, 515.

legal rights of permanent occupancy within a sufficiently defined territory. Mere executive 'recognition' is insufficient as is a simple acknowledgment that Indians physically lived in a certain region." In some treaties, the United States recognized title by relinquishing its claim to a specific area and promised to protect the Indians within the borders of their land. This was not stated as such in the Treaty of Ruby Valley under Article V.[5] In 1974, when a group of Shoshone people filed a motion for rehearing on the findings of title by the ICC (1962), according to a 30 day time limit under the "Rules of Procedure", they were 11 years to late[6]. In the end, Congressional action is the only way to restore tribal title. With the passage of time, assimilation, reorganization, and relocation the vast "majority" of Western Shoshone people have laid their feelings of disappointment to rest. The outcome of the 1998 referendum for distribution is symbolic of the peace and closure they desire.

- **THE SHOSHONES VIEW THE CLAIMS AWARD AS AN APOLOGY OF SUBSTANCE** offered by the United States via the U.S. Indian Claims Commission established after the injustices to the American Indian became more widely known to principled contemporary politicians following World War I. The Shoshones enthusiastically filed their case for the wrongs done in 1951. It was fraught with numerous attempts by some "minority" dissidents to change the litigation strategy in the judicial process. Had a withdrawal been successful, there would be no court awarded claims today.
- **THE CONTINUING HOPE OF THE SHOSHONE PEOPLE,...** Now the Shoshone people look to Congress to conclude the claims after 39 years of litigation (1951-79 & 1974-89), 51 years of debate, and 99[7] or more years of faith that the claims would be finalized. Now they are placing their trust in an extremely difficult course to traverse – the Congressional legislative process – with the hope it will not let them down and S. 958 will be passed within the allotted time.
- **DEMOCRACY IN ACTION.** The Shoshone people were pleased to finally get the opportunity to be heard at the ballot box through a straw poll. Tribal voter eligibility lists and required individual identification was employed to determine Shoshone affiliation. Those unable to attend a reservation's polling site were allowed with proof of tribal enrollment to request an absentee ballot. A few Shoshones who chose not to enroll in an IRA tribe but wanted to vote were allowed to complete a "Letter for the Record" after certifying that they had not received any other claims award, offered a photo I.D. and stated their degree of blood. In 1998, 97% favored distribution. The results were 1,230 voted "yes" and 53 voted "no".[8] In 2002, 91% favored distribution with 1647 "yes" and 156 "no". It was estimated that approximately 65% of the eligible enrolled adult Shoshones participated in the straw poll. Of the seven reservations / colonies, NONE has ever put the question of distribution on their annual election as an advisory question in the last 25 years after the award was confirmed. Therefore, the Steering Committee felt the question needed to be answered to determine the direction of the Committee on distribution.
- **A REALISTIC OUTLOOK.** It is time to put behind the disappointment in the failure of the tribal system of government and their inability after 25 years to coordinate their inter-tribal efforts to produce a comprehensive plan for distribution and to settle this issue. It was this, the instability and manipulation of tribal politics by those opposed and their lawyers, that gave impetus to the formation of a "people's committee" or the Western Shoshone Claims Distribution Steering Committee in 1997. At a publicly held meeting concerning the legislation in Elko, NV, (8/21/99) with half of the gymnasium and the center filled with Shoshone people, in a "division of the house" for a vote of confidence in the Bill and the and in the direction of the Steering Committee, only three people stood opposing the legislation and the Committee. In Fallon NV, (9/12/99) no one in a gym half full stood against the Bill or Committee.

Second, **THE BAD:**

- **THE DEATH OF ELDERLY BENEFICIARIES** who had basic needs and were forgotten in the never-ending controversial litigation. Their dreams and hopes for a better future were never realized. It was their generation that was fraught with a multitude of social and economic problems in an era of little opportunity. A distribution could have provided something as simple as a new mattress. The growing resentment against those who oppose the claims distribution was obvious when at the public meeting on the Bill the three who opposed the Bill were publicly booed when speaking.

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[5] 1863 Treaty of Ruby Valley, Article V.

[6] .... TeMoak Bands of Western Shoshone Indians, Nevada, and Western Shoshone Legal Defense and Education Association... v. United States, decided 2/20/75.

[7] Johnny, Ike. Enrolled member of the Fallon Paiute Shoshone Tribe. 99 years old.

[8] Official Tally, "Referendum for the Western Shoshone Claims Distribution Act", 2002.

- **TRIBAL ELECTION ARE BASED ON KINSHIP NOT ON ISSUES,...** issues such as the "Claims". Unemployment remains high on isolated reservations (Yomba, Duckwater, South Fork, Duck Valley). Jobs are scarce with the exception of tribal jobs and having a tribal job means voting family members to office. Therefore, much time and energy is spent on electing relatives to council seats, not on a representative's stance on issues.
- **THE CHANGING FACES OF DEMOCRACY.** Elections cause change – in leadership, objectives, and claims negotiation's progress in the government-to-government process. Democracy is good in one sense, but has its weaknesses also. Constant change in tribal leadership means the end to long range goals and partially why no one comprehensive distribution plan ever materialized. When given a deadline to develop a plan under the 1973 Indian Judgment Funds Act in 1980, they failed. This tribal political instability was to the advantage of the stable core "minority". More recently (1997), it was also to the advantage of the Steering Committee's ability to move the claims issue forward, to obtain the consensus of the Shoshone people and to promote resolutions of support from the majority of tribal governments – resolutions which vacillated with new councils within the last seven years, but the people's desire to have their court award distributed on all reservations never changed. Where a tribal government "for, by and of the people" did not exist in representing the distribution of the claims in given years, the people organized petition drives so that they might be heard over their councils with more than 85% petition endorsers (Yomba and South Fork councils has never supported the claims distribution due to councilmen's cattle interest; Ely and Duckwater councils presently support the claims).
- **COUNCILMEN OR LEADERS THAT REPRESENT SPECIAL INTEREST GROUP OR HAVE A SELF INTEREST.** Some leaders / councilmen opposed to the claims distribution have BLM cattle trespass charges amounting to a million dollars or more.[9] They work through their lawyers and the news media to defeat distribution of the award as a reason to continue to use the land by claiming it is still "Shoshone land" as "the people do not want the money" or "refuse to take the money" – in total disregard of the of the U.S. Supreme Court decision [10] and the decision of the Shoshone people per the two straw poll referendums. Information is power and the control of information coming through tribal offices is tightly guarded as to what is told or not told to the people. When information is kept from the Shoshone people it limits their ability to make well informed decisions and slows the decision making process down.
- **CONTROL OF THE FOUR CHAIRMEN OF THE "SUCCESSOR TRIBES"**... controls the government-to-government relationship in negotiation, a subtle mechanism. The "minority" leadership and their lawyer(s) have utilized this process over the years. It resulted in the "majority" opinion being suppressed, [11] the people being put on the "back burner". This political manipulation and maneuvering was evidenced most recently after the August 2, 2002, Senate hearing. In an illegal meeting of the four Te-Moak band chairmen, several resolutions were passed against the people's voice or straw poll.[12] Once the people heard about this outrage in the largest band, Elko, the Elko council passed a resolution to not recognize the four band chairmen's resolutions. [13]Even today, this is not widely known due to the control of information to the people by those four leaders and the lack of a tribal newspaper on the various reservations.

Third, **THE UGLY:**

- **THE LACK OF FAITH IN TRIBAL ACCOUNTABILITY** due to questionable accounting/ budgeting procedure and little to no public reporting mechanism [14]– one reason people do not want a 20% hold-back for tribal programming. The Steering Committee has received numerous comments on how if the 20% or more were to be added to the Bill with no restriction, such as interest only to be expended plus categories for use, the 20% will not be able to be found in seven to nine years.

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[9] http:// www.alphacdc.com/wsdp/[W.S. Land Rights and Grazing] W.S. Defense Project. No date.
[10] Nordwall, Wayne. BIA Area Director. Memorandum: "W.S. Claims Distribution". Phoenix, AZ, 1998.
[11] Elko, NV. Te-Moak Council Meetin. Flyer mailed to Fallon Committee: "Cattle Over People, WSNC", 1999.
[12] Letter to Senator Inouye, Senator Campbell, and Committee on Indian Affairs by Felix Ike, Te-Moak tribe chairman. 8/29/02. 2pp.
[13] Elko Band Council. Resolution N. 2002-ECB-28. Elko, NV 8/28/02. 3 pp.
[14] Reno Gazette Journal (Reno, NV), "25 Month Prison Sentence for Embezzling Tribal Officer" (Duckwater). 1997.

- **PRETENTIOUS DECLARATIONS BY THOSE OPPOSING DISTRIBUTION OF THE CLAIMS.** Federally recognized IRA tribes each have their own Constitution and By-Laws. They are independent of each other. For an organization to declare that they are part of a "nation" of people is questionable. No one single entity is a sole representative of the various Shoshones around the state. Yet, the Western Shoshone National Council (WSNC)[15] has made such preposterous claims of "representation". The majority of Shoshones see this organization(s) with limited numbers attempting to assert themselves into the governmental process of negotiations or into the news media on behalf of the "Western Shoshone", in a sense displacing the IRA governments. The WSNC goes on to use the "Western Shoshone " name in international forums. Their term "traditional government of the Shoshone nation" or "Western Shoshone nation" is misleading. Most non-Indians or institutions will interpret this to mean an "elected' government, which is quite different than being a registered Nevada non-profit corporation. In addition, donations (money, gifts of real property, clothes, trucks, night vision goggles, etc.) being requested over the internet in the name of the "Western Shoshones" is debatable when most Shoshones have been unaware of the contribution.
- **THE LITIGANTS OPPOSING DISTRIBUTION,** unlike the changing faces of elected official, these faces never change… They were at the Interior Department negotiation meetings in 1982, 1984, 1985, 1986, 1994, and former Congressman Vucanovich's House hearings in 1990 and 1992 – all of which failed. Some are still here today in opposition, probably not with a "good faith plan", but to undermine the "majority" opinion and as always to stop distribution.
- **NEWSPAPER PROPAGANDA BY SPECIAL INTERESTS** that tout the Shoshones are opposed to this or that[16] when in fact the average Shoshones know nothing about nor have they agreed to what is published. This same propaganda was used in the past to say, "the Shoshones don't want the money they want their land". This is why a straw poll had to be completed to reveal the truth about interest of the Shoshone people, descendants and beneficiaries of "The Western Shoshone Identifiable Group" court award.
- **THE UNENDING DEBATE BY MINORITY OPPONENTS** over land title, mineral rights, religion, air, etc… has kept the Shoshones' right to their court award or a tribal plan in limbo. The latest development is the presentation to staff members of the Indian Affairs Committee (7/26/02) of a 2001 international report by the Inter-American Commission on Human Right (Case No. 11.140 – Mary and Carrie Dann), which the United States rejected "in its entirety". The case that has been before the Commission since 1993. The U.S. Supreme Court (1985), after deciding that payment into trust for the Shoshone people effectuated full settlement of all claims and the extinguishments of aboriginal title, left the door open for "individual aboriginal title". The Danns could have pursued this avenue, but the lawyers for the Danns withdrew their case from the U.S. court system in 1991. Now the deficiencies mentioned in the Commission's report, partly that the Danns "be afforded resort to the courts for the protection of their property rights", reiterates what probably should have continued to be litigated in 1991. Given the past history and the years of prior suit by the Danns (1974-1989), the federally financed opportunities for land settlement negotiations amounting to over a million federal dollars, and the Indian title issues before the U.S. courts in past case law… it may be best to separate the land issue (reservation by reservation) from the monetary distribution and, in following the people's wishes, distribute 326-K, 326 – A-1 and 326 – A – 3.

FINALLY, the aforementioned factors both negative and positive have contributed to the present status of the Western Shoshone Claims. The Shoshones have endured much in their quest for justice and finality. They now rely on the judgment of Congress, where 100% agreement is a rarity, to end this long standing Claims. With a short time remaining in this second session, the Steering Committee on behalf of the Western Shoshones' "majority opinion" respectfully requests that the Indian Affairs Committee pass S. 958, as soon as possible back to the full floor of the Senate for consideration. Thank you.

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[15] Ibid. "W.S. Land Rights and Grazing – Who is the W.S. National Council?" p. 1.
[16] Reno Gazette Journal (Reno, NV), "W.S. Oppose F-22 Fighter". 1999.

WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT

REDRAFT OF S.958

YOMBA SHOSHONE LEGISLATIVE PROPOSAL

August 2, 2002

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Western Shoshone Claims Distribution Act'.

SECTION 2. NATURE OF PAYMENT.

The funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Nation in docket Number 326-K before the Indian Claims Commission, including all earned interest, are hereby characterized as payment for wrongs done to the Western Shoshones, other than takings of land, trespasses to land or violations of the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869);

SECTION 3. DISTRIBUTION OF DOCKET 326-K FUNDS.

The funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Indians in Docket Number 326-K before the Indian Claims Commission, including all earned interest, shall be distributed as follows:

(1) The Secretary shall establish a Western Shoshone Judgment Roll consisting of all Western Shoshones who--

(A) have at least 1/4 degree of Western Shoshone Blood;

(B) are citizens of the United States; and

(C) are living on the date of enactment of this Act.

(2) Any individual determined or certified as eligible by the Secretary to receive a per capita payment from any other judgment fund awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before the date of enactment of this Act, shall not be eligible for enrollment under this Act.

(3) The Secretary shall publish in the Federal Register rules and regulations governing the establishment of the Western Shoshone Judgment Roll and shall utilize any documents acceptable to the Secretary in establishing proof of eligibility. The Secretary's determination on all applications for enrollment under this paragraph shall be final.

(4) Upon completing the Western Shoshone Judgment Roll under paragraph (1), the Secretary shall make a per capita distribution of 100 percent of the funds described in this section, in a sum as equal as possible, to each person listed on the Roll.

(5) (A) With respect to the distribution of funds under this section, the per capita shares of living competent adults who have reached the age of 19 years on the date of the distribution provided for under paragraph (4), shall be paid directly to them.

(B) The per capita shares of deceased individuals shall be distributed to their heirs and legatees in accordance with regulations prescribed by the Secretary.

(C) The shares of legally incompetent individuals shall be administered pursuant to regulations and procedures established by the Secretary under section 3(b)(3) of Public Law 93-134 (25 U.S.C. 1403(b)(3)).

(D) The shares of minors and individuals who are under the age of 19 years on the date of the distribution provided for under paragraph (4) shall be held by the Secretary in supervised individual Indian money accounts. The funds from such accounts shall be disbursed over a period of 4 years in payments equaling 25 percent of the principal, plus the interest earned on that portion of the per capita share. The first payment shall be disbursed to individuals who have reached the age of 18 years if such individuals are deemed legally competent. Subsequent payments shall be disbursed within 90 days of the individual's following 3 birthdays.

(6) All funds distributed under this Act are subject to the provisions of section 7 of Public Law 93-134 (25 U.S.C. 1407).

(7) All per capita shares belonging to living competent adults certified as eligible to share in the judgment fund distribution under this section, and the interest earned on those shares, that remain unpaid for a period of 6-years shall be added to the principal funds that are held and invested in accordance with section 4, except that in the case of a minor, such 6-year period shall not begin to run until the minor reaches the age of majority.

(8) Any other residual principal and interest funds remaining after the distribution under paragraph (4) is complete shall be added to the principal funds that are held and invested in accordance with section 4.

(9) Neither Section 22 of the Indian Claims Commission Act, ch 959, 60 Stat. 1055 (Aug. 13, 1946); nor the judgment in Western Shoshone Identifiable Group v. United States, Docket 326-K before the Indian Claims Commission and the United States Court of Claims; nor payment of the judgment; nor this authorization for the use and distribution of the judgment award shall be applied or deemed to bar, preclude, extinguish, discharge or abrogate any otherwise valid Western Shoshone land or resource rights; including hunting, fishing, trapping and gathering rights; that are based upon Indian title, aboriginal Indian title, original Indian title or the 1863 Treaty of Ruby Valley,18 Stat. 689 (1869); or affect any other rights recognized, identified or described in the 1863 Treaty of Ruby Valley.

SECTION 4. DISTRIBUTION OF DOCKETS 326-A-1 AND 326-A-3.

The funds appropriated in satisfaction of the judgment awards granted to the Western Shoshone Indians in Docket Numbers 326-A-1 and 326-A-3 before the United States Court of Claims, and the funds referred to under paragraphs (7) and (8) of section 3, together with all earned interest, shall be distributed as follows:

(1) (A) Not later than 120 days after the date of enactment of this Act, the Secretary shall establish in the Treasury of the United States a trust fund to be known as the 'Western Shoshone Educational Trust Fund' for the benefit of the Western Shoshone members. There shall be credited to the Trust Fund the funds described in the matter preceding this paragraph.

(B) The principal in the Trust Fund shall not be expended or disbursed. The Trust Fund shall be invested as provided for in section 1 of the Act of June 24, 1938 (25 U.S.C. 162a).

(C) (i) All accumulated and future interest and income from the Trust Fund shall be distributed, subject to clause (ii)—

(I) as educational grants and as other forms of educational assistance determined appropriate by the Administrative Committee established under paragraph (2) to individual Western Shoshone members as required under this Act; and

(II) to pay the reasonable and necessary expenses of such Administrative Committee (as defined in the written rules and procedures of such Committee).

(ii) Funds shall not be distributed under this paragraph on a per capita basis.

(2) (A) An Administrative Committee to oversee the distribution of the educational grants and assistance authorized under paragraph (1)(C) shall be established as provided for in this paragraph.

(B) The Administrative Committee shall consist of 1 representative from each of the following entities:

(i) The Battle Mountain Band Council
(ii) The Duckwater Shoshone Tribe
(iii) The Elko Band Council
(iv) The Ely Shoshone Tribe
(v) The Fallon Band of Western Shoshone
(vi) The Te-Moak Tribe of Western Shoshone Indians of Nevada
(vii) The Temoak South Fork Band Council
(viii) The Timbisha Shoshone Tribe
(ix) The Wells Band Council
(x) The Western Shoshone Business Council of the Duck Valley Reservation
(xi) The Yomba Shoshone Tribe

(C) Each member of the Committee shall serve for a term of 4 years. If a vacancy remains unfilled in the membership of the Committee for a period in excess of 60 days, the Committee shall appoint a replacement from among qualified members of the organization for which the replacement is being made and such member shall serve until the organization to be represented designates a replacement.

(D) The Secretary shall consult with the Committee on the management and investment of the funds subject to distribution under this section.

(E) The Committee shall have the authority to disburse the accumulated interest fund under this Act in accordance with the terms of this Act. The Committee shall be responsible for ensuring that the funds provided through grants and assistance under paragraph (1)(C) are utilized in a manner consistent with the terms of this Act. In accordance with paragraph (1)(C)(i)(II), the Committee may use a portion of the interest funds to pay all of the reasonable and necessary expenses of the Committee, including per diem rates for attendance at meetings that are the same as those paid to Federal employees in the same geographic location.

(F) The Committee shall develop written rules and procedures that include such matters as operating procedures, rules of conduct, eligibility criteria for receipt of educational grants or assistance (such criteria to be consistent with this Act), application selection procedures, appeal procedures, fund disbursement procedures, and fund recoupment procedures. Such rules and procedures shall be subject to the approval of the Secretary. A portion of the interest funds in the Trust Fund, not to exceed $100,000, may be used by the Committee to pay the expenses associated with developing such rules and procedures. At the discretion of the Committee, and with the approval of the appropriate tribal governing body, jurisdiction to hear appeals of the Committee's decisions may be exercised by a tribal court, or a court of Indian offenses operated under section 11 of title 25, Code of Federal Regulations.

(G) The Committee shall employ an independent certified public accountant to prepare an annual financial statement that includes the operating expenses of the Committee and the total amount of educational grants or assistance disbursed for the fiscal year for which the statement is being prepared under this section. The Committee shall compile a list of names of all individuals approved to receive such grants or assistance during such fiscal year. The financial statement and the list shall be distributed to each organization represented on the Committee and the Secretary and copies shall be made available to the Western Shoshone members upon request.

SEC. 5. STUDY AND RECOMMENDATIONS FOR RESTORATION OF AN ECONOMICALLY ADEQUATE WESTERN SHOSHONE LAND BASE.

(a) Generally. --The United States General Accounting Office (GAO) is hereby authorized and directed to undertake an investigation and study, and prepare a report and recommendations to Congress, of the history and status of Western Shoshone land rights arising from Western Shoshone use and occupancy of lands in Nevada from time immemorial, aboriginal (original) Indian title and the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869). The study shall include a legal and historical analysis of the status of Western Shoshone aboriginal Indian title. The GAO's recommendations shall expressly incorporate needs as identified by each federally-recognized Western Shoshone tribal government in Nevada ("Affected Tribe") for an expanded land base adequate to ensure economic self-sufficiency for such tribe, and shall specifically identify by legal land descriptions based upon the federal rectangular survey all lands recommended for transfer in trust for the benefit of each such tribe.

(b) Lands under the jurisdiction of the Bureau of Land Management. --The GAO shall consult with the Secretary of Interior to

identify existing lands under the jurisdiction of the Bureau of Land Management to be included in such recommended transfers. Lands recommended for transfer in trust to each tribe shall include all lands subject to Bureau of Land Management grazing permits [cite authority for permits] held by such tribe or its tribal livestock or cattlemen's association.

(c) National Forest Lands. --The GAO shall consult with the Secretary of Agriculture to identify existing National Forest lands to be included in such recommended transfers. Lands recommended for transfer in trust to each tribe shall include all lands subject to Bureau of Land Management grazing permits [cite authority for permits] held by such tribe or its tribal livestock or cattlemen's association.

(d) Affected Tribes. – The following federally-recognized Western Shoshone tribes shall be the subjects of and the beneficiaries of the study and recommendations:

(1) The Battle Mountain Band Council
(2) The Duckwater Shoshone Tribe
(3) The Elko Band Council
(4) The Ely Shoshone Tribe
(5) The Fallon Band of Western Shoshone
(6) The Te-Moak Tribe of Western Shoshone Indians of Nevada
(7) The Temoak South Fork Band Council
(8) The Timbisha Shoshone Tribe
(9) The Wells Band Council
(10) The Yomba Shoshone Tribe

(e) Tribal Government Involvement. –The GAO is directed to ensure the participation in and review of the study and recommendations by each Affected Tribe. The GAO is directed to hold a minimum of two public hearings of record on or near the reservation of each Affected Tribe for the purpose of providing the tribal government and tribal members the opportunity to comment on the study and provide information to be considered in the study. Transcripts of all such hearings shall be appended to the final study. The final study and recommendations shall include any statements or documents that may be submitted by each Affected Tribe for inclusion in the study, including all comments and objections to the final conclusions and recommendations of the study.

(f) Submission of the Study and Recommendations. --The GAO is directed to complete and submit the study and recommendations to Congress within two years of the effective date of this Act. 75 copies of the study and recommendations shall be submitted to the Senate Indian Committee or its successor and 75 copies shall be submitted to the House Resources Committee or its successor. The study shall include a draft of

proposed legislation that would transfer lands in trust for the benefit of each Affected Tribe consistent with the final recommendations of the study, incorporating tribal comments on the study.

(g) Minimum Acreages. –The study shall identify and recommend to be transferred in trust for the benefit of each Affected Tribe the following minimum land acreages:

(1)	The Battle Mountain Band Council	[ ]
(2)	The Duckwater Shoshone Tribe	[ ]
(3)	The Elko Band Council	[ ]
(4)	The Ely Shoshone Tribe	[ ]
(5)	The Fallon Band of Western Shoshone	[ ]
(6)	The Te-Moak Tribe of Western Shoshone Indians of Nevada	[ ]
(7)	The Temoak South Fork Band Council	[ ]
(8)	The Timbisha Shoshone Tribe	[ ]
(9)	The Wells Bank Council	[ ]
(10)	The Yomba Shoshone Tribe	1,000,000

In formulating recommendations for areas to be transferred in trust, as to each Affected Tribe the GAO shall give preference to sacred sites and areas of historical and cultural importance, traditional resource use areas, and areas historically used by such tribe for livestock grazing or used for livestock grazing by the owners of ranches subsequently purchased by the United States to create Western Shoshone Indian reservations. Where any Affected Tribe holds federal grazing permits issued pursuant to the Taylor Grazing Act of 1934, 43 U.S.C. § 315 (1976 ed.), or 43 U.S.C. §1901 et seq. as of the effective date of this Act, the study shall include the lands and grazing areas encompassed by such permits in the lands recommended to be transferred in trust for the benefit of such tribe.

SECTION 6. TRANSFER IN TRUST OF YOMBA SHOSHONE GRAZING AREA.

Title to the following described ancestral Western Shoshone lands is hereby transferred in trust for the benefit of the Yomba Shoshone Tribe and added to the Yomba Shoshone Reservation, subject to all valid existing rights acquired by third parties pursuant to the public land laws of the United States prior to the effective date of this Act.

[ADD LAND DESCRIPTION OF GRAZING AREA CURRENTLY PERMITTED TO THE YOMBA SHOSHONE TRIBE BY THE BLM AND THE FOREST SERVICE; FEDERAL RECTANGULAR SURVEY LAND DESCRIPTION TO BE INSERTED]

SECTION 7. AUDIT OF JUDGMENT FUND.

(a) Within 90 days of the effective date of this Act the United States General Accounting Office shall undertake, complete and report an audit of the Western Shoshone judgment fund, including accumulated interest and investment income, to determine whether all of the monies which should have been credited to and retained in the judgment fund account have been so credited and retained, whether the fund has been invested at appropriate interest rates, and whether the fiduciary obligations of the United States have been fulfilled with respect to the management and investment of the trust fund.

(b) The results of the audit by the General Accounting Office shall be reported to each of the entities listed in Section 4(2)(B), the Secretary of the Interior, the Chairperson of the Senate Select Committee on Indian Affairs and the Chairperson of the House Resources Committee.

SECTION 8. DEFINITIONS.

In this Act:

(1) ADMINISTRATIVE COMMITTEE; COMMITTEE- The terms `Administrative Committee' and `Committee' mean the Administrative Committee established under section 4(2).

(2) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(3) TRUST FUND- The term `Trust Fund' means the Western Shoshone Educational Trust Fund established under section 4(1).

(4) WESTERN SHOSHONE MEMBERS- The term `Western Shoshone members' means an individual who appears on the Western Shoshone Judgment Roll established under section 3(1), or an individual who is the lineal descendant of an individual appearing on the roll, and who--

(A) satisfies all eligibility criteria established by the Administrative Committee under section 4(2)(F);

(B) fulfills all application requirements established by the Committee; and

(C) agrees to utilize funds distributed in accordance with section 4(1)(C)(i)(I) in a manner approved by the Committee for educational purposes.

SECTION 9. REGULATIONS

The Secretary may promulgate such regulations as are necessary to carry out this Act.

END

tl:c:shoshone:s958Yombaredraft

Fax Cover Sheet

Date: 08/08/2002
Total Pages: 4

To: Carl Christensen
Company:
Phone:
Fax: 12022282589

From: Nancy Stewart
Company: Western Shoshone Steering Committee
828 McLean Rd.
Fallon, NV 89406
Phone: 1.775.867.3237
Fax: 1.775.867.3237

Message... CONFIDENTIAL

I am sending you information regarding 326-A1 and 326-A3 on S.958 to be added to the information you send to the Senators of the Indian Affairs Committee. Duck Valley Shoshone members are concerned about your promotion, given your role, of the Paiute members of their reservation (Business Council of Duck Valley which consists of a majority of Paiutes; their 1975 claims did not provide for their descendants, some of whom married Shoshones). Relating to your role, the Shoshone people strongly feel that the 1993 Dann complaint before the OAS be separated from S.958. The "controversey" as you term it concerns a MINORITY of individuals promoting their private enterprise, especially given the amount of federal money given to the organization (WSNC) to resolve their case. Again, look carefully at the old tribally "prepared land plans" the WSNC was involved in (1991). You will find a veiled attempt to have their boundaries touching each other to effecuate the return of 2/3's of Nevada.

THIS FAX WAS CREATED AND FAXED BY SUPERFAX/SUPERVOICE/SUPERVOICE PRO FOR WINDOWS

United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

In reply, please address to:
Main Interior, Room 6456

Memorandum

To: Director, Office of Tribal Services

From: George T. Skibine
Acting Deputy Associate Solicitor
Division of Indian Affairs

Subject: Western Shoshone Judgment Fund in Dockets 326A-1 & 326A-3

Your office requested a legal opinion regarding which entities are the legal beneficiaries of the judgement funds appropriated by Congress in satisfaction of Indian Claims Commission Dockets Nos. 326A-1 and 326A-3, Te-Moak Bands of Western Shoshone Indians v. United States, 23 Ct. Cl. 435 (1991) (general accounting and interest claims). We have researched the issue and conclude that the descendants of the Western Shoshone identifiable group are the beneficiaries of the judgements. Because the claims prosecuted by the Te-Moak Band were on behalf of the Western Shoshone identifiable group, the tribal entities descended from this group are the beneficiaries, and no others.

Background

On August 10, 1951 the Western Bands of the Shoshone Nation, represented by the Te-Moak band, filed a claim against the United States with the Indian Claims Commission. The Te-Moak claim was part of a joint petition filed by all Shoshones, given the docket number 326, that sought relief from the taking of former Shoshone lands and from the misuse of funds and proceeds held in trust by the United States. The Indian Claims Commission determined that the Te-Moak Band of Western Shoshone Indians of Nevada possessed the capacity to sue on behalf of the Western Bands of the Shoshone Nation of Indians. See Shoshone Indians v. United States, 11 Ind. Cl. Comm. 387, 388 (1962).

In 1957, after the claim was filed but before any decision was rendered, the Commission ordered all of the general accounting claims to be severed from the original petition into separate causes of action for each group of Shoshones. The Western Shoshone claim was given docket number 326A. Te-Moak Bands of Western Shoshone Indians of Nevada, on behalf of Western Shoshone Nation of Indians v. United States, 18 Ct. Cl. 74 (1989). When the Indian Claims Commission expired in 1978, Congress transferred jurisdiction over the claims to the Court of Claims. In

1982 when the Court of Claims ceased operating, Congress transferred jurisdiction to the United States Claims Court. On December 20, 1990, the Claims Court severed the Western Shoshone case into three portions, each corresponding to a different issue. Docket 326A-1 contained the general accounting claims, the water claims became 326A-2 and the interest claims became 326A-3. In a 1991 decision, the Court of Claims dismissed the water claim, docket 326A-2, and awarded judgement on the accounting and interest claims. Id. The Court determined that the Western Shoshone would recover $234,041.31 plus interest of $516,835.39. The judgement was based on the court's findings that the United States had misappropriated tribal trust funds and was unable to provide any evidence to support the allowance of the expenditures. Though Congress has appropriated the money necessary to satisfy the judgment, no disbursement has occured

Legal Analysis

The Act establishing the Indian Claims Commission provides that a claim before the Commission may be presented by "any member of an Indian tribe, band or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band , or group, such organization shall be accorded the exclusive privilege of representing such Indians. . ." Indian Claims Commission Act of Aug. 13, 1946, 60 Stat. 1049, repealed by 90 Stat. 1990 (1976).

Pursuant to the statute, the Te-Moak Band of Western Shoshone filed suit on behalf of all Western Shoshones. As noted above, the claims in Docket 326 were claims by the Shoshone Indians, which were divided by the Commission into separate claims, and Docket 326A embodied the claims of the Western Shoshone Indians. Because the Te-Moak band of Western Shoshone was recognized by the Commission as having the authority to represent the Western Shoshone claims, the Court of Claims refused to allow the Timbisha Shoshones, the Duckwater Shoshones and the Yomba Shoshones to intervene because, in part, the Te-Moak band adequately represented the interests of all Western Shoshones. See Te-Moak Bands of Western Shoshones v. United States, 18 Cl. Ct. 82, 87 (1989). Thus, the judgment awarded to the Te-Moak band on behalf of the Western Shoshones belongs to the Western Shoshones.

We note that the Bureau has asked that we examine whether the Shoshone-Paiute Tribes of the Duck Valley Reservation may appropriately be considered beneficiaries to the judgment funds. In our opinion, if the Tribes are descendants of the Shoshone Nation, they may. See Minnesota Chippewa Tribe et al. v. United States, 315 F.2d 906 (Fed. Cir. 1963)(Indian Claims Commission Act requires that the awards be made, not to individual descendants of tribal members at the time of the taking, but to the tribal entity or entities today). Any claim is on behalf of the entity, not individuals and the unit is entitled to the award. Id. Thus, the various Western Shoshone tribes are entitled to share in the award, including the Duck Valley Shoshone group. However, the Duck Valley Paiute component of the Shoshone-Paiute Tribes is not entitled to share in the award because a Paiute tribal organization exists and is recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group. This

organization has the "exclusive privilege of representing such Indians. . . ." Indian Claims Commission Act of Aug. 13, 1946, 60 Stat. 1049, repealed by 90 Stat. 1990 (1976). Thus, any claims against the United States on behalf of the Paiute group of the Shoshone-Paiute Tribes should have been brought by the Paiute entity that had the exclusive privilege of representing the Paiutes. See Peoria Tribe of Indians of Oklahoma v. United States, 169 Cl. Ct. 1009 (1965).

How the award is to be paid and who precisely can participate in the award to the Western Shoshones are questions for the Bureau of Indian Affairs.

United States Senate
Committee on Indian Affairs Staff
838 Hart Senate Office Building
Washington, D.C. 20510

March 15, 2002

Mr. Daniel K. Inouye, Chairman

Greetings, I am providing testomony to oppose S.958 & H.R.2851. My name is Jody A. Abe and I am a member of the Te-Moak Tribe of Western Shoshone. I am representing myself as the Elko Band Chairperson, because of an on-going election dispute, and to which the Bureau of Indian Affairs interferance. My Council has to stand idlely by to witness a pretentious council provide testamony on a monumental wrongful injustice on the part of the Interior Department.

We the Western Shoshone are once again placed in the position of having the Bureau accept a document that allows legal language to be interpreted by the system. It is difficult for the average person to comprehend or to interpret S.958. We have been having to rely on advocates, as attorneys are very expensive, having learned that in the past.

The Treaty of Ruby Valley was so intricately written after all the experiance of the federal liasons that claimed our lands from east to west, using Treatys like handing out blankets and clothes to the savages. But documents unraveled the true story of pain and terror which forced the Leaders of the Western Shoshone to sign, they were told to come unarmed for there was to be a feast, that feast was an Indian cut-up and put in a large pot. With rifles aimed at their heads the people were forced to eat this man. Elders remember this pot being out at Fort Ruby long after the calvery left. It's gone now but those of us who know of this story are left bitter and disillusioned. The hurt runs deep and I cry everytime I read this document, this I will pass on to my children so the history of the Treaty of Ruby Valley is not preceived as the Treaty refers "Peace and Friendship". September 11 comes to mind when writing my testomony, why? These same emotions were encountered by the people of the United States," Our Country! Our Land!". Millions of our people were killed by a foreign nation,"Anthrax scare?", we encountered gifts,"blankets infected with smallpox". This bill that is before you will effect our future for generations. Senator Reid calls for a distribution to help the "impoverished people", by who's standard is he referring to? We are a proud nation. $20,000.00 will entice a few, the numbers on a ballot being in question and a vote outside of tribal law.

We have in the Elko area 192.80 acres of land of which was set aside for the Elko Indian Colony. Since the talk of this distribution, our enrollment has doubled, the status of tribal members at 1505, with over 410 being under the age of 17

(enrollment data for Elko as of March 2000). Total Te-Moak Tribal enrollment as of March was at 2500.

Land? Where will our children build their homes, a reservation identified on Article VI. never materilized. In March of 2000, I submitted a Land Withdrawal Packet, on behalf of the Elko Indian Colony for 4,385.59 acres of disposal land approved and signed by the Bureau of Land Management Director Robert Abby. To this date absolutely nothing has been processed, but the Washington Office called to say that,"They were afraid that we would set presidance and all the Indians of Nevada will rush in to get land". There's something wrong here.. First there's Federal Laws to abide by, my application was completed according to the 25 CFR.151.3 (1) (3) and 151.11.,but who follows the Laws?

A Treaty was signed by the President of the United States in 1863, but in 1951 the Indian Claims Commission an administrative body created by the United States Congress to partially compensate Indian nations for lands and resources taken from them. A claim was brought before the ICC and concluded in the United States Court of Claims reportedly on behalf of the entire Western Shoshone people. The proceedings were conducted without the consent and participation of Western Shoshone governments and leaders. "Deja vu"??

Was this a good Treaty? For the railroad it was, for the mining it was, and for the ranchers and settlements it was.
For the Indians who couldn't read or understand what was being said, all was lost. The Year 2002, the Indians are still lost if we accept this money without looking towards the future.
An Admendment was inserted to the Treaty in June of 1869, allow for a second Admendment in 2002. Mr. Inouye, allow us to re-negotiate this Treaty to allow for the preservation of our hunting and fishing rights. So traditions can be handed down to our youth, gathering and spirital sites,the expansion for economic development, homesites, recreation and last but the most crucial, gravesites.

Without additional land, we will have no hope in assuring that the future will hold advances for our children, if this bill goes through it will be considered as a windfall to our people. As in our cities, drugs, and alcohol are no strangers to our area. The Elko business will Thank You as well as Senator Reid who has vested holdings in the area of the Public Lands Bill.

Thank You, for your time and I pray the outcome will be just.

Sincerely,

Jody A. Abe

Jody A. Abe Elko Band Chairperson
Attach; U.S. Bancorp N.A. vs Felix @ Co.

United States District Court

DISTRICT OF Nevada

U.S. Bancorp N.A., a National Association and Oregon corporation, dba U.S. Bank of Nevada,

v.

Felix Ike; Larson Bill; Carla Premo; Karen McDade; Melanie Tom; Steve Johnnie; Stanford Knight; Fermina Stevens; Michael Price; El Wood Mose; Leca Jim; Jody Abe; Floyd Bill, Harvey Healy; Lydia Johnson-Sam; Clarence Andreozzi; Te-Moak Tribal Council; and Does 1-10, inclusive.

AMENDED

SUMMONS IN A CIVIL ACTION

CASE NUMBER: CV-N-01-0067-ECR(PHA)

TO:

Charles R. Zeh, Esq., 575 Forest Street, Suite 200, Reno, NV 89509, on behalf of defendants Elwood Mose, Leta Jim, Jody Abe, Harvey Healy, Lydia Johnson-Sam Clarence Andreozzi, and Floyd Bill.

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY

Jeremy J. Nork, Esq.
Hale Lane Peek Dennison Howard and Anderson
100 W. Liberty Street, 10th Floor
Reno, Nevada 89501
(775) 327-3000

answer to the complaint which is herewith served upon you, within 20 days after service of s summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken ainst you for the relief demanded in the complaint.

LANCE S. WILSON, CLERK

(BY) DEPUTY CLERK

DATE FEB - 2 2001

TESTIMONY OF LARSON BILL, CHAIRMAN

SOUTH FORK BAND COUNCIL

SOUTH FORK INDIAN RESERVATION

Before the United States Senate
Committee on Indian Affairs
Washington, DC

August 2, 2002

Good Afternoon - Mr. Chairman, Committee Members and Guests,

My name is Larson Bill, I am currently the Chairman of the South Fork Band Council and Vice-Chairman of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Before I begin, I would like to inform the Committee that the Te-Moak Tribe of Western Shoshone consists of four constituent Bands, South Fork Band (includes Odgers Ranch Reservation), Battle Mountain Band, Elko Band and Wells Band. The Te-Moak Tribe is an IRA Tribal Government, and does not represent any other Western Shoshone Tribes/Bands in the State of Nevada. The Te-Moak Tribe has jurisdiction only over the four constituent Bands.

The South Fork Band (includes Odgers Ranch Reservation) is the only constituent Band that is agriculturally-based whose members choose to become herdsmen and agriculturalists.

The distribution of monies from Docket 326K through Senate Bill S.958, is premature and has not met the proper presentation to all eligible Western Shoshone People or their Tribal representatives.

It is the belief that the United States is simply disregarding the one Supreme Law of the Land, the *Treaty of Ruby Valley 1863*, a treaty of peace and friendship. Prior to 1863, beginning in 1787, the United States adopted and passed laws, which provided for the protection of the Western Shoshone Peoples and their homelands. It deeply saddens me to see the United States government repeatedly ignore the *Treaty of Ruby Valley 1863*, as if the Treaty does not exist!

As far back as history can tell us, the Western Shoshone People have not broken any of or any part of the articles as outlined in the Treaty. That has been for over 128 years!

I ask you, how is it possible for a single committee or a judge in the court of law able to extinguish a Treaty? A Treaty made between two Nations and only extinguishable between the Nations that made the Treaty.

I have several examples of the United States Government not upholding their half of the agreement that they have signed.

1) North West Territorial Ordinance of 1797 - Article III
2) United States Constitution - Article VI, Paragraph II
3) Treaty of Guadalupe Hidalgo 1848 - statue 922
4) Act of Congress organizing the Territory of Nevada 1861

5) Treaty of Ruby Valley 1863.

It appears the United States, through "gradual encroachment", apparently this legal term often used by the Government, has violated the Treaties it agreed with and signed.
First and foremost- Mother Earth is not sale. We are all caretakers of our homelands which provide us with life sustaining resources. Be it plant life, wildlife, air, water or a combination of all.
Our homelands are being damaged and destroyed on a daily basis, cultural sites, sacred sites, burial sites, medicinal plants, wildlife - through the administration of the United States Government.
The "vote" in June 2002 using a ballot, and introduced by Harry Reid, does not state any background on the status of the land, hunting fishing and gathering rights, grazing - only money. The needs of a few does not and should not outweigh the needs of the entire Western Shoshone Nation.
The Western Shoshone People are entitled to be informed and given the opportunity to protect their homelands for the future generations to come.
I stand before you today, pleading - please stop this premature Bill, meet with the Western Shoshone People in Nevada and together formulate a settlement that would give us all a healthy balance.
A government-to-government relationship should be of the utmost focus to achieve an agreeable settlement for all Western Shoshone People.
In closing, I urge you all to take all issues into prospective and to base your determination on those factors. Primarily the *Treaty of Ruby Valley 1863.*

I have provided a supplemental testimony that is attached to my own testimony to be noted as part of the record for this hearing.

Thank you all for giving me the opportunity to testify here before you all.

Supplemental Testimony:

I am honored to be here. My name is Larson Bill, Chairman of the South Fork Indian Reservation and Vice-Chairman of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

I am here today to present testimony on Senate Bill S.958, for the South Fork Reservation. The South Fork Reservation is a constituent Band of the Te-Moak Tribe of Western Shoshone. This Reservation is an agricultural based reservation.

The distribution of the money from Docket 326K has somewhat divided our people. There are some that favor the acceptance of the money and those who believe that land should also be included in the language of this Bill.

The South Fork Reservation requests that the members of the Reservation, who chose to become herdsman according to the Treaty of Ruby Valley of 1863, be given the opportunity to expand the land base of the Reservation to meet future needs of the people who reside on the South Fork Indian Reservation.

The lands asked for is incorporated into the packet provided to you. Since 1936, the South Fork Reservation has had to exist on the 13,000 acres. Which at that time was set aside for the Western Shoshone members who chose to become herdsmen. Today, the land base has become insufficient for the daily

operations of the cattleman and those who set out to become agriculturists. There is not enough land to support a growing population of Western Shoshone who wish to become involved in the ranching business.

The South Fork Reservation; moreover, the cattlemen has just this year experienced a shortage of grazing land areas. This resulted in the overgrazing on portions of our range lands, further resulting in poor cattle conditions.

The South Fort Reservation believes that the Land issue should be addressed along with the hunting, fishing and gathering issues as part of the Treat Rights under the Treaty of Ruby Valley of 1863.

The Reservation lands need to be expanded for grazing, economic development and housing for all Shoshone members.

We request that these issues be addressed because it concerns the future of the Shoshone Indians. We would like to see part of the Ruby Mountains be included in the land issue, for hunting, fishing, and traditional gatherings. Also, to protect our native medicinal plants, wildlife and the water that flows into the Reservation that is our source of drinking water.

It is our hope that upon your favorable response, the land that we are requesting will not only be utilized for range but also economic

development and future home sites as land becomes available to meet the Reservation's growing population.

For you, the Committee, we have provided maps; the first maps shows the original Shoshone territory, a great portion as you can see covers a huge portion of Nevada. The second depicts the present South Fork Indian Reservation, grazing lands included, also the highlighted areas in yellow show lands that we are requesting. The third map shows the present land area for the Odgers Ranch and Ruby and the highlighted land in green represents forestry adjacent to the Reservation. The remaining pages are Resolutions: one passed in 1992 for Reservation expansion; and the second, a support resolution from the Te-Moak Tribal Council.

I would also like to request that this Committee also put forth its time, energy and financial resources to resolve the issue of a Shoshone Homeland in Nevada, as much as the Government of the United States has provided to the country of Israel to protect and establish its own homelands.

We as Shoshone Indians of the South Fork Reservation oppose the offering of monetary monies offered for our homelands of our ancestors and their ancestors before them. For over 128 years the Shoshone Indians have kept their end of the provisions listed on the Treaty of 1863. Whereas, the United States have not kept their end of the agreement as written in the following documents.

1. Northwest Territorial Ordinance of 1787 – Article III;
2. United States Constitution, Article VI, Paragraph II;
3. Treaty of Guadeloupe Hidalgo 1848, 9 Statue 922;
4. Act of Congress organizing the Territory of Nevada 1861;
5. 1863 – Treaty of Peace and Friendship.

Mother Earth is not for sale; we are just caretakers of these lands that provide us all with life sustaining plants, air and water. To sell our lands to the United States Government is totally against our beliefs and the history of our existence.

The straw poll taken in 1998 does not prove any background on the status of the land. The needs of a few do not outweigh the needs of the whole Shoshone Nation.

I believe that the United States giving the Shoshone Indians a $1.05 an acre is unfair totaling in the millions when it should be in the billions owed to the Shoshone Nation. I strongly feel that there is time for negotiations for the award and lands for grazing, economic development, gathering, hunting, fishing rights, lands for grazing, economic development, gathering, housing, and giving all Shoshone Indians a piece of the Ancestral lands which is the basis of our existence.

I plead with the United States not to just give the money to the Shoshone Indians of Nevada and say we do not deserve anything else but that there are all the issues I have stated that need to be addressed. Government to Government Relationship should be

of the utmost focus to achieve this settlement for all Shoshone Indians.

Thank you for your time and the opportunity to testify before the Senate Committee on Senate Bill 958.

TE-MOAK TRIBE OF WESTERN SHOSHONE

525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
FAX - (775) 738-2345

RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-19

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT,

WHEREAS, this organization is an Indian Organization known as the Te-Moak Tribe of Western Shoshone Indians of Nevada as defined under the Indian reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economical and social welfare of its tribal members, and

WHEREAS, the Te-Moak Tribal Council comprises representatives of constituent Te-Moak Bands at Battle Mountain, Elko Band, South Fork Band, and Wells Band, and

WHEREAS, the Steering Committee has never met with the Te-Moak Tribal Council.

WHEREAS, the Steering Committee has never provided the Te-Moak Tribal Council with reports on the activities of the committee pertaining claims distribution.

WHEREAS, the Steering Committee and any other affiliated committees do not represent the Te-Moak Tribe, nor authorized to speak on behalf of the 4 Bands of the Te-Moak Tribe Western Shoshone.

NOW THEREFORE BE IT RESOLVED, the Te-Moak Tribal Council rescinds resolution 97-TM-19, and the Te-Moak Tribal Council does not recognize the Steering Committee, and therefore abolishes the Steering Committee in its entirety.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom 6 Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

TE-MOAK TRIBE OF WESTERN SHOSHONE

525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
FAX - (775) 738-2345

RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-20

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT,

WHEREAS, this organization is an Indian Organization known as the Te-Moak Tribe of Western Shoshone Indians of Nevada as defined under the Indian reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economical and social welfare of its tribal members, and

WHEREAS, the Te-Moak Tribal Council comprises representatives of constituent Te-Moak Bands at Battle Mountain, Elko Band, South Fork Band, and Wells Band, and

WHEREAS, the Te-Moak Constitution states in Article 11 Sec. 2 Tribal Referendum. Upon the request of the majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted by the Election Board to a popular referendum of registered voters. The registered voters shall by majority vote in such referendum, decide whether the ordinance or resolution shall thereafter be in effect; provided, that at least thirty percent (30%) of the registered voters shall vote in such referendum.

WHEREAS, We, the Western Shoshone Indians of Nevada, located at Elko, Battle Mountain and South Fork; in order to improve the governing structure initially established by the Constitution and Bylaws adopted by the adult Indians residing on the reservation at Elko, Nevada, on May 3, 1938; pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984, and approved on August 24, 1938; to provide an opportunity for other Te-Moak Communities of Western Shoshone Indians of Nevada to become part of this Tribe; to conserve our Tribal property; to develop our resources; to administer justice; to promote the welfare of ourselves and our descendants, and to other wise govern the affairs of this Tribe, do ordain and establish this Constitution pursuant to the Indian Reorganization Act of 1934, as amended.

WHEREAS, the Te-Moak Constitution states in Article 4 Sec. 5 (a) (6) Tribal Chairperson ...Shall not obligate the Tribe without the prior written approval of the Tribal Council; and

NOW THEREFORE BE IT RESOLVED, the Te-Moak Tribal Council does not recognize the Felix Ike balloting of June 3rd.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom 6 Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

TE-MOAK TRIBE OF WESTERN SHOSHONE
525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
FAX - (775) 738-2345

RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-21

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT,

WHEREAS, the, TE-MOAK Tribe of western Shoshone Council as the governing body who represents Elko, Wells Battle Mountain and South Fork (includes Odgers Ranch and Ruby Valley), bounded by The Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and

WHEREAS, to quote the PREAMBLE which states, to conserve our Tribal property; to develop our resources; to administer justice; to promote the welfare of ourselves and our descendants, and otherwise govern the affairs of this Tribe, and

WHEREAS, the Te-Moak Tribal Council is concerned with the actions and judgments the Te-Moak Chairman has presented regarding the so called Peoples issues vote and testimony in Washington DC, and

WHEREAS, in the Te-Moak Constitution of the Western Shoshone the following applies to The Chairman and Elections of the Te-Moak Tribe of Western Shoshone, SEC 5. Duties of the Chairman (3) Shall sign all negotiable instruments, contacts, applications, for Federal, or other funds, and all other obligations of the Bands, all as designated by the Tribal Council; Shall make written and oral reports at all Tribal Council meetings of all his or her activities; (6) Shall not obligate the Tribe without the prior written approval of the Tribal Council; ARTICLE 5 – REGISTRATION AND VOTING (b) In all elections of the Band or Tribe, a registered voter may vote only in the Band where the voter is registered And,

WHEREAS, the Council sees that under the Constitution of the Te-Moak Tribe of Western Shoshone there is but four elections that can happen, ARTICLE 11- POPULAR PARTICIPATION IN GOVERNMENT Section1. Tribal Initiative. Section 2. Tribal Referendum, Section 3. Band Initiative, and Section 4. Band Referendum, each type of these elections can only take place only after the Tribe request or the Band request the election, and

WHEREAS, the voting that took place on June 3rd was done without the approval of either the bands nor the Tribal Council and furthermore the ballots used were extremely bias, voting for the money or against, this does not reflect the true wishes of the Western Shoshone People.

NOW THEREFORE BE IT RESOLVED, the voting and ballot used that took place June 3rd is invalid because of the lack of Tribal Council or Bands prior approval.

NOW BE IT FURTHER RESOLVED THAT, this resolution be sent to Senator Reid and other Congressional Representatives as it represents the Te-Moak Tribal Council true concerns regarding the process of which Senate Bill S 958 is being pushed for approval. The Te-Moak Tribal Council requests Government to Government negotiations. The Te-Moak Tribal Council request for a table discussion before anything is introduced before the Senate for the following;

1. Land, hunting, fishing, grazing and gathering issues.
2. Money for damages for the past to the present.
3. Recognize the Western Shoshone as a nation within a Nation.
4. Recognize that the Treaty can only be abolished or amended by the two nations that made it.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom _6_ Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of _5_ FOR, __0__ AGAINST, __0__ ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

TE-MOAK TRIBE OF WESTERN SHOSHONE
525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
FAX - (775) 738-2345

RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-22

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT,

WHEREAS, this organization is an Indian Organization known as the Te-Moak Tribe of Western Shoshone Indians of Nevada as defined under the Indian reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economical and social welfare of its tribal members, and

WHEREAS, the Te-Moak Tribal Council comprises representatives of constituent Te-Moak Bands at Battle Mountain, Elko Band, South Fork Band, and Wells Band, and

WHEREAS, the Te-Moak Constitution Tribal Chairman has been obligating the tribe without council approval.

NOW THEREFORE BE IT RESOLVED, the Te-Moak Tribal Chairman has to come in front of the Council with anything pertaining to the Tribal Council.

C-E-R-T-I-F-I-C-A-T-I-O-N

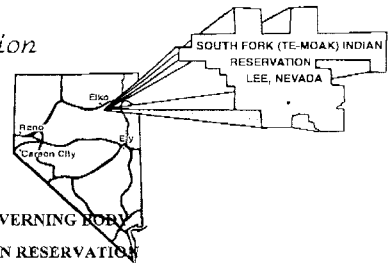
I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom 6 Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of 4 FOR, 0 AGAINST, 1 ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

South Fork Indian Reservation
South Fork Band Council
HC 30 B-13 (Lee) • Spring Creek, Nevada 89815
Phone 775-744-4273 • Fax 775-744-4523



RESOLUTION OF THE GOVERNING BODY
OF THE
SOUTH FORK BAND INDIAN RESERVATION

RESOLUTION NO. 02-SF-26

BE IT RESOLVED BY THE SOUTH FORK BAND COUNCIL:

WHEREAS, this organization is an Indian organization known as the South Fork Band Council, as defined by the Indian Reorganization Act of June 18, 1934, as amended, and operates and functions in accordance with the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and

WHEREAS, the South Fork Band Council is in unity that the present committee known as the steering committee does not represent the South Fork Band Council since there was no reports presented to them regarding their actions, and

WHEREAS, the voting that took place on June 3rd was done without approval from the Bands or the Tribal Council but was done with the assistance from the Steering Committee, and

WHEREAS, the South Fork Band Council strongly urge the Te-Moak Tribal Council to abolish the Steering Committee since they have not reported to the Tribal Council of their actions.

NOW THEREFOR BE IT RESOLVED THAT, the South Fork Band Council request the Te-Moak Tribal Council to form a task force with all concerned Shoshone People and Governments as a Nation formulate a plan for all Western Shoshone Indians through negotiations with the United States Governments

CERTIFICATION

I, the undersigned, hereby certify the South Fork Band Council comprises seven members of whom constituting a quorum were present at a duly-held meeting on the 6th day of August, 2002, at the South Fork Community Building and that this Resolution was adopted by vote of 5 FOR, 0 OPPOSED, 0 ABSTAINED, pursuant to Article 4, Section 12 (a) and (b) and Section 13 of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson R. Bill, - Chairman
South Fork Band Council

ATTEST:

_____
Member

U.S. SENATE: COMMITTEE ON INDIAN AFFAIRS

TESTIMONY ON "The Western Shoshone Claims Distribution Act"

By

Mr. Calvin C. Birchum Jr., Walker River Tribal Member

My name is Calvin Birchum, Jr.,. and I am a member of the Walker River Tribe, of Schurz, Nevada. I am here to present testimony in favor of S. 958. The majority of Western Shoshone people who favor distribution of their claims award, per the 1998 referendum, cannot afford to attend this hearing today. I felt compelled to be here to speak, *NOT* as a tribal official or as a member of any committee, organization, or corporation employee; but as a Western Shoshone. My father, Calvin Birchum Sr., was a full member of the Western Shoshone Tribe. Thank you for this opportunity to appear before the Indian Affairs Committee.

In my support of the passage of this bill, I would like to address a few misconceptions that have been promoted in the media by opponents of this bill, who in fact represent the minority opinion.

Basis of Individual Descendency Versus a Tribal Claim

1. In 1951, the claim was originally filed on **behalf of the descendants** of the Western Shoshone Identifiable group, **NOT** on behalf of tribal governments.[1]

2. In 1977, the court adjudicated award WAS MADE to the **Western Shoshone Identifiable Group**, to the individual descendants of the Western Shoshones, **NOT** to the tribal organization called "the successor tribes" named later in 1982 by the BIA.

3. In 1980, the BIA in their "Results of Research" AGREED by recognizing the descendants as "...scattered...not possible to describe...in terms of forming a tribe or a group of organized tribes, particularly in view of the Shoshone-Paiute combined organization and the very real possibility that many Western Shoshone descendants... are not and never have been associated with any reservation entity...[2] ...We find those Western Shoshone people, and their descendants, who derive from the censuses and other rolls of the above cited entities (**12 reservations named**), and other descendants who prove Western Shoshone ancestry on the basis of rolls and records to the satisfaction of the Secretary...to be the beneficiaries of the award in Docket 326-K." [3]

4. In 1998, the BIA Phoenix Area Director stated, "Inasmuch as there is no Western Shoshone Tribe, but rather, bands of Western Shoshone Indians, and that the original claim was filed on behalf of the 'Western Shoshone Identifiable Group', I believe a 100% per capita distribution is appropriate in this case."[4]

5. There is NO PURE SHOSHONE TRIBE or RESERVATION. Today, all tribes have recipients of the Paiute / Washoe / other distributions enrolled in and / or living on their reservations as well as some non-Indians or non-members.

6. In 1982, the BIA reversed the "Results of Research" and the "successor tribes" were injected into the equation by an "**AMENDED** Results of Research"[5] because of the 1973 law, The Indian

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[1] 1980 BIA "Results of Research – Pertinent Aspects of the Litigation". p.3, ¶ 3.
[2] 1980, Ibid. – "Identifying the Western Shoshone Beneficiary". p.10, ¶ 3.
[3] 1980, Ibid. – "Contemporary Western Shoshone Entities, Nevada & California". pp.11-12, ¶ 3.
[4] Nordwall, Wayne. BIA Phoenix Area Director. Memorandum to Deputy Commissioner of Indian Affairs: "Western Shoshone Claims Distribution" . 1998. p.2, ¶ 1.
[5] 1982 BIA "Amended Results of Research", p.1, ¶ 3.

Judgment Funds Distribution Act"-- but the 1973 Northern Paiute Distribution was NOT subjected to this 1973 law.

7. The Western Shoshones feel this subsequent decision by the BIA Operations "Acting" Deputy Assistant Secretary to make certain tribes (leaving out some of the tribes with larger Shoshone populations) was **arbitrary** because the **Indian Claims Commission** and the **Court of Claims decided** that the claim was on behalf the "Identifiable Group", they were the **original "claimant".** This 1982 BIA decision was a blatant denial of the due process of law given the courts decision of the true beneficiaries of the award...the descendants.

8. In 1998, the self-determination of the Shoshone people by referendum mandated a 100% per capita (1,230 voted "yes" for 100% per capita to ¼ degree blood and 53 voted "no"—later BIA received another 415 letters in support of distribution and 6 against). Most tribes in Nevada require at least ¼ degree blood to become an enrolled member of that tribe.

Opponents say the referendum was illegal:

1. The 1980 BIA Hearing of Record received letters showing 194 people wanting their claims distributed and 75 against[6]. Yet, from 1980 to today, the opponents' news media releases claim "the Western Shoshones do not want the money they want the land ". They had NO AUTHORITY or PROOF to make such statements to the press and mislead the Western Shoshone people and the general public.

2. A "referendum" implies a question requiring an answer that is put before the people for approval or rejection. The straw poll was simple and straightforward. The question as to whether the Western Shoshone wanted their court adjudicated claim distributed had to be answered in order to proceed in a forthright manner.

3. No reservation has ever voted on this basic issue. One cannot reasonably or prudently proceed without the support of the Western Shoshone people. A basic premise of a democracy is a government of the people, for the people, and by the people.

4. The BIA's on going on site role in reservations elections is to only visually monitor; they cannot carryout an election. The Western Shoshone Claims Distribution Steering Committee requested monitoring at the referendum and reservation notification of the referendum in Nevada by the Eastern, Western, and Regional BIA directors and BIA tribal services officers. Posters were either placed in public places on each reservation or sent for posting, news articles were released and the news media was invited to attend. In order to participate in the referendum individuals had to possess a membership card or present an I.D. and be included on tribal rolls. For the non-enrolled Shoshones or those unable to attend a notarized letter for the record and a copy of their membership card sufficed.

5. No tribal Constitution & By-Laws precludes straw polls and most recognize and support the U. S Constitution's Civil Rights of its membership.

6. The Western Shoshone Claims Distribution Steering Committee's (WSCDSC) membership (nucleus formed in 1997) consisted of tribally elected representatives from various reservations that chose to participate and / or official tribally recognized by resolution representatives and others. All tribes were invited to attend.

7. The 1973 "Indian Judgment Funds Distribution Act", 87.1, (h), provides that tribal governing body or "the recognized spokesmen or representatives of any descendent group" may submit

[6] Gover, Kevin. Research attachment to Letter, Speaker. 2000. p.2, ¶6.

a plan, THEREFORE... the first step to proceeding was to complete a referendum.

Opponents say the "government to government" relationship was ignored:

1. Now... given the 1973 **post-claims development** of the "Indian Judgment Funds Distribution Act" (claims case: 1951-1977) that requires, IF a tribe is a recipient of an award, a percentage be retained for programming purposes[7] and a PLAN must be submitted with a given TIME FRAME[8], the clock began ticking in 1980 after the Hearing of Record. The "successor tribes" FAILED to meet this deadline (even a 1985 **MILLION dollar grant** awarded to the Western Shoshone National Council—then supported by "successor tribes" -- to help settle the land identification problem did not lead to a solution and there following in 1990 Mr. Yowell stated, "...need to have some funding to prepare an economic plan on the land..."[9].). The **government-to-government negotiations failed even with financial assistance.**

2. The 1973 Indian Judgment Funds Distribution Act, 87.3, (b), p. 274, regarding **programming exceptions** states, " ...unless the Secretary determines that the particular circumstances of the affected Indian tribe **clearly warrant otherwise**." The Assistant Secretary of the Interior, Kevin Gover, in 2000 stated, "We also believe that **the best interests of the Western Shoshone will not be served by providing additional time for successor tribes to reach a consensus** on the division and distribution of the land claims funds in Docket 326-K." [10]

3 Since 1997, due to the **21 years of failure within the political tribal arena to produce a PLAN and / or INTRODUCE A BILL to that effect,** a volunteer non-paid coalition of Western Shoshones, the WSCDSC, have worked through the Western Shoshone people[11] to have a BILL introduced into the Senate, S. 958, and House, H.R. 2851.

4. In 1997, the TeMoak Council (representing four tribes) gave rise to the concept of the perpetual educational fund and passed resolution # 97-TM-10 for 100% per capita to ¼ degree blood quantum. The 1997 TeMoak resolution was verified in 1998 by the Western Shoshone Claims Distribution Steering Committee's referendum.

5. In 1999, a new TeMoak Council, under Elwood Mose, rescinded the 1997 resolution with no further action[12].

6. In 2001, a new TeMoak Council rescinded the rescission of the 1999 Council.

7. Presently, **SEVEN** tribal governments in keeping with the 1998 referendum and with a vested interest based on their Shoshone populations support by resolution S.958, **ONE** supported by resolution (later changed by a new council to support, but with an amendment to include other issues), **ONE** opposes, and **THREE** are uncommitted.[13]

8. Over the past two and a half years, where tribal councils at that time (THREE) were opposed to distribution in opposition to their members, the MAJORITY of tribal members PETITIONED the BIA for distribution to effect recognition.

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[7] 1973 Indian Judgment Funds Distribution Act, definitions, 87.1, (k), 25 U.S.C. 1401-1408, p.273.
[8] 1973, Ibid., timeframes, 87.3, (b),...the Secretary shall submit a Secretarial Plan for the use of judgment funds,...within 180 days from the appropriation of the funds...to Congress..., p. 275.
[9] 1990 transcript. H.R. 3384. p.156.
[10] Gover, Kevin. Letter to Speaker of the U.S.House of Representatives. 2000. p.4, ¶ 2.
[11] 1998 Referendum, May 23 and May 24; Bill presentation public meetings with hand held votes of confidence – only 3 voted against- , Aug. 21 & Sept. 12, 1999, etc.
[12] 1999 Elko Poster sent to WSCDSC members and distributed on reservations.
[13] 2001 Resolutions, see attached.

9. ELEVEN YEARS ago, 1990, The Western Shoshone National Council's[14] chief, Raymond Yowell, and followers were involved in opposing Bill H.R 3384 introduced by attorney Kennedy. Yowell's final statement was, "....And the council decided that an amendment could not do what we want to do, and we would rather come with a WHOLE NEW COMPREHENSIVE BILL"[15]...and **still TODAY....they have never attempted to coordinate or introduce a Bill or good faith plan...** their credibility is now questioned by the majority of Western Shoshone people in this regard...

Opponents say S. 958 does not include other Western Shoshone Issues:

1. The conclusion of several lawsuits, some that reached the U.S. Supreme Court, from 1974 – 1995 concerning land, fishing and hunting have not resolved these issue to the satisfaction of the litigants NOR has a plan been forthcoming to include these issues, therefore the Western Shoshones desire their court award to be distributed.

2. The majority of Shoshones are of the opinion that too many issues –land, air, water, hunting, etc. – have tended to complicate and retard the presentation of a viable plan and are now questioning the use of these issues as a motive to delay the distribution to further the opponents' outside special interests.

3. 326-K was awarded for "extinguishments of the aboriginal title of the Western Shoshones" and in "United States v. Dann. 470 U.S. 39 (1985), the Supreme Court held that acceptance of payment did not extinguish title, but rather, that payment of the judgment by the United States into the Treasury of the United States effectuated full settlement of all claims". [16]

4. Any rights under the treaty that still remain need to be solved on an individual basis separate from 326-K. The Bill, S. 958, covers this under section 2, (9). Article VI of "The Constitution of the United States of American" states, "...all treaties made...under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution of laws of any state to the contrary notwithstanding."

5. Individual reservation land expansion for housing, economic development, etc., as other tribes have accomplished, need to be completed by other governmental or legislative avenues.

Conclusion

Whether the tribal governments really had a legitimate claim to be involved is open to question, but the opportunity for the government to government "good faith negotiations" and the presentation of a "good faith plan" was always there. If the revolving door of politics interfered with and made a mockery out of the claims settlement process, then it was the Shoshone people's recognized right under the 1973 Indian Judgment Funds Distribution Act as the original "claimants " to present a Bill for consideration to Congress. This is the view of the majority of the Western Shoshone, not only those who were able to make their voices heard at the ballot box, but those who have lobbied the committee on their own behalf through letters and petitions. We ask for a passage of this Bill as it stands.

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[14] Western Shoshone National Council: NOT on the Secretary of Interior's list of acknowledged tribes, was created around 1983-84 by land-return supporters as a traditional government, not presently supported by most IRA tribes, is said to be registered as a non-profit corporation, has identical core members who co-exists under other organizational names; first chief Jerry Millett of Duckwater and second chief Raymond Yowell of South Fork

[15] 1990 Transcript, Ibid. p. 160.

[16] Nordwall, Ibid. p.1.

Statement of Carrie Dann on behalf of the Dann Band of Western Shoshone Indians in Opposition to the Western Shoshone Claims Distribution Act

I, Carrie Dann, on behalf of the Dann band of Western Shoshone, oppose the proposed Western Shoshone Claims Distribution Act (Senate Bill 958). If passed in its current form, this act will finalize the illegal and discriminatory action of the Indian Claims Commission saying that our Western Shoshone title to our traditional lands was extinguished.

It is my opinion that Indian Claims Commission attorneys were not representing the Western Shoshone, for they did not listen to what the Indians were saying or telling them. The lawyer's response was always "I'm doing what is best for you Indians." He went ahead and did what he said was "the best for Indians." However, whatever he did to further the destruction of Western Shoshone rights was done at the whim of the alleged claims attorneys and the US Department of Interior.

The first clients of the alleged attorneys was Temoak Tribal Council. They signed the contract with these attorneys with the BIA standing over them. This was probably in the early 1950's. They never saw or heard from the alleged attorneys until 1959, when they again appeared to renew their contract. For some reason, a contract was with new clients: the Western Shoshone Identifiable Group.

In 1965 the alleged attorneys returned for a signature to borrow money to appraise the Western Shoshone lands. Their "clients" refused to sign this contract. The attorneys returned to DC without a contract, only to return with a new idea – hey, let's get a new client and we will call it the Claims Committee. New people were chosen to now serve at the attorneys' whims. There were no by-laws or rules, they were now the

new YES peoples. Again the Western Shoshone got whipped by the alleged attorneys and the BIA.

The first clients, the Temoak, a recognized Tribal Council, made an attempt to fire their attorneys. They went through the procedures of firing the attorney and tried to hire a new attorney. This of course didn't happen, because the ICC would not allow it. There was also an attempt by other Western Shoshone to intervene, but they, including myself, but the ICC did not allow intervention.

The alleged attorneys always told the Western Shoshone assembled that they had nothing, there was no land, the US took it a long time ago. He would further threaten them or intimidate his clients. The lands were taken a long time ago. The word gradual encroachment was not used, until some time in the 1960's. There were some of us that questioned how the US can just take the lands of peoples. He just continued his song and dance that the lands were "taken". No explanation when the "taking" occurred. When questioned about the limitation placed by the US constitution, he told the Indians that Congress can do as it wants.

There was a conflict of interest with the alleged claims attorney, they drafted the ICC Act, they knew that they had to make every effort to show or prove that the Western Shoshone did not have land, because they drafted the act and the act is supposed to compensate for lands that Indians no longer have. Lands given up by Indians by treaty or agreement or otherwise. The ICC did not have the authority to extinguish Indian title. The Western Shoshone never gave up their land to US through treaty or agreement. Western Shoshone lands were never ceded to the US. The alleged attorneys could not

get paid unless the Indians no longer had land, this is what happened in the Western Shoshone case.

If the US did take the lands, in a country that is ruled by rule of law, maybe it is a rule of law for the white people only. US v. Dann certainly showed there was no taking and furthermore there had been no title argument in any of the US court cases, even at the ICC there was no title argument on behalf of the Western Shoshone Indians. The alleged claims attorneys made every effort to show that Western Shoshone had no land. Their mission was to attempt to show the Western Shoshone no longer had land so that they could get paid. Indeed, they did get paid for all the lies they told.

The Treaty of Ruby Valley did not cede or give land to the US, but the alleged attorneys, BIA, and Department of Interior manufactured a date of July 1, 1872 as the date of "taken by gradual encroachment" by which the Western Shoshone lands were lost to the US. Nothing happened on that date, this date is purely mysterious. Is gradual encroachment the law of the US, or is it a law that deals only with Indian peoples of the US? I find the word gradual encroachment not a law for all other people, only Indians. Is this law racist? I'd say yes, for it is used for indigenous peoples only. I believe the constitution limits how the US can take land, and there are procedures that must be followed. Right? Did this happen in the Western Shoshone case? No, the Western Shoshone have never been given the right to argue title before any court. Is it because we are looked at as non-human – for we are treated as non-humans by the attorneys who are supposed to represent their clients and to protect their rights. Only Indians have attorneys who try to do away with their rights.

It seems that racism played an important role then, and to this very day racism plays an important role. This bill Senate bill 958 is also a very racist bill for it is being used to legitimize a racist finding by the Indian Claims Commission. Still to this very day there is a conflict of interest being perpetrated by the BIA in this bill, Senate bill 958. This bill S 958 has language that says "this will not waive Western Shoshone treaty rights", but whoever drafted this bill uses clever words to hide their true intent. Just what is the true intent of the bill? Is it not to quiet the title to Western Shoshone land rights once and for all? I'd say put it down in writing – your intent that spells out just what you are attempting to tell the Western Shoshone peoples. It could be for the denial of Western Shoshone rights to hunt and fish, for which some Western Shoshone are fined and jailed under the state laws, for the failure to protect the Western Shoshone from illegal action by the State for giving to the State of Nevada the right to hunt and fish and trap.

The desire for the lands of indigenous peoples has been going on since the arrival of the Europeans on the Western Hemisphere. If I remember right, didn't Columbus say he found paradise upon his arrival? When he found the Indians were not of the Christian faith, he labeled them heathens, infidels, pagans and savages. This doctrine has been used in the US court decisions and I believe it is still being used. It is the Christian doctrine that has been used in decisions made about Indians. They say Indians only have a right to hunt and gather, and nothing else – but in Western Shoshone National Council v. Molini Western Shoshone even hunting rights were denied. This certainly put the indigenous peoples in the category of non-humans, in the class of our four-legged

relatives, those with wings and those that crawl or swim, anything but human, something that humans can wipe out when they desire to do so. Many of our four-legged and winged friends and those that swim are being placed in endangered species. I believe the traditions of indigenous peoples should be listed in that category.

If the SB 958 is passed by those that are assembled here today it certainly will place us, traditional peoples, in that category. This SB 958 as it is written will do just that, for it will take away everything that is Western Shoshone. Traditional peoples have ties to the land and waters, this includes hot waters in the most sacred way. Our culture is tied to the land, our traditional Western Shoshone lands.

I guess you, because of your military and police power, the supposed most powerful nation on the face of he earth, can do as you want. Just your presence puts fear and terror in the mind, heart, and soul of those that have been subjected to unfair treatment at the hands of the local BLM., Department of the Interior. Even though I have this fear of the BLM., thinking that any time now they could come in and take our livestock, which is our livelihood in the 21st century. To deal with that fear and terror, we must ask ourselves what are we standing for? I guess it is our belief that we cannot forsake our teachings, our faith in Creation, we have to make a stand for dignity, honor, principles, and the inherent rights of the Western Shoshone peoples to save generations to come.

Before the genocide on the indigenous peoples, land and its natural resources we the livelihood of our people, and it is still the same today. To a traditional Western Shoshone (those that still worship in the manner that our forefathers did), LAND IS

LIFE, WATER IS LIFE, AIR IS LIFE, AND SUN IS LIFE. In our spiritual lifeways we are tied to them. It is essential to our spiritual and cultural survival as humans. The land is called Sogobee or sogobia, which in English means Earth Mother. From her flows all life. She is the mother to all living things – plants to humans. This includes all of you, and upon death all life returns to her, she cradles all of Her children in Her arms upon their return to Her.

Now, what is meant by trusteeship? In the case of the Western Shoshone, it is to accept your alleged right to take all the land rights of the Western Shoshone peoples. I must have a false impression that a trustee is supposed to protect your rights. I was told early in U.S. v. Dann that a trustee is to foresee that you are not ripped off or cheated by unscrupulous people. According to Webster's dictionary, scrupulous means having a strict regard for what is right. That may sound good, but in reality the unscrupulous people were the alleged trustees, people from the Department of the Interior and the BIA.

The Indian Reorganization Act became a law in the 1930's. Under this act Indians became wards of the US if they chose to live on the now-established trust lands. The US now has their first trusteeship over the Western Shoshone people for only those that chose to live there. The US never had trusteeship over the lands recognized and reserved in the Treaty of Ruby Valley. To this day there is not trustee over the lands under the treaty. The Old Timers never spoke about a trustee agreement with the US other than the trust lands, lands bought under the IRA.

The US tried really hard to make Indians into Americans and to introduce individual land ownership so there would be no collective ownership of lands. This was

the first introduction of greed. Then they would be able to buy their lands or take it for failure of not paying taxes, or more likely to get them drunk and give Indians a few cents.

This is happening again now, according to the terms of SB 958 the US is trying to get Western Shoshone land for 15 cents per acre. This time, however, those that want 15 cents per acre are persons that are not tribal governments, but individuals who have lost their Shoshone-ness, they are those who have been retrained to think about themselves as individuals. Land value in Western Shoshone country is not determined by Indians, it is determined by claims lawyers and the BIA or Department of Interior as a trustee and the value is not even a market value of land.

What was the market value of land in 1872 to whites? The fees the mining companies paid to get a patent were $2.50 to $5.00 per acre in 1872. The value of land to Indians was approximately 15 cents per acre. It looks like fraud, swindling and cheating by the trustees in an attempt to make the Indians look foolish in the eyes of the enlightened world, doesn't it? The distribution of 26 million will further the need for those that want this illegal fraudulent distribution.

This bill to defraud the Western Shoshone was drafted by a few Western Shoshone individuals with the aid of the BIA and was drafted into a bill by the senators and house representatives from the State of Nevada. It is told there are approximately 6,000 Western Shoshone and the amount of persons who voted in the straw vote about the distribution was approximately 1,200. In my math that is about 20% of the number of Western Shoshone. Most of those that I saw were not local people, many of them came from some where else. True, they may be members of the Temoak tribal

enrollment, however the enrollment is not supposed to be used for money distribution. I understand that the enrollment is to be used only for education and health care. I surely would be interested to see who voted. The question on the so-called straw ballot was: Do you want money? Yes or no. There was no explanation. Except they said the vote wouldn't affect Western Shoshone claims to land, and that was a lie.

I need money too, but not for our sogobee, Mother Earth, this is my home, not for waters cold or hot, not for air, not for our foods, this includes game birds, animals and etc. These are our foods along with seeds, roots and greens and all of our natural foods that grows on our Sogobee. Lots of our native foods are now gone, crowded out by weeds and grasses that were and still are introduced by whites, settlers and others. This very day the BLM. and other so-called managers are in the process of destroying pine trees and other native trees. The use of harsh chemicals is used and often the trees are burned to be replaced by other vegetation, which is considered more grasses for domestic livestock, although of course the BLM. and others will say for wild life. I find its humans trying to replace the Creator, since they are tearing down His work and replacing His work. Our creation stories tell about all the things that grew here and if they are eatable and the uses of medicinal plants.

We also lost too many of our people to the California Volunteers, vigilantes and to small pox that was used intentionally to kill the native people off. We, the Western Shoshone, lost so much of knowledge about our medicinal plant use. Our meat foods like deer and etc. were killed off wantonly in so many cases. Fur-bearing animals almost disappeared, many of these animals were used in sacred ceremonies. Our traditional life-

ways were disrupted so much.

Today our sacred places are being destroyed or are threatened to be destroyed by mining. Our sacred hot waters (labeled minerals by the US) are threatened by geothermal activities. The Beowawe geysers, which hold many creation stories, are completely destroyed for geothermal power, the sacredness of these places which is being destroyed for geothermal power, the sacredness of this place which is being destroyed is the continuation of the genocide that is being perpetrated against us. This type of genocide is death to our way of life, our connection to our Mother Earth and our Creator is being destroyed so that the sacred Little People and the spiritual helpers who live in the mountains, valleys, near hot waters and cold waters now live under fear and threat, and this is the same threat to our ways of life. It is a threat to our ways of worship. This way of worship was given to us by the Creator, and His laws and directions for Human kind is told in the stories, which I call the creation stories.

Our teachers and Gifted Ones were wiped out, wantonly destroyed by the California Volunteers and whites who went on a killing rampage in Western Shoshone country, no man, child or elderly escaped their ravage rampage, killing innocent Indians at their homes or settlements. A so-called friendly person delivered some yellow material to the Indians which was later described as the scarf that is usually worn by the Volunteers. What the volunteers didn't kill, small pox did. It is told that Indians died like flies.

It's a wonder that some of us are still here to witness the final act of genocide, a spiritual genocide that is being perpetrated against us today. This is SB 958, this will

make legal in America's way all the attempts of the past to TAKE our sacred lands from us, the very essence of our survival as traditional Western Shoshone peoples will disappear forever. This bill 958 will make the massacres OK, and it will legalize (according to the American way) the theft in 1872. It will be legalizing the fraud committed against the Western Shoshone. It will make it OK to TAKE BY GRADUAL ENCROACHMENT – just another word for stealing or theft – the lands of the Indians, the savages, who are just like the animals, who are claimed to have no rights to the land. I guess they have the right to hunt and gather as animals.

I do believe that American law reads that Indian lands will not be taken or put into the hands of others without their consent. The Western Shoshone did not ever give their consent to give or sell to the US their Sogobeeia. In a country that professes to be good, righteous, honest and upstanding, then you must kill this SB958. I ask you all that are here today let your morals, ethics and good conscience be your guide.

SEP. 8, 2002

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KEN DARROUGH
P.O. BX 21278
RENO, NV 89515

THIS TESTIMONY IS SUBMITTED IN SUPPORT OF THE IMMEDIATE PER-CAPITA DISTRIBUTION OF DOCKET 326-K'S FINAL JUDGEMENT FUNDS PLUS ITS ACCUMULATED INTEREST.

DANIEL INOUYE, CHAIRMAN, SENATE SELECT COMMITTEE INDIAN AFFAIRS
838 HART SENATE OFFICE BUILDING
WASHINGTON, D.C. 20510

OUR ABORIGINAL WESTERN SHOSHONE ANCESTORS (GREAT-GREAT-GRANDPARENTS) SUBSISTED UPON MANY DIFFERANT TYPES OF SEED, NUT AND ROOT-BEARING PLANTS AND SMALL AND LARGE GAME ANIMALS WITHIN THEIR OWN INDIVIDUAL SUBSISTENCE LAND AREAS. THEY MADE THEIR TRADITIONAL WINTER HOME-SITES IN CANYON BOTTOMS WHERE WATER AND OTHER SUBSISTENCE RESOURCES WERE AVALABLE. OUR W.S. ANCESTORS INDEPENDANTLY OCCUPIED AND USED THEIR OWN DISTINCT SUBSISTENCE LAND AREAS AND EACH ABORIGINAL SUBSISTENCE AREA DEVELOPED THEIR OWN DISTINCT "NEWE" (SHOSHONE) DIALECT.

IN DECEMBER 1861 OUR ABORIGINAL WESTERN SHOSHONE ANCESTORS TUTUWA AND JIM BIRCHIM FROM CENTRAL NEVADA MADE A PEACE AGREEMENT AT REESE RIVER VALLEY WITH NEVADA'S TERRITORIAL GOVERNOR JAMES W. NYE, THEY ACKNOWLEDGED ABORIGINAL OWNERSHIP OF THEIR OCCUPIED LAND AREAS AND IT'S ABUNDANT RESOURCES

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SENATOR DANIEL INOUYE

THEY ALSO AGREED NOT TO DAMAGE TELEGRAPH LINES, STAGE ROUTES OR WHITE PEOPLE. OUR WESTERN SHOSHONE ANCESTORS FROM CENTRAL AND SOUTHERN NEVADA DID NOT PARTICIPATE IN THE 1863 RUBY VALLEY TREATY (SEE MAP).

IN 1863 "NORTHERN" WESTERN SHOSHONE MADE AN AGREEMENT WITH THE UNITED STATES GOVERNMENT, THIS 1863 RUBY VALLEY TREATY SUPPORTED THE U.S. GOVERNMENT'S POLICY OF "ENCROACHMENT" UPON AND THE "TAKING" OF AMERICAN INDIAN'S ABORIGINAL LAND AREAS. THE RUBY VALLEY TREATY ALLOWED THE ESTABLISHMENT OF FARMS, RANCHES, MINES, RAILROADS AND THEIR COMMUNITY CENTERS (TOWNS). NORTHERN WESTERN SHOSHONE ALSO AGREED TO ABANDON THEIR ABORIGINAL LAND AREAS TO LIVE ON A FEDERAL RESERVE, AND THE DUCK VALLEY RESERVATION WAS CREATED FOR THEM IN 1877.

BECAUSE OF THE 1863 RUBY VALLEY TREATY OUR WESTERN SHOSHONE FAMILY GROUP'S ABORIGINAL SUBSISTENCE LAND AREAS WITHIN CENTRAL AND SOUTHERN NEVADA WERE GRADUALLY "ENCROACHED" UPON AND THEIR SUBSISTENCE RESOURCES WERE "CONSUMED" BY HUGE RANCHES, FARMS, MINES AND MINING "BOOMTOWNS". OUR GREAT-GREAT-GRAND-PARENTS WERE FORCED TO ABANDON THEIR ABORIGINAL SUBSISTENCE LAND AREAS IN ORDER TO SURVIVE, AND BECAUSE OUR ANCESTORS WERE INDEPENDANTLY RESPONSIBLE FOR THEIR OWN FAMILIES, THEY WERE ABLE TO "INTEGRATE" THEIR TRADITIONAL LIFESTYLE WITH WORKING FOR A "LIVING" WAGE AT SCATTERED FARMS, RANCHES, MINES AND AT HIST-

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ORICAL FARMING, RANCHING, RAILROAD AND MINING TOWNS.

OUR ABORIGINAL WESTERN SHOSHONE ANCESTORS WERE AUTHORITATIVELY IDENTIFIED, THROUGH THE INDIAN CLAIMS COMMISSION (I.C.C.) AND ANTHROPOLOGICALLY BY OMER STEWART AND JULIAN STEWARD: "... AMONG WESTERN SHOSHONE THE HOUSEHOLD WAS VERY NEARLY A SELF-SUFFICIENT ECONOMIC UNIT AND AS SUCH AN INDEPENDANT SOCIAL AND POLITICAL UNIT ... THE WESTERN SHOSHONE IDENTIFIABLE GROUP TO BE A LAND-USING ENTITY WITH CULTURAL AND ECONOMIC BUT LITTLE POLITICAL COHESIONS, THEY DID NOT AND DO NOT TODAY FORM A SINGLE POLITICAL ENTITY..."

THE I.C.C. FURTHER DETERMINED THAT: "... THERE EXISTED A WESTERN SHOSHONE "IDENTIFIABLE" GROUP WHICH ABORIGINALLY EXCLUSIVELY USED AND OCCUPIED A LAND AREA IN NEVADA AND CALIFORNIA ... UNTIL BY GRADUAL ENCROACHMENT BY WHITES, SETTLERS, AND OTHERS ... THE WAY OF LIFE OF THESE (AMERICAN) INDIANS WAS DISRUPTED AND THEY WERE DEPRIVED OF THEIR (ABORIGINAL) LANDS ... FINDS THAT THE UNITED STATES (GOVERNMENT) WITHOUT PAYMENT OF COMPENSATION, ACQUIRED, CONTROLLED AND TREATED THESE (ABORIGINAL) LANDS OF THE WESTERN SHOSHONE (IDENTIFIABLE) GROUP AS "PUBLIC" LANDS..."

THE I.C.C. THROUGH DOCKET 326-K LEGALLY DETERMINED THE "LIABILITY" OF THE UNITED STATES GOVERNMENT. ON AUGUST 15, 1977

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THE I.C.C. MADE A FINAL MONETARY AWARD FOR DOCKET 326-K TO THE WESTERN SHOSHONE IDENTIFIABLE GROUP: "... FROM THAT POINT ONWARD, THE WESTERN SHOSHONE ACQUIRED A VESTED PROPERTY RIGHT TO THE BENEFICIAL OWNERSHIP OF THE JUDGEMENT FUND... THE UNITED STATES IS ACCOUNTABLE FOR MISMANAGEMENT OF THE TRUST FUND... THE UNITED STATES HAS ALSO OBLIGATED ITSELF TO EARN OR PAY INTEREST UPON SUCH FUNDS..."

THE COMMISSIONER OF INDIAN AFFAIRS "RESULTS OF RESEARCH" REPORT (MARCH 11, 1980) CONCERNING DOCKET 326-K CONCLUDES: "... IT SHOULD BE NOTED EARLY IN THIS REPORT THAT THE AWARD DOES NOT DERIVE ESSENTIALLY FROM THE WESTERN SHOSHONE TREATY OF OCTOBER 1, 1863, SIGNED AT RUBY VALLEY, NEVADA. THAT TREATY DESCRIBED ONLY THE "NORTHERN" PORTION OF THE WESTERN SHOSHONE LANDS... THE WESTERN SHOSHONE ENTITIES WERE AND ARE EXTREMELY SCATTERED... IT IS NOT POSSIBLE TO DESCRIBE THE WESTERN SHOSHONE IN TERMS OF FORMING A TRIBE OR A GROUP OF ORGANIZED TRIBES... THAT MANY WESTERN SHOSHONE DESCENDANTS ARE NOT AND NEVER HAVE BEEN ASSOCIATED WITH ANY RESERVATION ENTITY...

CONGRESSIONAL "COMPENSATION" LEGISLATION FOR DOCKET 326-K MUST INCLUDE LEGAL RECOGNITION FOR OUR ABORIGINAL WESTERN SHOSHONE INDEPENDANT FAMILY GROUPS.

1) THAT IN TRIBUTE AND RESPECT FOR OUR WESTERN SHOSHONE

SENATOR DANIEL INOUYE SHT 5 OF 5

GREAT - GREAT - GRANDPARENTS ELIGIBLE DESCENDANTS MUST POSSESS AT LEAST ONE-QUARTER BLOOD DEGREE OF WESTERN SHOSHONE ANCESTRY IN ORDER TO PARTICIPATE.

2) THE PER-CAPITA (INDIVIDUAL SHARE) DISTRIBUTION OF DOCKET 326-K'S MONETARY FINAL JUDGEMENT AWARD PLUS ITS ACCUMULATED INTEREST TO EACH ELIGIBLE INDIVIDUAL WESTERN SHOSHONE DESCENDANT.

EACH INDIVIDUAL DESCENDANT OF THE ABORIGINAL WESTERN SHOSHONE INDEPENDANT FAMILY GROUP'S FROM CENTRAL AND SOUTHERN NEVADA SUBSISTENCE LAND AREAS HAS AN EXISTING INHERENT RIGHT TO REPRESENT THEIR OWNSELVES, AND NO ONE CAN REPRESENT OR SPEAK FOR AN INDEPENDANT WESTERN SHOSHONE FAMILY GROUP OR INDIVIDUAL BUT THEMSELVES.

SUBMITTED BY: Ken Yarrough September 8, 2002

AN INDIVIDUAL DESCENDANT OF CENTRAL & SOUTHERN NEVADA'S ABORIGINAL WESTERN SHOSHONE FAMILY GROUPS, WITH 7/8 (SEVEN-EIGTHS) BLOOD DEGREE OF WESTERN SHOSHONE ANCESTRY.

NOTE: ADDITIONAL CONGRESSIONAL LEGISLATION SHOULD BE REQUIRED TO ADDRESS THE COMPLEX LAND (REAL PROPERTY) ISSUES, INCLUDING HUNTING & GATHERING AND BURIAL SITES BUT NOT BE A PART OF DOCKET 326-K'S "MONETARY" COMPENSATION LEGISLATION.

TESTIMONY OF PAUL M. DURHAM REGARDING THE WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT S. 958

March 21, 2002

Jeffrey M. Jones
Paul M. Durham
Kevin R. Pinegar
David F. Klemp
R. Stephen Marshall
Douglas A. Taggart*
Wayne D. Swan
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S. Robert Bradley
David L. Arrington
J. Mark Gibb
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Max B. Lewis
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John Paul Kennedy

*Resident in Ogden

My name is Paul M. Durham[1]. My partner, John Paul Kennedy,[2] and I are the attorneys for hundreds of Western Shoshones who are proponents of legislation to obtain distribution of the Western Shoshone Judgment Fund. Our clients, who include both the old and the young, are generally not wealthy people but must work hard to earn their living. Many reside in Nevada within the aboriginal claim area of the Western Shoshones. A significant number, however, also reside outside the claim area in neighboring towns and states. While a large percentage of them are full blood Western Shoshones, many are only partly Western Shoshone. Even though this is a diverse group, they all have one thing in common: They feel that enough time has passed and Congress should act now to approve this legislation, which will enable them to receive a distribution of the Judgment Fund appropriated in 1979 in satisfaction of the Western Shoshone claim.

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1 I received my B.A. degree (magna cum laude) from the University of Utah in 1977. In 1980, I received my J.D. degree from the University of Utah where I was the Managing Editor of the Utah Law Review. I am the founding partner of Durham Jones & Pinegar, a 25-attorney law firm in Salt Lake City, Utah, which represents Indian interests among other areas of practice. John Paul Kennedy is a member of Durham Jones & Pinegar, and has a long and distinguished law practice in the field of Indian affairs, as indicated by his brief biography below. Mr. Kennedy is currently on assignment in Russia for 3 years and has asked me to assist with this matter in his absence.

2 Mr. Kennedy received his A.B. degree (cum laude) from Harvard in1963. In 1966 he received my J.D. from Stanford Law School where he was a member of the Board of Editors of the Stanford Law Review. He has practiced in the field of Indian Affairs for over twenty-eight years, and during that time he has represented eight different tribal governments and numerous individual Indian people. Mr. Kennedy specialized in Indian land matters, both with respect to litigation as well as legislation. For example, in the 100th Congress, he was successful in obtaining passage of legislation which restored several thousand acres to the Goshute Indian Reservation. In prior years, as counsel to the HopiTribe, through legislation, litigation, and negotiation, he was able to restore nearly one million acres to the Hopi Reservation and laid the ground work for the restoration of substantially more land to the Hopis.

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The Shoshone People

From time immemorial the Shoshones occupied and controlled a vast crescent-shaped area, stretching from Wyoming on the northeast end to Death Valley, California, on the southwest end. Their lands included parts of Wyoming, Idaho, Utah, Nevada, Oregon, and California.

Because of the harsh conditions of the land, the Shoshones generally lived in small groups which were semi-nomadic. Depending upon the season and prevailing conditions, the family groups relied on large sustaining areas for their existence. These areas included places to gather pinenuts, herbs, roots, and grasses, places to hunt deer, antelope, prairie dogs, birds, and other animals, and places to engage in simple agricultural pursuits. Traditionally, of course, they did not have cattle, sheep, or horses. Periodically, some family groups would join with others to celebrate religious events, usually associated with the seasons of the year. In this process, family leaders counseled with other family leaders from their general areas in a loose-knit fashion which was the nearest form of a tribal organization which the Shoshones had.

Thus, the Shoshones were characterized from the beginning as a collection of independent and diverse bands. Each group had its own particular needs and interests, which often conflicted with others--even those nearby. Anthropologist Julian H. Steward, in his work on the Western Shoshones, observed as follows:

> The Shoshonean exploitation of the Great Basin's environment was so simple that the individual family was, in most respects, necessarily the independent, self-supporting unit . . . . among Western Shoshone the household was very nearly a self-sufficient economic unit and as such an independent social and political unit .... The subsistence areas seasonally occupied and used by each aboriginal Western Shoshone family covered an area of approximately 40 to 50 square miles depending upon the availability of seed, roots, wildlife and water.[3]

Similarly, the BIA noted in its report of March 11, 1980:

> The Western Shoshone entities were and are extremely scattered. It is not possible to describe the Western Shoshone in terms of forming a tribe or a group of organized tribes .... [M]any Western Shoshone descendants are not and never have been associated with any reservation entity. One reason for the development of this situation was the strong proclivity of Western Shoshone families to attach themselves to scattered ranches and other establishments in the Nevada-California area.

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[3] Steward, "Basin-Plateau Aboriginal Sociopolitical Groups," Bureau of Ethnology Bulletin 120 (1928).

In the 1850's, with the discovery of gold in California, many non-Indian miners and ranchers began to encroach into the Shoshones' territory. To avoid conflict, the United States sent Indian agents into the area to attempt to negotiate agreements with the Shoshones. The lands now known as the Western Shoshone area (the eastern third of Nevada and part of California) were the subject of a treaty signed in 1863, called the Treaty of Ruby Valley. Many Western Shoshone group leaders (but certainly not all) signed that treaty, which promised compensation and a reservation to the Western Shoshones in exchange for the right to engage in a variety of uses of the Shoshone land. It is undisputed that the United States failed to honor its commitments, which were inadequate in any event in terms of what would have been legally fair consideration for the treaty.

The Western Shoshone Claim under the Indian Claims Act

In partial response to the national outcry for justice for American Indians who had been the victims of broken treaties and unfavorable court decisions, denying claims against the United States, Congress enacted the Indian Claims Act in 1946. The purpose of that legislation was to provide a remedy to Indians who were the descendants of those who had been mistreated in the past by the federal government. A claim (Docket 326-K) involving the Western Shoshone territory was filed by the Washington, D.C., Indian law specialists Wilkinson, Cragun & Barker, and was successfully prosecuted to judgment, which was finally entered in 1977, about twenty-six years after commencement of the action. Other Shoshone claims were also taken to final judgment, funds appropriated, and the money distributed. The Western Shoshone claim was the last in the series. It is the only major Shoshone claim which has yet to be distributed.[4]

After entry of the judgment, a group of Western Shoshones who from the outset had opposed bringing the claims case attempted to intervene in that case. Their efforts were rejected by the courts. When the judgment became final, the same group sought to block the appropriation of money to pay the judgment. That effort also failed and in 1979 Congress appropriated approximately 26 million dollars to compensate the Western Shoshones for the taking of roughly 24.4 million acres. The average date of taking was determined to be 1872. The Judgment Fund was placed on deposit under the supervision of the Bureau of Indian Affairs, and today has increased with accumulated interest to a total of approximately $130 million.[5]

In 1973 Congress enacted 87 Stat. 466 (25 U.S.C. Sec. 1401, et seq.) which was designed to serve as a generic statute for handling the distribution of all Indian Claim judgments entered after that date. That law allowed each Indian group to determine a plan of distribution, which was then subject to BIA approval and congressional review within a maximum of 270 days after appropriation of the funds to satisfy the judgment. Efforts to arrive at a Western Shoshone plan

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[4] Some minor ancillary claims are still being adjudicated. For example, the Western Shoshone water and accounting claims are still pending.

[5] The law firm which handled the litigation before the Indian Claims Commission was compensated for its work shortly after the funds were appropriated in 1979.

of distribution within the statutory time limit, however, were met with division and disagreement among the various factions, bands, and groups. As a result, nothing happened and the funds remained undistributed.

The Dann Family

A handful of Western Shoshones have attempted to delay the distribution of the Judgment Fund pending resolution of certain litigation involving the Dann family, a group of Western Shoshone Indians living in central Nevada. The Danns were ranchers who were grazing their livestock on lands supervised by the Bureau of Land Management. The Danns claimed that the lands in question belonged to them and had been used by their ancestors years before.

The United States brought a trespass action against the Danns because they did not have valid grazing permits. The Danns defended by asserting that the land belonged to them and therefore they did not need permits. Initially, the district court held that the Indian title to the land had been extinguished when the claims case judgment was certified for payment. United States v. Dann, Civil No. R-74-60 (District of Nevada, January 5, 1977). After a trip to the Ninth Circuit and back to the district court, the case was again appealed. The Ninth Circuit reversed the district court, holding that payment had not occurred under the Indian Claims Act because there was no plan of distribution. United States v. Dann, 706 F.2d 919, 926 (9th Cir. 1983). The Supreme Court reversed, holding that "payment" occurred under the act when the funds in question were placed by the United States into an account for the Western Shoshones. United States v. Dann, 470 U.S. 39, 105 S.Ct. 1058, 1062-64 (1985).

The case was returned to the district court which ruled that the Danns had a claim to the land, and the case again went to the Ninth Circuit. This time, however, the Ninth Circuit held that Indian ranchers could not rely on a tribal aboriginal-title defense to the government's trespass action. The Ninth Circuit left open a possible individual aboriginal title claim, but set strict standards of proof. 865 F.2d 1528 (9th Cir. 1989). The Supreme Court denied cert. In subsequent proceedings, the Danns abandoned any individual claims, and the Bureau of Land Management is now locked in a controversy concerning livestock reduction. The Danns are reported to have many hundreds of head of livestock which are illegally grazing on BLM controlled land. They have refused to remove their livestock voluntarily, despite the court rulings.

Every client who has mentioned the Danns to me has made a point of disclaiming any interest or sympathy with their cause. The Danns do not represent the Western Shoshone people or their views about the distribution. The Danns are relatively wealthy people who do not need or care about the judgment distribution. Instead, the Danns and the few who support them seem to be interested in maintaining their hold on the land so that they can carry on their livestock business.

Thus, the years of litigation have resulted in only delays, frustration, and now confrontation. The hope that all Western Shoshones would benefit from the litigation has been

unfulfilled. Indeed, some are of the opinion that the unsuccessful litigation has only served to hurt the Western Shoshones in their pleas to Congress.

Prior Legislative Efforts

In 1986, some elderly Western Shoshones desiring distribution approached Mr. Kennedy as a lawyer specializing in Indian matters and asked for help. His first response was to advise them to seek relief from the leaders of their respective bands. Their answer was that they had done this where they could. In some instances, however, these Indians were not formally enrolled in any band or tribal group. While they were Western Shoshone descendants, they were not living on any reservation and claimed no affiliation with any particular band. These people had no leader to which they could appeal.

The other Western Shoshones who asked Mr. Kennedy for help and who were living on various reservations told him that they had requested help from their leaders, but because of the actions of a few, their requests had been ignored.

With this negative information at hand, Mr. Kennedy told our clients that in his opinion the only solution for them would be to obtain an act of Congress approving the distribution. He advised them that this would be a lengthy and costly process.

Because our clients could not afford to hire a lawyer on an hourly basis, they asked Mr. Kennedy to prepare a contingent fee agreement for them, which he did and submitted it to the BIA for review. The BIA reviewed the agreement and made several suggestions which were adopted. When the final contract was submitted for approval as to form, the BIA took the position that it was a contract with individuals and did not require BIA approval. The contract has been modified somewhat. The fee which we are entitled to receive is four percent (4%) of the amount distributed to our clients.

With the help of many clients, Mr. Kennedy drafted a proposed bill and then he contacted several members of the 101st Congress to obtain sponsors for the legislation. Because most of our clients reside within Rep. Barbara Vucanovich's district, Mr. Kennedy requested that she consider being the lead sponsor for the Bill. After careful consideration, she agreed to do this. She was then joined by five other Members of Congress whose districts surrounded hers.

A hearing was held on April 26, 1990, on H.R. 3384. Several proponents for the legislation testified as well as several opponents. The Department opposed the legislation, enumerating its objections. Following the hearing, the sponsors of the legislation requested a mark-up, but the term drew to a close before action could be taken.

During the summer of 1990, numerous additional public meetings were held throughout Nevada, with hundreds in attendance. The support for the distribution was overwhelming. In addition, Mr. Kennedy also engaged in discussions about the legislation and possible changes to accommodate major concerns. Copies of possible changes to meet the issues raised by the BIA were also sent to the Central Office of the BIA.

During the 102nd Congress, a second bill was introduced as H.R. 3897. A hearing was held on April 30, 1992, and a report published as Serial No. 102-55. That bill died in committee due to efforts which were commenced to negotiate some of the issues.

During the 106th Congress, Senator Harry Reid introduced a bill which was the result of a suggestion offered by the Bureau of Indian Affairs as modified by the Senator's office. The bill was dropped on May 27, 2000, as S. 2795.

The Issues Presented by this Legislation

A. Eligibility

Under the proposal offered by the Distribution Association, those who would be eligible to receive a proportionate per capita share include all quarter-blood Western Shoshone descendants who have not already shared in another judgment. Thus, the requirements for eligibility are actually two: The first requirement is at least one-quarter Western Shoshone blood quantum. The BIA would ultimately be responsible for making such determinations as has been the case in dozens of other prior distribution situations.

The second eligibility requirement specifies that the person must not have already participated in another judgment distribution. This is a standard restriction which has been imposed in virtually every other distribution case. The only exception to this should be those Indians who shared in the California awards, which consisted of very small payments in comparison to the amounts at issue with this legislation.

B. Percentage of Distribution

Our proposed bill provides for 100% distribution of each individual's share with no hold-backs for tribal programs. This is appropriate for the following reasons: First, many Western Shoshones who would be eligible for distribution are not enrolled on any reservation. Second, many others reside far from their home reservations and do not return except rarely. Third, most of the reservations where Western Shoshones do reside are comprised of only a fraction of Western Shoshone people along with other tribal groups. For example, at Duck Valley in north-central Nevada along the Idaho border, of 1500 reservation residents, only about one-fourth of the people are Western Shoshones, with the remainder being Northern Paiute. The Paiutes control virtually all of the seats on the tribal council, and thus they also control how the tribal money is spent, who gets which jobs and which benefits. Generally (as might be expected), the Paiutes on that reservation are treated vastly more favorably than the Western Shoshones. To make matters worse, the Northern Paiutes have already received 100% of their moneys under their judgment distribution. Consequently, if a portion of the Western Shoshone money were given to that tribe, it would benefit Northern Paiutes, not Western Shoshones. This situation is also found at many other locations throughout Nevada such as Fort McDermitt, Fallon, Reno-Sparks, and Goshute.

C. Protective Provisions

During the course of discussing the possible provisions of the Bill with the various groups and individuals interested in the legislation, the need for several different types of protective provisions became evident. For example, some of the opponents to the legislation asserted that acceptance of a share of the Judgment would constitute the sale of ancestral lands. Because the Judgment was primarily designed to compensate present-day Western Shoshones for the taking of aboriginal lands by the government during the 1800's, a provision was inserted into the proposed Bill which states that receipt of a share of the distribution would not be construed as a sale of ancestral lands.

Similarly, some claimed that acceptance of distribution would waive treaty rights. Because of this assertion, another provision was included in the Bill which specifies that acceptance of a share of the distribution shall not be construed as a waiver of any existing treaty rights. In addition, the Bill states that executive order reservations set aside for Western Shoshones are to be protected.

Finally, because many of those who had been advocates for distribution faced threats and intimidation from those who wanted to continue the fight for land, the proposed Bill states that it is unlawful for any person or tribal government to discriminate against any person who accepts a share of the distribution.

D. Attorney's Fees

When his clients first came to Mr. Kennedy, they indicated that they did not have any resources with which to pay attorney's fees for whatever services would be required to obtain distribution of the fund. They asked whether he would be willing to handle the case on a contingent-fee basis, which he agreed to do. Unless both our clients and Mr. Kennedy are protected with respect to this matter, they will be denied the right to counsel in pursuing this distribution. They were unable to obtain any help on their own, and they are unable to pay for assistance any other way.

Some people, I am sure, strongly support distribution of the Fund, but they also strongly feel that they would like to get their money without having to pay any lawyer for any of the services required to obtain distribution of the Fund. Our clients feel that all who benefit from our efforts to obtain passage of this legislation should share equally it the costs.

The attorney's contract specifies a 4% fee, which "shall be paid out of the funds in such [Judgment Fund] Account prior to any funds being paid to Client from such Account." Consistent with that contract provision, the Bill, like dozens of other distribution statutes, allows the BIA to deduct legal fees and costs prior to the distribution of the individual shares. The Bill only provides for payment of the attorney's fees with respect to those individuals who have entered into a contract with the attorney.

By having the BIA supervise the payment of the fees under the terms of this Bill, the various individual clients are given a measure of protection they otherwise would not have. At the same time, trying to collect relatively small amounts of money from a large group of individuals creates enormous practical problems for the attorney.

Precedent exists for deducting attorneys fees from distribution statutes. At least 42 other statutes have contained an attorney's fees provision in claims cases. Of course, each case is unique-as is the Western Shoshone case.

E. Individual Action

The United States has a definite preference to deal "government to government" in matters involving Indians. In this case, of course, the prime movers are not tribal governments, but individual Indians instead. Again, however, this case presents different concerns which justify Congress' taking action on the basis of the desires of individuals rather than tribal governments. First, as noted above, there is no "Western Shoshone government." No one body is authorized to speak for all possible beneficiaries for this judgment. The claims action was not brought on behalf of a tribe, but rather on behalf of an identifiable group of descendants. Second, many (perhaps even a majority) of the beneficiaries are not members of any recognized tribal organization. Third, as is apparent to everyone, after more than twenty years, the various tribal organizations which have been involved continue to be unable to arrive at any agreement or plan which would allow distribution. The lack of a consensus plan is not surprising given the broad diversity of the various bands and the differences among individual Western Shoshones who are not members of any band or group. Granting more time and/or money to these tribes would be an exercise in futility and would only delay justice for thousands of Western Shoshones who want distribution now.

The experience of the Seminoles' distribution is an instructive precedent on this point. In their case, after the BIA recommended an approach, two opposing factions delayed distribution until finally legislation was introduced. When the government-to-government issue was raised, the Congress allowed the record to remain open for one month to give the groups one last opportunity to agree on a plan. The time passed with no agreement and Congress acted. In this instance, only the Duckwater Tribe and the South Fork Band of the Te-Moak Tribe have submitted any suggestions. It is important to note that both of those suggestions call for distribution of the judgment fund. Each of those suggestions, however, contains numerous other "wish-list" items, which serve only to spell doom for any legislation. For example, the Duckwater proposal seeks to enlarge the tribal reservation by approximately 2 million acres, including forest lands and private lands. That proposal also seeks to have the Tribe acquire significant additional water rights and other interests. Finally, that proposal also seeks large amounts of additional funding and hunting and fishing rights.

While all of these wish-list items are desirable from a tribal standpoint, they pose serious issues which will undoubtedly involve opposition from many quarters. In short, the "alternatives" which have been suggested, are really not alternatives at all, but rather constitute a

plan to have the distribution delayed or killed altogether. To date, no Member of Congress has been willing to introduce any alternative bill. The only legislative plans which have been introduced have been the plans offered by the Western Shoshone Judgment Distribution Association.

F. Support of the People

In 1998, under the supervision of the BIA, a referendum was held with all Western Shoshones who were one-quarter blood invited to participate. Over 95% of those voting in the secret-ballot election expressed their desire to see the fund distributed as soon as possible. The referendum was held after many public meetings, after attempted negotiations with the BLM and BIA, after litigation was completed, and after years and years of waiting.

Conclusion:

It has now been over 50 (fifty) years since the original Western Shoshone claim was filed. After years of litigation under the Indian Claims Act, judgment was entered in favor of the claimants. After more litigation, funds to satisfy the judgment were appropriated. More than twenty years have passed during which even more litigation, negotiations, and extensive discussions have taken place. Yet, despite all of this time and effort, no distribution has taken place.

The hundreds of Western Shoshones whom we represent are frustrated and discouraged with the federal government. Those who are members of tribal organizations have the same feelings with respect to their local governments.

The time has come for Congress to act on this legislation.

Paul M. Durham and
John Paul Kennedy
DURHAM JONES & PINEGAR,
Attorneys for
Western Shoshone Judgment
Distribution Association
111 E. Broadway, Suite 900
Salt Lake City, Utah 84111
(801) 415-3000
(801) 415-3500 (fax)

STATEMENT FOR THE RECORD
ON
"WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT"
S. 958 AND H.R. 2851

Chairman Inouye, committee members and staff, "thank you" for allowing me to come before you today. My name is Glen Hooper and I am here today to represent a **coalition of Yomba Shoshone members**, the Yomba Committee, who are in opposition to the distribution proposal being presented by the attending Yomba Tribal Council. *The Yomba Committee is composed of enrolled members of the Yomba Shoshone Tribe,* ***85% of whom support the approval the "Western Shoshone claims Distribution Act" S. 958 and H.R. 2851, as written.***

The Yomba Committee requests this "Statement" be entered into the record and inclusion into the congressional hearings based upon the Yomba Shoshone Tribe Constitution & By-laws which allow the tribal membership a voice in tribal affairs above the executive role of the Tribal Council members elected capacity[1].

The Yomba reservation is located in isolated central Nevada 50 miles South of Austin, on an unpaved road surrounded by mountainous terrain and low rolling sagebrush covered hills. The most recent enrollment statistics indicates there are 203 members and approximately **15% live on the reservation**. Though the enrollment is minuscule compared to total numbers of Western Shoshone, Yomba's role as one of the 1981 BIA designated "successor" tribes[2] for the 1973 Clams Distribution Act elevated this status.

The Yomba Committee was established to benefit our tribal membership, to gather information on current events concerning the Shoshone claims and to have a voice in discussions with other Shoshone committees or governmental entities. The need for the Committee was paramount to our membership because the Yomba Tribal Council represented by the Chairman supported non-tribal members (Dann family) and non-tribal organizations (Western Shoshone National Council) that opposed distribution in direct opposition to the wishes of the majority of the Yomba membership[3].

In 2000 a formal petition of the Yomba membership asking for support of the "Act" was circulated. Approximately 85% of the membership signed in favor of the petition. Almost all of the residents of the reservation, including two tribal council members signed. A new petition was circulated, to verify the outcome to the previous year petition. The results were the same as 2000.

Although the outcome of both petitions clearly reflect support for the distribution of the "Act", the Tribal Council continues to publicly oppose the membership on this issue with no compromise. Consequently there has **been little to no participation** on the part of the membership on the **Tribal Council's plan** which is being advanced by their lawyer, Mr. Tom Leubben, in this congressional hearing. The 2000 chairman and the tribes's legal representative has gone so far as to suggest that 326-K is a "tribal asset" and individual members have no right to it[4].

The Yomba Committee is involved with the majority of Western Shoshone people's effort to seek resolution to the long standing controversy due to the decades of debate -

1. December 20, 1939, Constitution & By-laws of the Yomba Shoshone Tribe, Article IV Section 3, page 4
2. 1980 designated successor tribes:TeMoak (Elko-Battle Mountain-Wells-South Fork), Ely, Duckwater, Yomba
3. Memo from Yomba Tribal Council Chairman
4. 1990 Hearing H.R. 3348 - page 156 & 160

on land verses money - where there has been no presentation of a "comprehensive land plan". After years of litigation, discussion, and transient reservation leadership some of whom did not negotiate with the United States in good faith due to an ALL or NOTHING goal regarding the land - today the Western Shoshone people speak. They now demand the debate be brought to an end and the distribution be made as expeditiously as possible. The following statements further Yomba Committees' position:

1. In addition to the 2000 -2001 petitions, many of our members voted in the 1998 straw poll vote which showed that the desires of the Yomba Shoshone coincides with other Shoshones. Many of who support distribution with 96% voting in favor of 100% per capita to a quarter degree blood and only 4% voted against it.
2. The delayed distribution by the politically and legally savvy for 24 years is viewed as a direct insult and shows a lack of respect for the elders-- most of whose time has passed without resolution and retribution for the loss of their ancestral lands.
3. The U.S. Court of Claims issued settlement and as with any litigant, the Shoshones are due their rightful payment.
4. The membership supports the perpetual education fund component of the "Act".
5. 85% of the membership lives off the reservation, their head-count is included in federal funding formulas, **yet most funding is restricted to the interior boundaries** of the Yomba reservation with the exception of minimal education funds. The Yomba membership therefore supports the 100% per capita with no 20% hold back. The beneficial use of the 20% would apply only to on-reservation residents, half of whom are not enrolled members of Yomba and not legally entitled to benefit from the Shoshone claims. Additionally, off-reservation Yomba members are **not entitled to vote**, which further lessens the control of the utilization of their share of the 20% hold back and is, therefore **discriminatory**.
6. In what can be termed a "betrayal of trust", the Shoshones had for a fair and equitable solution, some where along the line the people were forgotten in what seems to be ongoing litigation. Shoshones feel even their traditional cultural beliefs have been exploited by a few in the promotion of their personal endeavors. Financial solicitation nationally and internationally through the use of the "Western Shoshone" name is becoming intolerable to many who see through this facade. The shameful claim of "authority" has <u>not been granted</u> by the Western Shoshone people to any one person or organization. It is hoped that distribution of the settlement funds will end this cycle of use and abuse.

We, the "grassroots" people, the MAJORITY of the Yomba tribal membership request the 107th congress approve the bipartisan legislation currently being proposed by Nevada's representatives, Senator Harry Reid, Senator John Ensign (S. 958) and Congressman Jim Gibbons (H.R. 2851). Thank you.

POSITION PAPER
OF THE
YOMBA SHOSHONE TRIBE MEMBERSHIP

Congressional Representatives: March 8, 1999

We, the undersigned Yomba Shoshone Tribe members hereby denoted according to the Yomba Shoshone Tribe Enrollment Ordinance, as specified in the Yomba Shoshone Tribe Constitution & By-Laws, reflect the majority of the membership voting by such petition - hereafter shall be conclusive and binding upon the issue at hand. Through this petition signed by the majority of the Yomba Shoshone Tribal members, it is hereby determined that the undersigned persons, request the US Government through the Congressional Representative to recognize this petition because of the following reasons:

1). The Yomba Tribal Council has historically ignored and *not recognized* any such petitions arising from local or domestic issues that requested formal resolution by said membership.

2). The *majority of Yomba Shoshone Tribe members reside off the Reservation* in neighboring urban areas and are not assisted by any services, other than minimal education money, as contracted by the Yomba Tribal Council from the U.S. Government.

3). The Yomba Shoshone Tribe *formal organizational structure does not provide for the authority over or benefits to members who reside off the Reservation* therefore a 20 - 80 distribution plan is inequitable as specified within the 25 Code of Federal Regulations.

4). The Yomba Shoshone Tribal members did have the opportunity to vote during the recent series of meetings conducted by the Western Shoshone Steering Committee which was monitored by the Bureau of Indian Affairs personnel in June 1998 to determine the outcome of the Western Shoshone Claims Distribution Act and find this strategy equatable to initiate the claims distribution process.

5). The undersigned Yomba Shoshone Tribal members *oppose* the Yomba Tribal Council Chairman's letter with attached Tribal Council Resolution stating authority over the total membership on the position of the Claims Distribution process.

6). The Western Shoshone Claims Distribution Act is *supported by a majority of members who want closure to this Claims Distribution issue* after allowing many years of ongoing effort by the Western Shoshone National Council to acquire ownership of said land in question.

APPENDIX 10

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

WASHINGTON, D.C. 20245

IN REPLY REFER TO:

Tribal Government Services

JAN 22 1982

Memorandum

To: Phoenix Area Director

From: Acting Deputy Assistant Secretary - Indian Affairs (Operations)

Subject: Amended Results of Research Report on Western Shoshone Award in Docket 326-K

This memorandum replaces that of August 20, 1981, on essentially the same subject, and constitutes an amendment to the original Results of Research Report of March 11, 1980, relating to the subject award. This action is prompted by the Bureau's overall policy to designate successor tribes as beneficiaries of claims awards whenever possible in order that there might be maximum opportunity for those tribes that so wish to develop programming proposals for the use of judgment funds.

In this instance it is clear, as indicated in the March 11, 1980, report, that all of the tribes cited below are composed of individuals who are at least in part Western Shoshone and who have probably not participated in those awards which would preclude them from being beneficiaries of this one:

1. Te-Moak Bands of Western Shoshone Indians (includes Elko, Battle Mountain, South Fork and Wells); estimated total enrollment is 1,200.

2. Duckwater Shoshone Tribe of the Duckwater Reservation; enrollment is about 230.

3. Yomba Shoshone Tribe of the Yomba Reservation; enrollment is about 300.

4. Ely Indian Colony; enrollment is about 170.

Consequently, we are designating these tribes as tribal successors to the Western Shoshone entity of the period of 1853 - 1872 (the California and Nevada taking dates) and beneficiaries of a part of this award. The remaining beneficiaries consist of all other persons of Western Shoshone ancestry, in their individual capacity, who otherwise meet the criteria detailed in the March 11, 1980, Results of Research Report.

In connection with this determination, several additional items of explanation are in order. First, it is expected that the method employed to establish tribal shares, which has been explained at Western Shoshone general meetings, will be

RECEIVED
JAN 29 1982
PHOENIX AREA DIRECTOR

RECEIVED
FEB 01 1982

Yomba Shoshone Tribe
HC 61 Box 6275
Austin, NV 89310-9301
Tel. (775) 964-2463
Fax (775) 964-2443

August 5, 1999

U.S. Senator Harry Reid
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reid,

We understand that you have met recently with representatives of the Duckwater Shoshone Tribe and the Western Shoshone Claims Distribution Steering Committee to discuss the distribution of the judgement funds from Indian Claims Commission Dockets 326-A and 326-K We have reviewed a draft bill providing for distribution, and wish to communicate our concerns with its content and the process by which this is occurring.

First, I want to make clear that the Yomba Shoshone Tribe has no objection to the distribution of the proceeds of ICC Docket 326-A. We strongly oppose, however, the distribution of the Docket 326-K judgement funds at this time.

As you may be aware, the issue of Western Shoshone land rights is currently before the Inter-American Commission on Human Rights, which recently issued precautionary measures against the United States pending a resolution of the issues (correspondence attached). In the precautionary measures, the Court requested that the Untied States refrain from taking any action which might irreparably harm the rights at issue in that case. It has always been our concern that a distribution of the Docket 326-K judgment monies, without a corresponding negotiated, legislated resolution of Western Shoshone land rights, would effectively leave the Western Shoshones as a permanently landless Native American Nation.

It is our position that the judgement funds from the ICC proceedings should *not* be distributed in the absence of a negotiated land rights settlement with the Western Shoshone Nation as a whole. It is clear to us that once the Docket 326-K judgment fund has been distributed, Congress will have no further reason to concern itself with our desperate need for an adequate and economically viable land base. Therefore, we must oppose any legislative attempt to distribute the judgement funds which does not include a satisfactory resolution of the issue of Western Shoshone land rights. Please find enclosed a copy of our Tribal Council Resolution in this regard.

I wish to reiterate our willingness to enter into negotiations, together with the other Western Shoshone governments, to resolve these issues.

Yours truly,

Kevin Brady Sr.
Tribal Chairman

cc: Jim Gibbons, Member of Congress
Richard Bryan, Senator State of Nevada
Daisy West, Tribal Relations Specialist US Department of Interior
Larry Piffero, Co-Chairman Western Shoshone Steering Committee
Elwood Mose, Chairman Te-Moak Council
Ron Apodaca, Chairman Ely Shoshone Tribe
Tim Thompson, Chairman Duckwater Shoshone Tribe
Nevada Penoli, Chairperson Wells Band
Lydia Johnson, Chairperson Battle Mountain Band
Marvin McDade, Chairman South Fork Band
Glenn Wasson, Chairman Winnemucca Band of Western Shoshones
Fred Drye, Tribal Operations Western Nevada Agency Bureau of Indian Affairs
Alvin Moyle, Chairman Fallon Business Council
Marvin Cota, Chairman Duckvalley Shoshone Paiute Tribe
Carrie Dann, Western Shoshone Defense Project
Wilbur Woods, Chairman Elko Band
Chief Raymond Yowell, Western Shoshone National Council
Wayne Nordwall Esq., Phoenix Area Director Bureau of Indian Affairs
Robert Hunter, Superintendent Western Nevada Agency Bureau of Indian Affairs

Western Nevada Agency

RELATING TO THE ESTABLISHMENT OF A WESTERN SHOSHONE JUDGMENT ROLL AND PROVIDING FOR THE APPORTIONMENT AND DISTRIBUTION OF THE AWARD IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 326-K

HEARING

BEFORE THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

H.R. 3384

WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT

HEARING HELD IN WASHINGTON, DC
APRIL 26, 1990

Serial No. 101-61

Printed for the use of the Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1991

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Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-036844-8

Mr. Yowell.

Mr. YOWELL. First of all, of course, I would say that H.R. 3384 needs to be stopped. It needs to not go any further.

Mr. OWENS. Right. I got that message loud and clear.

Mr. YOWELL. Thank you. I wanted to emphasize that.

Mr. OWENS. Yes.

Mr. YOWELL. And certainly I will allude to Mr. Ike's presentation that we do need additional lands. We need the protection and the access to sacred areas that are throughout the aboriginal territory. We need to retain our hunting, fishing and gathering rights, and also we need to have some funding to prepare an economic plan on the lands that we're talking about adding. That is one of the big obstacles that stands in our path at this moment, to have the money to finalize our economic plan and bring a comprehensive package to the Congress.

Mr. OWENS. Thank you.

Mr. Millett.

Mr. MILLETT. Since you already got the message that Mr. Yowell was going to share with you, I won't do that part of it either.

I am here representing the Duckwater Shoshone Tribe.

Mr. OWENS. Right.

Mr. MILLETT. The tribal leadership in Duckwater is very concerned about what we refer to as a handout. We feel that money is important to everybody, including myself.

Mr. OWENS. What I am asking you to do is tell me what you would like Congress to do.

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Mr. MILLETT. Sir, would you cosponsor a bill that included the things that we are talking about here?

Mr. OWENS. Well, even more important than that, what I am saying is if we could come up with an answer, this bill that is before you could be amended perhaps—perhaps—to help solve your problem.

The answer to your question is that I will try to help as a member of the committee to work out an equitable solution.

You do have this vehicle. We now have had a hearing. I would recommend that you give us the benefit of your ideas and you make them as careful and as reasonable and as perhaps unified as possible and get them before us. The record will be open for 30 days, and we would welcome any further suggestions and ideas.

Mr. YOWELL. Let me make just one comment.

Mr. OWENS. Go right ahead.

Mr. YOWELL. You mentioned an amendment. Before we came here, the National Council perceived that this might be something that might be brought up and did discuss it. And the council decided that an amendment could not do what we want to do, and we would rather come with a whole new comprehensive bill.

160

Fallon Shoshone Claims Committee ►►►►►►►
828 McLean Road, Fallon, Nevada 89406

SENATE INDIAN AFFAIRS COMMITTEE – TESTIMONY (S.958)
107TH CONGRESS
Nevada Iversen

Mr. Chairman, Committee Members, thank you for this opportunity that is being granted to the Shoshone people. My name is Nevada Iversen, member of the Fallon Shoshone Claims Distribution Committee the Shoshone Band of the Fallon Paiute Shoshone Tribe. Our reservation in mid-western Nevada **has the second largest Shoshone population** behind Elko.[1]

On behalf of our enrolled Shoshone members, I am here to testify **in favor of** the "Western Shoshone Claims Distribution Act" S. 958 in accordance with the outcome of the 1998 referendum held in Elko and Fallon and witnessed by the BIA. 1,230 voted "yes" to **100% per capita distribution to one-quarter blood quantum** and 53 voted "no" against. In addition, open public presentations of the Bill in both communities, in a hand held vote of confidence, produced only 3 people who voted against the Bill. [2]

Despite the unfortunate convoluted 50-year history of litigation, there are several **other compelling reasons for our endorsement of this "Act"**:

First, the precedent for a 100% per capita has been previously set under an "Act" for the other major tribe in Nevada, the Northern Paiute in 1973.

Second, we support the 100% per capita **over the 20% hold back** for tribal governmental programming per the 1973 P.L. 93-134,Claims Distribution Act, because

(1) if 20% is taken off the **top of the award**, Fallon's members **cannot access their share** through the four named "successor" tribes' services as non-members of those seven tribes -- creating unequal treatment,

(2) 50 percent or more of enrolled Shoshones live off their reservation and receive little to no social service assistance from their tribes,

(3) off- reservation members in most tribes do not have voting rights, therefore they have no control over the use of their 20% share,

(4) due to the mixed Indian and non-Indian populations that occupy reservations, non-beneficiaries of the award indirectly become heirs to the exclusion of rightful off-reservation recipients, and

(5) an asset must be exclusively shared by all Shoshones equally whether on or off their reservation. The 100% per capita and educational scholarship fund meets this acid test.

Third, in 1998, the BIA Phoenix Area Director stated, "Inasmuch as there is no Western Shoshone Tribe, but rather, bands of Western Shoshone Indians, and that the original claim was filed on behalf of the 'Western Shoshone Identifiable Group,' I believe a 100% per capita distribution is appropriate in this case." [3]

---

[1] 2000 census, tribal enrollment, Western Nevada Agency and Nevada area map showing reservations, colonies, ranches
[2] "Fallon Paiute Shoshone Tribe, Resolution 01-F-337", Reaffirm Support of S.958 and H.R. 2851, 2001.
[3] Nordwall, Wayne. Phoenix Area Director. Memorandum: "Western Shoshone Claims Distribution, .Phoenix, AZ, p.2.

Fourth, the 15 year judicial test case on aboriginal land title, Dann I, II, and III, which reached the U.S Supreme Court, concluded that the Shoshones had been paid because the monetary award was deposited in trust for the Shoshones and that the title was lost due to encroachment per the Indian Claims Commission proceedings. [4]

Fifth, due to the 1979 Congressional appropriation, the Shoshones can no longer assert title to their aboriginal territory in the judicial system—this brought finality to what was a major deterrent in accepting the award. The Shoshones have no recourse to the Supreme Court decision.

Sixth, due to the dynamics of tribal politics and special interest groups, negotiated land meetings between the highest level of the Department of Interior and tribal leaders failed. It happened in 1982 where DOI offered 10 million acres plus 100% per capita and in 1994 where DOI identified public lands available to tribes it was refused by tribal leaders. [5] Further, as no comprehensive land plan has been forthcoming from tribal leaders since the 1980 hearing of record OR the 1990 and 1992 hearings on Kennedy bills introduced by former Representative Vucanovich, the Shoshone people have become disenchanted with purported land objectives and feel **reservation expansion and other issues need to be separated from the distribution**. Reservation land plans would be more appropriately handled by individual tribes through other governmental means.

Seventh, the "Act' under section 2, (9) commemorates the sanctity of the partnership formed with the United States under the 1863 Treaty of Ruby Valley so as not to diminish the future aspirations of the Shoshones.

In conclusion, justice delayed is justice denied and the process of justice begun 50 years ago must have closure by distribution to its rightful heirs. Kevin Gover, past Assistant Secretary of Indian Affairs, in a letter to the President of the Senate stated, " ...the best interests of the Western Shoshone will not be served by providing additional time for successor tribes to reach a consensus on the division and distribution of the land claims funds in Docket 326-K." [6] We agree with Mr. Gover and seek and end to this sad chapter in the history of our people and the failure, both tribal and non-tribal, of the legal, political and moral system. Therefore, the Fallon Band of Western Shoshones respectfully request the distribution of the funds accrued in the name of the Western Shoshones and supports this "Act". Thank you for this opportunity to speak to you today.

[4] Nordwall. Ibid. p.1

[5] Gover, Kevin. Assist. Secretary - Indian Affairs. Letter attachment: "Background Information-Docket 326-K ", 2000, p.3, 4.

[6] Gover, Kevin. Assist. Secretary- Indian Affairs. Letter [Albert Gore, Jr., President of the Senate], 2000, p.4.

WESTERN SHOSHONE
TRIBAL ENROLLMENT
2000 CENSUS

(Subject to Change Daily due to Deaths and Births)

RANKED BY POPULATION	TOTAL ENROLLED SHOSHONE	ENROLLED MEMBERS	RESERVATION ESTABLISHED	SIZE
ELKO **	1,495		1918 & 31	192 ac
FALLON	653	S / P 1,001	1907 & 17	5,540 ac
BATTLE MOUNTAIN **	572		1917 & 64	683 ac
OWYHEE	400	S / P 2,155	1887 & 1886	*144,274 ac
DUCKWATER **	337		1940 & 44	3,814 ac
ELY**	294		1930 & 57	100 ac
SOUTH FORK**	258		1937 & 41	13,049 ac
MCDERMITT	UA	S / P 875	1936	*34,604 ac
TIMBISHA – California award	UA	1996 figure 240	1999	*7,000+ ac
YOMBA**	214		1934 & 37	4,718 ac
WELLS**	195		1977	80 ac
WINNEMUCCA	UA	S / P 77	1936	360 ac

TOTAL: 4,418 - DOES NOT INCLUDE " UA " ,(possible N. Paiute or California Indian awards)

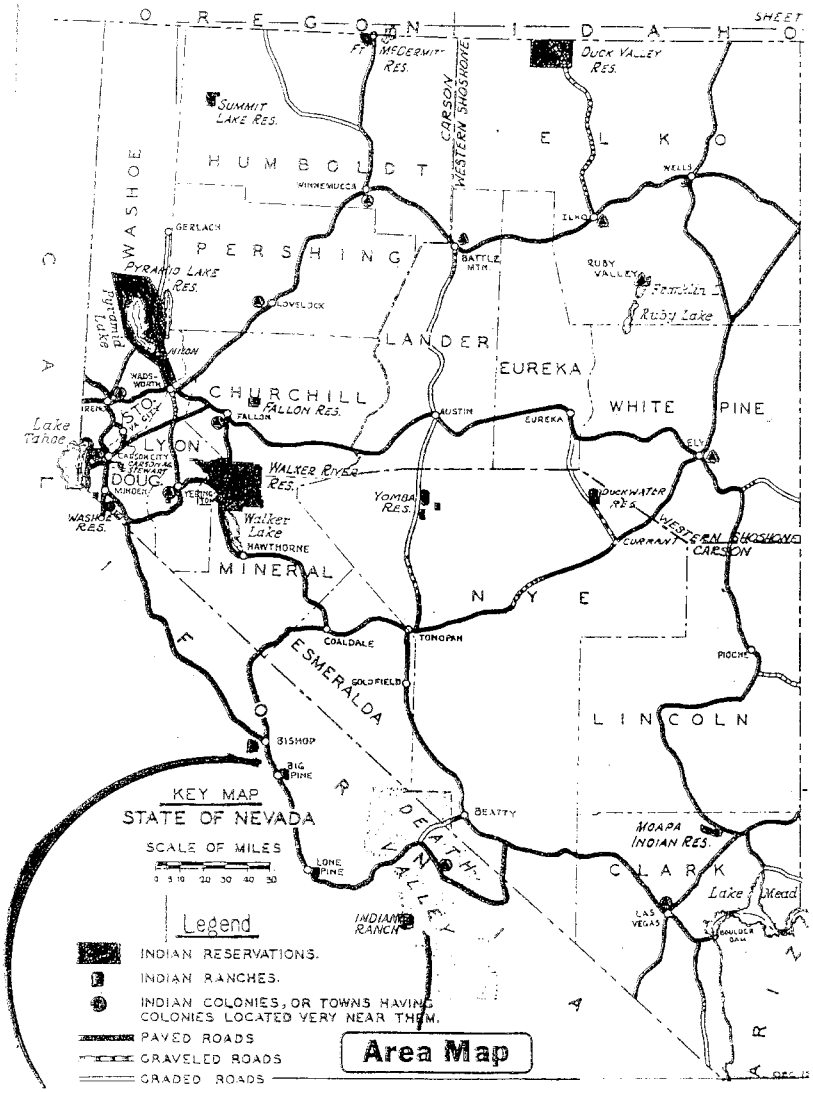
Te-Moak: Consist of four bands ("name claimant"):

- Elko, Battle Mountain, South Fork, Wells = 2,520
  - 4 representatives from Elko Band
  - 2 representatives from Battle Mountain Band
  - 2 representatives from South Fork Band
  - 1 representative from Wells Band

*reservation land crosses state line

** "Successor Tribes" AMENDED - 1982

NEVADA, only, TOTAL enrolled **INDIAN POPULATION**: **12,607**


OREGON
IDAHO
SHEET
FT. MCDERMITT RES.
DUCK VALLEY RES.
SUMMIT LAKE RES.
CARSON
WESTERN SHOSHONE
HUMBOLDT
ELKO
WASHOE
WINNEMUCCA
WELLS
GERLACH
PERSHING
PYRAMID LAKE RES.
Pyramid Lake
BATTLE MTN.
RUBY VALLEY
Franklin
Ruby Lake
LOVELOCK
LANDER
EUREKA
CHURCHILL
FALLON RES.
FALLON
AUSTIN
EUREKA
WHITE PINE
ELY
Lake Tahoe
LYON
DOUG.
MINDEN
WALKER RIVER RES.
YOMBA RES.
DUCKWATER RES.
WASHOE RES.
Walker Lake
HAWTHORNE
CURRANT
WESTERN SHOSHONE
CARSON
MINERAL
NYE
COALDALE
TONOPAH
PIOCHE
ESMERALDA
GOLDFIELD
LINCOLN
BISHOP
BIG PINE
KEY MAP
STATE OF NEVADA
SCALE OF MILES
BEATTY
MOAPA INDIAN RES.
DEATH VALLEY
LONE PINE
CLARK
Lake Mead
LAS VEGAS
INDIAN RANCH
Legend
INDIAN RESERVATIONS.
INDIAN RANCHES.
INDIAN COLONIES, OR TOWNS HAVING COLONIES LOCATED VERY NEAR THEM.
PAVED ROADS
GRAVELED ROADS
GRADED ROADS
Area Map

FALLON PAIUTE-SHOSHONE TRIBE

RESOLUTION 01-F-337

BE IT RESOLVED BY THE GOVERNING BODY
OF THE FALLON BUSINESS COUNCIL THAT;

WHEREAS: The Fallon Business Council is the recognized governing body of the Fallon Paiute-Shoshone Tribe with the responsibility to exercise the privileges and powers of self-government, to conserve and develop our resources and to secure the social and economic well-being of our Tribe; and

WHEREAS: The Fallon Business Council through Resolution 97-F-063 recognized the Fallon Shoshone Claims Committee as the representative body of the Fallon band of Western Shoshone with powers to negotiate directly with various private, tribal and governmental entities regarding the Western Shoshone Claims; and

WHEREAS: Within the total membership of 1001 there are 653 direct descendants of eligible Western Shoshones who are possible beneficiaries, of whom 347 are one-quarter or more blood degree, of the "Western Shoshone Claims Distribution Act", S.958 and H.R. 2851; and

WHEREAS: The Fallon Business Council -- following the May, 1998, eastern and western area Shoshone claims distribution referendum (1,230 voted yes & 53 voted no) -- on February 22, 1999, approved Resolution 99-F-028, the "Western Shoshone Claims Distribution Act" sanctioned by the Bureau of Indian Affairs, with a 100% per capita disbursement to Western Shoshones of one-quarter blood degree or more, with a perpetual educational fund component, and for the use and distribution of Docket 326-K, 326-A1 and 326-A3; and

NOW, THEREFORE BE IT RESOLVED: That we, the Fallon Paiute-Shoshone Tribe, in representation of the second largest band of Shoshones in the state of Nevada do hereby reaffirm our support of the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" introduced into the U.S. Senate (S.958) and U.S. House of Representatives (H.R. 2851) of the 107th Congress; and

BE IT FURTHER RESOLVED: That we, the Fallon Paiute-Shoshone Tribe, in the interest of our Shoshone members approve of the Department of Interior Nevada Congressional delegation and Congress expeditiously bring to conclusion as is without modification S. 958 and H.R. 2851 in keeping with the consensus of the Shoshone people and the Fallon Band of Shoshones; and

8955 Mission Road • Fallon, Nevada 89406-9159 • Tel 775-423-6075 • Fax 775-423-5202

AND, BE IT FURTHER RESOLVED: That we, the Fallon Paiute-Shoshone Tribe, in support of our Fallon Band of Western Shoshones request that this "Resolution" be entered as part of the record in the forthcoming Congressional hearings on the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" and be transmitted to the Nevada Congressional Delegation and to all appropriate offices of the Bureau of Indian Affairs.

CERTIFICATION

At a duly held meeting of the governing body of the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, consisting of seven members, of which four constitutes a quorum, that was present on this 2nd day of October , 2001, and voted 7 in favor, 0 against, 0 abstaining, in the adoption of the foregoing Resolution, according to the powers vested by the Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Constitution and By-laws.

Donna Cossette

Donna Cossette, Chairman
Fallon Business Council

Eugene Jack

Eugene Jack, Secretary
Fallon Business Council

UNITED STATES GOVERNMENT

memorandum

Office of the Area Director (602) 379-6600

DATE: December 1, 1998

REPLY TO ATTN OF: Phoenix Area Director

SUBJECT: Western Shoshone Claims Distribution

TO: Deputy Commissioner of Indian Affairs, MS# 4140-MIB

In 1977, the Indian Claims Commission awarded the Western Shoshone Indians $26 million dollars for extinguishment of the aboriginal title of the Western Shoshone. Western Shoshone Identifiable Group v. United States, 40 Ind. Cl. Comm. 318 (1977). The United States Court of Claims affirmed the award and payment was made in 1979. Temoak Band of Western Shoshone Indians v. United States, 219 Ct.Cl. 346, 593 F.2d 994 (1979). The Distribution of Judgment Funds Act, 25 U.S.C. § 1401 et seq., sets forth a procedure for distributing judgment funds. However, various individuals and groups resisted the formulation of a distribution plan. In essence, these groups argued that until they accepted payment of the judgment funds, title to the land was not extinguished and they were entitled to continue to use the land. In United States v. Dann, 470 U.S. 39 (1985), the Supreme Court held that acceptance of payment did not extinguish title, but rather, that payment of the judgment by the United States into the Treasury of the United States effectuated full settlement of all claims.

CATTLEMEN DANN & YOWELL

Despite this clear holding, individual Western Shoshones continued to refuse to accept payment and successfully blocked the formulation of a distribution plan. In 1997 John Duffy, Juliette Faulkner and others met with representatives of the Western Shoshones and tried to facilitate the formulation of a distribution plan. During those negotiations, the Departmental representatives told the tribal representatives that since the time limits for preparing a distribution plan under the Distribution of Judgment Funds Act had long since expired, that any plan would have to be submitted to Congress. They also advised the tribal representatives that the distribution plan could be for a 100% per capita distribution if that is what the beneficiaries desired. After becoming Area Director, I received several inquiries as to whether I would assist in working on a distribution plan. I advised the callers that I would help work on a plan if it appeared that a majority of the Western Shoshone people supported the effort. Several months later, Daisy West and I were invited to attend two hearings that were being conducted by the Western Shoshone Steering Committee. The Committee is a group of individual Western Shoshones that have organized to try and prepare a distribution plan. Members of the Committee asserted that in past meetings, a small vocal minority had succeeded in intimating the "silent majority" into remaining silent on any distribution plan. In order to avoid this problem, the Committee arranged for two public hearings where any interested individuals could speak pro or con on the proposal to prepare a distribution plan. At the end of the meeting, a vote by sealed ballot was also conducted.

As anticipated, an articulate and vocal group protested any distribution plan claiming distributing the money was selling the land or that the payment should be considered rent and that additional money should be demanded from the United States. Others acknowledged that the Supreme Court had already decided the issue of extinguishment of title and that it was time to quit allowing a small group to thwart the distribution of the judgment monies. The vote from the two meetings was 1230 in favor of distributing the money and 53 against distribution. Thus, it is clear that an overwhelming majority of adult Western Shoshones favor distribution. Essentially, the proposal that the people voted for was a 100% per capita distribution of Docket 326-K and the establishment of a permanent education fund from Dockets 326-A(1) and 326-A(3). Inasmuch as there is no Western Shoshone Tribe, but rather, bands of Western Shoshone Indians, and that the original claim was filed on behalf of the "Western Shoshone Identifiable Group," I believe a 100% per capita distribution is appropriate in this case. A draft Bill is attached for your review. If you need additional material to support a legislative proposal please let me know. (Daisy West should have also have files on this matter.)

Attachment

cc: Superintendent, Eastern Nevada Agency

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515

MAY 9 2000

Dear Mr. Speaker:

Enclosed is draft legislation "To authorize the Use and Distribution of the Western Shoshone Judgment Funds in Docket Nos. 326-K, 326-A-1, and 326-A-3" (Dockets).

We recommend that the draft bill be referred to the appropriate Committee for consideration and that it be enacted.

The draft bill is being submitted under subsections 2(c) and (d) of the Indian Tribal Judgment Funds Act (Act) of October 19, 1973, 87 Stat. 466, 25 U.S.C. §1402, as amended. We are submitting the draft bill under these provisions because we have determined that circumstances do not permit the preparation and submission of a plan as provided under the Act, and that it is impossible for us to obtain the consent from the tribal governing bodies concerning the division of the judgment funds.

The principal sum of the funds awarded to the Western Shoshone in these Dockets total $26,145,189.89. The added interest and investment income brings the total to $116 million. These funds were appropriated on December 19, 1979, March 23, 1992, and August 21, 1995, to satisfy the Western Shoshone land and accounting claims filed against the United States government.

The legislative proposal calls for the Secretary of the Interior (Secretary) to prepare a roll and distribute per capita, eighty-five (85) percent of the funds awarded in Docket 326-K, including interest, to all Western Shoshone who have at least one-quarter degree Western Shoshone Blood that have not shared in any other judgment fund distribution, and who are living on the date the legislation is enacted. The principal of the funds awarded in Dockets 326-A-1 and A-3, plus fifteen (15) percent of the principal funds awarded in Docket 326-K will be held in a non-expendable trust account. The earned interest and investment income will be used for educational grants to qualified individuals who are listed on the per capita payment roll prepared by the Secretary, or to the lineal descendant of a person appearing on the roll who satisfy the eligibility criteria established by an Administrative Committee established under the provisions of the legislative proposal.

On March 11, 1980, the BIA issued its first Results of Research Report in Docket 326-K. The report described the difficulties in identifying the beneficiary. The Western Shoshone entities were described as being extremely scattered. The report found that "It is not possible to describe the Western Shoshone in terms of forming a tribe or a group of organized tribes, particularly in view of the Shoshone-Paiute combined organizations and the very real possibility that many Western Shoshone descendants (including those who strongly identify as Shoshone people) are not and never have been associated with any reservation entity." On that basis, the report identified those Western

Shoshone people, and their descendants, who derive from the census and other rolls of twelve identified Shoshone and Shoshone-Paiute entities, and other descendants who prove Western Shoshone ancestry on the basis of rolls and records to the satisfaction of the Secretary of the Interior, to be the beneficiaries of the award in Docket 326-K.

The Bureau of Indian Affairs (BIA) issued an amended Results of Research Report on January 22, 1982, for Docket 326-K. The report was amended to bring it in line with the BIA's "overall policy to designate successor tribes as beneficiaries of claims awards whenever possible in order that there might be maximum opportunity for those tribes that so wish to develop programming proposals for the use of judgment funds." In that report four tribes were designated as the tribal successors to the Western Shoshone entity of the period of 1853 to 1872. Those tribes are 1) Te-Moak; 2) Duckwater; 3) Yomba, and 4) Ely. The remaining beneficiaries consist of all other persons of Western Shoshone ancestry, in their individual capacity who otherwise meet the criteria detailed within the March 11, 1980, Results of Research Report.

Since 1982 we have been unsuccessful in obtaining consensus from the four governing bodies of the successor tribes on how to allocate and distribute the funds.

Tribal Council Actions

The Te-Moak Tribal Council, following a membership claims meeting, enacted Resolution No. 97-TM-10, on March 6, 1997, adopting a plan for the distribution of these funds and requested the Department of the Interior to support the distribution. The plan adopted by the Te-Moak Tribal Council is similar to the legislative proposal submitted with this letter. On August 5, 1999, the Tribal Chairman of the Te-Moak Tribal Council advised us that the Tribal Council rescinded Resolution No. 97-TM-10, and the tribe withdraws its approval of the proposed distribution of Docket 326-K funds. The Chairman further stated that he is no longer authorized to sign any document pertaining to the distribution. We were advised that the action to rescind the 1997 resolution was by voice vote and that it has not been embodied into a formal tribal resolution.

The Duckwater Shoshone Tribal Council enacted a resolution on March 10, 1999, supporting the Western Shoshone claims proposal.

The Yomba Tribal Council enacted Resolution No. YT-34-99 on June 18, 1999, stating its opposition to the distribution of Docket 326-K funds in the absence of a negotiated land settlement. Prior to the enactment of this resolution, we received a petition signed by 98 individuals who identify themselves as adult Yomba tribal members who support the distribution of the funds. In light of the fact that Yomba's total enrollment is 208 members, including children, the petition seems to show overwhelming support of the distribution by the Yomba membership.

NOW 2002 IN FAVOR SEE THEIR RESOLUTION

The Ely Tribal Council enacted Resolution No. 99-EST-24 on August 10, 1999, stating its opposition to the distribution of Docket 326-K funds in the absence of a negotiated land settlement.

In summary, of the four successor tribes, one favors the legislative proposal and three oppose it. Of the three tribes that oppose the legislative proposal, Te-Moak indicates that it opposes the method of distribution. An article in the Elko Daily Free Press, dated Friday, August 13, 1999, states that

Chairman Mose is in favor of an alternative plan to grant 20 percent of the money to the tribal councils. We understand that the issue has been discussed by the Te-Moak Tribal Council, but so far they have not provided us with any Tribal Council Resolutions concerning the judgment funds since 1997. Ely and Yomba indicate that they oppose the distribution until such time as they have obtained a negotiated land settlement. We were advised that the Bureau of Land Management and the Yomba Tribe held a meeting on July 16, 1999, and that they have made progress in their negotiations.

Western Shoshone Steering Committee (WSSC) - May 1998 Referendum Vote

Although the governing bodies of three of the four successor tribes, due to the dynamics of tribal politics, have changed their position, or been silent until recently concerning the legislative proposal for the use of these funds, the individual Western Shoshone have been anxious for quite some time to have these funds distributed.

In March 1998, the Te-Moak Tribal Council approved a request from two of its council members to hold a general claims meeting for the purpose of documenting those individuals who "are in favor of judgment fund distribution" and for other purposes. The Western Shoshone Steering Committee (WSSC)*, which was previously established to discuss Dockets 326-A-1 and A-3, formed the nucleus to investigate this problem. It is composed of 31 members. The WSSC members are Western Shoshone from several of the reservations in Nevada. Most of the members are elected tribal council members or official tribal representatives from their home reservations.

The WSSC developed a proposal and scheduled meetings and referendums to be held at Elko and Fallon, Nevada, on May 23 and 24, 1998, respectively. Notices of the meeting were widely distributed through newspapers, agencies, and public places on each of the Western Shoshone and outlying reservations. The purpose of the meetings was to allow interested individuals the opportunity to give testimony and to conduct a referendum vote on whether to adopt the draft legislation on claims distribution. Voter eligibility was simple and straightforward. An individual was deemed qualified if they could prove that they were at least 18 years of age and possessed 1/4 degree Western Shoshone Indian blood. Tribal enrollment staff were present to verify if an individual possessed the requisite blood quantum. Those unable to vote on-site were given the opportunity to submit a letter for the record with the identical, notarized verification requirement. We are not aware of any disputes concerning an individual's eligibility to vote.

The meeting at Elko was quite lively. As anticipated, an articulate and vocal group protested any distribution of the funds. Claims were made that the distribution of the funds were the equivalent of selling the land, it was also suggested that the funds on deposit should be considered as rent, and that additional money should be demanded from the United States. Others acknowledged that the Supreme Court had already decided the issue of extinguishment of title and that it was time to quit allowing a small group to thwart the distribution of the judgment monies. The meeting at Fallon was quite different. There was no vocal opposition to the proposed distribution of the funds and the meeting was conducted and concluded in approximately two hours. The vote from the two meetings was 1,230 in favor of distributing the money and 53 against the distribution.

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* The WSSC members are identified in the attached background information.

Since then we have received letters supporting the distribution, and petitions signed by approximately 415 individuals supporting the legislative proposal. We also received six letters from Western Shoshone tribal members opposing the legislative proposal.

We are confident that the Western Shoshone want these funds distributed as quickly as possible. We also believe that the best interests of the Western Shoshone will not be served by providing additional time for successor tribes to reach a consensus on the division and distribution of the land claims funds in Docket 326-K.

Sincerely,

Assistant Secretary - Indian Affairs

Background Information - Docket 326-K

On August 15, 1977, the Indian Claims Commission (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*. 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. On August 16, 1967, the ICC severed the Western Shoshone claim from the other claims of the constituent bands or subdivisions of the Shoshone Nation as originally filed in Dockets 326 and 367. The Western Shoshone land valuation claim was designated 326-K.

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.

Pertinent Aspects Concerning the Western Shoshone Land Claims

Controversy surrounds any discussion concerning the distribution of the Western Shoshone Docket 326-K judgment funds. 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 accepting 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 States v. Dann, Civil No. R-74-60, BRT, (D. Nev.). The Association also petitioned for leave to file an amended claim in Docket 326-K. The Association asserted that Indian title to the greater portion of the aboriginal lands of the Western Shoshone had not been extinguished. It also asserted that an award of damages in Docket 326-K would extinguish the Western Shoshone claim to lands.

In the Dann case, the government argued that any title that the Western Shoshone ever had to the land in question had been extinguished, and that this fact had been conclusively established in proceedings brought before the ICC on behalf of the Western Shoshone.

In 1975, the district court accepted the government's arguments in the Dann case and granted summary judgment against the Danns.

On February 20, 1975, the ICC denied the petition to stay the proceeding and for leave to present an amended claim. In 1976 and 1977, the Te-Moak Bands of Western Shoshone filed several motions before the ICC to stay the proceedings in Docket 326-K. The motions were denied by the ICC on August 15, 1977. The claims in Docket 326-K were transferred to the United States Claims Court (Claims Court) prior to the termination of the ICC on September 30, 1978. On December 6, 1979, the Claims Court certified the award of $26,145,189.89 and the funds were appropriated.

On March 11, 1980, the BIA issued its first results of research report in Docket 326-K. The report described the difficulties in identifying the beneficiary. The Western Shoshone entities were described as being extremely scattered. The report found that "It is not possible to describe the Western Shoshone in terms of forming a tribe or a group of organized tribes, particularly in view of the Shoshone-Paiute combined organizations and the very real possibility that many Western Shoshone descendants (including those who strongly identify as Shoshone people) are not and never have been associated with any reservation entity." On that basis, the report identified those Western Shoshone people, and their descendants, who derive from the census and other rolls of twelve identified Shoshone and Shoshone-Paiute entities, and other descendants who prove Western Shoshone ancestry on the basis of rolls and records to the satisfaction of the Secretary of the Interior, to be the beneficiaries of the award in Docket 326-K.

The Bureau of Indian Affairs (BIA) held a hearing of record on July 26, 1980, in Elko, Nevada. Approximately 425 people attended the meeting to hear about the proposed plan for the use and distribution of the funds awarded in the Docket 326-K funds. Those in attendance were given the opportunity to testify at the hearing. A three-minute time limitation for testimony was established because a large number of those present wished to testify. The meeting was dominated by those opposed to the judgment fund plan. Many of those in favor of the plan felt intimidated and submitted written testimony with the request that it not be read publicly. At the conclusion of the meeting it appeared that the majority were opposed to the plan and wanted the funds invested until the Dann litigation was settled. Once the written comments were tallied it showed a different sentiment. The results of the written and oral comments were 75 against the fund distribution and 194 for the distribution of the funds with most asking for 100 percent per capita to individuals with at least 1/4 degree Western Shoshone Indian blood.

The BIA issued an amended Results of Research Report on January 22, 1982, for Docket 326-K. The report was amended to bring it in line with the BIA's "overall policy to designate successor tribes as beneficiaries of claims awards whenever possible in order that there might be maximum opportunity for those tribes that so wish to develop programming proposals for the use of judgment funds." In that report four tribes were designated as the tribal successors to the Western Shoshone entity of the period of 1853 to 1872. Those tribes are 1) Te-Moak, 2) Duckwater, 3) Yomba, and 4) Ely. The remaining beneficiaries consist of all other persons of Western Shoshone ancestry, in their individual capacity who otherwise meet the criteria detailed in the March 11, 1980 Results of Research Report.

On May 19, 1983, the Ninth Circuit Court of Appeals ruled in favor of the Danns. The Ninth Circuit held that the lower court was correct in concluding that the Western Shoshone title was not extinguished as a matter of law by application or administration of the public land laws, but reversed the lower court's holding that the Danns were barred by res judicata or collateral estoppel from asserting aboriginal title as a defense to the claim of trespass. This ruling was reversed by the United States Supreme Court on February 20, 1985. The Supreme Court held that "To hold, as the court below has, that payment does not occur until after the final plan of distribution has been approved by Congress would frustrate the purpose of finality . . . while subjecting the United States to continued liability for claims and demands that 'touch' the matter previously litigated and resolved by the Indian Claims Commission."

Since 1983 the Department of the Interior has been meeting with Western Shoshone organizations for the purpose of negotiating a legislative settlement to the land claims issue. In 1985 the Western Shoshone National Council received a grant from the Administration for Native Americans so that they could develop an inventory and historical analysis of the Western Shoshone aboriginal lands and other natural resources subject to the 1863 Treaty of Ruby Valley. Meetings were held in 1985 and 1986 with the Western Shoshone leadership for the purpose of developing a plan for the distribution of the judgment funds, and to identify lands that could be transferred to the Western Shoshone tribes to increase the reservation land base. Nothing was accomplished due to dynamic tribal politics and power struggles within the leadership.

A legislative proposal was drafted by an attorney representing the organization called the "Western Shoshone Distribution Association." The legislative proposal was used as the basis for H.R. 3384 that was introduced on September 28, 1989. This bill provided for the establishment of a Western Shoshone roll and the apportionment and distribution of the funds. A hearing was held on April 26, 1990, but no action was taken because the tribal governments, the Western Shoshone National Council, and the Administration opposed the bill. An attempt was made to revise the bill to address Interior's concerns but the Chairman of the Committee on Interior and Insular Affairs advised us in September 1990 that the bill would not be scheduled for full Committee consideration because all of the tribal governments adamantly opposed the bill and wished to begin negotiations with BIA to develop a plan to distribute the funds.

In November 1990, legislation was drafted regarding the use of rangeland resources in Nevada, but never introduced. In January 1991, the Duckwater Shoshone Tribe drafted proposed legislation concerning the Tribe's asserted claim to the lands of the Western Shoshone nation. This proposal

was never introduced. Another legislative proposal was drafted by the attorney for the Western Shoshone Distribution Association. It was used as the basis for H.R. 3897, which was introduced on November 22, 1991. A hearing was scheduled for April 30, 1992, but never held -- the bill died without action.

10,000,000 ACRES — TURNED DOWN BY U.S. NAT'L COUNCIL CHIEF, LOWELL AT THIS MEETING

On January 22, 1994, the Western Shoshone leaders met with the Secretary of the Interior in Denver, Colorado. As a result of that meeting, efforts were made to establish another Federal/Tribal negotiation team. Efforts were made to provide the members of the successor Tribes of the Western Shoshone with an inventory of public lands that were available for transfer to the tribes. We understand that the Bureau of Land Management continues to meet with some of the tribal governments and progress is being made on the negotiations.

Docket 326-A-1 and A-3

The claims in Docket 326-A-1 called for an accounting of two funds. The first was the $100,000 annuity to be paid to the Western Shoshone Indians under Article VII of the 1863 Treaty of Ruby Valley. In the Opinion of the ICC, dated April 29, 1970, 23 Ind. Cl. Comm. 74, the ICC found that the Government had not paid $16,392.76 of the Treaty funds to the Western Shoshone. The ICC also found that the Government improperly disbursed $9,930.74 of the Treaty funds. Those two amounts total $26,323.58, which could have potentially been awarded to the Western Shoshone. The subsequent ICC and Claims Court decisions never discussed the Treaty accounting claims again. It was inadvertently omitted from the award.

The second fund was the IMPL fund for the Western Shoshone Indians. The time-period of the accounting spanned from 1886 to 1951. The plaintiff asked the government to allocate the funds in the IMPL account between the various Western Shoshone Reservations. The government said that it could not allocate the funds because the records did not have sufficient information to allow such an allocation. The reports do show that the bulk of the funds were collected from the Duck Valley Reservation between 1919 and the mid to late 1930's.

On December 3, 1991, the United States Claims Court entered a final judgment of $823,752.64, in Docket 326-A-1, on behalf of the *Te-Moak Bands of Western Shoshone Indians of Nevada, suing on behalf of the Western Shoshone Nation of Indians*. On June 16, 1995, in Docket 326-A-3, the Court of Federal Claims awarded $29,396.60 in interest on the award previously entered in Docket 326-A-1. The funds to satisfy these awards were appropriated on March 23, 1992, and August 21, 1995, respectively.

In 1992, the BIA issued a Results of Research Report that erroneously identified the Te-Moak Band of Western Shoshone as the sole beneficiary of the funds awarded in Dockets 326-A-1 and A-3. On April 29, 1997, the report was withdrawn.

The BIA extended invitations to the Tribal leaders at Duck Valley**, Duckwater, Ely, Yomba,

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** The Business Council of the Shoshone-Paiute Tribes of the Duck Valley Reservation enacted Resolution No. 97-SPR-63 dated February 11, 1997. The resolution granted recognition to the

Te-Moak, and the Death Valley Timbi-Sha Shoshone Band of California asking them to attend a meeting scheduled for May 22, 1997, at Elko, Nevada, to discuss the disposition of the funds The Chairperson from Ely informed us that she would not be able to attend. The attorney representing the Timbi-Sha informed us that they would not attend because they did not believe they had an interest in the judgment fund. No acknowledgment or response was received from the Chairman at Yomba. Representatives from Te-Moak, Duckwater and Duck Valley attended, as well as the Shoshone representatives from the Fallon Reservation***. During the meeting we asked the tribal representatives to make recommendations on how the funds could be divided. They were advised that the record did not contain sufficient information for the government to allocate the funds between the reservations. The tribal representatives arrived at recommendations on how the funds could best be expended for the benefit of the Western Shoshone people by establishing a perpetual fund utilizing the interest to fund scholarship grants. This recommendation is contained in the legislative proposal.

Members of the
Western Shoshone Claims Steering Committee

Te-Moak Tribe:

1. WSSC Co-Chair Leta Jim, Vice-Chairperson, Te-Moak Tribal Council Member, and Elko Band Council Member
2. WSSC Co-Chair Larry Piffero, Te-Moak Tribal Council Member, and Elko Band Council Member
3. Wilbur Woods, Chairman, Elko Band Council
4. Grace Begay, Wells Band Council Member
5. Lydia Sam, Chairperson, Battle Mountain Band
6. Larson Bill, Tribal Representative, South Fork Band Council

Duckwater Tribe:

7. Henry Blackeye, Jr., Chairman, Duckwater Tribal Council
8. Tim Thompson, Vice-Chairman, Duckwater Tribal Council
9. Henry Blackeye, Sr., Secretary, Duckwater Tribal Council
10. Jerry Millett, Member, Duckwater Tribal Council
11. Douglas George, Sr., Member, Duckwater Tribal Council

Ely Area: None

Yomba Area:

12. Glen Hooper, Tribal Representative, Yomba Area

Owyhee Area:

13. Iliane Premo, Chairperson, Western Shoshone Council at the Duck Valley Reservation
14. Mildred Scissions, Member, Western Shoshone Council at the Duck Valley Reservation

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organization of Western Shoshone descendants called the "Western Shoshone of Duck Valley Reservation" for the purpose of handling all matters relating to the Western Shoshone claims until negotiations are finalized.

*** The Business Council of the Fallon Paiute-Shoshone Tribes enacted Resolution No. 97-F015, dated February 11, 1997, and amended it with Resolution No. 97-F-063, dated May 27, 1997. The resolution granted official recognition of the Fallon Shoshone Claims Committee to represent, negotiate, and make decisions on behalf of the Fallon Band of Western Shoshone in all matters relating to the claims issue.

15. David Jones, Member, Western Shoshone Council at the Duck Valley Reservation

Fallon Area:

16. Nancy Stewart, Co-Chairperson, Fallon Shoshone Claims Committee
17. Ermert Nihoa, Co-Chairman, Fallon Shoshone Claims Committee
18. Iola Byers, Member, Fallon Shoshone Claims Committee
19. Betty Robison, Interpreter for the Fallon Shoshone Claims Committee
20. Nevada Iverson, Member, Fallon Shoshone Claims Committee
21. Kathy Bowen-Curley, Member, Fallon Shoshone Claims Committee
22. Steven Amick, Member, Fallon Shoshone Claims Committee
23. Francine Tohannie, Secretary for the Fallon Shoshone Claims Committee
24. Ernest Hooper, Interpreter for the Fallon Shoshone Claims Committee
25. Nila Shanley, Member, Fallon Shoshone Claims Committee
26. Winford Graham, Member, Fallon Shoshone Claims Committee
27. Wayne Ellison, Member, Fallon Shoshone Claims Committee
28. Lynette Fisherman, Member, Fallon Shoshone Claims Committee
29. Vana Roman, Member, Fallon Shoshone Claims Committee
30. Cordelia Nordwall, Member, Fallon Shoshone Claims Committee
31. Barbara Culbertson, Member, Fallon shoshone Claims Committee

Fort Hall Area:

32. Everett Jim, Tribal Representative, Fort Hall Western Shoshone

Data Concerning the Western Shoshone Reservations and Tribal Enrollment

- Treaty of Ruby Valley entered into on October 1, 1863, with the Western Shoshone Indians.

- First Western Shoshone Reservation was established outside the aboriginal territory at Duck Valley by Executive Order dated April 16, 1877 for all Western Shoshone. Carlin Reserve Farm was established the same year, but it was later abolished.

- In 1885 Paddy Cap's Band of Paiute were sent to the Duck Valley Reservation. By Executive Order of May 4, 1886, approximately 69,000 acres were added to the Duck Valley Reservation for them and other such Indians as the Secretary of the Interior may see fit to settle thereon.

- In 1917, a reservation was established at Battle Mountain for homeless Shoshone.

- In 1918, 160 acres were reserved at Elko, Nevada for Shoshone and Paiute Indians living near Elko.

- The Act of June 27, 1930, authorized the purchase of 10 acres at Ely for the Shoshone already living there.

- The Act of June 18, 1934, authorized the purchase of lands for Yomba Shoshone. The Proclamation is dated October 27, 1938.

- Proclamation dated February 8, 1941, proclaimed a total of 9,548.46 acres within Elko County, Nevada to be an Indian Reservation for the use and benefit of the Te-Moak Bands of Western Shoshone.

- South Fork Indian Colony created under the 1941 proclamation.

- Wells Colony was created under the Act of October 15, 1977.

WESTERN SHOSHONE INDIAN RESERVATIONS

	Tribal	Allotted	Government	Total[1]	
Duckwater	3,814.52	0	0	3,814.52	*
Ely	111.25	0	0	111.25	
Wells	80.00	0	0	80.00	
Elko	160.00	0	32.80	192.80	
Battle Mountain	683.30	0	0	683.30	
South Fork	13,693.34	0	0	13,693.34	**
Odgers Ranch	1,987.04	0	0	1,987.04	***
Duck Valley (half each in Nevada & Idaho)	(NV) 144,274.30 (ID)145,545.00	0	0	289,819.30	
Yomba	4,718.49	0	0	4,718.49	****
Fallon	3,480.00	4,640.00	0	8,120.00	

Wildhorse Reservoir***** 3,981.68

[1] Abstracted from Phoenix Area Office BIA Annual Acreage Report for December 31, 1997.

* About 340,000 acres of Public Domain lands are used for spring, summer and fall cattle grazing permit (Taylor Grazing Act) to the tribe from the Bureau of Land Management (BLM).

** About 32,000 acres of Public Domain (BLM) and 3,000 acres of Humbolt National Forest (USDA USFS) are under Taylor Grazing Act permit to the tribe.

*** About 70,000 acres of Public Domain (BLM) is used in common with other permittees.

**** The tribe has permits for the use of Public Domain (BLM & USFS) Taylor Grazing Act lands. At this time the BIA does not have the number of acres on record.

***** The Wildhorse Reservoir was created by the Act of April 4, 1938, 52 Stat. 193. The Act set aside certain described lands which now aggregate 3,982 acres. These are Government-owned lands, not tribal trust lands, and are the reservoir site to store and regulate Indian irrigation waters delivered to the Duck Valley Reservation, which is roughly 15 miles downstream on the Owyhee River. The beneficiaries are the Indians residing upon the Nevada portion of the Duck Valley Indian Reservation.

Tribal Enrollment

Tribe	Tribal Enrollment	Western Shoshone Enrollment
Duckwater	318	318
Ely	288	288
Yomba	208	208
Te-Moak:		2,456
Battle Mountain	563	
Elko	1,445	
South Fork	258	
Wells	190	
Paiute-Shoshone Tribe of Fallon Reservation	987	598
Shoshone Paiute Tribe of Duck Valley Reservation	1,818	400
Total Enrolled Western Shoshone:		5,062
Non-enrolled Western Shoshone Descendants: *		1,500
Estimated Total Members		6,562

* Represents the estimated number of potentially eligible Western Shoshone lineal descendants that are not enrolled with any tribe, or if enrolled, they are members of non-Shoshone or non-Shoshone-Paiute Tribes.

Battle Mountain Band Council
37 Mountain View Drive
Battle Mountain, Nevada 89820
PH: 775-635-2004
FX: 775-635-8016

July 25, 2002

The Honorable Chairman, Mr. Daniel K. Inouye
Vice-Chairman, Mr. Ben Nighthorse Campbell
SENATE COMMITTEE ON INDIAN AFFAIRS
838 Hart Senate Office Building
Washington, D.C. 20510

RE: Testimony Hearing on Senate Bill No. S958 - August 2, 2002

Good morning ladies, gentlemen and guests, my name is Stanford Knight, I am the Chairman for the Battle Mountain Band. The Battle Mountain Band is a constituent Band of the Te-Moak Tribe of Western Shoshone.

First of all I would like to remind the Senate Committee that Congress finds and declares that: **The Western Shoshone Nation entered into a Treaty with the United States on October 1, 1863 at Ruby Valley which is known as the Treaty of Ruby Valley said Treaty was ratified by the United States Senate on June 17, 1869 and proclaimed by the President of the United States on October 21, 1869.**

As stated in the United States Constitution: Article VI. Clause 1: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Ancestral Lands of the Western Shoshone Nation have deep religious and cultural significance to the Western Shoshone People, and as a result the Western Shoshone People have never desired to give up their Ancestral Lands.

The distribution of claims money has caused great turmoil among our Indian people. There are people that want the money but also people who want land. Therefore I am asking for the Senate Committee to consider an amendment to the Bill S958, which would include both land and money.

The Western Shoshone continue to exercise aboriginal hunting, fishing, trapping, roaming and gathering rights throughout the ancestral territory of the Western Shoshone Nation and are utilizing large areas for grazing of livestock pursuant to aboriginal rights and the Treaty of Ruby

Valley. The amount of the judgement is inadequate compensation for the loss of Western Shoshone Land Rights. The Western Shoshone Nation has refused to accept the judgement as compensation for extinguishment of title to its lands and will not accept money in exchange for extinguishment of title to such lands, land damage or trespassing. The money offered to the Western Shoshone Indians are for **damages only**. The Western Shoshone Indians should not have been offered a price of $1.05 an acre to total only millions. When in reality it should be totaling in the billions owed to the Western Shoshone Nation.

The Bill that was introduced into Congress and is before the Senate Committee today is not for the sell and disposal of our land and treaty rights, it is for damages only. Let you be reminded that our Mother Earth is not for sale: we are just caretakers of these lands that provide us with all the necessities that are needed to live. To sell our lands to the United States Government is totally against our beliefs and the history of our existence.

I am requesting for the Senate Committee to:
Delete existing Section 2, Paragraph 9 in its entirety and substitute the following language: Neither Section 22 of the Indian Claims Commission Act, ch. 959, 60 Stat. 1055 (August 13, 1946): nor the judgement in Western Shoshone Identifiable Group v. United States, Docket 326-K before the Indian Claims Commission and United States Court of Claims; nor payment of the judgement; nor this authorization for the use and distribution of the judgement award shall be applied or deemed to bar, preclude, extinguish, discharge or abrogate any other wise valid claims to Western Shoshone land or resource rights; including hunting, fishing, trapping and gathering rights; that are based upon Indian title, aboriginal Indian title, original Indian title or the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869); or affect any other rights recognized, identified or described in the 1863 Treaty of Ruby Valley.

On behalf of the Battle Mountain Band should the President of the United States sign the Bill S958, the Battle Mountain Band in no way extinguish their aboriginal rights as rightfully given to us through the Treaty of Ruby Valley. As stated above the money offered is for **damages only.**

Thank you for giving me the opportunity to speak here today for myself as well as for my Newe people. This is a very important issue that each and every one of us would like to see resolved. Please consider all the testimonies that have been presented to you today. Government to Government Relationship should be of the utmost focus to achieve this settlement for all Western Shoshone Indians.

Thank you,
ss/

Stanford Knight, Chairman

Battle Mountain Band Council
Te-Moak Tribe of Western Shoshone
37 Mountain View Drive, #C
Battle Mountain, Nevada 89820
Phone: (775) 635-2004
Fax: (775) 635-8016

TE-MOAK TRIBE OF WESTERN SHOSHONE
BATTLE MOUNTAIN BAND COUNCIL

TRIBAL AUTHORIZATION FORM

TO WHOM IT MAY CONCERN:

THIS LETTER WILL SERVE AS AUTHORIZATION FOR MICHAEL PRICE, VICE-CHAIRMAN OF THE BATTLE MOUNTAIN BAND TO REPRESENT THE BATTLE MOUNTAIN BAND IN THE ABSENCE OF STANFORD KNIGHT, CHAIRMAN OF BATTLE MOUNTAIN BAND COUNCIL. I HEREBY AUTHORIZE MICHAEL PRICE TO VOTE ON ANY ISSUE PERTAINING TO THE BATTLE MOUNTAIN BAND AT THE SENATE COMMITTEE ON INDIAN AFFAIRS HEARING ON AUGUST 2, 2002.

RESPECTFULLY,

CHAIRMAN STANFORD KNIGHT
BATTLE MOUNTAIN BAND
TE-MOAK TRIBE OF WESTERN SHOSHONE

DATE:

7-24-02

Battle Mountain Band Council
Te-Moak Tribe of Western Shoshone
37 Mountain View Drive, #C
Battle Mountain, Nevada 89820
Phone: (775) 635-2004
Fax: (775) 635-8016

July 25, 2002

United States Senate
Committee on Indian Affairs
Daniel Inoyae, Chairman
Washington, DC 20510-5450

Dear Mr. Inoyae,

In October 2000 at a general election, I was elected Chairman of the Battle Mountain Band Council and duly sworn in, therefore, I feel it appropriate that as Chairman, I address the contents of this proposal.

We, the Battle Mountain Band Council, request the Committee on Indian Affairs to give the Battle Mountain Band Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, an opportunity to present a Packet to your office as a rider to the S.958 Bill.

Should you have any questions regarding this request please feel free to contact me at the Battle Mountain Band Administration Building at (775) 635-2004.

Sincerely,

Stanford Knight Chairman
Battle Mountain Band Council

RESOLUTION OF THE GOVERNING BODY

OF THE

BATTLE MOUNTAIN INDIAN COLONY

91-BM-41

BE IT RESOLVED BY THE BATTLE MOUNTAIN BAND COUNCIL, THAT

WHEREAS, this organization is an Indian Organization known as the Battle Mountain Band Council as defined by the Indian Re-Organization Act of June 18,1934 as amended to exercise certain rights of home rule and to be responsible for the promotion of economic and social welfare of its Tribal members, and

WHEREAS, the Te-Moak Tribal Council is the parent Council for the communities of Battle Mountain, South Fork, Wells, and Elko, and

WHEREAS, the Battle Mountain Band Council would like to submit the Land Rights Act for the Battle Mountain Indian Community, and

WHEREAS, conditions set forth in this act were determined as the out come of a questioneir that was sent out to the members of the Battle Mountain Community, and

WHEREAS, this document shall be officially known from this day as the Battle Mountain Band Council Land Rights Act as stated in the attached document.

NOW THEREFORE BE IT RESOLVED, the Battle Mountain Band Council by adoption of this Resolution No. 91-BM-41 officially recognize the attached document to be known as the Battle Mountain Band Council Land Rights Act.

PAGE 2, RESOLUTION NO. 91-BM-41

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned as Chairman of the Battle Mountain Band Council do hereby certify that the Battle Mountain Band Council is presently composed of 6 sworn members of whom 6 constituting a quorum were present at a duly held meeting of the Battle Mountain Band Council on the 4th Day of September, 1991 and that the foregoing Resolution was duly approved and adopted at such meeting by a vote of 6 FOR 0 AGAINST 0 ABSTAINED, pursuant to Article 4 Section 12 (B) of the Te-Moak Constitution of the Western Shoshone Indians of Nevada, and that said Resolution has not been rescinded nor amended in any form.

Glenn V. Holley Sr. Chairman
Battle Mountain Band Council

TE-MOAK TRIBE OF WESTERN SHOSHONE
BATTLE MOUNTAIN BAND COUNCIL

AN ACT

To reaffirm the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869), between the United States and the Western Shoshone to confirm Western Shoshone hunting, fishing, trapping, gathering, and roaming rights throughout the Western Shoshone Ancestral Territory; to confirm Title to certain Western Shoshone Ancestral Lands in the Te-Moak Tribe of Western Shoshone Battle Mountain Band Council, and Battle Mountain Indian Colony; to provide for Economic Development, resource protection and self determination of the Te-Moak Tribe of Western Shoshone, Battle Mountain Band Council, and Battle Mountain Indian Colony.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the Te-Moak Tribe of Western Shoshone Battle Mountain Band Council, and Battle Mountain Indian Colony "**Land Rights Act**".

FINDINGS

SECTION 1. Congress finds and declares that:

A. The Western Shoshone Nation entered into a Treaty with the United States on October 1,1863 at Ruby Valley, Nevada which is known as the Treaty of Ruby Valley said Treaty was ratified by the United States Senate on June 17,1869 and proclaimed by the President of the United States on October 21,1869.

B. The Treaty of Ruby Valley did not cede in any Western Shoshone Lands to the United States for its citizens to pass through Western Shoshone Lands and provide for certain types of temporary occupancy by citizens of the United States.

C. The Treaty of Ruby Valley delineated a portion of the Ancestral Lands of the Western Shoshone Nation, including the area surrounding the present Te-Moak Tribe of Western Shoshone Battle Mountain Colony, and recognized Western Shoshone occupancy of such Lands.

D. The Ancestral Lands of the Western Shoshone Nation have deep religious and cultural significance to the Western Shoshone People, and as a result the Western Shoshone People have never desired to give up their Ancestral Lands and be removed to other areas.

E. The Congress of the United States recognizes the right of the Western Shoshone people to continue to hold and occupy their ancestral homelands, and the right of the Western Shoshone People to economic and political Self-Determination.

F. The Western Shoshone People have continuously asserted their ownership of Western Shoshone Lands, and such lands have never been legally abandoned by the Western Shoshone.

G. The Western Shoshone continue to exercise aboriginal hunting, fishing, trapping, roaming and gathering rights throughout the ancestral territory of the Western Shoshone Nation and are utilizing large areas for grazing of livestock pursuant to aboriginal rights and the Treaty of Ruby Valley.

H. Western Shoshone title to the larger part of the ancestral lands of the Western Shoshone Nation remained un-impaired until December 19,1979 when the judgment in **Western Shoshone Identifiable Group vs. United States**, Docket 326-K was paid.

I. The amount of the judgment, $26,143,000.00 constitutes woefully inadequate compensation for the loss of Western Shoshone Land Rights as of December 19,1979.

J. The Western Shoshone Nation has **refused to accept** the judgment awarded in Docket 326-K as compensation for extinguishment of title to its lands and will not accept money in exchange for extinguishment of title to such lands.

K. The United States desires to dispose of the fund created by the final judgment in **Western Shoshone Identifiable Group vs. United States**, Docket 326-K.

L. Article VI of the Treaty of Ruby Valley provides for the establishment of Western Shoshone Indian Reservations where Western Shoshone may become economically self-sufficient, but which reservation have heretofore never been established.

M. The Courts of the United States, in **United States vs. Dann**, have held that certain long standing Western Shoshone rights of occupancy enforceable against the United States.

N. There is an immediate need for a fair and just resolution of Western Shoshone land rights against the United States, and an immediate need to provide an adequate land base for the Te-Moak Tribe of Western Shoshone, Battle Mountain Band.

O. No provisions of this Act shall constitute a precedent for re-opening, re-negotiating, or legislating upon any past settlement involving Land Rights, or other matters with any Tribe, Band, or identifiable group of American Indians.

SECTION 2. For the purposes of this Chapter, "The Term":

A. "Secretary" means Secretary of the Interior.

B. "Western Shoshone Indian" means a person of one quarter or more Western Shoshone Indian descendant, whether or not such person is an enrolled member of a federaly- Recognized Indian Tribe.

C. "Te-Moak Tribe of Western Shoshone Battle Mountain Band" means the Federaly Recognized Indian Tribe that occupies the Battle Mountain Indian Colony, at Battle Mountain , Nevada.

D. "The Te-Moak Tribe of Western Shoshone Indians Battle Mountain Band" means a person of one-quarter or more Western Shoshone Indian Descendent who is an enrolled member of the Te-Moak Tribe of Western Shoshone, is eligible for enrollment in the Te-Moak Tribe of western Shoshone in accordance with its enrollment law, descendant of a re-enrolled or person eligible for enrollment in the Te-Moak Tribe of Western Shoshone.

E. "Te-Moak Tribe of Western Shoshone, Battle Mountain Band" means all lands lying within the following geographic points:

* on the Northeast, from Northeast of Dry Creek Mountain

* on the Northwest, from Northeast of Winnemmucca

* on the Southwest, from Northeast of Logan Peak

* and on the Southeast, from Northwest of Bald Mountain

F. "Western Shoshone Nation" refers collectively to those Sovereign and independent Bands of Western Shoshone Indians who interred into the bilateral 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869) and the bilateral Tutuwa Treaty, with their Chiefs and headmen acting as ministers, plus the Timbisha Shoshone Tribe of Death Valley, California, the Dann Band of Crescent Valley, Nevada and all other Western Shoshone People as defined above.

G. "Private Lands" means land held in fee simple by any person or entity other than the United States and its agencies and instrumentalities.

H. "Federal Lands" and "Federaly Claimed Lands" means lands held or claimed to be held in fee simple by the United States that are not held in trust for Indians. Such terms include lands subject to administration of the United States Departments of Agriculture and Interior, including all of the sub-agencies of those departments.

I. "Land(s)" means surface rights, sub-surface rights, mineral estates, and water rights appurtenant to land, whether Federaly or Privately held.

J. "Sub-Surface Estate" means sub-surface mineral rights retained by the United States on those lands which surface rights have been conveyed to private parties by the United States Patent, and any sub-surface rights acquired by the United States separately from surface rights.

K. "Western Shoshone Ancestral Lands" and "Western Shoshone Ancestral Territory" means all lands within the exterior boundaries of the ancestral lands, within the exterior boundaries of the Ancestral Lands of the Western Shoshone Nation.

NATURE AND PURPOSE OF COMPENSATION

SECTION 3. Compensation:

The judgement awarded by the United States Court of Claims in **Western Shoshone Identifiable Group vs. United States**, Docket 326-K, is hereby characterized as to be negotiated with the Western Shoshone Nation for wrongs done, and past damages to that Nation and its individual members by the United States during the **Nineteenth and Twentieth Centuries**, including the disruption of the Western Shoshone Culture and Lifestyle, the destruction of game, and trespass on Western Shoshone Lands, including the removal of valuable minerals without compensation. Not withstanding the judgment in **Western Shoshone Identifiable Group vs. United**

States, such funds shall not be deemed compensation for the taking of or extinguishment of title to Western Shoshone Aboriginal Lands.

DISTRIBUTION OF WESTERN SHOSHONE COMPENSATION FUNDS

SECTION 4. Distribution:

A. The Western Shoshone Nation has refused to accept the judgment awarded in Docket 326-K as compensation for extinguishment of title to its lands and will not accept money in exchange for extinguishment of title to such lands. Monetary settlement of any kind will have to be negotiated between the United States and the Western Shoshone Nation.

1. Pursuant to negotiations with the Western Shoshone Nation the following persons born prior to and alive on the effective date of this Act who are identified on Tribal or Interior Department records as Western Shoshone Indians and who are enrolled in any of the following Tribes shall be included:

Te-Moak Tribe of Western Shoshone Indians of Nevada

Duckwater Shoshone Tribe

Ely Shoshone Tribe

Yomba Shoshone Tribe

Timbisha Shoshone Tribe

Shoshone/Paiute Tribe of Duck Valley Reservation

Paiute/Shoshone Tribe of Fallon Reservation

Reno Sparks Indian Colony

Fort Mc Dermit Paiute and Shoshone Tribes

Walker River Paiute Tribe

Lovelock Paiute Tribe

Owens Valley Paiute/Shoshone Band of Indians

B. Individuals of the following categories shall not be eligible for enrollment.

1. Those who participated in the Shoshone Award Docket 326-D, 326-E, 326-F, 326-G, 326-H, 366, and 367 or who are members of the Shoshone Tribe of Wind River Reservation or of the Shoshone Bannock Tribes of Fort Hall Reservation.

2. Those who Shoshone Ancestry is derived solely from the Boise or Bruneau Bands.

3. Members of the Confederated Tribes of the Goshute Reservation or of the Skull Valley Goshute Tribe;

4. Those who participated in the Indians of California Award in Dockets 31, 37, 80, 80-D, and 347.

5. Those who participated in the Southern Paiute Award in Docket 88 or who are members of the Moapa Paiute Tribe or of the Kaibab Paiute Tribe.

6. Those who participated in the Northern Paiute Award in Docket 87.

7. Those who are found eligible to participate in the Mojave Award in Docket 283 and 295 or who are members of the Fort Mojave Tribe.

8. Members of the Washo Tribe of Nevada and California.

9. Members of the Quechan Tribe.

10. Those who participated in the Klamath Award in Docket 100 or who's Indian Ancestry is derived solely from Yahooskin Snakes or Walapai Paiutes.

11. Any other Shoshone who has already received per capita in any other areas.

C. Not until an agreement between the United States and the Western Shoshone Nation has been reached through a negotiations process shall any judgment funds be allocated to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band.

TE-MOAK TRIBE OF WESTERN SHOSHONE BATTLE MOUNTAIN BAND ANCESTRAL LANDS CONFIRMED

SECTION 5. Land Title Confirmed

A. Legal Description - Area Using Public Land Rectangular Surveys Terminology: **Mount Diablo Meridian**

1. T. 26 N., R 38 E., 23,041 acres
T. 27 N., R 38 E., partially surveyed 24,044 acres
T. 28 N., R 38 E., 23,020 acres
T. 29 N., R 38 E., 22,960 acres
T. 30 N., R 38 E., partially surveyed 22,795 acres
T. 26 N., R 39 E., 23,013 acres
T. 27 N., R 39 E., unsurveyed 23,204 acres
T. 28 N., R 39 E., 21,180 acres
T. 29 N., R 39 E., 22,908 acres
T. 30 N., R 39 E., partially surveyed 22,900 acres
T. 31 N., R 39 E., partially surveyed 22,402 acres
T. 32 N., R 39 E., 23,586 acres
T. 33 N., R 39 E., 23,320 acres
T. 34 N., R 39 E., 23,461 acres
T. 35 N., R 39 E., 23,033 acres
T. 36 N., R 39 E., 23,023 acres
T. 37 N., R 39 E., 22,926 acres
T. 26 N., R 40 E., 22,525 acres
T. 27 N., R 40 E., 22,719 acres

T. 28 N., R 40 E., 23,593 acres
T. 29 N., R 40 E., 22,963 acres
T. 30 N., R 40 E., 22,824 acres
T. 31 N., R 40 E., 23,147 acres
T. 32 N., R 40 E., partially surveyed 23,008 acres
T. 33 N., R 40 E., 22,857 acres
T. 34 N., R 40 E., 22,898 acres
T. 35 N., R 40 E., 22,965 acres
T. 36 N., R 40 E., 22,950 acres
T. 37 N., R 40 E., 23,091 acres
T. 26 N., R 41 E., partially surveyed 23,644 acres
T. 27 N., R 41 E., 22,971 acres
T. 28 N., R 41 E., 22,755 acres
T. 29 N., R 41 E., partially surveyed 22,950 acres
T. 30 N., R 41 E., 22,940 acres
T. 31 N., R 41 E., 23,107 acres
T. 32 N., R 41 E., 22,971 acres
T. 33 N., R 41 E., 23,304 acres
T. 34 N., R 41 E., 22,801 acres
T. 35 N., R 41 E., 23,579 acres
T. 36 N., R 41 E., 22,868 acres
T. 37 N., R 41 E., 22,781 acres
T. 26 N., R 42 E., partially surveyed 23,460 acres
T. 27 N., R 42 E., unsurveyed 23,040 acres
T. 28 N., R 42 E., unsurveyed 23,040 acres
T. 29 N., R 42 E., 22,778 acres
T. 30 N., R 42 E., 22,879 acres
T. 31 N., R 42 E., 23,020 acres
T. 32 N., R 42 E., 22,787 acres
T. 33 N., R 42 E., 22,798 acres
T. 34 N., R 42 E., 22,958 acres
T. 35 N., R 42 E., 22,960 acres
T. 36 N., R 42 E., 23,038 acres
T. 37 N., R 42 E., 23,019 acres
T. 26 N., R 43 E., partially surveyed 23,067 acres
T. 27 N., R 43 E., partially surveyed 23,177 acres
T. 28 N., R 43 E., unsurveyed 23,040 acres
T. 29 N., R 43 E., 23,014 acres
T. 30 N., R 43 E., 23,119 acres
T. 31 N., R 43 E., 21,099 acres
T. 32 N., R 43 E., 24,918 acres

T. 33 N., R 43 E., 23,003 acres
T. 34 N., R 43 E., 22,426 acres
T. 35 N., R 43 E., 22,879 acres
T. 36 N., R 43 E., 22,553 acres
T. 36 N., R 43 E., 22,553 acres
T. 37 N., R 43 E., 22,992 acres
T. 37 1/2 N., R 43 E., 810 acres
T. 38 N., R 43 E., 22,993 acres
T. 39 N., R 43 E., 22,941 acres
T. 40 N., R 43 E., 22,360 acres
T. 26 N., R 44 E., unsurveyed 24,900 acres
T. 27 N., R 44 E., 22,904 acres
T. 28 N., R 44 E., partially surveyed 23,013 acres
T. 29 N., R 44 E., 22,935 acres
T. 29 N., R 44 1/2 E., 57 acres
T. 30 N., R 44 E., 22,906 acres
T. 30 N., R 44 1/2 E., 20 acres
T. 31 N., R 44 E., 23,480 acres
T. 32 N., R 44 E., 22,717 acres
T. 33 N., R 44 E., 22,980 acres
T. 34 N., R 44 E., 22,957 acres
T. 35 N., R 44 E., 22,930 acres
T. 36 N., R 44 E., 23,032 acres
T. 37 N., R 44 E., 23,032 acres
T. 38 N., R 44 E., 23,167 acres
T. 39 N., R 44 E., 22,903 acres
T. 40 N., R 44 E., 25,689 acres
T. 41 N., R 44 E., 12,434 acres
T. 26 N., R 45 E., 23,048 acres
T. 27 N., R 45 E., partially surveyed 23,057 acres
T. 28 N., R 45 E., partially surveyed 22,882 acres
T. 29 N., R 45 E., 22,660 acres
T. 30 N., R 45 E., 22,683 acres
T. 31 N., R 45 E., 23,174 acres
T. 32 N., R 45 E., 22,634 acres
T. 33 N., R 45 E., 23,041 acres
T. 34 N., R 45 E., 23,276 acres
T. 35 N., R 45 E., 22,934 acres
T. 36 N., R 45 E., 23,021 acres
T. 37 N., R 45 E., 22,934 acres
T. 38 N., R 45 E., 22,808 acres
T. 39 N., R 45 E., 22,816 acres
T. 40 N., R 45 E., 28,144 acres
T. 41 N., R 45 E., 23,041 acres

T. 26 N., R 46 E., 23,004 acres
T. 27 N., R 46 E., 25,116 acres
T. 28 N., R 46 E., 23,005 acres
T. 29 N., R 46 E., 23,003 acres
T. 30 N., R 46 E., 22,872 acres
T. 31 N., R 46 E., 23,145 acres
T. 32 N., R 46 E., 23,003 acres
T. 33 N., R 46 E., 23,031 acres
T. 34 N., R 46 E., 22,857 acres
T. 35 N., R 46 E., 22,928 acres
T. 36 N., R 46 E., 23,049 acres
T. 37 N., R 46 E., 22,947 acres
T. 38 N., R 46 E., 22,917 acres
T. 39 N., R 46 E., 22,923 acres
T. 40 N., R 46 E., 27,569 acres
T. 41 N., R 46 E., 23,015 acres
T. 26 N., R 47 E., 23,218 acres
T. 27 N., R 47 E., 23,040 acres
T. 28 N., R 47 E., 25,020 acres
T. 29 N., R 47 E., 25,019 acres
T. 30 N., R 47 E., 26,088 acres
T. 31 N., R 47 E., 23,043 acres
T. 32 N., R 47 E., 23,411 acres
T. 33 N., R 47 E., 22,967 acres
T. 34 N., R 47 E., 23,129 acres
T. 35 N., R 47 E., 23,334 acres
T. 36 N., R 47 E., 23,009 acres
T. 37 N., R 47 E., 22,929 acres
T. 38 N., R 47 E., 22,965 acres
T. 39 N., R 47 E., 22,957 acres
T. 40 N., R 47 E., 27,843 acres
T. 41 N., R 47 E., 23,018 acres
T. 26 N., R 48 E., partially surveyed 21,888 acres
T. 27 N., R 48 E., partially surveyed 22,973 acres
T. 28 N., R 48 E., partially surveyed 23,031 acres
T. 30 N., R 48 E., 23,385 acres
T. 31 N., R 48 E., 22,250 acres
T. 32 N., R 48 E., 23,263 acres
T. 33 N., R 48 E., 22,945 acres
T. 34 N., R 48 E., 22,912 acres
T. 35 N., R 48 E., 23,282 acres
T. 36 N., R 48 E., 23,023 acres
T. 37 N., R 48 E., 22,995 acres
T. 38 N., R 48 E., 22,809 acres

T. 39 N., R 48 E., 22,946 acres
T. 40 N., R 48 E., 27,564 acres
T. 41 N., R 48 E., 23,029 acres
T. 26 N., R 49 E., 23,383 acres
T. 27 N., R 49 E., unsurveyed 19,188 acres
T. 28 N., R 49 E., 22,914 acres
T. 29 N., R 49 E., 23,911 acres
T. 30 N., R 49 E., 20,611 acres
T. 31 N., R 49 E., 23,019 acres
T. 32 N., R 49 E., 22,951 acres
T. 33 N., R 49 E., 23,050 acres
T. 34 N., R 49 E., 22,933 acres
T. 35 N., R 49 E., 22,924 acres
T. 36 N., R 49 E., 22,986 acres
T. 37 N., R 49 E., 22,991 acres
T. 38 N., R 49 E., 22,969 acres
T. 39 N., R 49 E., 22,933 acres
T. 40 N., R 49 E., 25,977 acres
T. 41 N., R 49 E., 23,035 acres
T. 26 N., R 50 E., 23,015 acres
T. 27 N., R 50 E., 23,187 acres
T. 28 N., R 50 E., 19,228 acres
T. 29 N., R 50 E., 23,948 acres
T. 30 N., R 50 E., 22,917 acres
T. 31 N., R 50 E., 23,104 acres
T. 32 N., R 50 E., 22,433 acres
T. 33 N., R 50 E., 23,510 acres
T. 34 N., R 50 E., 19,166 acres
T. 35 N., R 50 E., 18,757 acres
T. 36 N., R 50 E., 15,218 acres
T. 37 N., R 50 E., 22,804 acres
T. 38 N., R 50 E., 15,098 acres
T. 39 N., R 50 E., 15,499 acres
T. 40 N., R 50 E., 16,698 acres
T. 41 N., R 50 E., 23,025 acres
T. 26 N., R 51 E., 23,047 acres
T. 27 N., R 51 E., 23,187 acres
T. 28 N., R 51 E., 19,228 acres
T. 29 N., R 51 E., 23,948 acres
T. 30 N., R 51 E., 22,917 acres
T. 31 N., R 51 E., 23,104 acres
T. 32 N., R 51 E., 22,433 acres
T. 33 N., R 51 E., 19,249 acres
T. 34 N., R 51 E., 22,988 acres
T. 35 N., R 51 E., 23,307 acres
T. 36 N., R 51 E., 23,017 acres

The area described, including both Public and Nonpublic Lands, aggregate 4,386,998 acres.

2. Within 180 Days of the effective date of this Act, the Secretary shall cause to be published in the Federal Register the Legal Land Descriptions of all lands and interests title to which is confirmed in the Te-Moak Tribe of Western Shoshone, Battle Mountain Band, all lands withdrawn pursuant to this Act.

B. Surveys:

1. Within two years following the effective date of this Act the Secretary shall cause to be surveyed the surface and sub-surface estates title to which is hereby confirmed to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band. The exterior boundary of the area as to which fee and simple title has been confirmed to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band shall be monumented at the rectangular surveys terminology.

2. All withdrawal and conveyance pursuant to this Act shall be shown on current plates of survey or protraction diagrams of the Bureau of Land Management, and shall conform as nearly as practicable to the United States Land Survey System.

D. Conveyance of Lands:

1. Immediately upon completion and approval of the surveys of all lands confirmed to the ownership of the Te-Moak Tribe of Western Shoshone, Battle Mountain Band pursuant to this Act, the Secretary shall issue to the Tribe fee patents to the surface and subsurface estates of such lands.

E. No liability for Trespass:

1. The Te-Moak Tribe of Western Shoshone, Battle Mountain Band shall not be liable to the United States under the Taylor Grazing Act of 1934, or pursuant to any other provision of law or doctrine of equity, for

trespass to lands belonging to or claimed by the United States within Western Shoshone ancestral territory, which trespass occurred prior to the effective date of this Act.

SECTION 6. Water Rights

A. All waters:

1. Which are within, flow through or arise of lands confirmed to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band pursuant to this Act.

2. There is no valid, outstanding appropriation under Nevada State Law.

3. Would be deemed abandoned pursuant to Nevada State Law on the day prior to the date of enactment of this Act.

4. Are not otherwise previously reserved by the United States shall on the effective date of this Act, be deemed the property of the Te-Moak Tribe of Western Shoshone, Battle Mountain Band.

B. All Water Rights confirmed to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band pursuant to this Act which would otherwise be considered the property of the Federal Government:

1. Shall retain the same quantity and date of priority that such rights would have if the Federal Government were deemed to have reserved such rights.

2. Shall not be subject to abandonment pursuant to Nevada State Law.

3. Shall be treated as permanent present perfected rights under Federal Law.

4. Shall not be limited to the uses for which such rights were deemed reserved by the Federal Government.

5. May be used or allocated for any purpose within or without the boundaries of lands belonging to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band as the Te-Moak Tribe Battle Mountain Band may determine.

C. All water rights, other than rights described in subsection 8 (B) hereof which may be deemed the property of the Te-Moak Tribe, Battle Mountain Band pursuant to this Act.

1. Shall have a priority date as of the date of this Act.

2. Shall be treated as permanent present perfected rights under Federal Law.

3. Shall not be subject to abandonment pursuant to Nevada State Law.

D. All water rights appurtenant to the lands belonging to, or held in trust by the United States for the Benefit of, the Te-Moak Tribe, Battle Mountain Band, including water rights subject to this Act and water rights appurtenant to lands acquired by or, for the Te-Moak Tribe, Battle Mountain Band prior to the effective date of this act, Shall be subject to the sole and exclusive jurisdiction of the Te-Moak Tribe of Western Shoshone, Battle Mountain Band for the purposes of determining use and allocation.

SECTION 7. AUTOMATIC PROTECTION FOR LANDS CONFIRMED TO TE-MOAK TRIBE OF WESTERN SHOSHONE, BATTLE MOUNTAIN BAND TRIBAL OWNERSHIP PURSUANT TO THIS ACT:

A. Notwithstanding any other provision of law or doctrine of equity, all and interests in land confirmed or conveyed to the Te-Moak Tribe, Battle Mountain Band ownership pursuant to the provisions of this Act, Shall Be Exempt, so long as such land and interests are not sold to third parties.

1. Adverse possession and similar claims based upon estoppel or latches.

2. Real property taxes by any governmental entity; condemnation pursuant to State Law.

3. Judgments resulting from a claim based upon or arising under:

   A. Title 11 of the United States Code or any successor statue.

   B. Other insolvency or moratorium laws, or other laws generally affecting creditor,s rights.

4. Judgment in any action at law or in equity to recover sums or penalties incurred by the Te-Moak Tribe, Battle Mountain Band, and any of its contractually waived prior to the commencement of such action.

   A. Except as otherwise specifically provided, said exemptions described shall apply to any claim or judgement existing on, or arising after, the date of the enactment of this Act.

   B. No land or interests in land confirmed or conveyed to the Te-Moak Tribe, Battle Mountain Band Tribal Ownership pursuant to the provisions of this Act may be soled; provided that such land or interests in land may be sold if such sale has been approved by a vote of two thirds 2/3 of the eligible voters of the Te-Moak Tribe, Battle Mountain Band in a Band election held not more than one 1 year prior to the actual conveyance of such land or interests in land.

   C. Definition: For the purpose of this subsection, the term "sold" means the irrevocable conveyance or transfer of

any interest in real property; provided that any lease or contingent conveyance for a period longer than 99 years shall be considered a sale confirming to the Te-Moak Tribe, Battle Mountain Band "Sales and Use Tax Ordinance"

SECTION 8. NO EFFECT ON VALID EXISTING LAND RIGHTS

A. Nothing in this Act shall deprive any person or government of any valid existing right of use or possession, or any contract right, which that person or government may have in any of the lands hereby confirmed to the Te-Moak Tribe, Battle Mountain Band, or of any existing right of access over and across such lands in accordance with the provisions of such contracts or the term of such existing rights.

B. All existing mineral leases involving lands the title to which is confirmed to the Te-Moak Tribe, Battle Mountain Band, under this Act, including oil and gas leases, which were issued or approved pursuant to Federal Law prior to the enactment of this Act, Shall remain in full force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law applications for mineral leases, pending on the date of enactment of this Act shall be rejected and advance rental payments returned to the applicants.

SECTION 9. EFFECT ON SUBSISTING TREATIES AND INCONSISTENT LAWS

A. The Treaty of Ruby Valley, to the extent not inconsistent with this Act, is continued in full force and effect. All rights and exemptions, both political and territorial, not expressly delegated to the Federal or State Governments by this Act or the Treaty of Ruby Valley are hereby reserved to the Western Shoshone Nation and its constituent Tribes and Bands.

B. The provisions of this Act supersede all laws of the United States which are inconsistent herewith, including laws generally applicable to "Indians".

SECTION 10. JURISDICTION

A. Notwithstanding that Battle Mountain it is one of the constituent Bands of the larger Western Shoshone Nation, and that certain Tribal Governmental powers and attributes, including Tribal Sovereignty, may be exercised by the Te-Moak Tribe, Battle Mountain Band, is hereby acknowledged as a historically recognized Indian Tribe possessing full Indian Tribal Sovereignty and powers of self government as recognized by the laws of the United States, including Tribal Sovereign Immunity.

B. All Lands the title to which is confirmed to the Te-Moak Tribe, Battle Mountain Band pursuant to this Act, and all lands hereafter acquired by the Te-Moak Tribe, Battle Mountain Band in accordance with the provisions of this Act, shall be subject to the Te-Moak Tribe of Western Shoshone, Battle Mountain Band jurisdiction.

SECTION 11. DISPOSITION OF MINERAL ROYALTIES AND LEASE PAYMENTS

A. The Te-Moak Tribe of Western Shoshone, Battle Mountain Band may in its discretion, distribute up to 10% of the annual value of mineral royalties and lease payments received from lands the title to which is confirmed in the Te-Moak Tribe, Battle Mountain Band. The balance of such monies shall be retained or expended for Tribal Operations and or economic development.

SECTION 12. TAX EXEMPTION

A. Distributions of mineral royalties, and lease payments, Shall not be subject to Federal or State income tax, nor shall such payments be taken into account for purposes of determining eligibility for State of Federal benefit programs.

SECTION 13. HUNTING, FISHING, TRAPPING, GATHERING, AND ROAMING RIGHTS

A. The aboriginal hunting, fishing, trapping, gathering, and roaming rights of the "Western Shoshone Nation" and its individual members are hereby fully recognized and preserved throughout the Western Shoshone Ancestral Territory. All Western Shoshone Indians, as herein defined, Shall be entitled to exercise Western Shoshone hunting, fishing, gathering, and roaming rights.

B. The Battle Mountain Band through the Te-Moak Tribe, Shall have exclusive jurisdiction to regulate hunting, fishing, trapping, gathering, and roaming by any and all persons, whether or not they are members of the Western Shoshone Nation, on all lands, lakes, and streams held in trust by the United States for Western Shoshone Tribes, Bands, and individuals, and on all lands, lakes, and streams wherein the surface estate is confirmed in the Te-Moak Tribe, Battle Mountain Band pursuant to this Act.

SECTION 14. RULES AND REGULATIONS

A. The Secretary is authorized to promulgate such rules and regulations as may be required to implement this Act.

TESTIMONY AND STATEMENT OF
LARRY M. MANNING
SUBMITTED FOR THE RECORD
TO THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
August 2, 2002

HEARING ON S.958, A BILL FOR THE USE AND DISTRIBUTION OF FUNDS AWARDED TO THE WESTERN SHOSHONE, DOCKET NUMBERS 326-A-1, 326-A-3, & 326-K
August 2, 2002
WASHINGTON, D.C.

Mr. Chairman and members of the Committee, my name is Larry M. Manning, a direct lineal Western Shoshone descendant. Through this testimony, I speak for the many Western Shoshone Descendants, particularly the children, who stand to be excluded from their rightful inheritance by S. 958 should this Bill, as proposed, be implemented.. I submit this testimony in hopes that the Senate Committee on Indian Affairs will modify S. 958 to avert a large miscarriage of justice as identified below for the many innocent people this Bill will exclude.

The distribution of the funds to the Western Shoshone Indians as provided in the judgment of the Indian Claims Commission for Docket Number 326-K, along with the disbursal of the accounting claims awarded in Dockets 326-A-1 and 326-A-3, raises many serious issues for the potential beneficiaries of these trust accounts. Mainly, in Docket Number 326-K, the takings claim, the issues are: 1) whether the funds should be distributed in the first instance; and 2) if distributed, who is entitled to receive such funds (whether pursuant to a blood quantum or by a lineal descendancy criteria). In relation to Dockets 326-A-1 and 326-A-3, the main issue is whether the proper beneficiaries are identified as the recipients of these claims under S.958. I submit that the proper beneficiaries for at least one-half, if not all, of the general accounting

claims in Dockets 326-A-1 and 326-A-3 belong to the Western Shoshones of the Duck Valley Indian Reservation. These Western Shoshone Indians will be improperly and illegally denied the rightful return of their resources if S.958, as currently drafted, is enacted. I wish to address each of these concerns in turn.

1. DOCKET 326-K: NO MINIMUM BLOOD QUANTUM IS REQUIRED BY LAW TO PARTICIPATE IN THE DISTRIBUTION AND NONE SHOULD BE SET.

On October 16, 1962, the Indian Claims Commission held that the Western Shoshones had a compensable property interest in lands located in Nevada and California which were taken by the United States. Under Docket Number 326-K, the Commission determined that the value of this land was worth $26,154,600.00 (minus $9,410.11 for compensation paid under the Treaty of Ruby Valley). Te-Moak Bands of Western Shoshone Indians of Nevada v. United States, 18 Cl.Ct. 74, 77 (1989). This final award was certified to the General Accounting Office on December 6, 1979 and the case was marked closed on February 5, 1980. Under 25 U.S.C. §§ 1402 and 1403, the Secretary was to submit a plan to Congress for distribution of this award. Id.

On May 9, 2000, Assistant Secretary-Indian Affairs Kevin Gover presented draft legislation to Congress entitled "To authorize the Use and Distribution of the Western Shoshone Judgment Funds in Docket Nos. 326-K, 326-A-1, and 326-A-3." Under this proposed legislation, the judgment funds contained in Docket 326-K would be distributed to all Western Shoshones who have at least *one-quarter degree Western Shoshone Blood.* **I submit that this blood quantum criterion, if enacted into law, would constitute another taking of property without just compensation by the United States against all Western Shoshone lineal descendants who do not meet the arbitrary one-quarter blood requirement. This is a**

violation of the 5th Amendment to the United States Constitution.

Since 1951, throughout all the legal actions, posturing and procedural maneuvering conducted in the Indian Claims Commission, the Court of Claims and the Claims Court in relation to the Western Shoshone claims, no legal authority found, held or otherwise required that the participants entitled to the distribution of Docket 326-K be at least one-quarter blood Western Shoshone. In addition, to my knowledge, no formal administrative or executive proceeding has required a minimum blood quantum to be met in order for one to participate in the Western Shoshone award. The conclusion is that no blood quantum other than lineal descendancy is legally required for a person to participate in the distribution of Docket 326-K. Congress should not now require, pursuant to this legislation, an arbitrary blood quantum that mandates more than lineal descendancy in order to participate in the award. To require more would ultimately violate the United States Constitution's takings clause.

Further, the Federal Government owes a trust responsibility to all Western Shoshone Indians, **including** lineal descendants (*See* Loudner v. United States, 108 F.3d 896, 901 (8th Cir. 1997)). This trust responsibility mandates that the Federal Government ensure that lineal descendants receive a per capita distribution of the judgment contained in Docket 326-K. There is precedence for this position. Lineal descendancy was used as a criterion in the Northern Paiute distribution plan submitted by the Secretary of the Interior to implement the Northern Paiute takings claim. Rogers v. United States, 877 F.2d 1550, 1553 (Fed. Cir. 1989).

In order to develop the distribution plan for the Northern Paiute claim, the Federal Government met with the Northern Paiute people from which a "Record of Hearing" was developed. This Record laid the foundation or basis for the Secretary's plan to distribute the

Northern Paiute claims.

Likewise, on August 8, 1980, the Bureau of Indian Affairs (BIA) developed a "Hearing of Record" for the Western Shoshone. In this Record, the BIA recommended and supported the Secretary's proposal to distribute the Western Shoshone judgment **"on a descendancy basis with no blood degree requirement."**

The Northern Paiute and the Western Shoshone situations parallel each other in many respects. Like the Northern Paiute, the Western Shoshone have many descendants living on and off various reservations and colonies under the control of different tribal governments in Northern Nevada. Most Indians living in this region can claim ancestry in both tribes and have endured similar historic interactions in their relations with non-Indian society. Where the Northern Paiute and Western Shoshone lived and how they interacted and participated with their tribal governments are clearly analogous. In this light, the Secretary was absolutely correct to propose that the judgment for the Western Shoshone from Docket 326-K be distributed to the lineal descendants as was done with the Northern Paiute claim. Both situations are identical.

Additionally, in a Memorandum dated March 11, 1980, from the Commissioner of Indian Affairs to the BIA Phoenix and Sacramento Area Directors, entitled "Results of Research Report on Western Shoshone Award in Docket 326-K", the Commissioner found:

> "We find those Western Shoshone people, <u>and their descendants</u>, who derive from the censuses and other rolls of the above cited entities, <u>and other descendants who prove Western Shoshone ancestry</u> on the basis of rolls and records to the satisfaction of the Secretary of the Interior, to be the beneficiaries of the award in Docket 326-K."

<u>Emphasis added</u>. No quarter blood requirement is established in this memorandum finding. The Commissioner held, appropriately, that those people who could prove ancestry (in other words-

lineal descendancy) had a right to share in the award. To hold otherwise would illegally deprive certain beneficiaries of their rightful property in violation of the 5th Amendment of the United States Constitution and in violation of the trust and fiduciary responsibilities the Federal Government owes to all Western Shoshone, regardless of blood quantum.

Establishing a certain minimal blood quantum other than lineal descendancy may be appropriate in those circumstances where the tribe awarded a judgment is located solely on one reservation and subject to only one federally-recognized tribal government. But here, as mentioned previously, we have Western Shoshone people located on various reservations subject to numerous federally-recognized tribal governments. Many Western Shoshone (over 50%) live off reservations. While each of these tribal governments can set the blood quantum criteria for their particular membership, these governments cannot set the criteria for the Western Shoshone claims award overall. To do so would result in various minimum blood requirements for different Western Shoshone thereby resulting in equal protection problems. Nor should any non-legitimate organization(s) portraying to represent all Western Shoshones be allowed to set this criteria. The fair, legal and honorable method of distributing the judgment fund in Docket 326-K is solely by Western Shoshone lineal descendancy.

2. ALL OF THE FUNDS CONTAINED IN THE IMPL TRUST FUNDS (PLUS THE INTEREST ACCUMULATED THERETO) FROM DOCKETS 326-A-1 AND 326-A-3 RIGHTFULLY BELONG TO THE WESTERN SHOSHONE PEOPLE OF THE DUCK VALLEY INDIAN RESERVATION.

In addition to the takings claim filed and identified as Docket 326-K, the Western Shoshone brought general accounting claims against the Federal Government. TeMoak Bands of Western Shoshone Indians v. United States, 23 Cl.Ct. 435 (1991). These accounting claims

became Docket Nos. 326-A-1 and 326-A-3 (Docket No. 326-A-2 was a water claim ultimately dismissed by the federal courts). Id. at 436. The general accounting claims in Docket No. 326-A-1 dealt with two trust accounts. The Western Shoshone claimed the Federal Government misused and mismanaged these two accounts on behalf of the Western Shoshone Indians.

The first trust account consisted of funds payable to the Western Shoshones under the Treaty of Ruby Valley. This account initially contained an amount of $100,000 payable to the Western Shoshone over a 20 year period. TeMoak Bands of Western Shoshone Indians of Nevada v. United States, 18 Cl.Ct. 74, 80-81 (1989). The funds were paid in return for the loss of game rights and privileges ceded by the Western Shoshone under the Treaty. Id. at 78. On July 8, 1991, the United States Claims Court awarded an amount of $115,539.91 plus $240,824.95 in interest for what it called "IMPL Claim I." TeMoak Bands of Western Shoshone Indians of Nevada v. United States, 23 Cl.Ct. 435, 439 (1991). I assume this award was for the Treaty provision outlined above. If so, then the amount in this first trust account rightfully belongs to all Western Shoshone. **If not, then this money, as a court-identified IMPL account, should be distributed to the Western Shoshone Indians of the Duck Valley Reservation under the justification provided below.**

The second trust account dealt with in Docket 326-A-1 was an account labeled Indian Moneys, Proceeds of Labor ("IMPL"). Generally, IMPL accounts came into existence with the passage of the Act of March 3, 1883, 22 Stat. 582, 590. This Act provided in part:

> "The proceeds of all pasturage sales of timber, coal, or other products of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe."

White Mountain Apache Tribe of Arizona v. United States, 26 Cl.Ct. 446 (1992). The IMPL trust account under Docket 326-A-1 was payable to the Western Shoshone for all the products purchased by the government from Indian reservations. TeMoak Bands of Western Shoshone Indians of Nevada v. United States, 18 Cl.Ct. 74, 81 (1989). The Western Shoshone IMPL accounts arose from the federal government's exploitation of the Western Shoshones' lands (i.e., reservations), and must, therefore, be treated as proceeds of the sale of Indian trust land. Petitioner's Exceptions to Defendant's Accounting and Memorandum of Points and Authorities in Support of Petitioner's Exceptions to Defendant's Accounting, at page 10, ft.nt 3. The time period for these IMPL accounts ran from 1886 through 1951.

The above information is critical because the only Reservation in existence with any resources which the Federal Government could have exploited and thus contribute to the Western Shoshone IMPL account during the period of 1886 to 1951 was the Duck Valley Indian Reservation. Although land was set aside in 1912 in Ruby Valley for the Western Shoshone, most of this land was on the rocky Eastern slopes of the Ruby Mountains and unsuitable for leasing, grazing, farming or other beneficial use. While 20 acres of this land had the potential to be farmed, no irrigation ditches existed on this land at the time. The necessary conclusion is that this land could not have been used as a basis for contributing to the IMPL account.

According to AS-IA Gover, the federal government cannot concretely track the IMPL funds to any other Indian reservation other than Duck Valley because of inadequate records. In line with this reality, Mr. Gover did admit that the federal records did show that the bulk of the IMPL funds **came from the Duck Valley Indian Reservation between the years 1919 and 1930's**. *See* letter of May 9, 2000, to the Honorable J. Dennis Hastert. This conclusion is

supported by the fact that the other Western Shoshone reservations (Yomba and Temoak) were not created until the late 1930's. The rest of the Western Shoshone trust land consisted of "colonies" not suitable for generating funds that could be deposited into the Western Shoshone IMPL account for lack of physical resources to exploit.

The clear implication and indisputable conclusion of these facts is that all the funds in the second trust account in Docket 326-A-1 held by the Federal Government for the Western Shoshone Indians came from the Duck Valley Indian Reservation. These funds must be legally returned to the Western Shoshone Indians of that reservation. To this end, the Claims Court entered an amount of $109,541.06 plus interest of $241.815.79 for IMPL II. TeMoak Bands of Western Shoshone Indians of Nevada v. United States, 23 Cl.Ct. 435, 439 (1991). This money, along with any accumulated interest generated to date, is held in trust by the Federal Government for the Duck Valley Reservation Western Shoshone Indians and must be returned specifically to these people. The proposed legislation to distribute the money in Docket 326-A-1 must be changed to properly deal with this fact.

For Docket 326-A-3, according to AS-IA Gover (*See* letter of May 9, 2000, to the Honorable J. Dennis Hastert), the Court of Federal Claims awarded $29,396.60 on June 16, 1995 for the amount previously awarded on Docket 326-A-1 for the two trust accounts. Accordingly, any of the interest which is attributable to Duck Valley's specific share in the IMPL account(s) must be awarded accordingly to Duck Valley's Western Shoshone.

3. CONCLUSION

If Congress is to pass legislation for the distribution of the Western Shoshone claims as contained in Dockets 326-K, 326-A-1 and 326-A-3, then certain modifications must be made to

the currently proposed legislation. The proposed legislation must not contain the one-quarter blood quantum. To do so violates the takings clause of the 5th Amendment to the United States Constitution and violates the trust responsibility the Federal Government owes to all Western Shoshone Indians, including lineal descendants. To this end, I request that the one-quarter blood quantum criteria be taken out of S.958 and the requirement of lineal descendancy be substituted therefore.

Further, the Western Shoshone Indians of the Duck Valley Reservation are clearly the sole beneficiaries of at least one-half of the judgment funds awarded in Dockets 326-A-1 and 326-A-3. In relation to the first trust account, further investigation needs to be conducted to determine if the Duck Valley Western Shoshone are entitled to these funds. If this first trust account is truly an IMPL account and not related to the payments the Federal Government made pursuant to the Treaty of Ruby Valley, then the Western Shoshone of Duck Valley are rightfully entitled to these funds.

The second trust account clearly belongs to the Western Shoshone of the Duck Valley Reservation. To allow these funds to go to persons whose resources did not contribute to the trust account will be a great miscarriage of justice which the Congress should not be a party to. S.598 must be modified to allow the return of Duck Valley's resources to the beneficiaries who own such resources, the Western Shoshone Indians of the Duck Valley Reservation.

Thank you for allowing me to submit this testimony to the Committee. I appreciate the Committee's consideration of these concerns that I have raised and request that S. 958 be modified in accordance with the above-testimony to correct the oversights this Bill currently contains.

September 7, 2002

To: Senator Daniel Inouye, Chairman
Senate Committee on Indian Affairs
722 Hart Senate Office Building
Washington, DC 20510
http://www.senate.gov~inouye/webform.html

From: Larry M. Manning
P.O. Box 264
Owyhee, NV 89832
(775)757-2415
Larry.Manning@mail.ihs.gov

Re: Senate Bill S. 958
Western Shoshone Claims Distribution Act
Western Shoshone Claims Dockets 326K, 326A-1, & 326A-3

Dear Senator Inouye,

Thank you for your commitment to read all materials/testimony submitted to you before September 8, 2002, on this matter. I am a member of the Shoshone-Paiute Tribe of the Duck Valley Indian Reservation, Owyhee, Nevada. I am a Western Shoshone descendent and a Vietnam Veteran. I represent many Western Shoshone descendents/children who would be hurt by this bill should it pass as proposed. Again I write to you with the hopes that we may be heard.

I once heard a wise judge instruct two opposing attorneys; "I want each of you to submit to me your best final arguments within 15 days, AND, I want to see case law or written law. I DO NOT want any philosophical arguments." With this in mind I proceed.

DOCKET 326-K

We strongly oppose the ¼ degree blood requirement to participate in the claims distribution as the bill proposes. The other large claim distribution here at Duck Valley was the Northern Paiute Claims (Docket 87) of December 6, 1974, and this was based on descendency. Please see ATTACHMENT A. We feel this is an historical lawful precedent and rightfully should be followed with this claim.

This Western Shoshone "Steering Committee" is not a lawfully constituted body and is a loose knit, self-appointed, committee comprised of only ¼ bloods and not all Western Shoshone descendents. It appears they have been effective in that they have "steered" the money their way in this bill. We pray you do not allow this to happen.

As you know this steering committee conducted two elections (straw votes) for this claims distribution for ¼ blood only. The last on June 3, 2002. There was no real

difference between the two. Basically it was an election held BY and FOR the ¼ bloods, so the results were again entirely predictable. Please see ATTACHMENT B, C, and ATTACHMENT D. Here in Owyhee, many Western Shoshone descendents not meeting their ¼ blood requirement were turned away at the door and not permitted to vote. Needless to say, many were very upset. Many questioned the basis for their authority to hold this election. There was much chaos. Many feel this group is trying to steal their equal right to inherit their fair portion of this money. Minority vote results held binding on the majority who were not permitted to vote echoes of the Deep South in the mid-1900s. Fortunately the Civil Rights Acts ended that. Is this no different?
(Questions: Those Western Shoshone descendents denied just compensation for lands taken, would they still retain title and associated rights – however disputed they may be? Should this ¼ blood requirement pass, would a class action lawsuit/injunction be in order? These are last ditch hypothetical questions. But are we not at our last ditch?)

Chairman Inouye, during the hearing you asked why the BIA did not conduct an election. This was a very good question. (The BIA responded that they were not asked.) I can think of two good reasons:

1. The BIA is responsive to lawfully constituted, constitutionally based, and Federally recognized Indian Tribal Governments. This steering committee is not. They cannot/should not act at the behest of an unofficial committee. To do so would place their trust responsibilities to <u>all</u> Western Shoshone descendents in serious question. Also in this case, they would in all probability have incurred the wrath of several lawful Tribal Business Councils who also oppose this bill.
2. This ¼ blood steering committee would not have control over the election and the official count.

DOCKETS 326A-1, 326A-3

These dockets rightfully belong to Duck Valley and must be withdrawn from the bill as written. Neither this steering committee nor the Tem oak Council has lawful standing to obligate these funds. The Shoshone-Paiute Tribal Business Council of the Duck Valley Indian Reservation, a federally recognized tribal government, has requested this by resolution. See ATTACHMENTS E and F.

Senator, many of us Western Shoshone descendents have put many hours into the preparation of this testimony. They have appointed me as their spokesman. Please take the time to read and please give it due consideration. Our biggest concern is for the many children who will be denied by those who are uncaring. A great Chief once said:

"Let us put our minds together and see what
better life we can make for our children."
Sitting Bull, Hunkpapa Teton Sioux Chief, 1880.

Are we wrong for wanting something good for our children? They are rightfully entitled to it, are they not? Presently, they are entitled to it through direct descendency. At the moment the ¼ blood requirement is passed, the door will close on them. If you include them, we will be sure to tell them it was because of you and your committee that they have their inheritance. They will give thanks to you all and you will be remembered.

Larry M. Manning

ATTACHMENT A

gate production quotas for the following controlled substances expressed in grams in terms of respective anhydrous bases, be established as follows:

SCHEDULE I

Basic class:	Proposed—1975
1-alpha-acetylmethadole	800,000
Tetrahydrocannabinols	650

SCHEDULE II

Basic class:	Proposed—1975
Alphaprodine	34,500
Amobarbital	12,504,948
Amphetamine	3,291,320
Anileridine	88,132
Apomorphine	2,000
Cocaine	800,000
Codeine (for sale)	49,273,000
Codeine (for conversion)	1,165,000
Desoxyephedrine[1]	41,915,374
Dihydrocodeine	721,000
Diphenoxylate	1,132,000
Ecgonine	200,000
Ethylmorphine	44,880
Fentanyl	2,000
Hydrocodone	800,000
Hydromorphone	70,200
Levorphanol	3,000
Methadone	3,245,000
Methadone Intermediate (4-cyano-2 dimethylamino-4,4-diphenyl butane)	1,360,000
Methamphetamine	19,669,325
Methylphenidate	1,200,000
Mixed alkaloids of opium	163,821
Morphine (for sale)	600,000
Morphine (for conversion)	42,182,000
Normethadone	830,000
Opium (tinctures, extracts, etc., expressed in terms of opium)	1,804,000
Oxycodone (for sale)	1,709,400
Oxycodone (for conversion)	7,000
Oxymorphone	8,000
Pentobarbital	23,120,000
Pethidine	17,367,416
Phenazocine	225
Phenmetrazine	2,741,758
Secobarbital	18,480,000
Thebaine (for sale)	4,250,000
Thebaine (for conversion)	1,750,000

[1] 758,168 g for the production of levodesoxyephedrine for use in a noncontrolled product, and 457,238 for production of methamphetamine.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. These comments or objections should state with particularity the issues concerning which the person desires to be heard. A person may object or comment on the proposals relating to any one or more of the above mentioned substances without filing comments or objections regarding the others. Comments and objections should be submitted in quintuplicate to the Office of the Administrative Law Judge, Attention: Hearing Clerk, Drug Enforcement Administration, Department of Justice, 1405 Eye Street NW., Washington, D.C. 20537, and must be received by January 13, 1975. If a person believes that one or more issues raised by him warrant a full adversary-type hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Administrator finds, in his sole discretion, warrants a full adversary-type hearing, the Administrator shall order a public hearing in the FEDERAL REGISTER summarizing the issues to be heard and setting the time for the hearing (which shall not be less than 30 days after the date of publication).

Dated: December 9, 1974.

JOHN R. BARTELS, Jr.,
Administrator,
Drug Enforcement Administration.

[FR Doc.74-29071 Filed 12-12-74;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

NORTHERN PAIUTE

Plan for Use and Distribution of Judgment Funds

DECEMBER 6, 1974.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated by the Acts of September 30, 1951 (65 Stat. 733), and October 21, 1968 (82 Stat. 1190), in satisfaction of the awards granted to the Northern Paiute Nation in Indian Claims Commission Docket 87. The plan for the use and distribution of the funds were submitted to the Congress with a letter dated July 18, 1974, and was received (as recorded in the Congressional Record) by the House of Representatives on July 22, 1974, and by the Senate on July 23, 1974. Neither House of Congress having adopted a resolution disapproving it, the plan became effective on October 10, 1974, as provided by Section 5 of the 1973 act, *supra*.

The plan reads as follows:

The funds appropriated by the Acts of September 30, 1951 (65 Stat. 733), and October 21, 1968 (82 Stat. 1190), in satisfaction of the judgments granted to the Northern Paiute Nation in Docket 87 before the Indian Claims Commission, including all interest accrued, less attorney fees and litigation expenses, shall be used and distributed as herein provided:

The Secretary of the Interior (hereinafter "Secretary") shall make a per capita distribution, subsequent to preparing and approving a Northern Paiute descendant roll, of the totality of the judgment fund principal, and its accrued interest, in a sum as equal as possible to each eligible Northern Paiute descendant born on or prior to and living on the approval date of this plan. Individuals in the following categories shall not be eligible for enrollment: members of the Quechan Tribe or the Walker Tribe of Nevada and California, individuals who have participated in judgments awarded to the Indians of California in Dockets 31, 37, 80, 80-D and 347; the Malheur Paiutes in Docket 10; the Southern Paiutes in Dockets 88, 820 and 820-A; or to the Chemehuevis in Dockets 361 and 361-A; or individuals whose Indian ancestry is derived solely from the Walpapi Paiutes, Yahooskin Snakes Bannocks or Western Monos.

The Secretary shall publish rules and regulations in the FEDERAL REGISTER governing Northern Paiute enrollment procedures, and shall utilize any documents acceptable to him in establishing proof of eligibility.

The shares of living competent adults shall be paid directly to them. The shares belonging to minors, legal incompetents, and deceased persons shall be invested as individual Indian money until paid under appropriate safeguards to the minor or legal incompetent or distributed in accordance with Departmental regulations governing estates (43 CFR 4.200-4.237), whichever is applicable.

Arrangements shall be made by the Secretary, if such has not been accomplished before the approval date of this plan, for the restoration, with appropriate interest, to the Northern Paiute judgment funds of any and all such funds advanced for program planning purposes to the Walker River Paiute Tribe and the Fort McDermitt Shoshone-Paiute Tribe.

MORRIS THOMPSON
Commissioner of Indian Affairs.

[FR Doc.74-29069 Filed 12-12-74;8:45 am]

National Park Service

SOUTHWEST REGIONAL ADVISORY COMMITTEE

Cancellation of Meeting

The meeting of the Southwest Regional Advisory Committee originally scheduled for December 16 and 17, the notice of which was previously published on page 40965 in the FEDERAL REGISTER on Friday, November 22, 1974 (FR Doc. 74-27336) has been cancelled.

Dated: December 11, 1974.

ROBERT M. LANDAU,
Liaison Officer, Advisory Commissions, National Park Service.

[FR Doc.74-29230 Filed 12-12-74;10:28 am]

Office of the Secretary

[INT DES 74-108]

BANDELIER NATIONAL MONUMENT, NEW MEXICO

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for a proposed master plan for Bandelier National Monument, New Mexico, and invites written comment on or before January 27, 1975. Written comments should be addressed to the Superintendent, Bandelier National Monument, at the address given below.

The draft environmental statement considers development patterns and goals for administration of the monument. Proposed master plan concepts include acquisition of lands, classification of lands, development to accommodate visitors entering the monument from the south, a transportation system to relieve congestion in Frijoles Canyon, and both interpretive and research programs.

SEP. 7.2002 5:53PM EAGLE CREST COMM NO.843 P.5/15

VOTE

ATTACHMENT B

TO: Eligible WESTERN Shoshones of Duck Valley RESERVATION

WESTERN Shoshone Claims Distribution Act

VOTING will be HELD AT THE H.D.C. – Tribal Gym - backROOM
MONDAY - JUNE 3rd 2002 - 7:00 AM –to- 7:00 PM.

VOTING REQUIREMENTS:

1. MUST be 18-yrs. old to vote
2. Must have TRIBAL ENROLLMENT CARD
3. Must be one-quarter (1/4) degree Western Shoshone Blood ← NOTE

And you have NOT RECEIVED any other Indian Nation Award from the United States Indian Claims Commission - or the United States Court of Claims such as:

- Docket 288 —— Washoe TRIBE of NEVADA and CALIFORNIA
- Docket 326-I —— NORTHWESTERN or Shoshone-Bannock Tribes of FORT HALL RESERVATION
- Docket 87 —— NORTHERN PAIUTE Claims Award
- Docket 17 —— MALHEUR PAIUTE AWARD
- Docket 88 —— SOUTHERN PAIUTE AWARD

After the closing of the voting POLLS, WESTERN Shoshone Claims Committee of Duck Valley will tally an unofficial count in front of members and post it as an unofficial count

Ballot Boxes will be secured and taken to Te-Moak Administration office at 8:00 am - Tuesday morning June 4, 2002. Tally of all the Communities Ballots will be counted in open forum at the Elko Colony Gym at 6:00 PM, Tuesday June 4th 2002 for the Official Tally.

ATTACHMENT C

WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT
Year 2002, REFERENDUM
Before the Senate Indian Affairs Committee

Senator Harry Reid has asked that the Western Shoshone do another BALLOT to verify that he has the support of the majority of people and to accurately and fairly pass legislation to address the judgment funding of **"The Western Shoshone Claims Distribution Act"**. Please remember that a BILL may be changed during the LEGISLATIVE PROCESS by the Senate Indian Affairs Committee and when it goes back to the full floor of the Senate.

INSTRUCTIONS: ***ELECTION CLERK WILL REMOVE THE "CERTIFICATION OF TRIBAL MEMBERSHIP" PRIOR TO ISSUING THE BALLOT. Please use an ink pen.***

CERTIFICATION OF TRIBAL MEMBERSHIP

I, _____, certify that I am an enrolled
(Print Full Name)

Member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian nation's award, and that I meet the one-quarter (1/4) minimum Western Shoshone blood quantum.

NOTE

Enrollment Number: _____

_____ Date

_____ Signature

THANK YOU FOR YOUR PARTICIPATION
CONTINUE ON TO NEXT PAGE TO VOTE

ATTACHMENT D

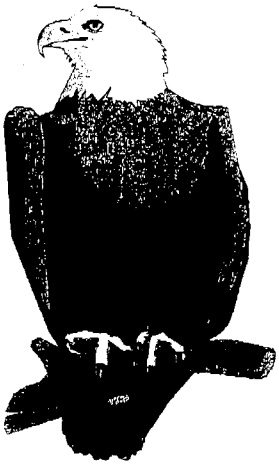
BALLOT

Their ballot was on this page. They refused to give us a copy of their ballot and guarded them closely. Our Tribal policy is that all voting ballot samples be publicly posted for at least a two week period before election. They did not do this.

SEP. 7.2022 5:54PM EAGLE CREST COMM NO.843 P.8/15
ENT BY: ATTORNEY GENERAL T.O.NATION; 520 393 2699; MAR-19-02 2:41PM; PAGE 2

ATTACHMENT E (1 of 2)

WESTERN SHOSHONE NATION



CLAIMS DOCKETS

326-A1

&

326-A3

AUGUST 7, 1997

&

AUGUST 8, 1997

ELKO, NEVADA

ATTACHMENT E (2 of 2)

(John Paul Kennedy, Temoke Shoshone Tribe Attorney speaking...)

look this is our land and we need you to help us a you know establish that fact and the bureau because of things like this Navajo Hopi problem just don't want anything to do with it they see it as a big headache even though it might be right but they don't want to do anything with it, so that is a very important issue to the Western Shoshone Council at Duck Valley now it turns out that recently through some of the work of some of the leaders here the Sho-Pai Council has passed a resolution which repeats an earlier resolution where they, the Sho-Pai Council actually recognizes this group to be the spokespersons for the Western Shoshone faction on that reservation, so they've kind of recognized that they do have a separate identity and a separate interest, if I were one of the Paiutes up there I would never would have done that but they a they have I think because of people like David and Elaine that have kind of pushed that along that's happened, in any event this is a this is the issue that's up there. As it relates to this problem I think there are two aspects, the first aspect is in resolving this as suggested I think by Felix this morning it is very important for Duck Valley to have the door opened somehow so that this question regarding the status of their reservation can be answered. That's in the interest of really all the Western Shoshone, but it's particularly of course in the interest of those who are up there. How do we open that door, and why is the door closed to the inworth, well the door is closed because the Federal Government has sobered immunity, you can't sue the Federal Government unless they say okay you can sue me, the Sho-Pai council that's up there, you can't sue them either be for the same reason Indian tribes have sobered immunity so in order to get that door opened we need an either consent from them or consent from the Sho-Pai or, I think more realistically, an act of congress that will say the door's open, we'll let you get this matter resolved if you have to go to court to resolve it fine let some judge rule on the issues fine, but somehow that answer has to be given one way or the other as to what their rights are in their land, so that's something as we started out talking about the size of this pie, if we can throw that into the pie and make the pie a little bigger that would make these people a lot happier. They start off with the attitude and this is, you know, a lot of people have different views on it, but the Duck Valley Western Shoshones say this claim this A claim, not the big claim but the smaller claim that we're talking about today, this claim really was the only reason it was filed was because of their grandparents who are living on the reservation were cheated up there and that's why it was filed and that the money that was taken, at least ninety or ninety-five percent of it was Duck Valley money, belonged to their ancestors and should have been given to their ancestors up there. So they feel and when the original report came down they objected to that report because of that reason and in or in making that point we've talked to some of the folks such as Francis Horn who was the lawyer who really was in charge of this part of the claim and we said to her you know well why was this claim filed and whose who was to benefit and Francis wrote back, in fact she wrote to the Bureau of Indian Affairs back in 1982 or 83 somewhere way back then, she said this is this is Duck Valley's assets, it isn't everybody, it isn't Timbisha it isn't Duck Water it isn't Ely it isn't anybody it isn't Te-Moak it's Duck Valley and it belonged to them and that's why we filed the claim, well the Bureau made this mistake and Te-Moak went out and spent alot of time, alot of money, alot of tribal energy, alot of investment into this whole process and now they come back and say op we made a mistake. Please forgive us, so there's alot or blame here, maybe plenty to go around. But I think from the stand point of the group as to how we all solve this problem if we say the pie is only so big and that's it, we don't solve it. But if we say to the Bureau we want you to make the pie bigger and we want you to [illegible]

-326A-1 & 3 Docket

-Attorney for Hobbs, Straus, Dean, & Walker. Washington DC Law Firm

ATTACHMENT F (1/2)

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161

RESOLUTION
of the
GOVERING BODY
of the
SHOSHONE-PAIUTE TRIBES
of the
DUCK VALLEY INDIAN RESERVATION

RESOLUTION NUMBER: 2002-SPR-012

BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION THAT,

WHEREAS, This is an Indian organization known as the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation as defined and established under the Indian Reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of the economic and social welfare of its Tribal Membership in accordance with the Constitution and By-laws of the Shoshone-Paiute Tribes of the Duck Valley Reservation, approved by the Membership on March 21, 1936, and approved by Secretary Ickes, Department of the Interior, April 20, 1936; and

WHEREAS, The Shoshone-Paiute Tribal Business Council is the only federally recognized and duly elected governing body of the Membership of this tribe, established in accordance with the above document, and is sworn to protect the interests of its membership; and

WHEREAS, The Shoshone-Paiute Tribal Business Council declares that there is no other Tribal Business Council in existence on the Duck Valley Indian Reservation; and

WHEREAS, The Business Council has become aware that the Senate Committee on Indian Affairs is scheduling a hearing on S.958, a bill 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 an identical companion bill in the House of Representatives Committee on Resources, H.R. 2851; and

WHEREAS, Dockets 326-A-1 and 326-A-3 are administrative accounting claims based upon wrongs committed by the United States Government exclusively against the Indians who settled on the Duck Valley Indian Reservation after it was established in 1877, and are therefore separate and apart from the land claim (Docket 326-K); and

WHEREAS, A precedent identical claim distribution has been set under the Northern Paiute Claims Settlement whereby the Fort McDermitt Tribes had a similar accounting claim that was distributed exclusively to members of that tribe and not shared with the entire Northern Paiutes; and

WHEREAS, The Business Council of the Shoshone-Paiute Tribes of Duck Valley hereby totally object to S.958 as written with regard to Dockets 326-A-1 and 326-A-3, wherein these funds would be taken away from the Duck Valley membership for whom the claim was intended; and

WHEREAS, In reference to Docket 326-K distribution plan, the Shoshone-Paiute Tribal Business Council recognizes that there have been two (2) previous Indian Claims Commission Distributions on the Duck Valley Indian Reservation-the Northern Paiute Claims and the Malheur Paiute Claims-and these two (2) claims were based on Tribal descendency, not ¼ blood requirement. To now demand ¼ blood requirement on this, the third distribution, the Business Council recognizes that many Tribal Members, particularly children, will be wrongfully denied their inherited right to participate in any claims distribution; and

ATTACHMENT F (2 of 2)

SHOSHONE-PAIUTE TRIBES
RESOLUTION 2002-SPR-012
PAGE 2

WHEREAS, The Shoshone-Paiute Tribal Business Council also recognizes that because of the sensitivity and accuracy/inaccuracy of determining exactly who is ¼ degree blood, descendency based on the Indian Census Rolls of 1934 is the most fair method of determining eligibility;

NOW THEREFORE BE IT RESOLVED BY THE SHOSHONE-PAIUTE TRIBAL BUSINESS COUNCIL OF THE DUCK VALLEY INDIAN RESERVATION THAT, The United States Senate Committee on Indian Affairs must rightfully strike Sec. 3 Distribution of Dockets 326-A-1 and 326-A-3 from H.R. 2851 in its entirety, so these funds can be distributed to those for which they were intended; and

The United States House of Representatives Committee on Resources must rightfully strike Sec. 3 Distribution of Dockets 326-A-1 and 326-A-3 from H.R. 2851 in its entirety, so these funds can be distributed to those for which they were intended;

BE IT FURTHER RESOLVED THAT, The Bureau of Indian Affairs immediately take necessary steps to isolate these funds awarded under Dockets 326-A-1 and 326-A-3, and to protect these funds for the exclusive use and benefit to those for which they were rightfully intended, the Tribal Members of Duck Valley;

BE IT FURTHER RESOLVED THAT, Senate Bill S.958 and House Bill H.R. 2851, Sec. 2-Distribution of Docket 326-K Funds, Paragraph (1), Part (A) "have at least ¼ degree Western Shoshone Blood;" be stricken and replaced with "are direct descendants of persons of Western Shoshone ancestry as based on the Official Indian Census Roll of 1934":

BE IT FURTHER RESOLVED THAT, Tribal Resolution Number 97-SPR-63 is hereby rescinded, and the Shoshone-Paiute Tribal Business Council does not consider itself to be obligated or bound by any entity claiming to be a "Business Council of Duck Valley";

BE IT FINALLY RESOLVED THAT, All further Western Shoshone Indian Claims issues shall be handled by the Shoshone-Paiute Tribal Business Council.

CERTIFICATION

It is hereby certified that the Shoshone-Paiute Tribal Business Council is composed of six (6) Members of whom five (5) constituting a quorum and a Chairman were present at a meeting held on the 13th day of November, 2001, and that the foregoing resolution was duly adopted by the affirmative vote of 4 FOR, 1 AGAINST and 0 ABSTENTIONS; pursuant to the authority contained in Article VI, Section 1 (a) of the Constitution of the Shoshone-Paiute Tribes approved April 20, 1936.

Marvin Cota
MARVIN COTA, Tribal Chairman
Shoshone-Paiute Tribes

Helen Hernandez
HELEN HERNANDEZ, Tribal Secretary/Ofs. Adm.
Shoshone-Paiute Tribes

WHO WILL SPEAK FOR THE CHILDREN?

Date: March 15, 2002

To: The Honorable Daniel K. Inouye, Chairman
and Committee Members
United States Senate
Committee on Indian Affairs
Washington, DC 20510-6450

From: Larry M. Manning
P.O. Box 264
Owyhee, NV 89832

Re: **Hearing on Bill S. 958**
Western Shoshone Claims Distribution Act (Introduced in the Senate)
Indian Claims Commission Docket Numbers 326-A-1, 326-A-3, and 326-K

Dear Honorable Chairman Inouye and Committee,

I am an enrolled member of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation in Nevada. I am a direct descendant of Western Shoshone ancestry - a fact which is documented in our Official Tribal Records. I am proud to be a citizen of the United States and I am an Honorably Discharged Vietnam Veteran, proud to have served my country. I speak for the many people and all children who will be denied their rightful ancestral inheritance (by a relatively small number of self-serving individuals) should this bill become law.

A grave injustice stands to be committed against many Western Shoshone Descendents should this bill be passed as proposed. Previous claims distributions here at Duck Valley have been based on descendency – not the ¼ blood requirement as this bill proposes. A relatively small number of individuals have made that determination which will be of tremendous financial advantage to themselves at the expense of all descendents. Many of us question their legal "standing" on which they base their right to vote a large number of people out of property rights (money is property) while denying us the right to vote, and to hold this vote binding upon us. The ones who stand to be hurt most are the children – they are our biggest concern. We do not want to see anyone take their money.

Specifically, I refer to:

S. 958, Page 2, SEC. 2. DISTRIBUTION ON DOCKET 326-K FUNDS.

(1) The Secretary shall establish a Western Shoshone Judgment Roll consisting of all Western Shoshones who—

(A) have at least ¼ degree of Western Shoshone Blood.

Testimony: This must be changed to read :

(A) "are direct descendants of persons of Western Shoshone ancestry as based on the official Indian census roll of 1934."

Because:

1. **Descendency** was the method utilized for determining elegibility for two previous Indian Claims Commission distributions here at Duck Valley – the Northern Paiutes and the Malhuer Paiutes. Participant parties claimed then that the 1934 Indian census rolls were wrong in some instances, yet the rolls were determined to be "best evidence" and were utilized by the Bureau of Indian Affairs to establish descendency. **Senators, instruct this established precedent to again be the determining factor.**

2. They contend that this ¼ degree blood requirement is the wish of the people by their vote. This vote result was **preordained** since they only permitted those they considered to be ¼ blood to vote. **All** descendents were **not** permitted to vote. This is no less than **conspiracy**. **Senators, do not permit this conspiracy.**

3. This ¼ degree blood requirement was voted on by their select few who realize that the more descendents – children and grandchildren - they eliminate, the more money they will personally receive. **Senators, do not permit them to steal from the children.**

4. A $25,000 check (their estimate) for a secret "yes" vote on the ¼ blood requirement is quite an incentive. **Senators, can you not see what they are doing?**

5. Blood quantums listed on the official 1934 Indian census rolls have been changed to enable and ensure that certain individuals, their children, and grandchildren, meet their required ¼ degree blood. (This information comes from very reliable sources and will be quite easy to compare and verify.) **Senators, take the time to investigate.**

6. Changing blood quantums for financial gain is fraudulent and criminal. **Senators, do not permit this to happen.**

7. Many bona fide, legitimate, Western Shoshone descendents, children and grandchildren, will be denied their lawful rights and their rightful inheritance from their ancestors. **Senators, do not permit them to deny the children their rights.**

8. Ancestral rights are held sacred within the Native American communities, and they are to be honored. **Senators, remind them that these sacred rights cannot be voted away.**

9. I have attended their meetings and have voted against their ¼ blood requirement. They told me (and others) that they did not recognize my vote and declared the vote "unanimous" in favor. This is a most severe form of "taxation without representation." **Senators, do not allow them to vote away my rights while denying me the right to vote.**

10. Some of us who have opposed them have been the victims of verbal and physical abuse – a form of terrorism. **Senators, I thank you and support you in your opposition to terrorism.**

11. Many "closed/secret" meetings were held to discuss Western Shoshone issues and money expenditures. Western Shoshone (public) money expenditures were decided at these meetings. **Senators, do not endorse the people's money expenditures in meetings closed to the public.**

12. Native American Chiefs and Leaders are bound to always be honorable in their dealing with others and to always respect the rights of others. **Senators, help them to be honorable.**

13. During the public Northern Paiute Claims distribution meetings at Duck Valley, the Bureau of Indian Affairs Superintendent at that time told the people that all claims were based on descendency and that almost all tribal members were eligible to participate in either the Northern Paiute claims or wait for the Western Shoshone claims. Many chose to wait. Now this group has voted many of those out. **Senators, hold the words of the BIA Superintendent to be true.**

14. You, Senators, have the authority to disapprove this ¼ blood degree requirement. By changing this requirement to descendency, you can benefit the thousands of Western Shoshone descendants who stand to be denied. **Senators, please, you must not deny them.**

15. You, Senators, as representatives of the federal government, have a fiduciary trust responsibility as guardian and protector of the rights of the Native Americans – including the children. Often we are our own worst enemies and at times we must be protected from ourselves. **Senators, hold this trust responsibility sacred and do not let your children be hurt.**

16. All citizens have rights guaranteed to us by the U.S. Constitution and amendments thereof. The 5th amendment guarantees that property shall not be taken without due process of law and without just compensation. All Western Shoshone descendents (who have not participated in any previous claims distribution) possess inherited property rights to a share of these funds. A "straw" vote conducted by this "steering committee" with a relatively small number of ¼ bloods voting, does not constitute "due process of law" and how will they be compensated? **Senators, do not let them violate the Constitutional rights of the Western Shoshone descendents without due process of law.**

17. **No minimum blood quantum is required by law.**

18. **Right at this moment, all Western Shoshone descendents, including children, are eligible and entitled to receive their fair share of this claims distribution – including the ½ bloods.** Should this bill requiring ¼ blood be passed by this Senate Committee on Indian Affairs, many of us will lose faith in our system. Some will laugh. Others will cry – not for ourselves or for the money - but for the children.

Therefore: Senators, this ¼ degree blood requirement must be changed to descendency.

They need your approval to commit this travesty; otherwise they would not be here. They would already have carried it out if congressional approval was not necessary. The Bureau of Indian Affairs apparently supports this relatively few despite it's trust responsibility to all descendents. Surely they must recognize what is happening here or perhaps it is of little concern to them. Serpico, the New York City Police Officer – God bless the New York Police Department – said it best:

Those who are in a position to correct a sham
and do not do so, also become a part of the sham.

Do not confer legitimacy to these illegitimate actions. Please, you must correct this sham.

Some would have you believe that to distribute these monies based on descendency is a difficult, long, drawn out process. It has happened twice here at the Duck Valley Indian Reservation. All have the right to apply – subject to verification – and there is an appeal process. Rights must not be sacrificed for expediency.

Senators, you are here because you are honorable and your people believe in you and trust you to make the right decisions. You now hold a significant part of the future of many children in your hands – a trust that was previously misplaced. These young descendant children have no idea what some people here are trying to do to them. They are innocent and it is the duty of their elders to always watch out for them and to protect them from those who would seek to hurt them. That is our intent.

They have denied us our voice and our vote at their meetings. We quit going. We determined our best, and perhaps only, chance would be at the congressional hearings. That time is now. Hear our voice as we speak from the heart.

I thank each of you for the opportunity to speak to you. We ask the Creator to watch over you as you serve the people through these particularly difficult times.

Please consider our testimony. So much for so many depends on it.

Sincerely,

Speaking for and on behalf of many,

Larry M. Manning
P.O. Box 264
Duck Valley Indian Reservation
Owyhee, Nevada 89832
(H) (775) 757-2863
(W) (775) 757-2415

All my relations

March 12, 2002

Daniel K. Inouye, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D. C. 20510

RE: Opposition of Senate Bill 958and House of Representatives Bill 2851
(Sent by facsimille and first class mail)

Testimony of Mary McCloud
P.O. Box 181
Schurz, Nevada 89427

I, Mary McCloud, urge you to oppose Senate Bill 958 and a companion House of Representative Bill 2851, supporting the Western Shoshone Distribution Act sponsored May 24, 2001 by Senators Harry Reid and John Ensign and Congressman James Gibbons on September 6, 2001. Both bills are ***not*** authorized by the official governments of Western Shoshone. But by a self-selected committee not representative of the Western Shoshone or their governments.

In April 1994, President Clinton signed Executive Order 12866 directing all United States Governmental Departments, including the Department of Indian Affairs to adhere to "government to government relations with the Native American Governments." However, they disregarded this Executive Order regarding Claims.

The struggle to oppose this settlement began in 1951 when eighty-eight years prior, with a "peace and friendship treaty" we allied ourselves with the United States by and with the 1863 Treaty of Ruby Valley. A treaty emanating from international law, this treaty is in effect today. However, the U.S. Government and its Department of the Interior appear to consistently ignore authority and prohibition against alienation of title to Western Shoshone in the following documents:

1. **The Northwest Territorial Ordinances of 1787-Article III,** which states in part – *The utmost good faith shall always be observed towards the Indians, their land, and their property shall never be taken away from them without their consent."*
2. **US Constitution, Article VI, paragraph II,** states, *This Constitution, and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby. Anything in the Constitution of Laws of any state contrary notwithstanding."*
3. **Treaty of Guadeloupe Hidalgo 1848, 9 Statute 922 – "***Special care shall be taken" against "those invasions (Against the Indians) which the United States have solemnly obligated themselves to restrain."*
4. **Act of Congress Organizing the Territory of Nevada 1861,** *"Providing that nothing in this Act contained shall be construed to impair the right or property now pertaining to the Indians in said territory, so long as such rights shall remain un-extinguished by treaty between the US and the Indians."*
5. **Treaty of Ruby Valley 1863** – which is a *"Treaty of Peace and Friendship."*

We do not consent to sell our property to the United States. Neither did we loose our land through declared war with the United States. Therefore, the Western Shoshone Nation is **opposed** to settlements determined in 1977 by the Indian Court of Claims. Furthermore, at a hearing of Record July 26, 1980, Western Shoshone **defeated**, then and continues 21 years later to **oppose** any settlement regarding our land.

It is the Indian Claims Commission that established 1872 as valuation date for damages for the Western Shoshone. When prior to that date, the US Government never approached attempted to amend or abrogate the Treaty of 1863 with the Western Shoshone Chiefs. These Chiefs were still alive in 1872 and they never consented to sell or cede away their land. Neither the Chiefs nor the U.S. ever declared war to take Western Shoshone land. The Chiefs honored the terms of friendship in the treaty. However, the United States did not, as review of official records indicate, that the only relevant Federal Act which took place in 1872 was the Mining Law.

Nevada Congressional Representatives do dishonor to the Western Shoshone, to emphasize a straw poll vote held May 1998 at two Native Communities. This straw poll vote was undemocratically engineered by self-selected Claims Distributing Steering Committee supported by unethical BIA participation. The legality of votes cast in number, process, eligibility, execution and authenticity is questioned and ballots were not legally approved. Voters were not informed first by testimony as ballots were cast simultaneously. Balloting was held in total disrespect of the Democratic process, a process we have come to embrace as experienced voters. Further Western Shoshone challenge how the BIA and Steering Committee could use threats of arrest to control and intimidate testimonials. Many Western Shoshone People, who opposed the sale of their land, have taken their final journeys. Now we as living descendants (elders, children and grandchildren) carry on our fight to preserve our heritage and history against S. 958 and H.R. 2851. Western Shoshone want justice for ourselves and that of our future descendants. **We oppose, any plan of distribution that will not guarantee to protect our agreed rights, and we are against the bills that qualifying blood degree of one-quarter (1/4).** Both bills provide nothing for the future of the Western Shoshone Nation**, but surely will act as our death warrant!**

An article in Newsweek recently stated that the Inter-American Commission on Human Rights of the Organization of American States had issued a report to the Bush Administration on the case of Carrie and Mary Dann and the Dann Band of Western Shoshone vs. United States (LACHR, No. 11.140).

I respectfully encourage you and other members of the Congress to obtain a copy and review the reports. The report has a direct bearing on Western Shoshone land rights that are put in jeopardy by Senate Bill 958.

A recent BBC news broadcast on February 21, 2002, reported that President Bush, while in China, urged the Chinese government to respect human rights. How ironic, while here in America he seems to ignore the rights of the indigenous people of this country. In my opinion President Bush is neglecting to respond to the confidential report of the Inter-American Commission on Human Rights with regard to the Western Shoshone people.

Senate Bill 958, Section 2 Distribution of Docket 326-K Funds, No. 2 states that persons who receive a per capita payment from any other judgment fund awarded by the Indian Claims Commission, the Unites States Claims Court, or the United States Court of Federal Claims before the date of enactment of this Act, shall not be eligible for enrollment under this Act. **PLEASE NOTE: It is a strong possibility that Shoshone members of neighboring Tribes have participated in the above-referenced claims through descendancy or as a member of these Tribes, and were possibility participants in the straw poll vote.**

As a voter, it appalls me that the Federal Government has invited chairmen from the neighboring Paiute Tribes, who have no legitimate cause or interest in the Western Shoshone claim, to testify. They have no right to testify on our issues. This is another violation of our human rights.

Key persons such as Carrie Dann of the Dann Band; Raymond Yowell, Chief of the Western Shoshone National Council; and Pauline Esteves, former chairperson of the Timbisha Band were excluded from the October 23, 2001hearing. They have long-standing legitimate land issues, and are all within the territory of the Western Shoshone. I am requesting that they respectfully be given the opportunity to testify at the March 21, 2002 hearing and their participation in related meetings in regards to the proposed legislation.

I question the language of Section 3 – Distribution of Dockets 326-A-1 and 326-A-3 and oppose the monies being used for education. According to Daisy West, Tribal Relations Specialist, BIA, Washington D. C. in the minutes of the May 22, 1997, "This is a tribal claim. It's not a lineal descendant claim. It's strictly a tribal claim". So who is the REAL recipient? Duck Valley Reservation, Temoak Tribe of Western Shoshone, or the Western Shoshone Nation under the 1863 Ruby Valley Treaty?

I also question Sec. 3 – Distribution of Dockets 326-A-1 and 326-A-3, Sec. B: "*The Administrative Committee shall consist of 1 representative from each of the following organizations*" – **This is a misconception and fraudulent** and are not recognized as such – (v) *The Western Shoshone Business Council of the Duck Valley Reservation* – This Council is non-existent, they are known as Shoshone Paiute Business Council of Duck Valley or Shoshone Paiute Tribe of Duck Valley. (vi) *Fallon Band of Western Shoshone*. They are non-existent. They are known as the Fallon Paiute Shoshone Tribe.

Therefore, we request further, your support to guarantee the human rights for the Western Shoshone; help to preserve and protect our culture and spirituality and that of our future generations; and consider that this request shall consider all 6000 plus Western Shoshone, tribally affiliated including lineal descendants, by and with proper and fair negotiations. Senate Bill 958 and HR Bill 2851 should be defeated in their entirety. The Bill is deceptive and authored by the Western Shoshone Steering Committee who are not the government of the Western Shoshone. Inviting them to testify is a violation of our human rights.

Western Shoshones are greatly distressed regarding the terrorism of September 11, 2001 and the horror of which should not overshadow our efforts for full and proper consideration

For the record, if this passes, **I WILL NOT PARTICIPATE IN THE DISTRIBUTION OF FUNDS IN SENATE BILL 958. THIS BILL WAS AUTHORED BY THE WESTERN SHOSHONE CLAIMS DISTRIBUTION STEERING COMMITTEE WHICH CONSISTS OF INDIVIDUAL PEOPLE AND ARE NOT THE GOVERNMENT. AS A WESTERN SHOSHONE, I WAIVE NO SOVREIGNTY.**

Respectfully Submitted,

Mary McCloud

July 31, 2002

Senator Daniel Inouye
Committee on Indian Affairs
838 Hart Senate Office Bldg.
Washington, D.C. 20510

Re: Testimony on Senate Bill 958 and protest of hearing scheduled for August 2, 2002.

Dear Senator Inouye:

I am in total opposition to the above-named bill on the following points:

1. It is substantial deception from the time of the Indian Claims Commission Act on August 13, 1946. {The Western Shoshones never ceded land, nor is there any documents to prove gradual encroachment took place, and it does not extinguish title).
2. In Supreme Court vs. Dann, the Supreme Court ruling was based on **a fiction made into a reality.** As scholar, Milner Ball stated, "...the Court held a "payment" had been effected, although the Indians received no money and opposed the conversion of their land. The trust doctrine was the device the Court struck upon for executing this maneuver. The United States was not only the judgment debt to Indians, the Court said, but was also trustee to the Indians. Therefore the United States as debtor can pay itself as trustee, say this change in bookkeeping constitutes payment to Indians, and the Court will certify the fiction as a reality.
3. The straw pole vote held May 23-24, 1998 was questioned by Senator Reid and he then cancelled the hearing scheduled for March 21, 2002. The latest referendum of June 3, 2002, is also bogus since it did not follow the constitution of the Temoak Tribe of the Western Shoshone. The constitution was not followed since 30% of the registered voters had to be present in order to make the voting legal. Neither state or federal law was followed also, making it illegal in my opinion. Felix Ike did not inform all of his constituents. The notices were sent out only to a selected few. I did not receive the notice and many others that I know were not informed. By the time I heard about it, it was too late to apply for an absentee ballot, however, I did vote, **UNDER PROTEST.**
4. The Inter-American Commission on Human Rights has submitted a report to the Bush administration, which has been made public and submitted to the Senate Committee. It should be remembered:
    a. The U.S. has a responsibility to respect the human rights of Native American peoples, which include the right of self-determination and the right to possess property, both communally and individually.
    b. The U.S. has a responsibility to respect the findings of international human rights bodies. It cannot expect to be respected or taken seriously internationally if it is unwilling to respect these international institutions.
    c. U.S. has an obligation to honor Treaties made with Indian Nations under the U.S. Constitution (Article VI, Section 2)
    d. U.S. must stop all trespass and confiscation action against Western Shoshone in respect of the U.S. Constitution, the 1863 Treaty of Peace and Friendship. Western

Shoshone human rights and the findings of such bodies as the Inter-American Commission on Human Rights.

e. The U.S. should initiate negotiations with the Western Shoshone to address the ongoing conflict over land use and rights.

5. I feel Senator Harry Reid is outside of his legal authority to involve himself in developing a new ballot and election process in an attempt to satisfy tribal members and the Senate Committee on Indian Affairs (letter to Felix Ike, April 15, 2002 and May 1, 2002 attached). His selection of persons who will testify at the hearing on August 2, 2002 is unethical. Senator Reid has stated that he wants to "do what is best for members of the Western Shoshone Tribes, and will take whatever time is necessary to work through those newest concerns". I don't see this happening. The ballot has not resolved anything, the issue has caused more controversy.
6. Any legislation concerning the Western Shoshone must be developed with the consent and participation of Western Shoshone leadership, both Traditional and Federally Recognized Councils.

I want to stress that Larry Piffero and Nancy Stewart, co-chairs of the Western Shoshone Steering Claims Committee. They are not the official government of the Western Shoshone Nation. They are only a self-selected committee and have not been given the official authority by the recognized council, to speak on our behalf.

Allowing Nancy Stewart to testify, when she has no official capacity, is detrimental to the Western Shoshone Nation. If she testifies, then Carrie Dann and Raymond Yowell should also be allowed to have the same privilege. Care and Raymond have an issue, what is Nancy Stewart's? Felix Ike is also detrimental to the Temoak Council; he has gone against the decision of the Temoak Council.

Felix Ike also has **not** been given the official capacity to testify on behalf of the Temoak Council. He has ignored the Temoak Council. To my knowledge, the four bands under the Temoak Council and have submitted resolutions and letters sent to your office in regards to Mr. Ike having no official capacity to speak in their behalf. I feel Senator Reid, in inviting him to testify, has undermined the Temoak Council.

I am totally opposed to this bill and have sent many letters of protest. I again request that this bill be quashed. Attached is my testimony which I previously sent to you on March 11, 2002. Please read it again. As a Western Shoshone, I waive no sovereignty.

Sincerely,

Mary McCloud

Mary McCloud
P.O. Box 181
Schurz, Nevada 89427

Subscribed and sworn to before me this 31st day of July, 2002.

Bonnie K. Hughes
Notary Public

BONNIE K. HUGHES
Notary Public - State of Nevada
Appointment Recorded in Mineral County
No: 94-5829-13 - Expires September 15, 2004

Reid Postpones Western Shoshone Claims Distribution Hearing

Wednesday, March 20, 2002

Washington, D.C. - In response to recent concerns raised about the Western Shoshone Claims Distribution Act, Senator Harry Reid announced today he will postpone a scheduled hearing regarding the legislation.

"I am postponing the hearing on my bill, S. 958 the Western Shoshone Claims Distribution Act, so that I can take a fresh look at some of the concerns that have been recently raised about this legislation," Senator Reid said. "In addition, given the importance of the Yucca Mountain battle that will soon move to Congress, I will focus my efforts on that fight because it affects the Western Shoshone, every Nevadan and all of America."

Recently, concerns were raised about the ballot that was used to poll tribal members about their support of claims distribution as well as an apparent lack of consensus among Western Shoshone tribes on this issue.

Reid cited these concerns as justification for postponing the hearing and reviewing the legislation. "I am confident that we will be able to resolve many of the issues that have been raised with regard to S. 958," Reid said. "I want to do what is best for members of the Western Shoshone tribes, and we will take whatever time is necessary to work through these newest concerns."

The hearing was scheduled for Thursday, March, 21. There has been new date set for the hearing.

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[Return to Previous Page]

05/13/02 MON 11:06 FAX 7757382345 TEMOAK TRIBE 004
MAY. 2. 2002 9:25AM SENATOR REID NO. 801 P. 2

HARRY REID
NEVADA

ASSISTANT MAJORITY LEADER

United States Senate

WASHINGTON, DC 20510-2803

May 1, 2002

Chairman Felix Ike
Te-Moak Tribe of Western Shoshone
525 Sunset Street
Elko, NV 89801

Dear Chairman Ike,

Thank you for developing a new draft ballot and time line for polling the Western Shoshone on their support of a claims distribution plan. As you know, I am committed to moving S. 958, The Western Shoshone Claims Distribution Act, through the legislative process. A clear and unambiguous ballot is essential to show the Congress that the Western Shoshone people support the provisions in S. 958, and I believe we can make significant progress with the legislation once a new vote has occurred.

I am impressed with your draft ballot: it is well-worded and straightforward. I suggest that you remove reference to the bill number (S. 958) from all voting items so the results of the vote will not be tied to a specific piece of legislation. For example, Question Number 1 could be reworded as follows:

> "I support the distribution of the judgment funds awarded to the Western Shoshone in Docket 326-K (including interest accrued) to be paid at 100% per capita."

I also suggest that you include a fact sheet with the ballot that describes the three accounts referred to by Indian Claims Court docket numbers in the ballot questions. This would help to clarify voters' questions and will add credibility to the voting results.

The Committee on Indian Affairs suggests the inclusion of the following statement, which could be added to the fact sheet:

> "The United States Supreme Court has ruled that claims to tribal aboriginal land title were extinguished upon the payment into the U.S. Treasury of judgment funds awarded under Docket Numbers 326 K, 326-A-1 and 326-A-3 by the Indian Claims Commission. Accordingly, the distribution of these funds neither revives any extinguished claims nor extinguishes any existing or future claims against the United States government."

I look forward to working with you further on the new ballot and vote, and I appreciate your hard work on this issue.

Sincerely,

Harry Reid

HARRY REID
U.S. Senator

Web: http://reid.senate.gov

05/13/02 MON 11:06 FAX 7757382345 TEMOAK TRIBE 005

HARRY REID
NEVADA

ASSISTANT MAJORITY LEADER

United States Senate

WASHINGTON, DC 20510-2803

RECEIVED
2002 APR 19 PM 3:33
TEMOAK TRIBE

April 15, 2002

Chairman Felix Ike
Te-Moak Tribal Council
525 Sunset Street
Elko, Nevada 89801-2539

Dear Chairman Ike:

I appreciate the energy and passion with which you have pursued a resolution to the Western Shoshone claims distribution issue. I regret that it was necessary to postpone the hearing on my bill, The Western Shoshone Claims Distribution Act (S. 958) on short notice.

The Act will distribute the judgment funds that have been held in trust for the Western Shoshone people for over 20 years, and I remain committed to moving the bill through the legislative process. As part of this process, the bill must receive approval from the Senate Committee on Indian Affairs. The Committee recently raised concerns about the bill and the wording of the ballot by which Western Shoshone tribal members voted on the proposed distribution plan. In light of these issues, I made the difficult decision to postpone the hearing.

I recognize that there will never be complete agreement on any claims distribution plan; however, I will respect the wishes of the majority of the Western Shoshone people in passing legislation to address the judgment funds. To accurately and fairly assess the wishes of the Western Shoshone in this matter, I will work to develop a new ballot and election process that satisfies tribal members and the Senate Committee on Indian Affairs.

Thank you for your understanding on this difficult situation.

Sincerely,

Harry Reid

HARRY REID
United States Senator

DUCKWATER SHOSHONE TRIBE

TESTIMONY OF JERRY MILLETT, VICE CHAIRMAN BEFORE THE SENATE COMMMITTEE ON INDIAN AFFAIRS MARCH 21, 2002

I. INTRODUCTION.

My name is Jerry Millett. I am the Vice Chairman of the Duckwater Shoshone Tribe. I have served 14 years as Duckwater Tribal Chairman, and a total of 22 years on the Duckwater Tribal Council. I also served as Chief of the Western Shoshone National Council for 3 years. I have been dealing with the Western Shoshone land rights issue all of my adult life. I think it is fair to say that I am an expert on this issue.

The Duckwater Reservation is located 75 southwest of Ely, Nevada, and 277 north of Las Vegas. We are located in a very remote and unpopulated part of Nevada.

Let me make clear at the outset that the Duckwater Shoshone Tribe supports the objective of S.958. A majority of our membership supports a 100% per capita distribution of the Western Shoshone Judgment Fund that resulted from Docket 326-K before the Indian Claims Commission. This is because our membership is completely frustrated with the failure of the Interior Department to negotiate a land settlement with us, and the failure of Congress to confirm an economically adequate Western Shoshone land base. In other words, our people don't think we can ever hope to get real justice from the executive administration or the courts.

However, as a tribal councilman I have an obligation to represent all of our people, not just those who are anxious to get a check. In the past, a majority of our membership took the position that a settlement with the U.S. has to include land as well as money. A large minority of our membership still takes that position.

There are a number of other very important matters that must be considered in any effort to resolve the Western Shoshone land rights issues. Having said that the Duckwater Tribe does support 100% per capita distribution, my testimony will address these other issues.

II. OBLIGATION OF THE FEDERAL GOVERNMENT TO DEAL WITH TRIBES ON A GOVERMENT TO GOVERNMENT BASIS.

One of the obligations of the federal government is to deal with American Indian Nations on a government-to-government basis. This is the very essence of tribal sovereignty. It is incorporated into countless federal statutes, treaties, Executive Orders and policy statements. One big problem we are having with S.958 is that it was drafted

in response to demands by individual Western Shoshones who want money. However, the Western Shoshone Judgment Fund represents the common legacy and heritage of all Western Shoshones. Once it is gone, it is gone. That is all there is. There will be nothing left of our ancient heritage except our tiny and inadequate reservations. So, the distribution of the Fund affects us all, including our tribal existence, our unique culture and our future. Why is it that this bill has been drafted and sponsored with absolutely no consultation with Western Shoshone tribal governments? This bill is an overwhelming violation of our tribal sovereignty and our legal and moral right to an effective and honest government-to-government relationship with the federal government. Prior to enactment of this bill there must be meaningful consultations between the BIA and the Nevada Congressional delegation and all of the Western Shoshone tribal governments to determine what is best for the Western Shoshone Nation as a whole, not just those who are anxious to get a check.

Some people might say that the BIA and the Congressional delegation have consulted with the Western Shoshones because they have worked with the Western Shoshone Steering Committee to draft this bill. You must understand, however, that the Western Shoshone Steering Committee is a self-appointed group that has no formal political standing and that simply want money, nothing else. I have heard people say that the results of the so-called "election" held by the Steering Committee validly shows that most Western Shoshones just want the money distributed without delay. Apparently, some 1,000 people checked their ballot, "I am in favor of 100% per capita claims payment to one-quarter degree of Western Shoshone Blood," and 50 people checked, "I am not in favor of receiving any claims payment." This so-called "election" was meaningless. First, there was no formal notice of a referendum to all Western Shoshones. Second, only a little over a thousand people out of more than 6500 who might be eligible for the per capita distribution were involved. Who knows how many of that thousand were even Western Shoshones. The "election" was only among the self-selected group who showed up, mostly because all they want is money anyway. Thirdly, the ballot offered only false and misleading alternatives. To my knowledge, very few Shoshones, including myself, could agree with the statement, "I am not in favor of receiving any claims payment." We all think we are owed very large damages by the United States. Many of us think, however, that we should not accept any amount of money without also obtaining an economically adequate land base, which would provide a livelihood for ourselves and future Shoshone generations forever into the future.

III. VIOLATIONS OF HUMAN RIGHTS.

Some of my ancestors signed treaties with the United States in 1863. The Treaty of Ruby Valley and the Tutuwa Treaty did not cede any Western Shoshone land. The Government just wanted rights-of-way to California and the right to mine minerals. After the treaties were signed, the Government completely ignored them and acted as if the United States owned the land. In 1951 certain attorneys filed a claim under the Indian Claims Commission Act for a taking of all Western Shoshone lands, even though a taking never actually occurred. This case was called Western Shoshone Identifiable

Group v. U.S.. The land claim part of the case became Docket 326-K. The Duckwater Shoshone Tribe did not hire these attorneys and never had any relationship with them whatever. We were never a party to the case. When we tried to intervene in the case, the Court of Claims denied our motion and held that we were being adequately represented by the Temoak Bands Council, with whom we have no political relationship. As a simple matter of fact, we were not adequately represented by the Temoak Bands Council. Many of us disagreed strongly with the claim when we did hear about it through the grapevine.

The Government sued Mary and Carrie Dann in 1974 for trespass for grazing livestock on lands administered by the BLM. The Dann Band has occupied their ranch in Crescent Valley, Nevada, continuously since time immemorial. The Dann Band was never a party to the Indian Claims Commission Act proceedings either. The Court of Claims also denied their motion to intervene in the case.

In 1962 the Indian Claims Commission held that:

> ...[B]y gradual encroachment of whites, settlers, and others, and the acquisition, disposition or taking of their lands by the United States for its own use and benefit, or the use and benefit of its citizens, the way of life of these Indians was disrupted and they were deprived of their lands.

Shoshone Tribe of Indians v. United States, 11 Ind. Cls. Comm. 387 (1962).

Because the court provided them with no date of taking, the claims attorneys just stipulated July 1, 1872 as the "date of valuation" so they could hire an historical appraiser to come up with a number that could be used as the basis for a money judgment. We all know, the courts and judges know, and you know that nothing whatever happened on July 1, 1872 that could have extinguished our Indian title. It was probably a hot day in central Nevada and there weren't any white folks around.

Among the many things we don't understand about what the courts have held in our litigation is how it is that unauthorized trespasses and Treaty violations by individual white people gave the U.S. title to our lands? Ordinarily, of course, the U.S. is not liable for the wrongdoing of its individual citizens. If I had a house in Las Vegas and a rude neighbor trespassed in my yard, I certainly could not sue the U.S. for a taking and for trespass, nor would the Government own my land.

In 1985 the U.S. Supreme Court held that when the U.S. paid itself from its left hand as judgment debtor to its right hand as judgment creditor and Shoshone trustee, we were "paid" within the meaning of the finality provision of the Indian Claims Commission Act. This is, of course, just another mammoth legal fiction. The reason we are here today is that almost 25 years after the original Court of Claims judgment, we have not actually been paid.

In 1989 the Ninth Circuit Court of Appeals held in U.S. v. Dann that the fictional 1979 "payment" precludes us from claiming and getting back our lands. Although the court also held that our ancestral title was extinguished on July 1, 1872, that cannot be true for the reasons discussed above. Just think about this for a moment. The courts are telling us that our title was extinguished on July 1, 1872 solely as the result of a court judgment and completely fictional payment in 1979. And this is the outcome of a trespass case that was filed in 1974, five years before the payment that apparently extinguished our title and caused the Dann Band to be in trespass on their own lands. It doesn't make sense, even to a lawyer. I believe we lost our lands because of a political imperative that we must lose our lands to white people one way or another, and the implementation of that imperative by administrative and judicial fraud. That's why I believe the U.S. is flagrantly violating our internationally recognized human rights to keep the land we have lived on since time immemorial.

In 1993 Mary and Carrie Dann filed a petition before the Inter-American Commission on Human Rights of the Organization of American States. This case is called Dann v. U.S.. The Duckwater Tribe, together with the Yomba and Ely Shoshone Tribes, intervened in this case as amicus curiae. The Complaint alleges that the U.S. has violated Western Shoshone rights by denying us the use of our aboriginal and Treaty lands, and challenges the U.S. to reform discriminatory legal doctrines that deny basic constitutional and human rights to indigenous American peoples.

In response to the Danns' requests, the Commission has issued "precautionary measures" against the U.S. on three occasions to halt threatened BLM enforcement action against the Danns pending completion of the Commission's investigation. The U.S. has never formally responded. On October 25, 1999 the Danns filed a request with the Commission to enter into a process of friendly settlement with the U.S. The U.S. has not responded.

On October 19, 2001, the Commission transmitted a Confidential Report to the U.S. Under the Commission's rules, the submission of a report means that the Commission has made findings of human rights violations and recommendations for remedial action. The Commission gave the U.S. 60 days to comment on how it is going to implement the Commission's recommendations. If the issues are not resolved with 90 days of the transmittal, the Commission may issue a final report that contains its opinion and final conclusions and recommendations. If the U.S. did respond to the Commission, it has not bothered to tell us. The issues have definitely not been resolved despite the passage of more than five months.

On August 23, 1999 the Yomba Shoshone Tribe submitted a Request for Urgent Action to the Committee for the Elimination of Racial Discrimination ("CERD") under its urgent action / early warning procedure. The Duckwater and Ely Shoshone Tribes subsequently joined in this request.

CERD was established by the International Convention on the Elimination of All Forms of Racial Discrimination, a United Nations treaty to which the U.S. is a party.

The purpose of CERD is to monitor and review actions by states to fulfill their obligations under the Convention.

The Request asserts that the rights of the Western Shoshones are being violated by the U.S. in a discriminatory fashion on the basis of their status as indigenous peoples. The Request asks that CERD direct the U.S. to halt actions threatening irreparable harm to the Western Shoshones and to enter negotiations with Western Shoshone leaders to resolve Western Shoshone land rights issues.

When asked at CERD's August 2001 meeting to answer specific questions regarding Western Shoshone land rights, the United States asserted its inability to do so. In its Concluding Observations on the session, CERD expressed its concern with the "persistence of the discriminatory effects of the legacy of the destructive policies with regard to Native Americans" generally, and with the United States' actions affecting the Western Shoshones in particular. CERD recommended that the United States "should ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5(c) of the Convention."

We believe that these apparent findings by respected international bodies of human rights violations by the United States against the Western Shoshones are a very serious matter. Aside from the wrongs being done to Western Shoshones, how can the U.S. expect the rest of the world to support its concerns about violations of human rights by other countries if it does not treat its own indigenous minorities with fairness and justice?

We believe this Committee has a solemn moral obligation to obtain and review the Inter-American Commission on Human Rights Report on Western Shoshone land rights prior to enactment of this bill forward.

IV. NEED FOR DUCKWATER RESERVATION EXPANSION.

Although our Treaty of Ruby Valley of 1863 did not cede any Western Shoshone land to the United States, we and all other Western Shoshones have been made virtually landless by the dishonest and faithless policies of the Interior and Justice Departments, although they were at all times supposed to be acting as our trustee. After signing the Treaty of Ruby Valley and obtaining its benefits from us, the United States proceeded to ignore the Treaty and treat all of our land as if it were unappropriated public domain open to acquisition by white people. The Government didn't even have the decency to honestly announce its intention to steal our land. Huge tracts of our land have been seized by the military, by the Atomic Energy Commission and Department of Energy, by the Department of Agriculture for National Forests, by the Interior Department for national wildlife refuges, by mining companies for huge gold mines, by oil companies for the most productive oil wells in all of the United States, and by individual settlers. We receive economic benefits from none of this activity.

The single greatest need of the Duckwater Shoshone Tribe is for a large enough land base to provide us with sufficient economic opportunity and jobs to support our population and membership. Our small 3,785 acre reservation was created in 1940 when the BIA purchased three ranches under the authority of the Indian Reorganization Act of 1934. The BIA apparently expected a land base that originally supported three white families, who went bankrupt, to support 20 Indian families in the 1940's. Our membership now includes approximately 94 families. Appurtenant grazing rights that were acquired by the BIA when the ranches were purchased have been steadily reduced by the Bureau of Land Management from enough to support 2500 head of cattle and 6000 sheep in 1940 to enough to support 600 head of cattle only today. Other than tribal government itself, and a small catfish farm, livestock raising is the only economic opportunity we have at Duckwater.

My Tribe desperately needs a larger reservation and a much larger grazing area. The 1863 Treaty of Ruby Valley specifically anticipated that Western Shoshones would become herdsmen. This made sense because once the white people had killed off most of the game, there was no other way for us to survive. Now, however, we are being denied even that opportunity. The Interior Department officially considers us to be "landless Indians." This is, of course, entirely the result of Interior and other federal Departments' miserable failure to abide by the terms of our Treaty. As a result, about 97% of per capita income on the Duckwater Reservation comes from tribal government itself. All of that is federal money.

Together with my testimony I am submitting a proposed amendment to S.958 that would begin to address our economic problems. It provides for an immediate transfer of our 400,000 grazing area, which we hold under grazing permits from the BLM. into trust status. This area would be added to our existing Reservation.

Our proposed amendment would also require the General Accounting Office to conduct an investigation and study of the history of the 1863 Treaty of Ruby Valley and Western Shoshone land rights, and prepare a report to Congress recommending and identifying a land base for each of the Western Shoshone tribes in Nevada that is adequate to allow that tribe to reach economic self-sufficiency. I'm sure the members of this Committee are well aware that Congress enacted a land settlement for the Timbisha Shoshone Tribe. That land settlement arose out of a study and recommendations by the National Park Service that was mandated in the California Desert Protection Act. We proposed this process to take place during the time when legislation is enacted and the distribution of the judgment fund. This is proposed so that there won't be any delays in the overall process.

V. SUBSTITUTE FOR S.958 SECTION 2(9).

Advocates of S.958 have been assuring Western Shoshone people that the distribution of the Western Shoshone judgment funds under the proposed legislation

would have no effect on Western Shoshone treaty rights or land rights. This is because the bill contains the following provision as Section 2, paragraph 9:

> (9) receipt of a share of the judgment funds under this section shall not be construed as a waiver of any existing treaty rights pursuant to the '1863 Treaty of Ruby Valley, inclusive of all Articles I through VII, and shall not prevent any Western Shoshone Tribe or Band or individual Shoshone Indian from pursuing other rights guaranteed by law.

Unfortunately, these statements and Section 2, paragraph 9 itself are intentionally misleading. While this language has the appearance of protecting Western Shoshone treaty and land rights, it does not. This is because the federal courts have held that although the Treaty remains "in full force and effect," no enforceable rights exist under the Treaty. Although it is technically true that S.958 would therefore not adversely affect non-existent Treaty rights, it is dishonest to tell or imply to Shoshones that their Treaty rights will be protected or remain intact despite the proposed legislation. Section 2(9) is in no way necessary to accomplish the purposes of the bill - it is included for no other reason than to mislead Shoshones who would otherwise oppose the bill into believing the bill has no adverse effect on their land and treaty rights. Western Shoshone land and treaty rights have been lost as a specific result of the Western Shoshone claims litigation, and distribution of the judgment is simply the last event in a long chain of fraudulent and dishonorable dealings between the Interior Department, the claims attorneys, the courts and the Shoshones.

In correspondence dated July 22, 1991 to Congressman Barbara Vucanovich and April 11, 2001 to Senator Reid, Nevada Attorney General Frankie Sue del Papa states her position that any Western Shoshone judgment Distribution bill should not allow the continuance of any Western Shoshone aboriginal land or treaty rights. She expresses concern that even the current language of Sec. 2(9) in S.958 might provide an argument that Treaty rights continue (which, of course, it doesn't do). The Nevada Attorney General herself identifies the harm in S.958 - it will arguably bring finality to Western Shoshone land and treaty claims. From the Attorney General's perspective, that is the whole point of the bill.

The reason the courts have not upheld any Western Shoshone land or treaty rights is because of the language of Section 22(a) of the Indian Claims Commission Act of 1946, which reads:

> The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.

The U.S. Supreme Court held in United States v. Dann that the Western Shoshones have been paid within the meaning of the Indian Claims Commission Act because the Interior Secretary set up a trust account to hold the judgment funds. Of course, the Shoshones have not actually been paid. The Ninth Circuit Court of Appeals later held in the same case that the fictitious payment to the Shoshones triggered the

application of the language quoted above and the Shoshones therefore cannot claim to own the land because that would be a "claim [or] demand touching matters involved in the controversy [the Indian Claims Commission Act case]."

There is, however, a way to fix this problem so that the Indian Claims Commission case and the distribution of the Judgment Fund really won't have any effect on Western Shoshone land and treaty rights. In order to protect these rights, the following language should be substituted in S. 968, Senators Reid and Ensign's bill, for the language of Section 2(9) now in the bill:

> Neither Section 22 of the Indian Claims Commission Act, ch 959, 60 Stat. 1055 (Aug. 13, 1946); nor the judgment in Western Shoshone Identifiable Group v. United States, Docket 326-K before the Indian Claims Commission and the United States Court of Claims; nor payment of the judgment; nor this authorization for the use and distribution of the judgment award shall be applied or deemed to bar, preclude, extinguish, discharge or abrogate any otherwise valid Western Shoshone land or resource rights; including hunting, fishing, trapping and gathering rights; that are based upon Indian title, aboriginal Indian title, original Indian title or the 1863 Treaty of Ruby Valley,18 Stat. 689 (1869); or affect any other rights recognized, identified or described in the 1863 Treaty of Ruby Valley.

Although there are many other problems with S. 968 that must be fixed before the bill is enacted by Congress, the language proposed above will honestly preserve Western Shoshone land and treaty rights as promised by the Western Shoshone Steering Committee and the Nevada Congressional delegation. This language is included in our proposed amendment to S.958.

VI. GAO AUDIT.

We have included a final provision in our proposed amendment to S.958. It requires that the General Accounting Office perform an audit of the Western Shoshone Judgment Fund to determine whether all of the monies which should have been credited to and retained in the judgment fund have been so credited and retained, whether the fund has been invested at appropriate interest rates, and whether the fiduciary obligations of the United States have been fulfilled with respect to the management and investment of the trust fund. In view of the Cobell litigation and the inability of the Interior Department to keep track of Indian money, I'm sure you can understand the great importance of this provision.

VII. CONCLUSION.

Although the Duckwater Shoshone Tribe officially supports the objective of S.958 to distribute the Western Shoshone Judgment Fund 100% per capita, we also believe that there are critical deficiencies in the bill that must be fixed. Our proposed amendments will accomplish that. In addition to adopting our amendments, however, I believe this Committee is morally obligated to obtain and review the Inter-American Human Rights Commission Report on U.S. violations of Western Shoshone human rights under The Rights and Duties of Man before it does anything further with S.958.

tl:c:duckwatrwrittentests958

DUCKWATER SHOSHONE TRIBE
TESTIMONY BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
SENATE BILL 958
MARCH 21, 2002

Proposed amendment to S.958, the Western Shoshone Claims Distribution Act

The Duckwater Shoshone Tribe is proposing the following amendments to S.958, the Western Shoshone Claims Distribution Act. The purpose of these amendments is described in detail in our written and oral testimony on S.958.

The proposed amendments address the following matters:

(1) provide substitute language for the bill's Sec. 2(9) to clarify possible ambiguities in the intent of this paragraph to protect Western Shoshone land and treaty rights;

(2) direct the United States General Accounting Office (GAO) to conduct a study of Western Shoshone land rights and recommend lands to be identified as Western Shoshone Reservations;

(3) provide for a transfer in trust of the existing Duckwater Grazing Area to be added to the Duckwater Reservation and

(4) direct the GAO to audit the Western Shoshone Judgment Fund prior to distribution to ensure that none of the funds have been lost and that the Fund has earned an appropriate interest rate

The text of the proposed amendments is as follows:

A. PROTECTION OF WESTERN SHOSHONE LAND AND TREATY RIGHTS.

Delete existing Sec. 2, paragraph 9 in its entirety and substitute the following language:

> Neither Section 22 of the Indian Claims Commission Act, ch 959, 60 Stat. 1055 (Aug. 13, 1946); nor the judgment in Western Shoshone Identifiable Group v. United States, Docket 326-K before the Indian Claims Commission and the United States Court of Claims; nor payment of the judgment; nor this authorization for the use and distribution of the judgment award shall be applied or deemed to bar, preclude, extinguish, discharge or abrogate any otherwise valid Western Shoshone land or resource rights; including hunting, fishing, trapping and gathering rights; that are based upon Indian title, aboriginal Indian title, original Indian title

or the 1863 Treaty of Ruby Valley,18 Stat. 689 (1869); or affect any other rights recognized, identified or described in the 1863 Treaty of Ruby Valley.

B. ESTABLISHMENT OF AN ECONOMICALLY-ADEQUATE WESTERN SHOSHONE LAND BASE.

Insert a new Section 4 to read as follows:

SEC. 4. STUDY AND RECOMMENDATIONS FOR ESTABLISHMENT OF AN ECONOMICALLY ADEQUATE WESTERN SHOSHONE LAND BASE.

(a) Generally. --The United States General Accounting Office (GAO) is hereby authorized and directed to undertake an investigation and study, and prepare a report and recommendations to Congress, of the history and status of Western Shoshone land rights arising from Western Shoshone use and occupancy of lands in Nevada from time immemorial, aboriginal (original) Indian title and the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869). The study shall include a legal and historical analysis of the status of Western Shoshone aboriginal Indian title. The GAO's recommendations shall identify the needs of each federally-recognized Western Shoshone tribal government in Nevada ("Affected Tribe") for an expanded land base adequate to ensure economic self-sufficiency for such tribe, and shall specifically identify by legal land descriptions based upon the federal rectangular survey all lands recommended for transfer in trust for the benefit of each such tribe.

(b) Lands under the jurisdiction of the Bureau of Land Management. --The GAO shall consult with the Secretary of Interior to identify existing lands under the jurisdiction of the Bureau of Land Management to be included in such recommended transfers. Lands recommended for transfer in trust to each tribe shall include all lands subject to Bureau of Land Management grazing permits [cite authority for permits] held by such tribe or its tribal livestock or cattlemen's association.

(c) National Forest Lands. --The GAO shall consult with the Secretary of Agriculture to identify existing National Forest lands to be included in such recommended transfers. Lands recommended for transfer in trust to each tribe shall include all lands subject to Bureau of Land Management grazing permits [cite authority for permits] held by such tribe or its tribal livestock or cattlemen's association.

(d) Affected Tribes. -- The following federally-recognized Western

Shoshone tribes shall be the subjects of and the beneficiaries of the study and recommendations:

(1) The Battle Mountain Shoshone Tribe
(2) The South Fork Band Council
(3) The Elko Colony Shoshone Tribe
(4) The Wells Band Council
(5) The Temoak Western Shoshone Tribe
(6) The Ely Shoshone Tribe
(7) The Duckwater Shoshone Tribe
(8) The Yomba Shoshone Tribe

(e) Tribal Government Involvement. –The GAO is directed to ensure the participation in and review of the study and recommendations by each Affected Tribe. The GAO is directed to hold a minimum of two public hearings of record on or near the reservation of each Affected Tribe for the purpose of providing the tribal government and tribal members the opportunity to comment on the study and provide information to be considered in the study. Transcripts of all such hearings shall be appended to the final study. The final study and recommendations shall include any statements or documents that may be submitted by each Affected Tribe for inclusion in the study, including all comments and objections to the final conclusions and recommendations of the study.

(f) Submission of the Study and Recommendations. --The GAO is directed to complete and submit the study and recommendations to Congress within two years of the effective date of this Act. 75 copies of the study and recommendations shall be submitted to the Senate Indian Committee or its successor and 75 copies shall be submitted to the House Resources Committee or its successor. The study shall include a draft of proposed legislation that would transfer lands in trust for the benefit of each Affected Tribe consistent with the final recommendations of the study.

(g) Minimum Acreages. –The study shall identify and recommend to be transferred in trust for the benefit of all Affected Tribes a total of no less than 10 million acres of public lands under the administrative control of the Bureau of Land Management or the Forest Service. A proportionate share of the total acreage recommended for transfer in trust shall be allocated to each Affected Tribe based upon the percentage that such tribe's enrolled membership bears to the total enrolled membership of all Affected Tribes. In formulating recommendations for areas to be transferred in trust, as to each Affected Tribe the GAO shall give preference to sacred sites and areas of historical and cultural importance, traditional resource use areas, and areas historically used by such tribe for livestock grazing or used for livestock grazing by the owners of ranches subsequently purchased by the United States to create Western Shoshone Indian reservations. Where

any Affected Tribe holds federal grazing permits issued pursuant to the Taylor Grazing Act of 1934, 43 U.S.C. Section 315 (1976 ed.), or the **[National Forest Grazing Permit authority]**, as of the effective date of this Act, the study shall include the lands and grazing areas encompassed by such permits in the lands recommended to be transferred in trust for the benefit of such tribe.

C. RENUMBER EXISTING SECTIONS OF S.958.

Renumber existing Section 4 as Section 5, and renumber existing Section 5 as Section 6.

D. TRANSFER IN TRUST AND ADDITION OF THE DUCKWATER GRAZING AREA TO THE DUCKWATER RESERVATION.

Add a new Section 7 to the bill to transfer legal title to the area currently subject to grazing permits from the BLM to the Duckwater Shoshone Tribe to the United States to be held in trust for the benefit of the Duckwater Shoshone Tribe and added to the Duckwater Shoshone Reservation.

Section 7. Transfer in Trust of Duckwater Grazing Area.

Title to the following described ancestral Western Shoshone lands is hereby transferred in trust for the benefit of the Duckwater Shoshone Tribe and added to the Duckwater Shoshone Reservation, subject to all valid existing rights acquired by third parties pursuant to the public land laws of the United States prior to the effective date of this Act.

[ADD LAND DESCRIPTION OF GRAZING AREA CURRENTLY PERMITTED TO THE DUCKWATER SHOSHONE TRIBE BY THE BLM]

E. GENERAL ACCOUNTING OFFICE AUDIT OF WESTERN SHOSHONE JUDGMENT FUND.

Add a new Section 8 to the bill that will provide for the General Accounting Office to perform an audit of the Western Shoshone Judgment Fund prior to distribution to ensure that no funds have been lost, that the funds have been invested at appropriate interest rates and that the fiduciary duties of the United States as trustee for the Judgment Fund have been fulfilled.

Sec. 8. AUDIT OF JUDGMENT FUND.

(a) Within 90 days of the effective date of this Act the United States General Accounting Office shall undertake, complete and report an audit of the Western Shoshone judgment fund, including accumulated interest and investment income, to determine whether all of the monies which should have been credited to and retained in the judgment fund account have been so credited and retained, whether the fund has been invested at appropriate interest rates, and whether the fiduciary obligations of the United States have been fulfilled with respect to the management and investment of the trust fund.

(b) The results of the audit by the General Accounting Office shall be reported to each of the Western Shoshone tribal governments listed in Section 3(2)(B), the Secretary of the Interior, the Chairperson of the Senate Select Committee on Indian Affairs and the Chairperson of the House Resources Committee.

tl:c:duckwater:s958amendment

The Honorable, Daniel K. Inouye, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

RE: Opposition of Senate Bill 958 and House of Representative Bill 2851
(Sent by E-mail and signed letter to follow by first class mail)

Testimony of Marjorie Patterson
P.O. Box 405
Schurz, Nevada 89427

Introduction

I, Marjorie Patterson am a Western Shoshone of the Timbisha Band and have been omitted fr this senate bill. It affects me personally and will affect the rights of my grandchildren and the children. I am opposing this bill in its entirety.

I urge you to oppose and defeat S. 958 and the companion Bill H.R. 2851 " The Western Shoshone Distribution Act" as sponsored by Nevada Congressional representatives, Senators Harry Reid, John Ensign and Congressman James Gibbons.

This bill was authored by the Western Shoshone Distribution Steering Committee who are not the official government of bands of the Western Shoshone nation, but a group of individual persons, along with Bureau of Indian Affair's official, Daisy West, Tribal Relations Specialist Washing D.C, and Fred Drye of Nevada Western Agency of the BIA submitted a finalized drat copy of the bill to Senator Reids' office July 30, 1999.

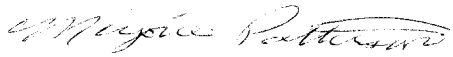
This bill is a misconception, deceptive and fraudulent and should not be considered by the Sen Committee. To my acknowledgement this bill should be killed. Sec. 3. Distribution of Docke 326-A-1 and 326-3 (B) The Administrative Committee shall consist of one representative from each of the following organizations: ... The Timbisha Band of Western Shoshones have been completely left out. The Fallon Band of Western Shoshone is non-existent, and is not within th Western Shoshone territory. These people's ancestors were individuals who left the original Western Shoshone Territory to obtain land at Fallon/Stillwater with the Paiute Tribe. The Shoshone people of Fallon trace their origins back to the Western Shoshone Territory, i.e., Ely, Duckwater, Yomba. They are not excluded as Shoshones, but, this bill is denying legitimate Bands of Shoshones within the Western Shoshone Territory and adding a non-existing tribal government, Fallon Shoshone Band. This bill is authored by the Western Shoshone Distributio Committee who not the official tribal government spear headed by Larry Piffero and Nancy Stewart.

Pauline Esteves former chairman of the Timbisha Band and Carrie Dann who are the key peopl that were not invited to testify at the March 21, 2002, hearing. These two people along with Raymond Yowell have a long-standing issue concerning the Treaty of Ruby Valley. I urge you to invite Pauline Esteves and Carrie Dann to testify.

The Human Rights report to President Bush's administration pertaining to the case of Carrie and Mary Dann of the Dann Band of Western Shoshone v. United States. The senate committee needs to review the report before the hearing of March 21st.

As this bill stands, is not beneficial to the Shoshone people. I urge you to defeat S.958 bill.

Respectfully Submitted,



Marjorie Patterson
March 17, 2002

August 1, 2002

The Honorable Daniel K. Inouye, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D. C. 20510

RE: Addendum to Testimony of Marjorie Patterson, Box 405, Schurz, Nevada 89427

ADDENDUM

As a Western Shoshone, I am very concerned about our Homeland. I feel that Senator Reid is ignoring our protest against Senate Bill 958 in regards to our Homelands.

I ask that the Bill be killed.

Our Homelands belong to our Western Shoshone people. It is part of us. We have never destroyed our Homelands.

I am protesting the selection of Nancy Stewart and Felix Ike to testify at the hearing on August 2, 2002. This has not been a fair selection. In my opinion, they are a couple of sellouts.

The referendum of June 3, 2002 in my opinion is illegal. To pass this bill will be another violation against the Western Shoshone Nation.

The International Committee on Human Rights has submitted their report on this issue.

I pray that the committee take into consideration, the report of the Human Right's Committee and stop the violation against the Western Shoshone Nation.

Thank you for taking my concerns into consideration.

Respectfully,

Marjorie Patterson

Marjorie Patterson
P.O. Box 405
Schurz, Nevada

WESTERN SHOSHONE CLAIMS COMMITTEE
[illegible]
Elko, Nevada 89801
Fax (775) [illegible]

October 10, 2001

VIA: FAX/US MAIL

The Honorable Chairman, Mr. Daniel K. Inouye
and
Vice-Chairman, Mr. Ben Nighthorse Campbell
SENATE COMMITTEE ON INDIAN AFFAIRS
838 Hart Senate Office Building
Washington D.C. 20510

RE: TESTIMONY HEARING ON SENATE
BILL NO. 958 - Oct. 23, 2001

Dear Mr. Inouye and Mr. Nighthorse Campbell:

Thank you Mr. Chairman and Members of the Committee for this opportunity to submit my written testimony in support and passage of the Western Shoshone Claims legislation, entitled, "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT", Senate Bill No. 958, re-introduced by Mr. Reid and Mr. Ensign of Nevada on May 24, 2001 and co-sponsored by Mr. Gibbons in the House of Representative on September 6, 2001, cited as H.R. - 2851 bearing the same title.

It is with deepest regret that I will not appear before your Committee in person due to my medical condition of a Renal failure but on behalf of the Western Shoshone people, we express our sadness and sympathy to the families who lost their love ones in the recent disaster that devasted our Eastern border.

My name is Larry Piffero and I am the Lead Chairman of the Western Shoshone Claims Steering Committee. I am an enrolled member of the Te-Moak Tribe of Western Shoshone of Nevada residing in Elko, Nevada. I am a former member of the Elko Band Council and a former member of the Te-Moak Tribal Council (1997-2000 Election)

I am aware of the Committees' agenda must be filled with other important matters and the committment of the panel members to attend emergency hearings regarding the recent happenings so I will make my presentation short and brief as possible.

The Steering Committee was formed and recognized by the former Te-Moak Tribal Council (1997-2000 elected officals) to study and investigate the status of the Western Shosnone claims. A formal panel of tribal members were selected and appointed from varies tribal groups, (32 members) consisting of tribal officials, tribal members, and interested individuals with the knowledge of monetary award, land issue and related matters concerning aboriginal rights. Local community meetings were held to review and discuss the development of a plan. It was decided to formulate the distribution of the award and to set aside funds to streng-

then education programs, it was also concurred by the majority the question of land issue and other aboriginal rights be sought on a different page or other means of legislative process. As a result of local meetings, a Ballot was prepared as follows:100% per capita payment be disbursed to one-quarter or more Western Shoshone blood utilizing funds from Docket 326-K and to establish an education program from 326-A-1 and 326-A-3 funds.

On May of 1998, two mass meetings were held, one in Elko, Nevada and the other at Fallon, Nevada. Notices of the meetings were widely distributed in all Nevada newspapers and Idaho, to all tribal offices, and by local communication. Both agencies of Eastern and Western Bureau of Indian Affairs, Phoenix Area Office-BIA, and a representative of Tribal Government Service-Washington D.C. was in attendance to observe and witness the event. invitations were sent to all tribal governments, groups and organizations, and to individuals. The meeting in Elko was held at the Elko Colony Gym reaching its seating capacity and quite vocal and lively while the meeting at Fallon was quiet and to the point. (Elko Daily Free Press Article is attached)

As a result of the two combined meetings, 1,230 casted their votes in favor of distribution with an additional votes of 400 were received in the US mail and 53 were in opposition of the award, followed by 5 votes in the US mail. Based on the tremendous support by the voters (98%), the Steering Committee requested Senator Reid to petition Congress to introduce the "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" It was introduced last June during the last session of Congress but the Bill didn'tmake it through the process before the session ended. It was re-introduced in this session of the 107th Congress by Mr. Reid and Mr. Ensign of Nevada, Senate Bill No. S-958 and by Mr. Gibbons in the House of Representative House Bill H.R.-2851.

Mr. Chairman and members of the Committee and on behalf of the Western Shoshone people we represent, we come to appear before this Committee with this common mission to ask for your help to close this long outstanding issue. We request your support on this measure in an expeditious manner.

In 1977, the Indian Claims Commission awarded the WesternShoshone Indians $26 million dollars and the United States Court of Claims awarded payment in 1979. The Distribution of Judgement Funds Act provided procedures for distributing judgement funds. Since that time, tribal entities did not meet the prescribed time frame to submit any plan nor come to any form of a negotiated agreement with Federal representatives solely based on the frequent turnover of elected officials in tribal elections. (See Memorandum to Deputy Commissioner of Indian Affairs). There is no consistency in reaching a mutual agreement of tribal leadership and some local tribal governments flatly refuse to adhere and comply with the voters petition to resolve the claims settlement!

Also, we have a small group of individuals testifying in opposition of the Bill who claims to represent a vast majority of 10,000 Western Shoshone and I believe that information is misleading and not true. Our people were somewhat angered to read in the new media about the burst of Shoshone population explosion within a few years but took it ina serious and humorous gesture. It is evident the opposition have been very vocal through the years in their efforts to delay and prolong the distribution. The Western Shoshone Nation Council and other opposing groups bearing varies organizational names do not represent all Western Shoshone Indians as they claim but a handful of a few. They have exhibited their complaints

half around the world alleging wrongful doings by the United States when the issue is of a local interest and can be dealth with on a local level. The methodology could have been accomplished comparable to the Steering Committees process.

Tribal elders support the passage of the "Bill", as one of our elders expressed her feelings, she quotes, "I am positive you are aware the funds in Indian Education in under funded every year and our children do not have the opportunity to get a good education, let us give our kids the help they need." She also states, "I believe the payment of funds will be put to good use for many of us. We will get a chance to pay most of our bills, buy new household goods and new furniture to replace the ones we bought at second hand stores and yard sales and have enough money to invest and start a savings account. Most of our people are on a fixed-income and cannot afford to buy these things, let us enjoy the needed income while we are still alive." (Florine Maine-Battle Mountain Colony)

In conclusion, and consider the weight of numerous testimonies in favor of the distribution of award and the many letters of support, I see no alternative but to highly recommend the passage of Senate Bill No. 959...since this is a new millennium, a new era, it's evolution, times are changing, a new generation has come about...it's time to bring closure to this claims issue.

I further request my written testimony be conveyed to the House Committee on Resources in the House of Representative, House Bill No. H.R. - 2851, in the upcoming hearing, the Bill was introduced by Mr. Gibbons on September 6, 2001.

Thank You

Larry Piffero, Co-Chairman
WESTERN SHOSHONE CLAIMS STEERING COMMITTEE
1799 Weyumb Street Telephone No. (775) 777-7914
Elko, Nevada 89801

cc; Jim Hansen, Chairman-House Committee on Resource
Nevada Congressional Delegates
Senate/House Committee Members
Assistant Secretary for Indian Affairs

Attachments: Deputy Commissioners Letter, Dated Dec. 1, 1998
Elko Daily Newspaper Article-May 1998

UNITED STATES GOVERNMENT

memorandum

Office of the Area Director (602) 379-6600

DATE: December 1, 1998

REPLY TO ATTN OF: Phoenix Area Director

SUBJECT: Western Shoshone Claims Distribution

TO: Deputy Commissioner of Indian Affairs, MS# 4140-MIB

In 1977, the Indian Claims Commission awarded the Western Shoshone Indians $26 million dollars for extinguishment of the aboriginal title of the Western Shoshone. Western Shoshone Identifiable Group v. United States, 40 Ind. Cl. Comm. 318 (1977). The United States Court of Claims affirmed the award and payment was made in 1979. Temoak Band of Western Shoshone Indians v. United States, 219 Ct.Cl. 346, 593 F.2d 994 (1979). The Distribution of Judgment Funds Act, 25 U.S.C. § 1401 et seq., sets forth a procedure for distributing judgment funds. However, various individuals and groups resisted the formulation of a distribution plan. In essence, these groups argued that until they accepted payment of the judgment funds, title to the land was not extinguished and they were entitled to continue to use the land. In United States v. Dann, 470 U.S. 39 (1985), the Supreme Court held that acceptance of payment did not extinguish title, but rather, that payment of the judgment by the United States into the Treasury of the United States effectuated full settlement of all claims.

Despite this clear holding, individual Western Shoshones continued to refuse to accept payment and successfully blocked the formulation of a distribution plan. In 1997 John Duffy, Juliette Faulkner and others met with representatives of the Western Shoshones and tried to facilitate the formulation of a distribution plan. During those negotiations, the Departmental representatives told the tribal representatives that since the time limits for preparing a distribution plan under the Distribution of Judgment Funds Act had long since expired, that any plan would have to be submitted to Congress. They also advised the tribal representatives that the distribution plan could be for a 100% per capita distribution if that is what the beneficiaries desired. After becoming Area Director, I received several inquiries as to whether I would assist in working on a distribution plan. I advised the callers that I would help work on a plan if it appeared that a majority of the Western Shoshone people supported the effort. Several months later, Daisy West and I were invited to attend two hearings that were being conducted by the Western Shoshone Steering Committee. The Committee is a group of individual Western Shoshones that have organized to try and prepare a distribution plan. Members of the Committee asserted that in past meetings, a small vocal minority had succeeded in intimating the "silent majority" into remaining silent on any distribution plan. In order to avoid this problem, the Committee arranged for two public hearings where any interested individuals could speak pro or con on the proposal to prepare a distribution plan. At the end of the meeting, a vote by sealed ballot was also conducted.

As anticipated, an articulate and vocal group protested any distribution plan claiming distributing the money was selling the land or that the payment should be considered rent and that additional money should be demanded from the United States. Others acknowledged that the Supreme Court had already decided the issue of extinguishment of title and that it was time to quit allowing a small group to thwart the distribution of the judgment monies. The vote from the two meetings was 1230 in favor of distributing the money and 53 against distribution. Thus, it is clear that an overwhelming majority of adult Western Shoshones favor distribution. Essentially, the proposal that the people voted for was a 100% per capita distribution of Docket 326-K and the establishment of a permanent education fund from Dockets 326-A(1) and 326-A(3). Inasmuch as there is no Western Shoshone Tribe, but rather, bands of Western Shoshone Indians, and that the original claim was filed on behalf of the "Western Shoshone Identifiable Group," I believe a 100% per capita distribution is appropriate in this case. A draft Bill is attached for your review. If you need additional material to support a legislative proposal please let me know. (Daisy West should have also have files on this matter.)

Attachment

cc: Superintendent, Eastern Nevada Agency

ELKO DAILY

Vol. 115 No. 124 Established Jan. 5, 1883 Elko, Elko County, Nevada

Western Shoshones vote to receive $105 million

By Mark Waite

An overwhelming majority of local Western Shoshone Indians voted to support the distribution of $105 million in claims first awarded in 1979, in meetings this weekend in Elko and Fallon.

At the Elko Colony Gym Saturday, 432 of those who stood in long lines to vote in person cast yes ballots for the distribution, 48 said no. In balloting by mail, the count was 589 for distribution, only five against. Combined, 1,021 wanted to distribute the claims, a resounding 95 percent of those voting.

In Fallon yesterday, the vote was unanimous, with 109 voting for distribution, according to Larry Piffero, a member of the steering committee that pushed for the vote on the distribution.

"Our people never agree on a perfect document," said Wilbur Woods, Elko Band Chairman. But he added, "I believe it's time the government pay for the wrongs done to the Indian people."

Woods said the money is compensation for the destruction of the Indian lifestyle, for locking up Indians on reservations and spreading disease.

Attorney John Paul Kennedy, said he supported the idea of distribution as soon as possible, with 100 percent of the money going to people who are at least one-quarter Western Shoshone blood. No contingency fee will be required to pay for legal costs. The original 1979 settlement was for $26 million, which has been bearing interest for the last 20 years.

But despite the lopsided vote, there were vocal opponents of the distribution who thought the tribal members were entitled to more compensation for past wrongs. The $105 million would amount to $26,250 if divided equally among 4,000 beneficiaries.

"You might be happy with a couple thousand dollars, but it goes fast," Lois Whitney said. "We need to keep fighting for 74 million acres of Shoshone land and billions of dollars not millions."

Mary McCloud, speaking to the U.S. Bureau of Indian Affairs superintendent for eastern Nevada, said, "do you Steve Tibbets have the title in your hand saying the government owns this land?"

"I challenge you to bring out the Western Shoshone land transfer that happened in 1872," said Carrie Dann. She claimed the land was worth $40 billion, not $26 million.

"If you want money, go for money instead of going for nickels and dimes," she said.

Thomas Wasson of Susanville, Calif., said, "I'm not a prostitute. My rights are not for sale."

"They said this money is for damages. It's not for damages. It's hush money to shut us up," said Janet Sam Lobato of Boise.

While admitting people will use the money to buy cars and homes, Nevada Penoli of Wells said, "it's a drop in the bucket. Look at our earth. It's getting contaminated."

But Benny Tom of Owyhee said his grandfather once told him he would get a big settlement from the government. Tom said the beneficiaries can't keep paying lawyers to litigate their claims.

With the comments getting increasingly emotional, and some audience members in tears, Laureen Woolboy from Utah said nothing will pay for what her great-great grandparents went through.

"A lot of people my age don't even know what the money's about," said Karen Sam, arguing for the distribution. "We have to go downtown and apply for welfare."

"Since I've been a youngster, I've been hearing about all this treaty business," said Douglas Garza. "I'm for 100 percent [distribution]. I'm looking toward the future. I'm not looking back."

"We're just going to take the money now and run because we're broke Te-Moaks," said Kay Lynn McQueen. "Our senior citizens, they need a few dollars."

Frank Gualardo said Indians aren't receiving any royalties from mining on land in Nevada. "Take what we can get now because I don't think we're going to get any royalties," he said.

When McCloud stepped up again to speak, Piffero told her she already had used up her two minutes of comment. It led to a brief altercation in which Marion Sam and McCloud stepped up to the table and argued with committee members. The BIA police had to be called.

Te-Moak Tribal Chairman Elwood Mose wasn't allowed to speak when he went to the microphone just after noon, because Piffero declared the comment period over.

Mose, who previously said the distribution vote wouldn't be binding, said the tribal council won't get involved until legislation is introduced in Congress. ANd he predicted the legislation wouldn't be on a fast track.

"The people here voted the interest of their pocketbook," Mose said. "This money payment is going to throw a new wrinkle in things."

"The sentiment here applies only to people who can prove they are enrolled somewhere, some tribe," Mose said. "What about the people who don't belong to any tribe who are less than one-quarter? That's where the real fight is going to come."

Piffero said he wasn't surprised at the outcome and said the claims distribution should settle some conflict among tribal members. Unlike Mose, he predicted the bill to appropriate the money would move quickly through Congress, since the money has been sitting so long. He said the amount could grow some more in the two or three years it may take to distribute the money.

Testimony of Marguerite Lita Piffero

Western Shoshone

REGARDING S. 958,

A bill 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, 326-K
107th Congress March, 2002

Submitted to the U.S. Senate Select Committee on Indian Affairs

Thank you for giving me an opportunity to share my testimony.

If bill S.958 is approved it will extinguish Western Shoshone land and resource rights. The language in the bill is deceptive, and the bill as written violates the Treaty of Ruby Valley. Some true representatives of the Western Shoshone have not been invited to participate in this hearing, and some invited do not have information representing the majority of our people. They have information saying 1,230 Shoshone support this bill. But these people believe that the bill support reparations for past damage, not giving up rights to the land. This is happening too fast and is not supported by the Western Shoshone people.

In February 4 issue of Newsweek (in the periscope section) is an article a report of the Inter-American Commission on Human rights in the case of the United States Against Mary and Carrie Dann. It deals directly with the obligations of the United States under international human rights law to recognize and protect Western Shoshone land and resource rights.

The same rights jeopardized by S 958.
This report needs to be investigated, before any decisions can be made. It is not public yet, but I believe Washington DC already know what is in it, and is hasty to push S.958 through before the public knows. This bill as written will break our Treaty of Ruby Valley of 1863.

According to the U.S. Constitution," a treaty once entered into by the United States, becomes the Supreme Law of the Land. With

this treaty the U.S. recognized the Shoshone as an independent nation and thus it possessed as the rights and responsibilities of a sovereign nation. We have rights we have to protect if Washington will not.
Northwest Ordinance of 1787 states that Indians '"land and liberty," shall never be taken from them without their consent.

In *Dann*, the Supreme Court ruled that

> . . . "payment" occurs under § 22(a) when funds are placed by the United States into an account in the Treasury of the United States for the Tribe.... *Id.*, at 44-45.

Case law prior to the *Dann* ruling was "that payment does not occur until a final plan of distribution has been approved by Congress." *Id.*, at 45. This was the clear ruling of the Court of Appeals for the Ninth Circuit in *U.S. v. Dann*, 706 F.2d 919 (1983), and of the Court of Claims in two earlier phases of the Western Shoshone litigation, *Western Shoshone Legal Defense and Education Ass'n v. U.S.*, 531 F.2d 495 (Ct.Cl. 1976), and *Temoak Band of Western Shoshone Indians v. U.S.*, 593 F.2d 994 (Ct.Cl), cert denied, 444 U.S. 973 (1979). *Temoak Band of Western Shoshone Indians v. U.S.*, 593 F.2d 994 (Ct.Cl), cert denied, 444 U.S. 973 (1979).

What treaty rights will we have left if S.958 is passed as written?

You violate your own laws knowing what the law was before the case, and still is the law today.
You have an obligation to clarify this ruling on record, before deciding this bill.

Some of the people coming before you today say they represent the majority, what majority there is no majority 1,230 people out of more that 6,000, I say whose majority?
This number 1,230 from a straw vote, by a Steering Committee not recognized by the Council, represents people believing this money would be for compensation for past damages done to the Western Shoshone only. They would not be selling their land. If S.958 goes through as written that was not a true statement, we will lose our land and resource rights, forever breaking our Treaty of Ruby Valley.

This hearing is to hear what the people want, what about the elders, the ones that are gone, are they not heard, because it has taken so long? They are the ones that suffered! Their words are strong our land is not for sale.

Some of us have gone out to the people to all sides not just a select chosen few, to see what the people want.
The true majority say our land is not for sale this money is for past damages.
It seems to me that Washington is the one not listening.

Western Shoshones that should have been invited to speak before you were not invited. Carrie Dann and Lois Whitney have worked hard to see that this deception did not take place you have disrespected them by not inviting them, and instead chose some that should not have a say as they do not have our best interest concerning our issues of the Western Shoshone lands some possibly benefiting from other claims. They do not speak for any majority and should not have a claim in this hearing.

I ask you today to let Carrie Dann and Lois Whitney speak, and any others that have come a long way to have there say.
My answer is simple not up for negotiation no for S.958 as it is written! Our land is not for sale. I want no part in the taking of our land.

Submitted by Marguerite Lita Piffero

March 18,2002

July 30, 2002

Mr. Carl Christensen
Senior Counsel to the Majority
838 Heart Senate office Building
Washington DC 20510
(sent by fax facsimile)

Mr Carl C.Christensen
I am writing in regards of the bill S 958 you have all the legal papers on this matter, I am writing on the moral issues.
Nothing has changed the bill is the same and not good for the Western Shoshone, also the language is still deceptive and unclear.
Two people that say they are speaking on our behalf are not.
Nancy Stewart is not speaking for me, or many Western Shoshone. She is invited I'm told because she is on the steering committee. A committee that does not exist not approved by our Te-moak Council. She should not speak for us this committee has already been informed of this yet she is invited again to this hearing again.
Felix Ike is there to represent us so this committee assumes but he does not represent us. He is only a Chairman of the Te-Moak Council. He cannot obligate this tribe alone as he is trying to do. He has been given directives from his council that he has ignored having an illegal referendum vote when it should not have taken place, and refuses to call a meeting of the Council to address these important issues. .
Now you even disrespect us farther and exclude tribal people that should be involved in this important issue. I find this disrespectful.

Because all IRA elections and paramount issues require proper notice, processes, regulations and appointments we ask you and your committee to **oppose the language and the intent of S.958; oppose the manner in which this hearing was brought to the committee and scheduled; and allow the governments of the Western Shoshone Nation to represent it's constituents in the proper manner and with issues that truly address their needs.**
I invite you and the Committee to Western Shoshone land to address these important matters to come to a solution for the best for us all

Sincerely

Lita Piffero

Lita Piffero

Date: 9/25/02 1:25 AM
Sender: edandleettaa <leettaa@citlink.net>
To: testimony
Priority: Normal
Subject: Senate Select Committee on Indian Affairs S958

Senator Inouye and Committee
Senate Select Committee on Indian Affairs

In light of the the illegal taking of the Dann Sister cattle!! This only should
make this committee more aware that S958 does nothing for us and does not address our concerns!!

The proposed Western Shoshone Distribution Act to distribute the Indian Claims
Commission award amid controversy and disagreement among both elected tribal and
traditional Western Shoshone leadership, will not resolve the long-standing land
rights issues of the Western Shoshone in Nevada. Certainly, it will not right
the harms caused by the ICC proceedings so clearly recounted in the report of
the Inter-American Commission on Human Rights. In my opinion, distribution of
the Indian Claims Commission award will only cause more conflicts among the
Western Shoshone communities and the Western Shoshone and the federal government
It should be recommended that Congress now approve legislation that will mandate
negotiation of the Western Shoshone to secure an adequate land base for the
Western Shoshone people using the Timbisha Shoshone Homeland Act as a model.
Congress should take no action to distribute the ICC award unless such action is
specifically provided for in the negotiations. The process must be a
government-to-government negotiation between sovereign entities, and the
composition of the federal negotiating team should reflect the high priority of
the United States government to address both tribal and federal interests. The
federal and Western Shoshone teams should jointly undertake a study to determine
the lands appropriate as a land base for the Western Shoshone. Funds necessary
to undertake these activities should be appropriated.
My stand is we have NOT given up any lands !!

Respectfully,

Lita Piffero

775-738-5841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FROM : FAX NO. : 208 759 3238 Feb. 19 2002 10:17AM P1

STATEMENT OF

KYLE PRIOR

VICE CHAIRMAN
WESTERN SHOSHONE CLAIMS COMMITTEE

OF

DUCK VALLEY
OWYHEE, NEVADA

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

OF THE

UNITED STATES SENATE

HEARING ON

WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT
S. 958

2002

I want to thank you for the opportunity to appear before this committee. It is a privilege to provide supportive testimony to bill S.958, the Western Shoshone Claims Distribution Act that provides for the use and distribution of the funds awarded to the Western Shoshone under the Indian Claims Commission Docket Number 326-A-1, 326-A-3, and 326-K.

My name is Kyle Prior, I am an enrolled member of the Shoshone-Paiute Tribes of northeastern Nevada and southern Idaho, I serve as an elected spokesperson for the Western Shoshone Claims Committee of Duck Valley Indian Reservation. The Western Shoshone Claims Committee of Duck Valley Reservation support this award, rightfully, belonging to those Shoshones who are ¼ degree Western Shoshone blood quantum for the reasons I will now summarize.

First of all, S.958 will bring closure to a long and painful chapter of history for the Western Shoshone people. There are tribal members in various Western Shoshone communities throughout Nevada that have worked on this issue for nearly 24 years, since the U.S. Court of Claims awarded the Western Shoshones this settlement. Elders of our communities, the original Western Shoshones, who so clearly deserved to receive this settlement, are no longer here on this earth with us, but their struggles and toils remain with our generation of Shoshone.

Secondly, it is clear to the current generation that this matter should come to a close; this belief is evident by a May 1998 referendum vote, which resulted in 96% in favor and 4% opposed to accepting the settlement. The rarity of united consensus among

different bands of Western Shoshone statewide indicates a strong desire to unify in an effort to resolve this longstanding issue

Today, the Senate Select Committee on Indian Affairs has possibly heard or will hear testimony that is in opposition to certain portions of this bill. The Western Shoshone of Duck Valley have unanimously voted to support the current bill, as written. The position of the Duck Valley Western Shoshones is consistent with the majority of the eight Western Shoshone Tribes throughout the State of Nevada who support distribution of the Western Shoshone Claims Dockets in question as outlined by bill S.958.

Third, the ¼ blood quantum for the Western Shoshone settlement was set years ago by Western Shoshones from throughout Nevada and has been revisited repeatedly through the years. The Western Shoshone have never waivered in our desire to keep the ¼ degree blood quantum. A recent example of maintaining such a requirement would be Duck Valley's August 2001 secretarial election where the people of the Shoshone-Paiute Tribes maintained a ¼ blood degree requirement for enrollment purposes. This has always been and continues to be the decision of the Western Shoshones, holding true to the desires of past leaders and elders of our communities and our people today.

Finally, the administration of the educational funds must remain under the administration of the Western Shoshone Steering Committee, comprised of eligible Western Shoshones, located at the Te-Moak Band of Western Shoshone. This is the only equitable and practical solution. It does not stand to reason for a tribe made up of both Western Shoshone and Northern Paiute decedents to have any oversight authority over educational funds for eight Western Shoshone tribes. Our tribal history has been documented to read that when the education funds were originally decided to go to Duck

Valley it was because it was a Western Shoshone Reservation, governed by a council comprised of Western Shoshone. Today, an inter-tribal mixture of Paiute Shoshone people, the majority of which have received a previous Northern Paiute Claim Settlement, governs the Shoshone-Paiute Tribes. It is imperative to the future of all eligible Western Shoshone people to be able to share in these educational funds regardless of locality or residence. This will ensure the future of all Western Shoshone people in the generations yet to come.

Though the majority of the Western Shoshone tribal members seek distribution it by no means undermines the continued struggles of Shoshone people to become self-governing and self-sufficient. The distribution will not only mean a closure to a chapter, but a new beginning for many families who seek to develop economic development enterprises, continue or begin higher education at universities and colleges of their choice, and to follow their dreams to their abilities, which as a result will better the lives of our Western Shoshone Tribal members through a resource that has been denied them for many years. We decline to address the vocal minority that oppose the clear will and desire of our people other than noting they are primarily Indians who do not meet the ¼ Western Shoshone blood quantum requirement.

In closing, I offer my humble and respectful thank you on behalf of the Duck Valley Western Shoshone Claims Committee. The Western Shoshone Claims Committee finally feels hope due to this Senate Select Committee on Indian Affairs actions and the actions of the Honorable Senators Harry Reid and John Ensign as well as Nevada's second district representative, Congressman Jim Gibbons of Nevada for sponsoring the Western Shoshone Claims Distribution Act. Thank you for your time and support.

WESTERN SHOSHONE BUSINESS COUNCIL

Western Shoshone Indian Reservation
P.O. Box 425
Owyhee, Nevada 89832-0425

Peace and Friendship
TOSA WIHI
Executive Order of April 16, 1877

December 13, 2001

The Honorable Senator John Ensign
United States Senate, Hart Office Building
Constitution Ave., & Second St. NE
Washington, DC 20510-6450

Re: Bill S-958, Western Shoshone Distribution Act

Senator John Ensign:

On behalf of our Western Shoshone Claims Committee and of the Western Shoshone tribal members of the Duck Valley Reservation, we extend our sincere appreciation to you and the Honorable Harry Reid for co-sponsoring Senate Bill S-958 in the 107th Congress. We also recognize and appreciate the Honorable Congressman James Gibbons, Nevada for introducing companion bill, HR 2851 in the House of Congress.

Duck Valley Committee Reorganization:

Due to the Shoshone Paiute constituency of our reservation, and due to the fact that five (5) of the seven (7) councilmen of the tribe's Shoshone Paiute Business Council received the Northern Paiute claims, due to the fact that the leadership of the Western Shoshones will not tolerate a recipient of the Northern Paiute Claims representing any of theWestern Shoshones in the Western Shoshone Claims, and due to the Shoshone Paiute Councils' recent action to withdraw past Council's recognition of the Shoshones, our committee was compelled to reorganize to speak solely for our Western Shoshone in Duck Valley, to have a voice for our own people in the legislative process. Our previous designation was the "Western Shoshone Business Council" and now we are renamed the "Western Shoshone Claims Committee of the Duck Valley Reservation."

Duck Valley Western Shoshone Support S-958:

It is clear to the majority of the Western Shoshones that we want the funds from the claims Docket 326-K distributed with all due haste at 100% per capita to those Western Shoshones of 1/4 degree blood quantum. We also stongly support the establishment of the perpetual educational fund using funds from Dockets 326-A-1 and 326-A-3. The call for a vote in May, 1998 in Elko and Fallon on the Western Shoshone Claims distribution was well advertised and also observed by the BIA and subsequently at our many Duck Valley public meetings, there was almost unanimous support by the Western Shoshone at Duck Valley for the Bill as introduced. This was especially true of the public meeting that was conducted at Duck Valley on February 22, 2000 when the public had an opportunity to comment and offer any suggested amendments or revisions. Once again the majority of Western Shoshone at Duck Valley supported actions of the Western Shoshone Claims Committee of the Duck Valley Reservation without any additions or changes to the Bill as presented. Given the present official recession in the United States and the high unemployment on all Indian Reservations in Nevada where Shoshones may live, the Claims amount of $132,788,527.04 would be a huge boost in the economy across Nevada.

Rescheduling of Hearing by Committee on Indian Affairs:

As the October 23, 2001 hearing before the Committee on Indian Affairs was postponed due to the Anthrax threat, we are hopeful that the hearing may be rescheduled as quickly as possible. It is of great concern to us that only one year remains for the Bill to traverse the Congressional Legislative Process and to reach President George W. Bush for his affirmative signature.

Page Two
Letter, dtd 12/13/01

Testimonial Hearing Representatives:

Please add the following people to the appropriate panel to represent the Western Shoshone Claims Committee of Duck Valley Reservation:

Mrs. Winona Charles, Chairwoman, Duck Valley Reservation, Owyhee, Nevada, and
Mr. Kyle Prior, Vice Chairman, Duck Valley Reservation, Owyhee, Nevada.

Thank you for supporting this bill and the anticipated distribution to those Western Shoshone of 1/4 degree blood at 100% per capita as the majority of Western Shoshone support.

Sincerely,

Western Shoshone Claims Committee of Duck Valley Reservation

(Mrs.) Winona Charles
Chairwoman

cc: Senator Harry Reid, Nevada
Senator Daniel K. Inouye, Hawaii, Chairman Committee on Indian Affairs
Senator Ben Nighthorse Campbell, Colorado, Vice Chairman Committee on Indian Affairs
Congressman James Gibbon, Nevada
Pat Zell, Staff Director, Contact Person
Carl Christensen, Contact Person
Marilyn Bruce, Clerk of Senate Committee on Indian Affairs
Lucy Kuizon, Aide to Senator Reid
Julene Hayworth, Aide to Senator Ensign
Robert Uithoven, Aide to Congressman Gibbon
Christina Delmont-Small, Committee on Resources
Daisy West, Tribal Relations Specialist, Office of Tribal Government Services, BIA, Washington, DC
Larry Piffero, Lead Co-Chairman, Western Shoshone Claims Distribution Steering Committee, Elko
Nancy Stewart, Co-Chairwoman, Western Shoshone Claims Distributions Steering Committee, Fallon

FROM : FAX NO. : 208 759 3238 Feb. 19 2002 10:20AM P7

Claims Committee

WESTERN SHOSHONE ~~BUSINESS COUNC~~IL

Western Shoshone Indian Reservation
P.O. Box 425
Owyhee, Nevada 89832-0425

Peace and Friendship
TOSA WIHI
Executive Order of April 16, 1877

November 13, 2001

Te-Moak Band of Western Shoshone
525 Sunset Street
Elko, NV 89801

ATTENTION: Felix Ike

Dear Mr. Ike:

On November 7, 2001, the Western Shoshones on the Duck Valley Indian Reservation held a business meeting and conducted an election of officers and members to the Council. The results of the election is furnished below for your information.

Winona Charles, Chairperson	P.O. Box 224, Owyhee, NV 89832
Kyle Prior, Vice-Chairperson	P.O. Box 187, Owyhee, NV 89832
Louise George, Member	P.O. Box 395, Owyhee, NV 89832
Naomi Mason, Member	P.O. Box 1, Owyhee, NV 89832
Ilaine Premo, Member	P.O. Box 425, Owyhee, NV 89832
Geraldine Jones, Member	Gen Delivery, Owyhee, NV 89832
Deborah Blossom, Member	Gen Delivery, Owyhee, NV 89832
Earl Crum, Alternate	P.O. Box 457, Owyhee, NV 89832
Ellison Jackson, Alternate	Gen Delivery, Owyhee, NV 89832

Any correspondence from your office to council members concerning the "Western Shoshone Distribution Act" and any other Western Shoshone issue or concern should be addressed to each person's personal address. You will be kept informed if there is any change in our addresses or membership.

The council and I look forward to working with you and your organization on issues of mutual interest. We look forward to opportunities when we might meet and work together on Western Shoshone issues.

Sincerely,

Ilaine Premo,
DV Western Shoshone Council

CC: Western Shoshone Council Members

BETTY ROBISON, TRIBAL MEMBER, DUCKWATER SHOSHONE TRIBE
TESTIMONY ON **S.958**
"WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT"
SENATE COMMITTEE ON INDIAN AFFAIRS
(August 2, 2002)

I support the passage of Senate Bill No. S. 958 "Western Shoshone Claims Distribution Act" in it's entirety with 100 percent per capita distribution to one-quarter degree Western Shoshone blood quantum and the perpetual education plan.

A distribution plan for the 1977 court adjudicated award in Docket 326-K for the Western Shoshone people has been explored far too many years. Tribal leaders have held meetings of every nature and at every level with other tribes, Department of The Interior, Officials of Bureau of Indian Affairs, Bureau of Land Management, the State of Nevada and at two House of Representatives Hearings. Literally, there has been truck loads of paper work generated regarding this issue. In 1985, and beyond, over a million dollars in Administration for Native American (ANA) grant funds was awarded to the Western Shoshone National Council with the specific objective of settling the land claims and to devise one common plan for this distribution. The end result after 19 years... the money was wasted and NOTHING[1] accomplished .

With this in mind in 1997, the Shoshone people throughout the state formed a people's committee called the Western Shoshone Claims Distribution Steering Committee (WSCDSC). In May 1998, the volunteer, non-paid committee held a referendum in the northern and central part of the state. The results were overwhelming, 1,230 for and 53 against, in favor of 100 percent per capita distribution to the eligible recipients of one quarter or more Western Shoshone. The BIA reported that following the vote they received letters supporting the distribution, and petitions signed by 415 individuals supporting the legislative proposal. They also received six letters from individuals opposing the proposal.[2]

On June 3, 2002, another referendum was held of the Shoshone people. The outcome was much the same as the 1998 referendum. With approximately 5,062 eligible Western Shoshone (adults and children) there was a 60 percent voter turnout, half are not of voting age. For anyone to tout there are 10,000 or more is incorrect and misleading the public.

In 1998, my tribe, the Duckwater Shoshone Tribe, conducted a survey of its membership on the distribution of the above award. Sixty percent of the members responded to the survey. They all favored a 100 percent per capita distribution. Today the Duckwater tribe[3] is expressing their desire to amend the Act to recognize **fishing, hunting and trapping**, when in fact the General Statewide

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[1] Gover, Kevin. Assistant Secretary of the Interior - BIA letter, "pertinent Aspects Concerning the Western Shoshone Land Claims". 2000. P. 3- ¶ 2&3.

[2] Gover, Ibid P. 4 - ¶ 1.

[3] Duckwater Tribe. Letter to Larry Piffero. 2001,Statewide Regulations issue Indian fishing and hunting licenses "free".

Regulations issue Indian fishing and hunting licenses "free".[4&5] Regarding the **gathering rights,** at no time does the state ever require a permit. Indian people gather at appropriate times of the year for pine nuts or for their medicinal plants. They are also requesting Shoshone **land rights** based upon "Indian title, aboriginal Indian title, original Indian title." However, Rulings of the Supreme Court say the aboriginal land title was extinguished.

On April 26, 1990, at the hearing on H.R. 3384, sponsored by John Kennedy, before the Committee on Interior and Insular Affairs, the following testimony was given by Elwood Mose (then a supporter of Mr. Kennedy on behalf of his clients' Bill): "No one finds it desirable or necessary to program any part of the award for tribal purposes. There are too many unanswered and too many troubling questions with tribal accountability and responsibility to Indian people, and the people would prefer avoiding any problems associated with tribal chairman or tribal council accountability in favor of complete distribution."[6] This currently remains the sentiment of the people. Then, ten years later, and after the peoples referendum, as Te-Moak tribal chairman, Mr. Mose completely reversed his position to the point of casting the tie breaking vote in the Te-Moak council meeting to rescind the previous council's Resolution for 100 percent per capita distribution. His actions represent the fickleness of tribal leaders and tribal politics and why today there is no comprehensive plan from the tribes.[7]

Further, from 50 to 85 % of tribal members live off reservation. In Duckwater slightly over 50% are off reservation. If 20 percent of their award went into tribal programs, because they have no voting rights, they would not be allowed to participate in the maintenance and disposition of their funds.

However, never mentioned in this issue are the people who live off reservation. Like most Americans those that live off the reservation have common every day financial struggles verses those on the reservation who receive HUD housing, medical, social services, and in most places, food distribution, etc.. Those who live in cities pay astronomical monthly rental or mortgage rates for a place to stay. This money could not buy a home but it could certainly help toward the purchase of one. Therefore, it is not in the best interest of the Western Shoshone people to put money into a system where they have no benefit. A 100 percent per capita distribution must be favored as it is more equitable whether on or off the reservation.

The Western Shoshone people have become victims of endless legal maneuvering by lawyers representing small groups of people with a "self-interest," and a mission-less tribal leadership. Today I am an elder and third generation in my family involved in this issue. My Shoshone language is the only living testimony that I have of my native Western Shoshone heritage. I ask you our elected leaders in Congress to settle this long-standing dilemma per the peoples' choice.

Respectfully,

Betty J. Robison

Betty J. Robison, Member, Duckwater Tribe and WSCDSC

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[4] Wildlife Administrative Services Office. "General Statewide Regulations". 2001.

[5] Western Shoshone National Council; et al., Plaintiff versus William Molini, Director, Nevada Department of Wildlife; et al., Defendants. Pp 1 -7. 1990.

[6] H.R. 3384. Hearing "Relating to the Establishment of a Western Shoshone Judgement Roll and Providing for the Apportionment and Distribution of the Award in Indian Claims Comission Docket Numbered 326-K". Serial No. 101-61. 1990. P. 29 - ¶ 4.

[7] Elko, Nevada , Poster. "Cattle Over People". 1999.

08-07-2002 16:36 From-FALLON PAIUTE SHOSHONE TRIBE 775 423 5202 T-250 P.005/022 F-863

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, D.C. 20515

MAY 9 2001

Dear Mr. Speaker:

Enclosed is draft legislation "To authorize the Use and Distribution of the Western Shoshone Judgment Funds in Docket Nos. 326-K, 326-A-1, and 326-A-3" (Dockets).

We recommend that the draft bill be referred to the appropriate Committee for consideration and that it be enacted.

The draft bill is being submitted under subsections 2(c) and (d) of the Indian Tribal Judgment Funds Act (Act) of October 19, 1973, 87 Stat. 466, 25 U.S.C. §1402, as amended. We are submitting the draft bill under these provisions because we have determined that circumstances do not permit the preparation and submission of a plan as provided under the Act, and that it is impossible for us to obtain the consent from the tribal governing bodies concerning the division of the judgment funds.

The principal sum of the funds awarded to the Western Shoshone in these Dockets total $26,145,189.89. The added interest and investment income brings the total to $116 million. These funds were appropriated on December 19, 1979, March 23, 1992, and August 21, 1995, to satisfy the Western Shoshone land and accounting claims filed against the United States government.

The legislative proposal calls for the Secretary of the Interior (Secretary) to prepare a roll and distribute per capita, eighty-five (85) percent of the funds awarded in Docket 326-K, including interest, to all Western Shoshone who have at least one-quarter degree Western Shoshone Blood that have not shared in any other judgment fund distribution, and who are living on the date the legislation is enacted. The principal of the funds awarded in Dockets 326-A-1 and A-3, plus fifteen (15) percent of the principal funds awarded in Docket 326-K will be held in a non-expendable trust account. The earned interest and investment income will be used for educational grants to qualified individuals who are listed on the per capita payment roll prepared by the Secretary, or to the lineal descendant of a person appearing on the roll who satisfy the eligibility criteria established by an Administrative Committee established under the provisions of the legislative proposal.

On March 11, 1980, the BIA issued its first Results of Research Report in Docket 326-K. The report described the difficulties in identifying the beneficiary. The Western Shoshone entities were described as being extremely scattered. The report found that "It is not possible to describe the Western Shoshone in terms of forming a tribe or a group of organized tribes, particularly in view of the Shoshone-Paiute combined organizations and the very real possibility that many Western Shoshone descendants (including those who strongly identify as Shoshone people) are not and never have been associated with any reservation entity." On that basis, the report identified those Western

1-1

Shoshone people, and their descendants, who derive from the census and other rolls of twelve identified Shoshone and Shoshone-Paiute entities, and other descendants who prove Western Shoshone ancestry on the basis of rolls and records to the satisfaction of the Secretary of the Interior, to be the beneficiaries of the award in Docket 326-K.

The Bureau of Indian Affairs (BIA) issued an amended Results of Research Report on January 22, 1982, for Docket 326-K. The report was amended to bring it in line with the BIA's "overall policy to designate successor tribes as beneficiaries of claims awards whenever possible in order that there might be maximum opportunity for those tribes that so wish to develop programming proposals for the use of judgment funds." In that report four tribes were designated as the tribal successors to the Western Shoshone entity of the period of 1853 to 1872. Those tribes are 1) Te-Moak; 2) Duckwater; 3) Yomba, and 4) Ely. The remaining beneficiaries consist of all other persons of Western Shoshone ancestry, in their individual capacity who otherwise meet the criteria detailed within the March 11, 1980, Results of Research Report.

Since 1982 we have been unsuccessful in obtaining consensus from the four governing bodies of the successor tribes on how to allocate and distribute the funds.

Tribal Council Actions

The Te-Moak Tribal Council, following a membership claims meeting, enacted Resolution No. 97-TM-10, on March 6, 1997, adopting a plan for the distribution of these funds and requested the Department of the Interior to support the distribution. The plan adopted by the Te-Moak Tribal Council is similar to the legislative proposal submitted with this letter. On August 5, 1999, the Tribal Chairman of the Te-Moak Tribal Council advised us that the Tribal Council rescinded Resolution No. 97-TM-10, and the tribe withdraws its approval of the proposed distribution of Docket 326-K funds. The Chairman further stated that he is no longer authorized to sign any document pertaining to the distribution. We were advised that the action to rescind the 1997 resolution was by voice vote and that it has not been embodied into a formal tribal resolution.

The Duckwater Shoshone Tribal Council enacted a resolution on March 10, 1999, supporting the Western Shoshone claims proposal.

The Yomba Tribal Council enacted Resolution No. YT-34-99 on June 18, 1999, stating its opposition to the distribution of Docket 326-K funds in the absence of a negotiated land settlement. Prior to the enactment of this resolution, we received a petition signed by 98 individuals who identify themselves as adult Yomba tribal members who support the distribution of the funds. In light of the fact that Yomba's total enrollment is 208 members, including children, the petition seems to show overwhelming support of the distribution by the Yomba membership.

The Ely Tribal Council enacted Resolution No. 99-EST-24 on August 10, 1999, stating its opposition to the distribution of Docket 326-K funds in the absence of a negotiated land settlement.

In summary, of the four successor tribes, one favors the legislative proposal and three oppose it. Of the three tribes that oppose the legislative proposal, Te-Moak indicates that it opposes the method of distribution. An article in the Elko Daily Free Press, dated Friday, August 13, 1999, states that

attach. 1-

Chairman Mose is in favor of an alternative plan to grant 20 percent of the money to the tribal councils. We understand that the issue has been discussed by the Te-Moak Tribal Council, but so far they have not provided us with any Tribal Council Resolutions concerning the judgment funds since 1997. Ely and Yomba indicate that they oppose the distribution until such time as they have obtained a negotiated land settlement. We were advised that the Bureau of Land Management and the Yomba Tribe held a meeting on July 16, 1999, and that they have made progress in their negotiations.

Western Shoshone Steering Committee (WSSC) - May 1998 Referendum Vote

Although the governing bodies of three of the four successor tribes, due to the dynamics of tribal politics, have changed their position, or been silent until recently concerning the legislative proposal for the use of these funds, the individual Western Shoshone have been anxious for quite some time to have these funds distributed.

In March 1998, the Te-Moak Tribal Council approved a request from two of its council members to hold a general claims meeting for the purpose of documenting those individuals who "are in favor of judgment fund distribution" and for other purposes. The Western Shoshone Steering Committee (WSSC)*, which was previously established to discuss Dockets 326-A-1 and A-3, formed the nucleus to investigate this problem. It is composed of 31 members. The WSSC members are Western Shoshone from several of the reservations in Nevada. Most of the members are elected tribal council members or official tribal representatives from their home reservations.

The WSSC developed a proposal and scheduled meetings and referendums to be held at Elko and Fallon, Nevada, on May 23 and 24, 1998, respectively. Notices of the meeting were widely distributed through newspapers, agencies, and public places on each of the Western Shoshone and outlying reservations. The purpose of the meetings was to allow interested individuals the opportunity to give testimony and to conduct a referendum vote on whether to adopt the draft legislation on claims distribution. Voter eligibility was simple and straightforward. An individual was deemed qualified if they could prove that they were at least 18 years of age and possessed 1/4 degree Western Shoshone Indian blood. Tribal enrollment staff were present to verify if an individual possessed the requisite blood quantum. Those unable to vote on-site were given the opportunity to submit a letter for the record with the identical, notarized verification requirement. We are not aware of any disputes concerning an individual's eligibility to vote.

The meeting at Elko was quite lively. As anticipated, an articulate and vocal group protested any distribution of the funds. Claims were made that the distribution of the funds were the equivalent of selling the land, it was also suggested that the funds on deposit should be considered as rent, and that additional money should be demanded from the United States. Others acknowledged that the Supreme Court had already decided the issue of extinguishment of title and that it was time to quit allowing a small group to thwart the distribution of the judgment monies. The meeting at Fallon was quite different. There was no vocal opposition to the proposed distribution of the funds and the meeting was conducted and concluded in approximately two hours. The vote from the two meetings was 1,230 in favor of distributing the money and 53 against the distribution.

---

* The WSSC members are identified in the attached background information.

attach. 1-3

Since then we have received letters supporting the distribution, and petitions signed by approximately 415 individuals supporting the legislative proposal. We also received six letters from Western Shoshone tribal members opposing the legislative proposal.

We are confident that the Western Shoshone want these funds distributed as quickly as possible. We also believe that the best interests of the Western Shoshone will not be served by providing additional time for successor tribes to reach a consensus on the division and distribution of the land claims funds in Docket 326-K.

Sincerely,

Assistant Secretary - Indian Affairs

attach. 1-4

Pertinent Aspects Concerning the Western Shoshone Land Claims

The BIA issued an amended Results of Research Report on January 22, 1982, for Docket 326-K. The report was amended to bring it in line with the BIA's "overall policy to designate successor tribes as beneficiaries of claims awards whenever possible in order that there might be maximum opportunity for those tribes that so wish to develop programming proposals for the use of judgment funds." In that report four tribes were designated as the tribal successors to the Western Shoshone entity of the period of 1853 to 1872. Those tribes are 1) Te-Moak, 2) Duckwater, 3) Yomba, and 4) Ely. The remaining beneficiaries consist of all other persons of Western Shoshone ancestry, in their individual capacity who otherwise meet the criteria detailed in the March 11, 1980 Results of Research Report.

On May 19, 1983, the Ninth Circuit Court of Appeals ruled in favor of the Danns. The Ninth Circuit held that the lower court was correct in concluding that the Western Shoshone title was not extinguished as a matter of law by application or administration of the public land laws, but reversed the lower court's holding that the Danns were barred by res judicata or collateral estoppel from asserting aboriginal title as a defense to the claim of trespass. This ruling was reversed by the United States Supreme Court on February 20, 1985. The Supreme Court held that "To hold, as the court below has, that payment does not occur until after the final plan of distribution has been approved by Congress would frustrate the purpose of finality . . . while subjecting the United States to continued liability for claims and demands that 'touch' the matter previously litigated and resolved by the Indian Claims Commission."

Since 1983 the Department of the Interior has been meeting with Western Shoshone organizations for the purpose of negotiating a legislative settlement to the land claims issue. In 1985 the Western Shoshone National Council received a grant from the Administration for Native Americans so that they could develop an inventory and historical analysis of the Western Shoshone aboriginal lands and other natural resources subject to the 1863 Treaty of Ruby Valley. Meetings were held in 1985 and 1986 with the Western Shoshone leadership for the purpose of developing a plan for the distribution of the judgment funds, and to identify lands that could be transferred to the Western Shoshone tribes to increase the reservation land base. Nothing was accomplished due to dynamic tribal politics and power struggles within the leadership.

A legislative proposal was drafted by an attorney representing the organization called the "Western Shoshone Distribution Association." The legislative proposal was used as the basis for H.R. 3384 that was introduced on September 28, 1989. This bill provided for the establishment of a Western Shoshone roll and the apportionment and distribution of the funds. A hearing was held on April 26, 1990, but no action was taken because the tribal governments, the Western Shoshone National Council, and the Administration opposed the bill. An attempt was made to revise the bill to address Interior's concerns but the Chairman of the Committee on Interior and Insular Affairs advised us in September 1990 that the bill would not be scheduled for full Committee consideration because all of the tribal governments adamantly opposed the bill and wished to begin negotiations with BIA to develop a plan to distribute the funds.

In November 1990, legislation was drafted regarding the use of rangeland resources in Nevada, but never introduced. In January 1991, the Duckwater Shoshone Tribe drafted proposed legislation concerning the Tribe's asserted claim to the lands of the Western Shoshone nation. This proposal

Attach. 1-5

DUCKWATER SHOSHONE TRIBE
511 Duckwater Falls, P.O. Box 140068
Duckwater, NV 89314
Phone (775) 863-0227 Fax (775) 863-0301

October 9, 2001

Larry Pieffero
1799 Weymba Street
Elko, Nevada 89801

Dear Mr. Pieffero:

This is in response to your request of having the Tribe draft a resolution, pertaining to the Western Shoshone Claims Distribution Act. I wanted to take this time to inform you that the Duckwater Shoshone Tribe did a resolution in 1998 and I have enclosed a copy for your records.

The Tribe has proposed a language change in the said distribution bill, to replace Section 2, paragraph 9 now in the bill:

Section 22 of the Indian Claims Commission Act. Ch 959, 60 Stat. 1055 (Aug. 13, 1946) shall not be applied to bar or preclude any otherwise valid Western Shoshone land rights based upon Indian title, aboriginal Indian title, original Indian title or the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869); or hunting, fishing, trapping or gathering rights; or any other rights recognized, identified or described in the 1863 Treaty of Ruby Valley.

It is our hope that the language proposed above will preserve Western Shoshone land and treaty rights as promised by the Western Shoshone Steering Committee and the Nevada Congressional delegation.

If you have any questions, please do not hesitate to call me. Thank you.

Sincerely,

Lisa Ann George
Assistant Tribal Manager

Health Department	(775) 863-0222	Fax (775)863-0142
Environmental Dept.	(775) 863-0296	Fax (775)863-0289
Duckwater Police Dept.	(775) 863-0175	Fax (775)863-0328

Attach. 2

Mail Applications to:
WILDLIFE ADMINISTRATIVE SERVICES OFFICE
P.O. Box 1345
Fallon, Nevada 89407-1345

Application Questions Call:
1-800-576-1020
1-775-423-7577

General Statewide Regulations

RESIDENT LICENSES AND PERMITS

Qualifications for Resident Licenses. For the purpose of issuing and using resident licenses or permits, a person is considered to be a resident of the State of Nevada if he is a citizen of, or is lawfully entitled to remain in the United States, and during the six months preceding his application to the Division for a license or permit, he was domiciled in this state; was physically present in this state except for temporary absences; and did not purchase or apply for any resident license, tag or permit to hunt, fish or trap in another state, country or province. **A resident license or permit issued by this state is void if the person to whom it was issued establishes his domicile in, and obtains any privilege or entitlement conditional on residency from another state, country or province.**

A person who is not domiciled in Nevada but who is attending an institution of higher learning in this state as a full-time student is eligible for a resident license or permit if, during the six months preceding his application to the Division for a license or permit, he was physically present in Nevada except for temporary trips outside the state, and did not purchase or apply for any resident license, tag or permit to hunt, fish or trap in another state, country or province.

- **Annual Fishing License**- for persons 16 years of age or older — $21.00
- **Junior Fishing License**- for persons 12 through 15 years of age — $ 5.00
- **Senior Fishing License**- for persons 65 years of age or older with 5 years of continuous Nevada residency — $ 5.00
- **Combination Hunting and Fishing License**- for persons 16 years of age or older (Parental signature required at time of purchase for persons 16-17 years of age) — $39.00
- **Junior Combination Hunting and Fishing License**- for persons 12 through 15 years of age (Parental signature required at time of purchase) — $ 8.00
- **Senior Combination Hunting and Fishing License**- for persons 65 years of age or older with 5 years of continuous Nevada residency — $ 8.00
- **Short-Term Fishing Permit: valid until midnight of day specified** — $ 7.00
  Each consecutive day added to a Short-term Permit to Fish (must be purchased at the same time short-term permit is purchased) — $ 2.00
- **Serviceman Fishing License**- For Nevada resident servicemen on active duty who are stationed outside of Nevada — $ 6.00
- **Disabled Veteran Combination Hunting and Fishing License** for veterans who reside in Nevada and have incurred a service-connected disability which is considered 50% or more by the U.S. Department of Veterans Affairs, and who have received a specific discharge from service. License is available only from the Division of Wildlife — Free
- **Disabled Person Fishing License**- for persons with a severe physical handicap. License is available only from the Division of Wildlife — $ 5.00
- **Disabled Person Combination Hunting and Fishing License** for persons with a severe physical handicap. License is available only from the Division of Wildlife — $ 8.00
- **Indian Fishing and Hunting License**- for resident Indians with a certificate of eligibility. License is available only from the Division of Wildlife — Free

NONRESIDENT LICENSES AND PERMITS

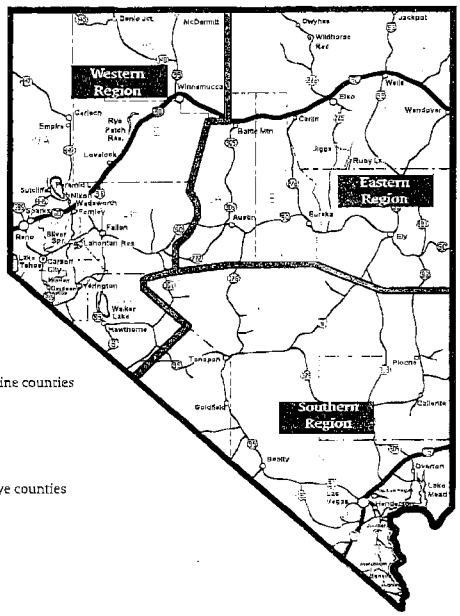
- **Annual Fishing License**- For persons 16 years of age or older — $51.00
- **Junior Fishing License**- For persons 12 through 15 years of age — $ 9.00
- **Colorado River Fishing License**- For persons 14 years of age or older — $21.00
- **Short-Term Fishing Permit**-Valid until midnight of day specified — $12.00
- **Each consecutive day added to a 1-Day Permit to fish** (must be purchased at the same time 1-Day Permit is purchased) — $ 4.00

Attach. 31 32

82-835

Nevada Regional Reference Map

For further information contact one of the following Division of Wildlife Offices:



STATE HEADQUARTERS

1100 Valley Road
Reno, NV 89512
(775) 688-1500

Western Region Office

380 West B Street
Fallon, NV 89406
(775) 423-3171
Serving Carson City, Churchill, Douglas Humboldt, Lyon, Mineral, Pershing, Storey, and Washoe counties

Eastern Region Office

1375 Mountain City Hwy.
Elko, NV 89801
(775) 738-5332
Serving Elko, Eureka, Lander and White Pine counties

Southern Region Office

4747 Vegas Dr.
Las Vegas, NV 89108
(702) 486-5127
Serving Clark, Esmeralda, Lincoln, and Nye counties

Henderson Office

744 S. Racetrack Road
Henderson, Nevada 89015
(702) 486-6742
Serving Henderson and Las Vegas areas

How To Use These Regulations

1. First, review the General Statewide Regulations including seasons, hours, limits, etc. on pages 4, 5 and 6.
2. Then, consult the reference map above to find the area in which you are interested in fishing -- Western (formerly known as Region I,) Eastern, (formerly known as Region II,) or Southern (formerly known as Region III).
3. Turn to the appropriate Region section and review **both General Region Regulations and the Special Regulations for that Region.**
4. If fishing in a Wildlife Management Area, review pages 24-25.

Attach. 3

09-07-2002 16:39 From-FALLON PAIUTE SHOSHONE TRIBE 775 423 5202 T-250 P.013/022 F-983

NEVADA INDIAN COMMISSION
24 JUL 1990
RECEIVED

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

ENTERED
JUL 19 1990
CLERK U.S. DISTRICT COURT
DISTRICT OF NEVADA
BY DEPUTY

WESTERN SHOSHONE NATIONAL COUNCIL; et al.,

Plaintiff,

v.

WILLIAM MOLINI, Director Nevada Department of Wildlife; et al.

Defendants.

CV-N-86-585 BRT

FILED
JUL 4 09 PM '90
CAROL C. FITZGERALD
BY

SUMMARY JUDGMENT

In this action plaintiffs, the Western Shoshone National Council and certain individual Shoshone Indians, seek to establish unrestricted hunting and fishing rights in the area described in the Treaty of Ruby Valley. Defendants, state officials charged with enforcement of Nevada hunting and fishing regulations, oppose the action asserting plaintiffs' subjugation to appropriate state control on the same basis as all other persons.

Since the action was commenced, the defendants have by agreement been restrained from enforcing state fish and game regulations against plaintiffs. The terms and conditions of this agreement have no effect on the final disposition of this case. The need for prompt ill-considered action was avoided by the agreement.

72
v.8/821

attach. 4-1

The Treaty of Ruby Valley (1869), a treaty of peace and friendship between the United States and the Western Bands of Shoshone Indians, provided that all hostilities against emigrant trains and citizens of the United States should cease. It also recognized the rights of emigrants to mine and settle on Shoshone lands. Article VII deals specifically with hunting, in the following language:

> The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceeding stipulations, and of their faithful observance of the said bands, the United States promise and agree to pay to the said bands of the Shoshonee nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

There is no contention that the United States has not complied with Article VII.

Final decision in this case was delayed pending final decision in U.S. v. Mary Dann and Carrie Dann, ___, F.2d ___ (9th Cir. 1989), which was then pending on appeal. The parties to this action have cited almost every decided case dealing with Indian aboriginal rights touching on the rights to hunt and fish. After study of the authorities and the arguments flowing therefrom we

Attach. 4-2

think decision in this case is governed by two controlling precedents.

The Dann decision, preceded by a tortuous path of litigation ultimately concluded that the aboriginal title of the Shoshone Indians had been extinguished by payment of the judgment of the Indian Claims Commission. "When tribal title has been extinguished and paid for pursuant to the Indian Claims Commission Act, we cannot view the remnants of that tribal title as surviving thereafter in individual tribal members." Dann also identified July 1, 1872 as the date when tribal title was extinguished.

The other precedent of great import for this case is Oregon Department of Fish and Wildlife v. Klamath Indian Tribe, 473 U.S. 753, 105 S. Ct. 3420 (1985). The 1864 Treaty with the Klamath Indians ceded 22 million acres to the United States and excepted 1.9 million acres for an Indian reservation, securing to the Indians the exclusive right of "taking fish" within the reservation. No right to hunt within the reservation and no right to hunt and fish outside the reservation was expressly preserved by the Treaty.

After the reservation boundaries were surveyed, the Klamath Indians promptly protested that thousands of acres described in the Treaty had been excluded from the reservation. A Klamath Boundary Commission was appointed and its report, after investigation, concluded that 617,000 acres had been erroneously excluded from the reservation. The Commission valued the excluded land at 88.36 cents per acre, basing the valuation on its use for timber and stock grazing. The report did not discuss hunting or

fishing activities or give a value to the right to conduct such activities on the land. The final cession agreement in June 1901 cedes 621,824 acres to the United States for $537,007.20. Members of the tribe continued to hunt and fish on the ceded lands after 1901, and there is no record of the state of Oregon asserting fish and game regulatory jurisdiction over the ceded lands until this action was commenced. Subsequently a claim was filed with the Indian Claims Commission and the Commission, in 1969, granted the Klamath Indians $4,162,992.80 additional compensation for the lands ceded by the 1901 agreement. The award, which was paid, was based on the estimated value of the land for stock grazing and timber harvesting and did not mention or give a value to hunting and fishing rights.

The United States Supreme Court reversed the decisions of the United States District Court for the District of Oregon and the United States Court of Appeals for the Ninth Circuit, and held that the Klamath Indians had no aboriginal retained rights to hunt and fish on the 621,824 acres of ceded lands and that this territory was within the regulatory authority of the state of Oregon. Noting that the 1864 Treaty referred only to fishing rights, the court observed: "Although hunting is not expressly mentioned in the Treaty, it is clear that any exclusive right to hunt was also confined to the reservation." 473 U.S. 767. This construction is pertinent to the interpretation of Section VII of the Treaty of Ruby Valley which refers only to compensation for "game" and not for fish.

In the Klamath case, the Supreme Court relied upon the

Attach. 4-4

language of the 1901 Agreement as a conveyance of the Tribe's title to the land and a surrender of "all their claims, right, title, and interest in and to" that portion of the reservation, (473 U.S. 768) despite the fact that hunting and fishing rights may be enjoyed by Indians independent of any ownership of land (Antoine v. Washington, 420 U.S. 194, 95 S. Ct. 944) and that hunting and fishing rights were not expressly surrendered, and concluded that the Klamath Indians retained no hunting and fishing rights free from state regulation on the ceded territory.

Alluding to the Claims Commission award, the Supreme Court said (420 U.S. 774):

> Moreover, the Tribe has since been afforded an opportunity to recover additional compensation for the ceded lands, in light of the 'unconscionable' amount paid in 1906. 20 Ind. Cl. Comm'n, at 530. Yet in that proceeding, which resulted in an award to the Tribe of over $4 million, id., at 543, the Tribe apparently agreed that the 'highest and best uses' for the ceded lands were commercial lumbering and livestock grazing, again without mention of any hunting or fishing rights. The absence of specific compensation for the rights at issue is entirely consistent with our interpretation of the 1901 Agreement.
>
> VII
>
> Thus, even though 'legal ambiguities are resolved to the benefit of the Indians,' DeCoteau v. District County Court, 420 U.S. 425, 447 S.Ct. 1082, 1094, 43 L.Ed.2d 300 (1975), courts cannot ignore plain language that, viewed in historical context and given a 'fair appraisal,' Washington v. Washington Commercial Passenger Fishing Vessel Assn., 443 U.S., at 675, 99 S.Ct., at 3069, clearly runs counter to a tribe's later claims. Careful examination of the entire record in this case leaves us with the firm conviction that the exclusive right to hunt, fish, and gather roots, berries, and seeds

attachment

> on the lands reserved to the Klamath Tribe by the 1864 Treaty was not intended to survive as a special right to be free of state regulation in the ceded lands that were outside the reservation after the 1901 Agreement. The judgment of the Court of Appeals is therefore reversed.

In the present case, plaintiffs have lost aboriginal title to the territory in question by virtue of the paid award of the Indian Claims Commission which had a statutory effect (Section 22a of the Indian Claims Commission Act, ch. 959, 60 Stat. 1049, 1055 (1946)): "The payment of any claim ... shall be full discharge of the United States of all claims and demands touching any of the matters involved in the controversy."

The foregoing is comparable to the right, title, and interest language in the Klamath case and carries a like implication of surrender of usufructuary rights to hunt and fish.

Also, unlike the Klamath Treaty, the Treaty of Ruby Valley was specifically concerned with such usufructuary rights in the area of use by the Shoshone Tribes and in Article VII provided for the loss of such rights, as the encroachments of the white settlers destroyed their value.

Finally, irrespective of aboriginal retained rights, strong authority recognizes a state's rights to manage hunting and fishing on public lands by non-discriminatory regulation. Puyallup Tribe v. Department of Game of Washington, 391 U.S. 392, 88 S. Ct. 1728 (1968); Kennedy v. Becker, 241 U.S. 556, 36 S. Ct. 7095 (1916); United States v. Winans, 198 U.S. 371 (1905); Washington v. Washington Commercial Passenger Fishing Vessel Assn., 443 U.S. 658,

Attach. 4-6

99 S. Ct. 3055 (1979).

In consideration of the premises,

IT HEREBY IS ORDERED, ADJUDGED AND DECREED that:

1. The temporary injunction heretofore entered is vacated and plaintiffs' motion for a permanent injunction is denied.

2. Plaintiffs' motion for summary judgment is denied and summary judgment is hereby granted to defendants with the force and effect that the action entitled above is hereby dismissed with prejudice.

DATED July 10, 1990.

UNITED STATES DISTRICT JUDGE

attach. 4-7

RELATING TO THE ESTABLISHMENT OF A WESTERN SHOSHONE JUDGMENT ROLL AND PROVIDING FOR THE APPORTIONMENT AND DISTRIBUTION OF THE AWARD IN INDIAN CLAIMS COMMISSION DOCKET NUMBERED 326-K

HEARING

BEFORE THE

COMMITTEE ON
INTERIOR AND INSULAR AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

H.R. 3384

WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT

HEARING HELD IN WASHINGTON, DC
APRIL 26, 1990

Serial No. 101-61

Printed for the use of the Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE
65-633 WASHINGTON : 1991

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-036844-8

Attach. 5-1

09-07-2002 16:41 From-FALLON PAIUTE SHOSHONE TRIBE 775 423 5202 T-250 P.021/022 F-963

I am delighted to welcome you here this morning, and wo please proceed in the order in which I have called you, Mr. Ms. Temoke, and Ms. Eben, please. Mr. Mose.

PANEL CONSISTING OF ELWOOD MOSE, SHOSHONE INDIAN; JOHN PAUL KENNEDY, ESQ.; ACCOMPANIED BY ROBERT W. EDWARDS, ESQ., AND CLAUDE S. ZOBEL, ESQ; HELEN EBEN, SHOSHONE INDIAN; ROSEMARY TEMOKE, SHOSHONE INDIAN; AND ROBERT W. EDWARDS, ESQ.

Mr. MOSE. Thank you, Mr. Chairman. My name is Elwood Mose. I am a member of the Western Shoshone out in Nevada. I am enrolled with the Te-Moak Bands of the Western Shoshone. I thank you for this opportunity to appear here today.

I am here because a number of Shoshone Indians in Nevada on the several Shoshone reservations, on the several Shoshone-Paiute reservations, have requested that I come here today to convey to you their unequivocal and their overwhelming desire to have a per capita distribution to be made to them. They wish 100 percent per capita distribution. Their reasons are fairly simple. They have waited for 10 years, a decade, since the money was appropriated and set aside, and nothing has occurred in terms of negotiated land settlements, in terms of any progress that is readily identifiable. And the Indians are saying we have had enough. We would like to accept our payment. We would like to make it 100 percent per capita, and we want it distributed at the earliest possible date.

A number of these people have gotten frustrated with the claims process, and they have gotten frustrated with the Bureau of Indian Affairs and their tribal officials. As a result, they sought out and secured private counsel to represent their interests for a claims payment, and that is Mr. Kennedy.

Out of the approximately 2,000 Indians who live on the Shoshone reservations, the Te-Moak Bands, Ely, Duckwater, Yomba and the Shoshone-Paiute reservations at Fallon, McDermitt, Winnemucca and other places, I would say that there are two kinds of people out there: the people who have retained Mr. Kennedy to represent their interests, and the other group are people who have not retained Mr. Kennedy but still want a 100 percent per capita distribution. In any case, they would like the per capita distribution limited to a one-quarter degree blood quantum.

No one finds it desirable or necessary to program any part of the award for tribal purposes. There are too many unanswered and too many troubling questions with tribal accountability and responsibility to Indian people, and the people would prefer avoiding any problems associated with tribal chairmen or tribal council accountability in favor of a complete distribution.

The people who want to be paid are not unemployed. They are not seeking money just for the sake of seeking money. These are industrious people. These are people who have made and carved out livings for themselves sometimes in the face of severe adversity. These are people who are tradesmen. These are people who are professionals. These are people who are ranchers and housewives. These are people who are all gainfully employed. Every Shoshone that I know does not have any notion that he is owed a living by

attach. 5-2

" CATTLE OVER PEOPLE "
WESTERN SHOSHONE NATIONAL COUNCIL (WSNC)

WSNC works to control political groups
by controlling COUNCILS they control the government-to-government relationship and, thereby, control the rights of the Shoshone people--or the claims award--meanwhile they use the words "Western Shoshone" to further their own agenda in working with/for non-Indian activists

and

IT HAPPENED AGAIN (especially since the claims award is in sight) ON WEDNESDAY, AUGUST 4, 1999, at the TE-MOAK COUNCIL MEETING

at the

TE-MOAK COUNCIL: a MOTION to DROP the 1997 COUNCIL'S RESOLUTION # 10 for CLAIMS DISTRIBUTION at 100% PER CAPITA TO ¼ DEGREE BLOOD

but

➡ MOTION DIED, for LACK of a "SECOND"

then

WSNC continued their arguments (cattleman Yowell of South Fork Res., cattleman Dann of Crescent Valley, Chairman Brady of Yomba Res., small number of other Shoshones & non-Indians supporters);.... the meeting continued late into the night- -

AFTER the Battle Mountain representative left to return to her community

THEN ➡ MOTION to drop 1997 Resolution #10 RE-INTRODUCED: NOW 3 TO 3

AGREEING TO DROP:	AGAINST DROPPING:
Elko: Jodi Decker Abe	Elko: Larry Piffero
S.Fork: Floyd Bill	Elko: Leta Jim
Wells: Harvey Healy	Elko: Melanie Tom

CHAIRMAN, ELWOOD MOSE of South Fork, BROKE THE TIE VOTE & AGREED TO DROP resolution #10 of the 1997 Te-Moak Council

THOSE VOTING TO DROP RESOLUTION #10 HAVE CAST A VOTE AGAINST THE PEOPLE'S CHOICE TO RECEIVE THEIR CLAIMS AWARD
AS DETERMINED BY THE MAY 1998 VOTE
WHERE 1,230 SHOSHONES VOTED "YES" AND 53 VOTED "NO"

NOT WASTING ANY TIME: the NEXT DAY, MOSE sent a LETTER to BIA OFFICIALS WITHDRAWING 1999 TE-MOAK APPROVAL OF DISTRIBUTION and Yomba's Mr. Brady sent 2 resolutions to BIA, state reservations and congressmen mentioning the DANN'S and cattlemen's problems FAILING to mention or SUPPORT his enrolled members petition (85% wanting distribution). THEN on SATURDAY, August 7, MOSE met in AUSTIN, NV, with WSNC- - A VICTORY CELEBRATION OR MORE PLOTTING AGAINST THE PEOPLE'S CHOICE ????

WSNC's NEXT MOVE IS TO UNDERMINE THE WESTERN SHOSHONE STEERING COMMITTEE that consists of several official tribal reps who are working to get a bill (100% PER CAPITA; ¼ DEGREE) introduced in the U.S. Congress on behalf of the PEOPLE'S CHOICE.
(Mose'sWest letter,Aug. 5,'99; & see Timbisha, Death Valley news article-- other ways for land base expansion)

Attach. 6

ELKO BAND COUNCIL

March 8, 2002

The Honorable Chairman, Mr. Daniel K. Inouye
And
Vice-Chairman, Mr. Ben Nighthorse Campbell
SENATE COMMITTEE ON INDIAN AFFAIRS
838 Hart Senate Office Building
Washington, D.C. 20510

RE: Testimony Hearing on Senate
Bill No. S958 – March 21, 2002

Good morning ladies and gentlemen, my name is Fermina Stevens, I am the Chairperson of the Elko Band Council in Elko, Nevada. I represent the largest of the four constituent bands of the Te-Moak Tribe of Western Shoshone Indians of Nevada with an enrollment of 1,594. I am speaking today on behalf of the people I represent.

This issue of land claims has been ongoing for many years. As a child, I remember hearing many heated discussions, I do not recall every discussion in detail but, I do remember there was always emphasis that this distribution was not for the sale of any Western Shoshone land but for the trespassing and damage that has occurred, this is also how it was told to me by my grandmothers. Over the past several years, the Elko Band Council has passed resolutions in support of the settlement with the understanding that it is only for past damages and trespass. The current council and the membership of my people understand that to be true and would not agree otherwise.

As I stated earlier, Elko Band has the largest population of the four bands in the Te-Moak Tribe. I should also let you know that we have the smallest land base of the four bands. Currently we reside on approximately 193 acres, of that acreage we have, maybe 75 acres that we will be able to develop for more housing and economic growth, which as you can tell will not benefit the future of Elko Band. As a tribe we have much potential for growth economically but the amount of land we have now hinders that potential. Today I would like to request the opportunity to retain additional land on behalf of the future of my people. Extra land means that we would be able to develop a gravesite, an important part of life is death and my people would like to know that when they are gone their remains are in a safe place. The youth of my community need a safe place to play baseball, softball, football or other recreation they would like to participate in.

Constituent Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada

The Te-Moak Tribe holds an annual Pow-wow that brings in a couple of thousand people from around the country, unfortunately we have outgrown our current facility and are in need of grounds to hold this cultural event that helps to keep our traditions alive. Additional land would also give our children the opportunity to discover their land, to learn who they are, where they come from and to protect our mother earth, this also helps to keep our culture strong. For thousands of years my people have roamed within the Western Shoshone Territory, traveling with the seasons hunting, fishing and gathering for medicinal purposes to provide for their families. Upon the arrival of non-native peoples we were forced to become herdsmen or ranchers, many of my people continue to lead their lives in the manner in which they were taught by their grandparents and great-grandparents. Please keep this in mind when contemplating the issue of retaining our ancestral land.

Many elders of my community have been waiting since they were young for this money. The distribution would give them the opportunity to do the little things that you or I might take for granted like paying bills, buying a car or even being able to attend local entertainment at one of the casinos, this would bring them enjoyment in their golden years. Since 1979, 300 Tribal members have passed away, 50% being elderly, including about ten (10) in the past several months. Although majority will accept the distribution, there are several Tribal members who will not, they would like for their rejections to be addressed in a formal manner in the paperwork process.

As we all know education is a very important factor to all Nations, the membership of Elko Band is no exception. As a Tribal Leader, I am well aware that the amount of money that Tribes have is never enough to supplement the higher education of our young people. To set aside dockets 326-A-1 and 326-A-3, will make many dreams a reality for many people of my Tribe, which will help stimulate economic growth and make the community stronger as a whole.

Another area of concern is the 100% per capita payment to each individual. If a percentage is given to Tribal programs some people have mentioned concern that he or she may not receive their share due to them not being in a service area, this would be unfair. For the ones who have chosen to take the money they would like the opportunity to spend or invest as they wish. I have been asked by a few people to let you know that we all are not a people without education or direction, I would like to go on record as saying some Tribal members, have gone to college or are in college, they have set goals for their families, they have nice homes and most have good jobs to go to everyday. This does not mean they don't struggle to make ends meet like other unfortunate persons who also live in a life of poverty. They only want their fair share of what is owed to them as Western Shoshone people, as the land of their ancestors has been destroyed.

As an elected Tribal Leader and a representative of my people it is my duty to ensure that the rights of future generations are protected, therefore I would like to request an amendment to Senate Bill 958:

Delete existing Section 2, Paragraph 9 in its entirety and substitute the following language:

Neither Section 22 Of the Indian Claim Commission Act, ch. 959, 60 Stat. 1055 (August 13, 1946); nor the judgment in Western Shoshone Identifiable Group v. United States, Docket 326-K before the Indian Claim Commission and United States Court of Claims; nor payment of the judgment; nor this authorization for the use and distribution of the judgment award shall be applied or deemed to bar, preclude, extinguish, discharge or abrogate any other wise valid claims to Western Shoshone land or resource rights; including hunting, fishing, trapping and gathering rights; that are based upon Indian title, aboriginal Indian title, original Indian title or the 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869); or affect any other rights recognized, identified or described in the 1863 Treaty of Ruby Valley.

In conclusion I would like to thank you for the opportunity to be here today. This is a very important issue that has burdened and has brought turmoil to my people for too many years. It is my belief that this distribution will help many to do things they would not be able to do otherwise, but not at the expense of out right sale of the land which is wrong. Aside from what many people think, we do still have a tie to our mother earth that we hold sacred and are not willing to sacrifice.

Thank you,

Fermina Stevens

Fermina Stevens
Chairperson, Elko Band Council

Legislative Proposal for a Process to Resolve Western Shoshone Land and Resource Rights

In 1863, The Western Shoshone people signed a treaty of peace and friendship with the United States in Ruby Valley, Nevada (the "Treaty of Ruby Valley"). The Treaty of Ruby Valley was ratified by the United States on June 17, 1869 and proclaimed by the President of the United States on October 21, 1869. The treaty affirmed the boundaries of the Western Shoshone and did not cede title to any Western Shoshone lands but conceded certain rights to the United States for its citizens to pass through Western Shoshone lands and provided for certain types of temporary occupancy by citizens of the United States. Under the United States Constitution, this treaty continues to be part of the supreme law of the United States.

The ancestral home lands of the Western Shoshone as identified by the Treaty of Ruby Valley continue to be used and occupied by the Western Shoshone people and have deep religious and cultural significance to them. The Western Shoshone have never desired to give up their ancestral home lands and remove to other areas. They have continuously asserted their use and occupancy of Western Shoshone ancestral home lands, and such lands have never been legally abandoned by the Western Shoshone. Specifically, Western Shoshone people continue to hunt, fish, trap, and gather throughout the ancestral territory of the Western Shoshone and are utilizing large areas for the grazing of livestock pursuant to aboriginal rights and the Treaty of Ruby Valley. The Western Shoshone have not accepted the $26,143,000 judgment awarded on December 19, 1979 pursuant to *Western Shoshone Identifiable Group v. United States*, Docket 326-K as compensation for alleged extinguishment of title to the land and will not accept money in exchange for their land rights.

Article VI of the Treaty of Ruby Valley provides for the establishment of Western Shoshone Indian Reservations where Western Shoshone people may become economically self-sufficient, but

such reservations have never been established. Additionally, the Ninth Circuit Court of Appeals, in *United States v. Dann,* held that Western Shoshone title was not extinguished. There is an immediate need for a fair and just resolution of the Western Shoshone land rights and monetary claims against the United States, and an immediate need to provide an adequate land base and affirm indigenous rights for the various tribes and bands.

The following legislative proposal sets forth a process by which the Congress of the United States can reaffirm the Treaty of Ruby Valley by confirming Western Shoshone hunting, fishing, trapping, and gathering rights throughout Western Shoshone ancestral territory and confirming certain land areas within the ancestral territory to be held exclusively by the Western Shoshone people for their use and benefit. This proposal is aimed at rectifying the existing situation where the Western Shoshone live on their ancestral lands without the ability to achieve self-determination and economic independence. The proposal provides for the economic development, resource protection and self-determination of the Western Shoshone; including the distribution of Western Shoshone Compensation Funds to the tribes or bands and their members.

ANNEX I
Proposal for Initial Legislative Act

A. Purpose. The purpose of this Act is to reaffirm the 1863 Treaty of Ruby Valley and the peace and friendship between the Western Shoshone people and the United States government; to establish and maintain economic security for the Western Shoshone people; and to reaffirm the Western Shoshone home land base. This Act will implement the United States' moral and legal obligations as a member of the international community in terms of upholding the rights of indigenous peoples, particularly with regard to their land and resource rights.

It is in the best interest of both the Western Shoshone and the United States to secure to the Western Shoshone a permanent land base within the ancestral territory of sufficient size to meet the housing, economic, employment, governmental, and cultural needs of the Western Shoshone people. The unresolved land status of the Western Shoshone has created long standing hardships for the Western Shoshone people and has made it difficult for the Western Shoshone and the agencies that now manage the lands to achieve mutually beneficial relationships. The process set forth by this Act is also consistent with the shared responsibility of the Western Shoshone and the United States to protect and preserve the natural, cultural and historic resources of the Western Shoshone ancestral home land for generations to come.

B. Joint Western Shoshone/Federal Commission. This Act directs the establishment of a Joint Western Shoshone/Federal Commission, coordinated by an independent facilitator, to study land and resource tenure in order to reaffirm a Western Shoshone home land. The commission will be composed of Western Shoshone and representatives from relevant federal agencies. The resulting study will identify exclusive land areas to be held by the Western Shoshone for their use and benefit and non-exclusive land areas to which the Western Shoshone will have access

to and traditional use of for hunting, fishing, gathering, and cultural purposes. The study will also include provisions relating to Western Shoshone involvement in decision-making and implementation of natural resources management.

C. Distribution of Western Shoshone Compensation Funds. This Act directs the Bureau of Indian Affairs to establish an arrangement by which to distribute the compensation funds awarded by the United States Court of Claims in *Western Shoshone Identifiable Group v. United States*, Docket 326-K (the "Western Shoshone Compensation Funds"). This distribution is due to the United States' desire to dispose of the funds and its desire to compensate the Western Shoshone for harms caused by federal and state actions. The funds are hereby characterized as compensation for wrongs done to the Western Shoshone by the United States during the nineteenth and twentieth centuries, including the disruption of Western Shoshone culture and lifestyle, the destruction of game, and trespass to Western Shoshone lands, including the removal of valuable minerals without compensation. Notwithstanding the judgment in *Western Shoshone Identifiable Group v. United States*, such funds shall not be deemed compensation for the taking of or extinguishment of title to Western Shoshone aboriginal lands. The funds are to be distributed to Western Shoshone communities in a manner to be determined.

D. Interim Measures. This Act directs the Bureau of Land Management to establish interim measures aimed at enjoining further federal action on Western Shoshone ancestral lands until the completion of the study set forth in paragraph B, above, and the approval and implementation of legislation directed by the study.

Set forth below is the process by which this proposal will be accomplished:

Process

STEP 1. **Initial Legislative Act negotiated and approved. [See Annex I for detailed proposal]**

- Sets forth the purpose of the process;
- Directs the establishment of a Joint Western Shoshone/Federal Commission to develop a comprehensive land and resource tenure proposal;
- Distributes compensation fund monies for redress of harms -- not for land; and
- Directs the creation of interim measures.

STEP 2. **Interim Measures created and implemented.**

STEP 3. **Studies of suitability and land uses conducted.**

STEP 4. **Draft Congressional Report on Land and Resource Tenure created by Joint Western Shoshone/Federal commission.**

STEP 5. **Public comments to Draft Congressional Report received.**

STEP 6. **Final Legislative Act drafted from Congressional Report.**

STEP 7. **Final Legislative Act approved by Congress.**

STEP 7. **Cooperative Agreements and Joint Management Plans created, as necessary to implement Final Legislation.**

WESTERN SHOSHONE GOVERNMENT'S SUPPLEMENTAL OPPOSITION TESTIMONY AGAINST SENATE BILL 958

Good Morning, Chairman Inouye, Vice-Chairman Campbell, and Committee members.

My name is Raymond D. Yowell, and I am presenting this supplemental opposition testimony as the holder of the Western Shoshone GovernmentÆs High Office of Chief. In accordance with this CommitteeÆs rules, the required number of copies of this supplemental and our main opposition testimony have been filed.

The Indian Claims Commission Hearing of Record, July 1980

The only event to be held by the United States Claims Commission in Western Shoshone Territory took place in July of 1980. At this ICC Hearing of Record, the Western Shoshone asked the hearing officer: ôBy what United States law did the United States ever acquire Western Shoshone territory?ö The hearing officer did not have an answer to this direct question. Because the hearing officer could not answer the question, and this being the first time that the Western Shoshone had a direct say at all in the issue, without the claims lawyers standing in the way, the Western Shoshone rejected the monetary award from ICC Docket 326K.

United States Laws and Treaties

The Western Shoshone Government has long known from its research that there are a number of United States laws and treaties that protect the Western Shoshone Territory from acquisition by the United States *without our consent*. The United States Government has not complied with these laws and treaties. Since the United States has not legally acquired our Territory from us, there is no basis for distributing an ôawardö for a ôtakingö that has not happened.

Due to todayÆs short time limitation, these laws and treaties are listed as follows, without elaboration. A more detailed and elaborated version is in the main opposition testimony.

Article 6 of the U.S. Constitution - The Treaty Supremacy Clause.

The 1787 Northwest Ordinance

The 1834 Trade and Intercourse Act ù Sections 11-12.

The 1841 Pre-emption Act.

The 1848 Treaty of Guadalupe Hidalgo between Mexico and the United States ù Article 11.

The Territorial Act for the Territory of Nevada 1861.

The 1863 Treaty of Peace and Friendship of Ruby Valley

I.C.C.Æs Lack of Authority to Extinguish Indian Title

Congress did not give the Indian Claims Commission any authority to extinguish Western Shoshone Title, but only to make awards for prior takings.

Title by Conquest

The Western Shoshone Government has determined from its research of United States records that the United States never declared war on the Western Shoshone Nation. Therefore, the United States did not acquire Western Shoshone Territory by war and conquest.

***United States v. Dann* Litigation**

Federal district and appeals courts have decided several times that the Western Shoshone still hold title to their Territory, and that the Claims Commission never litigated the issue of title. Why are we here then?

We are here because the United States Supreme Court has blocked our ability to litigate our title in court. The 1985 Supreme Court ruling in the *United States* v. *Dann*, decided

that the Claims award itself, prevents us from defending our Territorial title in court. This argument is made despite the fact we have continually refused to accept the ôaward.ö It is our position that we will never accept an award for a ôtakingö that never occurred.

The Nevada Congressional delegation refers to numbers of individual Shoshone who want to accept some money from the United States as a way of justifying distribution of ICC docket 326K. Such individuals do not represent the Western Shoshone Nation and its Government. The desire of such individuals for money is not justification for or a valid basis upon which to destroy the Western Shoshone NationÆs quest for justice in our Territorial land rights issue.

Western Shoshone Territorial Land Rights: Elements for a Solution to the Issue.

Because of the continuing failure of the United States Government to provide legal documented evidence on its purported acquisition of Western Shoshone Territory, the most practical way to achieve a solution is for the Western Shoshone High Government Officials and the United States via its Executive branch, to engage in sincere and honest discussions on the issue. During these discussions, as agreement is reached from both sides on specific elements, such agreement will be documented and signed.

These agreements would be on the following, but not limited to these points:

1. The retention of Western Shoshone Territorial areas, including all resources, for exclusive use by the Western Shoshone.
2. Discussion of conditions for United States use of Western Shoshone Territorial areas, including all resources.

3. The right by Western Shoshone to hunt, fish, gather and travel in Western Shoshone Territory.
4. The right by Western Shoshone to hold religious ceremonies including visits to burial and sacred sites anywhere in Western Shoshone Territory.
5. Discussion of royalties for present and future United States mineral and geothermal use in Western Shoshone Territory.
6. Discussion on conversion of the I.C.C. docket 326K to an award for past damages inflicted on the Western Shoshone by the United States.

Conclusion

In conclusion, Mr. Chairman, in 1992 this same matter of I.C.C. Docket 326K was introduced in the House of Representatives. After hearing the opposition testimony from the Western Shoshone, the House Committee wisely rejected the bill. This Committee must also reject this bill.

The Western Shoshone will not consent to the distribution of the I.C.C. monetary award as long as it is categorized as payment for Western Shoshone Territory. The land is sacred and is the church of the Western Shoshone and cannot be sold.

The foundation for a solution to the issue of Western Shoshone land rights will be laid if Section 2(9) of this bill is intended to overturn Section 22(a) of the Indian Claims Commission Act with regard to the Western Shoshone. We would like to hear today from this Committee whether this is the bill's intention, so that this matter may be clearly stated for the record.

Thank you Mr. Chairman and Committee members.

Western Shoshone National Council
HC 30, Box 272
Spring Creek, NV 89815, U.S.A.
775-744-4381

August 9, 2001

Senator Harry Reid
Committee on Indian Affairs
U.S. Senate
Washington, D.C.

REF: S. 958, Western Shoshone Distribution Bill

Dear Senator Reid:

I am enclosing for your information a statement by the Western Shoshone National Council in opposition to S. 958.

Our statement presents the history of the relationship between the United States and the Western Shoshone Nation, from the Treaty of Ruby Valley to the present. In this context, the statement explains the wrongness of the proposed forced distribution of funds contemplated in S. 958.

As you know, the Western Shoshone people, through their National Council, have long rejected the so-called "award" under Indian Claims Commission Docket Numbers 326-A-1, 326-A-3, and 326-K.

The Western Shoshone National Council remains open to negotiations with the United States to resolve the underlying issues of land use and title. The principle of honorable and fair dealings that should characterize the relationship between the United States and the Western Shoshone calls for such negotiations. S. 958 is an attempt to ignore the underlying issues and therefore violates this principle.

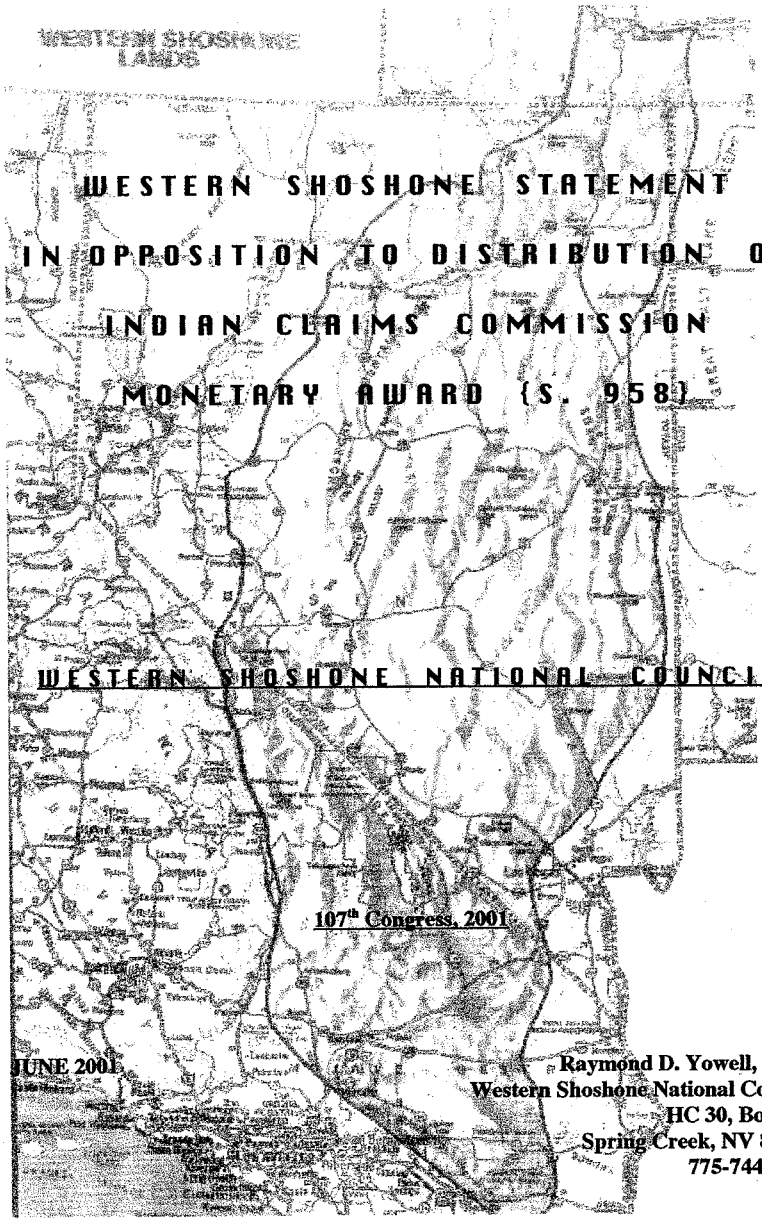
If S. 958 is to be considered by the Committee, I request an opportunity to appear before the Committee to discuss the bill and answer questions.

With thanks for your attention,

Sincerely,

Raymond Yowell

Raymond Yowell, Chief



WESTERN SHOSHONE STATEMENT IN OPPOSITION TO DISTRIBUTION OF INDIAN CLAIMS COMMISSION MONETARY AWARD (S. 958)

WESTERN SHOSHONE NATIONAL COUNCIL

107th Congress, 2001

JUNE 2001

Raymond D. Yowell, Chief
Western Shoshone National Council
HC 30, Box 272
Spring Creek, NV 89815
775-744-4381

107th Congress, 2001

WESTERN SHOSHONE GOVERNMENT'S TESTIMONY AGAINST MONETARY DISTRIBUTION OF UNITED STATES INDIAN CLAIMS COMMISSION DOCKET 326K (S. 958)

Presented By:
Raymond D. Yowell, Chief
Western Shoshone National Council

June 2001

Executive Summary

The Western Shoshone Government (Western Shoshone National Council) authorizes Chief Raymond D. Yowell to present testimony in opposition to the Distribution Bill for Indian Claims Commission Docket 326K (S. 958). The Western Shoshone Government is the entity that entered into the 1863 Treaty of Peace and Friendship with the United States.

Docket 326K came into being in 1951, when the Western Shoshone Te-Moak Bands Council (a creation of the United States 1934 Indian Reorganization Act), under pressure from the Bureau of Indian Affairs, filed a claim against the United States. The Western Shoshone Government opposed and protested against the filing of the claim from inception, stating that the United States has not extinguished Western Shoshone territorial title.

The Western Shoshone Government attempted to stay Docket 326K proceedings, but was rebuffed by the Commission and the Court of Claims. Commission proceedings came to finality in 1979, with certification of a $26 million award. The Western Shoshone rejected the award and continue to assert title to their territory.

The Western Shoshone rely on the following laws and treaties to support their territorial title: *The 1787 Northwest Ordinance, The 1834 Trade and Intercourse Act, The 1841 Preemption Act, The 1848 Treaty of Guadalupe Hidalgo, The 1861 Nevada Territorial Act*, and *The 1863 Ruby Valley Treaty of Peace and Friendship between the Western Shoshone and the United States.*

It is the opinion of the Western Shoshone Government that at the dates and times when motions for a stay of the Claims proceedings were made, the United States could not produce evidence of the extinguishment of Western Shoshone territorial title. It is the opinion of the Western Shoshone Government that at the present time the United States still cannot produce evidence of the extinguishment of Western Shoshone territorial title.

In the course of litigation between 1974 and 1985, various federal courts have concluded that Western Shoshone title has never been actually litigated. The U.S. Supreme Court ruled in *U.S. v. Dann*, 470 U.S. 39 (1985), that litigation of the title is blocked by the fact that the Claims Commission has certified an award in the Te-Moak Bands proceedings. This ruling was made despite the fact that the Western Shoshone have rejected the award and no award monies have been transferred to or expended for the benefit of the Western Shoshone.

The Supreme Court decision in the *Dann* case rests on an assumption that the United States is acting as a "trustee" for the Western Shoshone. The Western Shoshone have never consented to such an arrangement and the actual behavior of the United States in avoiding litigation of title has harmed rather than helped the Western Shoshone.

Federal courts have acknowledged that the Western Shoshone retain the right to speak to Congress to protect Western Shoshone territorial title. The Indian Claims Commission Act itself is clear that Congress

has a role to play in regard to the submission and approval of a final plan of distribution of the award.

The Western Shoshone Government therefore requests, in the cause of justice and due process of law, that this Committee not approve the Western Shoshone distribution bill {S. 958}, but reject it. This matter can only be addressed on a Nation to Nation basis between the Western Shoshone and the United States at the highest level, via the U.S. State Department and the U.S. President.

Testimony

INTRODUCTION

My name is Raymond D. Yowell. I will be presenting written testimony on behalf of the Western Shoshone Government against the proposed Distribution Bill on Docket 326K {S. 958}. I hold the governmental office of Chief for the Western Shoshone Government (Western Shoshone National Council) and am authorized by my government to present this opposition testimony to your committee.

The Western Shoshone Government has existed from time immemorial and is the entity that entered into the 1863 Treaty of Peace and Friendship made in Ruby Valley, Western Shoshone Territory (Newe Sogobia), with the United States.

BACKGROUND OF DOCKET 326K & THE U.S. INDIAN CLAIMS COMMISSION

Some information on Docket 326K will be appropriate to provide this Committee with the basis for the Western Shoshone Government's opposition to the Distribution Bill. Docket 326K came into being in 1951, when the Western Shoshone Te-Moak Bands Council (a creation of the United States 1934 Indian Reorganization Act), under heavy pressure from the Bureau of Indian Affairs, were forced to file a claim with the U.S. Indian

Claims Commission against the United States. The Te-Moak Council was also pressured by Bureau of Indian Affairs personnel into hiring the Washington, D.C., law firm of Wilkinson, Cragun, and Barker to be the attorneys to file and handle the claim from that point on.

The Western Shoshone Government opposed and protested against the filing of the claim, stating that the United States had not extinguished Western Shoshone territorial title; therefore, it was not necessary to file the claim. The claim was filed anyway. From the very day the claim was filed, the Western Shoshone Governments' opposition was manifested at all subsequent meetings held by the law firm of Wilkinson, Cragun, and Barker in Western Shoshone Territory.

In 1974, the Western Shoshone Government, through the Western Shoshone Legal Defense and Education Association, filed a motion to stay the proceedings in the U.S. Indian Claims Commission until Western Shoshone territorial title could be determined in a regular court proceeding. The U.S. Indian Claims Commission rejected the motion to stay its proceedings, stating that only the Te-Moak Tribal Council could bring forth this type of questioning.

The Western Shoshone Government then appealed to the U.S. Court of Claims. The Court of Claims also rejected the motion to stay the proceedings. The following is a portion of the opinion issued by the Court of Claims:

> [I]t is far too late...to upset the applecart after the fruit has been so carefully collected and piled.... *Western Shoshone Legal Defense & Ed. Ass'n v. U.S.*, 531 F.2d 495, 504 (1976).

In rendering this decision, the U.S. Court of Claims was obviously not concerned about justice and due process of law, but only about reaching closure in the case on the basis of what had occurred to that date. Interestingly enough, the Court of Claims also stated that if the Western Shoshone Government wants "to postpone payment, in order to try out the issue of current title, it can, of course, ask Congress to delay making the appropriation and direction which will be necessary to pay the award." *Id.*, at 503 n. 16. We will return to this point later.

In 1977, the Te-Moak Tribal Council fired the law firm of Wilkinson, Cragun, and Barker and joined together with the Western Shoshone Government to file another motion to stay the proceedings in the U.S. Indian Claims Commission until Western Shoshone territorial title could be determined. Once again, the U.S. Indian Claims Commission rejected the motion to stay its proceedings. Once again, the Court of Claims seconded the rejection. And, once again, the Court was more interested in keeping the case moving than in finding out what really was the status of Western Shoshone territorial title. This time, instead of speaking about applecarts, the Court said, "far too much water had gone under the bridge." *The Temoak Band of Western Shoshone Indians v. The United States and the Western Shoshone*

***Identifiable Group Represented by the Temoak Bands of Western Indians*, 593 F.2d 994, 996 ((1979).**

As you can see from the name of this last case, the U.S. Court of Claims put the Te-Moak Tribal Council on both sides of the lawsuit, as plaintiff and defendant. Remember, earlier in this testimony it was stated that when the Western Shoshone Government first brought a motion to the U.S. Court of Claims, the Court of Claims stated that only the Te-Moak Tribal Council could file such motions. Now that the Te-Moak Tribal Council had also brought a motion to stay the proceedings, the United States Bureau of Indian Affairs pretended to continue to represent the Te-Moak Tribal Council. The Bureau did this via a renewed contract with Wilkinson, Cragun, and Barker, despite the fact that the Te-Moak Council had fired this firm. This practice continued until the U.S. Indian Claims Commission finalized Docket 326K and the monetary award was certified, at which point the law firm was paid 10% of the award. Under what provision of United States law is this legal? How could the Te-Moak Band sue itself?

The Te-Moak Tribal Council and the Western Shoshone Government appealed the Court of Claims rejection of a stay to the United States Supreme Court, which refused to hear the case. Thus ended the first united Western Shoshone effort to have its territorial title determined.

On November 28, 1979, the proceedings in the U.S. Indian Claims Commission came to finality and some twenty-six (26) million dollars was awarded in Docket 326K. On December 6, 1979, the U.S. Treasury transferred this dollar amount to the Department of the Interior and the Interior Secretary, purportedly as "trustee" for the Western Shoshone, accepted the monetary transfer. The law firm of Wilkinson, Cragun, and Barker were given more than two million dollars from the award and were not heard from again by the Western Shoshone.

In July 1980, the hearing of record—the last phase in the Indian Claims Commission process—was held in Elko, Nevada. At this hearing, the Western Shoshone asked the U.S. hearing officer, "Under what U.S. law did the United States legally acquire Western Shoshone Territory?" The hearing officer did not have an answer to the question. Because the hearing officer did not have an answer to the question, the Western Shoshone rejected the monetary award from the U.S. Indian Claims Commission. From the day of the hearing of record (now 21 years ago) to this day, the Western Shoshone Government has continued to ask this question of the United States. To date, the United States has yet to give an answer to the question.

The U.S. Indian Claims Commission Act did not give the Commission authority to extinguish the territorial title of Indian Nations, but only to award compensation for title previously extinguished. The U.S. Court of Claims had the mandate under the United States Constitution to see to it that true justice and due

process of law were followed in Claims Commission rulings. If there were a question from either party on the progress of a proceeding, the Court must base its decision on U.S. law. To reject a motion questioning the process of a case, without an investigation of the facts to determine if there is merit to the motion, is not justice and due process of law. The Court of Claims should have granted the Western Shoshone motions to stay the proceedings and sought evidence that either supported or denied the continuing existence of Western Shoshone territorial title.

It is the opinion of the Western Shoshone Government that at the dates and times when motions for a stay of the Claims proceedings were made, the United States could not produce evidence of the extinguishment of Western Shoshone territorial title. It is the opinion of the Western Shoshone Government that at the present time, today, when we are opposing the distribution of Docket 326K, the United States still cannot produce evidence of the extinguishment of Western Shoshone territorial title. That title has simply never been litigated.

This testimony will show that at a later date, after the Claims Commission monetary award had been made, the United States Supreme Court would use the fact of the award itself as a mechanism for blocking the trial of Western Shoshone territorial title.

UNITED STATES LAWS THE WESTERN SHOSHONE REFER TO WHEN THEY REJECT THE INDIAN CLAIMS COMMISSION MONETARY AWARD

Listed below, in order of passage by the U.S. Government, are the U.S. laws the Western Shoshone refer to when they reject the monetary award from I.C.C. Docket 326K:

The 1787 Northwest Ordinance (still in effect) states in part that: "The utmost good faith shall always be observed towards the Indians; their land and property shall never be taken from them without their consent; ... laws founded in justice and humanity shall, from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."

The 1834 Trade and Intercourse Act (still in effect, as codified in various sections of the U.S. Code) restricts authority to make land transactions with Indian Nations. Section 11 specifically prohibits "any person" from making "a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe." Section 12 provides that "no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribes of Indians, shall be of any validity in law or equity, unless the same is made by treaty or convention entered into pursuant to the Constitution."

The 1841 Preemption Act (repealed in 1891) tried to legalize squatters on lands not owned by the United States. This act was not used in Western Shoshone Territory.

The 1848 Treaty of Guadalupe Hidalgo between the United States and the Republic of Mexico. The Treaty contains no legal land descriptions and there is no legal land survey of the territory purportedly conveyed by Mexico to the United States, as required under international law. To the contrary, the leading words of Article 11 throw doubt on just what is being conveyed: "Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes...." The Western Shoshone are one of these "savage tribes" referred to in the treaty. The Western Shoshone Government, in its research, has not found documentation that Mexico had legally acquired the Indian Nations' territories in whatever areas are being referred to prior to the date of this treaty. How could Mexico convey to the United States what it did not have?

The 1861 Nevada Territorial Act. In enacting that legislation, the U.S. Congress referred to the 1787 Northwest Ordinance and stipulated that Indian lands "shall be excepted out of the boundaries, and constitute no part of the territory of Nevada." The territory of Nevada did not include "rights of persons or property pertaining to the Indians in said territory, so long as

such rights shall remain unextinguished by treaty with the United States and such Indians." In connection with this, the Western Shoshone have not found a treaty of extinguishment or any other transactions of Western Shoshone territorial land rights to have been conducted with the United States.

The 1863 Ruby Valley Treaty of Peace and Friendship between the Western Shoshone and the United States. This is the only governmental contact between the two nations. The Treaty did not cede Western Shoshone Territory to the United States. Treaties are only made between independent nations. By treating with the Western Shoshone, the United States recognized it as an independent nation. The power for the United States to enter into treaties with other nations is authorized in Article 6 of the U.S. Constitution: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any state to the contrary notwithstanding." Federal courts, in 1986 and again in 1989, have verified that the 1863 Treaty between the Western Shoshone Government and the United States is in full force and effect. [*U.S. v. Mary Dann and Carrie Dann*, D. Nevada, #C-R-74-60 BRT (1986); 873 F.2d 1189 (9th Cir. 1989)]

The United States contends that its Indian Claims Commission "found" that Western Shoshone territorial title was extinguished

through "gradual encroachment" of its citizens onto Western Shoshone territory. As pointed out earlier, according to United States law, only the United States Government can engage in land transactions with the Indian Nations (U.S. Trade and Intercourse Act of 1834). Therefore, "encroachment" by individual citizens cannot deprive the Western Shoshone of legal title to their territories.

Furthermore, when the Indian Claims Commission made its "finding" that "gradual encroachment" was how Western Shoshone territorial title was "taken," the Commission gave no specifics as to the number of citizens involved in the so-called encroachment. The Western Shoshone Government asks, "Was it one U.S. citizen? 10 U.S. citizens? 100 U.S. citizens? 1,000 U.S. citizens? 5,000 U.S. citizens? How many U.S. citizens did it take to effect the so-called 'gradual encroachment'"? Additionally, the Commission gave no specifics as to the number of acres of Western Shoshone land allegedly encroached upon. The Commission did not reveal legal land descriptions or legal land surveys where the so-called encroachment occurred. As a matter of record, the U.S. Indian Claims Commission was unable to identify any specific land areas where U.S. citizens supposedly "encroached" upon Western Shoshone territory. There was no number of acres, sections, townships, or other land measures exhibited by the U.S. Indian Claims Commission. It would seem that even if a "gradual encroachment" process were legal, at least 51% of Western Shoshone territory would have to

be encroached upon to effect a so-called "taking" for the United States by its citizens.

Today, some 129 years after the "valuation date" set by the U.S. Indian Claims Commission (1872, also referred to as the "date of taking"), only about 14% of the entire State of Nevada is in private ownership. (Private ownership is referred to here because U.S. citizens can only own land privately.) This figure includes the Reno and Las Vegas areas, where most of the private lands are concentrated. Western Shoshone territory encompasses the least settled areas of Nevada. While 14% in itself is therefore an inflated figure in regard to Western Shoshone territory, it may be used to show the outrageous and outright unsubstantiated "finding" of the U.S. Indian Claims Commission that "encroachment" ever occurred. The Western Shoshone Government does not understand how, in the circumstances, under the laws previously cited, and in a supposedly legal and factual proceeding, the U.S. Indian Claims Commission and the U.S. Court of Claims could have rendered a "finding" of such deficiency and incompetence.

CONQUEST BY WAR AS A METHOD OF TERRITORIAL ACQUISITION

The 1787 Northwest Ordinance, Article 3, also states: "the Indians property, rights, and liberty... never shall be invaded or

disturbed, unless in just an lawful wars authorized by Congress..."

If the United States contends that it acquired Western Shoshone territory by war, then the United States must provide documentation that this happened, including the date war was declared, the date and location of the final battle, the terms of surrender, and the name or names of Western Shoshone war chief or war chiefs who signed the surrender terms.

UNITED STATES VS. DANN - LITIGATION

In 1974, the United States brought a lawsuit in U.S. federal District Court, Nevada, against two Western Shoshone sisters, Mary and Carrie Dann, for purportedly grazing cattle on so-called "public land" without a grazing permit from the Bureau of Land Management. The Western Shoshone sisters defended themselves on the basis that Western Shoshone territorial title was never extinguished by the United States and, therefore, the U.S. Bureau of Land Management had no authority over the land in question. In 1976, the District Court issued a ruling in this case, that, because of the filing of the claim in the U.S. Indian Claims Commission against the United States by the Te-Moak Tribal Council, Western Shoshone territorial title had been taken by the United States. The Dann sisters appealed this ruling to the U.S. 9th Circuit Court of Appeals.

In 1978, the Court of Appeals reversed the Nevada District Court and sent the case back. In its reversal, the 9th Circuit stated that the District Court could not refuse to decide the title issue, because the question of Western Shoshone territorial title had not been litigated before the Indian Claims Commission and, additionally, the Commission had not arrived at a conclusion on the Te-Moak Tribal Council claim. After remand, the District Court made no move to hear the case. During this time, the Western Shoshone found correspondence from the U.S. Department of Justice to the District Court judge stating that he could wait until the Claims Commission made its ruling on the Te-Moak Tribal Council claim. The judge did this and waited until after December 6, 1979, when the Indian Claims Commission certified the award in Docket 326K. The judge then ruled that Western Shoshone territorial title had been "taken" on that date and that before 1979 Western Shoshone title had not been extinguished. The Dann sisters appealed the ruling back to the 9th Circuit Court of appeals, again asserting that the U.S. Indian Claims Commission could not extinguish Indian Nations' territorial title.

In 1983, the 9th Circuit issued its ruling on this appeal [*U.S. v. Dann*, 706 F.2d 919 (1983)], stating (1) that Western Shoshone territorial title "was never actually litigated" in the Indian Claims Commission proceedings on the Te-Moak Council claim and that therefore no judicial determination had been made on the title question [*Id.*, 924]; and (2) that although the Claims Commission monetary award was certified, extinguishment of

title had not occurred by "payment" because "no monies have actually passed into the hands of the Western Shoshone...nor been used for their benefit" [*Id.*, 926]. (As stated earlier in this testimony, the Western Shoshone rejected the award in July 1980.) The Court of Appeals also stated, in an echo of the 1976 Court of Claims decision, that "Congress...retains significant control over the claims process until the distribution scheme is actually put into effect" [*Id.*]

The United States appealed the 9th Circuit ruling to the U.S. Supreme Court. During this time, a Western Shoshone delegation visited with the U.S. Justice Department attorney who would be presenting the U.S. appeal. The Western Shoshone delegation convinced the attorney that the appeal should not be made; that instead the United States and the Western Shoshone should hold high-level talks to arrive at a compatible solution to the Western Shoshone territorial title issue. After this visit, the attorney refused to put forth the appeal to the Supreme Court. The Justice Department found another attorney to file the appeal and to argue against the Western Shoshone in *U.S. v. Dann*, 470 U.S. 39 (1985).

Also during this time, the Western Shoshone Government, after some strong lobbying of U.S. Government officials, entered into negotiations with the United States. Five negotiation sessions were held in 1984 and 1985, with very little progress towards an agreement on Western Shoshone land rights. In 1985, the United States ceased talks after the Supreme Court ruled in *U.S. v. Dann*

that there was no basis for further negotiations because Western Shoshone territorial title had been extinguished by the Indian Claims Commission certification of the monetary award.

Notice that the Supreme Court overturned only one part of the Court of Appeals ruling, namely the ruling that "payment" of the Indian Claims Commission monetary award had not been made. The Supreme Court said nothing about the 9th Circuit ruling that Western Shoshone territorial title had not actually been litigated in the Indian Claims Commission. It is the position of the Western Shoshone Government that, since the Supreme Court did not overturn the 9th Circuit ruling that Western Shoshone territorial title was never litigated, then that ruling and Western Shoshone title stands to this day.

The U.S. Supreme Court decision in *U.S. v. Dann* is that "payment" (in exchange for title to the land) was made by the United States to the Western Shoshone at the moment when the Claims Commission certified its award. Here is how the Court stated its decision:

> The final award of the Indian Claims Commission placed the Government in a dual role with respect to the Tribe: the Government was at once a judgment debtor, owing $26 million to the Tribe, and a trustee for the Tribe responsible for ensuring that the money was put to productive use and ultimately distributed in a manner consistent with the best interests of the Tribe. In short, the Indian Claims Commission ordered the Government *qua* debtor to pay $26 million to the Government *qua* trustee for the Tribe as the beneficiary. *U.S. v. Dann*, 470 U.S. at 49-50.

Never mind that the United States thus has a glaring conflict of interest in relation to the Western Shoshone. Never mind that the Western Shoshone have never consented to the purported "trusteeship" by the U.S. over the Western Shoshone. And never mind that the Western Shoshone are the best judge of their "best interests" and not the United States.

Furthermore, let us suppose for the moment that the U.S. had a "trustee" relationship to the Western Shoshone in this case. It is inconceivable that the Secretary of Interior could not have known of the lawsuit, *U.S. vs. Dann*, making its way up through the federal court system. With this knowledge, and understanding that Western Shoshone territorial title had never been litigated, the proper action for the Secretary of Interior to take as a "trustee" for the Western Shoshone would have been to refrain from accepting a monetary award from the Indian Claims Commission until Western Shoshone territorial title had actually been determined. Moreover, the proper actions of a "trustee" in the earlier Western Shoshone appeals to the Court of Claims would have been to acknowledge the fact that the Te-Moak Tribal Council wanted to stay the Claims Commission proceedings. Instead, the purported "trustee" took the side of the lawyers who had been fired by the Te-Moak Council and argued against the Western Shoshone in their own name!

The U.S. Interior Secretary's actions, rather than protecting the "best interests" of the Western Shoshone, undermined the Western Shoshone position throughout the challenges to the

Claims Commission proceedings and in *U.S. vs. Dann*. By these actions, the United States has tried to find a way out from determining Western Shoshone territorial title and has certainly violated any duty of "trust" that it may claim to have.

CONCLUSION - THE ROLE OF CONGRESS TODAY

Professor Milner S. Ball, University of Georgia Law School, in his study of the Western Shoshone litigation described above, stated:

> [T]he [Supreme] Court held a "payment" had been effected, although the Indians received no money and opposed the conversion of their land. The trust doctrine was the device the Court struck upon for executing this maneuver. The United States was not only the judgment debtor to Indians, the Court said, but was also trustee to the Indians. Therefore the United States as debtor can pay itself as trustee, say this change in bookkeeping constitutes payment to Indians, and the Court will certify the fiction as a reality. *Constitution, Court, Indian Tribes*, 1987 American Bar Foundation Research Journal 1, 65 (1987).

In the opinion of the Western Shoshone Government, the above is the most accurate description in the English language about what the U.S. Supreme Court did in *U.S. vs. Dann*. We agree with Professor Ball that these actions amount to a "consistent arrogation of power" and not the actions of a concerned "trustee" [*Id.*, 59].

The Western Shoshone Government is cognizant of the way United States law is supposed to be upheld. Due process of law is the main underpin that upholds United States laws. This means that the rule of law must follow an orderly process from case to case and law to law. Failure to implement in an orderly way United States laws would render the due process provisions of the United States Constitution useless and moot. This Committee needs no reminder of this process, but the Western Shoshone point this process out so that there cannot be a misunderstanding that due process of U.S. law certainly was not followed in all phases of the Western Shoshone territorial title issue.

Congressional representatives from the State of Nevada are using as reason for introducing this Western Shoshone monetary distribution bill from Indian Claims Commission Docket 326K {S. 958} that a number of Western Shoshone people want the money distributed. Numbers of Western Shoshone people, however, cannot legitimize what is illegal to begin with. As put forth clearly in this testimony, due process of U.S. law has not been followed in the Western Shoshone cases, thereby making the whole U.S. Indian Claims Commission process without force and effect as to extinguishing Western Shoshone territorial title.

There is a saying, "How many wrongs does it take to make a right?" The answer is, a wrong can never become right. No matter how many wrongs are piled on the scale of justice, the scale will never tip in favor of right. What is illegal to begin with

cannot be made legal. The Western Shoshone Government insists that the rule of law be followed to the letter to find a solution to the Western Shoshone territorial title issue.

As pointed out earlier in this testimony, the courts have stated that the Western Shoshone retain the right to speak to Congress to protect Western Shoshone territorial title. The Court of Claims said this in 1976. The 9th Circuit stated it again in 1983. The Indian Claims Commission Act itself is clear that Congress still has a role to play in regard to the submission and approval of a final plan of distribution of the award. Even the Supreme Court did not deny that.

It is the knowledge and understanding of the Western Shoshone Government that when all of the aforementioned U.S. laws were passed, the U.S. Congressional members of those times who made these laws did so with the full knowledge and expectation that they would be implemented and carried out to the letter of the act. As in times of old, congressional representatives who pass laws today also do so with the knowledge and expectation that these laws will be complied with and carried out to the letter of the act. The Western Shoshone Government therefore requests, in the cause of justice and due process of law, that this Committee not approve the Western Shoshone distribution bill {S. 958}, but reject it. To let this bill continue would be to compound an already bad situation and further aggravate a failure of due process of U.S. law in this matter. The two nations

must maintain and nurture the friendly relations they began in the 1863 Treaty of Ruby Valley.

The Western Shoshone will not consent to just paying out the monetary award for Docket 326K without addressing all elements that touch on their territorial issues. The best way to accomplish this will be for the Western Shoshone and the United States to hold discussions at the highest level, via the U.S. President and State Department and the high officials of the Western Shoshone Nation.

Thank you, Mr. Chairman and Committee Members.

APPENDICES

1. TREATY OF RUBY VALLEY BETWEEN THE WESTERN SHOSHONE AND THE UNITED STATES, OCTOBER 1, 1863 [18 Statutes at Large 689]

2. STATEMENT OF SENATOR REID INTRODUCING S. 958, "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT," *CONGRESSIONAL RECORD* (Senate - May 24, 2001), page S5635

3. S.958, "WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT" [107th Congress, 1st Session]

4. MAP OF WESTERN SHOSHONE LANDS

UNITED STATES TREATY WITH THE WESTERN SHOSHONI, 1863

October 1, 1863, 18 Statutes at Large 689

Treaty of Peace and Friendship made at Ruby Valley, in the Territory of Nevada, this first day of October, A.D. one thousand eight hundred and sixty-three, between the United States of America, represented by the undersigned commissioners, and the Western Bands of the Shoshonee Nation of Indians, represented by their Chiefs and Principal Men and Warriors, as follows:

ARTICLE 1

Peace and friendship shall be hereafter established and maintained between the Western Bands of the Shoshonee nation and the people and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States within their country, shall cease.

ARTICLE 2

The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be forever free, and unobstructed by the said bands, for the use of the government of the United States, and of all emigrants and travellers under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their nation, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over either of said routes is hereby guarantied by said bands.

Military posts may be established by the President of the United States along said routes or elsewhere in their country; and stationhouses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for mail or telegraph companies.

ARTICLE 3

The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through a part of the Shoshonee country, it is expressly agreed that the same may be continued without hindrance, molestation, or injury from the people of said bands, and that their property and the lives and property of passengers in the stages and of the employes of the respective companies, shall be protected by them. And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by the said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of country claimed or occupied by them.

ARTICLE 4

It is further agreed by the parties hereto, that the shoshonee country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use, as also for building and other purposes in any part of the country claimed by said bands.

ARTICLE 5

It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows:

On the north by Wong-goga-da Mountains and Shoshonee River Valley; on the west by Su-non-to-yah Mountains or Smith Creek Mountains; on the south by Wi-co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

ARTICLE 6

The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which, they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

ARTICLE 7

The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same; therefore, and in consideration of the preceding stipulations, and of their faithful observance by the said bands, the United States promise and agree to pay to the said bands of the Shoshonee nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the reception of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

ARTICLE 8

The said bands hereby acknowledge that they have received from said commissioners provisions and clothing amounting to five thousand dollars as presents at the conclusion of this treaty.

Done at Ruby Valley the day and year above written.

James W. Nye
James Duane
Doty Te-moak, his x mark
Mo-ho-a Kirk-weedgwa, his x mark
To-nag, his x mark
To-so-wee-so-op, his x mark
Sow-er-e-gah, his x mark
Po-on-go-sah, his x mark
Par-a-woat-ze, his x mark
Ga-ha-dier, his x mark
Ko-ro-kout-ze, his x mark
Pon-ge-mah, his x mark
Buck, his x mark

Witnesses:

J. B. Moore, lieutenant-colonel Third Infantry California Volunteers
Jacob T. Lockhart, Indian agent Nevada Territory
Henry Butterfield, interpreter

Ratified June 26, 1866
Proclaimed Oct. 21, 1869

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS -- (Senate - May 24, 2001)

[Page: S5635]

By Mr. REID (for himself and Mr. **ENSIGN**):

S . 958 . A bill 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, 326-K, and for other purposes; to the Committee on Indian Affairs.

Mr. REID. Mr. President, I rise today for myself and for Senator **ENSIGN,** to introduce the Western Shoshone Claims Distribution Act. I am re-introducing this much needed bill for the Western Shoshone Tribe from the second session of the 106th Congress. It had been referred to the Indian Affairs Committee, but there was not enough time at the end of the Congress to act on it.

In 1946, the Indian Claims Commission was established to compensate Indians for lands and resources taken from them by the United States. The Commission determined in 1962 that Western Shoshone homeland had been taken through ``gradual encroachment." In 1977, the Commission awarded the Tribe in over $26 million dollars. However, it was not until 1979, that the United States appropriated the funds to reimburse the descendants of these Tribes for their loss. Plans for claims distribution were further delayed by litigation; and the Western Shoshone concern that accepting the claims would impact their right to get back some of their traditional homelands.

The Western Shoshone are an impoverished people. There is relatively little economic activity on some of their scattered reservations. Those who are employed, work for the tribal government, work in livestock and agriculture, or work in small businesses, such as day-cares and souvenir shops. They live from pay check to pay check, with little or no money for heating their homes, much less for their children's education. Many of the Western Shoshone continue to be disproportionately affected by poverty and low educational achievement. Many individuals of the Western Shoshone are willing to accept the distribution of the claim settlement funds to relieve these difficult economic conditions. About $128.8 million (in principal and interest) would be distributed to over 6,000 eligible members of the Western Shoshone; $1.27 million (in principal and interest) would be placed in an educational trust fund for the benefit of and distribution to future generations of the Tribe.

The Western Shoshone have waited long enough for the distribution of these much needed funds. The final distribution of this fund has lingered for more than twenty years, and the best interests of the Tribe will not be served by a further delay in enacting this legislation. My bill

will provide payments to eligible Western Shoshone tribal members, and ensure that future generations will be able to enjoy the financial benefits of this settlement by establishing a grant program for education and other individual needs. The Western Shoshone Steering Committee, a coalition of Western Shoshone individual tribal members, has officially requested that Congress enact legislation to affect this distribution.

This Act also provides that acceptance of these funds is not a waiver of any existing treaty rights pursuant to the Ruby Valley Treaty. Nor will acceptance of these funds prevent any Western Shoshone Tribe or Band or individual Western Shoshone Indian from pursuing other rights guaranteed by law.

Twenty-three years has been more than long enough.

Finally, I would like to highlight the fact that Senator **ENSIGN** of Nevada joins me today to introduce this important bill. I know that Senator **ENSIGN** is concerned, as I, about the delay of the distribution of the claims to the Western Shoshone, and his support for this bill will help ensure that the Tribe will receive their long-awaited compensation.

I ask unanimous consent that the text of the bill be printed in the **RECORD.**

There being no objection, the bill was ordered to be printed in the **RECORD....**

S 958 IS

107th CONGRESS

1st Session

S. 958

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, 326-K, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 24, 2001

Mr. REID (for himself and Mr. ENSIGN) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

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, 326-K, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Western Shoshone Claims Distribution Act'.

SEC. 2. DISTRIBUTION OF DOCKET 326-K FUNDS.

The funds appropriated in satisfaction of the judgment award granted to the Western Shoshone Indians in Docket Number 326-K before the Indian Claims Commission, including all earned interest, shall be distributed as follows:

(1) The Secretary shall establish a Western Shoshone Judgment Roll consisting of all Western Shoshones who--

(A) have at least 1/4 degree of Western Shoshone Blood;

(B) are citizens of the United States; and

(C) are living on the date of enactment of this Act.

(2) Any individual determined or certified as eligible by the Secretary to receive a per capita payment from any other judgment fund awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before the date of enactment of this Act, shall not be eligible for enrollment under this Act.

(3) The Secretary shall publish in the Federal Register rules and regulations governing the establishment of the Western Shoshone Judgment Roll and shall utilize any documents acceptable to the Secretary in establishing proof of eligibility. The Secretary's determination on all applications for enrollment under this paragraph shall be final.

(4) Upon completing the Western Shoshone Judgment Roll under paragraph (1), the Secretary shall make a per capita distribution of 100 percent of the funds described in this section, in a sum as equal as possible, to each person listed on the Roll.

(5)(A) With respect to the distribution of funds under this section, the per capita shares of living competent adults who have reached the age of 19 years on the date of the distribution provided for under paragraph (4), shall be paid directly to them.

(B) The per capita shares of deceased individuals shall be distributed to their heirs and legatees in accordance with regulations prescribed by the Secretary.

(C) The shares of legally incompetent individuals shall be administered pursuant to regulations and procedures established by the Secretary under section 3(b)(3) of Public Law 93-134 (25 U.S.C. 1403(b)(3)).

(D) The shares of minors and individuals who are under the age of 19 years on the date of the distribution provided for under paragraph (4) shall be held by the Secretary in supervised individual Indian money accounts. The funds from such accounts shall be disbursed over a period of 4 years in payments equaling 25 percent of the principal, plus the interest earned on that portion of the per capita share. The first payment shall be disbursed to individuals who have reached the age of 18 years if such individuals are deemed legally competent. Subsequent payments shall be disbursed within 90 days of the individual's following 3 birthdays.

(6) All funds distributed under this Act are subject to the provisions of section 7 of Public Law 93-134 (25 U.S.C. 1407).

(7) All per capita shares belonging to living competent adults certified as eligible to share in the judgment fund distribution under this section, and the interest earned on those shares, that remain unpaid for a period of 6-years shall be added to the principal funds that are held and invested in accordance with section 3, except that in the case of a minor, such 6-year period shall not begin to run until the minor reaches the age of majority.

(8) Any other residual principal and interest funds remaining after the distribution under paragraph (4) is complete shall be added to the principal funds that are held and invested in accordance with section 3.

(9) Receipt of a share of the judgment funds under this section shall not be construed as a waiver of any existing treaty rights pursuant to the `1863 Treaty of Ruby Valley', inclusive of all Articles I through VIII, and shall not prevent any Western Shoshone Tribe or Band or individual Shoshone Indian from pursuing other rights guaranteed by law.

SEC. 3. DISTRIBUTION OF DOCKETS 326-A-1 AND 326-A-3.

The funds appropriated in satisfaction of the judgment awards granted to the Western Shoshone Indians in Docket Numbers 326-A-1 and 326-A-3 before the United States Court of Claims, and the funds referred to under paragraphs (7) and (8) of section 2, together with all earned interest, shall be distributed as follows:

(1)(A) Not later than 120 days after the date of enactment of this Act, the Secretary shall establish in the Treasury of the United States a trust fund to be known as the `Western Shoshone Educational Trust Fund' for the benefit of the Western Shoshone members. There shall be credited to the Trust Fund the funds described in the matter preceding this paragraph.

(B) The principal in the Trust Fund shall not be expended or disbursed. The Trust Fund shall be invested as provided for in section 1 of the Act of June 24, 1938 (25 U.S.C. 162a).

(C)(i) All accumulated and future interest and income from the Trust Fund shall be distributed, subject to clause (ii)--

(I) as educational grants and as other forms of educational assistance determined appropriate by the Administrative Committee established under paragraph (2) to individual Western Shoshone members as required under this Act; and

(II) to pay the reasonable and necessary expenses of such Administrative Committee (as defined in the written rules and procedures of such Committee).

(ii) Funds shall not be distributed under this paragraph on a per capita basis.

(2)(A) An Administrative Committee to oversee the distribution of the educational grants and assistance authorized under paragraph (1)(C) shall be established as provided for in this paragraph.

(B) The Administrative Committee shall consist of 1 representative from each of the following organizations:

(i) The Western Shoshone Te-Moak Tribe.

(ii) The Duckwater Shoshone Tribe.

(iii) The Yomba Shoshone Tribe.

(iv) The Ely Shoshone Tribe.

(v) The Western Shoshone Business Council of the Duck Valley Reservation.

(vi) The Fallon Band of Western Shoshone.

(vii) The at large community.

(C) Each member of the Committee shall serve for a term of 4 years. If a vacancy remains unfilled in the membership of the Committee for a period in excess of 60 days, the Committee shall appoint a replacement from among qualified members of the organization for which the replacement is being made and such member shall serve until the organization to be represented designates a replacement.

(D) The Secretary shall consult with the Committee on the management and investment of the funds subject to distribution under this section.

(E) The Committee shall have the authority to disburse the accumulated interest fund under this Act in accordance with the terms of this Act. The Committee shall be responsible for ensuring that the funds provided through grants and assistance under paragraph (1)(C) are utilized in a manner consistent with the terms of this Act. In accordance with paragraph (1)(C)(i)(II), the Committee may use a portion of the interest funds to pay all of the reasonable and necessary expenses of the Committee, including per diem rates for attendance at meetings that are the same as those paid to Federal employees in the same geographic location.

(F) The Committee shall develop written rules and procedures that include such matters as operating procedures, rules of conduct, eligibility criteria for receipt of educational grants or assistance (such criteria to be consistent with this Act), application selection procedures, appeal procedures, fund disbursement procedures, and fund recoupment procedures. Such rules and procedures shall be subject to the approval of the Secretary. A portion of the interest funds in the Trust Fund, not to exceed $100,000, may be used by the Committee to pay the expenses associated with developing such rules and procedures. At the discretion of the Committee, and with the approval of the appropriate tribal governing body, jurisdiction to hear appeals of the Committee's decisions may be exercised by a tribal court, or a court of Indian offenses operated under section 11 of title 25, Code of Federal Regulations.

(G) The Committee shall employ an independent certified public accountant to prepare an annual financial statement that includes the operating expenses of the Committee and the total amount of educational grants or assistance disbursed for the fiscal year for which the statement is being prepared under this section. The Committee shall compile a list of names of all individuals approved to receive such grants or assistance during such fiscal year. The financial statement and the list shall be distributed to each organization represented on the Committee and the Secretary and copies shall be made available to the Western Shoshone members upon request.

SEC. 4. DEFINITIONS.

In this Act:

(1) ADMINISTRATIVE COMMITTEE; COMMITTEE- The terms `Administrative Committee' and `Committee' mean the Administrative Committee established under section 3(2).

(2) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(3) TRUST FUND- The term `Trust Fund' means the Western Shoshone Educational Trust Fund established under section 3(1).

(4) WESTERN SHOSHONE MEMBERS- The term `Western Shoshone members' means an individual who appears on the Western Shoshone Judgment Roll established under section 2(1), or an individual who is the lineal descendant of an individual appearing on the roll, and who--

(A) satisfies all eligibility criteria established by the Administrative Committee under section 3(F);

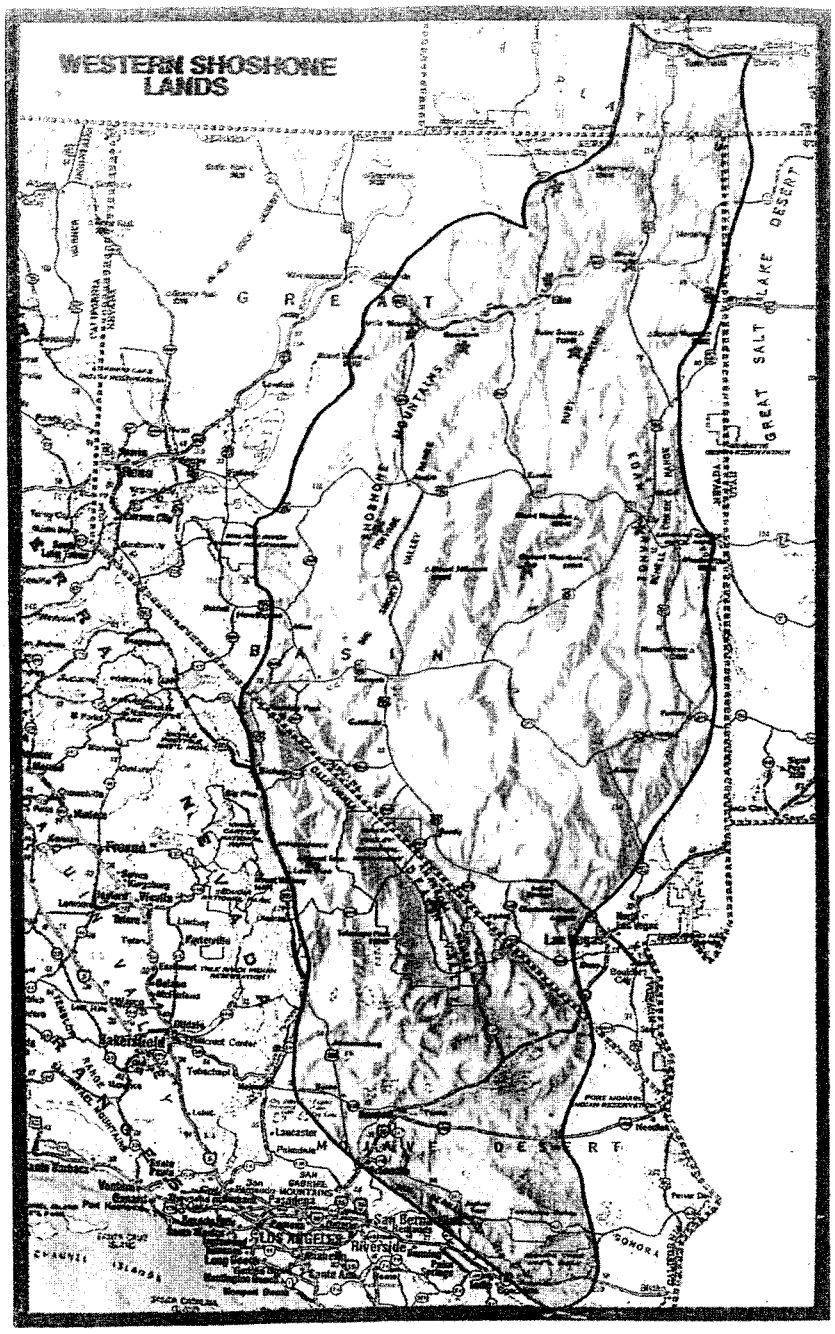
(B) fulfills all application requirements established by the Committee; and

(C) agrees to utilize funds distributed in accordance with section 3(1)(C)(i)(I) in a manner approved by the Committee for educational purposes.

SEC. 5. REGULATIONS.

The Secretary may promulgate such regulations as are necessary to carry out this Act.

END


WESTERN SHOSHONE
LANDS
GREAT
BASIN
GREAT SALT LAKE DESERT
SHOSHONE MOUNTAINS
Fresno
Bakersfield
Lancaster
Pasadena
San Bernardino
Riverside
LOS ANGELES
Las Vegas
Ely
Elko
Reno
Tonopah
Lake Mead
Sonora

8-07-2002 17:17 From-FALLON PAIUTE SHOSHONE TRIBE 775 423 5202 T-258 P.003/003 F-970

DORIS ALLISON, TRIBAL MEMBER, DUCKWATER SHOSHONE TRIBE
TESTIMONY ON S 958
"WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT"
SENATE COMMITTEE ON INDIAN AFFAIRS
(August 2, 2002)

I am in support of Senate Bill S-958. I have experienced the hope, effort and frustrations of three generations of family members who have actively pursued a monetary settlement, now they have all passed on.

In May 1998, in Elko, Nevada, the majority of Shoshone individuals voluntarily cast their individual votes for distribution without Tribal Council interference. This is the democratic way. On June 3, 2002, four years later, we, again, cast our votes on the same issue.

The Western Shoshone National Council and the Western Shoshone Defense Project are organizations with a very small faction of the Shoshone population. They and their organizations are imposing on my civil rights. They have managed to dupe the public into believing that they represent the entire Shoshone nation. Their actions have prolonged the distribution of the court adjudicated award for the Western Shoshone people.

Further, tribal sovereign immunity is the culprit that protects the tribal councils from prosecution for their arbitrary actions. Once they have been elected, they no longer feel they have to follow the wishes of the their membership and are easily swayed by influences from outside the tribe. We have no where to turn to appeal for redress of grievances, our civil rights are violated, we are denied fair representation, equal protection and denied due process of the law.

For the reasons I have given, Congress must reassess the Shoshone issue and proceed with the distribution of the judgment funds in Dockets 326-A1, 326-A3 and 326-K. These funds awarded by the Indian Claims Commission is our inheritance and it is unnecessary to prolong the distribution. Families are seriously being affected and separated.

Therefore, in all fairness of human dignity let this generation prevail and justice will be done for those who have passed on and also for the generations of their descendants.

Respectfully submitted,

Doris Allison

Doris Allison

JUL. 29. 2002 1:59PM

Gordon Lee Bishop
P.O. Box 744
Ione, CA 95640

To Who It May Concern:

I, Gordon Lee Bishop, am an officially enrolled member of the Te-Moak tribe of Western Shoshone Indians. I have never received any official notification or information regarding S958, the bill currently being debated in the United States Senate. I feel that I have not been given any opportunity to participate in this process.

Gordon L Bishop 7/28/02
Gordon Lee Bishop

March 15, 2002

Ms. Elizabeth Brady
1756 Redwood
Elko, NV 89801

Senate Committee on Indian Affairs
The Honorable Daniel K. Inouye
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye,

My name is Elizabeth Brady. I am a Western Shoshone mother, grandmother, and great-grandmother to many.

I am writing to you to oppose S958, Western Shoshone Distribution Act. It is with deep concern that if this legislation passes, the Western Shoshone will loose all grounds to our treaty and land rights. It is important for me to continue gathering plants for food and medicinal purposes. My family and I depend on the plants for medicine and basket making. We also need to hunt and fish to supplement our food sources and my Indian foods are important for my diet.

If passing this bill means that it will jeopardize my treaty and land rights and I am being paid for the sale of our lands and not for past damages and trespass, then I am opposed to this legislation.

I urge you to defeat S958, as I see it, this bill is violating my human rights as an indigenous person.

Thank you.

Respectfully,

Elizabeth Brady

Elizabeth Brady,
Western Shoshone

March 15, 2002

Mr. Webb Brady
1756 Redwood
Elko, NV 89801

Senate Committee on Indian Affairs
The Honorable Daniel K. Inouye
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Inouye,

My name is Webb Brady. I am a Western Shoshone father, grandfather, and great-grandfather.

I am writing to you to oppose S958, Western Shoshone Distribution Act. It is with deep concern that if this legislation passes, the Western Shoshone will loose all grounds to hunting and fishing rights. My family is dependent upon our Indian foods. My family and I hunt for wild game and fish for our surival.

If passing this bill means that it will jeopardize my hunting and fishing rights on our homelands, I am clearly in opposition of this legislation.

I urge you to defeat S958, as I see it, this bill is violating my human rights as an indigenous person.

Thank you.

Respectfully,

Webb Brady

Webb Brady,
Western Shoshone

Pat Zell

Bara Buffalo-Hide (406-383-8383)
A2z4art.com
P. O. Box 1
Dodson, Montana 59524
August 6, 2002

Senator Harry Reid, D-Nevada (775-882-7343)
600 East William
Carson City, Nevada 89701
528 Hart Office Building
Washington, District of Columbia 20510

Dear Senator Harry Reid,

I am an enrolled member of the TeMoak Band of Western Shoshone in favor of immediate distribution of the $138 million award (or higher) for the following reasons. Thank you for your endeavors in this matter.

Someone in a position of authority made a Western Shoshone lost land claim for damages before the Indian Claims Commission. Not only was the sought settlement reached, it was paid (26 million). Proof of settlement was proved by the $26 million accruing interest to a current total of $138 million (or more). It is a done deal.

No matter how long the distribution is delayed; it will not change the fact the title to said land was extinguished at the time of deposit of the "requested settlement." 1647 Western Shoshone tribal members voted for a per capita distribution of the $138 million settlement as an overwhelming majority compared to only 156 members opposing distribution. The Tribal Councils are responsible for upholding the majority of tribal members decisions and not minority leaders wishes.

The Claim's process being flawed does not change the fact a land claim was made and settled on behalf of the Western Shoshone people. Thereby, the distribution of the 22 year old (or older) settlement should be a separate matter before Congress and the Dann's, et al, flawed claim process should be litigated and remedied through the U. S. Supreme Court in light of the recent ruling of the Inter-American Human Rights Commission. Two separate issues require two separate remedies. The Dann issue parallels Hage versus United States and they can demand millions through their lawyer's past and future litigation. Their case should not be allowed to undermine the rights of the majority of Western Shoshone's to have our $138 million Award Settlement distributed.

Although I respect Raymond Yowell, Mary and Carrie Dann as Western Shoshone tribal members I do not think it right they failed to pay the required BLM livestock grazing fees into an escrow account earmarked for the Western Shoshone land bases. I have lived on six reservations and have not seen any tribal member exempted from paying fees to graze their livestock. If Western Shoshone tribal members want grazing land, let them use their per capita share and buy same.

S. 958 can be amended to reflect a percentage (10%?) per capita deduction to continue support of the land bases of the existing 9 colonies or reservations of the 9 Bands of Western Shoshone. There should be a per capita percentage set aside for economic development, education, funeral expenses, and to buy new lands.

Perhaps the original Western Shoshone Claimant flawed the process by asking too little. Too bad, so sad, we all make mistakes. However, Western Shoshones will not need to cry over making good use of the needed $20,000 per capita given money to heal our poverty from a done deal.

My Western Shoshone heritage relates TeMoak was an interpreter for the 1863 principal presiding Chief Tu-Tu-Wa who actually pursued the peace treaty of "The 1863 Treaty of Ruby Valley." The 1863 Treaty was "broken" and thus a basis for the 1973 $26 million award to the Western Shoshone members. My maternal grandmother, Amy Tu-tu-wa was the daughter of Chief Tu-tu-wa. It is now time to bring closure to this matter by distributing the Western Shoshone award monies. The majority of Western Shoshone demand distribution of the $138 million. We are the people who have spoken through a referendum vote as a matter of record. It should be a done deal based on a done deal. Thank you.

Bara Buffalo-Hide

Bara Buffalo-Hide (Member TM1244)

c.c.
Felix Ike (775-738-6602
1949 Circle Way
Elko, Nevada 89801

Faxed 8-12-02:

Senator Harry Reid, Nevada – 1-775-883-1980

✓ Senator Daniel Inouye, Hawaii – 1-808-541-2542

Senator Ben Nighthorse Campbell – Colorado – 1-709-542-2515
1-303-843-4116

Date: September 4, 2002
To: The Honorable Senator Daniel K. Inouye
Chairman, Committee on Indian Affairs

RE: Written Testimony in support of and passage of the "**WESTERN SHOSHONE CLAIMS DISTRIBUTION ACT", Senate Bill S-958.**

Dear Sir:

My name is John E. Conklin, I am a Western Shoshone from Battle Mountain. I was born in Battle Mountain and raised on the Battle Mountain Indian Colony. My late mother Dolores Conklin was born and raised on the same colony. My Father is Western Shoshone from the Duck Valley Reservation. I only speak for my mother and myself as she was taken from us last year. My mothers Mom Elizebeth Dixon 93 years of age still resides on the Colony in the same house the Government built for them so long ago. My late mother was in favor of Senate Bill 958 for monetary distribution.

As she told me many times this is for the old people who were considered, second class citizens for so many years. They are the ones that went hungry as kids, had to walk to school 5 miles away in hand me down cloths and worn out shoes. As my mother wept one day as we talked about the claims she actually got mad at the people who are against the Distribution. She said in her tears, these people are spoiled they do not think of the ones that really suffered. I know the settlement isn't much but in some ways its like the United Stated is saying sorry for their ancestors wrong doings. I brought up the question of the Land the traditionalist claim they still own. As stated by my mom " What land our they talking about anyway. What you don't own you can't loose anyway, simple as that." Once my Father said to me it is sad but we were put on these reservations because we were conquered by the white man. Count your blessing as some people that have been conquered by other nations were wiped out all together.

Speaking for myself I am and always have been in favor of Senate Bill-958 "Western Shoshone Claims, for monetary distribution. People say if we take the money we will not be Indians anymore. Well I say if there's one thing I do know is that I will always be brown and my people will always be Indians. Another thing they say is we will drink it up and spend all our money. Maybe but that's an individuals right as American Citizens. I ask these people when they make these kind of statements, Remember all the Indian Servicemen who died in the Wars for their Country, this one of the rights they so valiantly fought for, I say if the Indian spends their money on a new car, new clothes, or just has one big party until he spends it all, that's their business and theirs alone.

I feel those so-called traditionalist who call themselves the Western Shoshone National Council only have one objective to the distribution and it isn't Land, its greed. When this is all done and said they wont be getting their checks from the rich special interest groups. Some of these Traditionalist actually believe in the fight and my hat is off to them as they believe in their hearts what they are fighting for, but I believe the Raymond Yowells, the Mary and Carrie Dann's, and Corbin Harney's are in this fight for only one

reason, Their own enrichment. Most Shoshones I have talked know these so-called traditionalist are using the claims issue to make a living, "Plan and Simple". You see these people know the free meal ticket is almost dried up, but they will hold on as long as the Distribution hasn't taken place. Gentlemen end this charade and do what's right for the Western Shoshone Indians.

My Grandmother Elizebeth "Lizzie" Dixon a full-blooded Western Shoshone Indian who as I stated lives on the Battle Mountain Indian Colony is to me one of the real People who deserves this monetary settlement. She was Born is a Shack in the outskirts of the mining and railroad town of Battle Mountain, Nevada around 1909. Later she and her family were re-located to the newly built Indian Colony where she would raise her Family of 9 kids. This lady I have never heard complain about where she lives what she has or what fait has brought her. This old lady still lives alone and is pretty much self sufficient other than, that my sister watches her like a hawk. See this lady has had 5 of her children and her husband buried in Battle Mountain. She tells me she wants her money. What can she possible spend it on I don't know. Maybe she can leave her remaining children a little something when she passes on. Maybe she'll spend it all on herself who knows. Gentleman I ask you ask you let this old Shoshone Lady have her day as so many of the old people are dying off, and they are the ones who suffered so long ago.

My father came to Battle Mountain as a Buckaroo just working at each ranch on the way until he met my mother and he too makes his home on the Battle Mountain Colony. My father is one-half Western Shoshone and the other half German. He is a hard working man who put in 25 years in the area Mines as a self taught Diesel mechanic. Through his hard work he was able to send his kids to College and enjoys a fairly nice retirement thru his pensions and retirements benefits from the Mines. I feel this man deserves his day as he served his country during the Korean Conflict. When he graduated from Riverside Indian School in California he went directly to basic training. He is 74 years of age and worked all his life maybe he wants to take a well deserved vacation or leave his children or grandchildren something to remember him by. If any Western Shoshone deserves Senate Bill-958 it is this man.

In closing I want just want to tell you my late mother was a Tribal Chairman who was always in favor of the Senate Bill-958 "Western Shoshone Claims", it may be to late for her, but its not to late for my Grandmother Lizzie or my Father and the other old people who still hang on. I plead with you Honorable gentleman to please pass this bill before the real Western Shoshone who have endured a hard life are all gone.

Thank you for allowing me this opportunity to testify on my behalf.

Sincerely,

John Edward Conklin
Member of the Te-Moak Tribe of the Western
Shoshone Indians of Nevada. TM-0771
Registered member of the Battle Mountain Band.

NATIVE LANDS INSTITUTE
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President: Vine Deloria, Standing Rock Sioux
Vice President: Helen Sanders, Quinalt
Secretary/Treasurer: Thomas E. Luebben
Executive Director: Theresa Carmody
Director of Litigation: Thomas E. Luebben

July 30, 2002

VIA FACSIMILE

Senator Daniel K. Inouye
Chairman, Senate Committee on Indian Affairs
United States Senate
838 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator:

I have long been concerned and involved with the Western Shoshone land rights issue. It is apparent to those who understand the law of treaties and Indian title, and anyone who studies the voluminous Western Shoshone litigation, that a terrible wrong has been done to them by the United States and its courts in denying the Western Shoshones their land and treaty rights. Whatever the State, Justice and Interior Departments may say about the Western Shoshones having had their day in court, the judicial process to which they have been subjected displays a callous disregard for even the simplest logical reasoning. It is clear that the outcome is not only wrong and morally indefensible, but is also a violation of international human rights standards. I believe you have looked at the issue closely enough over your years with the Senate Indian Committee to be well aware of this.

Senator Reid has scheduled a hearing on August 2 before the Senate Indian Committee on his bill, S.958, the Western Shoshone Claims Distribution Act. This is the second time the hearing has been scheduled. S.958 would distribute the Western Shoshone Indian Claims Commission judgment fund 100% per capita. It should come as no surprise that some Western Shoshone individuals want a per capita distribution. We see this phenomenon in every bill involving the payment of money to a tribe. It is also true, however, that there is a consensus among duly-elected Western Shoshone tribal governments that such a distribution should not be at the expense of Western Shoshone land and treaty rights and should be coupled with a land settlement that provides an economically-adequate land base for all Western Shoshone communities.

I am deeply concerned that the primary objective of Senator Reid and the U.S. State, Justice and Interior Departments in forcing a distribution without a land settlement over the objections of Western Shoshone tribal governments is to enable the United States to tell itself and the world that the Western Shoshone issue has been fully and fairly resolved by payment

of compensation and can safely be forgotten. Senator Reid's own announcement of the recently scheduled hearing states: "[t]he legislation is **designed to settle long-standing claims by the Western Shoshone Indian Tribe.**" (Emphasis supplied.) Obviously, the federal bureaucracy and the non-Indian economy of Nevada will benefit immeasurably from what amounts to a quieting of title to most of the state, as well as from the instant infusion into the rural economy of Central Nevada of nearly $150 million in cash. Now with the release of the preliminary report of the Inter-American Commission on Human rights of the Organization of American States, the goal of settling the Shoshone claim will not be resolved and the net effect of Senator Reid's bill will be to provide further evidence that the United States obeys only those laws that benefit it – an image already causing much distrust in the world.

I have long wondered why the Interior Department and the Congress seemingly cannot bring themselves to do the right thing for the Western Shoshones - create an economically-adequate land base that will permanently sustain Western Shoshone communities and allow their ancient Great Basin culture to survive. When the Shoshones were trying desperately to stop the Indian Claims Commission and Claims Court proceedings in order to preserve their land and treaty rights and prevent the very outcome that is now imminent, in lieu of judicial relief the Claims Court twice declared that Congress should fix the problem. Senator Reid seems intent upon perpetuating the federal government's past practice of doing the wrong thing.

The way that Senator Reid is attempting to force his bill through the Senate Indian Committee is outrageous and resembles incidents of the past of confiscating Indian lands, situations that were corrected by later Congresses at great expense to the United States. In the past the procedures that Senator Reid wished to use were rejected by the Indians and by Congress. As a matter of fundamental fairness the record should be completely open for these hearings and those Shoshones who do not favor distribution of the funds should be allowed to choose their own representatives and be allowed to state their case. If it were any other group than Indians involved, all parties of interest would be encouraged to state their views.

As you know, I personally requested that Cary Dann be allowed to testify in addition to tribal government representatives from the affected tribes. I have been informed that only three witnesses, selected by Senator Reid, are being invited to testify - two in favor of the bill and one against. The Committee staff is unable even to tell us who all of the witnesses are. My staff has contacted many of the Western Shoshone tribal governments. Apparently none have been invited to testify and the Committee or Senator Reid has not even notified at least one tribe, the Yomba Shoshone Tribe. By your letter of July 19 you invited Felix Ike, Chairman of the Temoak Tribe, to testify. To our knowledge, however, Mr. Ike has not been authorized by the Temoak Council to testify on behalf of the Temoak Tribe. He is apparently testifying only on his own behalf as an individual who supports S.958. Although the witness list for the hearing scheduled for March 21, then abruptly cancelled, seemed incomplete to me, at least the affected tribal governments were included. The format for the August 2 hearing may be unprecedented in modern times for its disregard and disrespect for sovereign Indian tribal governments.

In its 1976 denial of the Western Shoshone Legal Defense and Education Association motion to intervene in the claims case, the Court of Claims said: "If the majority of the identifiable group wishes to postpone payment, in order to try out the issue of current title, it can, of course, ask Congress to delay making the appropriation and direction which will be

necessary to pay the award. Western Shoshone Legal Defense and Education Association v. United States and Western Shoshone Identifiable Group, 531 F.2d 495, 503, n.16 (Ct. Cl. 1976), cert. denied, 429 U.S. 885 (1976).

Unfortunately, this option was foreclosed when Congress provided for automatic appropriations to pay judgments of the Court of Claims. In 1979 when it denied the motion of the Temoak Bands Council (the nominal plaintiff in the case) for a stay to allow the Interior Secretary time to evaluate the Temoak claim that Western Shoshone title remained unextinguished, the Court of Claims said: If the Indians desire to avert the extinguishment of their land claims by final payment, they should go to Congress as recommended in Western Shoshone [quoted above, citations omitted]. If Congress wishes to alter or undo the normal course of Indian Claims Commission adjudication, it knows how to do it. [citations omitted]. The matter is somewhat changed since the Western Shoshone footnote because Congress can no longer stop the payment and defer the extinguishment of the title claim, just by not appropriating. By recent enactments, [citations omitted] Congress has amended the old standing appropriation to pay Court of Claims judgments to make it available for Indian Claims Commission judgments. Thus it looks as if the Temoaks would have to get Congress to act affirmatively. In view of its plenary power over Indian tribal property, we have no doubt that even after payment its action could be effective. And we think it is only Congress that could stay and undo the course of litigation at this late date, and if anybody should, it is only Congress. The essential point of the matter is that the Temoaks' true appeal is to legislative grace, not as of right to this court.

You have worked hard over the years to preserve and strengthen tribal sovereignty and support effective tribal government. I am at a complete loss to understand how the Senate Indian Committee can support such a deliberate and unsophisticated attack on tribal sovereignty and the long-standing policy of government-to-government relations. Furthermore, your Committee has maintained a long-standing policy against 100% per capita distributions that provide nothing for the support of tribal government services. This policy is incorporated into the Indian Tribal Judgment Funds Use or Distribution Act of 1973. Why would the Committee want to abandon that wise policy now?

I have been seeing in the press that a recent "referendum" among Western Shoshones has established that a majority of Shoshones support Senator Reid's bill. My staff has prepared the following short summary of reasons why the so-called "referendum" should not be used as the basis for your Committee to report favorably on S.958.

- The "referendum" was not supported by any Western Shoshone tribal governments, including the Temoak Council, and was not conducted according to the Temoak tribal constitutional procedures for referenda. In fact, the vote was nothing more than Mr. Ike's personal straw poll.

- Reasonable alternatives to the 100% per capita distribution were not included in the ballot or mentioned in the explanatory document.

- The "Fact Sheet" that accompanied the ballot contained significant erroneous and misleading statements.

Western Shoshone eligibility to participate in the poll could not be established prior to the poll because the criteria for sharing in the judgment distribution have not been established by Congress. In the past, the Interior Department has assumed the distribution

would be on the basis of a descendency roll. The poll apparently assumed a 25% blood eligibility requirement, although there is no legal basis for this restriction. We have been unable to obtain any information on the criteria actually used to determine who should be mailed ballots, or even to whom the ballots were actually distributed. How does anyone know that the approximately 1600 persons who allegedly favor a 100% per capita distribution are or should be eligible to vote or to receive a distribution?

The South Fork, Battle Mountain, Wells and Yomba Shoshone tribal governments formally opposed the poll.

As you know, the Inter-American Commission on Human Rights of the Organization of American States has issued a preliminary report to the United States in the case of United States v. Dann. I understand that the preliminary report has just been released by the Commission. The report finds violations of the American Declaration of the Rights and Duties of Man as a result of the denial by the United States of Western Shoshone land and treaty rights. I urge the entire Committee to carefully review and consider the report before Congress takes any action on S.958.

Thank you very much for your attention to this issue and all of your kind support in the past.

Sincerely,

Vine Deloria, Jr.
President Native Lands Institute

Cc:

Senate Indian Committee members
James Birchim, Chairman, Yomba Shoshone Tribe
Deborah Schaaf, Indian Law Resource Center
Mary Dann and Carrie Dann

SENT BY:NV AG CONSERVATION : 8- 2- 2 ; 7:34AM ; → 202 228 2589;# 2

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

March 19, 2002

Senator Daniel K. Inouye, Chairman
Senate Indian Affairs Committee
838 Hart Senate Office Building
Washington, D.C. 20510

Re: S. 958

Dear Senator Inouye:

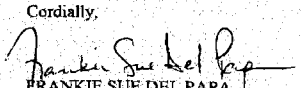
On behalf of the State of Nevada, I would respectfully ask that you accept the following brief comments into the record of the hearing before the Senate Indian Affairs Committee, scheduled for March 21, 2002, on bill S. 958. This measure addresses the subject of use and distribution of funds awarded to the Western Shoshone identifiable group under Indian Claims Commission dockets 326-A-1, 326-A-3, and 326-K.

Language in Section 2, paragraph (9) of the measure provides that receipt of the claims payments "shall not be construed as a waiver of any existing treaty rights pursuant to the '1863 Treaty of Ruby Valley.'" It is Nevada's understanding and position, however, that all treaty claims have been finally litigated and decided. The United States established there is no legal claim the Western Shoshone can maintain for title to the public lands in Nevada. *United States v. Dann*, 873 F.2d 1189 (9th Cir. 1989). The State prevailed in litigation brought by the Western Shoshone concerning member hunting and fishing rights. *Western Shoshone National Council v. Molini*, 951 F.2d 200 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 74 (1992).

Congress enacted the Indian Claims Commission Act to bring finality to claims against the United States and those whose interests were affected by such claims. Indeed, "the chief purpose of the Act [establishing the Commission] was to dispose of the Indian claims problem with finality." *Western Shoshone National Council*, 951 F.2d at 202, *quoting United States v. Pend Oreille Public Utility District No. 1*, 926 F.2d 1502, 1508 (9th Cir. 1991). Nevada supports this purpose and therefore supports S. 958, which furthers this objective by distribution of the claims payment. This result is beneficial to the members of the Western Shoshone; and to all whose title would otherwise be affected by unresolved claims. It is furthermore important to the State of Nevada itself, whose sovereignty and whose future is so closely tied to its concurrent jurisdiction on federal lands that make up eighty-seven percent of the State.

Thank you for considering the State of Nevada's interests, and please call on me if my office may be of further assistance.

Cordially,



FRANKIE SUE DEL PAPA
Attorney General

FSDP/CWH/sg
c: Senator John Ensign
Congressman Jim Gibbons
Congresswoman Shelley Berkley
Governor Kenny Guinn
Karen Wayland
Mary Conelly
Michael Turnipseed, Director, Department of Conservation and Natural Resources
Terry Crawforth, Administrator, Nevada Division of Wildlife
Sherrada James, Executive Director, Nevada Indian Commission
Pamela Wilcox, Administrator, Division of State Lands

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Mr. Daniel Inouye
Senate Select Committee on Indian Affairs
838 Hart Senate office Building
Washington DC 20510
(Sent by fax facsimile)

Senator Inouye and Committee:

I'm writing in regards to my opposition of the hearing that is scheduled for August 2,2002 at 2:00 pm. Bill S 958.

U.S treatment of the Western Shoshone and pending legislation before the Congress does nothing to resolve the lack of recognized land rights for the Western Shoshone. Legislation (S958 Western Shoshone Claims Distribution Act) is currently pending in the Congress which would individually distribute the claims money, which is the entire legal basis of the U.S. claim that it has extinguished land title. The legislation was crafted by Nevada Senator Harry Reid without the consent or participation of any Western Shoshone, Tribal councils, either Federally recognized, or Traditional; and includes no provisions to provide for an adequate land base for Western Shoshone communities or the recognition of any resource rights, such as grazing, hunting, gathering, and fishing!

Because all IRA elections and paramount issues require proper notice, processes, regulations and appointments we ask you and your committee to **oppose the language and the intent of S.958; oppose the manner in which this hearing was brought to the committee and scheduled: and allow the governments of the Western Shoshone Nation to represent it's constituents in the proper manner and with issues that truly address their needs.**

Sincerely,

Betty Jo Dick

Betty Jo Dick

March 15, 2002

Senate Committee on Indian Affairs
The Honorable Daniel K. Inouye
838 Hart Senate Office Building
Washington, D.C. 20510

LETTER OF OPPOSITION OF S958

My name is Mary Gibson. I am Newe (Western Shoshone) from Elko, Nevada. My family, my people, and my ancestors have been life-long inhabitants and aboriginal occupants to our ancestral homelands.

I am writing to you today to express my opposition to S958, Western Shoshone Distribution Act. I am totally opposed to this legislation on moral, ethical, and legal grounds.

For generations the Western Shoshone has believed and still believes the words and agreements put forth in the 1863 Ruby Valley Treaty. Words written and agreed upon, nation to nation, in a treaty, defined by the United States Constitution as the *"SUPREME LAW OF THE LAND"*. What is hard for me to believe and to understand is why word and honor means nothing to the United States of America.

Yet harder to believe is how the United States, through the guise of the Indian Claims Commission, lied and swindled the Western Shoshone. The "Treaty of Peace and Friendship" *DOES NOT* cede land. The treaty allows the U.S. to locate mines, ranches, and railroads, telegraph lines, towns, and military posts within Shoshone lands. There is nothing in this document that even suggests that these establishments extinguish Western Shoshone land title and sovereignty.

The legislation as proposed by Senator Reid and Senator Ensign is in no way preserving nor protecting our treaty and land rights. If anything, it is a shameful piece of legislation that purports the demise of my people; another form of cultural and spiritual genocide, history repeating itself, different generations, different century, but the same dishonesty and deception tactics to gain Western Shoshone land and resources for profit.

Newe Sogobia, our motherearth, is an integral part of who we are as Newe (Shoshone). Motherearth sustains us, gives us life. The land isn't just a piece of land; dirt, desert, and sage, it is our mother, giving life to all, not only human life, but all life. The land is a part of us as much as we are a part of the land. One cannot exist without the other. Our cultural traditions, religion, and spiritual beliefs are dependent upon our motherearth. And as indigenous people, we need to protect the land for our future generations.

Legally, the Western Shoshone has never been given due process. Issue after issue has compounded the complexity of Western Shoshone treaty rights, land claims, and basic human rights since the inception of the ICC. Court after court has denied and discriminated against the Western Shoshone's quest to pursue and litigate the actual issue

of whom really owns and holds title to Western Shoshone lands. To my knowledge, I have not seen any documentation from the United States, the exact transfer of title of lands, but the documentation for the Western Shoshone is the ratified Treaty of Ruby Valley.

As Mr. Reid has stated in political forums, this is a country of due process. Where then is the due process for the Western Shoshone? We have not been given the opportunity to participate in this democracy's due process regarding the legal issue of ownership of lands through the Ruby Valley treaty.

The legislative bill and the Nevada Senator's do not have the best interest of the Western Shoshone in mind. There is something questionable and definitely uncertain in the language of the bill. At least uncertain to the Shoshone people who believe they are accepting payment for past damages and trespasses. There is no provision in the bill that this payment is not for the sale of the land. The language I am really concerned about is in Section 2 (9) and states the following:

> *Receipt of a share of the judgement funds under this section shall not waiver any existing treaty rights pursuant to the '1863 Treaty of Ruby Valley' inclusive of all Articles I through VIII, and shall not prevent any Western Shoshone Tribe or Band or individual Shoshone Indian from pursuing other rights guaranteed by law;*

but according to the Indian Claims Commission Act it states:

> *The payment of any claim...shall be a full discharge of the United States of all Claims and demands touching any of the matters involved in the controversy.*

I don't see where the best interest of the Western Shoshone is being considered. Nor do I see our treaty rights as protected for future claims to the land. Any legislation concerning distribution of Claims money must clarify the payment is for past damages which does not include title or rights to the land. Language in the bill should also explicitly override the provision of the Indian Claims Commission Act that precludes the exercises of rights connected to lands for which are being compensate.

A onetime payment in exchange for our land will not lift my people from impoverishment. The cash payment will do nothing to change the conditions for the Western Shoshone. To be self-sufficient we need our lands and resources. Can you truly say this paltry sum will cure poverty? In the real world, this is nothing compared to what land values are today. More than anything, this payment constitutes the blood of my ancestors, who struggled to survive annihilation and dirty money from the U.S., who lied, cheated, and stole this land from the Shoshone. Anyway you look at it, it is wrong!

Eight generations of Shoshone people have articulated their love and oneness with Newe Sogobia to the US government and the US Congress. Contrary to numbers bandied

about, there are many Shoshones that are opposed to this legislation, but are confused by historical interpretations and the exact nature of the Indian Claims settlement and legal battles in trying to get the United States to recognize and acknowledge our treaty. Some have become discouraged and oppressed by a century of absolutism of promises broken.

I recognize that if this legislation passes, what a sad, sad, day this will be for the Western Shoshone people and the United States of America. This item may be a small item on your agenda, but the cultural genocide, discrimination, and ignorance toward my people is no small matter.

Your actions today will have international repercussions. The United States has a responsibility to respect the human rights of Native American peoples, which include the right of self-determination and the right to possess property, both communally and individually. I urge you to think of this matter and its one hundred-fifty year legacy. You are the individuals that will sign the legacy of the United States' honor as a negotiating power in the annals of history.

I urge your defeat of S958 as written and provide the Western Shoshone the due process entitled to us, to litigate and bring forth the truth and honor of the Ruby Valley Treaty of Peace and Friendship. The opportunity to negotiate our claims to the land or even negotiate a new treaty will bring much needed honor, dignity, and integrity to both the Western Shoshone and the United States.

Sincerely,

Mary Gibson

Mary Gibson,
Western Shoshone

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161

July 26, 2002

Senator Daniel K. Inouye
Senate Committee on Indian Affairs
838 Hart Senate Office Bldg.
Washington, DC 20510

RE: S 958 Western Shoshone Distribution
Shoshone-Paiute Tribes of Duck Valley Resolution 2002-SPR-012

Dear Honorable Senator,

This is very important. Attached herewith is a copy of Shoshone-Paiute Tribes Resolution 2002-SPR-012 regarding S 958. This is the official request of the Shoshone-Paiute Tribes of Duck Valley.

The inclusion of Indian Claims Commission Dockets 326-A-1 and 326 A-3 should not be included in this bill.

Dockets of 326 A are specifically for Duck Valley. As indicated by the attached resolution from the Shoshone-Paiute Tribes of Duck Valley, Dockets 326 A-1 and 326 A-3 should be deleted from the distribution bill associated for 326-K (all Western Shoshone Damage Claim).

Dockets of 326 A are Duck Valley specific associated to historic damages suffered by Western Shoshone people of Duck Valley and the disposition of these funds should rest with our tribal organization. Your legal staff should research the origins of the 326 A dockets and you should be able to clarify the intent of the claims court.

Finally, Shoshone-Paiute Tribes Resolution # 2002-SPR-012 requests that S 958, *absent the 326 A Dockets*, be amended to state in Paragraph (1), Part (A) "direct descendents of persons of Western Shoshone ancestry ....." as opposed the ¼ blood constraint.

Thank you for actions to strike the 326-A dockets. Thank you for your consideration on the amendment request.

Sincerely,

Terry Gibson
Tribal Chairman – Shoshone-Paiute Tribes of Duck Valley

Attachment: Resolution 2002-SPR-012

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161

RESOLUTION
of the
GOVERING BODY
of the
SHOSHONE-PAIUTE TRIBES
of the
DUCK VALLEY INDIAN RESERVATION

RESOLUTION NUMBER: 2002-SPR-012

BE IT RESOLVED BY THE BUSINESS COUNCIL OF THE SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION THAT,

WHEREAS, This is an Indian organization known as the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation as defined and established under the Indian Reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of the economic and social welfare of its Tribal Membership in accordance with the Constitution and By-laws of the Shoshone-Paiute Tribes of the Duck Valley Reservation, approved by the Membership on March 21, 1936, and approved by Secretary Ickes, Department of the Interior, April 20, 1936; and

WHEREAS, The Shoshone-Paiute Tribal Business Council is the only federally recognized and duly elected governing body of the Membership of this tribe, established in accordance with the above document, and is sworn to protect the interests of its membership; and

WHEREAS, The Shoshone-Paiute Tribal Business Council declares that there is no other Tribal Business Council in existence on the Duck Valley Indian Reservation; and

WHEREAS, The Business Council has become aware that the Senate Committee on Indian Affairs is scheduling a hearing on S.958, a bill 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 an identical companion bill in the House of Representatives Committee on Resources, H.R. 2851; and

WHEREAS, Dockets 326-A-1 and 326-A-3 are administrative accounting claims based upon wrongs committed by the United States Government exclusively against the Indians who settled on the Duck Valley Indian Reservation after it was established in 1877, and are therefore separate and apart from the land claim (Docket 326-K); and

WHEREAS, A precedent identical claim distribution has been set under the Northern Paiute Claims Settlement whereby the Fort McDermitt Tribes had a similar accounting claim that was distributed exclusively to members of that tribe and not shared with the entire Northern Paiutes; and

WHEREAS, The Business Council of the Shoshone-Paiute Tribes of Duck Valley hereby totally object to S.958 as written with regard to Dockets 326-A-1 and 326-A-3, wherein these funds would be taken away from the Duck Valley membership for whom the claim was intended; and

WHEREAS, In reference to Docket 326-K distribution plan, the Shoshone-Paiute Tribal Business Council recognizes that there have been two (2) previous Indian Claims Commission Distributions on the Duck Valley Indian Reservation-the Northern Paiute Claims and the Malheur Paiute Claims-and these two (2) claims were based on Tribal descendency, not ¼ blood requirement. To now demand ¼ blood requirement on this, the third distribution, the Business Council recognizes that many Tribal Members, particularly children, will be wrongfully denied their inherited right to participate in any claims distribution; and

WHEREAS, The Shoshone-Paiute Tribal Business Council also recognizes that because of the sensitivity and accuracy/inaccuracy of determining exactly who is ¼ degree blood, descendency based on the Indian Census Rolls of 1934 is the most fair method of determining eligibility;

NOW THEREFORE BE IT RESOLVED BY THE SHOSHONE-PAIUTE TRIBAL BUSINESS COUNCIL OF THE DUCK VALLEY INDIAN RESERVATION THAT, The United States Senate Committee on Indian Affairs must rightfully strike Sec. 3 Distribution of Dockets 326-A-1 and 326-A-3 from H.R. 2851 in its entirety, so these funds can be distributed to those for which they were intended; and

The United States House of Representatives Committee on Resources must rightfully strike Sec. 3 Distribution of Dockets 326-A-1 and 326-A-3 from H.R. 2851 in its entirety, so these funds can be distributed to those for which they were intended;

BE IT FURTHER RESOLVED THAT, The Bureau of Indian Affairs immediately take necessary steps to isolate these funds awarded under Dockets 326-A-1 and 326-A-3, and to protect these funds for the exclusive use and benefit to those for which they were rightfully intended, the Tribal Members of Duck Valley;

BE IT FURTHER RESOLVED THAT, Senate Bill S.958 and House Bill H.R. 2851, Sec. 2-Distribution of Docket 326-K Funds, Paragraph (1), Part (A) "have at least ¼ degree Western Shoshone Blood;" be stricken and replaced with "are direct descendants of persons of Western Shoshone ancestry as based on the Official Indian Census Roll of 1934":

BE IT FURTHER RESOLVED THAT, Tribal Resolution Number 97-SPR-63 is hereby rescinded, and the Shoshone-Paiute Tribal Business Council does not consider itself to be obligated or bound by any entity claiming to be a "Business Council of Duck Valley";

BE IT FINALLY RESOLVED THAT, All further Western Shoshone Indian Claims issues shall be handled by the Shoshone-Paiute Tribal Business Council.

CERTIFICATION

It is hereby certified that the Shoshone-Paiute Tribal Business Council is composed of six (6) Members of whom five (5) constituting a quorum and a Chairman were present at a meeting held on the 13th day of November, 2001, and that the foregoing resolution was duly adopted by the affirmative vote of 4 FOR, 1 AGAINST and 0 ABSTENTIONS; pursuant to the authority contained in Article VI, Section 1 (a) of the Constitution of the Shoshone-Paiute Tribes approved April 20, 1936.

Marvin Cota

MARVIN COTA, Tribal Chairman
Shoshone-Paiute Tribes

Helen Hernandez

HELEN HERNANDEZ, Tribal Secretary/Ofs. Adm.
Shoshone-Paiute Tribes

P.O. Box 219 Owyhee, Nevada 89832-0219 (775) 757-3161

July 27, 2002

Senator Daniel K. Inouye
Senate Committee on Indian Affairs
838 Hart Senate Office Bldg.
Washington, DC 20510

RE: S 958 Western Shoshone Distribution

Dear Honorable Senator,

This letter is to state that S 958 ***should not*** include the reference to the "Western Shoshone Business Council of Duck Valley." As stated in Sec. 3 (2) (A) (v).

There is only one Business Council on Duck Valley and it is the one I am Chairman of: The Shoshone-Paiute Business Council of Duck Valley. Our federally recognized tribal organization/chartered corporation is the only tribal government at Duck Valley.

The Shoshone-Paiute Tribes of Duck Valley have never, as a tribal organization/chartered corporation, participated in any claims settlement – and we wish, at this time, to keep it that way.

If at all necessary, Sec. 3 (2) (A) (v) may be amended to read: Duck Valley Western Shoshone Representative.

Thank you for your attention to this important matter.

Sincerely,

Terry Gibson
Tribal Chairman
Shoshone-Paiute Tribes of Duck Valley

DAVIS GONZALES
P.O. Box 898
Elko, Nevada 89803
(775) 738-6945

August 26, 2002

Honorable Chairman Daniel K. Inouye
SENATE COMMITTEE ON INDIAN AFFAIRS
838 Hart Senate Office Building
Washington D.C. 20510

Dear Chairman Inouye:

RE: Senate Bill-958 "Western Shoshone Claims Distribution"

My name is Davis Gonzales, a member of the Te-Moak Tribe of Western Shoshone Indians of Nevada with a residency at the Elko Indian Colony in Elko, Nevada.

I am a former Chairman of the Elko Band Council, Tribal Chairman of the Te-Moak Tribe Council, Chairman of Inter-Tribal Council of Nevada, Administrator for the Te-Moak Tribe for number of years and presently an administrator for the Elko Band Council.

In **1994**, you may still remember (photo included), we (Dale Malotte - Te-Moak Chairman, Paul Snooks -Battle Mountain Band), and other Western Shoshone Chairmans from Northeastern Nevada met with you **eight (8) years ago** in Washington DC on this very same issue. This meeting with you resulted from letters from the State of Nevada Delegations to your office to proceed with some kind of legislation for the Distribution of the Western Shoshone Claims.

First, I support the Western Shoshone propose Legislation S-958 as introduced by our Nevada Representatives in both Houses of Congress. This bill calls for a 100% per capita payment to 1/4 or more Western Shoshone blood, and to set aside funds for Indian Education programs.

I have been involved with the Claims issue over a period of twenty (20) years and the method of distribution never materialized due to the fact of many tribal entities do not seem to agree with each other because of their needs, the location of the colonies and reservations, the conflict of on and off reservation status, and the Western Shoshone people are scattered throughout the United States. We have tried to discuss the programing issues numerous time as recommended by the Bureau of Indian Affairs (PL 134) and found that it would not served all Shoshone on a equitable or fair share treatment of services or benefits. For example, reservation and colony resident would have access and availability to local programs and eligible members residing outside tribal areas, e.g. urban areas, and other parts of the United States would not share the benefits simple because of the distances. We made every attempt to resolved the outstanding issue, <u>But failed</u>.

I also understand the interest of land issue be included in the Legislation and other aboriginal rights such as hunting, fishing, gathering, and livestock grazing. The recommendation arose from the Yomba Indian Reservation, South Fork Indian Reservation, and Duckwater Indian Reservations. Lets compare the Page Bureau's policy and time frame imposed to the tribes to develop a plan of distribution in reference to the Result of Research and amendment documents (80/20 programming issues) and to the Distribution of Indian Judgement Fund Act. Again, the four designated successor tribes absolutely short fall the intended law to develop some sort of plan but two decades later, now want to comply with the law do

2 of 2, Letter to Chairman Inouye

not warrant any justification. I believe the claims distribution rests with the Western Shoshone beneficiaries since the tribal entities had their opportunity to do so, but failed!!

Furthermore, hunting and fishing is non-exempt to Nevada Indians except the purchase of deer tags and gathering of the pie-nuts is coordinated with local BLM offices. Land acquisition is made possible with local BLM District Office in the land application process, and I believe the Elko and Ely tribes are in the process. The three mentioned tribal areas is requesting to add lands in the legislation would only benefit their own areas and limit and restricted to other Western Shoshone, for the simple reason. The South Fork Indian Reservation is not allowing its neighboring band (Elko Band) who are eligible members to hunt and fish on their reservation, nor trap but only limit the privilege to their members, is this being fair if additional land was incorporated in this legislation. The subject of cattle ownership and grazing would only apply to present cattle owners and limitation would exclude other tribal members from becoming livestock owners.

Therefore, I endorse the full content of the S-958 as introduced by our Nevada State Congressional Delegates and to praise the hard work of the present Steering Claims Committee for all Western Shoshone to allow the **voices** of the Shoshone voters who was in favor of the distribution of the funds which laid dormant since 1979. The intent of this bill would serve all Western Shoshone people an equal and fair treatment of benefits.

Thank you for given me this opportunity to submit to you this letter, and request my statement be enter into the Hearing of Record. May the Great Spirit protect and watch over you and the committee members.

Sincerely,

Davis Gonzales, Te-Moak Tribal Member
Western Shoshone, Elko Nevada

September 6, 2002

Senator Daniel K. Inouye
Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

RE: Te-Moak Tribal Council Resolutions Opposing S.958 and Impeaching August 2nd Hearing Proponents of the Bill

Dear Senator Inouye and Members of the Senate Indian Affairs Committee:

We write as the legal representatives of Mary and Carrie Dann and the Dann Band of Western Shoshone Indians to submit supplemental information for the record on S. 958, the Western Shoshone Claims Distribution Act.

1. Tribal Impeachment of Pro-S 958 Witnesses Felix Ike and Nancy Stewart and of the "Referendum" on June 3, 2002.

On August 2, 2002, Felix Ike and Nancy Stewart testified in favor of S 958. Both claimed to speak on behalf of the Western Shoshone people – Mr. Ike as the chairman of the Te-Moak Tribal Council and Ms. Stewart as the representative of the Western Shoshone Claims Distribution Steering Committee. Both claimed that the "referendum" on June 3, 2002 shows overwhelming support by the Western Shoshone for the per capita distribution set forth S 958.

This did not comport with the views of many of the tribal leaders in the room who had come to Washington to testify at the hearing, but who were not allowed to do so – including leaders from the

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[1] The Te-Moak Tribe is comprised of four

Te-Moak Tribal Council and the Western Shoshone bands that make up the Te-Moak Tribe.[1]

The Te-Moak Tribal Council took immediate, decisive action to inform the Committee of its actual position in opposition to S. 958. On August 7, 2002 – three business days after the hearing – the Te-Moak Tribe of Western Shoshone passed a series of resolutions that explicitly and unequivocally 1) oppose S. 958; 2) disavow the referendum and its results; and deny any authority to be represented by the Western Shoshone Claims Distribution Steering Committee. These resolutions are summarized below and attached to this letter for submission to the record on S. 958.

Resolution 02-TM-21:

- States that the Te-Moak Chairman did not present the "true concerns" of the Te-Moak Tribe in his testimony in Washington, DC at the hearing on the bill;
- States that the voting that took place on June 3rd was done without the approval of either the bands or the Tribal Council, and that the ballots used were "extremely" biased, in that a choice between voting for the money or against the money "...does not

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Western Shoshone bands: South Fork, Battle Mountain, Wells and Elko. The South Fork, Battle Mountain, Wells and Elko bands are federally recognized Western Shoshone governments. Each has an elected council responsible for conducting business and obligating the bands. The Te-Moak Tribe has a tribal council, but it is a political entity with no geographic base and no constituency independent of the bands. All of the band councils have previously gone on record in opposition to S.958 as written, as has the Yomba Shoshone Tribe. (See "Statement of Opposition to Senate Bill 958: the Western Shoshone Claims Distribution Act" submitted by the Indian Law Resource Center on July 30, 2002, and attached hereto for your convenience.)

reflect the true wishes of the Western Shoshone People";

- Resolves that the voting that took place on June 3rd is invalid because it did not have the approval of the Te-Moak Tribal Council or Bands;

and, most important, this resolution says:

NOW BE IT FURTHER RESOLVED that this resolution be sent to Senator Reid and other Congressional Representatives as it represents the Te-Moak Tribal Council true concerns regarding the process of which Senate Bill S 958 is being pushed for approval. The Te-Moak Tribal Council requests Government to Government negotiations. The Te-Moak Tribal Council request[s] a table discussion before anything is introduced before the Senate for the following:

1. Land, hunting, fishing, grazing and gathering issues.
2. Money for damages for the past to the present.
3. Recognize the Western Shoshone as a nation within a Nation.
4. Recognize that the Treaty can only be abolished or amended by the two nations that made it.

The Te-Moak Tribal Council passed two other resolutions on August 7, 2002:

Resolution 02-TM-19 states that the Te-Moak Tribal Council "... does not recognize the [Western Shoshone Claims Distribution] Steering Committee, and therefore abolishes the Steering Committee in its entirety" (emphasis added).

And, in to dispense with any doubts about the validity of the results of the referendum, and to address claims that the referendum had tribal support, resolution 02-TM-20 states that the Te-Moak Tribal Council "... does not recognize the Felix Ike balloting of June 3rd (emphasis added).

The Senate Committee on Indian Affairs cannot in good conscience rely on the testimony presented by the proponents of S. 958 in light of this clear, direct and unequivocal statement in opposition to the referendum on June 3, 2002 and to a per capita distribution of the ICC

award prior to real negotiations that will address and resolve the issues facing the Western Shoshone as outlined above.

Sincerely,

INDIAN LAW RESOURCE CENTER

Subject: Western Shoshone Claims hearing

August 1, 2002

Senate Select Committee on Indian Affairs
838 Hart Senate Office Bldg.
Washington, DC 20510

Dear Senate Select Committee Members,

I am writing to you today because I am considerably alarmed by a brazen disrespectful misrepresentation by Senator Harry Reid, for the Western Shoshone people residing in the state of Nevada.

Your decision to acknowledge an over simpified yes/no vote on the claims distribution (S.958) and to approve a reschedule "hearing" without adequate notice to and no genuine intention of allowing fair representation by Shoshone governing and community representatives is outrageous to me and many others that are observing this process.

I do not believe that Senator Reid, NV has the right to hand pick 3 individuals, that could easily represent his own interests for the outcome to this issue, to speak before the committee and then dare to call that a fair hearing.

The United Nations Committee on the Elimination of Racial Discrimination has reccommended that the State should "...ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5(c) of the Convention..."

The Senate Indian Committee has been asked by the OAS, to delay any hearing on Western Shoshone issues until the report on the complaint in regards to the Claims Commission has been made public. I understand this request has been refused. I also understand that public access to the documentation regarding the sponsorship of the yes/no vote for the claims distribution has also been denied in spite of a FOIA request.

This refusal to make these documents open to scrutiny and to make these proceedings available to a significant number of varying Shoshone voices makes it apparent to me that you will not be working for a fair and just outcome to this land dispute. In fact it appears that you are attempting to ensure just the opposite.

The Federal Government has recognized the Western Shoshone as a self-governing Nation through the 1863 Treaty of Peace and Freindship. Western Shoshone communities have self-governing independent tribes each with their own councils and leaderships.

The very questionable "vote" preceding this hearing should be investigated by an objective and independent body. This vote should not stand and be considered an accurate representation of the comprehensive wishes of the Shoshone people.

This upcoming hearing should be re-scheduled, to allow reasonable and adequate notice to ensure Western Shoshone councils and organizations, as well as tribal members may have their chance to speak their differing views on this important and historic decision.

The time scheduled for a hearing must also insure the attendance of the full committee as well as a fully represented Western Shoshone Nation. To schedule a hearing with less than 12 business days notice in the afternoon, on the last day of the sessions is an insult to the integrity of the US legal

process and to the Shoshone people.)

I implore you, Senator Reid, to reconsider your acquiescence and participation in these questionable procedings that are planned for August 2, 2002.

Please use your elected position wisely and with respect for the established rights of all peoples and future generations.

Sincerely,

Corka Little

Corka Little
Western Shoshone Defense Project
Crescent Valley, NV

September 3, 2002

Senator Daniel Inouye
Chairman Of the Indian Affairs Committee

Dear Mr. Inouye;

I am writing to you in regards to S 958. I am a Tribal Member of the Ely Shoshone Tribe, my name is Cindy Sue Marques, enrolled tribal member, enrollment # 316 I am 38 years old Western Shoshone.

I am opposed of this bill. As stated from the Ely Shoshone Tribal Council that they support the enactment of S. 958 because they believe that it reflects the wishes of the vast majority of the Western Shoshone People and also the Ely Shoshone Tribe, reflected by the vote that was conducted June 3, 2002. This vote that was conducted, was conducted under many conflicts:

- the people appointed to count the votes, all whom are money people
- the person who received the absentee ballots, is also a money person (who's to say that these votes where not tampered with).
- It was said to some voters that if you voted "no" at this election that when the money is distributed, that you will not receive the money.
- was this a valid election?

The Tribal Council has taken many issues into thier own hands. People who oppose this bill have been fired from employment with the Ely Shoshone Tribe.

I believe in my heart that the people who deserved this money and that have fought for the land all these years are passed away. My grandmother Marjorie Pojoe Stark fought for many years for the land and her next seven generations. And what about our ancestors? The ones who survived the coming of the white men, the ones who conquered the tainted small pox blankets, the chiefs that had to sit and watch as an Indian boy be slain during the signing of the 1863 Treaty of Ruby Valley. These story was handed down through generations. What stories will we tell our grandchildren? How we sold out?

We need a land base for our children and our children to come. You need to look deeper into the eyes of the people who still believe in being Newe People. If this money is distributed to the Western Shoshone People, what becomes of the Newe People we be?

I am proud to be Western Shoshone! Just because there are a few greedy people out there not looking towards the future, and these people may or may not even be enough Western Shoshone to voice their opinions on this very important matter and they should not be voicing their opinions for the ones who oppose this bill.

Sincerely,

Cindy S. Marques, Enrolled Tribal Member of the Ely Shoshone Tribe
Cindy S Marques

Faxed to:
Senator Ben Nighthorse Campbell, 202-224-1933
Senator Harry Reid, c/o Karen Wayland 202-224-7327
Senator John Ensign 202-228-2193

September 5, 2002

Senate Hearing Members

Dear Members:

This is in response to the Indian Committee Hearing held in Washington, DC, on August 2, 2002, regarding the Western Shoshone Claims Issue, Bill S. 958, of Nevada.

There has been misrepresentation from Felix Ike, claiming to represent the Te-Moak Tribe at the Hearing. He said he was representing Te-Moak Tribe and other Western Shoshones in the State of Nevada; this was a lie. He was **not** representing the Te-Moak Tribe, the biggest tribe in Nevada. He is only representing himself as he's always claimed especially conducting elections by his family members and calling it a referendum of the people. The Te-Moak Constitution specially states how a referendum vote is done; this was not at all the case in this situation.

All of the chairmen that sit on the Te-Moak Tribe of Western Shoshone Council were present at the Hearing representing their Bands but were not allowed to speak, with the exception of one, on behalf of their reservations.

The three people hand picked, evidently, by Reid, did not represent the Western Shoshones. Names of the three were kept secret; this is not supposed to be a hush-hush issue. Reid did not at any time meet with the Western Shoshones. He supposedly met with several members who purportedly represented the Western Shoshones. There has been no formal Committee that is legal to make any decisions on S. 958. Nancy Stewart, who spoke as one of the three members, is not even an enrolled Indian of any Western Shoshone Tribe. She slandered South Fork Reservation by making remarks about cattle being killed, etc. She has no right to even mention South Fork Band's business.

The Te-Moak Tribe of Western Shoshone is the biggest tribe in the State of Nevada that is at the forefront of the Claims Issue. Two of the other Tribes are Shoshone-Paiute councils with the majority of their members already receiving the Paiute Claims money.

These hearings are unjust and a direct violation of our human rights. Before this Bill is passed by Washington, negotiations must be held between the Western Shoshone Nation and the U.S. Government on a government to government relationship. This is the only decent way. No consultation was held with the tribes before action on payment was proposed. These types of hearings should directly concern the concept of the United States' "consent of the governed." This payoff directly affects the Western Shoshone for the rest of our lives and generations to come.

This generous land which was taken from its original inhabitants under morally ambiguous, and at times, outright fraudulent circumstances requires reasonable, just compensation – not $1.15 an acre. Negotiations must be held before any action is taken by the Government. Please review and set a date to meet with the people and consider all information before any Bill is passed. Thank you.

Sincerely,

Karen McDade

Karen McDade
Western Shoshone
Lee, Nevada

U.S. Senator on the Indian Affairs Committee

Dear Senator/Committee Member:

H.R. 2851 was introduced by U.S. Representative Jim Gibbons of Nevada on 6 September 2001 on behalf of "The Western Shoshone Claims Distribution Act," (WSCDA)-Senate Bill S.958 (a companion to H.R. 2851) and which is being sponsored by the Honorable Senator Harry Reid and Senator John Ensign of Nevada. I am a registered Western Shoshone (from the Stillwater Reservation in Fallon, Nevada) living "off the reservation." Like many other American Indians, I and my mother were relocated to the Bay Area in 1957 as a result of the BIA's Employment Assistance Program efforts. I am not affiliated with any political ENTITY, Tribal Committee or Council. I am writing this letter to request your support of the recently introduced H.R. 2851. **Senate Bill S.958 (H.R. 2851's equivalent) has been reviewed and approved by the Bureau of Indian Affairs and is the first to be endorsed by the Shoshone people.** The "Western Shoshone Claims Steering Committee," a coalition of several official tribally-recognized representatives has worked very hard to gain the consensus of the majority--(1,230 Shoshones voting "yes" for distribution and 53 voting "no" against) and they've helped to get this bill introduced, thereby bringing closure to "WSCDA, Dockets 326-K, 326-A1 and 326-A3," a Court adjudicated claim (1951-1977), appropriated by Congress in 1979. **(Please see brief historical info accompanying this letter with important comments about the opposition.)**

There are several major issues at stake here concerning the Shoshone people:

The "20% Holdback" for Tribal entity use: Dollars set aside for "Tribal social service programs" is a good thing, but the reality of those "social service programs" actually coming to fruition via our Tribal Council/Staff Administrators has proven wasteful—for one, due to poor economic policy, those dollars have evaporated with little fiscal accountability to the Shoshone people. Until we have tribal administrators who are formally educated (with Degrees from accredited colleges) in budgetary expenditures and until some type of political "checks and balances" are put in place, there is little chance of those goals being implemented. Various Tribes have made attempts at "social service programs," but their record of achievement is short-lived and eventually, those programs cease to exist. A lack of carry-over from year-to-year of various well-intended programs is all too often the handiwork of nepotistic-political infighting, annual council elections and the non-existent establishment of tribal goals. H.R. 2851 and/or Senate Bill S.958 supports a perpetual education fund with interest only being expended as a means of preserving part of the principal for future generations and supplants the "hold-back" concept. As this is administered by a state wide, non-political committee, I feel this has the greatest chance of success. **We as a group are not adverse to a 20% holdback** if it is to be used for education[1] and administered as planned by the state-wide committee where it will then be placed in a trust account or perpetual-educational fund (by a bona fide banking institution) and can be made available to our future descendants on verification of school enrollment, and "proof-of-descendancy" basis. There's a possibility that other pressing needs would require the 20% be broken down further--15% going for education, 2-1/2% for a Shoshone burial fund and another 2-1/2% toward some sort of Indian health insurance to supplement the present and ever dwindling Indian Health Services' dollars. Usually by mid-year those dollars are gobbled up by major-medical cases such as bypass-heart surgery or other life-threatening procedures, the result being that other less-serious operations are postponed until additional grant dollars arrive in January, in essence causing Shoshone recipients pain and suffering four to six months in the waiting.

American Indians/Native Americans need to get on with the business of living. There are those of us who want to remain on a friendly basis with our government (a government that has tried to do well by us in most instances in comparison to other countries outside the United States). We owe it to ourselves to push forward and become active participants in the United States government. It's not about taking (Indians/Native Americans that is), it's about participation and giving, giving back what we (Indians/Native Americans) have been blessed with. **"...land return " are the OLD HACKNEYED IDEAS THAT KEEPS US IN AN UNPROGRESSIVE MODE.** For myself, personally, I have no desire to sit around and argue about past transgressions of the U.S. Government. I have grandchildren to worry about. I have their future to think about. If the numbers are correct, a greater percentage of us, 60% or more, live off the reservation. If these "off the reservation" members are anything like myself, then they too are members who don't drink, who work hard to care for their families, members who want education for their children. Our present goal should be education with the "mainstreaming" of our children, in order to ensure a fair and equal opportunity in the workplace of Western culture. Those of us in favor of distribution will pool our per capita and invest it in stocks / mutual funds, dividing the interest yearly. The perpetual-education fund will be used as a supplement to what we will or may have already contributed toward our children's education.

Your support of (the Senate Committee on Indian Affairs) in passing a common, comprehensive bill are the tools which will enable all our tribal members to go from this place, with money for education, housing, etc. **Your deliberations with other Committee members and/or House of Representative members is of great importance to all Western Shoshones seeking your assistance in this matter.** We hope our request will weigh heavily on your mind. I trust and pray you will lean towards justice and not delay further that which should have come to pass years ago (1981). Please support Senator Reid and Senator Ensign in this endeavor. Thank you for your time and interest.

Respectfully yours,
Marion Gayle Miles
Tribal Membership Enrollment # 0720

[1] The percentages of those Indians receiving college degrees is practically nil on most reservations.

THE OPPOSITION—WHO ARE THEY?

The majority of our people are not seditionist or activists, such as those who have successfully organized with outside non-Indian groups to delay the claims payment. Their purpose is to continue to use our "Western Shoshone" identity for their own hidden, radical agendas and/or private enterprise (land for cattle and although they are not saying--a more lucrative hold-out for the existing mining companies operating in and around Crescent Valley). This well-organized minority—The Western Shoshone National Council (WSNC) works to control key Tribal Chairmen—Chairmen who own cattle and represent their views and not the Tribal membership's mandate. The "land first" cry continues, yet when offered the opportunity,[1] without the knowledge of the Shoshone people, they did not negotiate in good faith. So this minority's views are no longer taken seriously by the Shoshone people. Where the majority of a Tribe's membership is at odds with their chairman, the membership has had to present petitions directly to the Bureau of Indian Affairs with the hope of being heard--e.g., Yomba,(with a Tribal enrollment of 208) has the dilemma being that only members living ON the reservation are allowed to vote and therefore, the 30 or so "on the reservation" members that are allowed to vote, do not give a real picture of what the "OFF the reservation" members may want and plus as a consequence, those members having no voting rights have no benefits) and Ely.

Another example is the Te-Moak[2] Tribal Chairman, a cattleman, who continues to disregard the overwhelming vote taken in Elko in favor of distribution. To complicate matters further, the Te-Moak Council's voting structure does not recognize voting representation based on a Tribe's population. Therefore, smaller colonies control the outcome. These people will not be satisfied unless two-thirds of the State of Nevada is returned—an unrealistic goal.

Comments on the Western Shoshone National Council (WSNC):

The WSNC by their own admission, are "not a federally-recognized tribal council created by the United States Indian Reorganization...." What they have done instead is misrepresent Western Shoshones by organizing what they call, "the WSNC (Western Shoshone National Council), as a nation,..." (which incidentally, by the very use of the word "nation" is misleading, truthfully this group consist of a handful of individuals who operate through five different organizational names--Western Shoshone National Council; the Western Shoshone Defense Project; the Corporation of Newe Sogobia (Western Shoshone homelands); the Western Shoshone National Cattlemen's Association (South Fork Western Shoshone Cattle Grazers); the Western Shoshone Great Basin Descendants of Western Shoshones--NOT a "nation.") "...comprised of representatives (self-appointed, I might add) from the various Western Shoshone communities."

The WSNC, registered as a non-profit organization, has managed to gain attention and support of several extremist groups who have the wherewithal and money to send lobbyist to Congress on their behalf; publicize "WEB Page" newsletters for their benefit on the World Wide Web. The rest of us cannot afford these kinds of activities.

Who is really benefiting by this delay? Certainly not the Te-Moak of Western Shoshones. How many of their members are cattlemen? From information gathered, there are 26 "Brands in Trespassing."

Shoshone Nation Cattle Brand Ownership by Western Shoshone Families or Group Number of "Brands in Trespassing" Presently Being Used by a Particular Family or Group Kari Dann Family 7 South Fork 13 Yamba 6. This info was obtained from the Nevada Bureau of Land Management

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[1] 1994 Denver, Colorado "Background Information – 326K," Page 4, Paragraph 2, Western Shoshone National Council and successor Tribal chairman meet with the Interior's negotiations team to identify available land. The Shoshone (WSNC)leadership refuse their offer.

[2] Te-Moak consist of Elko, Battle Mountain, Wells and South Fork Colonies

FROM : W.S.N. PHONE NO. : 7023226384 Jul. 30 2002 04:10PM P2

July 30, 2002

To: Senator Inouye
Chairman, Indian Affair Committee
838 Hart Senate Office Bldg.
Washington, D.C. 20510

Subject: Senate Bill 958 (Western Shoshone Claims)
August 2, 2002

From: Allen Moss (Western Shoshone)
12295 Westridge Drive
Reno, Nevada 89511

Sir;

This letter is from the discussion with Mr. Carl Christensen on the unfair voting practice of the trible council on the Western Shoshone Claims Bill.

As, a non-reservation member of which I didn't have the chance to vote, for the ballets were only sent to members they wanted to vote. The Yomba Reservation requires that each member be 50% Shoshone in order to live there or to be a member; I'am only 1/4% Shoshone. In my Famil group we have about a dozen people, but in the Reno, Sparks & surrounding area there are aba 20 to 30 Familys that didn't have no vote.

In Death Valley, California the Timbisha Shoshone Tribe didn't have Notice or the opportunity to Vote

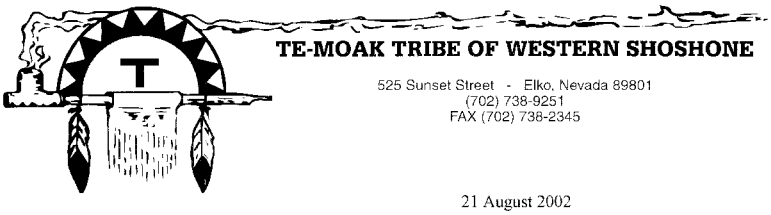
One of the ways to Solve the Problem with the Shoshone Nation would be Negotiation with All party on a New or Extended Agreement.

The United States has destroyed a Large Area of Shoshone Land by Nuclear test & Now with Storag of Nuclear waste from Around the world —

Perhaps this Committee has Noble Character & can Respect the Culture Rights & belief of the Shoshone Nation & Correct the injustices.

Sincerity
Allen Mom

P.S.
The Strozzi Family from Las Vegas, Nevada Numbering Around 120 didn't have opportunity to Vote.



TE-MOAK TRIBE OF WESTERN SHOSHONE

525 Sunset Street - Elko, Nevada 89801
(702) 738-9251
FAX (702) 738-2345

21 August 2002

The Hon. Daniel K. Inouye, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

S.958 COMMENT
VIA E-MAIL AND U.S. MAIL

Dear Senator Inouye:

The Te-Moak Tribe of Western Shoshone Tribal Council represents approximately 2,500 members. In August 1999, we withdrew support for a 100% Western Shoshone judgment fund distribution, Bureau of Indian Affairs work on a plan, and Interior Department legislative work towards monetary distribution. That is our present position. We respect popular sentiment for a claims money distribution. However, majoritarian rule has not replaced lawfully elected representative tribal government. A comprehensive bill that involves and addresses tribal and various Shoshone groups' interests is necessary to resolve Shoshone claims that have gone on for at least 52 years.

S.958 is technically deficient. It is unilateral. It treats descendant beneficiaries of the Western Shoshone entity of the 1800's as identified in 1980 Bureau of Indian Affairs Results of Research unequally. It presumes a formal one-quarter degree standard for a person of Shoshone ancestry to be eligible for distribution. There is not. S.958 denies the four added Shoshone tribal beneficiaries to Docket 326-K identified by the BIA in 1982 Amended Results of Research, a share of the docket under P.L. 93-134 for tribal purposes. It mixes Docket 326-A-1 accounting claim and 326-A-3 interest claim monies—awards that belong solely to the Te-Moak Tribe as determined by 1992 and 1995 BIA research—with Docket 326-K funds. Lastly, the bill evades historical and moral issues and the Shoshone relationship with the United States that stems from the federal constitution and incorporates the 1863 Ruby Valley Treaty. S.958 should receive no further consideration.

Congress can exercise plenary power to distribute claims funds and show the World that there is no right or wrong but only power—and that it is only power and neither fairness nor justice that determines what is right or wrong for Shoshone or any other peoples.

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The three speakers: Felix Ike, Willie Johnny, and Nancy Stewart who appeared before the Senate Committee on Indian Affairs 02 August 2002 represented only themselves. The first two were individuals designated by the BIA to be tribal officials and the third represented the private non-tribal voice of a claimed Shoshone "majority" for payment.

Felix Ike and Willie Johnny's positions and their councils are inventions of these BIA employees who needed tribal "officials" to support a BIA scheme for Shoshone judgment fund distribution:

Western Regional director **Wayne Nordwall**; **Barry Welch**, **John Philbin**, and **Charlotte Johnson** of the Phoenix, Arizona BIA who were assisted by Eastern Nevada Field Office superintendent **Paul Young** and his staff and Court of Indian Offenses magistrate **Frederick Woodside Wright**. They were and continue to be supported in Washington by deputy commissioner **Sharon Blackwell** and **Daisy West** of Tribal Government Services.

Felix Ike is no person to speak for the Te-Moak Tribe. According to the 1937 BIA Northeast Nevada Census, the 1938 Te-Moak Bands Constitution, and the revised 1982 Te-Moak Tribe Constitution his family was, and he is, ineligible for Te-Moak membership. Elko Colony political factions contrived Ike's membership (based on, of all things, the Western Shoshone *aboriginal* area) and his chairman position was created and is propped up by the BIA. Ike has done no good for Shoshone people and has been all over the place on claims. In 1984 he threw away a $20,000 judgment in Docket 343-70. In 1994 he told the House Interior Committee that tribal chairmen represented only the people who voted for them. In 1995 Ike claimed Te-Moak chairman election with all of 24 votes. Two years later he touted on behalf of all Shoshone a claims payment based on his resolution 97-TM-10. In 2002 Ike claims a majority mandate to move a payment forward on the basis of 5,446 Te-Moak, Duckwater, Duck Valley, Ely, and Yomba tribal members. But his cohort Nancy Stewart's muddled numbers suggest fewer than 1,900 persons of unknown tribal affiliation or non-membership voted for payment. There are no true data because none of the Shoshone tribes has held a constitutional referendum on distribution.

Nancy Stewart is part of a claimed popular group made up of individual Shoshone akin to the Western Shoshone Judgment Fund Distribution Association of the late 1980's that attempted to get Shoshone judgment funds distributed twice, once by H.R. 3384 in 1990, then by H.R. 3897 in 1992. The first bill failed because the four Shoshone governments wanted a comprehensive settlement plan. The second died because tribal governments were working on plans and because Senate sentiment was for not just a payment only. The Clinton Administration Interior made a negotiation effort at senatorial urging but the initiative sank under the weight of bureaucrats' agendas.

BIA CLAIMS SKULDUGGERY

In March 1998, the Te-Moak Tribal Council created a local committee of four council and two tribal members to look into claims issues important to the Tribe. The committee was to investigate, report and recommend non-binding options on claims issues to the Council. Committee duties were to be performed under the Tribe's Constitution and committee work was limited to the Tribe's territory and membership. Two council members dropped out and the two remaining ignored the two tribal members and turned the committee's limited charge into a large-scale operation called a "steering committee." That group, without the sanction of the Te-Moak Council or any of the other three Shoshone tribes, took on a life of its own and began dealing with BIA Western Regional and Central Office BIA officials to promote a judgment fund distribution.

In May 1998, outside tribal law or tribal approval and without tribal involvement, the steering committee set a Hobson's Choice "vote" on a 100% claims money distribution at one-quarter degree eligibility (a *No* vote cast meant a person wanted no money at all). BIA police, Western

Regional director Wayne Nordwall, and both Nevada agency superintendents showed up for the proceedings. No one knows or will admit to what persons "voted."

After the claimed majority vote for judgment fund distribution, the Phoenix BIA prepared draft distribution legislation by October 1998 and transmitted its draft formally to the Washington BIA in December 1998. In January 1999 at a meeting in Phoenix, assistant secretary Kevin Gover; deputy commissioner Hilda Manuel and regional director Wayne Nordwall were confronted by Te-Moak chairman Elwood Mose about Shoshone being on a claims "hit list." Although all were involved in the steering committee/BIA effort to effect a judgment fund distribution, none admitted anything about his or her activity and dealings.

The Te-Moak Tribe never received a draft bill or any communications about such an effort from the BIA. Te-Moak was finally given a draft by Larry Piffero in council August 1999 whereupon the Te-Moak Council promptly withdrew a 1997 resolution for 100% distribution. In May 2000 chairman Elwood Mose and the Yomba and Ely Tribes' chairmen met with assistant secretary Gover and Daisy West about BIA meddling in Shoshone claims but were brushed off. The BIA has eviscerated its trust responsibility to the Shoshone and abandoned all standards of trustee conduct by its ethically repugnant claims activity and dealings.

BIA REPLACED TE-MOAK TRIBAL COUNCIL TO PROMOTE ITS SCHEMES

The lawful Tribal Council of the Te-Moak Tribe is that of which I am chairman. The independent actions of my 1997-elected Council to withdraw Te-Moak support of cash claims payoff and our modernized policy of freedom from BIA opinion and prejudice offended institutionalized BIA dependence. Our operations adversely affected the authority and profit of those persons who, for the past thirty years, have enjoyed Te-Moak politics and funds control under the BIA.

Te-Moak displeased the BIA such that BIA employees and their tribal favorites created an opportunity to advance their claims schemes and protect their local self-aggrandizing interests in the Te-Moak Council's **voiding 07 November 2000** an outlaw 02 October South Fork Band election and all four 23 October 2000 Te-Moak band elections. Elections were rendered null because of severe constitutional infirmities and numerous tribal election ordinance irregularities and because of the malfeasance, misfeasance, and nonfeasance of band election officials. Rerun elections were scheduled for February 2001. A complete account is attached.

The Elko and Phoenix BIA ignored formal Te-Moak Council election nullification documents and communications and accepted instead a 08 November self-proclaimed "certification" of elections by a rogue election board "chairman." BIA employees and tribal supporters organized a month long fax, phone, and mail campaign to destabilize the sitting Te-Moak Tribal Council.

Out of a phony "tribal chairman election" conducted 13 November 2000 from which result he claimed chairmanship, Felix Ike tried to take over the Tribe in early November. He failed. A takeover at Elko Band in mid-November failed. Then, in early December Ike hit on a new and successful tactic: he claimed a "terrorist threat" made by the Tribe to have him arrested if he tried

to take over Te-Moak offices by his fictional claim to office had been made. BIA employee and CFR magistrate Frederick Woodside Wright issued a restraining order on Ike's behalf the morning of 11 December 2000. That very afternoon BIA police evicted the legitimate Te-Moak Council from its headquarters then oversaw a triumphal parade of Ike and his supporters into tribal headquarters. Tribal employees were summarily fired and bank accounts seized.

After a hearing in the 25 CFR Te-Moak Court of Indian Offenses on the Te-Moak Council's motion to vacate his restraining order, Wright ruled that the BIA having faxed and mailed memoranda listing Felix Ike and others as tribal government officials and councils (based on the certification from the election board chairman) bound him to a BIA decision about who constituted Te-Moak government. In a motion to clarify or reconsider, the Te-Moak Council argued that the CFR court by judicial *coup d'etat* had itself imposed a change in the Tribe's governing bodies and public officials; and if the BIA had made a decision about who was in office, the BIA had given no requisite administrative appeal rights regarding that decision and could not enforce its decision but the CFR court was doing indirectly for the BIA what it could not do directly. Such a decision was beyond BIA authority. CFR magistrate Wright ignored 25 CFR 11.104 (b), "No Court of Indian Offenses may adjudicate an election dispute or take jurisdiction over a suit against the Tribe or adjudicate any internal tribal government dispute." Wright used 25 CFR 11.104(c), "The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses.", and twisted logic to justify his involvement in internal tribal matters.

The exact same situation of voided and rescheduled Te-Moak band elections occurred in 1994. Then, BIA officials affirmed the Tribe's right and authority to resolve internal disputes. But then, BIA officials and employees were not invested as they are now in what might prove ultimately to be a criminal scheme to effect distribution of Western Shoshone judgment distribution funds.

TE-MOAK TRIBAL SOVEREIGNTY AND SELF-GOVERNMENT SAVAGED

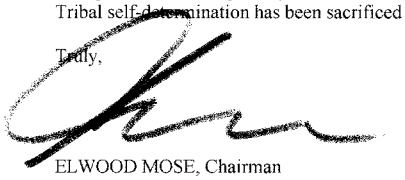
The BIA/Ike coup d'etat of Te-Moak government led to civil litigation in the United States Court for the District of Nevada. Following a 29 May evidentiary hearing, U.S. District Court judge Edward C. Reed issued 05 June 2002 an Order dismissing a Second Amended Cross Claim and Third Party Complaint in U.S. Bancorp, N.A. v. Ike, CV-N-01-067-ECR-RAM. The ruling, for the harm it does to Te-Moak and other Indian tribes, is being appealed to the 9th Circuit.

Despite a showing of facts and evidence that the BIA *never made a decision* about who was a Te-Moak official or council, Reed held that who Te-Moak's "officers" are is made by **designation** as accepted by the BIA. Te-Moak government now exists by BIA designation and the Tribe's Constitution has no legal weight. A BIA CFR judge can topple the Te-Moak Tribal Council simply by issuing a restraining order banning the Council from tribal headquarters. Reed bypassed all protocols relating to the trust relationship between the federal government and tribes and supported BIA involvement in an internal political tribal matter in spite of the fact that neither the BIA nor its court could get involved in an internal tribal matter. Judge Reed wreaked havoc with the distinct and clear meaning of words by holding that "designation" and "decision" is interchangeable.

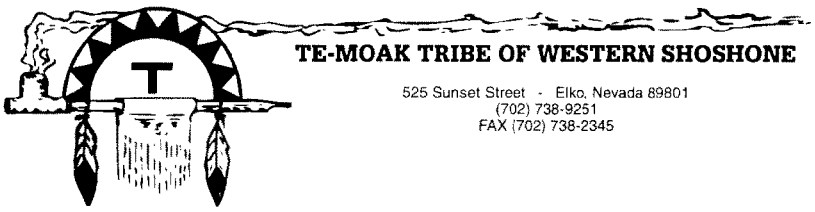
The District Court ignored Worcester v. Georgia, 6 Pet 515, 557 (1832); United States v. Mazurie, 419 U.S. 544, 557 (1975); United States v. Wheeler, 435 U.S. 313, 323 (1978); and Montana v. United States, 450 U.S. 544, 563 (1981). That "Indian tribes are 'distinct, independent political communities retaining their natural rights' in matters of local self-government", in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) and that, "they remain a 'separate people, with the power of regulating their internal and social relations'" is of no moment. How the BIA is to carry on government relations with a tribe—Goodface v. Grassrope, 708 F.2d 335 (1983)—is meaningless. The U.S. Supreme Court has been wrong for years. Indian tribes do not have the right to make their own laws and be ruled by them.

Arbitrariness and capriciousness is now a BIA standard in Indian affairs. Reed's ruling poisoned tribal sovereignty and self-government. Federal bureaucrats can *designate* (and evade making a *decision*) whomever they need into tribal office anytime it suits them. The ruling validates a dysfunctional archaic government agency that nurtures, inculcates, and rewards greed, profit, and corruption and whose primary character is one of no moral endeavor, no decencies, and no virtues. Tribal self-determination has been sacrificed to BIA pathology, BIA lawlessness, and BIA disorder.

Truly,



ELWOOD MOSE, Chairman
Te-Moak Tribe of Western Shoshone



TE-MOAK TRIBE OF WESTERN SHOSHONE

525 Sunset Street - Elko, Nevada 89801
(702) 738-9251
FAX (702) 738-2345

BIA: Bureau of (and for) Indian Abuse

The Lynching of Te-Moak Western Shoshone Tribe Self-Government

By Elwood Mose, Chairman, Te-Moak Tribal Council
Part 1 of 2, 19 January 2001

I. INTRODUCTION

In a 1994 article titled "The Worst Federal Agency" *U.S. News and World Report* reported that Congress had called the Bureau of Indian Affairs (BIA) a "national disgrace." The agency was according to one congressman, "the most pathetic example of government we have at the federal level." Pushing decision-making authority out of Washington to twelve area directors who dealt directly with tribes to improve Indian services had created instead bureaucratic fiefdoms "largely beyond the reach, influence, and discipline of Washington." Five years later, in August 1999 the National Academy of Public Administration politely reported BIA organizational and operational problems, the failure of a series of policies, and that the Bureau needed to build "credibility". Among regional tribal leaders the Phoenix, Arizona-based BIA Western Regional Office has a notorious reputation for a paternalistic good old boy style of handling Indian business. The BIA Eastern Nevada Field Office (ENFO) at Elko, Nevada is a backwater of achievement. Despite congressional and executive effort and initiative the BIA is unreconstructed and given totally to 19th Century administrative and management practices.

This paper covers Te-Moak Bands election nullification and how BIA schemes and involvement in the Tribe's internal affairs and how the alternative ends seeking and self-promotion of opportunistic Indians fouled up Te-Moak self-governance.

On 07 November 2000 the Te-Moak Tribal Council consisting of Elwood Mose, chairman and Leta Jim, vice-chairman, and members Jody Abe, Clarence Andreozzi, Lydia Johnson-Sam, Floyd Bill, Harvey Healey, Melanie Tom, Karen McDade, and Larry Piffero invalidated Band elections because they were infirm constitutionally: errors were committed and election officials violated Tribal

election law and the Tribal Constitution in conducting 02 and 23 October 2000 elections. A rerun election was set for 12 February 2001 with a chairperson election to follow. A tribal chairperson election would normally have been conducted within twenty-one days after Band regular elections but one could not be held without valid antecedent Band elections. One was not held.

Tribal election problems are routine and Te-Moak election invalidation would have been unremarkable had it not been for alternative outcome-producing election committee and claimed Tribal board member Ernest Aldridge who, knowing fully that elections were voided, claimed to certify them 08 November. Dishonest federal government bureaucrats at the Elko BIA jumped on Aldridge's claimed certification 09 November 2000, making it their task to recast another outcome to the voided elections by applying their authority and influence and positions and offices to promote, then install as their chosen councils, factions claiming to have been elected to Band councils and Felix Ike who claimed election to tribal council and chairman.

The method they employed was simple: BIA ENFO employees took Aldridge's letter, then issued and faxed widely their own memorandums noting his letter and lists of Band councils and members. They repeated the process following Aldridge's claimed certification of a 13 November Te-Moak council with Felix Ike as claimed chairman. The Phoenix BIA in turn faxed similar memos back to the ENFO creating a web of self and cross-verifying faxes. The result sought was achieved: elections couldn't *actually* have been voided if official BIA memoranda reported new councils and Felix Ike as new Te-Moak council chairman--after all, didn't the BIA have the final say so in Indians' affairs and self-government?!

BIA support gave Felix Ike the vigor to attempt a strongarm takeover of Te-Moak Tribe meetings, the Housing Authority, and Elko Band offices. He succeeded 11 December 2000. BIA police under the command of chief Troy Poitra enforcing a *coup d'etat* restraining order issued that morning on Ike's behalf by ENFO BIA 25 Code of Federal Regulations (CFR) Court of Indian Offenses judge F. Woodside Wright, swooped down on tribal offices and evicted the sitting Tribal Council; then stood by as Ike and supporters occupied offices, fired employees on the spot, changed locks, and assumed *de facto* Te-Moak Tribe control. Outlying offices had been or soon thereafter would be taken over by the Ike group.

The affair was a bizarre mirror image replay of a situation six years earlier--in October 1994 when the BIA became involved in Tribe-voided elections. Back then, the BIA recognized Te-Moak actions and used Bureau authority and resources to

hold Te-Moak Band and Tribal government in place until Felix Ike could be installed chairman in 1995 on the vote of 24 persons out of 544 registered voters!

II. FELIX IKE: CONTROVERSIAL POLITICO

In an interview with the *Elko Daily Free Press* 27 December 2000, Ike said, "Every time I run for tribal chairman there's always some sort of controversy." Speaking of the past Ike continued, "I was controversial back then and I don't think I've mellowed with age because I always questioned things."

In 1980, Ike, Larry Piffero, and Glen Holley brought suit in Te-Moak Court of Indian Offenses challenging the Te-Moak Council's authority to void an 01 October election in which they claimed to have been elected, and the Council's rescheduling another election 02 February 1981; they took issue too with a BIA solicitor's opinion that the Council could continue in authority until February. The rerun election was held and Ike and Piffero were elected to the Elko Community Committee (a Band forerunner) as members and Ike to the Te-Moak Council as chief. In April 1981 Ike and Piffero were petitioned for recall for "misrepresenting (Elko Colony residents)...neglected duties...and...morale problems." Ike's Council threw out the petition for unsubstantiated charges and because the 1938 Te-Moak Constitution did not provide for recall and no recall ordinance existed. Chief Ike pointed out "the council has sole authority to interpret the Constitution and By-Laws and make decisions based on those interpretations." Added Piffero, "...we can't go to the BIA for help...the way a lot of people are used to doing. We are drawing a line. We will never accomplish self-determination with the BIA doing everything. We are trying to quit our dependency on the bureau. We're more like (President) Reagan people. We are cutting out the fat."

A month later another Ike and Piffero recall petition was circulated for the reason they were both tribal employees and elected officials and refused to quit their jobs on becoming elected, creating conflicts of interest. The *Free Press* reported 11 May that Ike and Piffero were recalled 08 May. On 12 May 1981 Ike said, "This election has no validity whatsoever...it was voided by the Tribal Council before it ever took place." Ike said the council was the final authority on recall matters and its decision would stand. Ike said petitioners were "mistaken if (they thought) the Bureau of Indian Affairs will intervene...It's not their responsibility. The Tribal Council has the authority to declare this election invalid and that's exactly what the decision is." Ike added the election would be investigated. "Since the election was declared void,

we paid no attention to...balloting...we obviously have some questions about the voting and counting procedures that we'd like to have answered."

The newspaper reported 01 June that the May recall was investigated by the BIA. Superintendent Allan Core found the proceeding legal and declared that the Te-Moak Council was "bound to the results of the (recall) election." On 19 May 1981 Core "stated in a letter to all Council members that because of the violations committed by Ike and Piffero, the Bureau could no longer legally recognize them as Te-Moak Council members." Their positions were vacated and two new members appointed. On 04 January 1982 the *Free Press* reported the Tribe was "abuzz with controversy" over whether Ike and Piffero were Council members and a federal suit the two had filed. The duo had appealed superintendent Core's recall decision administratively. The Phoenix BIA vacated the superintendent's decision, saying he had "acted prematurely to involve the bureau in the intra-tribal affairs" of Te-Moak. But the superintendent still refused to recognize the pair as Te-Moak members. They appealed to Washington but the BIA assistant secretary denied their appeal 24 November saying that the Phoenix decision had left the Council "as it was up to May 19." The superintendent said 07 December he would recognize a "*de facto* authority" vested in the Te-Moak Council that did not include Ike and Piffero. They filed for an injunction in U.S. District Court 22 December 1981 that would restrain the BIA recognizing the *de facto* Council. They alleged the superintendent had acted beyond the scope of his duties and wrongfully interfered in internal tribal matters in violation of the constitution. The newspaper reported they hoped to "achieve a situation in which the BIA will stop interfering in the affairs of the tribal council which...has the authority to decide local issues without interference from...the BIA."

A two-page District Court decision in Ike et al. v. United States Dep't. of the Interior, 9 ILR 3043 was published May 1982. A federal judge found the Administrative Procedures Act, 5 U.S.C. 702 waived sovereign immunity where nonmonetary relief was sought by a person suffering a legal wrong or adversely affected by agency action or inaction and that Ike et al. had raised a federal question by alleging that they were denied a protected right to hold public office by a BIA official's action. The Court had subject matter jurisdiction. At hearing, the superintendent swore that he would not interfere with "the tribal forum's determination of the validity of the recall election and the council," and the case was held moot to that extent. "Determining that resolution of the dispute depends on the proper interpretation of the tribal constitution and by-laws, and finding the remaining issues to be an 'inter-tribal matter that should be resolved within the

tribe'," the District Court denied Ike's motion and stayed proceedings "pending exhaustion of tribal remedies." The Court retained jurisdiction if further exercise were necessary after tribal action. The ruling was a setback for Ike and Piffero. The Tribe was to decide on and resolve their dispute.

The matter returned to Te-Moak Court. The *Free Press* reported 06 April 1982 that Ike and Piffero were seeking an injunction to keep the persons who had taken their positions on the Te-Moak Council from acting as members. The Tribe operated with two councils. At hearing, judge Clarence McDade denied their motion according to a 21 April newspaper account. The business apparently came to an end about that time because a new Te-Moak Constitution was passed by Tribal members and approved by the BIA 26 August 1982 and a new election process came into existence. The dispute was to remain forever unresolved. Band elections under the new Constitution were conducted in October and the first Tribal chairperson election was held 19 October. Ike and Piffero were "apparent winners (in) the (October) 19 election," the *Free Press* reported. The election was voided on protests of counting procedures and another chairperson election was scheduled 06 December 1982. Ike was elected chairman then.

Ike remained controversy-free until 1986. A newspaper account 08 July of that year told a Te-Moak judge had ruled a South Fork Band petition against Ike valid at a 03 July hearing. According to the 21 July *Elko Daily Free Press*, the last item of many charges in the petition stated "Ike had a 'meeting with assistant secretary of Indian Affairs Ross Swimmer behind closed doors at the Treaty negotiation meeting in Washington, D.C., once again showing his complete disregard for tribal representatives and National Council policies.'" On 21 July Ike said that Swimmer had invited him into his office to discuss the Ruby Valley Treaty and "I felt it was a privilege and honor that the assistant secretary recognized the Western Shoshone Representative to meet with him and talk about the land claims issues in regard to the Treaty of 1863. I did not make any obligations on behalf of the Tribe." Ike survived the recall and apparently did not become involved in major Te-Moak controversy again until 1995.

Ike has figured prominently in Tribal disputes for two decades and prospered in Te-Moak affairs despite serious questions raised about how he and others became eligible for membership in the Te-Moak Tribe. When Te-Moak came into existence under the 1934 Indian Reorganization Act, the 01 January 1937 Carson Agency Northeastern Nevada Census Roll of Shoshone Indians residing within the Te-Moak **Bands** territory became the only list from which Tribal membership was drawn

under the 1938 Te-Moak **Bands** Constitution. The revised 1982 Te-Moak **Tribe** Constitution qualified the official census into Rolls 1 and 2 but the 1937 Agency census roll listing requirement remained. Ikes are not listed on the Agency Roll.

III. TE-MOAK INVALIDATION OF THE 2000 ELECTION

On 11 August 2000 the Te-Moak Council established a 23 October 2000 regular election date and a calendar of events pursuant to election ordinance No. 99-ORD-TM-02 adopted 20 August 1999.

Ten candidates ran for office at Battle Mountain Band, nine at Elko, four at South Fork, and ten at Wells Band. A total of 541 Band voters were eligible to vote: 116 at Battle Mountain, 303 at Elko, 81 at South Fork, and 40 at Wells Band. On 06 October, the Council found that Battle Mountain Band had proceeded with a different date of election events but its election process was geared to 23 October. There was a major problem with the South Fork Band (Part IV.). Ballots were prepared and election committees took possession of them 19 to 22 October. Absent ballots mailings were a problem. All four Bands held elections 23 October. Battle Mountain, Elko, and Wells Bands had enough candidates to constitute seven-member councils. South Fork, because only four candidates stood for election, would have to schedule a special election for three additional members to make up a full seven-member council.

The Te-Moak Council scheduled a meeting 26 October 2000, notifying Bands and election committees that the Council would review election conduct after which, providing all was in order, the Tribal Council would prepare a resolution conveying certified Band election results to the BIA pursuant to 23 October 1998 protocol established by acting Eastern Nevada Agency (ENA, now ENFO) superintendent Merle Zunigha. A widespread power outage occurred 26 October. The meeting was rescheduled for 01 November 2000, the Tribal Council's regular first Wednesday monthly meeting day. A tribal member died and observing a tradition that meetings were not held in such an event, the Tribal Council reset the meeting for 07 November.

At the 07 November 2000 meeting, the Tribal Council could not determine whether or how Bands followed the election ordinance. The Tribal Council understood election committees had failed to provide the Tribe with required documents and notice of committee or board members prior to the election, that they had not provided for voter sign-ins on election day, that they had not certified

elections within five days of 23 October, that two family members were on the Wells council outside the election ordinance, that South Fork's 02 October election took place not only outside the election ordinance but outside the Te-Moak Constitution, that the 23 October South Fork election in which four candidates were elected successfully to the Band Council was deliberately ignored by both the South Fork election committee and the Tribal election board; and that election committees had failed to inform the Tribe how the Tribal election board had come to be constituted, how it handled disputes and the process it followed and procedures it used to hear disputes.

The Te-Moak office had received a copy of a Battle Mountain protest 31 October and two Elko protests 24 October. There may have been protests at South Fork and Wells. Under the election ordinance protesters were entitled to a due process protest hearing. Ernest Aldridge who identified himself as election board chairman and apparently speaking for both the Band election committees and board 07 November would provide only little election information to the Council. Taking together the lack of information about the conduct of Band elections and that the election ordinance had not been followed and that election errors and violations occurred, and having determined in Resolution No. 00-TM-30 adopted 27 June 2000 that the Te-Moak Tribal Council was "**the forum for internal tribal and band government disputes**", the Te-Moak Council invalidated all four Band elections in Resolution 00-TM-67 and set in Resolution No. 00-TM-68 a replacement election to be held 12 February 2001. Because of the invalidation no subsequent tribal chairperson election was to be held nor could one have been conducted absent requisite prior Band elections. Pre-23 October Band Councils would continue in office until February 2001 under the Te-Moak Constitution Article 4, Section 11. (b) that "The regular term of office shall be three (3) years in length and until successors are duly elected and installed."

IV. TE-MOAK SOUTH FORK BAND INSURGENCY AND TE-MOAK-VOIDED SOUTH FORK ELECTIONS

Beginning May 2000, the Te-Moak Council became aware that the South Fork Band election committee at Band direction was removing tribal voters in conflict with Tribal law for having accepted Northern Paiute and Klamath claims docket judgment fund awards. South Fork also would not accept new voter registrations with forms prepared under the new 1999 Election Ordinance. South Fork was to cause further trouble.

On 08 August, three days prior to the Te-Moak Council setting the 23 October 2000 Band regular elections date, South Fork's council told it refused to follow the 1999 ordinance and urged other Bands to hold elections under repealed ordinance 96-ORD-TM-04. On 15 August South Fork wrote BIA director Wayne Nordwall of its decision to use the repealed ordinance and requested "any options you may initiate." On 21 August community members were notified by letter that the "South Fork Band Council determined the 99-ORD-TM-02 Election Ordinance is void." South Fork would hold its 2000 election "the first Monday of October, October 2, 2000" and voters were to vote on their own "constitution and run their own business completely." The 1982 Te-Moak Constitution had been "forced" on South Fork. The election committee chairman claimed the new ordinance "was not received by South Fork Band Council or approved by the Eastern Nevada Agency or Phoenix Area Office."

The next month, on 15 September, South Fork wrote reservation residents that the "Te-Moak Council set up all the elections; this is in direct violation of the Tribe's Constitution. The South Fork Band will not accept this and will have our own election according to the Band's 1996 Ordinance; this will be on October 2nd 2000." On 19 September the South Fork election committee chairperson wrote to Te-Moak that, "We, as the Election Committee for South Fork will not be attending your meeting on the 22nd of September. We will stand by our 1996 Election Ordinance and will abide by it...Te-Moak...has no authority to review our actions...there is no proper forum to review any actions by Band election committees." On 22 September the Tribal Council adopted Resolution No. 00-TM-49 that declared a 02 October South Fork-set election and the process leading up to it to be invalid and not to be recognized. On 26 September South Fork faxed to Te-Moak an "Eligible voters List + our OFFICIAL Candidate List for your information. Once again our Election Day will be on October 02, 2000." On 29 September South Fork wrote Te-Moak "The Tribes Constitution was set up to allow each Band their own Democratic Type of Government this was done under the Indian Reorganization Act and was done to allow all Tribal input in their Governmental Actions...the TE-Moak (sic) Council is supposed to be an Entity set up by the Bands and do not allow the Band Council input in the Te-Moak actions. This is ' why the South Fork Band Council will hold their Democratic Elections as set by the South Fork Election Committee...we will not allow (Te-Moak) to have any say in the Elections and will not recognize your Election Committee or any of their actions to set up South Fork Elections."

South Fork held a 02 October election in which thirty-two people took part and its election committee certified the election the same day. South Fork faxed out its "Official Tally Sheet" and list of persons elected 05 October. Then on or about 05 October Reno-Sparks Tribe-contracted Nevada Inter-Tribal Court of Appeals BIA-appointed judge Clarence McDade popped up on the South Fork Reservation to swear in council members. On 06 October the Te-Moak Council enacted Resolution No. 00-TM-64 declaring the self-declared and constitutionally irregular South Fork election a nullity and not to be recognized by any entity. On 16 October South Fork wrote to all Bands that, "South Fork had their 2000 Election." On 17 October its election committee wrote the Te-Moak Council stating that, "We...are opposing Chairman Mose's proposed October 23, 2000 election for the South Fork Band. We have conducted our election on the 2nd of October as defined and spelled out in the Te-Moak Tribal Constitution...we have followed all items and schedule of events concerning 'Band Elections' to the letter, as set forth in the tribal Constitution governing all Bands and the Te-Moak Tribal Council, one which we should be following and abiding by." On 24 October South Fork wrote the "Te-Moak Election Committee" that South Fork had "their elections" and "The legal South Fork Band Council does not recognize this (23 October) election..." "There is so much confusion among tribal members that did not read or be involved in this election ordinance 99-ORD-TM-02. We feel that this ordinance was not properly introduced or adopted by all bands as our constitution has provided for."

South Fork, with full BIA knowledge that its 02 October election was conducted extraconstitutionally and **ruled invalid twice** by the sitting Te-Moak Council, conducted business and although it had extensively denigrated the Te-Moak Tribal Council, promptly sent representatives to an Aldridge-certified Te-Moak council whose alleged Battle Mountain, Elko, and Wells members claimed election by a later election date and under a different election ordinance!

V. BIA INVOLVEMENT CREATES A DIFFERENT OUTCOME TO 2000 TE-MOAK-INVALIDATED ELECTIONS

On 07 July 1999 the Te-Moak Council proposed a new election ordinance and sent the draft ordinance to its four Bands for comment. The ordinance was aimed to effect elected government reform by making Te-Moak Tribal and Band government more open and accountable, allowing all eligible tribal members to vote, prohibiting immediate family members from serving together on councils, and forbidding elected officials from tribal or band employment. The BIA was requested to review the ordinance for secretarial approval for it to be enforceable in the Te-Moak Tribe's

BIA 25 CFR Court of Indian Offenses. On 20 August 1999 BIA Area director Wayne Nordwall wrote Te-Moak that its draft had not been "formally submitted" to the BIA and that the ordinance "as it is currently written...most likely will not be approved for the Te-Moak CFR court to enforce."

The Te-Moak Tribe Constitution provides that proposed ordinances are delivered to "each Band office for review and comment by the Band, at least ten (10) days but not more than forty-five (45) days, before a vote is taken on such proposals by the Tribal Council." After a forty-three day comment period at an open Tribal meeting 20 August 1999 at which only tribal members voiced comment and no Band representatives other than Tribal Council members took part, the Te-Moak Council adopted Election Ordinance 99-ORD-TM-02. Official copies were provided the Bands. The Bands were sent the officially adopted ordinance again in January 2000.

On 19 October 2000, ENFO superintendent Paul Young questioned the Tribe why a full forty-five days did not elapse before the 1999 election ordinance was adopted. Young demanded, "it will be necessary for your office to provide us copies of your cover letter(s) and the dated draft ordinance that was transmitted to the band councils for review. This is to ensure that the Band Councils were provided with the required 10 day review time frame as set forth in the Te-Moak Constitution Article IV, Section 20 (b)." The Tribe invited Young and staff to attend the election review scheduled for 01 November. Young declined 31 October stating archly that the BIA "does not intend to get directly involved in the Band Councils internal election dispute(s)." Young was correct. The BIA used indirection to get involved.

On 07 November, the very day that the Te-Moak Council invalidated the 23 October elections, Young wrote to Willie Johnny as chairman of the Wells Band about "newly elected council members and supporting resolution(s)."

On 09 November at 17:06 hours ENFO tribal operations specialist Susan Hernandez faxed a memorandum regarding Ernest Aldridge's certification of "Band elections held on October 2, 2000 and October 23, 2000" with a copy of Aldridge's 08 November letter to Paul Young and the message, "Te-Moak Band elections certified" to Sharlot Johnson, BIA Western Regional Office Tribal Government Services in Phoenix. On 13 November, the ENFO time-stamped personal delivery of a Te-Moak Tribe 25 Code of Federal Regulations administrative Notice of Appeal regarding the invalidated 02 South Fork election and all four Bands' invalidated 23 October elections.

On 16 November at 8:52 A.M Norma Allen of the ENFO faxed for Paul Young to all ENFO tribes five pages of a "Certification For Te-Moak Tribe Election". The fax included Hernandez' 09 November fax on Band elections. At 9:27 A.M. Allen faxed four pages of "Te-Moak election results" to all ENFO Tribes. The fax included a 15 November memorandum on "Te-Moak Tribal Chairperson Official election results" from ENFO acting superintendent Pete Lefebvre to Sharlot Johnson and a 15 November letter to Paul Young from Ernest Aldridge that the "Te-Moak Tribal Election Board officially certified the results of the Te-Moak Tribal Chairperson Election that was held on November 13, 2000. The Certification was held on November 14..."

On 17 November Susan Hernandez faxed a station identification unmarked "Memo on Te-Moak election results" to all Band Councils and the Te-Moak Office. The accompanying memorandum was from ENFO acting superintendent Ann J. Adams that in part read, "Per discussion with the Western Regional Office, Tribal Operations Officer Sharlot Johnson, on this date. This memorandum re-affirms our transmittal of the Te-Moak Band & Chairman elections. Please be advise (sic) *this is not a Bureau certification of the elections results*" (emphasis added). Adams then wrote further the election board had certified results in accordance with the Te-Moak election ordinance. As to earlier ENFO faxes, Adams wrote, "Our office is not rescinding any of our previous memorandums regarding the elections." Hernandez had prepared the memo only after the Te-Moak Council complained bitterly to Johnson what had been taking place since 09 November at the ENFO and after Felix Ike had attempted to take over a Te-Moak Housing Authority meeting and Elko Band offices.

On 06 December in an unmarked fax misdated "10/06/00" Susan Hernandez faxed for Paul Young to the Te-Moak office Young's 06 December 2000 letter returning Te-Moak Resolutions No's. 00-TM-74 through 77 and No's. 79 and 80 as being in conflict with the "enacted election ordinance and the constitution." The Resolutions addressed problems created by the BIA and Felix Ike and his supporters. Young also wrote "the appellate court of the Tribe shall be the finals interpret (sic) of this Constitution and tribal law." Young stated the Te-Moak election ordinance was the "controlling document regarding elections", that the board had certified Band elections and the Tribal Chairman election and that the ENFO had received those documents and transmitted them to Phoenix. Young finished with, "Please note the Bureau of Indian Affairs does not certified tribal elections' (sic) that is the charge of the Election Board."

The Te-Moak Tribal Council met with Paul Young 06 December and faxed him a letter about the meeting subject: reasons why Band elections were invalidated and Ernest Aldridge's actions and his having certified elections 08 November **after** the Band elections had all been voided 07 November 2000. The letter was received at the ENFO at 5:42 P.M. In an unmarked fax later that evening Susan Hernandez faxed for Young the Tribe's own letter back to it.

On 07 December 2000 Susan Hernandez sent an unmarked fax cover for Young to the Tribe with a letter from Young dated 07 December that read, "This is in response to your letter of December 6, 2000, regarding your concerns. First of all, there was an established election board appointed by the respective band councils. These band election committee members served on the election committee as well as the board. More over any discrepancy need to be address (sic) to the Te-Moak election board. Therefore, the election of October 23, 2000 have (sic) been certified by the Te-Moak Election Board and the council members are hereby elected, pursuant to the 99-ORD-TM-02 and are listed below." A nine member Te-Moak Council led by Felix Ike was identified as well as seven members of each of the four Bands. Harvey Healey was listed on both the South Fork and Wells Band councils. On 08 December Hernandez faxed a memorandum to the Bands and Tribe that "some typo-graphical errors were made in the letter of December 7, 2000, that was telefax (sic) to your offices yesterday afternoon. Please disregard the first draft received and replace it with this one." The corrected letter from Young was still dated 07 December but had been changed to read, "Therefore, the *elections of October and November*, 2000 have been certified by the Te-Moak Election *Committees/Board...*" (emphasis added). A seven member Te-Moak Council was identified and Harvey Healey was listed only on the Wells Band Council.

On 11 December the Tribe received for the first time Young's name-stamped memorandums dated 08 November and 09 November and sent to Sharlot Johnson. The memoranda listed the four Aldridge-certified Band councils. Members of the Battle Mountain council had generated Resolution No's. 00-BM-20 and 21 to list themselves 06 November and forwarded their election committee Official Tally Sheet to the BIA. Elko Band Resolution No. 2000-EBC-39 approved 04 November listed the Elko council. Elko included a copy of its 04 November meeting minutes. Members of the South Fork council elected 02 October were listed on Resolution No. 00-SF-45 approved 26 October but were misidentified by the BIA as Wells Band. South Fork sent its election committee Official Tally Sheet certified 02 October. Wells Band Resolution No. WBC-000-01 approved 05 November certified the Wells council members elected 23 October. Wells included oaths of office for

Band officers. The Te-Moak Tribe received not one of the documents sent by the Bands or Ernest Aldridge to the BIA.

On 11 December ENFO awarding official Ann Adams sent Willie Johnny a letter confirming that he was terminating all Wells law enforcement officers and stated, "The Bureau has sent the attached letter *recognizing* the new council" (emphasis supplied). The letter was Young's corrected 07 December letter to the Te-Moak Tribe.

At 15:27 hours 12 December 2000 Sharlot Johnson faxed for BIA Western Regional Office director Wayne Nordwall a signed "informal response" to Attorney Charles Zeh about Te-Moak. Nordwall wrote that the BIA had "...no role or authority to impose solutions to inter-tribal problems." Nordwall stated "The Bureau is not following the protocols set forth in our October 23, 1998 letter to Chairman Mose because the Te-Moak Tribe changed its election ordinance on August 20, 1999." He continued, "We are to the best of our ability attempting to follow the terms of the Tribe's ordinance. Thus, the Superintendent's letter of December 7, 2000 didn't certify any results or elect any council members. Only the election board can certify results and only the membership can elect council members. The letter merely reported the results 'certified by the Te-Moak Election Board Committee/Board' (sic). Any contests, disputes or other questions raised about the election or the certification have to be addressed by the Tribe through whatever mechanism it has in place to resolve such disputes as the Bureau lacks the authority to resolve those disputes." Nordwall closed, "As in all cases affecting the Bureau's dealings, if any party believes the Bureau took an inappropriate action in regard to any matter affecting their interest, they have the right to appeal that decision pursuant to 25 CFR Part 2." The BIA director dispensed tersely with his agency's usual one hundred fifty plus words statement of obligatory appeal rights to notify a party of a right to appeal a BIA decision.

At 14:27 hours on 15 December acting Western Regional director Barry Welch faxed to BIA agency superintendents and officers-in-charge, Western Region branch chiefs, Western Regional Office a memorandum that read, "On November 13, 2000, the Te-Moak Tribe held its tribal election. As a result, the Te-Moak Tribe consists of the following individuals" and listed Felix Ike and eight other persons and asked that all correspondence be addressed accordingly. Acting as BIA regional director, regional forester John Philbin sent a similar memorandum the same day.

On 03 January 2001 the ENFO date-stamped received four 21 December 2000 Wayne Nordwall-signed memoranda reading similarly that each of the four Te-Moak Bands, "held its tribal election. As a result, the...Band Council consists of the following individuals...Please address all correspondence accordingly." Nordwall wrote Battle Mountain held its election 06 November 2000, Elko Band 23 October, South Fork 02 October, and Wells Band 23 October.

VI. TE-MOAK BIA 25 CFR COURT & BIA-APPOINTED JUDGE ARE PART OF THE FEDERAL GOVERNMENT

The Department of the Interior (DOI) BIA published in the 21 October 1993 Federal Register final rules for law and order on Indian reservations. The BIA revised its 25 Code of Federal Regulations governing Courts of Indian Offenses to provide those courts with a complete and updated code of laws and to clarify the jurisdiction of those courts and their relationship to tribal governments and the Interior Department. The new rules provided for the applicability of the Federal Rules of Civil Procedure (FRCP) to BIA CFR courts. On page 54407 under Analysis of Comments and Changes Made to Proposed Regulations, the BIA wrote, "It is clear, however, that Courts of Indian Offenses are part of the Federal Government. *United States v. Red Lake Band of Chippewa Indians, 827 F.2d 380, 383 (8th Cir. 1987), cert. Denied, 108 S. Ct. 1109 (1988)*. Their involvement, without the consent of the tribal government, in tribal government disputes, is an unwarranted interference in tribal affairs. Unless the tribal government requests it, Court of Indian Offenses should not become a competing forum for those matters."

ENFO pays for CFR Court operation through Aid to Tribal Government and Executive Direction BIA congressional appropriations. Added funds for the ENFO judicial section are reprogrammed from federally funded Te-Moak Tribe Tribal Priority Allocations to the ENFO. BIA CFR judges are appointed by the DOI Assistant Secretary – Indian Affairs and for compensation are termed "intermittent, no predetermined tour of duty, compensated when actually employed, not entitled to overtime." CFR personnel fall under the administrative authority of the superintendents. The BIA ENFO CFR magistrate's job description provides the incumbent of the position "will be a professional attorney" who functions under the general administrative direction of the Tribal Operations Officer, Eastern Nevada Agency. "Technical advice on interpretations of laws or regulations or court procedures is not available..."

VII. RECENT BIA CFR COURT TE-MOAK DISPUTE DECISIONS

On 01 March 2000 in Resolution No. 00-TM-12 the Te-Moak Tribe authorized the CFR Court to adjudicate "any internal tribal government dispute...involving the Te-Moak Tribe and all or each of its four Bands..." The authorization was short-lived. The Tribe rescinded it by Resolution No. 00-TM-29 passed 27 June 2000. The same day the Tribal Council adopted Resolution No. 00-TM-30 that specifically forbade the CFR Court from adjudicating election disputes or taking jurisdiction over a suit against the Tribe or adjudicating any internal Tribal government dispute. The "Tribe may not be sued in the...Court of Indian Offenses." Additionally Te-Moak did not waive its tribal immunity and lastly, "the Te-Moak Tribal Council shall be the forum for internal tribal and band government disputes."

In Case No. SF-CV-004-99 involving a dismissed Tribal employee, BIA CFR judge Woodside Wright determined in 1999 that the Te-Moak CFR Court was a federal court and that the court had not been provided with "specific authority to take jurisdiction" of a case against the Tribe.

On 29 September 2000 in a filing of a motion accompanied by a resolution attempting to confer jurisdiction on the Court by the South Fork Band to "disallow the Te-Moak Council...to disrupt the South Fork Election being held on October 2, 2000." BIA Judge Woodside Wright denied the motion writing "A CFR Court has no jurisdiction on an election dispute or intra-governmental dispute without specific resolution allowing the Court to act. Here only one Council has a resolution. Thus there is no jurisdiction."

On 08 August 2000 in Case No. EC-CV-018-00 relating to an attempted removal by Elko Band of its representative to the Tribal Council Leta Jim and Elko Band's application for a restraining order, judge Wright cited Resolution No. 00-TM-29 removing all jurisdiction granted to the Court on disputes and dismissed the proceeding. Wright wrote, "While the court believes Plaintiff Elko Band's arguments are well taken for application in a Tribal Court setting, this court is not a tribal court. It is a CFR court setting at request of the Te-Moak Tribal Council and subject to such jurisdiction in internal governmental disputes as the tribal council grants, or limits. The Tribal Council granted limited jurisdiction under 8 (sic) CFR 11.104 (b). It then removed that jurisdiction. It has the power to so act. There is no tribal constitutional barrier to such action when CFR court jurisdiction is at issue. Without the support of an effective Tribal Resolution for jurisdiction the CFR court

cannot enter an enforceable order or judgment relating to an 'internal governmental dispute.' The substance of this matter is such a dispute."

In previous Case No. EC-CV-015-99 involving the same parties BIA Judge Wright on 26 July 1999 had issued a temporary restraining order preventing the Elko Band Council from removing Jim. Acting ENA superintendent Chester Mills wrote the judge 05 August 1999 to enquire whether the Court possessed a Tribal resolution or ordinance for it to take subject matter jurisdiction over election disputes or any internal tribal government disputes and, "If no resolution or ordinance has been enacted to grant the Te-Moak CFR Court jurisdiction over election disputes or any internal government disputes, then I advise you to take immediate action to rescind your restraining order against the Elko Band." Judge Wright dissolved his order 13 August 1999.

In 17 August 1999 correspondence to Leta Jim about her action involving due process and civil rights and her concern about Mills' letter, BIA PAO director Wayne Nordwall wrote that "There is no federal forum for resolution of civil rights violations by Indian Tribes. Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978). The CFR Court...is a federal forum." Nordwall iterated the CFR Court not taking jurisdiction per 25 CFR 11.104 unless the Tribe consented to be sued. Nordwall said although Brady v. Acting Phoenix Area Director, 30 IBIA 294 (1997) "...involved an election dispute, the same analysis applies to this case." The Tribe could choose whether or not to vest civil rights jurisdiction in the Court. Nordwall concluded, "Magistrate Wright will have to review Mr. Mills's letter and the CFR and determine whether he wishes to continue to exercise jurisdiction over this matter. If he decides to retain jurisdiction, it is up to the Tribe to decide if it wishes to vest jurisdiction in the CFR court, to file a motion to dismiss or take other action in response to any orders Magistrate Wright might issue."

On 16 November 2000 in Case No. EC-CV-05-01 Judge Wright issued a temporary restraining order applied for by Jody Abe who had become Elko Band successor chairperson under Te-Moak Resolution 00-TM-67 (1997-elected councils stay in office until the 2001 replacement election) after Wilbur Woods had resigned from Elko Band 15 November. Abe had fired a Davis Gonzales and Gonzalo Mendez and sought to keep them from entering "into or upon the premises of the Plaintiff's place of business..." On 17 November Wright rescinded his order based on receiving Ernest Aldridge's 08 November letter and one of the BIA's 08 or 09 November memorandums. Wright wrote, "...this court must accept as council members those persons recognized as such by the Bureau of Indian Affairs."

Wright noted that filings in the case were related to election dispute Cases No's. EC-CV-05-01 and EC-CV-06-01 and "this court does not have the authority to adjudicate an election dispute." On 28 November Te-Moak amended Resolution 00-TM-67 by Resolution 00-TM-80 and recognized formally Abe as chairperson.

On 16 November in Case No. EC-CV-06-01 Elko Band Council, and Wilbur Woods as 23 October council member and former Elko Band chairman, and Felix Ike as 23 October council member and 13 November Te-Moak chairman applied for a restraining order against Jody Abe, Leta Jim, and a BIA police officer. On 22 November Wright "attempted to weigh through the documents presented to ascertain if there is any matter or issue justiciable" before his court. Wright determined "the only matters that are under the jurisdiction of a CFR court are matters of personal safety for each of the named individual parties." The court could not "become involved in the internal affairs of the governing body of the tribe or band." The cases "appear to be direct attempts of the parties to embroil this court in either an election dispute or in internal governmental matters. Neither is permissible." Wright ordered the parties not to bother each other and dismissed complaint against Elko Band. Judge Wright denied Abe and Jim's motion to modify his order on both cases 04 December saying, "...this matter continues to be out of the jurisdiction of this court, except for the purpose of maintaining civil order. Each of the parties invites the court to address internal affairs of the governing body, and implicitly to adjudicate an election dispute. The court declines the invitations..."

VIII. BIA 25 CFR COURT A FELIX IKE PARTISAN

On 11 December in Case No. EC-CV-09-01 on Felix Ike's application as 13 November Te-Moak chairman BIA CFR judge Wright issued a restraining order against Tribal chairman Elwood Mose and members of the Te-Moak Tribal Council. Mose and the Council members were restrained from harassing plaintiff Ike and **additionally were prohibited from entering tribal government offices and ordered to vacate Te-Moak government offices.** BIA Law Enforcement Services police evicted Te-Moak Tribe officials from their offices the afternoon of Monday, 11 December. Following an 18 December hearing on a motion filed by Mose et al. to vacate his order, Wright issued a memorandum order 19 December denying the motion. Relying on 25 CFR 11.104 (c) "The decision of the BIA on who is a tribal official is binding in a Court of Indian Offenses", the judge wrote, "The BIA has presented, in two separate memorandum (sic), notice that the Te-Moak Tribal Council consists of Felix Ike" and others. He cited one or the other of BIA ENFO superintendent Young's two 07 December 2000-dated letters; and acting BIA

Western Regional director Barry Welch's 15 December memorandum to BIA offices that "the Te-Moak Tribe consists of the following individuals" and listing Felix Ike and Larson Bill, Vice-President **or** acting BIA Western Regional director Regional Forester John Philbin's 15 December memorandum listing Ike and Larson Bill, Vice-Chairman. As for the Te-Moak Council members arguing Brady, Wright wrote, "This assertion is without basis. In Brady the election at issue was a recall election." Election Ordinance 99-ORD-TM-02 provided a dispute mechanism and the BIA had received notice from the Tribal election board chairman that disputes had been reviewed and found null. "Any dispute was resolved by a Tribal forum and responded to by the BIA." As to the Tribal Council members raising 25 CFR 104 (c) (sic), "the letter from Superintendent of Eastern Nevada Agency dated December 7, 2000 is a decision" and that bound Wright, he wrote, as to who was a Tribal official as well as did one of the two memorandums from Phoenix. Wright's order limited the contacts of the individuals named in the case. He concluded the court had "no jurisdiction over any dispute arising from the several elections occurring within the Te-Moak Tribe during October and November 2000 *if in fact there is dispute is* (sic) *remaining*" (emphasis supplied). Te-Moak Resolution 00-TM-30 limited the court's authority to adjudicate internal governmental disputes Wright continued and, "The court's decision today does not address or resolve any such dispute. That dispute, *if there is such left for resolution, is properly before a different tribunal.*" (emphasis added). Wright ended, "the court limits its order to maintain the peace for those individuals named on the caption of this proceeding."

On 21 December 2000, Judge Wright denied a motion by Ike to compel local banks to release funds to him et al. based on the 19 December order in Case No. EC-CV-09-01. Wright wrote, "Motion denied. This court does not have jurisdiction over the named banks."

On 21 December Defendants filed a motion to clarify or reconsider arguing that judge Wright agreed with them that the CFR Court had no jurisdiction to decide disputes over membership on the Tribal Council, that it had no authority to hear intra-tribal disputes, and that the Court was limited to enter orders to keep the peace and only to the extent necessary to maintain the peace. Yet the Court had done more than it said it could do by having the Tribal Council evicted from its offices. The Court had by judicial *coup d'etat* imposed a change in governing bodies and public officials. The Court said it was following a "decision" made by the BIA as who was a Te-Moak official when the BIA had given no requisite appeal rights to its "decision" and thus could not enforce its "decision". The BIA Court did indirectly what the BIA could not-- enforce the BIA's 07 and 15 December letters. The BIA

had no role in deciding tribal election disputes. The BIA and its Court had no basis to pick and choose between tribal factions or recognize one group over another that resulted in the removal of incumbents from office or replace one government with another regime. In fact, Wayne Nordwall, Western Regional Office director had written 12 December that the "BIA's position in internal tribal disputes is that we have no role or authority to impose solutions to inter-tribal problems."

On 29 December Judge Wright denied the motion to reconsider, writing that the Defendants "continue to misapprehend" the Court's jurisdiction and that "the letter of December 7, 2000 is a decision of the BIA (as to who was a tribal official). This court has no jurisdiction to address the manner or method of the issuance of that letter." There was also no reason to dissolve the 11 December restraining order.

On Friday, 05 January 2001, plaintiff Ike filed a motion for the 11 December restraining order to remain in place for another thirty days, saying the Defendants had continued to dispute Ike's election and that civil order and public safety needed to be maintained by order continuation. Ike maintained the Defendants had interfered with local banks (Te-Moak Tribe and Housing funds had been frozen) and banks had refused to release funds for the Battle Mountain and Wells Bands and caused the Tribe and Bands "in effect to shut down essential day to day functions." The absence of a restraining order would likely present a breach of the peace by the Defendants, Ike averred, and they would "continue to frustrate the ongoing Tribal Administration." The Court had helped keep the peace during "a time of high tensions throughout the entire Tribe. The Court must keep the restraining order in place, and should extend it until the disputes to the recent elections are resolved..."

On Monday, 08 January 2001, at 2:35 P.M. the Te-Moak 25 CFR Court clerk advised the Defendants that a response to the motion was due by 5:00 P.M. that very afternoon. In responding, Defendants reiterated the Court's lack of jurisdiction, that there was no BIA decision to enforce, and that Federal Rules of Civil Procedure (FRCP) governed the Court's operations and that Ike's pleading was not verified nor supported by affidavit and consisted of speculation, ruminations, and claims with "no factual predicate before the court from which to rule." Defendants further responded that they were in the BIA Court for the limited purpose of challenging its jurisdiction and that they were "under the compulsion of the process itself" and not voluntarily there. Because the Court had effectuated a *coup d'etat* by *ex parte* restaining order, an action "egregiously beyond the jurisdiction of the court and Rule 65, FRCP" such excess could not be perpetuated and no further relief granted until a full evidentiary hearing was conducted. On 09 January 2001 Judge Wright

denied Ike's motion stating, "Defendants objection is well taken at this time. Plaintiff provides no support of this request to continue the Restraining Order by affidavit, verified motion, or otherwise, that shows an immediate necessity to continue the Temporary Restraining Order. This court will not continue it's (sic) order of December 11, 2000 absent such a prima facie showing."

IX. TE-MOAK 1994 ELECTION INVALIDATION

In 1994 Te-Moak Bands held regular elections 25 October under Election Ordinance 93-ORD-TM-04 enacted 03 June 1993. Fifty-nine candidates ran for office and 328 persons--sixty percent of the Tribe's 544 eligible voters--cast ballots. One election protest was made at Battle Mountain, none in Elko, one was made at South Fork, and three were made at Wells. Band election committees per the election ordinance certified their election results 29 October. The Tribal Election Board chairperson swore in new council members 31 October. On 01 November 1994 the Te-Moak Council, citing constitutional authority and numerous election ordinance violations passed Resolution No. 94-TM-44 invalidating Band elections and set 02 January 1995 as a new election date. Resolution No. 94-TM-45 moved the election date to 30 January 1995.

X. 1994 BIA INVOLVEMENT TO RECOGNIZE TE-MOAK ELECTION INVALIDATION

On the morning of 26 October 1994 a twelve-item Bands election deficiency list was prepared at the BIA Eastern Nevada Agency (ENA). BIA 25 CFR Court judges declined to swear in newly elected Band Council members. On 04 November 1994 acting ENA superintendent William J. Woods forwarded Te-Moak election invalidation resolutions to the BIA Phoenix Area Office (PAO). Area director Walter Mills wrote to Congresswoman Barbara Vucanovich 23 November that Te-Moak resolutions were enacted properly and did not require BIA approval and that internal tribal disputes should be settled through available tribal forums. On 01 December acting ENA superintendent Bob Hunter wrote the Tribe, repeating Mills statements and noted Te-Moak had its own process and timeframes for resolving disputes as well as the authority to interpret its own governing documents. Te-Moak CFR Court could be used to settle a dispute with the approval of the Tribe, Hunter wrote, and the BIA would continue to recognize pre-25 October Band councils until the new election. Interior assistant secretary Ada Deer affirmed Hunter and Mills views 30 December 1994.

On 14 February 1995 Tribal election disputants sued in Te-Moak CFR Court of Indian Offenses over the invalidated election (The case would drag on, being dismissed finally for lack of subject matter jurisdiction 08 August 1997).

On 24 February 1995 PAO acting director Barry Welch informed BIA deputy commissioner Hilda Manuel that with rescheduled elections held, Felix Ike had become Te-Moak chairman 20 February 1995. Te-Moak elections continued to be disputed and on 02 May 1996 Welch provided Felix Ike a "list of elected officials recognized by the Phoenix Area Office and the Eastern Nevada Agency to conduct business with the federal government." The next Te-Moak regular Band elections took place 06 October 1997 under Election Ordinance 96-ORD-TM-04 adopted 19 August 1996.

In summary, Te-Moak voided its Bands' 1994 regular elections and the BIA recognized Te-Moak actions under its laws and pursuant to the Tribal Constitution by which a resolution is as lawful as an act of the Congress or a state legislature's statute. A replacement election was held in January 1995 and a Te-Moak Council installed subsequently. An election lawsuit in the BIA 25 CFR Court of Indian Offenses languished for two and one-half years before being dismissed.

XI. CONCLUSION

United States government agency-employed workers, by simply issuing memoranda and transmitting them and using agency police and judges to enforce their prejudice, can *de facto* replace duly elected representative government. The BIA Western Regional Office, the Western Nevada Agency, and the Eastern Nevada Field Office upset tribal governments as they please. In addition to Te-Moak, they have derailed three other Nevada Tribal governments: the Fallon Paiute-Shoshone, the Goshute, and the Lovelock Paiute.

The problem now facing the Te-Moak Tribe is how to repair the massive damage to tribal government caused by BIA managers and workers, BIA police and the tribal mob led by Felix Ike; unravel the administrative tangles made by Wayne Nordwall and Barry Welch; and untie the legal knots by which the Tribe has been bound up by BIA judge F. Woodside Wright playing partisan in an internal and resolvable Tribal political dispute.

On 20 December 2000 in Case No. CV-N-00-0450-ECR (VPC) the BIA represented by United States Attorney Kathryn Landreth had to explain in response

to a United States District Court judge's 13 December questions its actions regarding monies and who are the proper members of the Winnemucca Tribe's Council. Winnemucca is another Nevada Tribe that has endured the heavy touch of the BIA. There might be hope for righting BIA wrongs in federal court. Perhaps BIA reform will occur under President Bush's administration and during the 107th Congress. The BIA is an ill-favored 19th Century patronage organization unnecessary to 21st Century Indian self-determination and the government-to-government relationship of tribal governments with the United States as found in Article I., Section 8., Clause 3 of the Constitution of the United States of America.

Part 2 delves into Western Shoshone Claims and BIA dirty dealings.

Author: Patricia George <nvnrmnc@mwpower.net> at internet
Date: 3/15/2002 9:34 AM
Normal
TO: testimony at Indian-Affairs
Subject: Fw: S-958; HR 2851- Western Shoshone Claims Distribution Act
---------- Message Contents ----------

----- Original Message -----
From: Patricia George
To: Testimony@Indian.Senate.gov
Sent: Friday, March 15, 2002 9:32 AM
Subject: S-958; HR 2851- Western Shoshone Claims Distribution Act

I am a citizen of the Western Shoshone Nation and a member of the Ely Shoshone Tribe. I am opposing Senate Bill No. S-958; House Bill No. HR-2851, that is being introduced under the Western Shoshone Claims Distribution Act.

The Ely Shoshone Tribal Council is supporting the West Shoshone Claims Distribution Act and I feel that they have been given the wrong information and they made the wrong decision.

I will only except money for the "damages" that was done to Mother Earth.

"Mother Earth is not for sale!"

My main concern, is if we except the money it will effect our future grandchildren's children and so forth. Second, we would not be able to take our issues to court. Therefore, we would not be able to exercise our sovereign rights.

Sincerely,
Geraldine Reilley
PO Box 150213
Ely Nevada 89315

Mr. Daniel Inouye
Senate Select Committee on Indian Affairs
838 Hart Senate office Building
Washington DC 20510
(Sent by fax facsimile)

Senator Inouye and Committee:

I'm writing in regards to my opposition of the hearing that is scheduled for August 2,2002 at 2:00 pm. Bill S 958.

U.S treatment of the Western Shoshone and pending legislation before the Congress does nothing to resolve the lack of recognized land rights for the Western Shoshone. Legislation (S958 Western Shoshone Claims Distribution Act) is currently pending in the Congress which would individually distribute the claims money, which is the entire legal basis of the U.S. claim that it has extinguished land title. The legislation was crafted by Nevada Senator Harry Reid without the consent or participation of any Western Shoshone, Tribal councils, either Federally recognized, or Traditional; and includes no provisions to provide for an adequate land base for Western Shoshone communities or the recognition of any resource rights, such as grazing, hunting, gathering, and fishing!

Because all IRA elections and paramount issues require proper notice, processes, regulations and appointments we ask you and your committee to **oppose the language and the intent of S.958; oppose the manner in which this hearing was brought to the committee and scheduled: and allow the governments of the Western Shoshone Nation to represent it's constituents in the proper manner and with issues that truly address their needs.**

Sincerely,

Barbara Ridley

Barbara Ridley

On behalf of my two sons
I am signing this for them
at their request.
Michael R. Miller
Shane Ridley Stevens

Mr. Daniel Inouye
Senate Select Committee on Indian Affairs
838 Hart Senate office Building
Washington DC 20510
(Sent by fax facsimile)

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Sincerely,

Barbara Ridley

On behalf of my two nieces at their request along with their grandchildren
Lawrence Jackson
Diego Hawkins
Patsy Luna
Shannon Darden
Stevens Stevens
Alice Stevens

July 26, 2002

The Honorable Senator Daniel K. Inouye, Chair
Mr. Carl Christiansen
The Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

re: Senate Bill 958

Dear Senator Inouye:

Herein please find testimony in regards to the Senate Bill 958, the western Shoshone Claims Distribution Act for August 2, 2002.

In brief, my main concerns are threefold:

~~1, there is no informed consent of the~~ western Shoshone regarding Senate Bill 958;
2, that very few (perhaps only three) western Shoshone are aware of Senate Bill 958; and
3, the western Shoshone paradigm of voting in the negative is done by removing oneself from the process.

1. I cannot find a single western Shoshone informant who has read Senate Bill 958.

2. I testify that my informal survey of western Shoshone people regarding Senate Bill 958 has yet to turn up *any* member of the tribe with full knowledge of Senate Bill 958. I have interviewed ranchers, traditionalists, urban dwellers, and a university professor who is the primary expert on matters of the western Shoshone. I find it strange and disturbing that none of the people I have interviewed have knowledge of SB 958. I am confused as to why no government agent or political leader has attempted to inform the western Shoshone in a complete way of this legislation, one that has the potential to impact the tribe in such a drastic and permanent manner. Any suggestion that the western Shoshone as a people are sufficiently aware of the content and ramifications of Senate Bill 958 is myth. The three people who *may* be in full consent are those named as "informants" or "witnesses" to the process. I have not interviewed them so I cannot say what they know.

3. In a western Shoshone paradigm, a vote in the negative in placed by withdrawing the self and the community from the "process." It is a way of saying that the process and the issue have been corrupted and cannot be redeemed as they stand at the present time. Segregation away from a person, a council, or other type of political body is an ancient and time-honored Native-centric method of voting against a

proposal. It is the ultimate rejection, stronger than the word no, and represents a banishment of the proposal or person from the community.

Many western Shoshone have removed themselves from the process of Senate Bill 958 as a vote in the negative. The Senate must take this into consideration in regard to the western Shoshone Claims Distribution Act for August 2, 2002. I strongly yet respectfully suggest that the Senate would already know this fact of western Shoshone law if they had engaged in discussions with the western Shoshone community.

Several additional problems with this pending legislation are as follows:

i. The western Shoshone are not and have not been represented in the discussions regarding the western Shoshone Claims Distribution Act for August 2, 2002.

ii. Traditional leaders, political, spiritual, and social, of the western Shoshone have been ignored in this process.

iii. There is a lack of full disclosure regarding the western Shoshone Claims Distribution Act for August 2, 2002, in the communities that make up the western Shoshone nation.

iv. Principal western Shoshone involved with Senator Reid's office appear to have acted alone without support from the majority of western Shoshone. Reid's principal, Felix Ike, has been the source of investigation by *Indian Country Today*, the leading news publication in Native America.

v. Traditional and historic ethnohistory of the western Shoshone needs to be included in the process of full disclosure regarding any attempts at the western Shoshone Claims Distribution Act for August 2, 2002.

Thank you in advance for considering this testimony.

Please send me any and all documents in paper form regarding this legislation. I am respectfully submitting the following questions to the committee. As the committee members are the most involved in this process, I would like each member to consider each question carefully and submit an individual answer. I would also request an answer from the collective to the following question: why does the government want to "buy" western Shoshone land?

1. How were the western Shoshone tribe contacted regarding SB 958?

2. How were the western Shoshone notified of each step in this legislative process, beginning with the U.S. original claim to the present SB 958? How was the information in Senate Bill 958 distributed to the people? Was the mail used, the media, the telephone, or other?
3. Whom specifically has the committee or its principals spoken with in the western Shoshone Nation?
4. What is the U.S. government historiography of this process of western Shoshone land claims? Please begin your discussion at 1863 and include the present.
5. What were the steps in creating SB 958, and which principal legislators were and are involved in the process? Please give details to the U.S. government representatives handling the land issue from 1863 forward.
6. What is the primary goal of SB 958?
7. Why is there a hurry to "fast track" this legislation?
8. What is the involvement of the Bureau of Indian Affairs in this matter? Please inform as to the history of their involvement from 1863 forward.
9. How will SB 958 impact the U.S. standing in the United Nations, the World Court, and in the public mind n regards to U.S. Constitutional protections of due process, equal protection under the law, social and environmental justice?

Thank you for answering these questions. Your time and consideration are of great value and I appreciate them very much.

Sincerely yours,

Annie Ross
The University of California, Davis
919 Homewood Drive
Woodland, California 95695
530.406.8561
annross@ucdavis.edu

FROM : IITC SAN FRANCISCO PHONE NO. : 415 641 1298 Aug. 01 2002 03:49PM P1

INTERNATIONAL INDIAN TREATY COUNCIL
2390 Mission St., Suite 301
San Francisco, CA. 94110
Telephone (415) 641-4482
Fax (415) 641-1298
email: iitc@igc.apc.org

August 1, 2002

United States Senate Indian Affairs Committee
Hart Building 838
Washington, DC 20510
Dem. Fax: (202)228-2589
Rep. Fax: (202)224-5429

RE: S.958, Hering Scheduled August 2, 2002, Western Shoshone

Dear Members of the Senate Indian Affairs Committee

The International Indian Treaty Council was founded in 1974, at Standing Rock, South Dakota, to take the issue of treaties before the international community. In 1977, the IITC was the first Indigenous Non-Governmental Organization recognized with Consultative Status by the United Nations Economic and Social Council (ECOSOC). Since that time and in that role, the IITC has worked internationally on behalf of the Sovereignty and Self Determination of Indigenous Peoples and the recognition and protection of Indigenous human rights, Treaties, Traditional Cultures and Sacred Lands.

In this role we write to you to demonstrate our concern and opposition to S.958, a bill purporting to "pay" for sacred Western Shoshone lands, lands that have never been ceded, and that have never been for sale.

In a previous communication, when this hydra first raised its head, we related to Senator Reed, the author of this bill, the history of the fraud perpetrated on the Shoshone, pointing out that this bill only perpetuates that fraud. We also quoted the Treaty Monitoring Body of the Convention on the Elimination of All Forms of Racial Discrimination and their examination of the United States Report on its compliance with that Convention. They addressed the issue of the Western Shoshone, questioning the impunity with which the Congress can deprive the American Indian of their rights. The manner in which this bill has arisen, and the numbers of witnesses that your committee has allowed (3) only underlines the abuse still practiced by the United States on the Native American. It is time to deal fairly with the American Indian, not a time to grind us into the dust.

You should be aware that the Organization of American States' Inter-American Commission on Human Rights (IACHR) has very recently addressed this same issue, raising well founded questions about the legitimacy of Indian Land Claims Commission and its process and purpose with regard to the Western Shoshone.

The IACHR has found human rights abuses and has recommended that the United States and the Western Shoshone Peoples to use the IACHR friendly settlement procedures. This hearing and your actions indicate to the world that the United States, like those the United States habitually condemns, acts with impunity in its violations of well established international human rights norms and ignores the findings of respected international fora responsible for their observance. International human rights exist. They are the legal and sacred obligations of the American government.

We would respectfully request that the Senate Indian Affairs Committee table this bill, and allow the Inter-American Human Rights Commission process to take its course. It should do so not only in the interests of justice, but to demonstrate some respect for the Organization of American States, the IACHR, and the human rights obligations of the United States.

for all my relations,

Alberto Saldamando
General Counsel, IITC

cc: Western Shoshone Defense Council
Andrea Carmen, IITC Executive Director

Mr. Daniel Inouye
Senate Select Committee on Indian Affairs
838 Hart Senate office Building
Washington DC 20510
(Sent by fax facsimile)

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Sincerely,

Karen Sam

Karen D. Sam

my 3 sons,

Stephen Sam

Jan Sandoval

Miguel Sam

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURIDICOS PARA LOS PUEBLOS INDIGENAS

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Executive Director
DEBORAH J. SCHAAF, ESQ.
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S. JAMES ANAYA, ESQ.
Special Counsel
Email: sjanaya@indianlaw.org

November 9, 2001

The Honorable Daniel K. Inouye
Chairman, Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

By facsimile and first class mail

Re: S. 958, Distribution of Indian Claims Commission Award to Western Shoshones

Dear Senator Inouye:

We ask that you delay action on the above bill until you have had an opportunity to investigate an important recent development in an international human rights case that has a direct bearing on Western Shoshone land rights that are put in jeopardy by S. 958. We are confident that you will want to ensure that the United States demonstrates full respect for the human rights that are at issue and for the international human rights tribunal that is determining the merits of this case.

The Inter-American Commission on Human Rights of the Organization of American States just issued its report in the case of *Carrie and Mary Dann and the Dann band of Western Shoshone Indians v. United States* (IACHR, No. 11.140). We represent the petitioners. The Yomba, Ely and Duckwater Shoshone Tribes are *amicus curiae*. At issue in the case is the threatened extinguishment of Western Shoshone land rights by the United States in violation of governing human rights law. The issuance of the Inter-American Commission's report means that there is a determination by the Inter-American Commission that the United States has violated human rights of the Western Shoshone petitioners. Since the report has not yet been made public, we do not know what specific human rights violations have been found against the United States. At this time, the report is available only to United States officials. In the near future the report will be released to the public.

The *Dann* case report is a potential embarrassment for the United States. This same Western Shoshone land rights dispute has also been discussed in United Nations human rights forums, and it has been followed by the press. Because the Inter-American Commission's report happened to be released at this particularly difficult moment for United States foreign affairs, we trust that you will want to review it with great care. We believe that there is an honorable path for the United States through the Inter-American Commission's friendly settlement procedure or through remedial congressional action.

The Inter-American Commission sent its report to the United States State Department so that the government may take remedial measures to comply with the Commission's recommendations in regard to any findings of human rights violations. (A letter from the Commission confirming this information and providing other relevant details is enclosed.) The petition filed in this case alleges (among other things) that the United States has wrongly claimed for itself lands that belong to the Danns and other Western Shoshone by treaty and aboriginal title, and that the United States has threatened their livelihood and cultural survival by interfering with their use of those lands. The petition also claims that these actions by the United States – and the laws on which they are based – are discriminatory. The government of the Unites States fails to accord the property of the Danns and other Indian peoples the same protections provided for the property of non-Indian Americans.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) in August express particular interest in the Western Shoshone case and expressed its "concern that treaties signed by the Government and Indian tribes ... under national law, could be abrogated unilaterally by Congress, and that the land they possessed or used could be taken without compensation by a decision of the Government." The Committee also expressed its concern for "plans for the expansion of mining and nuclear waste storage on Western Shoshone ancestral land, for placing their land to auction for private sale and other actions affecting the rights of indigenous peoples." CERD is now considering the report of the United States on the status of its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee posed several pointed questions to the United States about the Western Shoshone matter during its session in August, 2001 in Geneva. Answers to several of those questions are still outstanding.

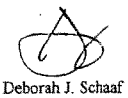
As you know, the United States is bound by the human rights principles that are outlined in the American Declaration on the Rights and Duties of Man and the Convention on the Elimination of All Forms of Racial Discrimination and by other principles of international law. Yet the United States has ignored the Inter-American Commission's repeated requests for protective measures for the Danns, and it is also under the scrutiny of CERD in regard to its actions against the Western Shoshone.

Again, this is a delicate moment in the history of our country and in the human rights case of the Western Shoshone people. The United States must be very deliberate and measured in its handling of this matter. Rather than move into a contentious and potentially embarrassing legislative hearing, Congress should review the report on the Danns' case and should ensure that there will be a fair resolution of the Western Shoshone land rights dispute.

We would like an opportunity to talk to you further about this matter. I will call you soon to arrange a time that is convenient for you and your staff.

Thank you for your attention to this matter.

Sincerely,



Deborah J. Schaaf

INDIAN LAW RESOURCE CENTER

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S. JAMES ANAYA, ESQ.
Special Counsel
Email: sjanaya@indianlaw.org

November 9, 2001

Gale A. Norton
Secretary of the Interior
US Department of the Interior
ms7229-MIB
1849 C Street NW
Washington, DC 20240

By facsimile and first class mail

Dear Ms. Norton:

The Inter-American Commission on Human Rights just issued a report on the case of Western Shoshone sisters Mary and Carrie Dann (Case No. 11.140) at its recent session. We recommend that you immediately suspend the on-going actions against the Danns planned by the Bureau of Land Management in Nevada until you have fully investigated this development. The Indian Law Resource Center filed the case at the Inter-American Commission on Human Rights on behalf of the Danns. The Yomba, Ely, and Duckwater Shoshone Tribes are also participants in the case as *amicus curiae*.

The Commission sent the report to the United States State Department so that the government may take remedial measures to comply with the Commission's recommendations in regard to any findings of human rights violations. (A letter from the Commission confirming this information and providing other relevant details is enclosed.) Since the report is confidential, we do not know what violations have been found against the United States by the Commission. The petition alleges (among other things) that the United States has wrongly claimed lands that belong to the Danns and other Western Shoshone based on treaty and aboriginal title and has threatened their livelihood and cultural survival by interfering with their use of those lands. The petition also claims that these actions by the United States – and the laws on which they are based – are discriminatory, as the government of the Unites States fails to accord the property of the Danns and other indigenous peoples the same protections provided for the property of non-Indian Americans.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) in August express particular interest in the Western Shoshone case and expressed its "concern that treaties signed by the Government and Indian tribes ... under national law, could be abrogated unilaterally by Congress, and that the land they possessed or used could be taken without compensation by a decision of the Government." The Committee expressed its concern for "plans for the expansion of mining and nuclear waste storage on Western Shoshone ancestral land, for placing their land to auction for private sale and other actions affecting the rights of indigenous peoples." CERD is now considering the report of the United States on the status of its compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee posed several pointed questions to the United States about the Western Shoshone matter during its session in August, 2001 in Geneva. Answers to several of those questions are still outstanding.

On July 18, 2001, the Elko BLM Field Office issued an Unauthorized Use Notice and Order to Remove against Mary and Carrie Dann. A copy of the Notice is enclosed. Helen Hankins, the Elko District Manager, confirmed that the BLM intends to take action to impound the Danns' livestock at any moment and without further notice. She informed the Danns' representatives that the BLM will use road blocks and deny air space to "protect BLM personnel." As recently as November 2, 2000, Ms. Hankins reiterated BLM's intention to impound the Danns' livestock.

As you know, the United States is bound by the human rights principles that are outlined in the American Declaration on the Rights and Duties of Man and the Convention on the Elimination of All Forms of Racial Discrimination and by other principles of international law. This is a delicate moment in the case of the Western Shoshone people and in the history of our country. The United States must be very deliberate and measured in its handling of this matter. Enforcement actions against the Danns or other Western Shoshone by the BLM or other agents of the United States are ill-advised at best in light of the Commission's report and the scrutiny of CERD. The United States has already ignored the Commission's repeated requests for protective measures for the Danns.[1] You can be certain that action against the Danns (or other Western Shoshone) in violation of international law will get the immediate attention of the world community.

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[1] The most recent request that the United States stay action against the Danns was sent to the United States only last August (see attached letter dated August 1, 2001) following an Unauthorized Use Notice and Order to Remove issued by the BLM Elko Field office on July 18, 2001. Similar requests for precautionary measures were directed to the United States from the Commission on April 21, 2001, June 28, 1999 and on March 6, 1998. (See attached.)

Rather than escalating an already volatile and contentious situation on the ground, the Department of the Interior should join with other agencies and branches of the United States government to establish a process for a fair resolution of the underlying dispute about Western Shoshone land rights.

We would like an opportunity to talk to you further about this matter. I will call you soon to arrange a time that is convenient for you and your staff.

We look forward to your immediate assurance that no action will taken against the Danns. Thank you for your attention to this matter.

Sincerely,

Deborah J. Schaaf

cc: Eric Wilson
Office of American Indian Trust

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURIDICOS PARA LOS PUEBLOS INDIGENAS

February 1, 2002

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Senator Daniel K. Inouye
Chairman, Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

By facsimile and first class mail

Re: S. 958, Distribution of Indian Claims Commission Award to Western Shoshone

Dear Senator Inouye:

I am writing to make you aware of an article in the February 4th issue of Newsweek about the report of the Inter-American Commission on Human Rights in the case against the United States filed by Mary and Carrie Dann and joined by the Yomba, Ely and Duckwater Shoshone Tribes. A copy of the Newsweek article is enclosed.

Last November, we wrote to ask that you delay action on S. 958 until you could investigate the Commission's report, which deals directly with the obligations of the United States under international human rights law to recognize and protect Western Shoshone land and resource rights -- rights that are jeopardized by S. 958. That report is not yet public, but it has been submitted to the United States. We do not yet have a copy. We understand that officials from State, Interior and Justice have been studying the Commission's report and preparing the US response.

If approved in its current form S. 958 threatens to extinguish Western Shoshone land and resource rights. The situation is fully described in our November letter, which I am enclosing for your convenience.

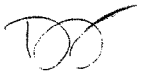
You might also be interested to know that in a bipartisan survey of 1,000 American voters, 75% are "opposed to laws that allow the U.S. government to take away Indian tribal lands without the legal procedures and compensation required when taking away other land."[1] In fact, 3 of 5 people (61%) are *strongly opposed* to these laws. The survey was conducted by Lake Snell Perry & Associates and The Tarrance Group from January 12 - 15, 2002.

We respectfully reiterate our request that Congress take no action on S. 958 at this time. At a minimum, if it is not the intention of Congress to extinguish Western Shoshone land rights, the bill should be amended to provide clear protection for Western Shoshone rights and legal claims to their ancestral lands at the same time that it authorizes distribution of the judgment fund. The enclosed proposed amendment would clarify that the payment, use and distribution of the Indian Claims Commission award shall not extinguish or impair the aboriginal and treaty rights of the Western Shoshone to their lands and resources.

We would also like to reiterate that Mary and Carrie Dann respectfully request the opportunity to have a representative of the Dann Band of the Western Shoshone present testimony at the hearing on S. 958, should it occur.

Thank you for your consideration.

Sincerely,



Deborah Schaaf

cc: Pat Zell
Carl Cristensen

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[1] Question wording: "Do you favor or oppose laws that allow the U.S. government to take away Indian tribal lands without the legal procedures and compensation required when taking away other land or aren't you sure? IF FAVOR/OPPOSE: Do you (favor/oppose) that STRONGLY or NOT SO STRONGLY?" The margin of error for this study is 3.1%. The sample was selected using random-digit dial procedures and interviews were conducted by telephone.

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S. JAMES ANAYA, ESQ.
Special Counsel
Email: sjanaya@indianlaw.org

February 1, 2002

Honorable Lorne Craner
Assistant Secretary for Democracy, Human Rights and Labor
United States Department of State
2201 C Street NW
Washington, DC 20520

By facsimile and first class mail

Re: U.S. Compliance with Human Rights Tribunal Decision

Dear Secretary Craner:

The government is preparing at this time to take a public stand on whether it will comply with a determination of a respected international human rights tribunal that is critical of United States domestic law and policy pertaining to the land rights of the Western Shoshone Indians of Nevada. Because of your leadership role in upholding the government's human rights policy, we bring our concerns to your attention and ask for your support.

The United States Congress will soon hold hearings on legislation to distribute the Indian Claims Commission award to the Western Shoshone. That proposed legislation is the latest step in a long-contested process that has been the subject of a petition in the Inter-American Commission on Human Rights against the United States. Your office has previously been involved in this case. Recently, the Commission issued a report which it submitted to the government.

As you know, the Commission's report is not yet public, and we do not yet have a copy. But such reports are issued only when there is a finding of violation by the respondent government. It is therefore apparent that the United States is now facing a report by the Commission that the United States has failed to meet its obligations under international human rights law to recognize and protect Western Shoshone land and resource rights. These rights are further jeopardized by S. 958 and its companion bill, HR 2851, which would authorize final payment and distribution of the Indian Claims Commission award. If approved in its current form, the legislation threatens to extinguish Western Shoshone land and resource rights.

Action by the United States Congress to move forward with legislation that is likely to extinguish Western Shoshone land and resource rights would be extremely unfortunate in light of the Commission's report, and may be very embarrassing to the United States. (The situation is fully described in a letter we sent to you last November, which I am enclosing for your convenience.) We have informed the members of the relevant Congressional committees about the situation. We hope that the Congress and the Administration will be persuaded to change course and will seek a fair, negotiated settlement of Western Shoshone land rights.

You will be interested in the enclosed article in the February 4th issue of Newsweek about the report of the Inter-American Commission on Human Rights in the Western Shoshone case. The petition in the case was filed by Mary and Carrie Dann, and was joined by the Yomba, Ely and Duckwater Shoshone Tribes. The case has already drawn much national and international attention, and many people and organizations interested in indigenous human rights will be closely monitoring how the United States responds to the Commission's report.

This is an opportunity to reaffirm the longstanding policy of the United States that the judgments of the Inter-American Commission should be applied to itself just as they should be applied to others. That vital human rights policy was clearly articulated by Luigi R. Einaudi to the General Assembly of the OAS in 1992 when he was the U.S. Permanent Representative to the OAS:

> Human rights are a central concern of the United States foreign policy. This reflects a sovereign decision to conduct our foreign relations in accordance with our national experience and aspirations. It also reflects the realization after the holocausts in Central Europe and more recently in Cambodia that no country anywhere can be indifferent to violations of basic human rights wherever they occur.
>
> With these considerations we joined the Universal Declaration of Human Rights, the UN Declaration on Civil and Political Rights, and the American Declaration of the Rights and Duties of Man. For these reasons, we signed the American Convention on Human Rights.
>
> We have not ratified the Convention. We have never argued, however, that nonratification exempts us from the Commission's criticism. When we affirm support for the Commission, we express our readiness to have its judgments applied to ourselves.

Now, more than ever, it is imperative that the United States demonstrate its leadership in international human rights by adhering t these high principles.

Accordingly, we respectfully request that you immediately inform Senator Inouye, Chairperson of the Senate Indian Affairs Committee, and Representative Hansen, Chairperson of the House Resources Committee, that it is not in the interest of the United States for Congress to take any action on legislation to distribute the Indian Claims Commission judgment fund at this time.

We would like to meet with you at your convenience to discuss this mater more fully and to explore how we might find an honorable solution.

Thank you for your consideration.

Sincerely,

Deborah Schaaf

INDIAN LAW RESOURCE CENTER

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S. JAMES ANAYA, ESQ.
Special Counsel
Email: sjanaya@indianlaw.org

February 1, 2002

Representative James V. Hansen
Chairman, House Resources Committee
United States House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

By facsimile and first class mail

Re: HR 2851, Distribution of Indian Claims Commission Award to Western Shoshones

Dear Representative Hansen:

I am writing to make you aware of an article in the February 4th issue of Newsweek about the report of the Inter-American Commission on Human Rights in the case against the United States filed by Mary and Carrie Dann and joined by the Yomba, Ely and Duckwater Shoshone Tribes. A copy of the Newsweek article is enclosed.

Last November, we wrote to ask that you delay action on HR 2851 until you could investigate the Commission's report, which deals directly with the obligations of the United States under international human rights law to recognize and protect Western Shoshone land and resource rights -- rights that are jeopardized by HR 2851. That report is not yet public, but it has been submitted to the United States. We do not yet have a copy. We understand that officials from State, Interior and Justice have been studying the Commission's report and preparing the US response.

If approved in its current form HR 2851 threatens to extinguish Western Shoshone land and resource rights. The situation is fully described in our November letter, which I am enclosing for your convenience.

You might also be interested to know that in a bipartisan survey of 1,000 American voters, 75% are "opposed to laws that allow the U.S. government to take away Indian tribal lands without the legal procedures

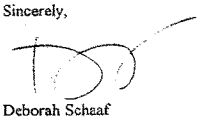
and compensation required when taking away other land."[1] In fact, 3 of 5 people (61%) are *strongly opposed* to these laws. The survey was conducted by Lake Snell Perry & Associates and The Tarrance Group from January 12 - 15, 2002.

We respectfully reiterate our request that Congress take no action on HR 2851 at this time. At a minimum, if it is not the intention of Congress to extinguish Western Shoshone land rights, the bill should be amended to provide clear protection for Western Shoshone rights and legal claims to their ancestral lands at the same time that it authorizes distribution of the judgment fund. The enclosed proposed amendment would clarify that the payment, use and distribution of the Indian Claims Commission award shall not extinguish or impair the aboriginal and treaty rights of the Western Shoshone to their lands and resources.

We would also like to reiterate that Mary and Carrie Dann respectfully request the opportunity to have a representative of the Dann Band of the Western Shoshone present testimony at the hearing on HR 2851, should it occur.

Thank you for your consideration.

Sincerely,



Deborah Schaaf

cc: Allen D. Freemyer, Chief of Staff

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[1] Question wording: "Do you favor or oppose laws that allow the U.S. government to take away Indian tribal lands without the legal procedures and compensation required when taking away other land or aren't you sure? IF FAVOR/OPPOSE: Do you (favor/oppose) that STRONGLY or NOT SO STRONGLY?" The margin of error for this study is 3.1%. The sample was selected using random-digit dial procedures and interviews were conducted by telephone.

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S. JAMES ANAYA, ESQ.
Special Counsel
Email: sjanaya@indianlaw.org

February 1, 2002

Gale A. Norton
Secretary of the Interior
US Department of the Interior
ms7229-MIB
1849 C Street NW
Washington, DC 20240

By facsimile and first class mail

Re: Congressional Action to Distribute Indian Claims Commission Award to Western Shoshone

Dear Ms. Norton:

I am writing to make you aware of plans by the Unites States Congress to hold hearings on legislation to distribute the Indian Claims Commission award to the Western Shoshone. In addition, I thought you would be interested in an article in the February 4th issue of Newsweek about the report of the Inter-American Commission on Human Rights in the case against the United States filed by Mary and Carrie Dann and joined by the Yomba, Ely and Duckwater Shoshone Tribes. A copy of the Newsweek article is enclosed.

As you know, the Commission's report is not yet public, and we do not yet have a copy. It is clear, though, that the Commission's report deals directly with the obligations of the United States under international human rights law to recognize and protect Western Shoshone land and resource rights -- rights that are jeopardized by S 958 and HR 2851 now under consideration by Congress. In fact, if approved in its current form the legislation threatens to extinguish Western Shoshone land and resource rights.

Action by the United States Congress to move forward with legislation that is likely to extinguish Western Shoshone land and resource rights would be extremely unfortunate in light of the Commission's report, and may be very embarrassing to the United States. (The situation is fully

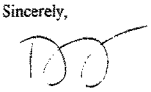
described in a letter we sent to you last November, which I am enclosing for your convenience.) We have informed the members of the relevant Congressional committees about the situation.

You might also be interested to know that in a bipartisan survey of 1,000 American voters, 75% are "opposed to laws that allow the U.S. government to take away Indian tribal lands without the legal procedures and compensation required when taking away other land."[1] In fact, 3 of 5 people (61%) are *strongly opposed* to these laws. The survey was conducted by Lake Snell Perry & Associates and The Tarrance Group from January 12 - 15, 2002.

The Department of the Interior should immediately inform Senator Inouye, Chairperson of the Senate Indian Affairs Committee, and Representative Hansen, Chairperson of the House Resources Committee, that it is not in the interest of the United States for Congress to take any action on legislation to distribute the Indian Claims Commission judgment fund at this time.

Thank you for your immediate attention to this matter.

Sincerely,



Deborah Schaaf

cc: Scott Keep

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[1] Question wording: "Do you favor or oppose laws that allow the U.S. government to take away Indian tribal lands without the legal procedures and compensation required when taking away other land or aren't you sure? IF FAVOR/OPPOSE: Do you (favor/oppose) that STRONGLY or NOT SO STRONGLY?" The margin of error for this study is 3.1%. The sample was selected using random-digit dial procedures and interviews were conducted by telephone.

FROM : FAX NO. : Sep. 01 2002 12:35PM P1

August 31, 2002

To: Senator Daniel Inouye, Chairman of the Indian Affairs Committee.

RE: Bill S958

Dear Senator,

My name is Bob Stark, Ely Shoshone Tribe, my enrollment number is: 210. I am writing in regards to bill S958. I am for the full distribution of the money to each member of the Western Shoshone Tribe in Nevada. I believe that each member deserves their share of this money and would resolve this issue that has been going on these many years.

I appreciate your time and consideration in this most important issue. I have also faxed with this letter a copy of my enrollment card. I would ask that you support this action and bring this long journey to its final conclusion.

Respectfully,

Bob Stark

Bob Stark
413 Emerald Circle
Henderson, Nevada 89105

cc: Senator Campbell, Senator Reid,
Senator Ensign

July 29, 2002

The Honorable Chairman, Mr. Daniel K. Inouye
AND
Vice-Chairman, Mr. Ben Nighthorse Campbell
SENATE COMMITTEE ON INDIAN AFFAIRS
838 Hart Senate Office Building
Washington, D.C. 20510

RE: Testimony Hearing on Western
Shoshone Claims Distribution

Good afternoon, my name is Fermina Stevens, I am writing today as a member of the Te-Moak Tribal Council and as an enrolled member of the Te-Moak Tribe.

As I am sure you are aware there are many issues involved in this controversy that make it so complex. I hope that you each will take into consideration a few issues that you may or may not be aware of when making a decision so important to the history of our Tribe.

I would like to say that I am a new leader I have less than two years experience in Tribal politics and have learned a lot in that time. The point I want to make is, since I've come into this position I have heard many Tribal members complaints and concerns that the past councils and in some cases the present councils have not always followed the laws or constitution of our Tribe. They want to see a change I know that for certain. I think and hope that you would understand the importance of a government and it's laws in protecting the rights of the people it serves.

The course of action that has taken place recently in this referendum ballot of the Te-Moak Tribe was not within the guidelines of our Constitution or Election Ordinance. The Te-Moak Tribal Council has NOT discussed or made any decision about conducting a referendum as stated in Article 11, Sect. 2 of our Tribal Constitution.

In Article 4, Sec. 5 (a) (6) of our Constitution it states that the Tribal Chairperson shall not obligate the Tribe without the prior written approval of the Tribal Council. The Te-Moak Tribal Council has not given the Council Chairman authorization of any kind in this matter that pertains to every enrolled member of our Tribe. No one person should have the right or the ability to put himself above the very document that is meant to protect us. As all officials of any government or organization, each of the Band Council and Tribal Council members have taken an oath of office to protect and defend the Constitution of the Tribe and of the United States. It seems the rights of the people we have sworn to protect has been violated.

Some people have said that the concerns of the Tribal Council are of little or no matter, that this is a people issue. I agree that this is a people issue it is an issue of the people

who are enrolled members of this Tribe that voted on a Tribal Referendum that took place within our jurisdiction. It is the obligation of the Te-Moak Tribal Council to ensure the rights of our people are protected. I hope you understand, it is time for our Tribal Government to take a stand to protect the people we serve especially in this historical event that will affect us for generations.

As stated earlier, the process for conducting a referendum was not followed. How the election was conducted is also questionable. No election committee was notified of this referendum as we were notified would happen on May 4, 2002. There was less than 30days notice in newspapers of the vote for members outside of the area. Many Tribal members were not informed by mail, phone call or newspaper of the election and did not receive or request an absentee ballot. I know there were a few enrolled Te-Moak Tribal members that voted on June 3rd in Elko who already received claims from another Tribe. That was to have been prevented, according to the information received on May 4, 2002. No ID's were asked to be provided to verify the names on the list that only eligible beneficiaries were able to vote on.

In a letter dated April 15, 2002 addressed to myself from Senator Reid he states, "To accurately and fairly assess the wishes of the Western Shoshone in this matter, I will work to develop a new ballot and ELECTION PROCESS that satisfies Tribal members..." As a Council member and as an enrolled member of this Tribe I'm not at all satisfied with the election process.

To this day many questions go unanswered and documents have not been provided for our records:

-Under what U.S. law did the United States acquire Western Shoshone territory?
-How was the title LEGALLY extinguished and by whom?
-When and where did the extinguishments take place?
-The land value prices are from 1872 estimates. What happened in July 1872 to determine this the date of taking?
-Where is the documentation to back that up?
The questions can go on and on as they have, the big question is, will they be answered up to moral satisfaction?

It is understood that people want their money so they can get on with life, that's what they voted for. There are also people who want more as you have heard by other testimonies, and there are those who want what is right by the laws of our Tribe, all of which should be taken into consideration by all involved.

Respectfully,

Fermina Stevens

Fermina Stevens,
Te-Moak Tribal Council Member

Mr. Daniel Inouye
Senate Select Committee on Indian Affairs
838 Hart Senate office Building
Washington DC 20510
(Sent by fax facsimile)

Senator Inouye and Committee:

I'm writing in regards to my opposition of the hearing that is scheduled for August 2,2002 at 2:00 pm. Bill S 958.

U.S treatment of the Western Shoshone and pending legislation before the Congress does nothing to resolve the lack of recognized land rights for the Western Shoshone. Legislation (S958 Western Shoshone Claims Distribution Act) is currently pending in the Congress which would individually distribute the claims money, which is the entire legal basis of the U.S. claim that it has extinguished land title. The legislation was crafted by Nevada Senator Harry Reid without the consent or participation of any Western Shoshone, Tribal councils, either Federally recognized, or Traditional; and includes no provisions to provide for an adequate land base for Western Shoshone communities or the recognition of any resource rights, such as grazing, hunting, gathering, and fishing!

Because all IRA elections and paramount issues require proper notice, processes, regulations and appointments we ask you and your committee to **oppose the language and the intent of S.958; oppose the manner in which this hearing was brought to the committee and scheduled: and allow the governments of the Western Shoshone Nation to represent it's constituents in the proper manner and with issues that truly address their needs.**

Sincerely,

Mandy L West
Wade L Smith
Tiffany G. Smith
Shyler Smith
Robert Mendez
Wm West

I, Barbara [illegible] mother of Mandy, Grandmother of (above) & their request am sending in their names.

FROM : LEWHITNE FAX NO. : 7757533794 Aug. 02 2002 09:15AM P1

TESTIMONY OF LOIS E. WHITNEY

1728 Redwood Street
Elko, NV. 89801
Tel: 775-753-3794

July 28, 2002

Senator Daniel K. Inouye, Chairman
Senate Select Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Tel: 202-224-2251
(Sent by facsimile)

RE: OPPOSITION TO HEARING OF SENATE BILL 958

To the Honorable Senator Inoyue and Committee:

I, Lois E. Whitney, ask the Hearing of August 2, 2002 to be immediately terminated. This hearing is in absolute violation of the civil and human rights of the Western Shoshone People, one of which I am. I ask that you protect my right and those of whom I represent in an issue that is against our humanity.

To proceed hearing a bill contrived of deceit is against the principals of this country and it's citizens, especially the Western Shoshone. In this issue, no honorable contingent of policy makers should allow the violations that this hearing perpetuates. In a matter paramount as the rights of the Western Shoshone, to not allow all returning parties traveling great distances to present their testimonies to not be heard, is disrespectful and on a particular bill that appears to us to be deceptive, is wrong and must cease.

What would be honorable and necessary is for the chairman and his committee, to stop now any further damage and question how the parties who support S958 can violate and bring such disgrace to our liberty and justice. This Committee of Senators must be informed and be cautious that this bill's supporters pretend that this bill is proper and by law supported by many Western Shoshone. We ask that you allow us to openly and with credibility, bring to the table the real issues of S958 and protect the best interests of the Western Shoshone.

We the constituents of our respective Western Shoshone Tribes and Bands have witnessed enough the atrocities against our peace and dignity, by the US Government and certain individuals of our own Indian Reorganized Communities. We present you with information that the Referendum Vote of June 3, 2002 is a violation of our voting process and is not sanctioned by the Te-Moak Tribal Government, it's Band Councils and/or other Western Shoshone Governments as a legal vote. We question how a general meeting of leaders and community without proper sanction be billed as a 32 member Western Shoshone Claims Steering Committee? They merely attended a meeting in 1997 and never was the Western Shoshone population informed of their intention.. Secondly, we

understand that a Fallon Claims Steering Committee did push voting twice in Shoshone Country, but they were not fully sanctioned by each Tribal entity, and they produced no rules to hold voting among other improprieties. I know that the Te-Moak Tribal Council did appoint by Resolution a five member Te-Moak Claims Investigating Committee but this committee never met collectively to incorporated the means as a subordinate committee and has no record of meetings. Neither of these groups could have legally held any type of voting to enact a proper referendum vote.

Specifically, referendum voting is protected by the 1930's Indian Reorganization Act (IRA), incorporated of procedures to promote the Native American to vote democratically. The act enforces elections by which 30% of the eligible voters participate, to be considered legal. Law guarantees us a process of secret or absentee vote. Further, the Indian public by the Act is assured that in the event there was disagreement, that such disagreement would be settled with a previously adopted policy. This process was violated and is against us as voters. We embrace voting in a proper process, if properly notified and so did the veteran voters since the conception of the IRA. The Referendum Vote of June 3, 2002 did not follow this process.

Further the Act established Native American Constitutions, which mirrored the Constitution of the United States, complete with articles and sections, and we considered this to be rule. Thus after years of humble existence the Native American have experience and enjoin in the expression of due process and justice because of the IRA. Our Constitution has a process of initiating a referendum vote clearly with the Tribal Council, not the Tribal Chairman, to sanction the process. Neither can the Tribal Chairman obligate the Tribe without his Council; further, the Te-Moak Chairman is not equal to the President of the United States. The Tribal Chairman's powers are dictated by the Tribal Constitution, and his/her position has no power to vote (except to break a tie) and further it has no veto power, that is reserved for the Tribal Council. Thus the nine memberTe-Moak Tribal Council did not sanction the June 3, 2002 vote.

We are the original Native Peoples of this continent; we have purpose and will prosper with out fear of shame or prosecution because equality means us to. Though in this twenty-first century, change seems to others to be slower for the Native Americans. We may have corrupt IRA government leaders, no due process or equal protection of the law, but we are not poor. We are traditionally, culturally and land wealthy and our wealth encompasses Nevada, Idaho, Utah, California. We want the opportunity to talk about all our best interests and arrive at a decision that is "fair and just" and we ask your support.

Because all IRA elections and paramount issues require proper notice, processes, regulations and appointments we ask you and your committee to **oppose the language and the intent of S.958; oppose the manner in which this hearing was brought to the committee and scheduled; and allow the governments of the Western Shoshone Nation to represent it's constituents in the proper manner and with issues that truly address their needs.**

Mr. Inouye, I submit a collection of issues my people believe should be included in any legislation that will affect them. By facsimile I submit my testimony on their behalf and fax their individual signed papers (totaling over 100) indicating what they consider as their needs. They exhibit a willingness to move forward in manner of respect, consideration, and hope for their future.

Respectfully

Lois E. Whitney

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Gordon Kelly (print full name), certify that I am a Western Shoshone and/or enrolled member of the Duckwater Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-002 Gordon Kelly (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

Y ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

Y SPIRITUAL AND SACRED GROUNDS.

Y ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

Y USER FEES COVERING AIR, LAND, WATER.

Y HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Sharon Katherine Stevens (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 7M-0833.

Date: June 3, 2002 Sharon K. Stevens (Signature)

Witness to signature Joe E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 JUL. 29 2002 07:01AM P3

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

- ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.
- ✓ HUNTING, FISHING AND GATHERING RIGHTS
- ✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).
- ✓ ENLARGEMENT OF LAND BASE
- ✓ TREATY RIGHTS
- ✓ SPIRITUAL AND SACRED GROUNDS.
- ✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.
- ✓ USER FEES COVERING AIR, LAND, WATER.
- ✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Tyson Eugene Steve, (print full name) certify that I am a Western Shoshone and/or enrolled member of the Temoke Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-34190.

Date: June 3, 2002 (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 JUL. 29 2002 07:02PM P4

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Cecelia Bill (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 2643400556

Date: 6-3-2002 Cecelia Bill (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNE FAX NO. :775 753-3794 Jul. 29 2002 07:02PM P5

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Tyrone Bullcreek (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Tyrone Bullcreek (Signature)

Witness to signature Lin E Whitney Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 07:03AM P6

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I Roberta Burton, certify that I am a Western Shoshone and/or enrolled
(print full name)
member of the Te Moak Western Shoshone Band Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM0930.

Date: 6/3/02 Roberta Burton
(Signature)

Witness to signature Lori E Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

_____ MONEY FOR DAMAGES AND NO SALE OF LAND.

__X__ HUNTING, FISHING AND GATHERING RIGHTS

_____ RETENTION OF LAND (SUBSURFACE AND ABOVE).

__X__ ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

_____ SPIRITUAL AND SACRED GROUNDS.

__X__ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

__X__ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Walter F. Fisk (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 1131.

Date: 6/3/2002 (Signature)

Witness to signature: Lyn E. Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affai-

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Theodore A. Cardill (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Theo Cardill (Signature)

Witness to signature: Lin E Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

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X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

_____ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Fermina Stevens (print full name) certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0217.

Date: June 3, 2002 Fermina Stevens (Signature)

Witness to signature: Lois E. Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe people (Western Shoshone) of the BATTLE MOUNTAIN COMMUNITY feel our issues should be included in any legislation proposed on our behalf.

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

✓ DAMAGES

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE)

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS

✓ ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

✓ USER FEES COVERING AIR, LAND, WATER

✓ HEALTH, EDUCATION, SOCIAL SERVICES

I, Donna Hill (print full name), certify that I am an enrolled member of the Western Shoshone Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: TM-1720

Date: 6/3/02 Donna K. Hill (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: [illegible] Date: 6/3/02

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X **MONEY FOR DAMAGES AND NO SALE OF LAND.**

X **HUNTING, FISHING AND GATHERING RIGHTS**

X **RETENTION OF LAND (SUBSURFACE AND ABOVE).**

X **ENLARGEMENT OF LAND BASE**

X **TREATY RIGHTS**

X **SPIRITUAL AND SACRED GROUNDS.**

X **ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.**

X **USER FEES COVERING AIR, LAND, WATER.**

_____ **HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.**

I, Madeline S Dixie **(print full name), certify that I am a Western Shoshone and/or enrolled member of the** Western Shoshone Temoak **Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:** TM 0525

Date: June 3rd 2002 Madeline S Dixie **(Signature)**

Witness to signature Jim E Whitney **Date** 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Althea Brady (print full name), certify that I am a Western Shoshone and/or enrolled member of the W.S. Nation Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 7/2/02 Althea Brady (Signature)

Witness to signature_____ Date_____

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:28PM P4

We, the Newe people (Western Shoshone) of the SOUTH FORK RESERVATION **COMMUNITY *feel our issues should be included in any legislation proposed on our behalf.***

INSTRUCTIONS: *Use an ink pen.* Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

✓ DAMAGES

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE)

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS

✓ ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

✓ USER FEES COVERING AIR, LAND, WATER

✓ HEALTH, EDUCATION, SOCIAL SERVICES

I, KAREN McDADE (print full name), certify that I am an enrolled member of the Te-Moak Western Shoshone Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: TM-1285

Date: 06/03/02 Karen McDade (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: Carlene Burton Date: 6-3-02

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X **MONEY FOR DAMAGES AND NO SALE OF LAND.**

X **HUNTING, FISHING AND GATHERING RIGHTS**

X **RETENTION OF LAND (SUBSURFACE AND ABOVE).**

X **ENLARGEMENT OF LAND BASE**

X **TREATY RIGHTS**

X **SPIRITUAL AND SACRED GROUNDS.**

X **ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.**

X **USER FEES COVERING AIR, LAND, WATER.**

X **HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.**

I, Brenda L. (Bill) Platero **(print full name), certify that I am a Western Shoshone and/or enrolled** + 4th De Sendant of A Treaty Signer "TSOA Wei Su go up."

member of the Western Shone **Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.**

Date: June 3, 02 Brenda L. (Bill) Platero **(Signature)**

Witness to signature [illegible] **Date** 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

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X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Carla Rae Platerio, certify that I am a 5th Descendant of a Treaty signer ("Tsoa Wei" sugoup) Western Shoshone and/or enrolled
(print full name)

member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0531.

Date: 6-3-02 Carla Platerio
(Signature)

Witness to signature Lois Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:30AM P7

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

- ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.
- ✓ HUNTING, FISHING AND GATHERING RIGHTS
- ✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).
- ✓ ENLARGEMENT OF LAND BASE
- ✓ TREATY RIGHTS
- ✓ SPIRITUAL AND SACRED GROUNDS.
- ✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.
- ✓ USER FEES COVERING AIR, LAND, WATER.
- ✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Dorsey Dave (print full name), certify that I am a Western Shoshone and/or enrolled member of the [redacted] Elko Band Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 2035.

Date: 6/03/02 (Signature)

Witness to signature: Lon Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Sophia Marie Dann (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-3041b.

Date: 6-3-02 Sophia M. Dann (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, JOHN LESPADE (print full name), certify that I am a Western Shoshone and/or enrolled member of the TE-MOAK Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 171.

Date: 6-3-2002 John Lespade (Signature)

Witness to signature: Lois E. Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

- ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.
- ✓ HUNTING, FISHING AND GATHERING RIGHTS
- ✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).
- ✓ ENLARGEMENT OF LAND BASE
- ✓ TREATY RIGHTS
- ✓ SPIRITUAL AND SACRED GROUNDS.
- ✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.
- ✓ USER FEES COVERING AIR, LAND, WATER.
- ✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, JOHN LESPADE (print full name), certify that I am a Western Shoshone and/or enrolled member of the TE-MOAK Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 171.

Date: 6-3-2002 John Lespade (Signature)

Witness to signature [signature] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:32AM P11

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Darla Lozano (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0376.

Date: June 3, 2002 [signature] (Signature)

Witness to signature [signature] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:33AM P12

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Bradford Holley (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0940.

Date: 6-3-02 Bradford D. Holley (Signature)

Witness to signature: Lin E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:33AM P13

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Tony Lee Plateria (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0527.

Date: 6-3-02 (Signature)

Witness to signature: Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

_____ MONEY FOR DAMAGES AND NO SALE OF LAND.

_____ HUNTING, FISHING AND GATHERING RIGHTS

_____ RETENTION OF LAND (SUBSURFACE AND ABOVE).

_____ ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

_____ SPIRITUAL AND SACRED GROUNDS.

_____ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

_____ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Prudencia Knight, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the Te Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 3098.

Date: 6-3-02 Prudencia Knight
(Signature)

Witness to signature Simmon Knight III Date 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:34AM P15

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Kathrine Bloom (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: #1205.

Date: 6/3/01 Kathrine Bloom (Signature)

Witness to signature: [illegible] Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:35AM P16

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Amelita Toyne, certify that I am a Western Shoshone and/or enrolled
(print full name)
member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0219.

Date: 6-3-02 Amelita Toyne
(Signature)

Witness to signature [illegible] Date: 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

/ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Marvin McDade, certify that I am a Western Shoshone and/or enrolled
(print full name)
member of the Te-Moak Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-1284.

Date: 6-3-02 Marvin McDade
(Signature)

Witness to signature Lori E. Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Jose G Jacobo Jr (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-moke Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0378.

Date: 6-3-02 (Signature)

Witness to signature: Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Ann Jacobo (print full name), certify that I am a Western Shoshone and/or enrolled member of the TEMOAK Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 6-3-02 Ann Jacobo (Signature)

Witness to signature [signature] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:37AM P20

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Leonard JACKSON (print full name), certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: June 3 2002 Leonard Jackson (Signature)

Witness to signature Marvin Sine Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:37AM P21

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Irene P. Adamson (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 1888.

Date: 6-3-02 Irene P. Adamson (Signature)

Witness to signature Lyn E. Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, MANUEL J COLOHUM, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the TEMOKE Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: AM 0056.

Date: 6/2/02 (Signature)

Witness to signature [signature] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:38AM P23

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Tanya Marie Jones (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 1071.

Date: 6-3-02 Tanya M. Jones (Signature)

Witness to signature: [illegible] Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Gillman Knight III, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 2915.

Date: 6/03/02 Gillman Knight III
(Signature)

Witness to signature: Brenda Knight Date: 6-03-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe people (Western Shoshone) of the SOUTH FORK RESERVATION **COMMUNITY feel our issues should be included in any legislation proposed on our behalf.**

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

yes DAMAGES

yes HUNTING, FISHING AND GATHERING RIGHTS

yes RETENTION OF LAND (SUBSURFACE AND ABOVE)

yes ENLARGEMENT OF LAND BASE

yes TREATY RIGHTS

yes SPIRITUAL AND SACRED GROUNDS

yes ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

yes USER FEES COVERING AIR, LAND, WATER

yes HEALTH, EDUCATION, SOCIAL SERVICES

I, Lena B Yowell (print full name), certify that I am an enrolled member of the Te-Moak Western Shoshone Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: TM-0239

Date: 6-3-2002 Lena B Yowell (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: Jon Whitney Date: 6/3/02

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

YES ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

Yes MONEY FOR DAMAGES AND NO SALE OF LAND.

Yes HUNTING, FISHING AND GATHERING RIGHTS

Yes RETENTION OF LAND (SUBSURFACE AND ABOVE).

Yes ENLARGEMENT OF LAND BASE

Yes TREATY RIGHTS

Yes SPIRITUAL AND SACRED GROUNDS.

Yes ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

Yes USER FEES COVERING AIR, LAND, WATER.

Yes HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, CARL N FERRIN (print full name) certify that I am a Western Shoshone and/or enrolled member of the TeMoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0241.

Date: June 3, 2002 (Signature)

Witness to signature Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Elizabeth Brady (print full name) certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: Elizabeth Brady

Date: 6/3/02

(Signature)

Witness to signature: Lori Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Webb Brady (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6/3/2002 Webb Brady (Signature)

Witness to signature Lois Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, JOAN G. WHITNEY, certify that I am a Western Shoshone and/or enrolled
(print full name)
member of the TE-MOAK Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6/3/02 Joan G. Whitney
(Signature)

Witness to signature Joan Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Rigoberto Isabey (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 6-3-02 Rigoberto Isabey (Signature)

Witness to signature Lois E. Whitney Date 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

M :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:48AM P5

Referendum Ballot # 00026

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

YES ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

YES ✓ HUNTING, FISHING AND GATHERING RIGHTS

YES ✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

YES ✓ ENLARGEMENT OF LAND BASE

YES ✓ TREATY RIGHTS

YES ✓ SPIRITUAL AND SACRED GROUNDS.

YES ✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

YES ✓ USER FEES COVERING AIR, LAND, WATER.

YES ✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Michael R. Miller (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0051.

Date: 6/3/02 Michael R. Miller (Signature)

Witness to signature Bernice Rabo Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe people (Western Shoshone) of the SOUTH FORK RESERVATION **COMMUNITY feel our issues should be included in any legislation proposed on our behalf.**

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

yes DAMAGES

yes HUNTING, FISHING AND GATHERING RIGHTS

yes RETENTION OF LAND (SUBSURFACE AND ABOVE)

yes ENLARGEMENT OF LAND BASE

yes TREATY RIGHTS

yes SPIRITUAL AND SACRED GROUNDS

yes ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

yes USER FEES COVERING AIR, LAND, WATER

yes HEALTH, EDUCATION, SOCIAL SERVICES

I, Lena B Yowell (print full name), certify that I am an enrolled member of the Te-Moak Western Shoshone Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: TM-0239

Date: 6-3-2002 Lena B Yowell (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: [illegible] Date: 6/3/02

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Sharlene Allison (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: June 3-02 Sharlene Allison (Signature)

Witness to signature Lois Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

JUL. 29 2002 05:50AM P8 FAX NO. :775 753-3794 M :WHITNEY

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Barbara J. Ridley (print full name), certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6/3/03 Barbara J. Ridley (Signature)

Witness to signature Lois E. Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Frank R Dann (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Frank R Dann 00090 (Signature)

Witness to signature Bernice Lalo Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

OM :WHITNE FAX NO. :775 753-3794 JUL. 29 2002 05:50PM P10

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Mary McCloud, certify that I am a Western Shoshone and/or enrolled
(print full name)
member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-03-02 Mary McCloud
(Signature)

Witness to signature Lydia Pippero Date 6-03-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

JM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:51AM P11

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

- ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.
- ✓ HUNTING, FISHING AND GATHERING RIGHTS
- ✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).
- ✓ ENLARGEMENT OF LAND BASE
- ✓ TREATY RIGHTS
- ✓ SPIRITUAL AND SACRED GROUNDS.
- ✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.
- ✓ USER FEES COVERING AIR, LAND, WATER.
- ✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, HAROLD WHITNEY, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 (Signature)

Witness to signature Lita Espero Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Betty Jo Dick (print full name), certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tomwak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0393.

Date: June 3rd 02 Betty Jo Dick (Signature)

Witness to signature _____ Date _____

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

M :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:52AM P13

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Toni Steve (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Toni Steve (Signature)

Witness to signature Lori E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, [illegible], certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the WESTERN Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 5-3-02 [illegible]
(Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, PEARL DANN (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0292.

Date: 6-3-02 Pearl Dann (Signature)

Witness to signature: [illegible] Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:53AM P16

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Marvin Daniel Brady JR (print full name) certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 1791.

Date: 6/3/02 Marvin Daniel Brady JR (Signature)

Witness to signature: Lori E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

JUL. 29 2002 05:54AM P17 FAX NO. :775 753-3794 JM WHITNEY

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:54AM P18

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

X

I, Marian Sam, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the Te-moke Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0389.

Date: 6/3/02 Marian Sam
(Signature)

Witness to signature _____ Date _____

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:55AM P19

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Stormy Luna (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 2541.

Date: ~~5/6/02~~ 6/3/02 Stormy Luna (Signature)

Witness to signature Lori E. Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Steve Brady (print full name), certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0129.

Date: 6-3-02 Sh Steve Brady (Signature)

Witness to signature [signature] Date 4/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

M :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:55AM P20

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Leslie McGarity (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0243.

Date: 6-3-02 Leslie McGarity (Signature)

Witness to signature Bernice Lalo Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:56AM P21

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

X

I, Mary Jane Dann (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 7139.

Date: 6-3-02 Mary L Dann (Signature)

Witness to signature Lori E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ **MONEY FOR DAMAGES AND NO SALE OF LAND.**

✓ **HUNTING, FISHING AND GATHERING RIGHTS**

✓ **RETENTION OF LAND (SUBSURFACE AND ABOVE).**

✓ **ENLARGEMENT OF LAND BASE**

✓ **TREATY RIGHTS**

✓ **SPIRITUAL AND SACRED GROUNDS.**

✓ **ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.**

✓ **USER FEES COVERING AIR, LAND, WATER.**

✓ **HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.**

I, PEDRO MENDOZA JR. **(print full name), certify that I am a Western Shoshone and/or enrolled member of the** Shoshone **Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:** TM 0037.

Date: June 03, 2002 — P. Mendoza Jr. **(Signature)**

Witness to signature Marcia Sam **Date** 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FAX NO. :775 753-3794 Jul. 29 2002 05:57AM P23 OM :WHITNEY

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

Yes MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Melanie G Davis (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-moak Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0218.

Date: June 3, 2002 Melanie G Davis (Signature)

Witness to signature Lois E. White Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

:WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 05:57AM P24

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Heather Jackson (print full name), certify that I am a Western Shoshone and/or enrolled member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02

(Signature)

Witness to signature: Lori E Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

Yes MONEY FOR DAMAGES AND NO SALE OF LAND.

_____ HUNTING, FISHING AND GATHERING RIGHTS

_____ RETENTION OF LAND (SUBSURFACE AND ABOVE).

_____ ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

_____ SPIRITUAL AND SACRED GROUNDS.

_____ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

_____ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I Jolynn Gail Stevens, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the W. Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 0219.

Date: June 3, 02 Jolynn G Stevens
(Signature)

Witness to signature Lin E Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

JUL. 29 2002 05:58AM P26 FAX NO. :775 753-3794 JM :WHITNEY

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

Yes MONEY FOR DAMAGES AND NO SALE OF LAND.

Yes HUNTING, FISHING AND GATHERING RIGHTS

Yes RETENTION OF LAND (SUBSURFACE AND ABOVE).

Yes ENLARGEMENT OF LAND BASE

Yes TREATY RIGHTS

Yes SPIRITUAL AND SACRED GROUNDS.

Yes ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

Yes USER FEES COVERING AIR, LAND, WATER.

Yes HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, LISA BATISTA LISA IKE, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the SHOSHONE Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0311.

Date: 6-3-02 Lisa Batista Lisa Ike
(Signature)

Witness to signature: Tom E Whitby Date: 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, [illegible] (print full name), certify that I am a Western Shoshone and/or enrolled member of the [illegible] Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0604.

Date: 6/3/02 [illegible] (Signature)

Witness to signature: [illegible] Date: 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

JUL. 29 2002 06:00AM P28 FAX NO. :775 753-3794 OM :WHITNEY

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

yes MONEY FOR DAMAGES AND NO SALE OF LAND.

yes HUNTING, FISHING AND GATHERING RIGHTS

yes RETENTION OF LAND (SUBSURFACE AND ABOVE).

yes ENLARGEMENT OF LAND BASE

yes TREATY RIGHTS

yes SPIRITUAL AND SACRED GROUNDS.

yes ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

yes USER FEES COVERING AIR, LAND, WATER.

yes HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Yolanda Cortez (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-1247.

Date: June 3, 2002 Yolanda Cortez (Signature)

Witness to signature Joy E. Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

_____ MONEY FOR DAMAGES AND NO SALE OF LAND.

_____ HUNTING, FISHING AND GATHERING RIGHTS

_____ RETENTION OF LAND (SUBSURFACE AND ABOVE).

_____ ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

_____ SPIRITUAL AND SACRED GROUNDS.

_____ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

_____ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Eddy Piffero, (print full name), certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0720.

Date: 6/3/02 Eddy Piffero (Signature)

Witness to signature Lori E. Whitney Date: 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

JUL. 29 2002 06:01AM P30 FAX NO. :775 753-3794 JM WHITNEY

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

- ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.
- ✓ HUNTING, FISHING AND GATHERING RIGHTS
- ✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).
- ✓ ENLARGEMENT OF LAND BASE
- ✓ TREATY RIGHTS
- ✓ SPIRITUAL AND SACRED GROUNDS.
- ✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.
- ✓ USER FEES COVERING AIR, LAND, WATER.
- ✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Desmond Dixon (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-2068.

Date: 6-3-02 Desmond Dixon (Signature)

Witness to signature: [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:01AM P31

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Bruce Paul Stevens (print full name) certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 6-3-02 Bruce P Stevens (Signature)

Witness to signature Joi E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Bryan Andrew Allison (print full name) certify that I am a Western Shoshone and/or enrolled member of the Temoke Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 6-3-02 Bryan Allison (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, John Temoke (print full name) certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: John Temoke 6-3-02 John Temoke (Signature)

Witness to signature Bernice Rowo Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Mary E. Gibson (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Bands Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 0049.

Date: 6/3/02 Mary E. Gibson (Signature)

Witness to signature Bernice Rios Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 JUL. 29 2002 06:03AM P35

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Sally Knight (print full name), certify that I am a Western Shoshone and/or enrolled member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____

Date: June 3, 2002 Sally Knight (Signature)

Witness to signature [signature] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:04AM P36

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Nick Holley (print full name), certify that I am a Western Shoshone and/or enrolled member of the Battlemt Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 6-3-02 Nick Holley (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Judith Webiley (print full name), certify that I am a Western Shoshone and/or enrolled member of the Battle Mtn N.V. Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is:_____.

Date: 6-03-02 Judith Webiley (Signature)

Witness to signature [illegible] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Vickie Weibley (Holley) (print full name) certify that I am a Western Shoshone and/or enrolled member of the Battle Mtn. NV. Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0937.

Date: 6-3-02 Vickie Weibley (Holley) (Signature)

Witness to signature Lori E Whitney Date 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

ROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:05AM P39

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Edward Holly (print full name), certify that I am a Western Shoshone and/or enrolled member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: June 3 2008 Edward Holly (Signature)

Witness to signature Lori E White Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Marguerite Lita Piffero, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the Te Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0736.

Date: 6-3-02 Marguerite Piffero
(Signature)

Witness to signature Jan E. Whitney Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:06AM P41

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Jacqueline Stevens (print full name) certify that I am a Western Shoshone and/or enrolled member of the Tekeek Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Jacqueline Stevens (Signature)

Witness to signature: Lori E Shirley Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, William Temoke (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoke Tribe ~~TM-2172~~ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-2172.

Date: 06-03-02 (Signature)

Witness to signature: Lyn E. Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Bobby Dick (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoke Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6/3/2002 Bobby Dick (Signature)

Witness to signature Lyn E Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:08PM P44

We, the Newe people (Western Shoshone) of the BATTLE MOUNTAIN COMMUNITY feel our issues should be included in any legislation proposed on our behalf.

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

X DAMAGES

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE)

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS

X ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

X USER FEES COVERING AIR, LAND, WATER

X HEALTH, EDUCATION, SOCIAL SERVICES

I, Marlene G. Leach, certify that I am an enrolled member of the (print full name) TE-MOAK Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: 1775

Date: May 31-2002 Marlene G. Leach (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: [illegible] Date: May 31, 2002

We, the Newe people (Western Shoshone) of the BATTLE MOUNTAIN COMMUNITY feel our issues should be included in any legislation proposed on our behalf.

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

X DAMAGES

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE)

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS

X ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

X USER FEES COVERING AIR, LAND, WATER

X HEALTH, EDUCATION, SOCIAL SERVICES

I, Lorie Carpenter (print full name) certify that I am an enrolled member of the Te-Moak Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: [illegible]

Date: May 31 2002 (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature [illegible] Date: May 31 2002

the Newe people (Western Shoshone) of the BATTLE MOUNTAIN
MUNITY feel our issues should be included in any legislation proposed on our
f.

RUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE
TION BEFORE MAKING YOUR SELECTIONS.

✓ DAMAGES

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE)

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS

✓ ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

✓ USER FEES COVERING AIR, LAND, WATER

✓ HEALTH, EDUCATION, SOCIAL SERVICES

Nicole Tanya Martinez certify that I am an enrolled member of the
rint full name)
Western Shoshone Tribe. I have not received another U. S. Indian
s Commission Indian Nation's award, and that I meet the Western Shoshone blood
um (1/4 minimum) qualification for enrollment in my Tribe.

ment Number: TM# 01633

June 3, 2002 Nicole J. Martinez
(Signature)

k you for your participation. Your information will be sent to
tor Reid and others who are involved in this legislation.

s to signature: Angela Lara Date: 6-3-02

We, the Newe people (Western Shoshone) of the BATTLE MOUNTAIN COMMUNITY feel our issues should be included in any legislation proposed on our behalf.

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

X DAMAGES

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE)

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS

X ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

X USER FEES COVERING AIR, LAND, WATER

X HEALTH, EDUCATION, SOCIAL SERVICES

I, David Decker (print full name), certify that I am an enrolled member of the Te Moke Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: 2377

Date: 5/31/02 David Decker (Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: [illegible] Date: 5/31/02

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:10PM P48

[illegible], certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the Te Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 1815.

Date: 6-3-02 Rory Dann
(Signature)

Witness to signature Lois E. Whitney Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:10AM P49

We, the Newe people (Western Shoshone) of the BATTLE MOUNTAIN COMMUNITY feel our issues should be included in any legislation proposed on our behalf.

INSTRUCTIONS: Use an ink pen. Do not use a pencil. READ THE ENTIRE SECTION BEFORE MAKING YOUR SELECTIONS.

✓ DAMAGES

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE)

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS

✓ ROYALTIES FROM MINERALS, MINING, GEO THERMAL, AND PETROLEUM BUSINESSES

✓ USER FEES COVERING AIR, LAND, WATER

✓ HEALTH, EDUCATION, SOCIAL SERVICES

I, Donna Hill, certify that I am an enrolled member of the
(print full name)
Western Shoshone Tribe. I have not received another U. S. Indian Claims Commission Indian Nation's award, and that I meet the Western Shoshone blood quantum (1/4 minimum) qualification for enrollment in my Tribe.

Enrollment Number: TM-1220

Date: 6/3/02 Donna K. Hill
(Signature)

Thank you for your participation. Your information will be sent to Senator Reid and others who are involved in this legislation.

Witness to signature: [illegible] Date: 6/3/02

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

_____ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Fermina Stevens (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM-0217.

Date: June 3, 2002 Fermina Stevens (Signature)

Witness to signature: Iris E. Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

ate: 6-3-02 _____ (Signature)

Witness to signature _____ Date 6/3/02

hank you for participating. Your information will be sent to Senator Reid and others involved in this gislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

_____ RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

_____ TREATY RIGHTS

_____ SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

_____ USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Walter F. Fisk (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: TM 1131.

Date: 6/3/2002 _____ (Signature)

Witness to signature _____ Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

YES ✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Roy Vick (print full name), certify that I am a Western Shoshone and/or enrolled member of the TEMOAK Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0194.

Date: 6-3-02 Roy Vick (Signature)

Witness to signature Lois E. Whitney Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:17AM P1

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Wesley Dick (print full name), certify that I am a Western Shoshone and/or enrolled member of the Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: In 3093.

Date: 6-3-02 Wesley Dick (Signature)

Witness to signature: [illegible] Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:17AM P2

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

____ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

____ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Carla Blossom (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 0155.

Date: 6-3-02 Carla Blossom (Signature)

Witness to signature: Lori E Whitney Date: 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Kelly Ray Dann (print full name), certify that I am a Western Shoshone and/or enrolled member of the Temoak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: 1771.

Date: 6-3-02 Kelly Dann (Signature)

Witness to signature [signature] Date 6/3/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:18AM P4

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Arthur L. Thompson (print full name), certify that I am a Western Shoshone and/or enrolled member of the Te-Moak Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Arthur L. Thompson (Signature)

Witness to signature: Twila Bell Date: 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:19AM P5

... Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Gladys B Williams (print full name), certify that I am a Western Shoshone and/or enrolled member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: June 3rd 2002 Gladys B Williams (Signature)

Witness to signature Bernice Lulo Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Lew MAINE, certify that I am a Western Shoshone and/or enrolled
(print full name)

member of the _____ Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: _____.

Date: 6-3-02 Lew Maine
(Signature)

Witness to signature Brian Larson 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

X MONEY FOR DAMAGES AND NO SALE OF LAND.

X HUNTING, FISHING AND GATHERING RIGHTS

X RETENTION OF LAND (SUBSURFACE AND ABOVE).

X ENLARGEMENT OF LAND BASE

X TREATY RIGHTS

X SPIRITUAL AND SACRED GROUNDS.

X ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

X USER FEES COVERING AIR, LAND, WATER.

X HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, April T. George (print full name), certify that I am a Western Shoshone and/or enrolled member of the Western Shoshone Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: N/A (Private information)

Date: 3 Jun 02 April T. George (Signature)

Witness to signature Arthur L. Thompson Date 6-3-02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

We, the Newe People (Western Shoshone) feel our issues should be included in any legislation proposed on our behalf, and we submit the following as issues:

INSTRUCTIONS: Mark your choices with an ink pen. Do not use a pencil. READ ENTIRE SECTION BEFORE MAKING YOUR CHOICES.

✓ MONEY FOR DAMAGES AND NO SALE OF LAND.

✓ HUNTING, FISHING AND GATHERING RIGHTS

✓ RETENTION OF LAND (SUBSURFACE AND ABOVE).

✓ ENLARGEMENT OF LAND BASE

✓ TREATY RIGHTS

✓ SPIRITUAL AND SACRED GROUNDS.

✓ ROYALTIES FROM MINERALS AND ORE, MINING, GEO THERMAL, PETROLEUM, AND GAS BUSINESSES.

✓ USER FEES COVERING AIR, LAND, WATER.

✓ HEALTH, EDUCATION, SOCIAL AND JUDICIAL SERVICES.

I, Mary McCloud, certify that I am a Western Shoshone and/or enrolled
(print full name)
member of the Western Shoshone nation Tribe. I have not received another U.S. Indian Claims Commission Indian Nation's award. My enrollment number is: N/A.

Date: 6-03-02 Mary McCloud
(Signature)

Witness to signature Barbara J. Ridley Date 6/03/02

Thank you for participating. Your information will be sent to Senator Reid and others involved in this legislation. Additional comments should be forwarded to the Senate Select Committee on Indian Affairs.

FROM :WHITNEY FAX NO. :775 753-3794 Jul. 29 2002 06:21PM P9

University of Colorado at Boulder

School of Law
401 UCB
Boulder, Colorado 80309-0401
Phone: (303) 492-8047
FAX: (303) 492-1200

September 6, 2002

Senator Daniel K. Inouye
Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Re: Western Shoshone Distribution Act (S. 958) and the Timbisha Shoshone Homeland Act

Dear Senator Inouye and Members of the Senate Indian Affairs Committee:

I am aware that the Senate Indian Affairs Committee is considering legislation to authorize final payment and distribution of an Indian Claims Commission (ICC) award to the Western Shoshone (S. 958). I am also aware that the Inter-American Commission on Human Rights has issued a report finding that the United States has failed to meet its obligations under international human rights law to recognize and protect Western Shoshone land rights—rights that are further jeopardized by S. 958.

The proposed Western Shoshone Distribution Act to distribute the Indian Claims Commission award amid controversy and disagreement among both elected tribal and traditional Western Shoshone leadership, will not resolve the long-standing land rights issues of the Western Shoshone in Nevada. Certainly, it will not redress the harms caused by the ICC proceedings so clearly recounted in the report of the Inter-American Commission on Human Rights. In my opinion, distribution of the Indian Claims Commission award will likely exacerbate conflicts among the Western Shoshone communities and between the Western Shoshone and the federal government.

I write to the committee to propose an alternate course of action that has been successfully implemented under circumstances very similar to the situation faced by the Western Shoshone of Nevada. In 2000, Congress passed the pathbreaking Timbisha Shoshone Homeland Act.[1] I recommend that Congress now approve legislation that will mandate

[1] A copy of the Timbisha Shoshone Homeland Act and the Congressionally mandated study on which the Act is based are enclosed.

negotiation of the Western Shoshone claims to secure an adequate land base for the Western Shoshone people using the Timbisha Shoshone Homeland Act as a model. Congress should take no action to distribute the ICC award unless such action is specifically provided for in the negotiations. The process must be a government-to-government negotiation between sovereign entities, and the composition of the federal negotiating team should reflect the high priority of the United States government to address both tribal and federal interests. The federal and Western Shoshone teams should jointly undertake a study to determine the lands appropriate as a land base for the Western Shoshone. Funds necessary to undertake these activities should be appropriated.

This is the right policy, and one that is consistent with the Inter-American Commission's findings. Perhaps most important, in my opinion it is the only course of action that will result in a permanent, fair resolution of the issues that have plagued both the Western Shoshone and federal government for decades.

I make this recommendation based primarily on my experience as an impartial facilitator in negotiations between the National Park Service (and other federal agencies) and the Timbisha Shoshone Tribe to provide a permanent land base within the Timbisha Shoshone's aboriginal homeland in Death Valley, California. (I was also involved in the negotiations between tribes and the departments of Interior and Commerce over the application of the Endangered Species Act in Indian Country.) These negotiations were based on the government-to-government process outlined above and resulted in a comprehensive agreement that was set forth in the Timbisha Shoshone Homeland Act. This legislation and the process leading to its enactment two years ago provide an important model for Congress to consider in this case. It is summarized below.[2]

Timbisha Shoshone Homeland Act

The Timbisha Shoshone were dispossessed of their ancestral lands in 1933 when President Hoover created the Death Valley National Monument. Some tribal members left Death Valley, but those who remained lived as virtual squatters in the national park. In October, 1994, Congress inserted a provision in the California Desert Protection Act requiring the Department of the Interior to study the tribe's ancestral lands within and outside Death Valley National Park with the purpose of identifying lands "suitable for a reservation." The department was given one year to conduct the study and prepare and submit a report to Congress, and it was instructed to do so in consultation with the tribe.

The first phase of implementation was not successful. Three agencies, the National Park Service (NPS), the Bureau of Land Management (BLM), and the Bureau of Indian Affairs

[2] I have also attached for inclusion in the record on S. 958 an article published in *American Indian Culture and Research Journal* that fully recounts the process leading up to the Timbisha Shoshone Homeland Act ("Government to Government Negotiations: How the Timbisha Shoshone Got Its Land Back," Steven Haberfeld, *American Indian Culture and Research Journal*, Volume 24, Number 4, 2000).

(BIA) from the Department of the Interior and the National Forest Service (USFS) from the Department of Agriculture began to meet with the tribe in May, 1995. But after nine months of "study," at least five major meetings between the tribe and a host of government officials, and three drafts of the study report, talks broke down with deep hostility and distrust among all parties at the table.

Although I was not involved in this phase of the process, it seems clear in retrospect that the provision in the Desert Protection Act did not create a process designed to accomplish the stated goals of the Congressional mandate. The federal agencies did not see resolution of the Timbisha Shoshone's need for a homeland as a real priority. They initially sought only to undertake a consultation process, rather than a negotiation process in which issues are resolved by mutual agreement between equal parties. This did not work, and the intent of Congress to create a homeland for the Timbisha Shoshone and resolve years of conflict with the federal government was frustrated.

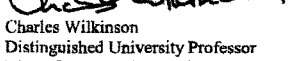
The ultimate success of the process in Death Valley demonstrates how sovereign entities can come together as equals in bilateral negotiations and reach agreement without either party sacrificing its vital interests. In the second round of talks, the process had the attention and commitment of high-level policy makers in the relevant federal agencies, and this was reflected in the composition of the federal negotiating team. The parties agreed to a framework that, among other provisions, acknowledged their special political relationship as sovereign entities and specified that their negotiations were intended to lead to a specific, formal proposal for achieving a Timbisha homeland. The framework also set forth the interests and principles each party would work to fulfill. Procedural agreements were reached which provided safety and predictability to all parties. The parties invited the participation of an independent facilitator.

It was apparent when I joined the second round of negotiations that both the Timbisha and federal negotiating teams started with great apprehension and distrust. Yet they were able to agree on substantial lands both within and outside Death Valley National Park as a homeland for the Timbisha, and, among other things, to acknowledge that the interests of both the Tribe and the National Park Service were served by "recognizing their coexistence on the same land and by establishing partnerships for compatible land uses."

This comprehensive agreement was reached when the government approached the Timbisha as an equal and began negotiations in good faith. It was not easy. The agreement was hammered out through a process of compromise by representatives of policy makers and by people who will have to live with the agreement as they implement it from day to day. As a result, over 65 years of conflict between the Timbisha Shoshone and the federal government have been resolved.

I hope the Senate Indian Affairs Committee will reject S. 958 and move forward with legislation to mandate a process of negotiation similar to that outlined above for the Western Shoshone. Thank you for the opportunity to provide this statement for the record. I would be happy to answer any questions from the Committee or to provide additional information about the Timbisha Shoshone Homeland Act.

Sincerely,



Charles Wilkinson
Distinguished University Professor
Moses Lasky Professor of Law

INDIAN LAW RESOURCE CENTER

CENTRO DE RECURSOS JURÍDICOS PARA LOS PUEBLOS INDÍGENAS

September 6, 2002

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S. JAMES ANAYA, ESQ.
Email: sanaya@indianlaw.org

Senator Daniel K. Inouye
Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

RE: **Te-Moak Tribal Council Resolutions Opposing S.958 and Impeaching August 2nd Hearing Proponents of the Bill**

Dear Senator Inouye and Members of the Senate Indian Affairs Committee:

We write as the legal representatives of Mary and Carrie Dann and the Dann Band of Western Shoshone Indians to submit supplemental information for the record on S. 958, the Western Shoshone Claims Distribution Act.

1. **Tribal Impeachment of Pro-S 958 Witnesses Felix Ike and Nancy Stewart and of the "Referendum" on June 3, 2002.**

On August 2, 2002, Felix Ike and Nancy Stewart testified in favor of S 958. Both claimed to speak on behalf of the Western Shoshone [illegible] Steering Committee. Both claimed that the "referendum" on June 3, 2002 shows overwhelming support by the Western Shoshone for the per capita distribution set forth S 958.

This did not comport with the views of many of the tribal leaders in the room who had come to Washington to testify at the hearing, but who were not allowed to do so – including leaders from the Te-Moak Tribal Council and the Western Shoshone bands that make up the Te-Moak Tribe.[1]

---

[1] The Te-Moak Tribe is comprised of four Western Shoshone bands: South Fork, Battle Mountain, Wells and Elko. The South Fork, Battle Mountain, Wells and Elko bands are federally recognized Western Shoshone governments. Each has its own tribal council responsible for conducting business and obligating the bands. The Te-Moak Tribe has a tribal council, but it is a political entity

The Te-Moak Tribal Council took immediate, decisive action to inform the Committee of its actual position in opposition to S. 958. On August 7, 2002 – three business days after the hearing – the Te-Moak Tribe of Western Shoshone passed a series of resolutions that explicitly and unequivocally 1) oppose S.958; 2) disavow the referendum and its results; and deny any authority to be represented by the Western Shoshone Claims Distribution Steering Committee. These resolutions are summarized below and attached to this letter for submission to the record on S.958.

Resolution 02-TM-21:

- States that the Te-Moak Chairman did not present the "true concerns" of the Te Moak Tribe in his testimony in Washington, DC at the hearing on the bill;

- States that the voting that took place on June 3rd was done without the approval of either the bands or the Tribal Council, and that the ballots used were "extremely" biased, in that a choice between voting for the money or against the money "...does not reflect the true wishes of the Western Shoshone People";

- Resolves that the voting that took place on June 3rd is invalid because it did not have the approval of the Te-Moak Tribal Council or Bands;

and, most important, this resolution says:

> **NOW BE IT FURTHER RESOLVED that this resolution be sent to Senator Reid and other Congressional Representatives as it represents the Te-Moak Tribal Council true concerns regarding the process of which Senate Bill S 958 is being pushed for approval. The Te-Moak Tribal Council requests Government to Government negotiations. The Te-Moak Tribal Council request[s] a table discussion before anything is introduced before the Senate for the following:**
>
> 1. **Land, hunting, fishing, grazing and gathering issues.**
> 2. **Money for damages for the past to the present.**
> 3. **Recognize the Western Shoshone as a nation within a Nation.**
> 4. **Recognize that the Treaty can only be abolished or amended by the two nations that made it.**

---

with no geographic base and no constituency independent of the bands. All of the band councils have previously gone on record in opposition to S.958 as written, as has the Yomba Shoshone Tribe. (See "Statement of Opposition to Senate Bill 958: the Western Shoshone Claims Distribution Act" submitted by the Indian Law Resource Center on July 30, 2002, and attached hereto for your convenience.)

The Te-Moak Tribal Council passed two other resolutions on August 7, 2002:

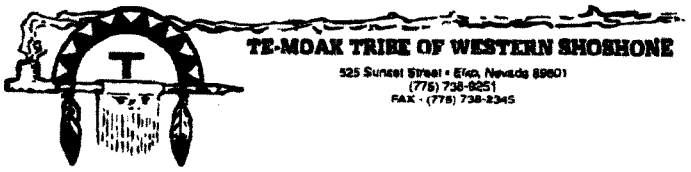
Resolution 02-TM-19 states that the Te-Moak Tribal Council "... *does not recognize the [Western Shoshone Claims Distribution] Steering Committee, and therefore abolishes the Steering Committee in its entirety*" (emphasis added).

And, in to dispense with any doubts about the validity of the results of the referendum, and to address claims that the referendum had tribal support, **resolution 02-TM-20** states that the Te-Moak Tribal Council "... *does not recognize the Felix Ike balloting of June 3rd* (emphasis added).

The Senate Committee on Indian Affairs cannot in good conscience rely on the testimony presented by the proponents of S. 958 in light of this clear, direct and unequivocal statement in opposition to the referendum on June 3, 2002 and to a per capita distribution of the ICC award prior to real negotiations that will address and resolve the issues facing the Western Shoshone as outlined above.

Sincerely,

INDIAN LAW RESOURCE CENTER



TE-MOAK TRIBE OF WESTERN SHOSHONE

525 Sunset Street • Elko, Nevada 89801
(775) 738-9251
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RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-21

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT,

WHEREAS, the, TE-MOAK Tribe of western Shoshone Council as the governing body who represents Elko, Wells Battle Mountain and South Fork (includes Odgers Ranch and Ruby Valley), bounded by The Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, and

WHEREAS, to quote the PREAMBLE which states, to conserve our Tribal property; to develop our resources; to administer justice; to promote the welfare of ourselves and our descendants, and otherwise govern the affairs of this Tribe, and

WHEREAS, the Te-Moak Tribal Council is concerned with the actions and judgments the Te-Moak Chairman has presented regarding the so called Peoples Issues vote and testimony in Washington DC, and

WHEREAS, in the Te-Moak Constitution of the Western Shoshone the following applies to The Chairman and Elections of the Te-Moak Tribe of Western Shoshone, SEC 5. Duties of the Chairman (3) Shall sign all negotiable instruments, contracts, applications, for Federal, or other funds, and all other obligations of the Bands, all as designated by the Tribal Council; Shall make written and oral reports at all Tribal Council meetings of all his or her activities; (6) Shall not obligate the Tribe without the prior written approval of the Tribal Council; ARTICLE 5 – REGISTRATION AND VOTING (b) In all elections of the Band or Tribe, a registered voter may vote only in the Band where the voter is registered And,

WHEREAS, the Council sees the under the Constitution of the Te-Moak Tribe of Western Shoshone there is but four elections that can happen, ARTICLE 11 - POPULAR PARTICIPATION IN GOVERNMENT Section1. Tribal Initiative, Section 2. Tribal Referendum, Section 3. Band Initiative, and Section 4. Band Referendum, each type of these elections can only take place only after the Tribe request or the Band request the election, and

WHEREAS, the voting that took place on June 3rd was done without the approval of either the bands nor the Tribal Council and furthermore the ballots used were extremely bias, voting for the money or against, this does not reflect the true wishes of the Western Shoshone People.

NOW THEREFORE BE IT RESOLVED, the voting and ballot used that took place June 3rd is invalid because of the lack of Tribal Council or Bands prior approval.

NOW BE IT FURTHER RESOLVED THAT, this resolution be sent to Senator Reid and other Congressional Representatives as it represents the Te-Moak Tribal Council true concerns regarding the process of which Senate Bill S 958 is being pushed for approval. The Te-Moak Tribal Council requests Government to Government negotiations. The Te-Moak Tribal Council request for a table discussion before anything is introduced before the Senate for the following:

02-TM-21

1. Land, hunting, fishing, grazing and gathering issues.
2. Money the damages for the past to the present.
3. Recognize the Western Shoshone as a nation within a Nation.
4. Recognize that the Treaty can only be abolished or amended by the two nations that made it.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom 6 Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larkin Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

TE-MOAK TRIBE OF WESTERN SHOSHONE
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RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-20

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT.

WHEREAS, this organization is an Indian Organization known as the Te-Moak Tribe of Western Shoshone Indians of Nevada as defined under the Indian reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the promotion of economical and social welfare of its tribal members, and

WHEREAS, the Te-Moak Tribal Council comprises representatives of constituent Te-Moak Bands at Battle Mountain, Elko Band, South Fork Band, and Wells Band, and

WHEREAS, the Te-Moak Constitution states in Article 11 Sec. 2 Tribal Referendum. Upon the request of the majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted by the Election Board to a popular referendum of registered voters. The registered voters shall by majority vote in such referendum, decide whether the ordinance or resolution shall thereafter be in effect; provided, that at least thirty percent (30%) of the registered voters shall vote in such referendum.

WHEREAS, We, the Western Shoshone Indians of Nevada, located at Elko, Battle Mountain and South Fork; in order to improve the governing structure initially established by the Constitution and Bylaws adopted by the adult Indians residing on the reservation at Elko, Nevada, on May 3, 1938; pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984, and approved on August 24, 1938; to provide an opportunity for other Te-Moak Communities of Western Shoshone Indians of Nevada to become part of this Tribe; to conserve our Tribal property; to develop our resources; to administer justice; to promote the welfare of ourselves and our descendants, and in other wise govern the affairs of this Tribe, do ordain and establish this Constitution pursuant to the Indian Reorganization Act of 1934, as amended.

WHEREAS, the Te-Moak Constitution states in Article 4 Sec. 5 (a) (6) Tribal Chairperson ...Shall not obligate the Tribe without the prior written approval of the Tribal Council; and

NOW THEREFORE BE IT RESOLVED, the Te-Moak Tribal Council does not recognize the Falk Ike balloting of June 3rd.

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RESOLUTION OF THE GOVERNING BODY
OF THE
TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA

RESOLUTION NO. 02-TM-19

BE IT RESOLVED BY THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS OF NEVADA THAT,

WHEREAS, this organization is an Indian Organization known as the Te-Moak Tribe of Western Shoshone Indians of Nevada as defined under the Indian reorganization Act of June 18, 1934, as amended, to exercise certain rights of home rule and to be responsible for the protection of economical and social welfare of its tribal members, and

WHEREAS, the Te-Moak Tribal Council comprises representatives of constituent Te-Moak Bands at Battle Mountain, Elko Band, South Fork Band, and Wells Band, and

WHEREAS, the Steering Committee has never met with the Te-Moak Tribal Council.

WHEREAS, the Steering Committee has never provided the Te-Moak Tribal Council with reports on the activities of the committee pertaining claims distribution.

WHEREAS, the Steering Committee and any other affiliated constituents do not represent the Te-Moak Tribe, nor authorized to speak on behalf of the 4 Bands of the Te-Moak Tribe Western Shoshone.

NOW THEREFORE BE IT RESOLVED, the Te-Moak Tribal Council rescinds resolution 97-TM-19, and the Te-Moak Tribal Council does not recognize the Steering Committee, and therefore dissolves the Steering Committee in its entirety.

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom 5 Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

02-Tm-20

C-E-R-T-I-F-I-C-A-T-I-O-N

I, the undersigned, as Vice Chairman of the Tribal Council of the Te-Moak Tribe of Western Shoshone Indians of Nevada, do hereby certify that the Te-Moak Council is composed of 9 members of whom 6 Constituting a quorum were present at a duly held meeting on the 7th day of August, 2002, and that the foregoing resolution was duly adopted at such meeting by a vote of 5 FOR, 0 AGAINST, 0 ABSTENTIONS, pursuant to Article 4, Section 3 (n) of the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada.

Larson Bill, Vice-Chairman
Te-Moak Tribe of Western Shoshone

ATTEST:

Recording Secretary
Te-Moak Tribe of Western Shoshone

DANN.96A

CONSTRUCTIVE CONQUEST IN THE COURTS

a legal history of the

THE WESTERN SHOSHONE LANDS STRUGGLE

By John D. O'Connell

ABSTRACT

Late in the twentieth century federal law courts found that the Western Shoshone still had title to millions of acres of putative public lands in Nevada. However a claim alleging that the United States had long ago taken all Western Shoshone lands had been filed in the Indian Claims Commission by a tribal government representing only a portion of the tribe. Other Western Shoshone and the tribal government that had filed the claim were not allowed to correct the claim or to refuse the award to protect existing title. Ultimately the courts decided that the fictional nineteenth-century confiscation, assumed by the Claims Commission, would have to be made reality, even as to lands continuously in Indian possession. The injustice was noted by courts, government officials, and international tribunals but it was left for Congress to correct.

INTRODUCTION

Many places in the West claim to have been America's last frontier, but the Great Basin, with its echelons of valleys and ranges, is surely the largest expanse of land in the lower forty-eight states that can legitimately make that claim. For the first hundred years after its inclusion within the United States, the only white occupants were prospectors,

herdsmen with roaming flocks of sheep, isolated ranchers, and the residents of the few and widely scattered towns.

Because of the Basin's remoteness and lack of population, it became the home of nuclear testing in the United States and, in the late 1970s, was to be the locus for the land-mobile MX Missile System, whose multitude of valley-filling "race track" bases, had it been built, would have constituted the largest military project in history. The Great Basin now contains the richest gold-mining district in the world and an expanding population. It is also the aeons-old homeland of the Newe, the indigenous hunter-gatherers who came to be known to the late-arriving non-Indians as the Western Bands of the Shoshone Nation, or the Western Shoshone.

In the fall of 1973, the author received a call for legal assistance from Mary and Carrie Dann, Western Shoshone herders of cattle and horses who were being threatened with impoundment of their stock for failing to obtain grazing permits from the Bureau of Land Management (BLM). At a meeting with the Danns and a group of traditional Shoshone elders, the elders explained through younger interpreters that the Western Shoshone had a treaty right to the use of the unoccupied lands of their territory until reservations were established for them. They said those treaty rights were now being ignored by the federal and state governments. The BLM was not only challenging their right to graze, it was chaining down stands of the pine-nut trees which provided the Indians' traditional subsistence food. Nevada state game wardens were denying their treaty rights to hunt, fish, and trap.

The Shoshone elders also described what they felt to be an even more serious

threat, an effort by attorneys to prosecute on their behalf a claim against the United States in the Indian Claims Commission (ICC) for a supposed nineteenth-century "taking" of all Western Shoshone lands. They feared that for the them to pursue that claim and accept money for their land would be to abandon their treaty rights and to sell their Mother Earth. They described a twenty-year-long battle to stop the ICC claim. It seemed unlikely that these uneducated desert dwellers had a better grasp of the law than the attorneys who were representing them in the ICC and who were well known for their expertise in Indian law. Nonetheless, these elders exuded a quiet confidence that inspired the author's belief that their theory deserved to be investigated and tested.

That investigation was made and a defense to the trespass notice was launched to test the theory that Western Shoshone title had never been extinguished and that the Indians had a treaty right to use unoccupied lands within their territory. The BLM was induced to abandon its administrative enforcement efforts and to file a civil trespass action against the Danns in the United Sates District Court in Reno. Thus, the United States of America, for the first time in the long and sordid history of its relations with the indigenous population, sought the aid of a court in evicting Indians from their homeland. In so doing, it put down its sword of conquest and its shield of sovereign immunity, and it took up the burden of an ordinary plaintiff in the ancient action of trespass to property--the burden of proving superior title to the defendants who happened, in this instance, to be in possession under one of the oldest titles on Earth.

This article will demonstrate that the United States was unable to prove its superior title to the Western Shoshone lands and that District Judge Bruce Thompson eventually

refused the government's request for trespass damages and equitable relief against the Danns. However, the Shoshone elders' suspicion of the Indian Claims Commission proved well founded, as the government was able to effectively extinguish the Shoshone title in 1979 by assisting the claims attorneys in pushing the Shoshone claim through the ICC and by accepting, as guardian of the Indians, payment of the ICC award on their behalf despite their continuing protests. It will be shown that, by this method, the government of the United States was able to wrest title from its wards in the last part of the twentieth century, while creating the illusion that the confiscation had occurred a century earlier. Although, at times, the lower courts made efforts to confront the reality of the history and the legal status of Shoshone title and to devise or force a solution, and at one time a negotiated settlement seemed close at hand, ultimately the judicial branch became the instrumentality for the last great seizure of Native American lands, leaving it to Congress to rectify the injustice.

This history will begin with the Treaty of Ruby Valley of 1863 that granted the United States and its citizens limited use of Western Shoshone lands until reservations were established for the Indians and it will show how that treaty relationship continued into modern times. Next, it will describe the complicated course of the claims proceedings and the efforts of the Indians to have the ICC and the Court of Claims correct the erroneous assumption that Western Shoshone lands had all been taken long ago. The story will then backtrack to pick up and follow the course of the trespass case against the Dann sisters and the repeated appeals through the federal court system that paralleled the claims proceedings for five years and extended into the 1990s. It will also describe the futile attempt of the

Indians to refuse the ICC award and the occasional and ineffectual efforts of some high government officials and the trial judge to devise a solution which would allow the Indians to keep some of their lands.

This history will then turn to describing the aftermath of the Dann litigation, including the congressional establishment of a small reservation within Death Valley Park for the California portion of the Western Shoshone. Now as the government cracks down on Indian stock people who continue to use their lands, the Western Shoshone and Congress struggle to decide whether Congress should simply distribute the ICC claims money to individual Indians or whether it should also confirm Western Shoshone ownership of some of their lands in Nevada.

I. THE TREATY OF RUBY VALLEY

In 1863, the Western Bands of the Shoshone Nation entered into a Treaty of Peace with the United States at Ruby Valley in what is now central Nevada.[1] Among its provisions, the treaty described the boundaries of Western Shoshone Country, extending from the Snake River in Idaho through Nevada into southern California.[2] The treaty did not cede title to any Shoshone lands; Congress had specifically instructed the treaty

[1]Treaty of Ruby Valley, 18 Stat. 689 (Dated 1863, ratified 1866); II INDIAN AFFAIRS: LAWS AND TREATIES 851-853 (Kappler, ed.)(1904).

[2]*Id.* at Art. VII. The treaty expresses the boundaries in transliteration of the Shoshone place names. During the 1970s, members of the Western Shoshone Sacred Lands Association, see *infra* note 45 and accompanying text, conferred with elders throughout Western Shoshone territory to establish the location of these places on a modern map.

commissioners not to extinguish Indian title.[3] The treaty granted the United States certain privileges, including rights-of-way to construct telegraph lines, wagon roads and a railroad to California and permission to engage in mining activity and to establish forts, towns, and ranches in support thereof.[4] Additionally, the treaty granted the President the authority to establish permanent reservations for the Western Shoshone within their territory. The Indians agreed, in that event, to "abandon the roaming life they now lead" and to remove their camps to such reservations.[5] However, the United States never exercised that option.[6] Acknowledging that use of the rights-of-way would disrupt Shoshone hunting and gathering, the treaty provided for compensation in the form of cattle,[7] anticipating and

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[3]Cong. Globe, 37th Cong., 2nd Session 2092 (1862). The country was in the midst of the Civil War, and Congress apparently wanted to secure peaceable passage to the gold fields of California and Western Nevada and to obtain permission for non-Indians to prospect for further minerals in Shoshone Country without the expense of a military campaign or supervising and supporting the Indians on a reservation.

[4]Treaty of Ruby Valley, *supra* note 1, at Article IV.

[5]*Id.* at Article VI.

[6]Finding of Fact 5, United States v. Dann, 13 ILR 3158 (D. Nev. 1986), *aff'd and rev. on other grounds*, 856 F.2d 1528 (9th Cir. 1989). A number of small executive-order reservations were established for local groups of Shoshone out of the "colonies" where some Shoshone had gathered on the edges of towns and out of ranches in the South Fork, Yomba, and Duckwater areas. But these were merely local arrangements, and the government never argued that they were the reservations anticipated by the treaty to trigger an extinguishment of the Shoshone title to their aboriginal territory. The Government did argue that the establishment of the Duck Valley Reservation on the Idaho border was a fulfillment of the treaty; but the Court of Appeals held that, since that reservation was not within Shoshone Country, as the treaty required, and the great majority of Western Shoshone refused to move there, it did not fulfill the treaty. United States v. Dann (*Dann II)*, 706 F.2d 919, 930 (9th Cir. 1982), *rev'd on other grounds*, 470 U.S. 39 (1985).

[7]Treaty of Ruby Valley, *supra* note 1, at Art. VII.

encouraging the conversion of the Shoshone from a hunter-gatherer to a pastoral life-style.[8]

The Treaty of Ruby Valley was never abrogated and remained in full force and effect, at least until payment of the ICC claim,[9] and the Western Shoshone title to their territory was never extinguished by an act of Congress.[10] Apparently, the government simply forgot about what may have been been intended to be its temporary arrangement with the Shoshone and came to believe it had stolen Shoshone lands, as it had the lands of other tribes. However, during the late 1800s, when the United States was waging wars of conquest against the indigenous peoples of the West, the Great Basin was simply of little interest to non-Indians other than prospectors, ranchers, and roaming sheep herders, all of whom regarded it mostly as a vast common. Consequently, the Western Shoshone were never subject to conquest, nor were their lands ever purchased wholesale by treaty. Instead, relatively small portions of Western Shoshone lands were settled by non-Indians for ranching, mining, and towns in support of those activities, that is, for purposes consistent with the limited concessions of the treaty.[11]

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[8]Finding of Fact 6, United States v. Dann, *supra* note 6, 13 ILR 1358.

[9]Finding of Fact 4, Conclusion of Law 2, *id.* at 3158, 3159.

[10]*See Dann II, supra* note 6, discussed in detail *infra* notes 78-94.

[11]*Id.*

II. PROCEEDINGS IN THE CLAIMS TRIBUNALS

The Western Shoshone Traditional Council retained an attorney as early as 1932 to enforce their Treaty land rights, but nothing was done.[12] Instead, that attorney eventually allied himself with a prominent Washington, D.C., lawyer, Ernest K. Wilkinson, who was one of the creators of the Indian Claims Commission[13] and, subsequently, a Utah politician and president of Brigham Young University. Mr. Wilkinson and his partners ("claims attorneys"), obtained a Bureau of Indian Affairs (BIA) supervised attorney-contract with the Temoak Bands Council, one of the federally recognized tribal governments which

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[12]Elmer R. Rusco, *The MX Missile and Western Shoshone Land Claims*, 2 NEV. PUB. AFFAIRS REV. 45, 47-48 (1982).

[13]Western Shoshone Identifiable Group v. United States, 652 F.2d 41, 43 (Ct. Cl. 1981). Mr. Wilkinson's partnership, Wilkinson, Cragun and Barker, continued to represent the Western Shoshone, despite the Shoshone attempt to discharge those lawyers, see *infra* notes 49-50 and accompanying text, throughout the ICC proceedings. In the latter years Mr. Robert Barker took a leading role. Eventually, the claims lawyers received 2.6 million dollars, out of the claims award, for their efforts in pushing the Western Shoshone claim through the ICC. See *infra* note 63. As will be explained, the Western Shoshone have received no actual benefit to date from the ICC award.

represent portions of the Western Shoshone people and territory, and filed a claim on behalf of the Western Shoshone before the ICC in 1951 seeking compensation for a "taking" of "a large part" of Western Shoshone lands.[14] This case became *Western Shoshone Identifiable Group v. United States*, ICC Docket 326K.

A. Inherent Problems for Indian Land Rights in ICC

[14]*See* United States v. Dann (*Dann I),* 572 P.2d 222, 224-25 (9th Cir. 1978); Western Shoshone Identifiable Group v. United States, 35 Ind. Clms. Comm. 457, 461-62 (1975); 652 F.2d 41, 43 (Ct. Cl. 1981).

Congress had passed the Indian Claims Commission Act in 1946 in an attempt to settle all the outstanding claims of Indians against the United States for wrongs committed against them.[15] Important features of the claim system that developed were: (1) the Commission could award only money damages for past wrongs, it could not return lands to Indians;[16] (2) no care was taken to determine who owned or controlled the claims (if anyone did besides the claims attorneys);[17] and (3) attorneys were paid a contingency fee based upon the amount of the recovery. In land cases, the amount of recovery was directly related to the amount of the Indians' land that the ICC found the Indians no longer owned, generating a clear conflict of interest between attorneys and clients in those instances where the Indians were still in possession or still had an arguable claim to possession.[18]

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[15]*E.g.*, Russel Lawrence Barsh, *Indian Claims Policy in the United States,* 58 N. D. L. REV. 7, 12 (1982).

[16] *Id.* at 21; Caroline L. Orlando, *Aboriginal Title Claims in the Indian Claims Commission:* United States v. Dann *and Its Due Process Implications,* 13 B. C. C. E NVT'L. AFF. L. REV. 241, 253-254 (1986).

[17]*See* Pueblo Santo Domingo v. United States, 647 F.2d 1087, 1089-91 (Ct. Cl. 1981)(Nichols, J., dissenting). The ICC did not establish an investigation division as mandated by Congress and instead relied upon an adversary system to obtain its information. ROBERT N. CLINTON, NELL JESSUP NEWTON & MONROE E. PRICE, AMERICAN INDIAN LAW, CASES AND MATERIALS 723 (1991). As a result, the ICC could not know if all the affected parties were adequately represented by the those appearing before the ICC unless the attorneys chose to reveal that.

[18]*Pueblo Santo Domingo, supra, 647* F.2d at 1090 (Nichols, J., dissenting). The government in its dual role as guardian for the Indians and as defendant in the ICC also had a glaring conflict of interest, but this ethical dilemma did not seem to restrain the lawyers representing the government in the ICC, MICHAEL LIEDER & JAKE PAGE, WILD JUSTICE, THE PEOPLE OF GERONIMO VS. THE UNITED STATES 92 (U. Okla. Press ed. 1999), or give pause to either the BIA agents in the field, *see* BIA Agent Steve Ferraca addressing a 1972 "Claims Meeting" in Elko, Nevada, in the documentary film BROKEN TREATY AT BATTLE MOUNTAIN (Cinnamon Productions 1974), or the Secretary of the Interior in accepting the ICC award for his

Once it had been established that Indians had owned lands, the government had no incentive to dispute that it had long ago stolen those lands. If payment of the award for taking lands effectuates an extinguishment of the Indians' title[19] and the United States

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Shoshone wards despite their protestations. Discussed *infra* note 112, 118 and accompanying text.

[19]The commentators seem to agree that it does, apparently in large part, because of the Shoshone litigation. *See, e.g.,* Charles F. Wilkinson, *Home Dance, the Hopi and Black Mesa Coal: Conquest and Endurance in the American Southwest*, 1996 BYU L. REV. 449, 469; John S. Harrison, *Hohfeld and Herefords: the Concept of Property and the Law of the Range*, 22 N.M. L. REV. 488, n. 217 (1992). Up until the ICC award became final in the Western Shoshone claims proceeding, government agents insisted that the ICC claim would have no such effect,

could thereby obtain those lands at nineteenth-century prices,[20] it was in the government's interest to agree that it had committed that ancient wrong whether or not it had actually done so. Thus, there was a unity of interest in the ICC between the claims attorneys and the government to agree that the Indians' lands had been taken, and that consensus saved the ICC the work of determining if, when, and how each tract was taken.[21]

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while the traditional Indians argued that it did; after the award, the parties switched sides on the issue, and the government argued that the Shoshone could no longer assert title, while the Danns argued that payment of the claim award had no effect on the title, at least as to those lands still in Shoshone possession. The government prevailed, whichever side of the issue it argued in the Shoshone litigation. In another case, the government succeeded in convincing a three-judge panel that a pending claim in the ICC for a taking of all Seminole lands would have no effect on the possessory rights of the petitioner Seminoles who were still in possession in the Everglades. Oscelola v. Kuykendall, 4 ILR F.80 (D.D.C. 1977). The Seminole cases are discussed in Barsh, *supra* note 15, at 20; Orlando, *supra* note 16, at 261-263.

[20]The ICC did not award interest from the date of taking. Barsh, *supra* note 15, at 18.

[21]The entry of such stipulations to save the "burdensome individual computation of value

as of the date of disposal of each separate tract" was encouraged by the claims tribunals. Western Shoshone Legal Defense & Educ. Ass'n v. United States, 531 F.2d 495, 500 (Ct. Cls.), *cert. denied*, 419 U.S. 855 (1976). Of course it also avoided the embarrassment of exposing the fact that there were Indians still in occupation of the lands that the lawyers in Washington were assuming had been taken long ago. As it turned out, the use of such stipulations, in a case like that of the Shoshone, where the Indians' lands had not all been actually taken or their title extinguished, had the effect of confiscating lands in the first instance.

B. The ICC Finding that Shoshone Lands Had Been Taken and the 1872 Date of Valuation

In 1962, the ICC held that "by gradual encroachment by whites, settlers and others, and the acquisition, disposition or taking of their lands by the United States for its own use and benefit, or the use and benefit of its citizens, the way of life of the [Western Shoshone] was disrupted and they were deprived of their lands."[22] However, the only issue actually litigated was whether the Shoshone had title to begin with; no evidence was submitted or argument held concerning the "taking" of Shoshone land,[23] yet alone extinguishment of their title.[24]

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[22]Shoshone Tribe of Indians v. United States, 11 Ind. Cl. Comm. 387, 416 (1962).

[23]United States v. Dann (*Dann I*), 572 F.2d 222, 226 (9th Cir. 1978). The Danns had introduced the entire transcript of the proceedings in the ICC claim to date in the district court, and represented to that court, Memorandum in Support of Cross-Motion for Summary Judgment at 45, n. 78, Record 129 (D. Nev. No. Civil R-74-60 BRT) and to the court of appeals, Brief of Appellants at 5, (No. 77-1696), that there was no evidence in the ICC record concerning the taking of Shoshone lands. The government was unable to designate any such evidence in response to the Danns' discovery request, *see* D. Nev., *op. cit. supra*, and did not challenge these assertions. Thus the court of appeals had ample grounds to conclude that the "finding" of the ICC that Western Shoshone lands were taken was merely an expression of a common assumption, rather than any considered result of litigation of the question.

[24]There is an important distinction between "taking" lands and extinguishing title although the Indian Claims Commission and the Court of Claims use those terms loosely and interchangeably. *See, e.g.,* Western Shoshone Legal Defense and Education Ass'n v. United States, 531 F.2d 495, 501 (Ct. Clms. 1976). This can induce confusion, and some commentators have on occasion followed suit, even while criticizing those tribunals' handling of the Shoshone cases. *See, e.g.,* Orlando, *supra* note 16, at 266-267. While it might constitute a "taking" within the broadly defined basis for compensation in the ICC, see, Barsh, *supra* note 15, at 11-12, merely treating lands as if they were public lands or even granting title to third parties does not extinguish aboriginal title. United States v. Santa Fe Pac. R. Co., 314 U.S. 339 (1941). There the Court held that only an act of Congress expressing a clear intent to extinguish aboriginal title could extinguish such title.

It would seem that the decision whether the Indians should seek compensation in the ICC for a taking of lands in the past or assert their unextinguished title would be for the Indians rather

than their claims attorneys and the government to make. However, the Western Shoshone were never allowed to make such an election of strategy. Resolution of the Business Council of the Temoak Bands of Western Shoshone, Nevada, Nov. 10, 1976, Respondents Appendix F, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476). Apparently this was because the ICC "community" seemed not to understand, or care about, the distinction between a mere taking and extinguishment of title, see *supra* note 18 and accompanying text, *infra* note 32. As will be shown, *infra* note 32 and accompanying text, the attorneys were compensated based upon the amount of Indian lands that were found to have been taken.

Because the ICC was unable to determine, on the record before it, when the actual taking of any particular tract had occurred and was therefore unable to determine damages, it set those matters for further trial.[25] However, the claims attorneys and the government attorneys obviated the reason to delve into those issues by stipulating that the ICC could use July 1, 1872, as the "date of valuation"; that is, that the claim should be valued for purposes of computing compensation as if the lands had all been taken on that date.[26] Actually, very few non-Indians lived within Western Shoshone territory in 1872, and not many more in 1962.[27]

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[25]Western Shoshone Identifiable Group v. United States, 29 Ind. Cl. Comm. 5, 7 (1972).

[26]*Id.* It is sometimes said that the parties stipulated that the Western Shoshone lands were taken, or stipulated that the tribal title was extinguished, on that date. *See* Orlando, *supra* note 16, at 266; Nell Jessup Newton, *Indian Claims in the Courts of the Conqueror,* 41 AMER. U. L. REV. 753, 762, 827 (1992). As will be shown, that may have been the ultimate effect of the stipulation, but the stipulation itself merely stated "that the Nevada portion of the Western Shoshone lands in dockets 326 and 367 shall be valued as of July 1, 1872." *Western Shoshone Legal Defense,* 29 Ind. Cl. Comm. at 7.

[27]*See* LIEDER & PAGE, *supra* note 18, at 189.

ad set out the claim, did not allege that *all* the Indians' lands had been taken. It stated: The United States] has disposed of a large part of the said land to settlers and others, or as seized and converted a large part of the said lands to its own use and benefit . . . ."[28]

urthermore, there *was* evidence in the ICC record of continuing occupation of Western hoshone aboriginal lands by traditional bands such as the Danns. The report of the expert nthropologist witness submitted by the claims attorneys in the offset phase of that tigation determining the value of the Western Shoshone claim stated:

> For most citizens of the United States, it is difficult to comprehend why Western Shoshone Indian families will remain in some of their poorer ancestral locations, barely surviving . . . on arid plots of land difficult to reach because they are many miles away from improved roads.
>
> The best efforts of federal, state and county authorities have failed to tempt the Western Shoshone to abandon their ancestral areas. Western Shoshone are in 1973 as they were in 1863 dispersed in nearly all sections of . . . the Western Shoshone territory described in the [Treaty of Ruby Valley] . . . . As the better land was acquired by whites for mining and ranching, the Shoshone remained and adjusted as best they could.[29]

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[28]Western Shoshone Identifiable Group v. United States, 35 Ind. Cl. Comm. 457, 461-62 5).

[29]O. C. Stewart, *The Western Shoshone of Nevada and the U.S. Government,* Plaintiff's

Exhibit 1 (Offset phase, ICC Docket 326 K) at 3, published in SELECTED PAPERS FROM THE 14TH GREAT BASIN ANTHROPOLOGICAL CONFERENCE at 77, 79, 81 (Ballena Press). The quoted statement was in the context of Dr. Stewart explaining the Shoshone view of Art. VI of the Treaty of Ruby Valley, *supra* note 1, wherein the Shoshone agreed to move onto reservations, provided those reservations were established within their territory. The implication was that the Shoshone remained in their native valleys because they believed that they had a treaty right do so. The Shoshone were correct in this belief. Conclusion of Law 3, United States v. Dann, 13 ILR 3158, 1359 (D. Nev. 1986), *aff'd and rev. on other grounds*, 856 F.2d 1528 (9th Cir. 1989).

Despite this notice to the government that many Shoshone were still in possession of their aboriginal lands under claim of treaty right, the government failed to exercise the opportunity, which it had in the ICC, to seek an offset for such lands.[30] By agreeing to value the claim for convenience purposes as if all Shoshone lands were taken in 1872, the government elected to pay for the wrongful taking of lands which it had not in fact taken, some of which were still in the possession of Indians.

C. The Inability of the Western Shoshone to Control the ICC Claim

[30]Finding of Fact 23, *id.*

Throughout the ICC proceedings (1951-1979), a large number of Western Shoshone, known as "traditionals" for their adherence to traditional Western Shoshone religion, culture, and leadership, protested that their treaty was still in effect, that they still owned and occupied a large portion of their territory, and that accepting compensation for a taking of Western Shoshone lands would amount to selling those lands.[31] The claims attorneys consistently answered these protests by insisting that the Indians were wrong and that the claim in the ICC did not threaten existing land rights.[32] The BIA actively supported the claims attorneys in this dispute and emphatically assured the Shoshones that they were

[31]Rusco, *op. cit. supra.* note 12.

[32]Representation made to the ICC by Western Shoshone claims attorney Robert W. Barker during oral argument. Transcript, Nov. 14, 1974, at 21, *Western Shoshone Identifiable Group, supra* note 14 (Docket 326K). Mr. Barker also told the commission that in his opinion the claims case could have no effect on the *Dann* trespass case pending in the federal district court, discussed at length *infra,* which he misconstrued as involving individual rights. *Id.* at 24-26, 37-38. The United States, represented by counsel at that hearing, did not dispute the representations of Mr. Barker concerning either what had been represented to the Shoshone over the course of the proceedings or the legal effect of the ICC proceedings on existing Western Shoshone land rights. The most charitable interpretation of the position of the claims attorneys and the government at this point is that they erroneously believed that the Western Shoshone did not have any extant tribal land rights. *See id.* at 22. A gross misunderstanding of Indian property law, specifically concerning aboriginal title and *United States v. Santa Fe Pac. R. Co.*, 314 U.S. 339 (1941), discussed *supra* note 24, was apparently common in the ICC community of lawyers and judges. *See* Transcript, *supra,* at 18, and LIEDER & PAGE, *supra* note 18, at 186-188. An obvious explanation for that view was that the ICC community only had an interest in the money compensation which might be due for ancient wrongs. Clearing Indians' title was not a goal, and Indians who were in possession and were supporting themselves without assistance of the government and who had no interest in receiving money from the government were apparently beyond their ken. Mr. Barker seemed to be unaware that many Western Shoshone had been and still were in continuous occupation of tribal lands, transcript, *supra* at 20, although his own evidence submitted the year previously had shown that it was so. *See supra* note 29 and accompanying text and quotation of evidence.

"not selling your land."[33] Those who wished to preserve their existing land rights were unpersuaded but unable to control the claims lawyers.

[33]See BIA Agent Steve Ferraca addressing a 1972 "claims meeting" in Elko, Nevada, in the documentary film BROKEN TREATY AT BATTLE MOUNTAIN (Cinnamon Productions 1974). However, the Court of Claims later characterized the decision to file the claim as a decision by the Indians "to exchange lands for money." Temoak Band v. United States, 219 Ct. Cl. 346, 361, 363 (1979).

In 1965, the claims attorneys requested that the Temoak Bands Business Council authorize a loan against the claims proceeds to finance expert witnesses. However, that council refused because it represented only a portion of the Western Shoshone people.[34] The claims attorneys then called for "general meetings" of the Western Shoshone, at which the majority of those present expressed their disapproval and walked out, an unfortunately ineffectual action not unusual in Indian country.[35] The remaining minority informally elected members of a "claims committee" who ratified the loan but thereafter took no other effective action to control the prosecution of the claim.[36]

The government was aware of the difficulties that the Western Shoshone had in controlling the prosecution of the ICC claim. The Associate Solicitor of Interior for Indian Affairs reported in 1977:

> Among the Western Shoshone there are groups who have persisted in their efforts to recover a substantial land base ever since their [ICC] claim was first conceived . . . . The Shoshone are impecunious and, consistent with their aboriginal social structure, without a strong central leadership. As a result, although the Shoshone who assert that their title to land is intact may be in the majority, it is those seeking damages who are accommodated by

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[34]Affidavit of Raymond Yowell, reproduced in Respondents' Appendix I, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476), at 2-3. Mr. Yowell has been active in Western Shoshone political affairs since the 1960s. He was a former chairman of the Temoak Bands Council and the Inter-Tribal Council of Nevada. He is a member of the Western Shoshone Claims Committee, and later became a leader of the Sacred Lands Association and Chief of the Western Shoshone National Council.

[35]*See, e.g.,*. Caroline L. Orlando, *Aboriginal Title Claims in the Indian Claims Commission:* United States v. Dann *and Its Due Process Implications,* 13 B. C. C. E NVT'L. AFF. L. REV. 241, n. 180 (1986).

[36]Yowell Affidavit, *supra* note 34, at A-3-5.

the structure of the Indian Claims Commission Act.[37]

[37]Report to Acting Assistant Secretary of Interior, Oct. 12, 1977. Reproduced in Respondents' Appendix H, *United States v. Dann*, 470 U.S. 39 (1985)(No. 83-1476), at 6-7.

This lack of a "strong central leadership," that is, a recognized political structure for the Western Shoshone as a nation to make decisions and settle controversies, would prove to have devastating results. The claims attorneys who had no interest in asserting land rights were in control of the claim; and the nation as a whole, the tribal owner of the Western Shoshone lands, was voiceless to protect its property interest in the ICC. Further, the lack of any dispute-resolution process no doubt contributed to the seemingly endless and acrimonious contention between the "money people" and the "land people"[38] which continues to fester to this day, adversely affecting attempts to achieve a resolution of either the land or the money claims issues.[39] The fact that the Western Shoshone were also impecunious, reported by the Associate Solicitor, meant that they were unable to obtain legal representation free of conflict of interest until the era of the public interest lawyers began in the 1970s.

D. Efforts to Wrest Exclusive Control from the Claims Attorneys in ICC

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[38]*See, e.g.,* the "claims meeting" scene in BROKEN TREATY, *supra* note 18.

[39]*E.g.,* Michelle Nijhuis, *Land or Money? A decades-old struggle over ancestral land leaves the Western Shoshone divided once again*, HIGH COUNTRY NEWS, August 5, 2002, cover story. See discussion *infra* at ___.

In 1974 a group of traditional Western Shoshone organized the Western Shoshone Legal Defense and Education Association, later known as the "Sacred Lands Association," and, along with their traditional chief, Frank Temoke, sought to broaden Shoshone representation in the ICC proceedings and exclude from the "taking" claim those lands not actually occupied by towns and white ranchers.[40] The ICC summarily denied that request.[41] The Court of Claims affirmed, holding that the Temoak Bands of Western Shoshone, a BIA-recognized tribal government, had the exclusive right to maintain the action on behalf of the "original Western Shoshone Identifiable Group,"[42] despite the fact that it politically

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[40]The author, along with Gerald H. Kinghorn and Kathryn Collard of Salt Lake City, represented the association.

[41]Western Shoshone Legal Defense & Edu. Ass'n v. United States, 35 Ind. Cl. Comm. 457 (1975). The ICC took the view that the Temoak Bands Council was the "exclusive representative plaintiff" of the "descendants of the Western Shoshone identifiable group" unless the association could show "collusion;" and the association's allegations that the Temoak Bands Council (or more accurately the claims lawyers) and the government were jointly representing that all Western Shoshone lands had been taken in 1872, when in fact a large portion of those lands had not been taken, was not sufficient to amount to "collusion" under the Indian Claims Commission Act. *See* Western Shoshone Legal Defense & Edu. Ass'n v. United States, 531 F.2d 495, 499 (Ct. Cls.), *cert. denied*, 419 U.S. 855 (1976).

[42]531 F.2d 495, 499 (1976). The "original Western Shoshone Identifiable Group" apparently is the claims tribunals' name for the ancestral Shoshone entity that, at one time long ago, owned the land. The tribunals' view that they were dealing only with "the descendants" of an entity that no longer existed, *see id*, yet alone owned any lands, no doubt colored their perceptions of both the substantive and adequacy of representation issues. If the only group interests before the ICC are those of descendants of an extinct former owner, with a monetary claim, and each member has an identical interest in seeing that claim maximized, issues of representation are simple. However, if a group is made up of a mixture of persons who are no longer associated with the land and those who, not only claim a continuing property interest in the land, but have been in continuous occupancy, serious due-process issues are involved. For a thorough of those issues see Caroline L. Orlando, *Aboriginal Title Claims in the Indian Claims Commission:* United States v. Dann *and Its Due Process Implications*, 13 B. C. ENVT'L. AFF. L. REV. 241 (1986).

represented only a portion of the Western Shoshone people and territory.[43] The court faulted the traditionals for failing to make their long-standing opposition to the claim known to the ICC earlier; notice to the claims attorneys and to "representatives of the United States" was not sufficient.[44] The court observed in a footnote that a majority of the Shoshones could "postpone payment, in order to try out the issue of current title, . . . [by] ask[ing] Congress to delay making the appropriation . . . to pay the award."[45]

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[43]Elmer R. Rusco, *The Organization of the Te-Moak Bands of Western Shoshone,* XXV NEV. HIST. SOC. Q. 174, 176 (1982).

[44]531 F.2d at 499.

[45]531 F.2d at 503 n.16.

The Business Council of the Temoak Bands, which had been declared by the decisions of the ICC and the Court of Claims to have the exclusive control of the prosecution of the claim, responded to those decisions by filing pro se pleadings in the ICC. These pleadings notified the ICC and the Secretary of Interior that the Temoak Bands Council had informed the claims attorneys more than ten years previously that it could not legally bind all Western Shoshone, denied that it had ever made an election of strategy to seek compensation rather than land, and requested a stay of proceedings so that it could remove any claim for lands still owned by the Western Shoshone.[46] The Temoak Bands council also joined with the traditionals in petitioning the Secretary of the Interior to take administrative action to recognize and protect Western Shoshone ownership of the non-private lands within their territory and to intervene in the ICC to obtain a stay pending that action.[47] The petition incorporated a thorough exposition of the legal basis for the claim of

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[46]Resolution of the Business Council of the Temoak Bands of Western Shoshone Indians of Nevada (Nov. 11, 1976), reproduced in Respondents' Appendix F, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476), at 2-3. See also *supra* notes 34, 36, and accompanying text.

[47]*Id.*; Petition to Secretary of Interior from The Temoak Bands of Western Shoshone Indians, Nevada and the United Western Shoshone Legal Defense and Education Association, (Feb. 18, 1977), at 1, 3-5. An identical petition was filed with the President. Memorandum to Solicitor, Department of the Interior from Associate Solicitor, Indian Affairs (Mar. 22, 1978).

aboriginal and treaty title to those lands.[48]

[48] *See* Petition, *supra* note 47 at 5-45.

The Temoak Bands Council further informed the ICC that, if the Temoak Bands *were* the exclusive representative plaintiff, it was firing the claims attorney for the Western Shoshone because he could not be controlled.[49] The ICC denied the motion for a stay, for the reason that it was late in the proceedings, and ignored the effort to fire the claims attorney, who continued to be recognized as the "attorney of record for the plaintiff."[50]

E. Temoak Bands and the Government Seek a Stay From Court of Appeals to Negotiate a Land Settlement

[49]Resolution of the Business Council of the Temoak Bands of Western Shoshone Indians of Nevada (Nov. 14, 1976),Respondents' Appendix G, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476), at 2-3.

[50]Western Shoshone Identifiable Group v. United States, 40 Ind. Cl. Comm. 305 (1977).

The Temoak Bands Council, through a new attorney, Reid Peyton Chambers, hired with a special grant from the BIA, appealed the denial of the stay request.[51] While the appeal was pending, Mr. Chambers also pressed the petition for administrative action, obtaining substantial support in the Interior Department from the Associate Solicitor and the Assistant Secretary for Indian Affairs,[52] who found that "the claim set forth in this petition is a substantial and persuasive one" and that there were compelling equity and policy reasons for the government to negotiate an overall settlement with the Western Shoshone involving confirmation of title to land as well as money compensation, thereby fulfilling the promise made in the treaty.[53] The Solicitor of the Interior appointed a task force to negotiate with tribal leaders and the Department of Justice joined with the Temoak

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[51]The full caption of the Court of Claims' decision expresses the confusion of the claims tribunals as to the Indian parties: "*The Temoak Band (*sic.*) of Western Shoshone Indians, Nevada, Appellant, v. The United States and the Western Shoshone Identifiable Group Represented by the Temoak Bands of Western Indians (*sic.*), Nevada, Appellees.* " Temoak Band v. United States, 593 F.2d 994 (1979). Reid Peyton Chambers appears as counsel for the Temoak Bands and Robert Barker (the claims attorney) as counsel for the Western Shoshone Identifiable Group, represented by the Temoak Bands. "The Western Identifiable Group" is an entity which only existed for ICC purposes and had no governing body and no voice other than the claims attorney.

[52]*See* Transcript, Reid Chambers Report, Western Shoshone Claims Meeting (June 23, 1979) at 16-17. The claims meeting was called by the Temoak Bands Council which invited other tribal governments and entities and the Western Shoshone people generally to hear Mr. Chambers explain the legal situation and the options available. Mr. Chambers did so orally, answering questions from the leaders and the people generally. The author was present.

[53]Memorandum to Solicitor, Department of the Interior, from Forest Gerard, Assistant Secretary, Indian Affairs (Apr. 11, 1978). That memorandum was supported by reference to the Memorandum to Solicitor, Department of Interior, from Thomas W. Fredricks, Associate Solicitor, Indian Affairs (Mar. 28, 1978). Mr. Fredricks stated: "The basis of the land claim is simple and convincing," *id.* at 5, and went on to describe and analyze the arguments set out in the petition. Mr. Fredricks concluded that the Secretary had the authority to confirm title to a reservation for the Western Shoshone under the Article VI of the Treaty of Ruby Valley and federal statutes. *Id.* at 17.

Bands in asking the Court of Claims for a stay of proceedings, to allow settlement negotiations.[54]

[54]Chambers, *supra* note 52 at 17-18.

Nonetheless, the Court of Claims issued its decision on the appeal, rejecting what it perceived to be a "belated change of heart" by the Temoak Bands and again directed the Shoshone to Congress: "If the Indians desire to avert the extinguishment of their land claims by final payment, they should go to Congress as recommended [in the earlier decision]. . . . The essential point of the matter is that the Temoak's true appeal is to legislative grace, not as of right to this court."[55] The government and the Temoak Bands jointly moved the Court of Claims to reconsider their earlier joint stay request, and the court reluctantly granted a forty-two-day stay.[56] The Solicitor of the Interior decided that

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[55]*Temoak Band*, 593 F.2d at 999. The Court of Claims seemed to view the Western Shoshone as either minority, dissident troublemakers or passive louts who slept on their rights and then ungratefully turned on the judges and claims lawyers who had worked tirelessly to obtain money for them. However, the author of the *Temoak Band* opinion dissented in a similar matter two years later, taking a much more sympathetic attitude toward Indians who alleged that their attorney had ignored their desires in entering a stipulation regarding a taking of lands, noting the built-in conflict of interest. Pueblo of Santo Domingo v. United States, 647 F.2d 1087, 1090 (Ct. Cl. 1981)(Nichols, J., dissenting). Judge Nichols observed, concerning unnamed ICC cases involving unextinguished aboriginal title, ". . . instances have occurred where awards were made and title extinguished by judgment where there was no expulsion even de facto." *Id.* at 1091. During the later dispute in the Western Shoshone claim regarding payment of the claims attorneys, discussed *infra* note 63, the Court of Claims observed that the claims attorneys were subject to the supervision of the Commissioner of Indian Affairs and the Secretary of the Interior. Western Shoshone Identifiable Group v. United States, 652 F.2d 41, 52 (Ct. Cl. 1981). However, the Court of Claims never blamed those agencies for the confusion in the Western Shoshone litigation.

[56]Temoak Band v. United States, 219 Ct. Cl. 346, 361-363 (Ct. Cl. 1979). The court stated: "We strongly reject the alleged right of parties to withdraw cases from submission for settlement negotiations, except in extraordinary circumstances. . . . Any interruption of this process [submission for appellate decision] makes a mockery of the orderly and expeditious conduct of court business." *Id.* at 362. The court's stay was also conditioned on there being no further stay and that any modification of the judgment by stipulation would not require further fact finding or affect the rights of third parties. *Id.* The court suggested that "[p]ossibly a simple

that was not sufficient time and called off negotiations, allowing the stay to lapse.[57]

F. Final Judgment Entered in the Claims Case

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stipulation to reduce the amount of land affected by the judgment and the dollar amount of the award, would be feasible," but stated its preference for congressional action to address the Indians' "new expectations." *Id* at 363. The author suggested to Reid Chambers that the $2,700,000 for 18,000,000 acres of fair to poor grazing lands, see *infra* notes 58-62 and accompanying text, be dropped from the award with a stipulation that these were the lands claimed by the BLM within the territory and leave to the law courts the decision as to who owned them. Mr. Chambers stated that would be too risky and that the government would never agree to let the law courts decide the issue.

[57]Chambers, *supra* note 52, at 19.

In December 1979, the Court of Claims reported the final award of the ICC of $26 million--the 1872 value without interest--for the "taking" of Western Shoshone lands.[58] With interest since 1979, the fund has grown to more than 120 million dollars.[59] The lands within Nevada had been earlier categorized and valued by the ICC as follows: farming lands (430,000 acres for which $1,500,000 was awarded); townsites (4,800 acres for which $900,000 was awarded); good grazing lands (3,000,000 acres for which $3,750,000 was awarded); and fair-to-poor grazing lands (18,000,000 acres for which $2,700,000 was awarded).[60] The remainder of the award was for lands in California and for minerals.[61] Since it is reasonable to assume that the lands selected for entry and settlement by non-Indians would be the better lands, the approximately 16,000,000 million acres of putative BLM lands to which the traditional Western Shoshone still claimed title[62] were likely to

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[58]Finding of Fact 20, United States v. Dann, 13 ILR 3158, 3159 (D. Nev. 1986), *aff'd and rev. on other grounds*, 856 F.2d 1528 (9th Cir. 1989); *see* United States v. Dann, 470 U.S. 39, 42 (1985). The Court of Claims had taken over all the ICC cases when the existence of the ICC terminated pursuant to Pub. L. No. 94-465, § 2, 90 Stat. 1990 (1976)(codified at 25 U.S.C.G. § 70 v (West 1976 & Supp. 1980), Barsh, *supra* note 15, at 17, so the case was not remanded at the conclusion of the appeal in *Temoak Bands.*

[59]Personal conversation in Salt Lake City with Raymond Yowell, Chief of the Western Shoshone National Council, March 22, 2001.

[60]Western Shoshone Identifiable Group v. United States, 29 Ind. Cl. Comm. 1, 5 (1972).

[61] *See id.* The great bulk of the $26 million award was for minerals. *See id.*

[62]The amount of lands within Western Shoshone territory which were being administered by the BLM was estimated by the Department of Interior to be 15.5 million acres. Petition for a Writ of Certiorari at 24, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476). While there are other lands claimed by the United States within the territory to which Western Shoshone title may not have been extinguished, *id.*, only BLM lands were involved in the *Dann* case, and, consequently, only those lands had been the subject of litigation and a judicial determination that they still were the property of the Western Shoshone.

have been valued as "fair to poor grazing lands" at the 1872 value of 15 cents per acre. The claims attorneys were paid attorneys' fees of 2.6 million dollars out of that fund in 1981,[63] but, as will be explained, no Western Shoshone person or entity has received any benefit to date.

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[63]Western Shoshone Identifiable Group v. United States, 652 F.2d 41, 52 (Ct. Cl. 1981). Several Western Shoshone entities objected to the awarding of the fees on the grounds that the claims attorneys had failed to serve the Indians' wishes, were guilty of malpractice and conflict of interest, and had caused their clients to effectively lose title to their lands, including lands they were still using and occupying. The Court of Claims held that the Indians were precluded from making this argument because "it has now been held that there was a taking, and the large judgment here is to pay it. That is what they authorized the suit for. The decision in their favor is the law of the case and will not be disturbed." *Id.* at 46, 51. The Court of Claims was unperturbed by the fact that "the law of the case" was based upon a stipulation that was signed by the claims attorneys, that was not authorized by the clients, and that was contrary to the factual findings and legal conclusions of the federal district court where the issue of continuing title actually had been litigated. *Id.* at 47. The Court of Claims even considered the efforts that the claims attorneys exerted in fighting off efforts by those Western Shoshone, including the official "representative plaintiff," who wished to keep their lands, as a reason to increase the amount of attorneys' fees. *Id.* at 50. The Court of Claims found that the claims attorneys had "accomplished remarkable results for their clients." *Id.* at 49.

Although the ICC had no jurisdiction to adjudicate title to Indian land (its jurisdiction was limited to awarding money damages for "ancient wrongs"), its decision ratified the assumption that a "taking" had occurred. The 1872 date, which the ICC adopted as an acknowledged fiction convenient for evaluating an ancient wrong, eventually came to be treated as if it were the date of a historical event by the law courts and the predicate to force reality to conform to that constructed history. The Western Shoshone people had to become the homeless victims, dependant upon government welfare, that the ICC community presumed them to be.[64] Mary and Carrie Dann did not match this stereotype.[65]

III. *UNITED STATES v. MARY and CARRIE DANN*

Mary and Carrie Dann are members of a traditional Western Shoshone extended-family band who have remained on their native lands in Crescent Valley and supported themselves by raising livestock as contemplated by the Treaty of Ruby Valley.[66] In 1974,

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[64]Ironically, one of the purposes of the Indian Claims Commission Act was to end the dependency of the American Indian, who was perceived as lying around idly waiting to receive some payment for the ancient wrongs done to his tribe. This dependency was seen to hamper the efforts to assimilate Indians into the mainstream of self-supporting Americans and paying off the old claims was proposed as a solution. Pawnee Tribe v. United States, 109 F. Supp. 860, 869 (Ct. Cl. 1953); Barsh, *supra* note 15, at 12.

[65]The Today Show, *The American Dream* (NBC News television broadcast, Nov. 4, 1984); *See generally* Allison M. Dussias, *Squaw Drudges, Farm Wives, and the Dann Sisters' Last Stand: American Indian Women's Resistance to Domestication and the Denial of Their Property Rights*, 77 N.C. L. REV. 637 (1999).

[66]Findings of Fact 1, 2, and 6, United States v. Dann, 13 ILR 3158 (D. Nev. 1986), *aff'd and rev. other grounds*, 856 F.2d 1528 (9th Cir. 1989). By the mid-1980s, the extended family had approximately thirty members, of whom half were living on or near the base camp at a given time. The base was located on lands which the Dann sisters' father had homesteaded adjacent to his mother-in-law's camp when Indians became citizens in 1925, thereby securing the band's water supply and hay meadow. Finding of Fact 7, *id.*

five years before entry of the final judgment in the ICC case, the Bureau of Land Management sued the Danns for an injunction and trespass damages for grazing livestock on "public domain" lands without a permit. The Danns asserted unextinguished Shoshone title and the Treaty of Ruby Valley, and since they were in possession, they challenged the plaintiff, the United States, to prove superior title in accordance with American land law. The United States was never able to do so. Over the course of seventeen years, the case was before the U.S. District Court in Reno four times, the Court of Appeals for the Ninth Circuit three times, and the U.S. Supreme Court once.

A. The Initial Round in the District Court and on Appeal in *Dann I*

In 1977, the district court held that the 1962 ICC finding of a taking by "gradual encroachment" was conclusive and binding on the Danns.[67] The Danns appealed, and the court of appeals, in *United States v. Dann (Dann I),*[68] granted an expedited review, reversed the judgment of the district court, and remanded the case for a trial on the issue of title to the land. The court of appeals held that the ICC determination was not binding because the ICC case had not at that time gone to final judgment and, more importantly, because the question of whether the Western Shoshone title had been extinguished had not actually been litigated or decided in the claims proceeding.[69] The court of appeals

[67]United States v. Dann, Civil No. R-74-60-BRT (D. Nev. Jan. 4, 1976)(Order granting injunction and deying cross-motion for summary judgment).

[68]572 F.2d 222 (9th Cir. 1978).

[69]*Id.* at 225-227. This holding and the support for it are discussed *supra* note 30.

remanded "the case to the district court for the purpose of deciding title."[70]

B. Round II in the District Court

[70] *Id.* at 223.

On remand, District Court Judge Bruce Thompson, at the request of the government and over the objection of the Danns,[71] waited almost two years for the ICC proceedings to become final. In April 1980, the district court held that Western Shoshone aboriginal title had not been extinguished prior to December 6, 1979, but that, as of that date, the tribal title was extinguished by the legal effect of the entry of the final judgment and award in the ICC proceedings. Because the Western Shoshone title had been good at the time that the government had sued the Danns for trespass, the district court dismissed the government's claim for damages, but it issued an injunction against the Danns' further unpermitted grazing use of the government's (newly acquired) public domain.[72] Both sides appealed, and the district court stayed its judgment pending the outcome.

C. The Western Shoshone Refuse the ICC Award

[71]Transcript, September 8, 1978, at 28-31, United States v. Dann, Civil R-74-60 BRT (D. Nev.).

[72]Judgment Granting Injunction, April 25, 1980, *id.,* Reproduced in Petitioner's Appendix, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476), at 31a.

Meanwhile, immediately following the ICC's monetary award, the BIA began to develop a "judgment fund distribution plan" as required by the Indian Tribal Judgment Funds Use or Distribution Act of 1973.[73] However, Judge Thompson's decision had reverberated through Shoshone country because it confirmed the legal arguments made by the traditionals over the years: that the only threat to their treaty rights to their lands was the claim proceeding in the ICC and that those Shoshones who had followed the BIA line supporting the claim had been duped.[74] Whatever support the ICC claim had enjoyed in Western Shoshone country crumbled. A hearing of record held in Elko, Nevada, on July 26, 1980, by the BIA on the distribution plan for the ICC award turned to shambles, as witness after witness, many speaking in Shoshone, denounced the claim and called upon the Western Shoshone Nation to refuse the award.[75]

When it became clear that the BIA could not complete the distribution plan within the six months required by the Distribution Act, largely because of massive Western Shoshone opposition to accepting the judgment, the BIA asked the Senate Select Committee on Indian Affairs for an extension of time. The committee chairman rejected

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[73]Judgment Funds Use or Distribution Act of 1973, 25 U.S.C. § 1404 (1404)(19__).

[74]An attorney in the office of the Associate Solicitor for Indian Affairs told the author at the time that the bureaucrats in the field were amazed that the traditional Indians were treating the Thompson decision as a "victory." However, the source and his counterparts in the Justice Department understood the significance of Judge Thompson's exposure of the claims process and the confirmation of the traditionals' treaty theories.

[75]Over 80 per cent of the witnesses opposed the distribution, at least until the title issue was resolved. *See* Transcript of Proceedings, Public Hearing of Record before the Bureau of Indian Affairs, Western Shoshone Proposed Plan of Distribution, July 26, 1980. (Copy in author's possession).

the BIA's request because of the Indian opposition, the uncertainty about the status of the Shoshone title, and the pendency of the appeal in the *Dann* case.[76] This put the judgment outside the purview of the 1973 Distribution Act, and the award could not be distributed or used for the benefit of the Western Shoshone without authorizing legislation.[77] The Western Shoshone thought that they had succeeded in following the Court of Claims' advice on how to avoid losing their land, as a result of the ICC proceedings, by having Congress delay the payment until they could establish the continuing validity of the tribal title in the law courts.[78]

D. The Court Of Appeals Upholds Shoshone Title in *Dann II*

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[76]Letter, Senator John Melcher to Department of Interior, August 4, 1980, reproduced in Respondents' Appendix M, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476).

[77]25 U.S.C. §§ 118, 1402(a), (b), 1405(b) (____). This was the view of the Solicitor for the Department of the Interior, expressed in a letter to the author dated September 2, 1980(original in author's possession). The Solicitor also stated that it meant that there was ample time to resolve any question raised in *Dann II*. *Id.*

[78]*See supra*, notes 50 and 54 and accompanying text.

The Court of Appeals for the Ninth Circuit agreed with the Shoshone in its 1983 decision on the appeal of the district court's April 1980 ruling in *United States v. Dann (Dann II)*.[79] It reversed the district court's order granting the injunction but left intact the dismissal of the trespass damage claim,[80] holding that the assertion of Western Shoshone title was not yet barred by the ICC judgment because the "payment" of the award required by the statutory discharge language had not occurred.[81] The court of appeals also went on to the merits of the title issue and addressed every argument that the government made concerning how the United States had extinguished the Western Shoshone aboriginal title.[82]

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[79]706 F.2d 919 (9th Cir. 1983), *rev'd* , 470 U.S. 39 (1985).

[80]*Id.* at 923. The government's claim for trespass damages against the Danns was never reinstated. See further discussion *infra* note 144 and accompanying text.

[81]*Id.* at 927.

[82]The Ninth Circuit in *Dann II* dealt only with aboriginal title as distinguished from treaty-recognized title. That decision, 706 F.2d at 922 n.1, states that the Danns had abandoned a claim to treaty title. Actually, the Danns at all times asserted treaty-recognized title as well but pointed out that, since the difference between the two types of title is whether compensation for a taking is compelled by the Fifth Amendment, *accord id.,* the distinction made no difference in the case because the Danns were arguing that there was no taking or extinguishment, rather than what compensation might be due. See, Appellants' Response to Cross Appeal and Appellant's Reply Brief, *Dann II, supra* (Nos. 80-4298, 80-4345) at 17-19. Although it is often remarked that aboriginal title *only* gives an Indian nation the exclusive right to use and occupy the land and not the right to alienate, *e.g.*, Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823), for all practical purposes that title "is as sacred as the fee simple of the whites," Mitchel v. United States, 34 U.S. 711, 745, 9 Pet. 464, 486 (1835), and this is particularly true as to the traditional Western Shoshone, who have no interest in "selling Mother Earth." The other disadvantage to having just aboriginal title rather than recognized title is that the Supreme Court has held that, if Congress confiscates aboriginal title by an express act of extinguishment, it need not pay compensation under the Fifth Amendment to the United States Constitution. Tee-Hit Ton Indians v. United States, 349 U.S. 272 (1955). Complete confiscation of Indian title by Congress was

probably politically impractical by the mid-1970s; otherwise, the convoluted machinations used to obscure the clearing of Western Shoshone title described here or the congressional confirmation of ownership by native villages and "Regional Corporations" of a substantial portion tracts of their aboriginal lands in the Alaska Native Claims Settlement Act, 43 U.S.C.A. § 1601 *et seq.,* at the time that aboriginal title to Alaska was extinguished, would not have been necessary.

The government did not dispute, in *Dann II*,[83] that the Western Shoshone had possessed title at one time but it claimed that, separate from any effect of the ICC proceedings, Western Shoshone aboriginal title had been extinguished by:

> (1) application of the public land laws, including the homestead laws, to the lands aboriginally held by the Western Shoshone; (2) creation of the Duck Valley Reservation for the Western Shoshone; and (3) administration of the lands pursuant to the Taylor Grazing Act for over 45 years.[84]

[83] 706 F.2d at 923.

[84] *Id.* at 928.

Addressing the effect of the public land laws, the court of appeals found that the Preemption Act, as amended,[85] by its own terms did not apply to Indian lands the title to which was unextinguished.[86] When the Homestead Act replaced the Preemption Act by the Act of March 3, 1891,[87] the latter act specifically provided that it was not to affect any Indian lands that were subject to treaties, and "disposition of such lands shall continue in accordance with the provisions of such treaties . . . ."[88] Article IV of the Treaty of Ruby Valley[89] provided for the establishment of agricultural settlements and ranches but only to the extent needed. The court of appeals therefore held that "the granting of homesteads by the government could work, at most, an extinguishment of aboriginal title to the actual land granted and no more."[90]

The government contended that the creation of the Duck Valley Reservation fulfilled Article VI of the treaty wherein the Western Shoshone agreed to move on to reservations when such reservations were established within their territories. However, the court of appeals found the treaty to be of no help to the government in that regard because

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[85]Act of June 22, 1838, ch. 119, 5 Stat. 251. The preemption acts laws were the predecessors to the Homestead Act and began the process of distributing the federal public domain to settlers. See generally GEORGE C. COGGINS, CHARLES WILKINSON, JOHN D. LESHY, FEDERAL LAND AND RESOURCES LAW (3d 1993), at 80-86.

[86]706 F.2d at 929.

[87]Ch. 561, § 5, 26 Stat. 1095, 1098.

[88]706 F.2d at 929.

[89]Note 1, *supra*.

[90]*Id.* at 930.

the Duck Valley Reservation was not within "their territories" as the treaty required, and, accordingly, the great majority of Western Shoshone, including the Danns, refused to move there. For the same reason, the court found no abandonment of title by the movement of some Shoshone onto that reservation.[91] The court was unimpressed with the government's argument that it should be given the benefit of the bargain for fulfilling the treaty because it erroneously and unilaterally thought that the reservation was within Western Shoshone territory.[92]

The court also rejected the government's claim that Western Shoshone title was extinguished by application of the Taylor Grazing Act:

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[91] *Id.* at 931.

[92] *See id.* 930.

> We do not find in the Taylor Grazing Act any clear expression of congressional intent to extinguish aboriginal title to all Indian lands which might be brought within its scope. . . . Indeed, we question whether aboriginally held lands can be properly characterized as "unappropriated and unreserved lands" forming a "part of the public domain" to which the Taylor Grazing Act applies.[93]

E. Settlement Negotiations Prompted by *Dann II*

While the decision of the court of appeals in *Dann II* confirmed that Shoshone title was extant as of December 1979, by remanding the case for trial to determine whether that title had been preserved to the date of trial,[94] it sent a signal that the situation was still fluid and pointedly observed that Congress could preclude the assertion of Shoshone title by authorizing the payment of the ICC award.[95] The Ninth Circuit appeared to be doing what courts should do when confronted with a problem created by a century of neglect by the political branches and involving vast expanses of land. It defined the existing legal rights of the parties and left the ultimate resolution to the affected parties to work out through the political processes.

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[93]*Id.* at 932, *citing* Lane v. Pueblo of Santa Rosa, 249 U.S. 110 (1919).

[94]706 F.2d at 933.

[95]The court, in finding that the ICCA bar had not yet fallen, had stated that Congress could "invoke the bar of [the ICCA] by allowing a plan of use or distribution [of the ICC award] to take effect or by legislating one." *Id.* at 927.

Although the court implied that Congress could simply authorize the payment and extinguish Shoshone title, it seemed unlikely that Congress in the mid-1980s would openly confiscate all of Shoshone lands in the face of domestic and international sympathy for Indians in general and the Western Shoshone in particular.[96] The prospect of obtaining a legislative solution, as the Court of Claims suggested earlier, became much more feasible for the Shoshone because the status quo now favored them. Furthermore it was intolerable both for the government and for some non-Indian interests concerned with the vast area of land to which the decision could apply. However, it was apparent that the Western Shoshone would not be able to obtain a satisfactory legislative solution on their own; it would take negotiation to get the support of the administration and the Nevada congressional delegation, and that meant obtaining the support of the other interests in Nevada.

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[96]A powerful documentary film by Joel Freedman, narrated by Robert Redford, BROKEN TREATY AT BATTLE MOUNTAIN (Cinnamon Productions 1974) had won major awards and played on National Public Television and sympathetic feature articles were appearing in newspapers and magazines across the country. *See, e.g.*, Sandra Widener, *The Sixteen Million Acre Question, EMPIRE MAGAZINE, THE DENVER POST,* May 13, 1984, cover story.

Only a few years earlier, Congress had extinguished the extant aboriginal title to Alaska; but in so doing, it settled aboriginal land claims by confirming title for substantial land bases for the various indigenous populations, as well as transferring some of the wealth from the lands back to them. Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1601 *et seq.*

At that time, in the early 1980s, a negotiated settlement seemed doable with minimum disruptions to existing uses. The Treaty of Ruby Valley[97] provided a blueprint. Although it could be argued that modern intrusions by non-Indian interests far exceeded anything contemplated by the Indians in making the treaty concessions to non-Indian mining, ranching, and transportation needs, Shoshone leaders took the expansive position that all existing private titles to lands and mining interests were valid under the treaty.[98] Western Shoshone hunting and gathering uses had gone on for centuries without disrupting any economic interest of non-Indians, and only in isolated areas were there grazing conflicts, since the major Shoshone stock operations had exclusive grazing permits to large areas (although they had at that time ceased to pay for them because it was clear the BLM

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[97]Note 1, *supra.*

[98]Applying this view to the swath of checkerboarded railroad lands through Shoshone country, every other section for twenty miles on either side of the railroads, was the most generous concession, since that could not reasonably be considered a necessary right-of-way for a railroad and *Santa Fe Pac., supra* note 24, was directly in point that railroads, and their successors, took such land subject to aboriginal title. At that time, the huge open-pit mining operations had not yet begun in Shoshone country. If they had, it would have been difficult for many traditionals, including the Danns, to concede that such operations were contemplated by the treaty. The traditionals probably would have at least insisted that the Western Shoshone had a right to regulate mining practices within their territory to protect the environment.

had no right to control Shoshone grazing).

The fact that many Shoshone leaders, including the principal leaders, were themselves ranchers, having more in common with their non-Indian counterparts than either did with the BLM land managers, made it relatively easy for the Shoshone to reach out to the stockmen. The "sagebrush rebellion" was in full swing, and the Shoshone may have appeared to be a more reasonable landlord than the BLM. The non-Indian ranchers signaled their openness to a negotiated settlement of the Shoshone land dispute.[99] The Shoshone also called upon other allies and friendly contacts,[100] made during the 1970s when most interests in the Great Basin united in opposition to the MX Missile System, which the Carter Administration had proposed basing throughout the remote valleys.[101]

The Western Shoshone National Council, a revival of the Traditional Council as a strongly united federation of the recognized tribal governments, the traditional Sacred Lands Association, and even an organization of individual Shoshone originally formed to support the ICC claim, was recognized in April 1984 by the BIA as the entity that

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[99]See, *e.g.,* Nevada State Multiple Use Advisory Committee on Federal Lands, Recommendation #84-1, Western Shoshone Land Claims (June 30, 1984), reproduced in Respondents' Appendix U, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476).

[100]For example, Raymond Yowell, the Western Shoshone leader of the Sacred Lands Association, Sub-Chief of the National Council, and former member of the claims committee, met with the Social Policy Committee of the Church of Jesus Christ of Latter-Day Saints to ask for the Mormon Church's assistance in countering the church influence, inappropriately used by the claims lawyers, which had contributed to the creation of the problem. He reported a sympathetic hearing to the author, who had arranged the meeting.

[101]*See Revolt in the West Could Kill Supermissle*, U.S. NEWS & WORLD REPORT, Mar. 31, 1980, at 47; Elmer R. Ruscoe, *The MX Missile and Western Shoshone Land Claims*, 2 NEV. PUB. AFFAIRS REV. 45 (1982).

"represents by far the majority interests of the Western Shoshone people. It is primarily the Council that we will look forward to working with in developing a proposed legislative settlement . . . ."[102] A negotiated political settlement was in the air, and the Western Shoshone National Council met with Deputy Assistant Secretary John Fritz[103] and, later, with other representatives of the Interior Department[104] to discuss the land needs of the Western Shoshone. The Reagan Administration seemed open to a negotiated settlement.

F. The Supreme Court Reviews and Reverses *Dann II* on Narrow Grounds

[102]Letter from John W. Friz, Deputy Assistant Secretary-Indian Affairs, to Thomas E. Luebben, Counsel for the Western Shoshone National Council (April 23, 1984), reproduced in Respondents' Appendix P, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476).

[103]The author was present. Portions of that meeting appear in the documentary film TO PROTECT MOTHER EARTH (Cinnamon Productions 1989).

[104]Personal and telephone conversations at the time with Thomas E. Luebben of Albuquerque, Legal Counsel for the National Council.

While the Interior Department was negotiating, the Department of Justice requested that the Solicitor General seek Supreme Court review of the court of appeals decision in *Dann II*. The Solicitor General granted the Danns a telephone hearing on whether he should do so. The author sought to persuade him that the matter was positioned for a fair settlement in the legislative process, which was required in any event, and that process should not be disrupted by Supreme Court review. In response to the author's further argument that it was not honorable for the United States to seek to confiscate lands that the Shoshone were still using without providing the reservations promised by treaty, the Solicitor General stated that "everyone knows that the Western Shoshone will end up owning their grazing lands."[105] The Solicitor General indicated that he had been led to

[105]The Solicitor General also stated that he did not think much of the author's "ethical argument" concerning the conduct of the ICC claim because it should be directed against "those folks on K Street," meaning, presumably, the claims lawyers, Wilkinson, Cragun & Barker. This was somewhat surprising because the Solicitor General, Rex Lee, had served as Dean of the Law School under BYU University President Ernest K. Wilkinson, who had been the partner in that

believe that the Department of the Interior would support measures to secure a land base of three million acres for the Western Shoshone regardless of what happened to the *Dann* case if it went to the Supreme Court.[106]

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law firm who had supervision of the Shoshone claim for many years. See *supra* note 13. It also ignored the statutory responsibility that the Department of Interior had to supervise the claims lawyers, 25 U.S.C. § § 70n, 80 (1976), and was inconsistent with the government's eventual argument in the Supreme Court that the Western Shoshone acceptance of the ICC award was effectuated by the Secretary of the Interior in his capacity as guardian of Indians.

[106]The figure of three million acres had evolved during discussions between Western Shoshone leaders and officials of the Department of the Interior and congressional staff as an approximation of the lands needed to sustain the Western Shoshone stock operations. Its use by the Solicitor General indicated that there was communication, at that time, between Interior and Justice.

The Solicitor General did petition for and obtain a writ of certiorari from the United States Supreme Court to review the decision of the court of appeals in *Dann II*. The government, significantly, did not ask the Supreme Court to determine who owned the land. Instead, the government asked the Court only to determine whether, after deposit of the ICC judgment fund in the Treasury, the Western Shoshone remained free to assert that aboriginal title had never been extinguished.[107] The Supreme Court granted the petition for review but narrowed the question even further, to whether the deposit of the funds constituted "payment" within the meaning of the discharge provision of the ICCA.[108] In an opinion that one commentator described as "most notable for what it did not say and for treating the case as simply one of statutory construction,"[109] the Court held that the transfer of funds on December 19, 1979, constituted "payment," whether or not the funds were ever accepted by or distributed to the Shoshone, because it was the intent of Congress in passing the ICCA to achieve finality,[110] and the government, "*qua* judgment debtor," paid the

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[107]Petition for a Writ of Certiorari at *i*, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476).

[108]United States v. Dann, 470 U.S. 39, 40 (1985).

[109]Newton, *supra* note 33, at 829.

[110]The Court reasoned that to delay the preclusive effect of the ICCA, 25 U.S.C. § 72 (1976), until Congress had approved the distribution plan would frustrate that intent by subjecting the United States to continuing claims and demands touching the controversy previously litigated in the ICC. 470 U.S. at 45. While focusing on a very narrow legal question, the Court was not limiting its view to the narrow facts and posture of the case before it. The Danns did not claim that the United States had any liability for taking the lands they used, and there had been neither a controversy concerning or litigation of the taking question in the ICC. The Court seemed to be protecting the United States from the ghosts of its past genocide in general and the threat to real estate titles across the country if the entire bundle of ICC proceedings started to unravel.

government, "*qua* trustee for the Tribe as beneficiary."[111] The Court relied upon the doctrine that, in the absence of fraud, a guardian may accept an offer on behalf of his wards.[112]

The Court remanded for further proceedings without addressing the Danns' arguments concerning the lack of due process in the ICC proceedings, what effect the statutory discharge the government received by the "payment" would have on existing Shoshone title, or whether that discharge justified the government's effort to eject the

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[111]470 U.S. at 49-50.

[112]*Id.* at 48-50. Besides the irony of applying guardianship doctrine in this circumstance was the insult implicit in attributing wardship to Indians such as the Danns who had never become dependent on the government but had remained proudly self-sufficient on their aboriginal lands. The social meaning of wardship includes not only inferiority but childlike dependence. "A *guardian* is someone who has charge of you the same way that a parent has charge of a minor child. . . . If you are an adult and you are the *ward* of a guardian who is taking care of you, it is because you are physically or mentally unable to take care of yourself." Edward McDonough, *Point of Law*, SALT LAKE TRIBUNE, Feb. 25, 2001, at AA-2.

Danns from continuously occupied lands.[113] The Court did, however, specifically mention that the Danns' alternative claim to "individual aboriginal title" was still open, implying that other issues were not.[114]

G. In the District Court for Round III--The *Thompson Decision*.

[113]For a summary of those arguments see Newton, *supra* note 17, at 829-830; Orlando, *supra* note 16, at 270-272.

[114]470 U.S. at 50.

While efforts were made to revive the negotiations,[115] the government seemed to lose interest in negotiating, and the institutional memory of "the legislative settlement" faded as time went on after the Supreme Court's decision. The low-level Justice Department lawyers assigned to the *Dann* case on remand appeared entirely unaware of the history of the case or of what representations had been made by the Solicitor General or appointed officers of the Interior Department during the Reagan Administration.[116] They indicated to the author that their instructions came from their "clients" in the Elko office of the BLM. The government moved for a preliminary injunction against the Danns.[117]

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[115]A ray of hope had been emitted by Peter Taylor, the counsel to the Senate Select Committee on Indian Affairs, who was quoted in reaction to the Supreme Court's decision saying: "The result renders [the Western Shoshone] a landless tribe and that was not the intent of Congress when it set up the commission." Ronald B. Taylor, *Indian Sisters Spur Land Rights Battle*, LOS ANGELES TIMES, Mar. 24, 1985, at Part I, 3, 35.

[116]See *supra* notes 102-106 and accompanying text.

[117]The government did not acknowledge that there might be anything odd in seeking a preliminary injunction after twelve years of litigation and lengthy delays sought by the government. See *supra* note 70 and accompanying text.

At the hearing on the motion in September 1986, the district court converted the matter into a trial over the Danns' objection and denied the Danns the opportunity to put on proffered evidence that the Secretary of the Interior, as the guardian of the Indians, was personally aware that he was selling his wards' lands to himself, as custodian of the lands of the United States, at 1872 prices by accepting the ICC award in 1979.[118] The district court went on to hold that the Danns were "precluded from asserting Western Shoshone Indian title" as a result of the 1979 payment.[119]

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[118]Transcript, July 31, 1986, at 4-10, United States v. Dann (D.C. Nev. Civil No. 74-60 BRT). The proffer was based upon information from Reid Chambers, the new attorney for the Temoak Bands, discussed *supra,* notes 52-62 and accompanying text, and from an attorney in the Associate Solicitor's office who had told the author at the time that the Solicitor, after being fully apprised of the results of the investigation by senior Interior officials, described *supra,* had personally met with and briefed the Secretary at length concerning the Western Shoshone and emerged from the meeting to announce to his staff that the Secretary had decided against taking any action to remedy the situation in the claims tribunals before the judgment became final and was paid.

[119]Conclusion of Law 5, United States v. Dann, 13 ILR 3158, 3159 (D. Nev. 1986).

However, District Court Judge Bruce Thompson, in devising the equitable remedy requested by the government, attempted to honor the hallowed public-land-law protection of valid existing rights by "grandfathering in" the Danns' land-use rights. In accordance with the Supreme Court's remand leaving open the issue of "individual aboriginal rights," Judge Thompson found that the Danns had established such rights to the section of land (660 acres) that had been the location of their grandmother's camp.[120] Judge Thompson further found, in an innovative extension of the concept of individual aboriginal title to include usufructory rights, that the Danns had such a right, and a treaty right, to continue to graze 598 head of cattle and 840 horses on the "public domain," without permits from the BLM, based upon their continuous lawful use up until December 1979, the date upon which the Taylor Grazing Act became applicable to the Western Shoshone lands.[121] The district court further found that "it would not be equitable and it would be contrary to good conscience to deprive the [Danns] of individual aboriginal and treaty rights which were established by continuous use and possession prior to December 19, 1979."[122] Judge Thompson also converted the grazing permits held by the estate of Mary and Carrie Danns' parents into additional individual aboriginal and treaty grazing rights.[123]

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[120]Conclusion of Law 9, *id.* That section of land is now the location of a camp maintained by supporters of the Danns.

[121]Conclusion of Law 10, 12, *id.*

[122]Finding of Fact 25, *id.*

[123]Mary and Carrie Dann had continued to obtain permits for the cattle belonging to the estate out of respect for other heirs who did not feel comfortable challenging the government. These permits had been obtained by their father under protest. Findings of Fact 8-10, Conclusion

of Law 11, *id.* The Dann sisters' own much larger, unpermitted herds had derived from their grandmother, who had begun herding horses in the nineteenth century under treaty right. Findings of Fact 6, 11, *id.*

While the Danns disagreed with Judge Thompson's solution because it individualized what the Danns asserted were tribal rights, it nonetheless appeared to be a rational and practical solution reflecting that judge's long experience and expertise at resolving conflicts over uses of the public lands.[124] It also seemed to leave a way open for other Shoshone individuals and entities to protect their existing uses. And, like his April 1980 decision,[125] it forthrightly set out what had happened to the Western Shoshone tribal title and treaty rights--they had continued to exist up to December 1979, but were now precluded solely as a result of the payment of the ICC claim. The findings of fact[126] remain a valuable historical record. Once again, the legal system seemed to be working to recognize the actual facts and define the problem and, this time, to devise a judicial solution.

H. The Appeal of the *Thompson Decision*: *Dann III*

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[124]Two of Judge Thompson's opinions in other cases appear as principal cases in GEORGE C. COGGINS, CHARLES WILKINSON, JOHN D. LESHY, FEDERAL LAND AND RESOURCES LAW (3d 1993): *Stewart v. Penny,* (D. Nev. 1965)(homesteading) at 87, and *Amax Exploration, Inc. v. Mosher,*(D. Nev. 1987)(mining).

[125]Discussed *supra* text accompanying notes 72, 74.

[126]United States v. Dann, 13 ILR 3158 (D. Nev. 1986).

The government, however, rejected Judge Thompson's solution and appealed, seeking to eliminate *any* Shoshone treaty or aboriginal right to use their territory, and the Danns cross-appealed. The Danns argued that the "full discharge" of "all claims and demands touching any of the matters involved in the controversy" received by the government pursuant to the ICCA[127] had relieved the government of all liability for past wrongs and barred the Indians from all further remedies, including the return of land that had been actually taken prior to the discharge, but that discharge did not create a new cause of action for the government that justified removal of Indians who had been in continuous possession of tribal lands. The Danns asserted that if the statute was interpreted so that the discharge not only eliminated claims for remedies for past wrongs which the statute created, but provided the basis for altering the status quo and disrupting possession, then due process standards required that the ICC judgment be invalidated because the existing property interest of the Western Shoshone was not represented in the ICC.[128] The Danns further argued that it was an abuse of discretion not to allow the Danns to present their evidence on the improper representation in the ICC and the fraud committed by the Secretary of Interior in accepting the ICC award.

The government, in its appeal, argued that the *Thompson decision* was wrong in

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[127]Sec. 22, Indian Claims Commission Act of 1946, ch. 959, 60 Stat. 1049, 25 U.S.C. §70u (1976).

[128]The Danns were not arguing that every member of a group should have a right to be heard in the ICC, but that *some* person or entity should have been heard on the issue of whether all the Shoshone lands had been taken and all Shoshone title had been extinguished, if those issues were to be preclusively determined there. To decide those questions without hearing from the title holder, or any person having an interest in preserving the title, deprived the title holder itself of due process. See discussion *supra* note 42.

recognizing individual possessory rights of the Danns because such rights could only be based upon government land policies that had changed before "entry" by the Danns, and they were not entitled to more land than the 160 acres their father had homesteaded. The government pointed out that the court in *Dann II,*[129] had stated that the ICC did not have jurisdiction over claims arising after 1946, and the ICC award could not result in the extinguishment of title on the date the award became final. The government argued that therefore the ICC judgment compels the conclusion that the title *must* have been extinguished before 1946, and because "the parties in the [ICC] proceedings stipulated to a valuation date of July 1872 for the government's taking of tribal aboriginal title," that date "should here be considered the date upon which tribal aboriginal title to the lands at issue was extinguished."[130]

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[129]706 F.2d at 928.

[130]Brief for the United States at 26, United States v. Dann (Dann III), 873 F.2d 1189 (9th Cir. 1989)(Nos. 86-2835 & 86-2890). The parties seemed to be in agreement that the ICC could not extinguish title. The dispute appeared to the author to be about what to do when the ICC awarded damages, computed as if all lands were taken, when title to particular tracts had not, in fact and law, been extinguished and the Indians were still in possession. Should the government suffer whatever losses might result because it paid damages for wrongs it had not yet committed, should the government be allowed to recover its loss from the parties responsible for the mistake

or deduct them from the ICC award, or should reality be altered to conform to a stipulation, and the Indians be forcibly removed from their lands because the stipulation was that the award could be valued as if the lands had all been taken in the last century?

The Court of Appeals in *Dann III* reversed the *Thompson decision*, ruling in favor of the government on all issues, except one: It found that the Danns did have the right under then-applicable public land laws to enter and use public lands up to 1934, when the area was closed to entry pursuant to the Taylor Grazing Act.[131] The court agreed that the fact of payment compelled a conclusion that Western Shoshone title to the lands used and occupied by the Danns was extinguished prior to 1946 and that July 1, 1872, was "the most appropriate date."[132] The court held that the necessary implication of the Supreme Court

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[131]United States v. Dann (Dann III), 873 F.2d 1189 (9th Cir.), *cert. denied,* 493 U.S. 890 (1989).

[132]*Id.* at 1198. Judge Thompson had not found that title was "extinguished" by the payment of the claim. He found that the effect of the statutory discharge in the Indian Claims Commission Act was to "preclude" assertion of the title, Conclusion of Law 5, 13 ILR at 3159, because the court of appeals, in *Dann II,* 706 F.2d at 927, had stated that payment would preclude or "bar" assertion of title, and there was nothing in the Supreme Court's decision, finding that payment had occurred, which was to the contrary concerning the effect of that

decision was that Western Shoshone tribal title was extinguished prior to 1946.[133]

payment. In *Dann III*, the court of appeals seems to apply the collateral estoppel and res judicata principles that it had rejected in *Dann II*. In *Dann II* that court had determined that a bar was the exclusively applicable effect of the statutory discharge received by payment of an ICC award. 706 F.2d at 924.

[133]873 F.2d at 1194-95. Despite the court of appeals' insistence that an ICC judgment could not have the effect of extinguishing title, the Supreme Court decision in *Dann* continues to be cited by commentators for that proposition. *See* Charles F. Wilkinson, *Home Dance, the Hopi and Black Mesa Coal: Conquest and Endurance in the American Southwest*, 1996 BYU L. REV. 449, 469; John S. Harrison, *Hohfeld and Herefords: the Concept of Property and the Law of the Range*, 22 N.M. L. REV. 488, n. 217 (1992).

The court remanded to the district court for a determination of whether the Danns held "individual occupancy rights" established by actual use and occupancy prior to November 1934, when Nevada was closed to homesteading and landless Indians could no longer establish individual title by settling on public domain. The appeals court further held that the Danns had been rightly prevented from putting on additional evidence in the district court (showing fraud by the Secretary of the Interior in accepting the payment in 1979), stating that "[t]he evidence the Danns sought to introduce was in support of tribal aboriginal title."[134] The court dismissed the Danns' due process arguments on the grounds

[134]873 F.2d at n. 4. The court did not state what the proffer was and therefore gave no explanation why the Danns could not show fraud in view of the Supreme Court's holding that, "absent actual knowledge of the fraudulent intent of the trustee," the Indians were bound by the payment by the government as debtor to the government as trustee. 470 U.S. at 48-50. Apparently the 9th Circuit was ruling that, since payment compelled the conclusion that the title was extinguished prior to 1946, the Danns could not put on evidence that in fact it was not and that the Secretary of the Interior had been personally informed, prior to his acceptance of the payment, that it was not, and that payment would have the effect of taking lands from under the feet of his wards. *See supra,* note 118.

that the tribal title was not "a direct property interest of their own" and "[t]he Danns were simply part of a litigating group with regards to the claims proceeding, and litigation strategy was subject to group decision."[135]

J. The Final Round in District Court

[135]873 F.2d at 1195. The court seems to suppose that the Danns had some input into the "group decision," but it does not explain its basis for such supposition. However, as explained, *supra* notes 31-44 and accompanying text, the "group" had no recognized government and was nominally represented by the Temoak Bands, which politically represented only a portion of the "group" and had territorial jurisdiction over only a portion of Western Shoshone lands. The Danns did not belong to the Temoak Bands, and even the Temoak Bands had no control over the decisions that were made by the claims lawyers. See discussion *supra* notes 46-50 and accompanying text.

At the time scheduled for trial in June 1991, the Danns withdrew any claim to "individual occupancy rights," as interpreted by the court of appeals,[136] because such a claim was inconsistent with their political assertion of aboriginal and treaty rights as Western Shoshone in continuous occupancy of tribal lands.[137] Although assertion of individual occupancy rights was the only legal defense remaining, the Danns argued that the government was nonetheless not entitled to the equitable relief of an injunction because

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[136]*See Dann III*, 873 F.2d at 1197. The potential economic value of the individual aboriginal occupancy rights that the Danns were abandoning was considerable. Prior to the trial date, the attorneys for the government had suggested to the author that the matter of the Danns' individual aboriginal grazing and occupancy rights be settled at 250 head of cattle on the range plus title to some land and requested a counteroffer. The government also suggested that the number could be considerably higher if it were limited to the Dann sisters' lifetimes. Author's notes of telephone conversations with Justice Department attorneys Patricia Weiss and Daria Zane, May 5, 1991. The author forwarded this offer to the Danns with his opinion that the government would probably agree to the Danns' perpetual right to graze 500 head of cattle (without permits) and confirm their individual title to two additional quarter-sections of land adjacent to the Danns' homestead. The author reminded them that this offer was in addition to reinstatement of the grazing permits for the livestock operation belonging to the estate of their parents. The Danns walked away from this offer as well as the opportunity to present their evidence of their parent's and grandmother's pre-1934 use and to have a now-sympathetic Judge Thompson qualify those rights. They did so out of principle and because they wanted it clear that they had been fighting for Western Shoshone rights, rather than personal benefit.

[137]While it is true that the Danns had previously asserted individual rights, which survived any loss of tribal rights in the ICC, they had asserted those rights as Western Shoshone and that those rights derived from the tribal aboriginal title and treaty. *See, e.g.,* Brief for Respondents at 33-38, United States v. Dann, 470 U.S. 39 (1985)(No. 83-1476). The Danns argued in *Dann III,* that they were in a stronger position than the Indians in *Cramer v. United States*, 261 U.S. 219 (1923), because they had been in possession of tribal lands for generations and their use of the lands for grazing was sanctioned by Article VII of the Treaty of Ruby Valley, *supra* note 1. "Thus the Danns did not enter upon 'unappropriated public lands' under the benevolent policy of the Interior Department toward homeless Indians." Danns' Reply and Response Brief at 37, 873 F.2d 1189 (9th Cir. 1989)(Nos. 86-2835 & 86-2890). They argued that the essence of *Cramer* was not charity but "pre-existing right," which in their case flowed from their continuous occupation of tribal lands under treaty right. *Id.* The Danns just could not bring themselves to make a claim that they entered unappropriated public lands and acquired some government benefits for homeless Indians, regardless of the economic benefit of such a claim.

it lacked clean hands and, therefore, the court should confine itself to issuing a legal ruling and leave the government to its own devices in securing its ill-gotten gains.[138] Meeting with counsel in camera and off the record,[139] Judge Thompson, in response to that argument, stated that he had no intention of issuing an injunction against the Danns because the BLM had administrative remedies it could pursue.

In the courtroom the judge allowed Mary and Carrie Dann and Western Shoshone National Council Chief Raymond Yowell to personally address the court,[140] and they passionately and eloquently expressed their lack of faith in the fairness of the United States courts and their intention to continue to occupy their ancestral lands. The court ordered the BLM not to impose any penalties and fees against the Danns for alleged trespass prior to June 6, 1991, and mandated that any cattle owned by the estate of the Danns' parents and found by agents of the BLM on the federal range in excess of permitted use "shall not be disturbed unless and until the appropriate notice of trespass and opportunity to remove any

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[138]Defendants' Memorandum on Appropriate Relief, United States v. Dann, 13 ILR 3158 (D. Nev. 1986)(CV-N-74-60 BRT).

[139]Minutes of the Court, June 6, 1991, *id.*

[140]*Id.*

such cattle or livestock shall be given after this date, and the opportunity shall be given to the owners to rectify the situation, all in accordance with the regulations of the Bureau of Land Management."[141]

[141] *Id.* at 2.

The court determined that Mary and Carrie Dann's unpermitted cattle were in trespass and those cattle and unauthorized improvements were subject to removal by the BLM from the range "in accordance with Federal Range Codes and Regulations."[142] The court later denied the government its costs in the litigation referring to the court's previously expressed "intention in this equitable action that the [Danns] should not be penalized for their untiring efforts to obtain recognition and enforcement of rights as Shoshone Indians."[143]

Thus, Judge Thompson limited the government's remedies to agency enforcement of applicable BLM grazing regulations, placing the government in exactly the same position that it had claimed to be in before it sued the Danns for an injunction and trespass damages seventeen years previously. The government had failed to obtain either an injunction or damages.[144] Nonetheless, the government, exploiting its legal position as

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[142]*Id.*

[143]Order Denying Costs, July 11, 1991, *id.* at 3.

[144]The damage claim dismissed by the district court in its order of April 25, 1980,

guardian of the Indians, had succeeded in destroying the Western Shoshone title by manipulating the proceedings in the *Dann* case and in the ICC.

IV. CONGRESS ESTABLISHES A RESERVATION IN DEATH VALLEY

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discussed *supra* notes 71 and 79 and accompanying text, was never reinstated. Whether this was because of oversight or the result of careful, strategic planning on the part of the government is not known. Although it would be consistent with the government's later theory regarding when the lands became federal lands, it would seem preposterous to impose damages for trespass upon persons, who were lawful possessors according to the courts at the time, because the court of appeals later decided, see discussion *supra* notes 129-132 and accompanying text, that their title had to be now deemed to have been extinguished a century earlier because of a stipulation entered in another proceeding where final judgment was not entered until years after the alleged trespass.

Congress has recently addressed a portion of the Western Shoshone land issue in providing a reservation for the Timbisha Shoshone Tribe (the Timbisha), the Western Shoshone band located in Death Valley, California. The California Desert Protection Act of 1994 included a provision directing the Secretary of the Interior, in consultation with the and relevant federal agencies, to conduct a study "to identify lands suitable for a reservation for the [the Timbisha] that are located within the [the Timbisha's] aboriginal homeland area within and outside the boundaries of Death Valley National Monument and . . . Park . . . ."[145] That study produced a Draft Secretarial Report[146] and eventually led to the passage of the Timbisha Shoshone Homeland Act,[147] which established a 7600-acre reservation in parcels surrounding Death Valley National Park and one 314-acre parcel within the park itself at Furnace Creek, the cultural, political, and geographical heart of the

[145]Section 705(b), P.L. 102-433; 108 Stat. 4498, 16 U.S.C. 410 (?).

[146]The Timbisha Shoshone Tribal Homeland, A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities, Developed by Representatives of the Timbisha Shoshone Tribe and the Department of the Interior, at 17(Copy in author's possession).

[147]Pub. L. 106-423, 114 Stat. 187, 16 U.S.C. 410.

tribe's homeland.[148] In addition, the Act grants the Shoshone traditional-use rights and establishes special-use areas in the park and monument where the Timbisha have non-exclusive rights.[149]

[148]William Booth, *Tribe Gets Ownership of National Park Lands*, SALT LAKE TRIBUNE, Jan. 3, 2001, at A-1.

[149]Pub. L. 106-423, 114 Stat. 187, 16 U.S.C. 410.

The Timbisha, one of the constituent entities of the Western Shoshone National Council, had remained in its native valley, adapting as best it could to non-Indian incursions.[150] Despite early settler harassment and later efforts by the Park Service to destroy their homes and move them from the area, they managed to hang on. While the legal history of the Western Shoshone in California is different,[151] overall the story of the Timbisha is remarkably similar to that of the Danns, and they have been allies over the years of the struggle.[152] There are no references in the secretarial report to the legal history of the Western Shoshone, and on the surface at least, the Timbisha secretarial report and Act seem to be based upon the long and close relationship between the Timbisha people and their lands rather than upon any legal claim. It is encouraging to other Western Shoshone that the Timbisha were able to obtain congressional confirmation to ownership

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[150]Personal conversation with Timbisha elder and Tribal Chairman, Pauline Esteves.

[151]Aboriginal title in California was found to be extinguished by operation of the California Land Claims Act of Mar. 3, 1851, ch. 41, 9 Stat. 631. Barker v. Harvey, 181 U.S. 481 (1901).

[152]Pauline Esteves, now the chairperson of the Timbisha Shoshone Tribe, was the Timbisha representative to the Western Shoshone National Council, which met monthly in Austin, Nevada, throughout much of the 1980s and 1990s. Carrie Dann, representing the Dann Band, and the author also regularly attended.

of a portion of their traditional homeland within a National Park.

V. CONCLUSION

The legal history of the United States is replete with instances where the Judicial Branch proved itself unable[153] or unwilling[154] to prevent the confiscation of Indian property by the political branches. However, it is one thing to say that when the President or Congress engages in such conquest, relief to the victims is not available in "the courts of the conqueror";[155] it is quite another to say that such conquest may occur by operation of those courts themselves in applying the constructive taking date adopted for one purpose in a claims tribunal as the historical date of extinguishment of title in the law courts. If the United States is to take property by conquest, it does not seem to be too much to ask that it actually draw its sword, get on its horse, and go out and conquer; or, if it does not have the stomach for such real conquest, it should at least muster the political will to conquer constructively by legislative fiat and openly extinguish the Indians' title by legislation as it has in the past.[156] On the other hand, if the United States is to hold itself to the rule of law and submit disputes with indigenous people to the courts, those courts ought to provide due process of law by allowing meaningful access to the claims tribunals and applying accepted

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[153]FELIX COHEN, HANDBOOK OF FEDERAL INDIAN LAW (1982 ed.) at 83 (discussing President Jackson's refusal to enforce the Supreme Court's decision in *Worchester v. Georgia*, 31 U.S. 515 (1832).

[154]*See, e.g.,* Lone Wolf v. Hitchcock, 187 U.S. 553 (1903).

[155]Johnson v. M'Intosh, 21 U.S. (8 Wheat) 543, 588 (1823)(dictum).

[156]*See, e.g.*, Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955).

doctrines of discharge and issue and claim preclusion in the courts. The United States did none of these in confiscating the lands of the Western Shoshone.

This is not some ancient wrong, sounding of "old, unhappy, far off things and battles long ago,"[157] for which no one now living is responsible. Over the last three decades, the Judicial and Executive Branches were repeatedly given opportunities to adopt an honest and equitable solution, either based upon existing law or imposed by political settlement, and they repeatedly squandered them. The opportunity remains to devise a legislative settlement, in the claim distribution process or otherwise, patterned after the partial solutions of the Timbisha Homeland Act and Judge Thompson's overturned order in *Dann*, that is, a solution that confirms Shoshone title to some lands and use rights and joint management authority on other lands.

September 5, 2002

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[157]William Wordsworth, *The Solitary Reaper,* quoted by Justice, now Chief Justice, William Rehnquist, in an entirely different context, in *Kaiser Aetna v. United States,* 444 U.S. 164, 177 (1979).

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WESTERN SHOSHONE NATION LAND RIGHTS ISSUE SUMMARY

October 2001

I. The 1863 Treaty of Ruby Valley.

In 1863, the Western Bands of the Shoshone Nation entered into a Treaty of Peace with the United States. The treaty described the boundaries of Western Shoshone Country, comprising some 60 million acres extending from the Snake River in Idaho through Nevada into southern California. The Treaty did not cede title to any Shoshone lands, although it granted the U.S. certain rights-of-way, mining rights and the right to establish towns and ranches in support of mining. Additionally, the Treaty granted the President authority to establish permanent reservations for the Western Shoshones within their territory. Although the Treaty of Ruby Valley was ratified by Congress and remains in full force, no reservations were ever created under the Treaty. Western Shoshone title to their territory has never been legally extinguished. Nonetheless, and solely as a result of proceedings before the U.S. Indian Claims Commission, the Western Shoshone Nation has been deprived of virtually all of its lands.

II. Indian Claims Commission Proceedings.

Western Shoshones retained counsel as early as 1932 to enforce the Treaty and their land rights. Nothing was done. Instead, in 1951, the Bureau of Indian Affairs (BIA) persuaded some Western Shoshones to file a claim before the Indian Claims Commission (ICC) seeking compensation for an alleged "taking" of all Shoshone lands. (Western Shoshone Identifiable Group v. U.S.) Throughout these proceedings (1951-1979), a large number of Western Shoshones protested that the Treaty is still in effect, that they still own and occupy the land, and that accepting compensation will amount to selling the land. Contrary to legal precedent, the claims attorneys insisted the Shoshones were wrong. Today, the Duckwater Shoshone Tribe, the Timbisha Shoshone Tribe, the Yomba Shoshone

Tribe, and the Dann Western Shoshone Traditional Family correctly assert that they were never represented in, nor parties to, these proceedings.

In 1962, the ICC held that Western Shoshones were "deprived of their lands" in the Nineteenth Century by "gradual encroachment of whites, settlers and others...." In the absence of a taking date, the attorneys stipulated July 1, 1872 as the "date of valuation" for purposes of compensation. In 1979, despite Shoshone attempts to stop the proceedings, the U.S. Court of Claims awarded less than $27 million--the 1872 value without interest--for a putative "taking." With interest since 1979, the Fund has grown to over $100 million. This Fund is being held by the Interior Secretary.

Although the ICC lacked jurisdiction to adjudicate Indian title (jurisdiction was limited to awarding money damages for "ancient wrongs"), its decision ratified a presumption that a "taking" had somehow occurred. Those Shoshones who now seek a land settlement insist that the Shoshone Nation never understood or intended that the claim was for the taking of their lands, but only for damages for trespass and other wrongs committed by non-Indians.

In 1974, the Western Shoshone Sacred Lands Association sought to broaden Shoshone representation in the ICC proceedings. It sought to exclude from the "taking" claim those lands not actually occupied by towns or white ranchers--some 16 million acres currently under Bureau of Land Management (BLM) and Forest Service control. Their request was summarily denied. The court noted in a footnote that the Shoshones could "postpone payment, in order to try out the issue of current title, ... [by] ask[ing] Congress to delay making the appropriation ... to pay the award."

In 1976, the nominal plaintiff in the case, the Temoak Bands Council, concluded that Western Shoshone title remained unextinguished and that action should be taken to stop the case before it was too late. The Temoak Council sought a stay pending a determination by the Interior Department Solicitor of the status of the Shoshone title, or an adjudication by a court with actual jurisdiction to determine the title. The Council also filed a separate quiet title action in federal district court in Washington, D.C.. The stay was denied, and after appeals were exhausted, the ICC case went to final judgment on December 12, 1979. The new action was dismissed. On appeal of the denial of the stay, the Court of Claims again directed the Shoshones to Congress: "If the Indians desire to avert the extinguishment of their land claims by final payment, they should go to Congress as recommended [in the earlier decision] .... The essential point of the matter is that the Temoak's true appeal is to legislative grace, not as of right to this court."

III. The Case of United States v. Dann.

Mary and Carrie Dann are Western Shoshones raising livestock on ancestral Shoshone lands in Crescent Valley, Nevada as contemplated by the Treaty of Ruby Valley. They are the leaders of a traditional Western Shoshone extended-family group. In 1974, the BLM sued the Danns for an injunction and trespass damages for grazing livestock on "public domain" without a permit. In defense, the Danns

asserted unextinguished Shoshone title and the Treaty. The case went before the U.S. District Court in Reno four times, the Ninth Circuit Court of Appeals three times, and the U.S. Supreme Court once.

In 1974 the District Court held that the 1962 ICC finding of a taking by "gradual encroachment" was conclusive. In 1976, the Ninth Circuit reversed and remanded for a trial on the grounds that the ICC case was not yet final and not conclusive. The District Court waited several years, apparently for the ICC proceedings to become final, without granting a trial. In April 1980, the court held that Shoshone aboriginal title was good until extinguished by the final judgment in the ICC proceedings on December 12, 1979, **five years after** the U.S. sued for trespass. Both sides appealed.

Immediately following the ICC award, the BIA began to develop a "judgment fund distribution plan" as required by the Indian Judgment Funds Distribution Act of 1973. When it became clear the BIA could not complete the plan within the statutory deadline, largely because of strong Western Shoshone opposition to accepting the judgment, the BIA asked the Senate Indian Committee for an extension. In view of the Dann appeal and uncertainty about the status of Shoshone title, the Committee rejected the BIA request. This put the judgment outside the purview of the 1973 Act. Congressional action is now required for distribution.

In 1983 the Ninth Circuit reversed again, holding that Western Shoshone title was not extinguished by the ICC judgment because the money was never actually paid to the Shoshones. The Appeals Court also held that no other action by the Government prior to December 1979 could have extinguished title. The Government petitioned for Supreme Court review.

The Government did not ask the Supreme Court to determine who owned the land. Instead, the Court was asked only to determine whether the Shoshones were "paid" within the meaning of the Indian Claims Commission Act. The Court held that the transfer of funds from the Treasury to the Interior Secretary on December 19, 1979 constituted "payment," whether or not the funds were ever accepted by or distributed to the Shoshones. The Court remanded for further proceedings without discussing whether the "payment" affected Shoshone title or justified the BLM's effort to eject the Danns.

In September 1986 the District Court held that the Danns were "precluded from asserting Western Shoshone Indian title" as a result of the 1979 "[constructive] payment." Again, the "taking" and the title status were not actually litigated - the title was simply deemed "precluded." On cross-appeals, the Ninth Circuit affirmed, holding that "payment of the claims award establishes conclusively that a taking occurred." The court adopted July 1, 1872, the **stipulated "valuation date,"** as the "most appropriate date" for the extinguishment. The court remanded, however, for a determination of whether the Danns held "individual aboriginal rights" established by actual use and occupancy prior to November 1934 when Nevada was closed to homesteading.

At trial in June 1991 the Danns withdrew all defenses based on "individual aboriginal rights" on the grounds that **Shoshone national land rights** are the essential issue. They also restated their lack of faith in the fairness of the U.S.

courts and their intention to continue occupying their ancestral lands. The court found them in trespass, but refused to grant the equitable (injunctive) relief sought by the Government or to levy penalties. The court limited the Government's remedies to the enforcement of applicable BLM grazing regulations, placing the Government in precisely its 1974 position when it initiated U.S. v. Dann.

IV. Current Status: Negotiations / Judgment Distribution.

Since 1980, several Western Shoshone Tribes and livestock associations have refused, along with the Danns, to pay federal grazing fees. Despite the Government's victory in the Supreme Court, Shoshones are grazing livestock on approximately 1,000,000 acres of "public domain" without permits, and are continuing their traditional hunting and gathering throughout their ancestral areas consistent with the Treaty and without regard to state law.

Western Shoshone tribal governments and political organizations continue to believe that the Treaty of Ruby Valley guaranteed their land rights, and that they have been defrauded by the Government and the courts. When they tried to stop the ICC case and prevent it from "precluding" their title, they were told to go to Congress for relief. Neither Congress nor the Administration have responded. The Western Shoshones have a strong moral and international legal claim to a significant land base within their ancestral lands. The only way to satisfy this claim despite adverse U.S. court rulings is in a negotiated, legislated land settlement.

There have been two efforts to negotiate a settlement. In 1986 Western Shoshone delegations met several times with Interior Department representatives, including the Assistant Secretary for Indian Affairs, Ross Swimmer. Those negotiations ended when Mr. Swimmer announced that no Shoshone land would be returned. In January 1994 a large Western Shoshone delegation met with newly appointed Interior Secretary Bruce Babbitt to restart negotiations. At the urging of the Senate Committee on Indian Affairs and the Nevada Congressional delegation, Secretary Babbitt committed to form a federal team to negotiate a legislative proposal. Several meetings were held from 1994 - 1997. The Government's only proposal was to allow the Shoshones to purchase lands at current fair market value from the BLM's land disposal list using the ICC judgment funds. In other words, the Shoshones could repurchase at present value lands the Government acquired no earlier than 1979 for 15 cents an acre - the 1872 value. The Shoshones rejected this proposal and negotiations ended because the Government could not bring itself to make a fair or reasonable offer.

The BLM continues to threaten the Danns, the Te-Moak Shoshone Tribe, the Yomba Shoshone Tribe and other Western Shoshone ranchers for payment of grazing fees. Since the Danns refuse to pay, the BLM has confiscated Dann livestock on two occasions.

In May 1998 a group of individual Western Shoshones held two meetings, supported by the BIA, to organize an effort to get Congress to distribute the Docket 326-K Judgment Fund. Despite unequivocal opposition from the Temoak Bands Council and the Yomba Shoshone Tribe, and in direct violation of a 1994 Executive

Memorandum and frequent public pronouncements of a policy of "government-to-government" relations with Indian Nations, the BIA is seeking distribution of the Fund with no land settlement.

V. International Proceedings.

In 1993 the Danns filed a human rights complaint before the **Inter-American Commission on Human Rights of the Organization of American States** (Dann v. U.S.). The Yomba and Ely Shoshone Tribes intervened in this case as *amicus curiae*. The Complaint alleges U.S. failure to meet its obligations to protect Western Shoshone land rights, and challenges the U.S. to reform discriminatory legal doctrines that deny basic constitutional and human rights to indigenous American peoples.

In response to the Danns' requests, the Commission has issued "precautionary measures" against the U.S. on three occasions to halt BLM action against the Danns pending completion of the Commission's investigation. (Copy attached.) The U.S. has never formally responded. On October 25, 1999 the Danns filed a request with the Commission to enter into a process of friendly settlement with the U.S.. The U.S. has not responded.

Despite U.S. requests that the Commission declare the Danns' Complaint inadmissible, in September 1999 the Commission ruled the petition admissible. The Commission concluded that the Danns' claims state a *prima facie* human rights violation.

On August 23, 1999 the Yomba Shoshone Tribe submitted a Request for Urgent Action to the **Committee for the Elimination of Racial Discrimination ("CERD")** under its urgent action / early warning procedure. The Duckwater and Ely Shoshone Tribes subsequently joined in this request.

CERD was established by the International Convention on the Elimination of All Forms of Racial Discrimination, a United Nations treaty to which the U.S. is a party. The purpose of CERD is to monitor and review actions by states to fulfill their obligations under the Convention.

The Request asserts that the rights of the Western Shoshones are being violated by the U.S. in a discriminatory fashion on the basis of their status as indigenous peoples. The Request asks that CERD direct the U.S. to halt actions threatening irreparable harm to the Western Shoshones and to enter negotiations with Western Shoshone leaders to resolve Western Shoshone land rights issues.

In August 2001, in its "Concluding observations" with respect to the United States following its annual meeting in Geneva, Switzerland, CERD "notes with concern [with respect to the Western Shoshones] that treaties signed by the Government and Indian tribes, ... can be abrogated unilaterally by Congress and that the land they possess or use can be taken without compensation by a decision of the Government."

Tom Luebben (tl:c:shoshone:sumary08.01)

DRAFT LEGISLATIVE PROPOSAL

YOMBA SHOSHONE INDIAN LAND RESTORATION ACT

Yomba Shoshone Tribe
Reese River Valley, Nevada

March 2002

AN ACT

To reaffirm the Treaty of Ruby Valley of October 1, 1863, 18 Stat. 689 (1869), between the United States and the Western Shoshone Indians; to confirm Western Shoshone Indian hunting, fishing, trapping, and gathering rights throughout the Western Shoshone ancestral territory; to confirm title to certain Western Shoshone ancestral lands in the Yomba Shoshone Tribe; to provide for the economic development, resource protection and self-determination of the Yomba Shoshone Tribe; to distribute funds to the Yomba Shoshone Tribe and its members from the Western Shoshone Judgment Fund; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Yomba Shoshone Indian Land Restoration Act".

Sec. 1. FINDINGS.

The Congress finds and declares that —

(1) the Western Shoshone Nation entered into a treaty with the United States on October 1, 1863, at Ruby Valley, Nevada, known as the "Treaty of Ruby Valley", which treaty was ratified by the United States Senate on June 17, 1869 and proclaimed by the President of the United States on October 21, 1869; and,

(2) the Treaty of Ruby Valley did not cede any Western Shoshone lands to the United States, but conceded certain rights to the United States for its citizens to pass through Western Shoshone lands and provided for certain types of temporary occupancy by citizens of the United States; and,

(3) the Treaty of Ruby Valley delineated a portion of the ancestral lands of the Western Shoshone Nation, including the area surrounding the present Yomba Shoshone community, and recognized Western Shoshone occupancy of such lands; and,

(4) the ancestral lands of the Western Shoshone Nation have deep religious and cultural significance to the Western Shoshone people and the Western Shoshone people have never desired to give up their ancestral lands and remove to other areas; and,

(5) the Congress of the United States recognizes the right of the Western Shoshone people to continue to hold and occupy their ancestral homelands, and the right of the Western Shoshone people to economic and political self-determination; and,

(6) Western Shoshone Indians have continuously asserted their ownership of Western Shoshone lands, and such lands have never been legally abandoned by the Western Shoshones; and,

(7) Western Shoshone Indians continue to exercise aboriginal hunting, fishing, trapping, and gathering rights throughout the ancestral territory of the Western Shoshone Nation and are utilizing large areas for the grazing of livestock pursuant to aboriginal ownership rights and the Treaty of Ruby Valley; and,

(8) Western Shoshone title to the larger part of the ancestral lands of the Western Shoshone Nation remained unimpaired until December 19, 1979 when the judgment in Western Shoshone Identifiable Group v. United States, Docket 326-K, was "deemed" paid; and,

(9) the amount of the judgment, $26,143,000, constitutes woefully inadequate compensation for the loss of Western Shoshone land rights as of December 19, 1979; and,

(10) the Western Shoshone Nation has refused to accept the judgment awarded in Docket 326-K as compensation for extinguishment of title to its lands and will not accept money in exchange for the extinguishment of title to such lands; and,

(11) the United States desires to distribute the fund created by the final judgment in Western Shoshone Identifiable Group v. United States, Docket 326-K; and,

(12) Article VI of the Treaty of Ruby Valley provides for the establishment of Western Shoshone Indian Reservations where Western Shoshone Indians may become economically self-sufficient, but which Reservations have heretofore never been established; and,

(13) the courts of the United States, in United States v. Dann, have held that certain long-standing Western Shoshone rights of occupancy are enforceable against the United States; and,

(14) the Yomba Shoshone Tribe traditionally and historically used and occupied approximately 10,840,000 acres of ancestral lands, known as the Yomba Shoshone Traditional Use Area, for hunting, fishing, trapping and gathering; livestock grazing and other Western Shoshone traditional purposes, which lands are primarily administered as public or National Forest lands by the United States; and,

(15) the Yomba Shoshone Tribe historically used and occupied under federal grazing permits approximately 800,000 acres of Western Shoshone ancestral lands, known as the Yomba Shoshone Historical Grazing Area; and,

(16) the Yomba Shoshone Tribe currently uses and occupies approximately 324,000 acres of Western Shoshone ancestral lands for grazing purposes under federal grazing permits; and,

(17) under claim of right based on Western Shoshone aboriginal Indian title and the Treaty of Ruby Valley, the Yomba Shoshone Tribe objects to paying grazing fees for the use of Western Shoshone ancestral lands; and,

(18) there is an immediate need for a fair and just resolution of Western Shoshone land rights and money claims against the United States, and an immediate need to provide an adequate land base for the Yomba Shoshone Tribe; and,

(19) no provision of this Act shall constitute a precedent for reopening, renegotiating, or legislating upon any past settlement involving land rights or other matters with any tribe, band or identifiable group of American Indians.

Sec. 2. DEFINITIONS.

For the purposes of this chapter, the term—

(1) "federal lands" and "federally-claimed lands" means lands held or claimed to be held in fee simple by the United States that are not held in trust for Indians. Such terms include lands subject to the administration of the United States Departments of Agriculture, Interior and Energy, including all of the sub-agencies of those departments;

(2) "land(s)", means surface rights, sub-surface rights and mineral estates, and water rights appurtenant to land, whether federally, tribally, or privately held;

(3) "private lands" means lands held in fee simple by any person or entity other than the United States and its agencies and instrumentalities;

(4) "Secretary" means the Secretary of the Interior;

(5) "sub-surface estate" means the sub-surface mineral rights retained by the United States on those lands in which surface rights have been conveyed to private parties by United States patent, and any sub-surface rights acquired or held by the United States separately or distinct from surface rights; "Yomba Shoshone Tribe" means the federally-recognized Indian Tribe that occupies the Yomba Shoshone Indian Reservation at Reese River Valley, Nevada;

(6) "Western Shoshone ancestral lands" and "Western Shoshone ancestral territory" means all lands within the exterior boundaries of the ancestral lands of the Western Shoshone Nation;

(7) "Western Shoshone judgment fund" means the proceeds of the $26,143,000 judgment awarded by the United States Court of Claims in Western Shoshone Identifiable Group v. United States, Docket 326-K, on December 6, 1979, plus accumulated interest and investment income;

(8) "Western Shoshone Nation" refers collectively to those sovereign and independent bands of Western Shoshone Indians who entered into the bilateral 1863 Treaty of Ruby Valley, 18 Stat. 689 (1869) or the bilateral Tutuwa Treaty, with their chiefs and headmen acting as ministers, including the Yomba Shoshone Tribe;

(9) "Yomba Shoshone Historical Grazing Area" refers to those lands particularly described in Section 5 hereof and traditionally and historically used by members of the Yomba Tribe and their ancestors for livestock grazing purposes;

(10) "Yomba Shoshone Indian" means a person of one-half or more Western Shoshone Indian descendency who is an enrolled member of the Yomba Shoshone Tribe, is eligible for enrollment in the Yomba Shoshone Tribe in accordance with its enrollment law, or is a descendant of an enrolled member or person eligible for enrollment in the Yomba Shoshone Tribe;

(11) "Yomba Shoshone Traditional Use Area" refers to those lands particularly described in Section 7 hereof and traditionally used and occupied by the Yomba Shoshone Tribe and their ancestors.

(12) "Yomba Shoshone Tribe" means the federally-recognized Indian Tribe which occupies the Yomba Shoshone Indian Reservation at Reese River Valley, Nevada.

Sec. 3. NATURE AND PURPOSE OF COMPENSATION.

The judgment awarded by the United States Court of Claims in Western Shoshone Identifiable Group v. United States, Docket 326-K, is hereby characterized as compensation to the Western Shoshone Nation for wrongs done to that Nation and its individual citizens by the United States during the Nineteenth and Twentieth Centuries, including the disruption of Western Shoshone culture and lifestyle, the destruction of game, and trespass to Western Shoshone lands, including the removal of valuable minerals without compensation. Notwithstanding the judgment in Western Shoshone Identifiable Group v. United States or other federal court cases, such funds shall not be

deemed compensation for the taking of or extinguishment of title to Western Shoshone aboriginal lands.

Sec. 4. DETERMINATION OF YOMBA SHARE OF WESTERN SHOSHONE JUDGMENT FUND.

(a) Within 90 days of the effective date of this Act the Secretary shall determine the share of the Western Shoshone judgment fund to be allocated to the Yomba Shoshone Tribe pursuant to this Act and shall transfer such funds into a segregated Indian tribal trust account for the benefit of the Yomba Shoshone Tribe and for distribution pursuant to this Act. The Yomba Shoshone Tribe share shall be a percentage of the judgment fund which percentage shall be determined as of the effective date of this Act by dividing the total number of enrolled members of the Yomba Shoshone Tribe by a denominator determined as:

(1) the total number of all persons born prior to and alive on the effective date of this Act who are identified on tribal or Interior Department records as Western Shoshone Indians who are 1/4 degree Western Shoshone and who are enrolled in any of the following tribes:

A) Duckwater Shoshone Tribe

B) Temoak Tribe of Western Shoshone Indians of Nevada

C) Ely Shoshone Tribe

D) Yomba Shoshone Tribe

E) Timbisha Shoshone Tribe

F) Shoshone - Paiute Tribes of the Duck Valley Reservation

G) Paiute - Shoshone Tribe of the Fallon Reservation

H) Reno-Sparks Indian Colony

I) Fort McDermitt Paiute and Shoshone Tribes

J) Walker River Paiute Tribe

K) Lovelock Paiute Tribe

L) Owens Valley Paiute - Shoshone Band of Indians

(i) Benton

(ii) Bishop

(iii) Lone Pine

(iv) Big Pine

(v) Fort Independence

M) Winnemucca Indian Colony;

less

(2) any persons who meet the above-stated criteria but who have previously received a per capita share of any judgment of the Indian Claims Commission, where the per capita share exceeded the sum of $500.

(3) Individuals in the following categories shall not be eligible for, or considered in determining, any distribution from the Western Shoshone Judgment Fund:

(A) those who participated in the Shoshone award in Docket 326 D, E, F, G, H, 366 and 367 or who are members of the Shoshone Tribe of the Wind River Reservation or the Shoshone-Bannock Tribes of the Fort Hall Reservation;

(B) those whose Shoshone ancestry is derived solely from the Boise Bruneau Bands;

(C) members of the Confederated Tribes of the Goshute Reservations or the Skull Valley Goshute Tribe;

(D) those who participated in the Northern award in Docket 87;

(E) those who participated in the Indians of California award dockets 31, 37, 80, 80-D and 347;

(F) those who participated in the Southern Paiute award in Docket 88 or who are members of the Moapa Paiute Tribe or the Kaibab Paiute Tribe;

(G) those who are found eligible to participate in the Mojave award in Docket 283 and 295 or who are members of the Fort Mojave Tribe;

(H) members of the Washoe Tribe of Nevada and California;

(I) those who participated in the Klamath award in Docket 100 or whose ancestry is derived solely from the Yahooskin Snakes or Walpapi Paiutes;

(J) members of the Quechan Tribe.

(b) The share of the Western Shoshone judgment fund allocated to the Yomba Shoshone Tribe shall be distributed to the Yomba Shoshone Tribe and Yomba Shoshone Indians in the following manner:

(1) $1,000,000 shall be designated and held in trust in an interest-bearing account by the Secretary as the Yomba Shoshone Tribe Health, Education, Welfare, and Governance Permanent Fund. The principal of the Permanent Fund shall not be expended or disbursed for any reason, but shall be held in perpetual trust for the purpose of generating income. All accumulated interest and investment income in excess of the aforesaid original permanent principal balance shall be available to the Yomba Shoshone Tribe for use and distribution as determined by its Tribal Council for the health, education, welfare, and governance of the Tribe and its members.

(2) The balance of the funds allocated to the Yomba Shoshone Tribe shall be distributed on a per capita basis to persons who meet the following criteria:

(A) such person was born prior to and was alive on the effective date of this Act, and

(B) such person is an enrolled member of the Yomba Shoshone Tribe or is eligible to be enrolled in the Yomba Shoshone Tribe pursuant to the Yomba tribal enrollment law in effect on the effective date of this Act, and

(C) such person has not received a per capita share of any other judgment of the Indian Claims Commission wherein such per capita share exceeded the sum of $500.

(c) There shall be established a Yomba Shoshone Unborn Child Fund. The purpose of this fund is to provide for the health, education and welfare of future generations of Yomba Shoshone Indians unborn as of the date of this Act. Yomba Tribal members may voluntarily contribute any amounts from their respective share of the Judgment Fund to the Yomba Unborn Child Fund. The Yomba Shoshone Unborn Child Fund shall be maintained as a segregated tribal account. The Yomba Shoshone Tribe shall adopt rules and regulations for the maintenance, administration and distribution of this fund.

(d) The Yomba Shoshone Tribe shall compile and submit to the Secretary within 60 days of the effective date of this Act a final role of all persons enrolled or eligible to be enrolled in the Yomba Shoshone Tribe as of the effective date of this Act. Persons eligible to be enrolled in the Yomba Shoshone Tribe will be treated as if they are enrolled for purposes of this Act. Decisions as to enrollment and eligibility for enrollment in the Yomba

Shoshone Tribe and decisions as to enrollment for the purpose of per capita distributions to Yomba Shoshone Indians pursuant to this Act shall be made by the Yomba Shoshone Tribal Enrollment Committee and the Yomba Tribal Council in accordance with tribal law. Decisions of the Yomba Tribal Council as to enrollment and eligibility for enrollment for the purpose of per capita distributions pursuant to this Act shall be final.

(e) Per capita shares, including the shares of deceased persons, payable to persons who are less than 18 years of age or who are under a legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines appropriate to protect such persons' best interests.

(f) Upon receipt from the Yomba Shoshone Tribe of the final roll of Yomba Shoshone Indians eligible to share in the distribution of the judgment funds the Secretary shall establish an Individual Indian Money Account for each eligible recipient on the roll.

(g) Within 30 days of receipt from the Yomba Shoshone Tribe of the final roll of Yomba Shoshone Indians eligible to share in the distribution of the judgment funds, the Secretary shall notify in writing each distributee aged 18 or more that such person may elect to receive his or her per capita share by either of the following means:

(1) establishment of an Individual Indian Money Account to be managed and invested by the Secretary as an annuity which shall pay an amount per month reasonably calculated to exhaust the annuity over a ten year period.

(2) a lump sum payment. If the Secretary does not receive notice in writing from a distributee of the election of distribution method (1) or (2) above by such distributee within a reasonable period of time (to be established by the Secretary), the per capita share of such distributee shall be distributed by the annuity method

of paragraph (1). Any distributee who is receiving payout of his (her) per capita share by the annuity method may elect at any time to receive a lump sum payout of the remaining balance of their annuity account by so notifying the Secretary in writing.

(h) Lump sum payments shall be made, and annuity payments from Individual Indian Money Accounts of persons 18 years of age on the effective date of this Act shall begin, no later than 180 days following receipt by the Secretary of the final roll from the Yomba Shoshone Tribe.

(i) Minors' distribution shares shall be held in Individual Indian Money Accounts until age 18, at which time such persons shall be notified by the Secretary in writing of the option to elect to receive a lump sum payment or an amount per month reasonably calculated to exhaust the annuity over a ten year period.

(j) Payments for deceased distributees shall be paid as either a lump sum or an annuity to the distributee's estate, heirs, or legatees upon proof of death and inheritance satisfactory to the Secretary. The Executor or the Administrator of the decedent's estate shall be considered the distributee for purposes of the application of subsection 4(g). Shares of deceased distributees without heirs or legatees shall be transferred by the Secretary to the Yomba Shoshone Tribe Health, Education, Welfare, and Governance Permanent Fund established pursuant to Section 4(a) hereof and shall become part of the Permanent Fund.

Sec. 5. YOMBA SHOSHONE TITLE TO YOMBA SHOSHONE HISTORICAL GRAZING AREA CONFIRMED.

(a) **Yomba Shoshone Historical Grazing Area.**

The following described lands shall comprise the Yomba Shoshone Historical Grazing Area: **[DESCRIPTION OF OUTER BOUNDARIES OF AREA ACCORDING TO FEDERAL RECTANGULAR SURVEY TO BE INSERTED]**

(b) **Land Title Confirmed.**

(1) Title in fee simple to all lands within the Yomba Shoshone Historical Grazing Area, including all surface and subsurface estates, is hereby confirmed in the Yomba Shoshone Tribe, subject to valid existing rights acquired by third parties pursuant to the public land laws of the United States prior to the effective date of this Act;

(2) The subsurface estate only in and to all lands within the outer boundaries of the Yomba Shoshone Traditional Use Area is hereby confirmed in the Yomba Shoshone Tribe, subject to valid existing rights acquired by third parties pursuant to the public land laws of the United States prior to the effective date of this Act.

(3) All unbranded livestock existing on lands the surface title to which is hereby confirmed to the Yomba Shoshone Tribe pursuant to this Act shall be deemed to belong to the Yomba Shoshone Tribe and shall be subject to disposition by the Yomba Shoshone Tribe.

(c) **Land Withdrawal.**

(1) All lands within the Yomba Shoshone Traditional Use Area, fee title and/or subsurface title to which is hereby confirmed in the Yomba Shoshone Tribe,

are hereby withdrawn, subject to valid existing rights, from all forms of appropriation under the public land laws of the United States, including mining and mineral leasing laws, as of the effective date of of this Act.

(2) No lands within the Yomba Shoshone Traditional Use Area or the Yomba Shoshone Historical Grazing Area, fee title to which is hereby confirmed in the Yomba Shoshone Tribe, shall be administratively withdrawn or designated for military use or military purposes after the effective date of this Act.

(3) Within 180 days of the effective date of this Act, the Secretary shall cause to be published in the Federal Register the legal descriptions of all lands and interests title to which is confirmed in the Yomba Shoshone Tribe and all lands withdrawn pursuant to this Act.

(d) **Surveys.**

(1) Within two years following the effective date of this Act the Secretary shall cause to be surveyed the surface and subsurface estates title to which is hereby confirmed to the Yomba Shoshone Tribe. The exterior boundary of the Yomba Shoshone Traditional Use Area and the exterior boundary of the Yomba Shoshone Historical Grazing Area, as to which fee simple title and/or subsurface estate has been confirmed to the Yomba Shoshone Tribe shall be monumented at angle points and at intervals of one mile on straight lines. Such survey shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act of 1975, P.L. 93-638, 25 U.S.C. Sec. 450 et seq., as amended.

(2) All withdrawals and conveyances pursuant to this Act shall be as shown on current plats of survey or protraction diagrams of the Bureau of Land Management and other applicable federal agencies, and shall conform as nearly as practicable to the United States Land Survey System.

(e) **Conveyance of Lands.**

Immediately upon completion and approval of the aforesaid surveys, the Secretary shall issue to the Tribe fee patents to the surface and subsurface estates of such lands.

(f) **Mineral Royalties and Lease Payments.**

Mineral royalties and lease payments previously payable to the United States pursuant to valid mineral leases issued prior to the effective date of this Act covering lands lying within the Yomba Shoshone Traditional Use Area title to which is hereby confirmed in the Yomba Shoshone Tribe shall be payable to and shall be the property of the Yomba Shoshone Tribe as of the effective date of this Act. Such royalties and lease payments shall be collected, received, and disbursed by the Secretary in the same manner and shall be subject to the same laws and regulations as similar payments in connection with mineral leases and agreements on Indian trust lands, unless such duties are assumed by the Tribe through Agreement with the Secretary.

(g) **No Liability for Trespass.**

The Yomba Shoshone Tribe shall not be liable to the United States under the Taylor Grazing Act of 1934, or pursuant to any other provision of law or doctrine of equity, for trespass to lands belonging to or claimed by the United States within Western Shoshone ancestral territory, which trespass occurred prior to the effective date of this Act. Any legal or administrative proceedings pending against the Yomba Shoshone Tribe as of the effective date of this Act which are based upon a claim of trespass or damages to lands of the United States within Western Shoshone ancestral territory shall immediately be dismissed with prejudice.

(h) **Land Management Programs and Benefits.**

All lands the title to which is confirmed to the Yomba Shoshone Tribe pursuant to this Act shall be eligible to participate in federal land management and other land related benefit programs, including those available through the Bureau of Indian Affairs for Indian Reservation lands and lands held in trust by the United States for the benefit of Indians.

Sec. 6. WATER RIGHTS.

(a) All rights to waters—

(1) which are within, flow through or under, or arise on lands wherein the surface title is confirmed to the Yomba Shoshone Tribe pursuant to this Act, and

(2) as to which there is no valid, outstanding appropriation under Nevada State law, and

(3) which would be deemed abandoned pursuant to Nevada State law on the day prior to the effective date of this Act, and

(4) which are not otherwise previously reserved by the United States;

shall, on the effective date of this Act, be deemed the property of the Yomba Shoshone Tribe.

(b) All water rights confirmed to the Yomba Shoshone Tribe pursuant to this Act—

(1) if previously reserved by the federal government, shall retain the same quantity and date of priority that such rights had prior to the effective date of this Act.,

(2) if unappropriated prior to the effective date of this Act, shall be deemed to be Winters Doctrine federally-reserved rights with a priority date as of the effective

date of this Act whose quantity is to be determined by the needs of the Yomba Shoshone Tribe for agricultural, domestic, commercial, municipal and industrial uses.

(3) shall not be subject to abandonment pursuant to Nevada State law,

(4) shall be treated as permanent present perfected rights under federal law,

(5) shall not be limited to the uses for which such rights were deemed reserved by the federal government, and

(6) may be used or allocated for any purpose within or without the boundaries of lands belonging to the Yomba Shoshone Tribe as the Yomba Shoshone Tribe may determine.

(c) All water rights appurtenant to lands belonging to, or held in trust by the United States for the benefit of, the Yomba Shoshone Tribe, including water rights subject to this Act and water rights appurtenant to lands acquired by or for the Yomba Shoshone Tribe prior to the effective date of this Act, shall be subject to the sole and exclusive jurisdiction of the Yomba Shoshone Tribe for purposes of determining use and allocation.

Sec. 7. YOMBA SHOSHONE TRADITIONAL USE AREA – LAND ACQUISITION AND CLAIMS SETTLEMENT FUNDS.

(a) **Yomba Shoshone Traditional Use Area.**

The following described lands shall comprise the Yomba Shoshone Traditional Use Area:

Beginning at the northeast corner of T. 27 N., R. 50 E.; thence west to the northwest corner of T. 27 N., R. 50 E.; thence south to the northeast corner of T. 27 N., R. 49 E.; thence west to the northwest corner of T. 27 N., R. 38 E.; thence south to the northeast corner of T. 23 N., R. 37 E.; thence west to the northwest corner of T. 23 N., R. 37 E.; thence south to the northeast corner of T. 22 N., R. 36 E.; thence

west to the northwest corner of T. 22 N., R. 36 E.; thence south to the southwest corner of T. 22 N., R. 36 E.; thence west to the northwest corner of T. 21 N., R. 35 E.; thence south to the northeast corner of T. 19 N., R. 34 E.; thence west to the northwest corner of T. 19 N., R. 34 E.; thence south to the southwest corner T. 16 N., R. 34 E.; thence west to the northwest corner of T. 15 N., R. 31 E.; thence south to the southwest corner of T 12 N., R 31 E.; thence east to the southwest corner of T 12 N., R. 32 E; thence south to the southwest corner of T 11 N., R. 32 E.; thence east to the northwest corner of T. 10 N., R. 33 E.; thence south to the southwest corner of T. 6 N., R. 33 E.; thence west to the northwest corner of T. 5. N., R. 33 E.; thence south to the southwest corner of T. 4 N., R. 33 E.; thence east to the northwest corner of T. 3 N., R. 33 E.; thence south to the southwest corner of T. 1 N., R. 33 E.; thence east to the southeast corner of T. 1 N., R. 36 E.; thence south to the southwest corner of T. 1 N., R. 37 E.; thence east to the southeast corner of T. 1 N., R. 40 E.; thence north to the southwest corner of T. 1 N., R. 41 E.; thence east to the southeast corner of T. 1 N., R. 50 E.; thence north to the northeast corner of T. 3 ½ N., R. 50 E.; thence east to the southeast corner of T. 4 N., R. 50 E.; thence north to the northeast corner of T. 10 N., R 50 E.; thence west to the southeast corner of T. 11 N., R. 50 E.; thence north to the northeast corner of T. 13 ½ N., R. 50 E.; then east to the southeast corner of T. 14 N., R 50 E.; thence north to the northeast corner of T.20 N., R. 50 E.; thence west to the southeast corner of T. 21 N., R. 50 E.; thence north to the northeast corner of T. 23 ½ N., R. 50 E.; thence east to the southeast corner of T. 24 N., R. 50 E.; thence north to the northeast corner of T. 27 N., R. 50 E. at the point of the beginning.

(b) **Establishment of the Yomba Shoshone Tribe Land Acquisition Fund - Amount.**

(1) There is hereby established in the United States Treasury a fund to be known as the "Yomba Shoshone Tribal Land Acquisition Fund."

(2) There is hereby authorized to be appropriated for deposit to the "Yomba Shoshone Tribal Land Acquisition Fund" $14,000,000. Such funds shall be held in trust and invested by the Secretary for the Yomba Shoshone Tribe and made available to the Tribe as required for the acquisition of land.

(3) The Secretary is authorized and directed to expend, at the request of the Yomba Shoshone Tribe, the principal and income accruing to the Yomba Shoshone Tribal Land Acquisition Fund for the purpose of acquiring land or natural

resources for such Tribe; provided, however, that any lands and natural resources so acquired must lie within the boundaries of Yomba Shoshone Traditional Use Area as defined herein. Lands acquired by the Tribe pursuant to this Act shall be held by the Tribe in fee simple subject to the provisions of Section 8 hereof.

(4) Whenever lands and natural resources acquired by the Yomba Shoshone Tribe pursuant to this Act include livestock grazing permits, rights or privileges administered by the United States Bureau of Land Management or the United States Forest Service, the land area subject to such rights shall be deemed to be lands confirmed to Yomba Shoshone tribal ownership pursuant to Section 5 hereof. Such lands shall be withdrawn, surveyed, and conveyed to the Yomba Shoshone Tribe pursuant to the procedures set forth in Section 5; provided, however, that any such lands which lie within a Wilderness Area previously established by Act of Congress shall not be withdrawn, surveyed, and conveyed to the Tribe.

(c) **Establishment of the Yomba Shoshone Tribe Claims Settlement Fund Amount.**

(1) There is hereby established in the United States Treasury a fund to be known as the "Yomba Shoshone Tribe Claims Settlement Fund."

(2) There is hereby authorized to be appropriated $5 million for deposit to the "Yomba Shoshone Tribe Claims Settlement Fund." Such funds shall be held in trust and invested by the Secretary for the Yomba Shoshone Tribe and made available to the Tribe as required for economic development, tribal operations, and resource management purposes.

Sec. 8. AUTOMATIC PROTECTIONS FOR LANDS CONFIRMED TO YOMBA SHOSHONE TRIBAL OWNERSHIP PURSUANT TO THIS ACT.

(a) Notwithstanding any other provision of law or doctrine of equity, all land and interests in land confirmed or conveyed to Yomba Shoshone tribal ownership pursuant to the provisions of this Act shall be exempt, so long as such land and interests are not sold to third parties, from:

(1) adverse possession and similar claims based upon estoppel or laches;

(2) real property taxes by any governmental entity;

(3) condemnation pursuant to State law;

(4) judgments resulting from a claim based upon or arising under —

(A) title 11 of the United States Code or any successor statute,

(B) other insolvency or moratorium laws, or

other laws generally affecting creditors' rights; and

(5) judgments in any action at law or in equity to recover sums owed or penalties incurred by the Yomba Shoshone Tribe and any of its agencies, enterprises, or individual members, unless this exemption is contractually waived prior to the commencement of such action.

(b) Except as otherwise specifically provided, the exemptions described in subparagraph 8(a)(4)(A) shall apply to any claim or judgment existing on, or arising after, the effective date of this Act.

(c) No land or interests in land confirmed or conveyed to Yomba Shoshone tribal ownership pursuant to the provisions of this Act may be sold; provided that such land or interests in land may be sold if such sale has been approved by a vote of two-thirds (2/3) of the eligible voters of the Yomba Shoshone Tribe in a Secretarially-supervised tribal

election held not more than one year prior to the actual conveyance of such land or interests in land.

(d) Definition. For purposes of this subsection, the term "sold" means the irrevocable conveyance or transfer of any interest in real property; provided that any lease or contingent conveyance for a period longer than 50 years shall be considered a sale such that subsection 8(c) shall apply.

Sec. 9. NO EFFECT ON VALID EXISTING LAND RIGHTS.

(a) Nothing in this Act shall deprive any person or government of any valid existing right of use or possession, or any contract right, which that person or government may have in any of the lands hereby confirmed to the Yomba Shoshone Tribe, or of any existing right of access over and across such lands in accordance with the provisions of such contracts or the terms of such existing rights.

(b) All existing mineral leases involving lands the title to which is confirmed to the Yomba Shoshone Tribe under this Act, including oil and gas leases, which were issued or approved pursuant to federal law prior to the effective date of this Act, shall remain in full force and effect in accordance with the provisions thereof. Notwithstanding any other provisions of law, applications for mineral leases under federal law involving such lands, including oil and gas leases, pending on the effective date of enactment of this Act shall be rejected and advanced rental payments returned to the applicants.

Sec. 10. EFFECT ON SUBSISTING TREATIES AND INCONSISTENT LAWS.

(a) The Treaty of Ruby Valley of October 1, 1863, 18 Stat. 689 (1869), to the extent not inconsistent with this Act, is continued in full force and effect. All rights and

exemptions, both political and territorial, not expressly delegated to the federal or state governments by this Act or the Treaty of Ruby Valley are hereby reserved to the Western Shoshone Nation and its constituent tribes and bands.

(b) The provisions of this Act supersede all laws of the United States which are inconsistent herewith, including laws generally applicable to "Indians".

Sec. 11. JURISDICTION.

(a) Notwithstanding that it is one of the constituent bands of the larger Western Shoshone Nation, the Yomba Shoshone Tribe is hereby acknowledged as a historically-recognized Indian tribe possessing full Indian tribal sovereignty and powers of self-government as recognized by the laws of the United States, including tribal sovereign immunity.

(b) All lands the title to which is confirmed to the Yomba Shoshone Tribe pursuant to this Act, and all lands hereafter acquired by the Yomba Shoshone Tribe in accordance with the provisions of this Act, shall be subject to Yomba Shoshone tribal jurisdiction and shall be deemed "Indian Country" within the meaning of 18 U.S.C. § 1151 for all purposes.

Sec. 12. DISPOSITION OF MINERAL ROYALTIES AND LEASE PAYMENTS.

The Yomba Shoshone Tribe may, in its discretion, distribute up to 50% of the annual value of mineral royalties and lease payments received from lands the title to which is confirmed in the Yomba Shoshone Tribe pursuant to this Act as per capita distributions to Yomba Shoshone Indians. The balance of such monies shall be retained or expended for tribal operations and/or economic development.

Sec. 13. TAX EXEMPTION.

Per capita payments and distributions pursuant to this Act, including distributions of mineral royalties and lease payments, shall not be subject to federal or state income tax, nor shall such payments be taken into account for purposes of determining eligibility for state or federal benefit programs.

Sec. 14. ABORIGINAL HUNTING, FISHING, TRAPPING, AND GATHERING RIGHTS.

(a) The aboriginal hunting, fishing, trapping, and gathering rights of the Yomba Shoshone Tribe and its individual members are hereby fully recognized and preserved throughout the Western Shoshone ancestral territory. All Yomba Shoshone Indians, as herein defined, shall be entitled to exercise Western Shoshone hunting, fishing, trapping, and gathering rights throughout the Western Shoshone ancestral territory as herein defined.

(b) The Yomba Shoshone Tribe shall have exclusive jurisdiction to regulate hunting, fishing, trapping and gathering by any and all persons, whether or not they are members of the Yomba Shoshone Tribe, on all lands, lakes, and streams held in trust by the United States for the Tribe and on all lands, lakes, and streams wherein the surface estate is confirmed in the Yomba Shoshone Tribe pursuant to this Act.

(c) The Yomba Shoshone Tribe shall have exclusive jurisdiction to regulate all hunting, fishing, trapping, and gathering by Yomba Shoshone Indians, as herein defined, on all Western Shoshone ancestral lands, lakes, and streams not held in trust by the United States for the benefit of any Indian tribe or individual Indian.

Sec. 15. RULES AND REGULATIONS.

(a) The Secretary of the Interior is authorized to prescribe such rules and regulations as may be required to implement this Act and shall do so within 90 days of its effective date.

(b) No provision of this Act shall be deemed to have any effect on the aboriginal or Treaty defined rights of Western Shoshone Indians with respect to lands or resources outside of the Yomba Shoshone Traditional Use Area, other than as specifically provided in Sections 14 of this Act.

(c) No provision of this Act shall be deemed to have any effect on the rights of any person or tribe eligible by law to receive a share of the Western Shoshone judgment fund other than the Yomba Shoshone Tribe and its enrolled and enrollment eligible members.

Sec. 16. AUDIT OF JUDGMENT FUND.

(a) Within 60 days of the effective date of this Act the United States General Accounting Office shall undertake, complete and report an audit of the Western Shoshone judgment fund, including accumulated interest and investment income, to determine whether all of the monies which should have been credited to and retained in the judgment fund account have been so credited and retained, and whether the fiduciary obligations of the United States have been fulfilled with respect to the management and investment of the trust fund.

(b) The results of the audit by the General Accounting Office shall be reported to the Yomba Shoshone Tribe, the Secretary of the Interior, the Chairperson of the Senate Select Committee on Indian Affairs and the Chairperson of the House Interior Committee.

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YOMBA SHOSHONE INDIAN LAND RESTORATION ACT

LEGISLATIVE JUSTIFICATION

Yomba Shoshone Reservation
Reese River Valley, Nevada

March 2002

YOMBA SHOSHONE
INDIAN LAND RESTORATION ACT
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EXECUTIVE SUMMARY

The objectives of the Yomba Shoshone Indian Land Restoration Act are to restore a portion of the Yomba Shoshone Tribe's ancestral lands, including economically critical lands, and to provide funds necessary to implement the tribal land-restoration and economic development provisions of the Act. The proposed legislation will also distribute to the Tribe an equitable share of the judgment awarded by the Indian Claims Commission (ICC) in Western Shoshone Identifiable Group v. United States, Docket 326-K. This legislation will further the social and economic self-sufficiency of the Yomba Shoshone Tribe and will redress significant historical injustices.

The existing Yomba Shoshone Reservation of 4,718 acres is located in Central Nevada about 180 miles southeast of Reno and about 60 miles southwest of Austin. The Yomba Reservation is so small that fully half of the Tribe's 206 members have been forced to leave to find jobs and a place to live. Because of its restricted land base, remote location, and increasingly limited grazing area and livestock carrying capacity, the Tribe's existing livestock operations are threatened, and further economic development is impossible.

In 1863, when the United States concluded the Treaty of Ruby Valley with the Western Shoshone Nation, the Nation controlled more than 62 million acres of ancestral (Indian Title) lands extending from the Snake River in Idaho south through Nevada and

into Southern California. Pursuant to the Treaty, which is still in full force and effect, the United States acquired only rights-of-way across Nevada providing access to California, and certain limited land use rights. The Western Shoshones have never ceded any of their land to the United States, nor was the original Indian title ever legally extinguished. Although the Treaty authorized the establishment of a reservation, this was never done.

The United States, however, boldly violated the Treaty and unlawfully seized control of the Shoshone lands without consent or compensation. This was accomplished primarily through executive orders establishing national forests in Nevada in 1907, the implementation of the Taylor Grazing Act of 1934, the Mining Act of 1872, and other "public lands laws".

Not until 1979 did the Western Shoshones become legally "precluded" from asserting their title to the land by a convoluted series of court proceedings. Today, the Western Shoshones control an insignificant fraction of their original lands and are consequently economically dependent upon the Federal Government.

The Yomba Shoshone Indian Land Restoration Act will immediately confirm surface and mineral title in the Yomba Shoshone Tribe to the non-military, federally-controlled lands within the Yomba Shoshone Historical Grazing Area, which contains approximately 2,580,000 acres of extremely arid, desert lands, a part of which is already being utilized by the Tribe for livestock grazing and traditional hunting and gathering (see Appendix B - Map). The Act will further confirm in the Tribe subsurface mineral title to lands within the larger legislatively defined Yomba Shoshone Traditional Use Area, containing approximately 10.5 million acres (including the Yomba Shoshone Traditional Grazing Area) (see Appendix C - Map), and will create a Fund for future acquisition of private

surface interests within the Traditional Use Area by means of voluntary transactions. The resources contained within Yomba Shoshone Traditional Use Area should be sufficient to ensure the economic self-sufficiency of the Tribe thereafter.

With the restoration of a portion of their ancestral land rights, Yomba tribal members will have the means to provide for themselves and their extended families. The Tribe will be able to plan for Reservation-based economic development that will provide job opportunities for returning members. Adequate housing will be provided. Religious, historic and culturally-significant sites and activities will be protected and preserved. Tribal community services, especially those for education and health, will be expanded. Funds will also be made available for higher educational opportunities for Yomba Shoshone children.

SECTION I: CURRENT ECONOMIC SITUATION OF THE YOMBA SHOSHONE TRIBE

A. Existing Yomba Shoshone Land Base and Reservation

The Yomba Shoshone Reservation was established by a Presidential Proclamation on October 27, 1938[1], under the authority of Section 5 of the Indian Reorganization Act. The present Reservation, located in Central Nevada approximately 180 miles southeast of Reno, and 60 miles southwest of Austin, along the upper Reese River Valley, consists of 4,718 acres held in trust by the United States for the benefit of the Yomba Shoshone Tribe. These lands were purchased by the United States from private ranchers in several

[1] This conclusion is taken from a 1988 draft report entitled, "Establishment of the Yomba Reservation: by Elmer Rusco. We have not yet had an opportunity to confirm this conclusion. It is possible that the Yomba Reservation was actually established by the purchase of several private ranches by the United States, title to which was taken in trust for the benefit of the Yomba Shoshone Indians.

transactions during 1937-1941.[2] All of the properties were acquired under Section 5 of the Indian Reorganization Act, 48 Stat. 984, 25 U.S.C. 465. Despite a great increase in tribal enrollment, there have been no additions of land to the Reservation since 1941. In addition, the Tribal grazing areas and the livestock carrying capacity of nearby federal lands have been severely reduced.

The Yomba Shoshone Tribe has exclusive jurisdiction over its Reservation lands and is a federally-recognized tribe. The Tribe's constitution and by-laws (Appendix E), approved December 20, 1939, by the United States Department of the Interior, Office of Indian Affairs, established a tribal organization to govern and manage tribal affairs and set forth policies for self-government. The Reservation now has health facilities, a church, tribal government buildings (including those for tribal operations, maintenance, ambulance and law enforcement), and approximately 50 residential housing units. There are 17 tribal members who comprise the Yomba Cattlemen's Association and whose main economic activity is ranching. However, only 10 members currently run cattle. They share the livestock handling facilities now on the Reservation.

Currently, the Reservation cannot support further construction of homes, livestock facilities, tribal enterprises, and health or school expansion. The small available land base and grazing areas now severely restricts any kind of economic development, forces tribal members to move away from the reservation and their homes to find jobs and schools, and separates extended family members. These circumstances have severely reduced the self-confidence and self-esteem of the people and their faith in local governance and self-determination.

[2] The Doyle Ranch was about 2,160 acres, the Bowler Ranch 1,560 acres, and the Derringer and Worthington Ranches were about 480 acres each.

B. Demographic Factors

As of January 2001, there were 206 enrolled members in the Yomba Shoshone Tribe and an estimated 100 eligible persons who had not enrolled. A minimum of one-half degree Shoshone blood (as well as several other requirements) is currently required to be eligible for membership. If the minimum blood-quantum necessary for tribal enrollment were reduced to one-quarter, tribal enrollment would substantially increase. Currently, 127 tribal members live on the Reservation or in nearby towns which are close enough for members to regularly participate in Reservation activities. Other tribal members live in Reno, Las Vegas, Fallon, other Western Shoshone communities in Nevada; and in Sacramento, Oakland, Massachusetts, Texas, Tennessee, Oregon, Arizona and New Mexico.

It is estimated that many, if not most, of the tribal members (and eligible members) who presently live a good distance from the Reservation will return when the tribal land base is restored.

C. Historic Economic Factors

> "Traditional Newe [Shoshone] territory extended through most of central Nevada and was bordered by Death Valley in the south, to Idaho in the north. The land was rich with life...deer, mountain sheep, antelope, rabbits, many small animals and buffalo were plentiful. Many birds including ducks, geese, grouse, and sagehens were found in Newe country. The Newe harvested the fruits, seeds, and roots of many plants at the proper time of the year." (Newe: A Western Shoshone History, Intertribal Council of Nevada, 1976)

With the scarcity of water in Nevada, Shoshones migrated throughout their aboriginal lands in nomadic bands of related families in ways that have sustained Shoshone life and culture for thousands of years. At different times during the 200 years following European contact, individual European people claimed title to various locations

within Western Shoshone Country. This denied the Shoshones access to these places in their homelands and reduced their ability to hunt, gather food, graze their horses and cattle, and farm their small subsistence crops where water was available.

The creation of the Toiyabe National Forest is an example of the consequences of forced removal and the denial of Western Shoshone economic subsistence practices. In 1907, with the creation of the Toiyabe National Forest by Executive Order, 2.1 million acres in the heart of Shoshone Country were seized by the federal government. This claim ignored the hundreds of Shoshones that were still living throughout this area and using the land to gather food, firewood, and medicines; and graze livestock. There were no European people living on these more than 2 million acres. Many Shoshones objected to being told that this was no longer their land and that they had to pay grazing fees to the government to graze their livestock on it. But despite their protests, only 290 acres within the Forest were eventually allotted individually to just 6 Shoshones. Hundreds of other Indians were required to pay penalties if caught grazing their animals on lands that they still considered their own. Those that could not pay grazing fees had their livestock killed by the Forest Service, a destructive act that forced them to leave their homelands.

The pressures of more European immigrants to Shoshone Country resulted in the forced migration of Shoshones to ranches and towns where they sought any kind of work to support their families. By the 1920's, seeking survival, many central Nevada Shoshones left the only lands they ever knew and moved westward out of Shoshone Country to Paiute reservations, particularly the Walker River Reservation.

By 1932, a Western Shoshone Treaty Council had formed to press claims against the federal government for broken treaty promises, broken promises that for decades had

resulted in extreme poverty, malnutrition, disease, starvation and death among Shoshone bands throughout Nevada.

All the Shoshones have ever needed is the right to continue to graze, farm, and develop their own lands without the federal government and non-Indians taking their lands and forcing them to move away.

Within a few years of the establishment of the Yomba Reservation in the late 1930's, and including grazing rights appurtenant to the four ranches that were purchased by the BIA to form the Yomba Reservation, the Yomba Shoshone Tribe and its members grazed cattle in a large area encompassing approximately 2,580,000 acres surrounding the Reservation. This area is referred to in the draft Yomba Shoshone Indian Land Restoration Act as the "Yomba Shoshone Historical Grazing Area." Over one-half of the Reservation itself was classified and used as grazing land. The Tribe also developed almost a quarter of its Reservation lands for irrigated hay and pasture production. Early on, the Tribe and its members formed a livestock association, which is presently known as the Yomba Cattlemen's Association.

The Tribe's cattle operations continually increased in size well into the 1970's. By 1945, expanded cattle operations had already made a substantial improvement in family incomes of Tribal members. Between 1946 and 1950, livestock numbers continued to increase, despite the involuntary cancellation, authorized by the Superintendent of the Carson Indian Agency, of various Tribal stock-watering claims outside the Reservation.[3]

[3] The Superintendent for the Carson Indian Agency told the Nevada State Engineer that various Indian water right applications were not considered essential to the interest of the Indians and could be cancelled, because the locations of the springs were beyond the range area used by the Indians and were within a U.S. grazing district where all grazing privileges had been allocated to others (Fryer, 1948). Apparently, the Yomba Indians were not consulted about this decision. In addition, the fact that the Indian water claims had been filed suggests that the Indians had, indeed, previously used the grazing areas where the springs were located.

In order to secure more grazing land, the Tribe thereafter sought and received increased grazing areas from the BLM, but these were discontinued by the BLM in the late 1960's. Starting in the 1970's, both the BLM and the USFS began to further limit the number of livestock on grazing units by substantially decreasing the authorized carrying capacity of various units.

While the Tribe once grazed nearly 1,800 cattle a year on BLM and National Forest lands within the Yomba Historical Grazing Area, the Tribe is now limited to just 500 head on approximately 331,000 acres. In addition, grazing permits are now being permitted only on an annual basis, rather than on a multi-year basis, making planning for and reliance upon the Tribe's livestock operations more difficult and tenuous. In addition, due to the wash-out of several irrigation dams that the Tribe has not been able to repair, the Tribe's irrigated hay and pasture production is much lower today than in the past, and so is the capacity to feed larger numbers of cattle.

Due to a decrease in the Tribe's grazing area and in the allowable livestock carrying capacity of its public-land grazing areas, the Tribe has been forced to make a major shift from an extensive livestock production system with a high land-to-animal ratio, to an intensive production system where animals are grazed all year round on the same land. For both biological and economic reasons, this trend is not conducive to sustaining or improving the Yomba Tribe's self-determination or economic self-sufficiency through livestock operations.[4]

The progressive reduction by the BLM and the Forest Service of grazing areas and grazing capacity available to the Yomba Shoshone Tribe since the 1940s has created an

[4] References herein to economic analyses are from a recent report done for the Tribe by Northwest Economic Associates, Vancouver, Washington, entitled, "A Preliminary Economic Assessment of Livestock Production by the Yomba Shoshone Tribe". This report is available upon request.

economic crisis for the Tribe. Livestock raising is the only realistic source of income for tribal members on the Yomba Reservation, other than tribal and federal government programs. The Tribe cannot hope to survive, prosper, or retain its young people on the income provided by 500 head of livestock.

D. Current Economic Factors

Yomba Shoshone members living on the Reservation are entirely reliant on a land-based economy. Agricultural and livestock operations are the primary economic activities of the Tribe and are the major source of jobs and income for tribal members. Those members not employed in agricultural or livestock operations, or by federally-funded tribal operations, must find employment off the Reservation.

Of the 127 tribal members now living on or near the Reservation, including children and elders, Yomba has only been able to afford 39 adult tribal members the opportunity to continually live and work there.

Yomba Shoshones are already experiencing severe economic problems on their Reservation. An extremely limited land-base precludes any further expansion of existing economic enterprises or the creation of new enterprises. An increasing Reservation population without increasing jobs forces more members to move away. The decreased access to and carrying capacity of federal grazing land, as well as the damaged irrigation infrastructure for Reservation lands, are threatening the Tribe's ability to successfully conduct its most important economic enterprise – cattle raising. Environmental factors (e.g., over-grazing, Nevada's drought, etc.), and price and supply fluctuations for livestock operations are also exacerbating Yomba's current depressed economic situation. There is a real possibility that Yomba cattlemen will be forced out of the livestock business in the

very near future. That would leave the Tribe with no jobs other than in federally-funded tribal government.

It is imperative that the Tribe expand its land base to include substantial additional grazing and agricultural lands and that the Tribe receive adequate economic aid to prevent further severe economic and environmental problems.

SECTION II: FUTURE TRIBAL NEEDS: THE RETURN OF YOMBA SHOSHONE LANDS

A. Yomba Shoshone Historical Grazing Area

The Yomba Shoshone Tribe is requesting the immediate return of the Yomba Shoshone Historical Grazing Area to Tribal ownership. This area includes both BLM and Forest Service grazing areas and is substantially larger than the Tribe's current grazing area. The Yomba Shoshone Historical Grazing Area, excluding federal lands administered by the Departments of Defense or Energy, private lands and existing Yomba Reservation lands, is approximately 2,580,000 acres. The present Reservation consists of only 4,681 acres, and the present Yomba grazing area on BLM-administered and National Forest lands is approximately 331,000 acres.

According to the Tribe, the existing Yomba Shoshone federal grazing areas have an allowable livestock carrying capacity of only approximately 300 cattle. The Tribe annually pays the federal government approximately $12,000 for grazing fees on these BLM and Forest Service lands. Because of the limited allowable carrying capacity, only two Tribal members are grazing the BLM and National Forest lands on a sustained basis. Over half of the Tribe's livestock herd is forced to graze year-round on Reservation lands.

While the federal government has presumably issued leases for oil and gas

exploration within the Yomba Shoshone Historical Grazing Area, at the time of this report there was insufficient information available to identify how much revenue is annually received by the federal and state governments from such development.

The proposed legislation immediately confirms all surface and mineral rights in the Yomba Shoshone Historical Grazing Area to the Yomba Shoshone Tribe, subject to valid existing third-party rights.

B. Yomba Shoshone Traditional Use Area

The Yomba Shoshone Traditional Use Area is the approximate area of Yomba Shoshone ancestral use and occupancy, and encompasses over 10,500,000 acres. Included in the Traditional Use Area are the existing Yomba Reservation and the Yomba Shoshone Historical Grazing Area. It includes lands that are currently administered by the BLM (8,499,713 acres), the Forest Service (the Toiyabe National Forest - 1,953,592 acres), the Department of Defense and Department of Energy (3,784 acres), and certain private lands (approximately 247,000 acres).

The proposed legislation includes a land acquisition fund with which to purchase private lands within the Yomba Traditional Use Area as these lands are made available for sale by private owners. Title to BLM grazing lands permitted for grazing to the selling owner will then be confirmed to the Yomba Shoshone Tribe. It is anticipated that ideally there will be a gradual buy-out of private interests in the Yomba Traditional Use Area over a long period of time, in order to continue to build up an adequate permanent land base for the Tribe as the tribal population increases.

All subsurface (oil & gas and mineral) rights in the Yomba Shoshone Traditional Use Area will be transferred to the Tribe upon enactment of this proposed legislation,

subject, however, to all valid existing rights acquired by third parties before the effective date of the proposed legislation.

C. Future Yomba Shoshone Economic Needs and Opportunities

As their ancestors have done, Yomba Shoshone tribal members individually and cooperatively hunt, fish, gather food and materials, and hold religious and cultural activities throughout their ancestral lands. Currently, the Yomba Tribe has access to and limited use of very few of these lands in the Yomba Shoshone Traditional Use Area. Therefore, tribal members cannot fully use or develop these lands for either cultural or economic activities. Further, tribal members who desire to return home cannot do so with any realistic plans for jobs, economic opportunities, or housing on their Reservation.

In a recent preliminary economic assessment of the Tribe's livestock production, the need for more grazing lands was identified as a primary requirement for the Tribe to achieve its priority goal of economic self-sufficiency.[5]

Within the near future, tribal planning targets the need for additional irrigated and dry alfalfa haylands, as well as additional grazing lands. These additions will be necessary to allow the existing tribal cattlemen in the Yomba Cattlemen's Association to stay in operation, and to permit additional tribal members to make a livelihood through livestock operations.

In addition to these land expansion needs, the following are also needed in the Yomba Shoshone Historical Grazing Area:

water and spring development
access to electrical power
cattle-guards
access roads

[5] Northwest Economic Associates, *A Preliminary Assessment of Livestock Production by the Yomba Shoshone Tribe* (1998).

white sage and ricegrass development
fencing and cross-fencing
rest and rotation grazing requirements

With these management and range improvements, the current livestock carrying capacity may be substantially increased. Current tribal operators will be able to increase their herds and profits. The Tribal herd will be increased to a profitable size, and new tribal operators will be able to begin operations.

Adding the Yomba Shoshone Historical Grazing Area to the present Reservation land base will provide sufficient range and potential agricultural land for more Tribal-member livestock operators. Tribal control of range land development and economic aid to finance improvements will provide wells, power lines, ground preparation, alfalfa seeding, and weed eradication for more acres of irrigated and dry alfalfa haylands. Together, the range developments and agricultural production under tribal control will enable tribal members to establish and maintain livestock and farming operations that will be the foundation of the Tribe's self-sufficient economic base for the foreseeable future.

The Tribe has developed the following list of economic opportunities and potential jobs that can be created after restoration of the Yomba Shoshone Historical Grazing Area to tribal control:

* managing range, water, wildlife, and Reservation ecosystems
* managing livestock operations (feedlots, packing plants, slaughterhouses, etc.)
* crop production (home vegetables/fruits, plus salable alfalfa haylands)
* production of forest products
* cultural/historic involvement and protection (sites, crafts, cultural practices)

It is projected that each of these economic areas will provide stable work opportunities for tribal members.

Adding Yomba Shoshone Historical Grazing Area lands to the present Reservation and receiving economic development funds will also allow the Yomba Shoshone Tribe to establish businesses as tribal enterprises or joint ventures. It will also be possible for the Tribe to use other business arrangements for new businesses with non-Indian ranchers, farmers and investors.

The time has come for the Tribe to regain control over the use and development of its own Yomba Shoshone Historical Grazing Area. The time has come for the Tribe and its members to be able to benefit from their own resources and become self-sufficient in the management and production of the land that sustained their ancestors for thousands of years.

SECTION III: HISTORY OF THE WESTERN SHOSHONE LAND RIGHTS ISSUE

The Western Shoshone people have never wanted more than to be left alone in their own ancestral country, which consisted of more than 62 million acres of the most arid and barren lands in North America. Despite a solemn and binding treaty with the United States, and largely as a result of litigation in the Indian Claims Commission and the Court of Claims, litigation which the Shoshones supposedly won, they lost their lands; not in the Nineteenth Century, but sometime between 1979 and 1989. They are considered "landless Indians" by the Interior Department. The following section summarizes the way in which the United States used its own judicial process, and a Commission intended to

provide justice for "ancient wrongs," to literally and knowingly defraud the Shoshones of their lands.[6]

A. The 1863 Treaty of Ruby Valley

On October 1, 1863, the Doty Treaty Commissioners, James W. Nye and James Duane Doty, concluded a Treaty on behalf of the United States with "the Western Bands of Shoshone Indians" at Ruby Valley, Nevada. The Treaty was ratified by the United States Senate on June 26, 1866 and proclaimed by President Grant on October 21, 1869. 18 Stat. 689 (1869). It remains in full force and effect as United States law.[7] The Treaty is attached hereto as Appendix A.

The United States was fighting its Civil War at the time the Treaty was negotiated, and the Union Government was concerned with ensuring safe passage to California for its military detachments and citizens so that California gold could be obtained to finance the war. The Treaty did not cede any Shoshone land or sovereignty to the United States. Congress explicitly instructed the Doty treaty commissioners not to seek a cession of Western Shoshone lands, apparently because the United States Government did not wish to bear the responsibility and expense of supporting the Western Shoshones that it would incur if it directly interfered with their traditional nomadic and subsistence lifestyle.[8]

The federal government wanted the Shoshones to remain self-sufficient in their own territory, and anticipated that the Western Shoshones would become

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[6] Two award-winning documentary films narrated by Robert Redford, "Broken Treaty at Battle Mountain" (1974) and "To Protect Mother Earth" (199)), chronicle the Western Shoshone land rights struggle and some of the land litigation. These films are available from Cinnamon Productions; 16 Wild Rose Road, Westport, CT 06880; (203) 221-0613.

[7] United States v. Dann, 13 Ind. L. Rptr. 3158 (Sept. 17, 1986), rev'd on other grounds, 873 F.2d 1189 (9th Cir., As Amended on Denial of Rehearing April 27, 1989) (Dann III).

[8] See, Cong. Globe, 37th Cong., 2d Sess. 2092 (1862).

herdsmen as the game in their territory dwindled from the impact of European travel and hunting.[9]

The treaty commissioners were instructed to secure safe passage through Shoshone country for European immigrants and travelers, including rights-of-way through Western Shoshone country for the use of the United States and its citizens for roads, telegraph lines and railroads to California, and "a definite acknowledgement as well of the boundaries of the entire country that [the Indians] claim."[10]

As instructed, the treaty commissioners incorporated a description of the boundaries of the lands encompassed by the treaty in Article V of the Treaty.

> "It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows: On the north by Wong-goga-da Mountain and Shoshonee River Valley: on the West by Su-non-to-wah Mountains or Smith Creek Mountains; on the south by Wi-co-bah and the Colorado Desert; on the east by Po-ho-no-be Valley or Step Toe Valley and Great Salt Lake Valley."

No map showing the exact locations of the boundary calls given in Art. V of the Treaty was prepared. It is clear, however, that the "Shoshonee River" refers to what is now known as the Snake River in Southern Idaho. The Smith Creek Mountains are probably the Desatoya Mountains on the Lander County / Churchill County line west of the Smith Creek Valley. Shoshone elders contend that "Wi-co-bah and the Colorado Desert" refers to the Mojave Desert in the vicinity of San Bernardino County, California. The Step Toe Valley runs north and south of Ely, Nevada, and the Great Salt Lake Valley holds the Great Salt Lake in Western Utah. The Treaty of Ruby Valley defines a vast area.

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[9] See Treaty of Ruby Valley, supra, Article VII; United States v. Dann, 13 Ind. L. Rptr 3158, Finding of Fact No. 6 (D. Nev. Sept. 17, 1986).

[10] United States v. Dann, 572 F.2d 222, 224 (9th Cir. 1978) (Dann I), quoting Northwestern Bands of Shoshone Indians v. United States, 324 U.S. 335, 347 (1945).

The Indian Claims Commission relied on the testimony of anthropologist Dr. Omer C. Stewart to define Western Shoshone Country. Dr. Stewart formed his expert opinion by reviewing all historical and written data available that indicated where European explorers, travelers, government officials and military expeditions found Western Shoshone Indians.[11] Dr. Stewart did not identify any Western Shoshone land in Utah or Idaho, whereas Western Shoshone elders assert ownership to more than 62 million acres extending to the Snake ("Shoshones") River in Idaho and to the Salt Lake Valley in Western Utah as described in the Treaty of Ruby Valley. The Commission then defined Western Shoshone Country by straight lines connecting the outer boundary points as indicated by Dr. Stewart. On this basis the Commission found that the Western Shoshone ancestral lands consisted of 24 million acres in Nevada and California. Western Shoshone elders contend that Western Shoshone Country is substantially larger, encompassing more than 62 million acres extending north to the Snake (Shoshonee) River and south into San Bernardino County, California.

Article VI of the Treaty of Ruby Valley contemplates that an adequate reservation land base would be set aside for the Western Shoshones. It provides that whenever the President of the United States "shall deem it expedient for them to abandon the roaming life and become herdsmen or agriculturalists," he may delineate reservations for the Western Shoshone "within the country ... described [in the Treaty]", and the Shoshones agree to remove to those locations and reside there. This was never done. In 1919

[11] Dr. Stewart apparently did not consult the Western Shoshone themselves about the locations of the boundaries of Western Shoshone Country. See Sutton, Irredeemable America: The Indians' Estate and Land Claims (1985), Chapter 8.

Congress ended executive authority to create Indian Reservations.[12] Now, only Congress can provide an adequate land base for the Western Shoshones.

B. Western Shoshone Rights Under the Treaty of Ruby Valley

The Treaty of Ruby Valley allowed the Western Shoshones to continue their hunter-gatherer lifestyle unless and until the President of the United States invoked Article VI of the Treaty. Consequently, Western Shoshone hunting, trapping, fishing, and gathering rights were necessarily reserved and retained under the Treaty at least until that eventuality. Since Article VI was never invoked by the President, Western Shoshones argue that hunting, trapping, fishing, and gathering rights throughout the area defined by the Treaty have never been extinguished or abrogated.[13]

Moreover, the 1863 Treaty of Ruby Valley arguably "recognized" Western Shoshone title to the area described in the Treaty.[14] The possessory and usage rights actually being exercised by the Yomba Shoshone Tribe and recognized by the Treaty of

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[12] Act of June 30, 1919, sec. 27, 41 Stat. 3, 34. See also, United States v. Dann, 706 F.2d 919, 30 (9th Cir. 1983), rev'd on other gounds, 470 U.S. 39 (1985) (Dann II).

[13] In Western Shoshone National Council v. Molini, 951 F.2d 200 (9th Cir. 1991), the Ninth Circuit Court of Appeals held that the Indian Claims Commission award in Western Shoshone Identifiable Group v. United States, Dkt. 326-K, established conclusively that Western Shoshone title has been extinguished, including hunting and fishing rights.

[14] The United States Justice Department has argued in United States v. Dann that the Treaty of Ruby Valley did not "recognize" Western Shoshone title. The Justice Department relies on the holding of Northwestern Bands of Shoshone Indians v. United States, 324 U.S. 335 (1945) that the 1863 Box Elder Treaty with the Northwestern Bands of Shoshones, 13 Stat. 663, did not recognize a compensable title in the Northwestern Bands. The Treaty of Ruby Valley was not in issue in Northwestern Bands, however. While all the Shoshone treaties may be similar in form, there are considerable differences in both content and historical context. Of all the Shoshone treaties, only the Treaty of Ruby Valley was not amended to include certain language limiting the nature of the title or interest acknowledged by the United States to be held by the Shoshones. That language was cited by the Court in Northwestern Bands as indicative of Congress' intent not to recognize title. The Treaty of Box Elder does not contain anything comparable to Articles VI and VII of the Treaty of Ruby Valley which specifically recognized and reserved Western Shoshone hunting, fishing, gathering, and grazing rights. Moreover, the Indian Claims Commission recognized that "[t]he Treaty of Ruby Valley is clearly distinguishable from the Treaty of Box Elder by reason of Article IV in the Treaty of Ruby Valley." Western Shoshone Identifiable Group v. United States, 29 Ind. Cls. Comm. 5, 47, n.6 (1972). Furthermore, the Western Shoshones had not been militarily defeated, as had the Northwestern Bands.

Ruby Valley are of the highest order, and are protected by the Fifth Amendment to the United States Constitution.

A long-standing principle governing the interpretation of Indian treaties is that all rights not expressly relinquished or conveyed to the United States by treaty are retained by the Indian tribes. United States v. Winans, 198 U.S. 371 (1905) Certain rights were granted to the United States by the Western Shoshones in the 1863 Treaty of Ruby Valley. The United States acquired rights-of-way for roads, railroads, and telegraph lines through Western Shoshone Country. The United States also acquired the right to establish military posts and mines, and ranches, agricultural settlements, and communities as required for the support of mines and mining activities (Treaty of Ruby Valley, Arts. I, II, III, and IV). Since no other rights were mentioned or conveyed to the United States by the Treaty, the Western Shoshone Nation arguably retained all other rights appurtenant to or associated with the land, including title to the land and hunting, fishing, trapping and gathering rights.

C. The Western Shoshone Land Rights Litigation

Following execution and ratification, the United States proceeded to ignore the 1863 Treaty of Ruby Valley. The Western Shoshones have consistently abided by its terms, right up to the present. The failure of the United States to honor the Treaty has led to seemingly interminable litigation, still ongoing, wherein the Western Shoshones sought, in vain thus far, to obtain justice from the United States and its courts. A complete list of the many reported decisions is included as Appendix H.

1. Western Shoshone Identifiable Group v. United States
Docket 326-K before the Indian Claims Commission

In 1947, at the urging of the BIA, the Temoak Bands Council approved a claims attorney contract with the law firm of Wilkinson, Cragun & Barker of Washington, D.C., for

the purpose of filing a claim under the ICCA.[15] The Temoak Bands Council is only one of nine federally recognized tribal governments whose citizens are primarily Western Shoshone Indians. This contract was controlled and extended from time to time by the Secretary of the Interior and the Commissioner of Indian Affairs pursuant to 25 U.S.C. §§70n and 81.[16] The Plaintiffs' claims attorneys were, thus, always under the control and supervision of the defendant in the case, the United States. The defendant, it now appears, shamelessly coveted the Shoshone lands.

In 1951, the claims attorneys filed a petition in the ICC seeking compensation for the taking of Shoshone lands in six large Western states. One of the five named plaintiff entities was the "Western Bands of Shoshone Nation of Indians, represented by the Temoak Bands of Western Shoshone Indians, Nevada, suing on behalf of the Western Bands of the Shoshone Nation of Indians, and on behalf of the Shoshone Nation or Tribe of Indians."

After alleging Western Shoshone title to a large tract of land in Nevada, including the lands specifically referred to in the 1863 Treaty of Ruby Valley, supra, the petition alleged that "defendant has disposed of a large part of the said land to settlers and others, or has seized and converted a large part of the said lands to its own use and benefit,

[15] The Western Shoshone land rights issue was not new in 1947. In 1932 Chief Muchach Temoak and other Western Shoshones retained attorney Milton Badt of Elko, Nevada, for the express purpose of asserting Western Shoshone land rights and enforcing the Treaty of Ruby Valley against the United States. The United States Senate held hearings in Elko in 1932 in response to Western Shoshone pleas to protect their land rights. Attorney Badt, who also represented the Nevada Cattlemen's Association (an egregious conflict of interest), sought, not enforcement of the Treaty, but the purchase by the Government of a Ruby Valley ranch from one of his non-Indian clients to establish an Indian Reservation. Unable or unwilling to take any effective action to help his clients regain control of their ancestral lands, Mr. Badt associated himself with Ernest Wilkinson, who took over the Shoshone work.

[16] The contract expired in 1968, and was never renewed by the Temoak Bands, It was, however, unilaterally extended in 1968, 1970, 1972, 1974, 1976 and 1978 by the Interior Department despite the formal termination of the attorney-client relationship by the Temoak Bands in 1976.

without any compensation to the said Western Bands, ..." (Emphasis supplied.)[17] The petition did not allege that all of the Western Shoshone lands were taken by settlers and the Government.[18]

The original petition in Western Shoshone Identifiable Group is not inconsistent with the view that Western Shoshone title remained unextinguished, but the case was nonetheless litigated as a claim for compensation for a taking of all Western Shoshone lands.[19] The Temoak Bands Council did not initially object to the proceedings because they were repeatedly assured, even after the filing of the petition, that the proceedings would have no effect whatsoever on Western Shoshone title or possessory rights, and would be for the purpose of enforcing the Treaty of Ruby Valley.

In 1962, The ICC determined that the Western Shoshones held aboriginal Indian title to a large tract of land (more than 24 million acres) extending from Northern Nevada south through central Nevada and Death Valley, California,[20] and that the Western Shoshones were "deprived of their lands [by] gradual encroachment of Europeans, settlers and others ...."[21] Lacking any discrete taking date that would allow an historical appraisal

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[17] Western Shoshone Identifiable Group v. United States, 35 Ind. Cl. Comm. 457, 461-62 (1975).

[18] In Dann II, supra, the courts stated "[it] is clear that any loss of territory is only so large as the excursion requires, and the Shoshone retain the rest." Supra at 930. Prior to the appeal proceedings in United States v. Dann, 706 F.2d 919, (9th Cir. 1983), rev'd on other grounds, 470 U.S. 39 (1985) (Dann II), the United States had never declared that it was claiming title to all Western Shoshone lands. A November 12, 1975 letter from the Acting Director, Office of Trust Responsibilities, BIA to the Associate Solicitor – Indian Affairs – Interior Department, acknowledged that Western Shoshone Indian title remained unextinguished. In Dann II and Dann III, the Government claimed that the 1979 "payment" of the judgment in Western Shoshone Identifiable Group v. United States "precluded" the Western Shoshones from asserting continuing title.

[19] This strategy is easily explained by the fact that the Western Shoshones had no money with which to pay an attorney, and the only way the claims attorneys thought they could recover and maximize a contingent fee was by asserting that the Government had taken all the Shoshone lands, and by seeking compensation for the taking.

[20] Shoshone Tribe v. United States, 11 Ind. Cl. Comm. 387, 413-14 (1962).

for the purpose of determining the compensation due the Shoshones, the attorneys for the Government and for the Te-moak Bands stipulated July 1, 1872, as the "valuation date" for the purpose of determining compensation due the Western Shoshones.[22] Although July 1, 1872 was clearly not originally intended to be considered the date of "taking", the Ninth Circuit Court of Appeals held in subsequent litigation that it must be deemed the date of extinguishment of Western Shoshone title.[23]

The Western Shoshone litigation in the Indian Claims Commission was problematic from its inception. Many Western Shoshones anticipated its ultimate disastrous result - the loss of title to all Western Shoshone ancestral lands as of 1979 in return for compensation based on the 1872 value. In addition, the ICC litigation was characterized by a startling disregard for the fundamental concepts of Anglo-American property law and the constitutional due process rights of the Western Shoshone people and their tribal

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[21] Id. at 416.

[22] In Temoak Bands of Western Shoshone Indians, Nevada v. United States and the Western Shoshone Identifiable Group Represented by the Temoak Bands of Western [Shoshone] Indians, Nevada, 593 F.2d 994 (Ct. Cl. 1979), cert. denied, 444 U.S. 973 (1979), the Court of Claims conceded that the ICC was "unable to discover any formal extinguishment" of the Western Shoshone title, and could not establish a date of taking. 593 F.2d at 996.

[23] Manifestly, nothing happened on July 1, 1872 that constituted a "taking" by the United States or that could have effected an extinguishment of the Western Shoshone title. It wasn't until United States v. Dann, 873 F.2d 1189 (9th Cir., As Amended on Denial of Rehearing April 27, 1989) (Dann III) reached the Court of Appeals that the Government asserted that July 1, 1872 was, in fact, the date of extinguishment of the Western Shoshone title. In United States v. Dann, 706 F.2d 919, (9th Cir. 1983), rev'd on other grounds, 470 U.S. 39 (1985) (Dann II) the Court of Appeals held that the Indian Claims Commission lacked jurisdiction to adjudicate the Indian title or to extinguish the title on its own authority; it had jurisdiction simply to award damages for takings or other wrongs that occurred before August 13, 1946, the date of the Act. Nonetheless, in Dann III the court held that the Supreme Court's holding that the Western Shoshones were "paid" when the Secretary of the Interior accepted a check in the amount of the judgment and established an account on the books of the Interior Department (United States v. Dann, 470 U.S. 39 (1985)) "establishes that the title has been extinguished." 873 F.2d 1194. Since nothing really happened that could have extinguished the Indian title as a matter of law (see, United States v. Santa Fe Pacific RR Co., 314 U.S. 339 (1941)), but extinguishment must nevertheless be deemed to have occurred, the Court of Appeals agreed with the Government that "July 1, 1872 . . . is the most appropriate date: for extinguishment. 873 F.2d at 1198. As a date of taking or extinguishment, July 1, 1872 is clearly a legal fiction. Western Shoshone title to their ancestral lands was good until December 19, 1979 when "payment" (also a legal fiction), occurred. As the discussion of the litigation in United States v. Dann, infra.

governments. Section 10 of the Indian Claims Commission Act provided that claims could be filed in the Commission by "any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members ...." As interpreted by the Court of Claims, however, the Act did not provide even the most basic due process protections for the rights of those who were not represented in the proceedings, but were nonetheless bound by the results. In class action proceedings, for instance, all members of the class must be given notice and allowed to exclude themselves from the proceedings. To make matters worse, when Western Shoshones attempted to intervene in the proceedings to protect their rights, they were denied the opportunity to participate.[24] The would-be intervenor, the Western Shoshone Legal Defense and Education Association, consisted of Western Shoshones who were concerned about the effect of the proceedings on Western Shoshone title, including lands they used and occupied continuously since time immemorial.

The "Western Shoshone identifiable group", nominally the plaintiff in Docket 326-K, was a non-existent entity invented for the caption of the case by the claims attorneys. Since there was, and is, no single, central, tribal government for the Western Shoshone Nation, no one plaintiff could properly represent the interests of all Western Shoshones.

Since the "Western Shoshone identifiable group" has never existed as a political entity, it could not properly be represented by, nor could it control, the claims attorneys. Although the claims attorneys held an attorney contract approved by the Temoak Bands

[24] Western Shoshone Identifiable Goup, Represented by the Temoak Bands of Western Shoshone Indians, Nevada and Western Shoshone Legal Defense and Education Association and Grank Temoke v. United States, 35 Ind. Cl. Comm. 457 (1975), aff'd sub nom., Western Shoshone Legal Defense & Education Assoc. v. United States and Western Shoshone Identifiable Group, 531 F. 2d 495 (Ct. Cl. 1976), cert denied, 429 U.S. 885 (1976) (denying the Western Shoshone Legal Defense & Education Association motion to intervene).

Council through 1964, when the contract expired, the claims attorneys created and purported to represent a "Western Shoshone Claims Committee" separate from the Temoak Bands Council.[25] The Committee consisted of eight individuals "elected" in 1965 at mass meetings of Western Shoshones, two from each of four locations in Shoshone Country where such meetings were held. This group was never reelected, and was answerable to no Western Shoshone tribal government or political institution. The claims attorneys paid a per diem and expenses for Committee members to attend infrequent meetings with the attorneys.

As a result of this arrangement, known to and tolerated by the Government as Indian trustee (and defendant in the case), no Shoshone tribal governments, or individual Shoshones other than the "Committee", had an opportunity to express an opinion or to control the conduct of the case. In fact, the vast majority of the Western Shoshone people opposed litigation to recover compensation for the fictional "taking" of the land, and preferred instead an effort to enforce the 1863 Treaty and recover land.[26] Nonetheless, all Western Shoshone people and tribal governments are apparently bound by the finding of the Indian Claims Commission that Western Shoshone title was somehow lost by "gradual encroachments of white[s] ...." during the Nineteenth Century, whether or not they were parties to the litigation, had notice, remained in actual occupancy of the land, or even

[25] The "Committee" alone apparently approved "extensions" of the claims attorney contract for two-year increments from 1964 through 1976 without reference to the Temoak Bands Council. In 1976 the Temoak Bands Council discharged the claims attorneys by Tribal Council resolution. Nonetheless, the Court of Claims continued to recognize the claims attorneys as counsel for the "Western Shoshone identifiable group" through final judgment in the case on December 6, 1979 and the determination of attorneys' fees in 1980.

[26] See, Transcript of hearing of Record of July 26, 1980 on a proposed plan to distribute the Western Shoshone judgment fund.

openly opposed the litigation, as did the Dann Band of Crescent Valley, Nevada.[27] The Court of Claims has even determined that the Yomba Shoshone Tribe was not a party in Western Shoshone identifiable group v. United States.[28]

In 1976 the Temoak Bands Council, the supposed plaintiff in the ICC case, concluded that Western Shoshone title remained unextinguished and that action should be taken to stop the ICC case before it was too late. Citing a concern that justice for the Shoshones not be further delayed, the Court of Claims denied the Temoak's motion for a stay pending a determination by the Interior Department Solicitor whether title was ever actually extinguished.[29] In its opinion, the Court of Claims directed the Temoak Bands Council to seek a remedy in Congress, promising that the Temoaks would have that opportunity following final judgment in the ICC case. The Court stated in footnote 16:

> Appellants' fear ... is that payment of the judgment will, under Section 22 of the Claims Commission Act, ... bar the Identifiable Group from thereafter claiming the land as still its own. They say they seek a final determination of this issue of continued ownership before an award is made, and contend that a pending suit in the District Court for Nevada furnishes that opportunity [United States v. Dann]. The Commission refused to stay its proceedings pending resolution of the Nevada action. We think this was a permissible choice on the Commission's part. Postponement of the conclusion of the present proceeding will harm the Indians monetarily if their

[27] United States v. Dann, 873 F.2d 1189 (9th Cir., As Amended on Denial of Rehearing April 27, 1989) (Dann III).

[28] The Western Shoshone Identifiable Group, Represented by the Temoak Bands of Western Shoshone Indians, Nevada v. United States, 652 F.2d 41, 43 (Ct. Cl. 1981).

[29] Western Shoshone Legal Defense and Education Association v. United States and the Western Shoshone Identifiable Group, 531 F. 2d 495 (Ct. U. 1976), cert denied, 429 U.S. 885 (1976).

claim to continued ownership fails. *** It may also be noted that the bar of Section 22 does not fall until payment .... If the majority of the Identifiable Group wishes to postpone payment, in order to try out the issue of current title, it can, of course, ask Congress to delay making the appropriation and direction which will be necessary to pay the award. [Emphasis supplied.].[30]

The Court elaborated upon this point in 1979 upon affirming the denial of the Temoak Bands Council's motion to stay the ICC proceedings pending determination of the status of the Indian title by a court of competent jurisdiction.

> If the Indians desire to avert the extinguishment of their land claims by final payment, they should go to Congress as recommended in Western Shoshone [citation omitted]. If Congress wishes to alter or undo the normal course of Indian Claims Commission adjudication, it knows how to do it. [Citation omitted]. The matter is somewhat changed since the Western Shoshone footnote [531 F.2d 495, 503n.16] because Congress can no longer stop the payment and defer the extinguishment of the title claim, just by not appropriating. By recent enactments, [citation omitted], Congress has amended the old standing appropriation to pay Court of Claims judgments, 31 U.S.C. {724a, to make it available for Indian Claims Commission judgments, ... Thus it looks as if the Temoaks would have to get Congress to act affirmatively. *** The essential point of the matter is that the Temoak's true appeal is to legislative grace, not as of right to this court.[31]

Although it was unwilling to grant relief in this case of justice gone woefully awry, the Court of Claims at least recognized in its 1979 decision that the Western Shoshones had a valid complaint. The court refused relief on the grounds that, because of considerations of judicial economy, it was too late to change the course of litigation. It referred the Shoshones to Congress for relief. Presumably, the court refused to grant the requested relief at least in part because of the court's belief that

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[30] 531 F.2d 495, 503 n.16.

[31] Temoak Bands of Western Shoshone Indians, Nevada v. United States and the Western Shoshone Identifiable Group Represented by the Temoak Bands of Western [Shoshone] Indians, Nevada, 593 F.2d 994, 999 (Ct. Cl. 1979), cert. denied, 444 U.S. 973 (1979).

the Western Shoshones have a remedy in Congress.

The legislative proposal of the Yomba Shoshone Tribe is the Yomba Tribe's effort to implement the above-quoted directive of the Court of Claims.

Following the Temoak's unsuccessful effort to stay the proceedings and obtain a proper determination of the actual status of Western Shoshone title, the Court of Claims awarded a judgment of less than $27 million on December 6, 1979, as compensation for a "taking" of the 24 million acres of Western Shoshone land identified by the Indian Claims Commission. As anticipated by the Court of Claims, funds to pay the judgment were automatically appropriated and were transferred to the Secretary of the Interior on December 19, 1979, without any opportunity for the Temoak Bands Council to delay payment and the preclusive effect of 25 U.S.C. 70u, pending determination of the true status of Western Shoshone title. In 1985 the Supreme Court determined that the establishment by the Secretary of a trust account to hold the funds constituted "payment" (albeit "constructive payment") to the Western Shoshones, triggering the application of Section 22 of the ICCA[32] Section 22 of the ICCA provides that "payment ... shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy."[33] The Ninth Circuit Court of Appeals concluded in Dann III that all Western Shoshones are "precluded" by the "payment" from asserting their land title. The Dann court went on to conclude that in the absence of any other event that could

[32] United States v. Dann, 105 S.Ct. 1058, 470 U.S. 39 (1985).

[33] In effect, the United States, supposedly acting at all times as the Indian trustee, "paid" the Western Shoshones in 1979 by transferring funds equal to the 1872 value of the land, without interest, from its right hand (the Treasury Department) to its left hand (the Interior Department), thereby effecting an extinguishment of Western Shoshone title in favor of itself. That the Secretary of the Interior accepted "payment" knowing and intending that the Shoshones thereby lose their land rights is manifest in the record.

have extinguished title, title must be deemed to have been extinguished on July 1, 1872, the stipulated date of "valuation."[34]

Following the entry of judgment in Western Shoshone identifiable group v. United States on December 6, 1979, the Bureau of Indian Affairs sought Western Shoshone approval of a "judgment distribution plan," pursuant to the Indian Tribal Judgment Funds Use or Distribution Act of 1973, 25 U.S.C. Sec. 1401 et seq., to distribute the fund per capita among all persons of any degree of Western Shoshone descendancy. This plan was overwhelmingly opposed by the Western Shoshone people at a hearing of record held in Elko, Nevada, on July 26, 1980. The record reflects that the Western Shoshones wanted their land, not money.[35] The BIA sought an extension of the statutory time limit to submit a distribution plan to Congress, but the extension was denied by the Senate Select Committee on Indian Affairs on the grounds that "a significant number of Western Shoshone people oppose acceptance of the award ...." and the pending Dann case.[36]

Nearly 20 years later, the Western Shoshone judgment fund has grown to more than $120 million including earned interest. An act of Congress is required to divide and distribute this award to the Shoshone people. Since that time, the nine Western Shoshone tribal governments have consistently sought a comprehensive legislative settlement with the United States of Western Shoshone land rights and money claims. The proposed Yomba Shoshone Indian Land Restoration Act would accomplish that objective for the Yomba Shoshone Tribe. Section 4 of the proposed legislation provides the means by which a fair and just division of this judgment award may be made to the Yomba

[34] 873 F.2d 1189, 1198.

[35] See, Transcript of Hearing of Record of July 26, 1980.

[36] August 4, 1980 letter from Senator John Melcher to Assistant Secretary, Indian Affairs. Appendix G.

Shoshone Tribe and the Yomba Shoshone Tribe can acquire an adequate and permanent land base consistent with the promise of Article VI of the 1863 Treaty of Ruby Valley.

2. United States v. Dann

In 1974 the Government filed an action in the federal district court for Nevada against Mary and Carrie Dann, members of the Dann Band of Western Shoshone Indians. The Dann sisters derive their livelihood from raising livestock in the Crescent Valley of central Nevada and the surrounding mountains. The complaint alleged that the Dann sisters trespassed on land near the Dann Ranch which the Government claims as federal public domain by allowing their cattle to graze without a permit. In fact, the Dann Band (the Dann sisters extended family) and its ancestors (grandmother Mary Hall and father Dewey Dann) raised livestock on their homelands in the Crescent Valley beginning in the Nineteenth Century in accord with the express intent of Article VII of the Treaty of Ruby Valley. The Danns claimed Western Shoshone aboriginal, treaty and possessory rights to the lands in question, and that no actions of the Government or Congress had ever extinguished Western Shoshone title. On cross-motions for summary judgment, the district court held that the Danns were collaterally-estopped from asserting Western Shoshone title by the 1962 interlocutory decision of the ICC in Shoshone Tribe of Indians v. United States, 11 Ind. Cls. Comm. 387 (1962).[37]

The Ninth Circuit Court of Appeals reversed and remanded expressly "for the purpose of deciding title".[38] The Court of Appeals held that the Danns were not collaterally estopped from asserting unextinguished Indian title because: 1) the decision of the ICC

[37] The Western Shoshone portion of this case later cam to be called Western Shoshone Identifiable Group v. United States, Docket 326-K.

[38] United States v. Dann (Dann I), supra, at 223.

was not a final judgment within the meaning of the Indian Claims Commission Act, and 2) the title issue was neither actually litigated nor actually decided in the proceedings before the Commission.[39]

Following notification from the Justice Department of the December 6, 1979, final judgment in Western Shoshone Identifiable Group v. United States, the district court held that "[t]he legal effect of the judgment for the purposes of the instant case is to extinguish the aboriginal Indian title to the lands of the Western Shoshone Indians..." as of December 6, 1979, when the Clerk of the Court of Claims certified to the General Accounting Office that the award in the Western Shoshone land claims case was final. Since Indian title clearly continued until at least 1979, despite the decision in the ICC case, the district court dismissed the Government's claim for trespass damages. Nonetheless, the district court issued an injunction forbidding the Danns' use of the "public domain" without obtaining grazing permits.[40]

On appeal again (Dann II), the Ninth Circuit reversed in part, affirmed in part, and remanded a second time with specific instructions to determine "the factual issue of whether aboriginal title [has] been preserved to the date of trial and whether the Danns are entitled to share in it."[41] The Appeals Court held: 1) that "payment" of the ICC judgment had not occurred within the meaning of Section 22(a) of the ICCA and the Danns were not precluded by that statute from asserting aboriginal title as a defense to this trespass action, and 2) the court below was correct in ruling that Western Shoshone aboriginal title

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[39] 572 F.2d at 226.

[40] United States v. Dann, Civ. No. R-74-60 BRT (D. Nev. April 25, 1980) (Judgment granting injunction).

[41] United States v. Dann (Dann II), 706 F.2d 919, 933 (9th Cir. 1983), rev'd other grounds, 470 U.S. 39 (1985).

was not extinguished as a matter of law by application of the public land laws in Shoshone territory.[42]

The Government petitioned for a writ of certiorari on the question "whether...the Western Shoshone remain free to assert, in collateral litigation, that aboriginal title to lands covered by the ICC award has never been extinguished".[43] The Government chose not to appeal the Ninth Circuit holding that Shoshone title was not extinguished.

The Supreme Court significantly narrowed the question presented to "whether the appropriation of funds into a Treasury account ... constitutes 'payment' under Section 22(a) of the Indian Claims Commission Act ..."[44] The Court answered that question in the affirmative, and remanded "for proceedings consistent with this opinion".[45] This decision gave the Government the benefit of the "discharge" provision of Section 22(a) of the ICCA. The Court did not go beyond this very narrow holding to decide the legal effect of the "discharge" on the Western Shoshone title, on Shoshone rights protected by the Treaty of Ruby Valley, or on the rights of Western Shoshones in actual possession or exercising rights of use and occupancy on Western Shoshone ancestral lands.

Following remand to the district court, the Government filed a Motion for Preliminary Injunction, contending that livestock grazing by the Dann defendants was causing irreparable damage to the range. On September 17, 1986, following a hearing, the district court issued an Order and Findings of Fact and Conclusions of Law. The district court

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[42] The Court noted in dicta that "it may be that aboriginally held lands do not qualify as 'unappropriated public lands' in which case the executive is not entitled to grant homesteads from them." Id. at 929.
[43] United States v. Dann, March 1984 Petition by the United States for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit at (I).

[44] United States v. Dann, 470 U.S. 39, 40-41, 44 (1985).

[45] Id. at 50.

concluded that Western Shoshone aboriginal title was not extinguished prior to December 19, 1979, (the date of the "payment"),[46] and that the Danns held "individual aboriginal and treaty [grazing] right[s]." Such rights are not subject to regulation by the BLM.[47] The court further noted that "[t]he government has admitted that the 1863 Treaty of Ruby Valley is in full force and effect."[48]

The Court also found, however, that the BLM "will be unable to effectively manage, protect and improve the public domain unless some limit is placed upon the use of the subject area by defendants",[49] and permanently enjoined the Danns from grazing in excess of their 1979 herd size of 768 cattle and 850 horses.

On cross-appeals to the Ninth Circuit, the Court of Appeals again reversed and remanded to the district court. The Court of Appeals held that Western Shoshone title must be deemed to have been lost in the Nineteenth Century because the Indian Claims Commission so determined. The court stated that the extent of individual Indian title grazing rights established by the Danns on public lands must be determined by reference to the number of livestock the Danns and their lineal ancestors were grazing in the area as of November 26, 1934, when the public domain in Nevada was closed to homesteading.[50]

On remand to the District Court the Government sought to enjoin the Danns from further livestock grazing on federal lands. The Government took the position the Danns had no rights established by individual use and occupancy. Trial was scheduled for June

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[46] 13 Ind. L. Rptr. 3158 (9/17/86), Conclusion 4. at 3159.

[47] Id., Conclusion 12. at 3159.

[48] Id., Finding 4. at 3158.

[49] Id., Finding 19 at 3159.

[50] United States v. Dann, F.2d, (9th Cir. 1989).

6, 1991. On June 6 the Danns appeared at court, withdrew their defenses to the action based on individual aboriginal title, and told the court the Western Shoshone Nation had not received fair treatment from the courts. The court issued judgment for the United States, but refused to give the Government injunctive relief. The BLM is now forced to attempt to impound the Dann's livestock, which is the precise position it was in before it initiated litigation in 1974.

3. Western Shoshone National Council v. Molini

In December, 1986, the Western Shoshone National Council (WSNC) and individual Western Shoshone Indians filed suit against the Director of the Nevada Department of Wildlife and other Nevada officials to enjoin the State from enforcing its hunting, fishing and other wildlife laws against Western Shoshone Indians hunting, fishing, trapping and gathering on Western Shoshone ancestral lands (Western Shoshone National Council v. Molini). The WSNC asserted that the Western Shoshone Nation and its individual members hold aboriginal tribal treaty and individual aboriginal rights to hunt and fish throughout the Western Shoshone ancestral territory, and that these rights were not extinguished by the ICC proceedings in Western Shoshone Identifiable Group v. United States. In fact, hunting, fishing, trapping and gathering rights were never addressed in the ICC proceedings and the ICC did not purport to compensate the Western Shoshones for the loss of such rights.

On January 4, 1988, the WSNC and the defendant, Nevada state officials, filed a stipulation for preliminary injunction. The injunction stopped the State from enforcing its hunting and fishing laws against Western Shoshone Indians who exercised aboriginal and treaty-protected hunting and fishing rights. The injunction required that the WSNC

regulate hunting and fishing by Western Shoshones in Shoshone ancestral areas in Nevada and report the totals of certain animals taken, to the Nevada Department of Wildlife.

Following the decision of the Court of Appeals in Dann III, the district court granted the Government's motion for summary judgment and dismissed the Molini case. The Ninth Circuit Court of Appeals affirmed, and the Supreme Court refused to hear the case by denying certiorari.

D. Need for a Negotiated / Legislated Land Settlement

It has long been apparent that a negotiated / legislated land settlement is needed to resolve Western Shoshone land rights issues. Western Shoshone tribal governments and political organizations continue to believe that the Treaty of Ruby Valley guaranteed their land rights, and that they have been defrauded by the Government and the courts. When they tried to stop the ICC case and prevent it from "precluding" their title, they were twice directed by the court to go to Congress for relief.[51] The Western Shoshones have a strong moral and international legal claim to a significant land base within their ancestral lands. The only way to satisfy this claim despite adverse U.S. court rulings is in a negotiated, legislated land settlement. Despite strong support in the past from the Nevada Congressional delegation, the Senate Indian Committee and other members of Congress[52], the Executive Branch has failed to negotiate a settlement.

There have been two efforts to negotiate a settlement. In 1986 Western Shoshone delegations met several times with Interior Department representatives, including the Assistant Secretary for Indian Affairs, Ross Swimmer. Those negotiations ended when

[51] See, *infra* at 26-27.

[52] See letters in Appendix J.

Mr. Swimmer announced that no Shoshone land would be returned. In January 1994 a large Western Shoshone delegation met with newly appointed Interior Secretary Bruce Babbitt to restart negotiations. At the urging of the Senate Committee on Indian Affairs and the Nevada Congressional delegation, Secretary Babbitt committed to form a federal team to negotiate a legislative proposal. Several meetings were held from 1994 - 1997. The Government's only proposal was to allow the Shoshones to purchase land at current fair market value from the BLM's land disposal list using the ICC judgment funds. In other words, the Shoshones could repurchase at present value lands the Government acquired no earlier than 1979 for 15 cents an acre - the 1872 value. The Shoshones rejected this proposal and negotiations petered out because the Government could not bring itself to make a fair or reasonable offer.

E. International Proceedings

1. Dann v. United States Before the Inter-American Commission on Human Rights of the Organization of American States.

On April 2, 1993, the Danns filed a Petition with the Inter-American Commission on Human Rights of the Organization of American States (Case No. 11.140) to obtain relief from the United States' continuing actions that impede, and threaten to further impede, their use and enjoyment of Western Shoshone ancestral lands.[53]

For years the United States and its political subdivision, the State of Nevada, have taken action or threatened to impede the Western Shoshone people from using and occupying lands that are within their ancestral Traditional Use Area. The threat is ongoing, and today it includes actions and threats of action to prevent the Danns and other Western

[53] The Yomba, Duckwater and Ely Shoshone Tribes are amicus curiae in this action.

Shoshone tribes, groups and individuals from hunting[54] and grazing livestock on lands within their ancestral Traditional Use Area.[55] It also includes United States complicity in gold mining operations that with each passing day encroach more onto the lands which the Danns and other Western Shoshone people depend upon for survival.

The Danns assert that the United States' conduct is in violation of relevant provisions of international human rights law, and that the mechanism by which the United States purports to have extinguished Western Shoshone rights is invalid for its discriminatory character and failure to accord due process.

In response to the Danns' requests, the Commission has issued "precautionary measures" against the U.S. on three occasions to halt threatened BLM enforcement action against the Danns pending completion of the Commission's investigation. The U.S. has never formally responded to the Commission's request to suspend enforcement until the completion of the proceeding. On October 25, 1999 the Danns filed a request with the Commission to enter into a process of friendly settlement with the U.S.. The U.S. has not responded.

On October 19, 2001, the Commission transmitted a Confidential Report to the U.S.. Under the Commission's rules, the submission of a report means that the Commission has made findings of human rights violations and recommendations for remedial action. The Commission has given the U.S. 60 days to comment on how it is

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[54] For example, since the Danns Petition was filed before the Inter-American Commission on Human Rights, Victor Whiterock, a Western Shoshone, was tried and convicted by the State of Nevada for hunting without a State-issued permit. The trial court rejected any argument of Western Shoshone ancestral rights to hunt, and the Supreme Court of Nevada upheld the conviction. See. Whiterock v. Nevada, 918 P.2d 1309 (NV 1996).

[55] For example, the Yomba Shoshone Tribe and the Duckwater Shoshone Tribe recently decided to enter into grazing settlement agreements with the BLM for livestock grazing on their ancestral lands, in large part to avoid the continuing threat that their livestock would be impounded and they would be subject to civil and/or criminal sanctions.

going to implement the Commission's recommendations. If the U.S. has not resolved the issues within 90 days, the Commission may issue a final report that contains its opinion and final conclusions and recommendations.

2. Proceedings Before the United Nations Committee for the Elimination of Racial Discrimination (CERD).

On August 23, 1999 the Yomba Shoshone Tribe submitted a Request for Urgent Action to the Committee for the Elimination of Racial Discrimination ("CERD") under its urgent action / early warning procedure. The Duckwater and Ely Shoshone Tribes subsequently joined in this request.

CERD was established by the International Convention on the Elimination of All Forms of Racial Discrimination, a United Nations treaty to which the U.S. is a party. The purpose of CERD is to monitor and review actions by states to fulfill their obligations under the Convention.

The Request asserts that the rights of the Western Shoshones are being violated by the U.S. in a discriminatory fashion on the basis of their status as indigenous peoples. The Request asks that CERD direct the U.S. to halt actions threatening irreparable harm to the Western Shoshones and to enter negotiations with Western Shoshone leaders to resolve Western Shoshone land rights issues.

When asked at CERD's August 2001 meeting to answer specific questions regarding Western Shoshone land rights, the United States asserted its inability to do so. In its Concluding Observations on the session, CERD expressed its concern with the "persistence of the discriminatory effects of the legacy of ... the destructive policies with regard to Native Americans" generally, and with the United States' actions affecting the

Western Shoshones in particular. CERD recommended that the United States "should ensure effective participation by indigenous communities in decisions affecting them, including those on their land rights, as required under article 5(c) of the Convention...."

SECTION IV: SECTION BY SECTION ANALYSIS OF PROPOSED YOMBA SHOSHONE INDIAN LAND RESTORATION ACT

Section 1. Findings

This section contains findings which briefly describe the history of the Western Shoshone land rights issue and the purpose of this Act, beginning with the 1863 Treaty of Ruby Valley and ending with the need for a fair and just resolution of Western Shoshone land rights and money claims against the United States.

Section 2. Definitions

This section includes the definitions necessary to implement the Act. The most significant are (4) "Yomba Shoshone Historical Grazing Area" and (10) "Yomba Shoshone Traditional Use Area." The Yomba Shoshone Historical Grazing Area consists of approximately 2,580,000 acres of public domain and National Forest lands (Western Shoshone ancestral lands), about 12% of which the Yomba Shoshone Tribe is presently using for livestock grazing under permits with the BLM and Forest Service. Yomba Shoshone Traditional Use Area consists of approximately 9,700,000 additional acres surrounding the Yomba Shoshone Historical Grazing Area wherein, under the proposed legislation, the Yomba Shoshone Tribe could acquire additional lands by voluntary real estate transactions with private landowners and federal grazing permittees. The proposed legislation would immediately transfer all mineral rights now held by the federal

government within the Yomba Shoshone Traditional Use Area to the Yomba Tribe, subject to valid existing private rights under the public land laws.

Section 3. Nature and Purpose of Compensation

On December 6, 1979, the United States Claims Court awarded $26,145,190 to the Western Shoshones in Western Shoshone Identifiable Group v. United States, Indian Claims Commission Docket 326-K. Of the total judgment, $21,550,000, an average of 83 cents / acre, was awarded for a "taking" of Western Shoshone land and $4,605,000 was awarded for the value of minerals removed prior to July 1, 1872. Most of the land was actually valued as "poor grazing land" at 15 cents/acre.

During the ICC Proceedings, many Western Shoshones erroneously believed that the Indian Claims Commission case sought compensation for wrongs and damages inflicted on the Western Shoshone people by the United States, rather than compensation for the land itself. The claims attorneys actively promoted this belief in order to avoid opposition to the claim from many, if not most, of their clients. Many Western Shoshone people hold strong Native religious beliefs that proscribe the "sale" of Western Shoshone land and prohibit them from accepting money for their lands. This section, by characterizing the judgment as compensation for "wrongs" done to the Western Shoshones, will allow many Shoshones to accept a per capita share of the judgment who otherwise could not do so for religious and cultural reasons.

Section 4. Distribution of Western Shoshone Compensation Funds

Subsection (a) provides for a pro rata share of the total Western Shoshone judgment fund to be distributed to the Yomba Shoshone Tribe. The Yomba pro rata share will be determined by the Bureau of Indian Affairs by dividing the number of enrolled

government within the Yomba Shoshone Traditional Use Area to the Yomba Tribe, subject to valid existing private rights under the public land laws.

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will be determined by the Bureau of Indian Affairs by dividing the number of enrolled Yomba Shoshones by the total of all Western Shoshones on the final distribution roll.

This Act deals only with the Yomba Shoshone Tribe. There are a total of nine federally-recognized Western Shoshone tribal governments in addition to Yomba. There are also an undetermined number of Indians of Western Shoshone descent and varying degrees of Western Shoshone blood living on other Indian reservations. Subsection (b) provides that $1,000,000 from the amount distributed to the Yomba Tribe shall be set aside as a permanent fund, the interest to be spent for health, education, welfare and tribal governance. The balance of the Yomba share is to be distributed per capita to enrolled members of the Yomba Tribe. All persons enrolled in the Yomba Shoshone Tribe are at least one-half Western Shoshone Indian by blood as required by the Yomba tribal enrollment law. Yomba Tribal members can voluntarily contribute any amount from their respective per capita share to the Yomba Tribal Unborn Child Fund. In order to avoid disinheriting future generations this fund is to provide for the perpetual health, education and welfare of future generations of Yomba children.

Subsections (c) through (j) deal with procedures for distribution of per capita shares of the judgment fund.

Section 5. Yomba Shoshone Title to Ancestral Lands Confirmed

The Yomba Shoshone Tribe and its members have owned and grazed livestock in the Yomba area since before the Reservation was established in 1937. Since the establishment of the Reservation, the Tribe has continuously grazed livestock within areas now administered by the BLM and the Forest Service. However, in recent decades the Tribe's federally administered grazing areas and the livestock carrying capacity of these areas have been substantially reduced. The Tribe is currently authorized to graze only

500 head of livestock on approximately 331,000 acres of public domain and National Forest lands.

The Yomba Shoshone Historical Grazing Area, consisting of about 2,680,000 acres, is the approximate area of lands historically used (between 1940 and 1975) by the Yomba Shoshone tribe and its members for livestock grazing.

Section 5(a)(1) confirms title in fee simple to the lands within the Yomba Shoshone Historical Grazing Area to the Yomba Tribe (see Appendix B, map). Section 5(a)(1) includes the legal description of these lands. It should be noted that the legal description includes approximately 51,116 acres of federal lands, other than those administered by the BIA, the BLM or the Forest Service. We have not attempted to delete these lands from the legal description because of the complexity of the legal descriptions that would result. The title to these other lands are protected by the "subject to valid existing rights" provision of Section 5(a)(1).

Section 5(a)(2) confirms title to all subsurface rights within Yomba Shoshone Traditional Use Area (see Appendix C, map) in the Yomba Tribe, subject to all valid existing rights acquired pursuant to the public land laws.

Section 5(a)(3) confirms title to all unbranded (unclaimed) livestock within the Yomba Historical Grazing Area in the Yomba Tribe. The purpose of this provision is to make it possible for the Tribe to manage and control these animals. Section 5(b)(1) effects a withdrawal from the operation of the public land laws of all lands within the Yomba Shoshone Traditional Use Area as defined in Section 2(11). The purpose of the withdrawal is to protect these lands from private appropriation and leasing under the public land laws until such time as the Yomba Tribe can purchase and acquire such lands

pursuant to Section 7(b)(2) of this Act. Section 5(c)(3) provides for publication in the Federal Register of a list of lands affected by this Act.

Section 5(d) provides for surveys of lands affected by this Act.

Section 5(e) provides for the Secretary of the Interior to convey fee simple title (subject to protections as provided in Section 8 of the Act) to surface and subsurface interests as provided in the Act to the Yomba Tribe.

Section 5(f) provides for mineral royalties and lease payments payable under federal agreements covering lands and interests conveyed to the Yomba Shoshone Tribe pursuant to this Act to be collected by the Secretary of the Interior as trustee for the Tribe.

Section 5(g) relieves the Tribe of any liability for grazing trespass and non-payment of grazing fees otherwise due the federal government under the Taylor Grazing Act of 1934, or other laws, and for the dismissal of any pending administrative proceedings against the Tribe.

Section 6. Water Rights

Section 6(a) provides that all waters and water rights not already appropriated under state or federal law on lands title to which is confirmed in the Yomba Shoshone Tribe under this Act will belong to the Yomba Tribe.

Section 6(b) provides that all water rights held by the federal government appurtenant to lands confirmed to the Yomba Tribe shall belong to the Tribe. Section 6(b) also gives the water rights acquired by the Tribe under Section 6(a) a priority as of the date of this Act and characterizes such rights as permanently perfected rights in the nature of Winters Doctrine Indian Reserved Water Rights.

Section 6(c) confirms tribal administrative jurisdiction over tribal water rights.

Section 7. Yomba Shoshone Tribe Land Acquisition and Claims Settlement Fund

Subsection 7(a) is a federal rectangular survey description of the lands included in the Yomba Shoshone Traditional Use Area.

Subsection 7(b) creates the Yomba Shoshone Land Acquisition Fund and authorizes the appropriation of $14,000,000 for the purpose of purchasing privately-owned lands within Yomba Shoshone Traditional Use Area as defined in Section 2(11) of this Act. The Fund can be used for purchases only within Yomba Shoshone Traditional Use Area. The purpose of this provision and this Fund is to allow the Tribe to acquire an adequate permanent land base within its ancestral territory through voluntary transactions with private parties whose lands were acquired pursuant to the federal public land laws. This amount is believed to be the approximate current value of the private ranches within the Yomba Shoshone Traditional Use Area. The estimated value of these private ranches does not include the value of mining claims staked or patented under the 1872 Mining Act or the value of federal mineral leases in the Traditional Use Area. It is not anticipated that the Tribe will attempt to acquire these private mineral interests.

Paragraph 7(b)(4) provides that if and when the Tribe purchases private lands, such as a ranch, which includes livestock grazing permits, such as grazing permits issued pursuant to the Taylor Grazing Act of 1934, the title to the public domain lands subject to such rights shall be confirmed and conveyed to the Tribe using the procedures established in Section 5 for lands now within the Yomba Shoshone Grazing Area. The rationale for this provision is that the federal government wrongfully deprived the Yomba Shoshone Tribe of its lands, and if the private interests in the area are adequately compensated through voluntary land sales to the Tribe, the Tribe should rightfully be entitled to acquire

title to and full control of the grazing lands covered by the grazing permits owned by each such ranch.

Section 7(c) authorizes the appropriation of $5,000,000 as the Yomba Shoshone Tribe Claims Settlement Fund for tribal economic development purposes. The rationale for the creation of this Fund is that the compensation that will be received by the Yomba Tribe through the Indian Claims Commission Act process (Western Shoshone Identifiable Group v. United States) and the resulting judgment fund is far less than fair and equitable compensation for the loss of use and loss of title to the Yomba's interest in the whole of the Western Shoshone ancestral lands. At the time Western Shoshone title was actually deemed lost to the United States and private parties (December 18, 1979), Western Shoshone lands could conservatively be valued from $5 billion to $10 billion, not including approximately $2 billion in minerals that were removed prior to that date.

Moreover, the Tribe will require capital to develop the full economic potential of the lands it will acquire pursuant to this Act. The Yomba Shoshone Tribe Claims Settlement Fund will provide such capital to be held in trust by the Secretary of the Interior and expended for economic development purposes.

Section 8. Automatic Protections for Lands confirmed to Yomba Shoshone Tribal Ownership Pursuant to This Act

This Section provides that the title confirmed in fee simple to the Yomba Tribe pursuant to this Act will be subject to certain restrictions and protections. The purpose of the Section is to give the Yomba Shoshone Tribe more discretion and control over its lands than would be the case if the title were held in trust by the United States for the benefit of the Yomba Tribe and subject to the control of the Bureau of Indian Affairs, as

most Indian Reservation lands are held. Under Section 8, the Yomba lands will not be held in trust by the United States. Rather, they will be owned and exclusively controlled by the Tribe, but subject to certain protections similar to those that apply to Passamaquoddy and Penobscot Indian lands under the Maine Indian Claims Settlement Act of 1980 and to Alaska Native Corporation lands pursuant to the Alaska Native Claims Settlement Act, as amended. These include protections against state and local taxation, adverse possession, condemnation, and execution of judgments against the Tribe. At the discretion of the Tribe the lands can be mortgaged and leased for up to 50 years. Upon a 2/3 vote of all eligible tribal voters, lands can be leased for more than 50 years or sold.

Section 9. No Effect on Valid Existing Land Rights

Section 9 preserves all valid existing rights held by third parties pursuant to the public land laws as of the date of the Act.

Section 10. Effect on Subsisting Treaties and Inconsistent Laws

This Section continues the 1863 Treaty of Ruby Valley in full force and effect and provides that this Act supersedes all other inconsistent laws.

Section 11. Jurisdiction

This section confirms and continues the tribal sovereignty and self-government of the Yomba Shoshone Tribe, confirms the Tribe's eligibility to use federal programs to develop and manage its lands, and provides that all tribal lands are to be considered "Indian Country" for jurisdictional purposes.

Section 12. Disposition of Mineral Royalties and Lease Payments

This Section provides that the Yomba Tribe must retain at least 50% of annual mineral royalties and lease payments for tribal operations and economic development and

not distribute such monies per capita. The purpose of this Section is to ensure the economic independence of the Tribe and the availability of funds for continuing tribal governance and economic development.

Section 13. Tax Exemption

The Section provides that per capita distributions pursuant to this Act shall not be taxable or taken into account to determine individual eligibility for federal and state benefit programs. This language is standard in Indian judgment distribution acts.

Section 14. Aboriginal Hunting, Fishing, Trapping and Gathering Rights

Subsection (a) recognizes and preserves aboriginal hunting, fishing, gathering and trapping rights throughout Western Shoshone ancestral territory. Although these rights were recognized in the 1863 Treaty of Ruby Valley and were not found extinguished or compensated for by the ICC, the State of Nevada has relied on the ICC proceedings and the Molini case to deny their continued existence.

Subsection (b) confirms exclusive Yomba tribal jurisdiction to regulate hunting, fishing, trapping and gathering on Yomba tribal lands.

Subsection (c) provides that the Yomba Shoshone Tribe will have jurisdiction to regulate off-Reservation hunting, fishing, trapping and gathering by Yomba members throughout the ancestral Western Shoshone territory.

Section 15. Rules and Regulations

This section provides for the Secretary of the Interior to promulgate rules and regulations as required to implement the Act and disclaims any effect on the rights of Western Shoshones who are not members of the Yomba Shoshone Tribe.

Section 16. Audit of Judgment Fund

This section requires that the General Accounting Office audit the Western Shoshone judgment fund account within 60 days of the effective date of the Act. This section has been included because of recent revelations that the Bureau of Indian Affairs has not properly kept track of Indian trust monies, and that substantial sums are unaccounted for. A GAO audit is the only means available to ensure that the United States has fulfilled its fiduciary obligations in the management of the fund.

tl:c:yomba:legislativejustification3

YOMBA SHOSHONE INDIAN LAND RESTORATION ACT

APPENDICES TO LEGISLATIVE JUSTIFICATION

Yomba Shoshone Reservation
Reese River Valley, Nevada

March 2002

APPENDICES
TO LEGISLATIVE JUSTIFICATION

Appendix A. 1863 Treaty of Ruby Valley

Appendix B. Map - Yomba Shoshone Historical and Current Grazing Areas and Water Rights

Appendix C. Map - Yomba Shoshone Traditional Use Area

Appendix D. Map – Western Shoshone Ancestral Territory

Appendix E. Yomba Shoshone Tribe Constitution and By-laws

Appendix F. Yomba Tribal Council Resolution Proposing Negotiated / Legislated Land Settlement

Appendix G. Letter dated August 4, 1980, from John Melcher, Chairman, United States Senate, Select Committee on Indian Affairs, to Ralph R. Reeser, Acting Deputy Assistant Secretary of Indian Affairs

Appendix H. List of Western Shoshone Reported Legal Decisions

Appendix I. Limited Bibliography of Western Shoshone Materials

Appendix J. Congressional Correspondence Supporting Negotiated / Legislated Land Settlement

Appendix K. Documentary Films on Western Shoshone Land Rights Struggle –Titles and Brief Descriptions

Appendix L. Article - "Two Indian Women are Fighting for This Ranch – And 16 Million Acres of Nevada," The Denver Post Empire Magazine, May 13, 1984

Appendix M. Article - "Indian Sisters Spur Land Rights Battle," Los Angeles Times, March 24, 1985

Appendix N. Article - "Western Shoshone to Take Nevada Land Battle to Congress," Reno Gazette-Journal, January 17, 1989

Appendix O. Editorial - "Give Shoshones Courtesy of Working Their Land," Las Vegas Sun, July 1, 1991

APPENDIX A

1863 TREATY OF RUBY VALLEY

Treaty of Ruby Valley 1863

Treaty between the United States of America and the Western Bands of Shoshone Indians. Concluded October 1, 1863; Ratification advised, with amendment, June 18, 1866; Amendment assented to June 17, 1869; Proclaimed October 21, 1869.

ULYSSES S. GRANT, PRESIDENT OF THE UNITED STATES OF AMERICA, TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

Whereas a Treaty was made and concluded at Ruby Valley, in the Territory of Nevada, on the first day of October, in the year of our Lord one thousand eight hundred and sixty-three, by and between James W. Nye and James Duane Doty, Commissioners, on the part of the United States, and Te-moak, Mo-ho-a, Kirk-weedgwa, To-nag, and other Chiefs, Principal Men, and Warriors of the Western Bands of the Shoshonee Nation of Indians, on the part of said bands of Indians, and duly authorized thereto by them, which Treaty is in the words and figures following to wit:

Treaty of Peace and Friendship made at Ruby Valley, in the Territory of Nevada, this first day of October, A.D. one thousand eight hundred and sixty-three, between the United States of America, represented by the undersigned Commissioners, and the Western Bands of the Shoshonee Nation of Indians, represented by their Chiefs and Principal Men and Warriors, as follows:

ARTICLE I.

Peace and friendship shall be hereafter established and maintained between the Western Bands of the Shoshonee nation and the people and Government of the United States; and the said bands stipulate and agree that hostilities and all depredations upon the emigrant trains, the mail and telegraph lines, and upon the citizens of the United States within their country, shall cease.

ARTICLE II.

The several routes of travel through the Shoshonee country, now or hereafter used by white men, shall be forever free, and unobstructed by the said bands, for the use of the government of the United States, and of all emigrants and travelers under its authority and protection, without molestation or injury from them. And if depredations are at any time committed by bad men of their nation, the offenders shall be immediately taken and delivered up to the proper officers of the United States, to be punished as their offences shall deserve; and the safety of all travellers passing peaceably over either said routes is hereby guaranteed by said bands.

Military posts may be established by the President of the United States along said routes or elsewhere in their country; and station houses may be erected and occupied at such points as may be necessary for the comfort and convenience of travellers or for the mail or telegraph companies.

ARTICLE III.

The telegraph and overland stage lines having been established and operated by companies under the authority of the United States through a part of the Shoshonee country, it is expressly agreed that the same may be continued without hinderance, molestation, or injury from the people of said bands, and that their property and the lives and property of passengers in the stages and of the employees of the respective companies, shall be protected by them. And further, it being understood that provision has been made by the government of the United States for the construction of a railway from the plains west to the Pacific ocean, it is stipulated by said bands that the said railway or its branches may be located, constructed, and operated, and without molestation from them, through any portion of country claimed or occupied by them.

ARTICLE IV.

It is further agreed by the parties hereto, that the Shoshonee country may be explored and prospected for gold and silver, or other minerals; and when mines are discovered, they may be worked, and mining and agricultural settlements formed, and ranches established whenever they may be required. Mills may be erected and timber taken for their use, as also for building or other purposes in any part of the country claimed by said bands.

ARTICLE V.

It is understood that the boundaries of the country claimed and occupied by said bands are defined and described by them as follows:

On the north by Wong-goga-da Mountains and Shoshonee River Valley; on the west by Sa-non-o-yan Mountains or Smith Creek Mountains; on the south by Wi-co-ban and the Colorado Desert; on the east by Po-no-no-be Valley or Steptoe Valley and Great Salt Lake Valley.

ARTICLE VI.

The said bands agree that whenever the President of the United States shall deem it expedient for them to abandon the roaming life, which they now lead, and become herdsmen or agriculturalists, he is hereby authorized to make such reservations for their use as he may deem necessary within the country above described; and they do also hereby agree to remove their camps to such reservations as he may indicate, and to reside and remain therein.

ARTICLE VII.

The United States, being aware of the inconvenience resulting to the Indians in consequence of the driving away and destruction of game along the routes travelled by white men, and by the formation of agricultural and mining settlements, are willing to fairly compensate them for the same, therefore, and in consideration of the proceeding stipulations, and of their faithful observance by the said bands, the United States promise and agree to pay to the said bands of the Shoshonee nation parties hereto, annually for the term of twenty years, the sum of five thousand dollars in such articles, including cattle for herding or other purposes, as the President of the United States shall deem suitable for their wants and condition, either as hunters or herdsmen. And the said bands hereby acknowledge the receipton of the said stipulated annuities as a full compensation and equivalent for the loss of game and the rights and privileges hereby conceded.

ARTICLE VIII.

The said bands hereby acknowledge that they have received from said commissioners provisions and clothing amounting to thousand dollars as presents at the conclusion of this treaty.

Done at Ruby Valley the day and year above written.

JAMES W. NYE
JAMES DUANE DOTY
TE-MOAK
MO-HO-A
KIRK-WEEDGWA
TO-NAG
TO-SO-WEE-SO-OP
SOW-ER-E-GAH
PO-ON-GO-SAH
PAR-A-WOAT-ZE
GA-HA-DIER
KO-RO-KOUT-ZE
PON-GE-MAH
BUCK

Witnesses:
J.B. MOORE, Lt. Col. 3rd Inf. Cal. Vol.
JACOB T. LOCKHART, Indian Agent Nev. Ter.
HENRY BUTTERFIELD, Interpreter

And whereas, the said Treaty having been submitted to the Senate of the United States for its constitutional action thereon, the Senate did, on the twenty-sixth day of June, one thousand eight hundred and sixty-six, advise and consent to the ratification of the same, with an amendment, by a resolution in the words and figures following, to wit:

IN EXECUTIVE SESSION, SENATE OF THE UNITED STATES,
June 28, 1866.

Resolved, (two-thirds of the Senators present concurring:) That the Senate advise and consent to the ratification of the Treaty of peace and friendship made at Ruby Valley, in the Territory of Nevada, the first day of October, A.D. one thousand eight hundred and sixty-three, between the United States of America, represented by their Commissioners, and the Western Bands of the Shoshonee Nation of Indians, represented by their Chiefs and Principal Men and Warriors, with the following

AMENDMENT:

Fill the blank in the 8th article with the word five.

Attest:

J.W. FORNEY,
Secretary

And whereas, the foregoing amendment having been fully explained and interpreted to the undersigned Chiefs, Principal Men, and Warriors of the Western Bands of the Shoshonee Nation of Indians, they did, on the seventeenth day of June, one thousand eight hundred and sixty-nine, give their free and voluntary assent to the said amendment, in the words and figures following, to wit:

Whereas the Senate of the United States, in executive session, did advise and consent to the ratification of the Treaty of peace and friendship, made at Ruby Valley, in the Territory of Nevada, on the first day of October, one thousand eight hundred and sixty-three, by the Commissioners on the part of the United States and the Western Bands of the Shoshonee Nation of Indians, represented by their Chiefs and Principal Men and Warriors, with the following amendment:

"Fill the blank in the 8th article with the word five."

And whereas the foregoing amendment has been fully interpreted and explained to the undersigned Chiefs and Principal Men and Warriors of the aforesaid Western Bands of the Shoshonee Nation of Indians, we do hereby agree and assent to the same.

Done at Ruby Valley, Nevada, on this 17th day of June, A.D. 1868.

Attest:
J.E. DAWLEY
R.B. SCOTT
W.R. REYNOLDS
LOUIS GRINNELL, Interpreter

TIM-OOK
BUCK
FRANK
CHARLEY TIMOOK
TO-NAG

Now, therefore, be it known that I, ULYSSES S. GRANT, President of the United States of America, do, in pursuance of the advice and consent of the Senate, as expressed in its resolution of the twenty-sixth of June, one thousand eight hundred and sixty-six, accept, ratify, and confirm the said Treaty, with the amendment aforesaid.

In testimony whereof, I have hereto signed my name, and have caused the seal of the United States to be affixed.

Done at the city of Washington, this twenty-first day of October, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-fourth.

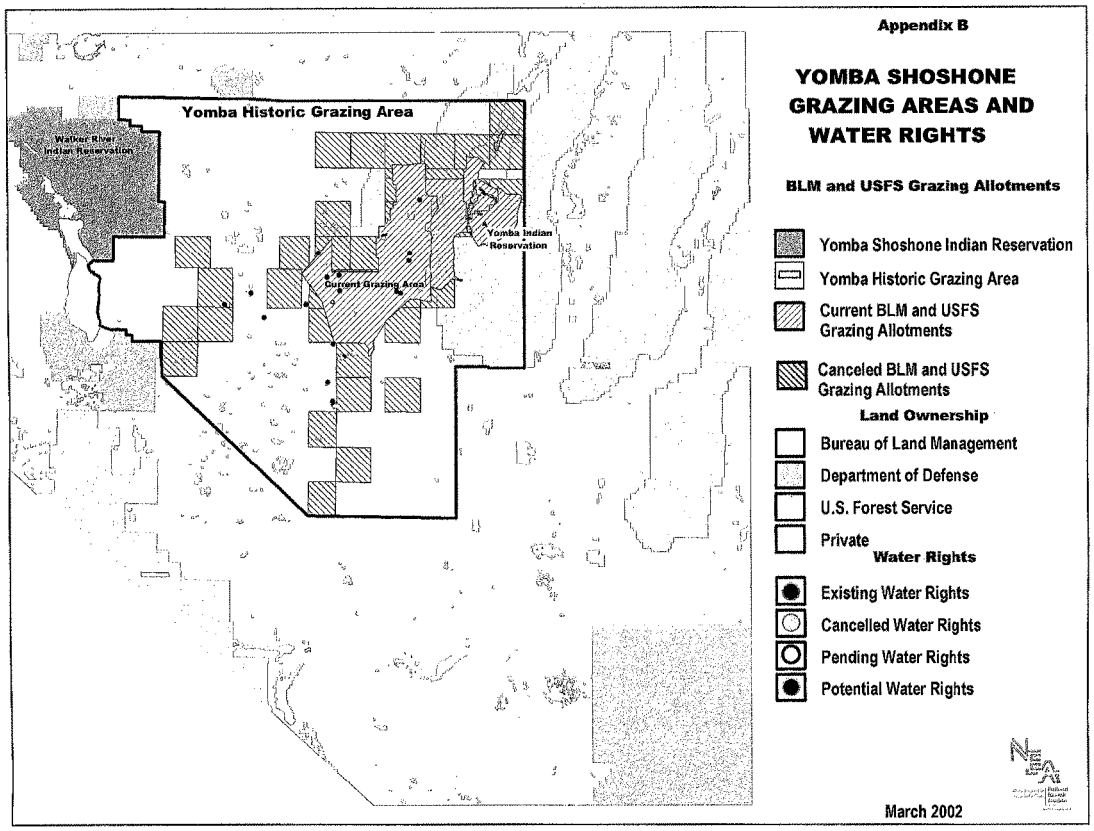
U.S. GRANT

By the President:
HAMILTON FISH
Secretary of State.

APPENDIX A

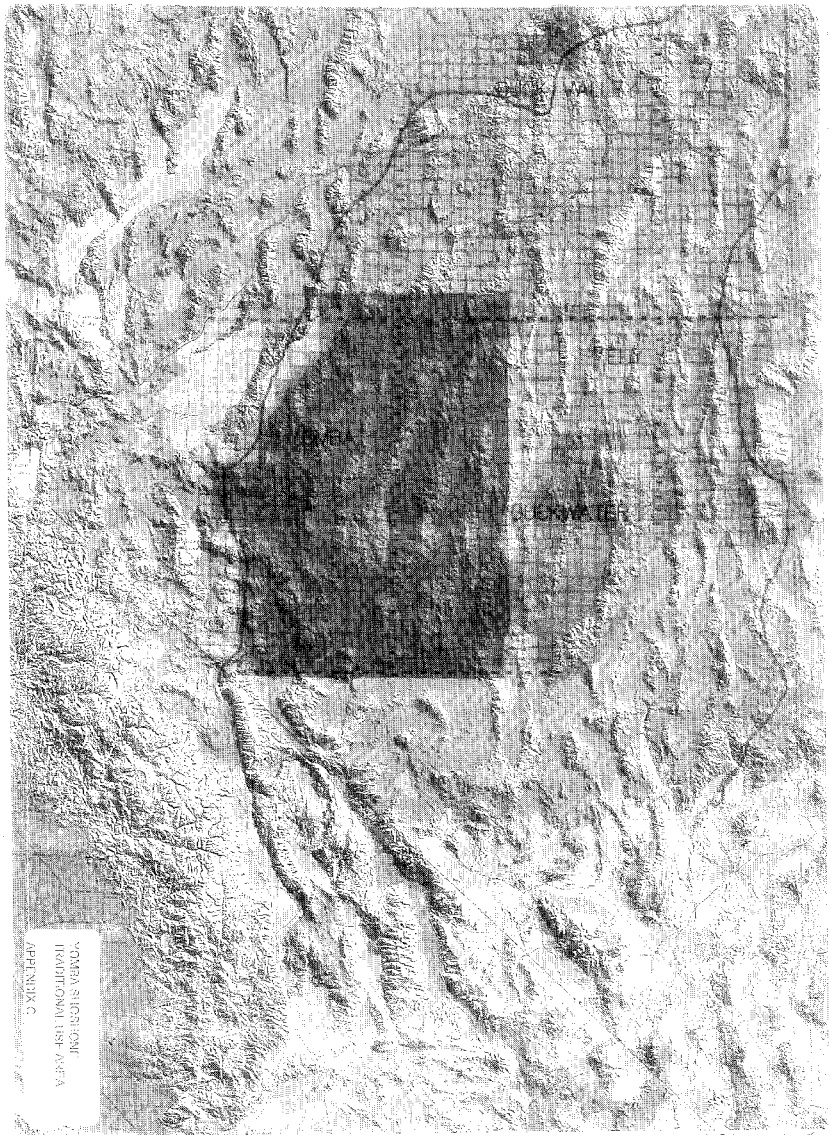
APPENDIX B

MAP – YOMBA SHOSHONE HISTORICAL AND PRESENT GRAZING AREAS AND WATER RIGHTS


Appendix B
YOMBA SHOSHONE GRAZING AREAS AND WATER RIGHTS
BLM and USFS Grazing Allotments
Yomba Shoshone Indian Reservation
Yomba Historic Grazing Area
Current BLM and USFS Grazing Allotments
Canceled BLM and USFS Grazing Allotments
Land Ownership
Bureau of Land Management
Department of Defense
U.S. Forest Service
Private
Water Rights
Existing Water Rights
Cancelled Water Rights
Pending Water Rights
Potential Water Rights
Yomba Historic Grazing Area
Walker River Indian Reservation
Yomba Indian Reservation
Current Grazing Area
March 2002

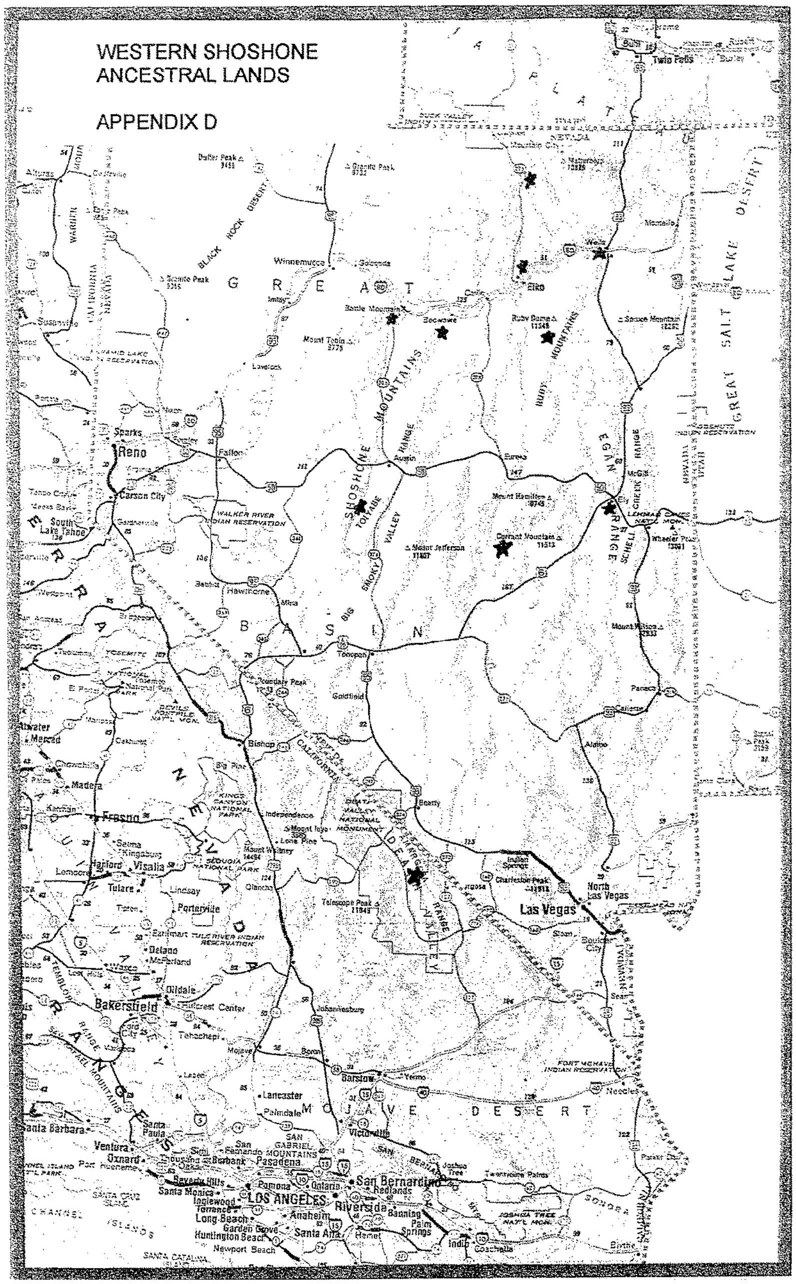
APPENDIX C

MAP – YOMBA SHOSHONE TRADITIONAL USE AREA


YOMBA SHORELINE
TRADITIONAL USE AREA
APPENDIX C

APPENDIX D

MAP – WESTERN SHOSHONE ANCESTRAL TERRITORY


WESTERN SHOSHONE
ANCESTRAL LANDS
APPENDIX D
Reno
Carson City
Las Vegas
Fresno
Visalia
Bakersfield
LOS ANGELES
San Bernardino
Riverside
MOJAVE DESERT
Elko
Wells
Tonopah
Austin
Eureka
GREAT SALT LAKE DESERT

APPENDIX E

YOMBA SHOSHONE TRIBE CONSTITUTION AND BY-LAWS

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

RECEIVED
JUN 2 6 1953
YOMBA

+

CONSTITUTION AND BY-LAWS

OF THE

YOMBA SHOSHONE TRIBE OF THE YOMBA RESERVATION NEVADA

APPROVED DECEMBER 20, 1939
EFFECTIVE DECEMBER 22, 1939

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1940

APPENDIX E

CONSTITUTION AND BY-LAWS OF THE YOMBA SHOSHONE TRIBE OF THE YOMBA RESERVATION, NEVADA

PREAMBLE

We, the Shoshone Indians residing on lands proclaimed on October 27, 1938, to be an Indian Reservation, which shall be known hereafter as the Yomba Reservation, in order to establish a tribal organization, to conserve our tribal property, to develop our resources, to administer justice, and to promote the welfare of ourselves and our descendants, do hereby ordain and establish this Constitution and By-Laws for the Yomba Shoshone Tribe.

ARTICLE I—NAME AND TERRITORY

SECTION 1. The name of this organized body shall be the Yomba Shoshone Tribe.

SEC. 2. The jurisdiction of the Yomba Shoshone Tribe shall include all the territory within the confines of the Yomba Reservation as established by the Proclamation dated October 27, 1938, and shall extend to such other lands as may hereafter be acquired by the Yomba Shoshone Tribe or by the United States in trust for said Tribe.

ARTICLE II—MEMBERSHIP

SECTION 1. The membership of the Yomba Shoshone Tribe shall consist of the following:

(*a*) All persons of at least one-half degree Shoshone Indian blood who may be designated by the Secretary of the Interior as eligible for residence on lands purchased heretofore or hereafter for the benefit of landless Shoshone Indians.

(*b*) Any other person of at least one-half degree of Shoshone blood whose name appears on the Carson Agency census of the Yomba Shoshone Indians who applies in writing to the Yomba Tribal Council.

(*c*) All children of at least one-half degree of Shoshone Indian blood born to any member of the Tribe.

SEC. 2. The Tribal Council shall cancel the membership of any adult person who makes application to sever his tribal relation, and thereafter such person shall cease to hold membership in the Tribe.

SEC. 3. The Tribal Council shall have power to promulgate ordinances subject to review by the Secretary of the Interior, governing adoption and loss of membership.

ARTICLE III—GOVERNING BODY

SECTION 1. The governing body of the Yomba Shoshone Tribe of the Yomba Reservation shall be a council known as the Yomba Tribal Council.

SEC. 2. The Tribal Council shall consist of six councilmen to be elected from the two districts as set forth hereafter.

SEC. 3. The Reservation shall be divided into two districts, to be known as the Upper District and the Lower District. Until otherwise defined, as hereinafter provided, the Upper District will include the tract known as the Doyle Ranch, and the Lower District will include the tract known as the Bowler Ranch. Each district shall elect three council members.

SEC. 4. The Tribal Council shall have the power to extend the boundaries of each district appropriately as more land is acquired and added to the Reservation, and to change the number of councilmen to be elected by each district in order to keep district council representation approximately proportionate to population, but the total number of councilmen shall not be changed, remaining as provided in Section 2 of Article III of this Constitution.

SEC. 5. The Tribal Council so organized shall elect from among its own members (1) a chairman, and (2) a vice-chairman, and from within or without its own membership, (3) a secretary, and (4) a treasurer, and may appoint or employ such other officers and committees as may be deemed necessary.

SEC. 6. In all elections after the first election, no person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Yomba Shoshone Tribe of the Yomba Reservation, and shall have resided in the district of his candidacy for a period of one year next preceding the election, and be at least twenty-five years of age.

SEC. 7. The Tribal Council of the Yomba Shoshone Tribe shall be the sole judge of the qualifications of its members.

ARTICLE IV—NOMINATIONS AND ELECTIONS

SECTION 1. The first election of a Tribal Council under this Constitution shall be called, held, and supervised by the Superintendent of the Carson Indian Agency within sixty days after the ratification and approval of this Constitution. At the first election, the two candidates receiving the highest number of votes in the Upper and Lower Districts shall serve three years. The two candidates receiving the next highest number of votes in the Upper and Lower Districts shall serve two years. The two candidates receiving the third highest number of votes in the Upper and Lower Districts shall serve one year, and thereafter elections for the Tribal Council shall be held every year and shall be called at least 60 days prior to the expiration of a term of office. The term of office of a councilman shall be for a period of three years or until his successor is elected, unless otherwise provided herein.

SEC. 2. The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

SEC. 3. All elections shall be by secret ballot.

SEC. 4. Any qualified member of the Yomba Shoshone Tribe may announce his or her candidacy for the Tribal Council within the district of his or her residence, such announcement to be in writing and presented to the Secretary of the Tribal Council at least ten

days before the election. It shall be the duty of the Secretary to post in a public place and in at least one other place in the district affected, at least ten days before the election, the names of all candidates for the Tribal Council.

SEC. 5. The Tribal Council or the election board appointed by the Tribal Council shall certify to the election of the members of the Tribal Council within five days after the election returns.

SEC. 6. Any member of the Yomba Shoshone Tribe 21 years of age or over, who possesses one-half or more degree of Shoshone Indian blood, who has been designated by the Secretary of the Interior as eligible for residence on lands purchased heretofore or hereafter for the benefit of landless Shoshone Indians, and who has maintained legal residence on the reservation for at least one year immediately prior to any election, shall have the right to vote, provided that at the first election the one-year residence rule shall not apply.

ARTICLE V—VACANCIES AND REMOVAL FROM OFFICE

SECTION 1. If a councilman or an official shall die, resign, be removed or recalled from office, permanently leave the reservation, or be found guilty of a felony or misdemeanor involving dishonesty in any Indian, State or Federal court, the Tribal Council shall declare the position vacant and an election shall be held by the appropriate district or body to fill the unexpired term.

SEC. 2. The Tribal Council may by four affirmative votes remove any official or expel any member of the Council for neglect of duty or gross misconduct. Before any such vote is taken on the matter, the member or official shall be given a written statement of the charges against him at least five days before the meeting of the Tribal Council before which he is to appear, and he shall be given an opportunity to answer any and all charges at such designated Council meeting. The decision of the Tribal Council shall be final.

SEC. 3. Upon receipt of a petition signed by one-third of the eligible voters in any district calling for the recall of any member of the Council, representing said district, it shall be the duty of the Council to call an election on said recall petition. No member may be recalled in any such election unless at least 30 percent of the legal voters of the district shall vote at such election.

ARTICLE VI—DUTIES AND POWERS OF THE TRIBAL COUNCIL

SECTION 1. *Enumerated Powers.*—The Yomba Tribal Council shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached by-laws:

(*a*) To negotiate with the Federal, State, and local governments on behalf of the Tribe, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the Yomba Shoshone Tribe.

(*b*) To employ legal counsel for the protection and advancement of the rights of the Yomba Shoshone Tribe, the choice of counsel

and the fixing of fees to be subject to the approval of the Secretary of the Interior.

(*c*) To approve or veto any sale, disposition, lease or encumbrance of tribal lands, interests in lands or other tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other qualified official or agency of government; *Provided*, That no reservation lands shall ever be leased for a longer period than permitted by law, or sold or encumbered, except for governmental or public service purposes.

(*d*) To confer with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Tribe prior to the submission of such estimates to the Bureau of the Budget and to Congress.

(*e*) To manage all economic affairs and enterprises of the Yomba Shoshone Tribe of the Yomba Reservation in accordance with the terms of a charter that may be issued to the Tribe by the Secretary of the Interior.

(*f*) To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Yomba Shoshone Tribe within the Yomba Reservation; providing for the manner of making, holding and revoking assignments of tribal land or interests therein; providing for the levying of assessments for the use of tribal privileges and property and the appropriation of available tribal funds for public purposes; providing for the licensing of nonmembers coming upon the reservation for the purpose of hunting, fishing, trading, or other business, and for the exclusion from the reservation of all persons not so licensed; and providing for the establishment of proper agencies for law enforcement within the jurisdiction of the Tribe.

(*g*) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the Tribe, any of the foregoing powers, reserving the right to review any actions taken by virtue of such designated power.

(*h*) To adopt resolutions not inconsistent with this Constitution and By-laws, regulating the procedure of the Council itself and all other tribal agencies and tribal officers, and to exercise such duties as are conferred upon the Council by the By-laws.

SEC. 2. *Future Powers.*—The Yomba Shoshone Tribe may exercise such further powers as may in the future be delegated to the Council by members of the Tribe or by the Secretary of the Interior, or any other duly authorized official or agency of the State or Federal government.

SEC. 3. *Reserved Powers.*—Any rights and powers heretofore vested in the Indians eligible to reside on the Yomba Reservation in accordance with the Proclamation of October 27, 1938, but not expressly referred to in this Constitution, shall not be abridged by this Article, but may be exercised by the people of the Yomba Reservation through the adoption of appropriate by-laws and constitutional amendments.

SEC. 4. *Manner of Review.*—Any resolution or ordinance which by the terms of this Constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Carson Indian Agency, who shall, within ten days thereafter, approve or disapprove the same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of same bearing his endorsement to the Secretary of the Interior, who may, within ninety days from the date of enactment, rescind the said ordinance or resolution for any cause by notifying the Council of such decision. If the Superintendent shall refuse to approve any ordinance or resolution within ten days after its enactment, he shall advise the Council of his reasons therefor. If these reasons appear to the Council insufficient, it may, by majority vote, refer the ordinance or resolution to the Secretary of the Interior, who may, within ninety days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

ARTICLE VII—TRIBAL LANDS

SECTION 1. The lands of the Yomba Shoshone Tribe now held or hereafter acquired by the Yomba Shoshone Tribe, or by the United States in trust for said tribe, shall be held as tribal lands and shall be used in accordance with a land-use agreement entered into between the Tribe and the Secretary of the Interior, and no part of such lands shall be mortgaged or sold. Tribal lands shall not be allotted to individual Indians, but may be assigned to members of the Tribe, or leased, or otherwise used by the Tribe, as hereinafter provided.

SEC. 2. Tribal lands not immediately required for assignments or for tribal or cooperative grazing use, may be leased by the Tribal Council, with the approval of the Secretary of the Interior, for such periods of time as are permitted by law.

In the leasing of tribal lands, preference shall be given, first, to cooperative associations composed of members of the Yomba Shoshone Tribe, and secondly, to individual Indians who are members of the tribe. No lease of tribal land to nonmembers shall be made by the Council unless it shall appear that no cooperative associations or individual members of the Tribe are able and willing to use the land and to pay a reasonable fee for such use.

Grazing permits covering tribal land may be issued by the Council with the approval of the Secretary of the Interior, in the same manner as leases.

SEC. 3. In any assignments of tribal lands which are now owned by the Tribe or which may hereafter be acquired for the Tribe by the United States, or purchased by the Tribe out of tribal funds, preference shall be given, first, to heads of families who are entirely landless, and secondly, to heads of families who have received assignments consisting of less than an economic unit of agricultural land, or other land or interest in land. Bull

The Tribal Council, may, if it sees fit, charge a fee of not to exceed five dollars on approval of an assignment made under this section.

Assignments made under this section shall be for the primary purpose of establishing homes for landless Indians.

SEC. 4. If any member of the Tribe holding an assignment of land shall, for a period of one year, fail to use the land so assigned, the assignment may be cancelled by the Council after due notice and an opportunity to be heard, and the said land may be reassigned in accordance with the provisions of section 3 of this Article. Revoca-

tion of an assignment may be appealed by the assignee to the Commissioner of Indian Affairs, who shall upon receiving such an appeal establish a board composed of three members, one member to be named by the appellant, one by the tribal council, and a third member to be chosen by the first two, provided that this third member shall not be a member of the tribe and shall not be an employee of the Carson Indian Agency. The decision rendered by this Board of Appeals shall be final. In case the two members first named fail to agree on a third member, the Commissioner of Indian Affairs shall make the appointment.

Upon the death of any Indian holding an assignment, his heirs or other individuals designated by him, by will or by written request, shall have a preference in the reassignment of the land, provided such persons are members of the Yomba Shoshone Tribe who would be eligible to receive an assignment.

SEC. 5. Applications for assignments shall be filed with the Secretary of the Council and shall be in writing, setting forth the name of the person or persons applying for the land and as accurate a description of the land desired as the circumstances will permit. Notices of all applications received by the Secretary of the Council shall be posted by him in at least two conspicuous places on the reservation for not less than twenty days before action is taken by the Council. Any member of the Tribe wishing to oppose the granting of an assignment shall do so in writing, setting forth his objections, to be filed with the Secretary of the Council, and may, if he so desires, appear before the Council to present evidence. The Secretary of the Council shall furnish the Superintendent or other officer in charge of the Agency a complete record of all action taken by the Council on applications for assignment of land, and a complete record of assignments shall be kept in the Agency office and shall be open for inspection by members of the Tribe.

Any member of the Tribe or the Superintendent may protest to the Commissioner of Indian Affairs against the action of the council on an assignment application within 30 days after such action has been taken. Upon receiving such a protest, the Commissioner shall authorize the creation of a Board of Appeals, one member to be named by the person making the protest, one to be named by the tribal council, and a third member to be chosen by the first two, provided that the third member shall not be affiliated with the tribe and shall not be employed in the Indian Service. The decision rendered by this Board of Appeals shall be final. In case the two members first named fail to agree on a third member, the Commissioner of Indian Affairs shall make the appointment.

ARTICLE VIII—REFERENDUM

Upon a petition of at least ten qualified voters of the Yomba Shoshone Tribe, a referendum may be demanded on any enacted or proposed ordinance or resolution of the Council, and the vote of a majority of the qualified voters voting in such referendum shall thereafter be conclusive and binding upon the Council.

ARTICLE IX—AMENDMENTS

SECTION 1. This Constitution and By-laws may be amended by a majority vote of the qualified voters of the Yomba Shoshone Tribe of the Yomba Reservation, voting at an election called for that purpose by the Secretary of the Interior; *Provided*, That at least 30 percent of those entitled to vote shall vote at such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

SEC. 2. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a petition signed by 25 percent of the qualified voters, members of the Tribe.

BY-LAWS OF THE YOMBA SHOSHONE TRIBE

ARTICLE I—DUTIES OF OFFICERS

SECTION 1. The Chairman of the Tribal Council shall preside over all meetings of the Council, perform all duties of a chairman, and exercise any authority delegated to him.

SEC. 2. The Vice-Chairman shall assist the chairman, when called upon so to do, and in the absence of the chairman, he shall preside. When so presiding, he shall have all the privileges, duties and responsibilities of the chairman.

SEC. 3. The Secretary of the Tribal Council shall conduct all correspondence and keep a complete and accurate record of all matters transacted at Council meetings. It shall be his duty to submit promptly to the Superintendent of the Carson Indian Agency and the Commissioner of Indian Affairs, copies of all minutes of regular and special meetings of the Tribal Council and the Tribe.

SEC. 4. The duties of the Treasurer shall be as follows: He shall accept, receive, receipt for, preserve and safeguard all funds for which the Council is acting as trustee or custodian. He shall deposit all such funds in such bank or elsewhere as directed by the Council; and he shall keep an accurate record, filing same in the Council's office, and he shall report all receipts and expenditures and accounts, and the nature of all funds in his possession or custody once every six months to the Council in writing, or at any time he is requested to do so by the Council. He shall be required to give a bond satisfactory to the Council and the Commissioner of Indian Affairs. Until the Treasurer is bonded, the Council may make such provision for the handling of funds of the tribe as shall guarantee their safety and proper disbursement and use.

SEC. 5. Newly elected Council members who have been duly certified shall be installed at the first regular meeting of the Council following the election.

SEC. 6. Each member of the Council and each officer or subordinate official, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath he shall pledge himself to support and defend the Constitution of the United States and this Constitution and By-laws.

Oath: "I, _____, do solemnly swear that I will

support and defend the Constitution of the United States against all enemies; that I will carry out faithfully and impartially the duties of my office to the best of my ability; that I will cooperate, promote, and protect the best interests of my Tribe, in accordance with its Constitution and By-laws."

SEC. 7. Regular meetings of the Tribal Council shall be held three times yearly in the months of March, July, and November, and at such other times as the Council shall by resolution provide, the exact day of meeting to be fixed by resolution.

SEC. 8. Special meetings may be called by written notice signed by the chairman, or by a majority of the Council, and when so called, the Council shall have power to transact business as in regular meetings. No business shall be transacted unless a quorum is present. A quorum shall consist of a majority of the entire membership of the Council.

SEC. 9. Order of business:

(*a*) Call to order by the Chairman
(*b*) Roll call
(*c*) Reading of minutes of the last meeting
(*d*) Unfinished business
(*e*) Reports
(*f*) New business
(*g*) Adjournment

SEC. 10. The Tribal Council may prescribe such salaries and expenses for officers or members of the Council as may be deemed advisable, from such funds as may be available.

ARTICLE II—ORDINANCES AND RESOLUTIONS

SECTION 1. All final decisions of the Council on matters of general and permanent interest to the members of the Tribe, shall be embodied in ordinances. Such ordinances shall be collected and published from time to time for the information and education of the members of the Tribe.

SEC. 2. All final decisions of the Council on matters of temporary interest, (such as action on the tribal budget for a single year, or petitions to Congress or the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoption of members, instructions for Council employees, or rules of order for the Council), shall be embodied in resolutions. Such resolutions shall be recorded in a special book which shall be open to public inspection.

SEC. 3. All questions of procedure (such as acceptance of committee reports or invitations to outsiders to speak) shall be decided by motion of the Council or by the ruling of the chairman, if no objection is heard. On all ordinances, resolutions, or motions, the Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure an unanimous agreement.

SEC. 4. Every ordinance shall begin with the words, "*Be it enacted by the Yomba Tribal Council* * * *". Every resolution shall begin with the words, "*Be it resolved by the Yomba Tribal Council* * * *".

ARTICLE III—ADOPTION OF CONSTITUTION AND BY-LAWS

This Constitution and By-laws shall be in full force and effect whenever a majority of the Shoshone Indians residing on the Yomba Reservation, Nevada, in accordance with the Proclamation of October 27, 1938, voting at an election called by the Secretary of the Interior in which at least 30 percent of the eligible voters shall vote, shall have ratified such Constitution and By-laws and the Secretary of the Interior shall have approved same, as provided in the Act of June 18, 1934, as amended by the Act of June 15, 1935.

I, Oscar L. Chapman, the Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached constitution and by-laws of the Yomba Shoshone Tribe.

All rules and regulations heretofore promulgated by the Interior Department or by the Office of Indian Affairs, so far as they may be incompatible with any of the provisions of the said constitution and by-laws will be inapplicable to these Indians from and after the date of their adoption thereof.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said constitution and by-laws.

Approval recommended December 18, 1939.

WALTER V. WOEHLKE,
Assistant to the Commissioner of Indian Affairs.

OSCAR L. CHAPMAN,
Assistant Secretary.
[SEAL]

WASHINGTON, D. C., *December 20, 1939.*

CERTIFICATION OF ADOPTION

Pursuant to an order, approved December 20, 1939, by the Assistant Secretary of the Interior, the attached constitution and by-laws was submitted for ratification to the Indians of the Yomba Reservation and was on December 22, 1939, duly approved by a vote of 30 for, and 0 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935.

HICKS DARROUGH,
Chairman, Election Board.

HOMER SAM,
Secretary, Election Board.

DON C. FOSTER,
Acting Superintendent, Carson Agency.

O

APPENDIX F

YOMBA TRIBAL COUNCIL RESOLUTION PROPOSING NEGOTIATED / LEGISLATED LAND SETTLEMENT

Yomba Shoshone Tribe
HC 61 Box 6275
Austin, NV 89310-9301
Tel. (702) 964-2463
Fax (702) 964-2443

RESOLUTION NO. YT-34-99

**RESOLUTION OF THE GOVERNING BODY
OF THE
YOMBA SHOSHSONE TRIBE**

WHEREAS: The Yomba Shoshone Tribe is organized under the provisions of the Indian Organization Act of June 18, 1934 (Stat. 984) as amended to exercise the certain rights of home rule and be responsible for the general welfare of it's membership; and

WHEREAS: The 1863 Treaty of Ruby Valley did not cede any ancestral lands of the Western Shoshone Nation to the United States; and

WHEREAS: The United States has never claimed to have extinguished the original Indian title of the Western Shoshone Nation to its ancestral lands by Treaty, conquest or Act of Congress as required by federal common law (e.g., United States vs. Santa Fe Pacific RR Co., 314 U.S. 339 (1941)); and

WHEREAS: On August 12, 1951, a claim was filed in the United States Indian Claims Commission by attorneys purporting to represent the Temoak Bands Council and seeking compensation for a "taking" of Western Shoshone ancestral lands, which claim was denominated Docket 326-K; and

WHEREAS: Throughout the litigation of Docket 326-K there was widespread Western Shoshone opposition to the claim because there had never been a purported of legally effective cession or "taking" of Western Shoshone ancestral lands; and

WHEREAS: On February 21, 1979, over the opposition of the Plaintiff, Temoak Bands Council, the United States Court of Claims rendered a final judgment in Docket 326-K awarding less than $27 million for a "taking" of Western Shoshone lands, which award was certified to the Untied States General Accounting Office on December 6, 1979; and

WHEREAS: On July 26, 1989, the Bureau of Indian Affairs held a "hearing of record" in Elko, Nevada on a plan to distribute the Docket 326-K Judgment Fend which hearing record reflects overwhelming opposition to the Judgment Fund distribution; and

WHEREAS: In 1992 Western Shoshone tribal governments unanimously opposed H.R. 3897, legislation introduced into the Untied States Congress that sought to distribute the Docket 326-K Judgment Fund for the reason that no Western Shoshone land rights settlement was included in such legislation; and

WHEREAS: On May 23 and 24, 1998, certain individual Western Shoshones characterizing themselves as the Western Shoshone Claims Distribution Steering Committee held meetings in Elko, Nevada and Fallon, Nevada and an "election" as to whether individual Western Shoshones want a per capita distribution of the Judgment Fund; and

WHEREAS: Such meeting and "election" was not authorized by the Temoak Bands Council or any other federally-recognized Western Shoshone tribal government, and therefore constitutes no more than an unofficial meeting called by individuals action entirely on their own; and

WHEREAS: The Yomba Shoshone Tribe opposed a distribution of the Judgment Fund in the absence of a land settlement as provided in H.R. 3897 in 1992 and continues to oppose a distribution in the absence of a land settlement; and

WHEREAS: On June 16, 1993 Interior Secretary Bruce Babbitt initiated land and money settlement negotiations with a coalition of Western Shoshones that included all federally-recognized Western Shoshone tribal governments and organizations and several negotiation meetings were held from 1994 through 1996; and

WHEREAS: The Western Shoshone land rights settlement negotiations terminated because the federal government failed to make any meaningful offer of settlement to the Western Shoshones; and

WHEREAS: Executive Memorandum of April 29, 1994 (Memorandum on Government-to-Government Relations with Native American Tribal Governments) pledges the federal government to maintain "government-to-government" relations with federally-recognized tribal governments and to notify and consult with such governments with respect to any actions of the federal government which may affect their interests; and

WHEREAS: No official notice of such meeting was given to any federally-recognized Western Shoshone tribal government has been consulted by the Secretary

of Interior, the Bureau of Indian Affairs or any other Western Shoshone tribal government, nor was any notice given of the involvement of the Bureau of Indian Affairs in such meeting; and

WHEREAS: No federally-recognized Western Shoshone tribal government has been consulted by the BIA with respect to a proposed distribution of the Judgment Fund, the holding of a meeting to discuss distribution, or the involvement of the BIA in efforts to distribute the Judgment Fund; and

WHEREAS: It appears that the Bureau of Indian Affairs is actively supporting individual Western Shoshone efforts to distribute the Judgment Fund without the involvement of federally-recognized Western Shoshone tribal governments and has drafted proposed legislation to distribute the Fund without a land settlement; and

WHEREAS: The involvement of the BIA in the meetings of May 23 and 24, 1998 and the active efforts of the BIA to distribute the Judgement Fund violate the federal government's pledge of government-to-government relations with Indian tribal governments as stated in the Executive Memorandum of April 29, 1994.

NOW THEREFORE BE IT RESOLVED: That the Yomba Shoshone Tribe hereby states its opposition to a distribution of the Docket 326-K Judgment Fund in the absence of a negotiated land settlement that substantially enlarges the Western Shoshone land base in Nevada; and

NOW THEREFORE BE IT FURTHER RESOLVED: That the BIA is hereby requested to stop any further efforts to plan for or distribute the Docket 326-K Judgment Fund in the absence of a negotiated land settlement; and

NOW THEREFORE BE IT FURTHER RESOLVED: That the Interior Department immediately begin land settlement negotiations with all federally-recognized Western Shoshone tribal governments.

CERTIFICATION

It is hereby certified that the Yomba Shoshone Tribal Council is the governing body of the Yomba Shoshone Tribe of Nevada and is composed of six members of whom 4 constituting a quorum were present at a duly held meeting on the 12th day of June 1999, and that the foregoing resolution was adopted by a majority vote of 3 for, 0 against, 1 abstentions.

Kevin Brady Sr
Tribal Chairman

APPENDIX G

LETTER DATED AUGUST 4, 1980, FROM JOHN MELCHER, CHAIRMAN, UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, TO RALPH R. REESER, ACTING DEPUTY ASSISTANT SECRETARY OF INDIAN AFFAIRS

JOHN MELCHER, MONTANA, CHAIRMAN
[illegible], HAWAII WILLIAM S. COHEN, MAINE
[illegible], ARIZ. MARK O. HATFIELD, OREG.
MAX L. RICHTMAN, STAFF DIRECTOR

T.S.

Rec'd Comm's Office [illegible]
AUG 20 1980

ROUTING 440 FOR [illegible]

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, D.C. 20510

Area Dir.		
Area Dir.		
Appraisal		
Credit		
Forestry		
Land Oper.		
Realty		
Roads		
Admin. Offr.		
Budget		
Finance		
Personnel		
Programs		
P&S/Contracts		
Comm. Serv.		
Empl. Asst.		
Housing		
Self-Gov. & Spec.	✓	
Claims		
EEO		
Educ.		

August 4, 1980

Ralph R. Reeser
Acting Deputy Assistant
Secretary of Indian Affairs
Office of the Secretary
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Reeser:

Thank you for your report on the Department's progress in the preparation of a plan for the distribution of judgment funds awarded the Western Shoshone in Docket No. 326-K before the Indian Claims Commission.

The Indian Judgment Fund Distribution Act of 1973, 87 Stat. 466, provides for a 90-day extension of time in which to submit the Department's plan to the Congress. As a general rule, such extensions are routinely granted upon Departmental request. However, there are several factors which weigh against granting the extension in this case.

It appears that a significant number of Western Shoshone people oppose acceptance of the award at this time. There is pending litigation in the case of U.S. v. Dann in the U.S. District Court for the district of Nevada in which title to certain land and the date of compensable taking are still in issue. The outcome of that case could clearly have a strong bearing on the course of action the Congress, the Department and the Western Shoshone people might wish to pursue.

An additional consideration involves the provisions of the 1973 Act itself. The Act provides that a distribution plan must lie before the appropriate Indian committee on both the House and Senate side for 60 working days. There are approximately 40 working days left in this Congress. If an extension was granted the new deadline for submission would be September 14th. It is doubtful such a deadline could be met, but, in addition, it appears a legal issue has been raised with respect to counting days in the present 96th Congress with days in the approaching 97th Congress in order to achieve the necessary 60-day period. This may not be an insurmountable obstacle, but under the

circumstances it would appear that this could lead to legal challenges that could further tie up the resolution of this claim and the distribution of the award.

Under these circumstances, it is my conclusion that the extension should not be granted. I trust the Department will submit appropriate legislation early in the 97th Congress.

With best regards,

Sincerely,

John Melcher

John Melcher
Chairman

APPENDIX H

LIST OF WESTERN SHOSHONE REPORTED LEGAL DECISIONS

APPENDIX H

WESTERN SHOSHONE LAND RIGHTS ISSUES
LIST OF COURT DECISIONS

A. Decisions of the Indian Claims Commission

1. Shoshone Tribe v. United States, 11 Ind. Cl. Comm. 387 (1962) (the original opinion of the ICC defining the aboriginal area of the Shoshone Indians and determining liability).

2. Western Shoshone Identifiable Group v. United States, 29 Ind. Cl. Comm. 5 (1972) (opinion determining the value of the Western Shoshone aboriginal lands).

3. Western Shoshone Identifiable Group, Represented by the Temoak Bands of Western Shoshone Indians, Nevada and Western Shoshone Legal Defense and Education Association and Frank Temoke v. United States, 35 Ind. Cl. Comm. 457 (1975), aff'd sub nom., Western Shoshone Legal Defense & Education Assoc. v. United States and Western Shoshone Identifiable Group, 531 F. 2d 495 (Ct. Cl. 1976), cert. denied, 429 U.S. 885 (1976) (denying the Western Shoshone Legal Defense & Education Association motion to intervene).

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5. Western Shoshone Identifiable Group v. United States, 40 Ind. Cl. Comm. 311 (1977), aff'd sub nom., Temoak Bands of Western Shoshone Indians, Nevada v. United States and Western Shoshone Identifiable Group Represented by the Temoak Bands of Western Indians, Nevada, 593 F.2d 994 (Ct. Cl. 1979), cert. denied, 444 U.S. 973 (1979) (decision on valuation of minerals taken from Western Shoshone lands prior to July 1, 1872).

B. Decisions of the Court of Claims

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2. Temoak Bands of Western Shoshone Indians, Nevada v. United States and Western Shoshone Identifiable Group Represented by the Temoak Bands of Western Indians, Nevada, 593 F.2d 994 (Ct. Cl. 1979), cert. denied, 444 U.S. 973 (1979) (affirming denial of plaintiff Temoak Bands' motion to stay proceedings pending determination of title and affirming decision on valuation of minerals taken from Western Shoshone lands prior to July 1, 1872).

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2. United States v. Dann, 706 F.2d 919, (9th Cir. 1983), rev'd on other grounds, 470 U.S. 39 (1985) (Dann II).

3. United States v. Dann, 105 S.Ct. 1058, 470 U.S. 39 (1985).

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APPENDIX I

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APPENDIX I

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APPENDIX J

CONGRESSIONAL CORRESPONDENCE SUPPORTING NEGOTIATED / LEGISLATED LAND SETTLEMENT

JAN- 7-94 FRI 17:51 Karl A Funke & Assoc. P.05
JAN 7 '94 16:08 FROM INTERIOR-INDIANS PAGE.003

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THOMAS M. FOLEY, WASHINGTON

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515-6201

January 7, 1994

DON YOUNG, ALASKA
RANKING REPUBLICAN MEMBER
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JOHN LANGSTAFF
STAFF DIRECTOR
RICHARD MEYER
GENERAL COUNSEL
DANIEL VAL KISH
REPUBLICAN STAFF DIRECTOR

The Honorable Bruce Babbitt
U.S. Department of the Interior
18th and C Streets, NW
Washington, D.C. 20240

Dear Secretary Babbitt,

I am writing in full support of your decision to take on the problems facing the Western Shoshone Indians. As you know, in 1979 the Western Shoshone were awarded funds for the taking of a large portion of the State of Nevada. The tribes have consistently refused to accept these funds which continue to collect interest in the U. S. Treasury. The plight of the Western Shoshone is one of the most difficult problems in all of Indian affairs.

As you prepare to tackle this matter, I respectfully make the following suggestions. First, I urge you to deal only with the Federally recognized tribes on this matter. The 1863 Treaty of Ruby Valley was made with tribal governments. I strongly suggest that only the tribal leaders of the Duckwater Shoshone Tribal Council, the Ely Colony Council, the Yomba Tribal Council and the four constituent Bands of the Temoak Tribe of Western Shoshone Indians (the Battle Mountain Band, the Elko Band, the South Fork Band and the Wells Indian Colony) be included in negotiations. It has been the experience of this Committee that expanding the scope of the discussions of the Western Shoshone issues beyond the tribal governments to include individuals tends to be extremely unproductive. Given the government-to-government nature of Federal-Indian affairs, the inclusion of individuals in negotiations is both unnecessary and inconsistent with Federal Indian policy.

Second, the issues facing the Western Shoshone include the loss of land and the loss of other Treaty rights. This is not merely a matter of distributing judgment funds. In hearings before this Committee, Members have commented that the Western Shoshone should be provided with some land base. I feel it is of paramount importance that the docket funds of the Western Shoshone should not merely be divided up on a per capita basis and distributed. The Subcommittee on Native American Affairs generally would frown on any plan that does not include provisions for tribal economic development and long range economic planning.

The Honorable Bruce Babbitt
January 7, 1994
Page 2

I look forward to working with you on this matter and wish you well as you meet with the Western Shoshone tribal governments on this most difficult problem. Thank you for your kind consideration of these comments.

Sincerely,

Bill RICHARDSON
Chairman
Subcommittee on Native American Affairs

12/17/93 12:02 INDN AFFAIRS U.S. SENATE → 505 842 6 NO. 478

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United States Senate

COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

November 23, 1993

The Honorable Bruce Babbitt
Secretary
U.S. Department of the Interior
1849 C. Street, N.W.
Washington, DC 20240

Dear Mr. Secretary:

We have been advised that you have agreed to schedule a meeting in Washington on or about December 3, 1993, to begin discussions that might lead to the resolution of outstanding claims of the Western Shoshone against the United States. We very much appreciate your taking the time out of your busy schedule to address this important matter.

Although we have sought independently to address this issue for more than a decade of our respective congressional careers, for the last eighteen months we have joined forces, working together to meet with elected leaders of the Shoshone tribal governments to explore the possibility for a comprehensive solution to the Western Shoshone claims. Our experiences have led us to conclude that the Department of Interior must play a leading role in a federal/tribal negotiation process to assist in the development of a Western Shoshone settlement.

We memorialized our conclusions in a letter to then Secretary Lujan on December 3, 1992, formally requesting his action to appoint a federal team to begin settlement negotiations with elected representatives of the Western Shoshone tribal governments. We were pleased with his positive response, and were heartened by your letter of June 16, 1993, providing your written commitment to undertake a process to seek a resolution of the issues involving the Western Shoshone.

Although we are well aware that there are many parties with an interest in the resolution of the Western Shoshone claims, we believe that the government-to-government relationship between the United States and Indian tribal governments requires that representatives of the federal government first seek direction from the elected representatives of the Western Shoshone tribal governments. This is the policy we have adopted and pursued for more than a year; this is the course of action we have advanced in numerous discussions between our staff and yours over the past eight

months. Further, this is the policy we have publicly communicated to the press and to all those who have expressed to us their interest in the Western Shoshone claims issue. Thus, we would hope that you might elect to have this first meeting with the elected representatives of the Western Shoshone tribal governments.

While we support the primacy of the role of the Western Shoshone tribal governments in a federal/tribal negotiations process, we understand that a comprehensive settlement of the Western Shoshone claims against the United States will require an inclusive rather than exclusive approach, particularly when specific issues of concern to various other interested parties are being addressed. Nonetheless, we support the efforts of the elected leaders of the Western Shoshone tribal governments to enlist your assistance as they attempt to work toward resolution of the Western Shoshone claims against the United States and believe that they deserve an opportunity to participate in a meeting in which you and they might share your respective views, in accordance with the unique character of the government-to-government relationship.

We appreciate your consideration of our views.

Sincerely,

HARRY REID
Member

DANIEL K. INOUYE
Chairman

06/07/93 11:51 INDIAN AFFAIRS U.S. SENATE → 7026358016 P.002
NO. 486

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United States Senate
COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

June 1, 1993

The Honorable Bruce Babbitt
Secretary of the Interior
Main Interior Building, Room 6151
1849 C Streets N.W.
Washington, DC 20240

Dear Mr. Secretary:

I am writing in follow-up to our May 25th meeting with regard to your agreement to designate a federal negotiating team for the purpose of attempting to resolve the claims of the Western Shoshones.

I have been contacted by Western Shoshone tribal leaders who will be meeting next weekend in Nevada to discuss claims issues, requesting my assistance in securing documentation of your agreement to establish a federal negotiations team. If you are amenable, your letter of confirmation could be sent to my office so that I might make it available to the Western Shoshones prior to their meeting.

I very much appreciate your willingness to assist the Western Shoshone tribal governments in resolving these matters of long-standing concern and importance to them.

Sincerely,

DANIEL K. INOUYE
Chairman

DANIEL K. INOUYE, HAWAII, CHAIRMAN
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STAFF DIRECTOR/CHIEF COUNSEL
DANIEL N. LEWIS, MINORITY STAFF DIRECTOR

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

December 3, 1992

The Honorable Manuel Lujan, Jr.
Secretary
Department of the Interior
Room 6151 Main Interior Building
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

We are writing to request your action to appoint a federal team to begin settlement negotiations with representatives of the Shoshone tribal governments that might lead to the resolution of the outstanding claims of the Shoshone people against the United States. We hope that you share our view that Western Shoshone land claim negotiations should proceed expeditiously.

During a meeting held in Washington yesterday, elected representatives of the Western Shoshone tribal governments voiced their support for a comprehensive solution to the Western Shoshone claims and expressed their willingness to enter into a federal/tribal negotiations process. Accordingly, we believe it is imperative for the Congress, Shoshone tribal governments and the Department of the Interior to begin working together toward development of a Western Shoshone settlement initiative without delay. We would also very much appreciate your directive to the Director of the Bureau of Land Management to proceed with the negotiation of an interim agreement with the Duckwater Tribe.

Thank you very much for your favorable consideration of our request, we look forward to receiving your reply.

Sincerely,

HARRY REID
Member

DANIEL K. INOUYE
Chairman

RICHARD BRYAN
U.S. Senator

JUN-22-1992 10:22 FROM TO 12026426124 P.02

DANIEL K. INOUYE, HAWAII, CHAIRMAN
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STAFF DIRECTOR AND CHIEF COUNSEL
DAVID M. ROSS, MINORITY STAFF DIRECTOR

United States Senate

SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510-6450

June 22, 1992

Mr. Tim Glidden
Counselor to the Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Glidden:

I am writing to request the assistance of the Department of the Interior in negotiations to resolve the claims of the Western Shoshone against the United States.

It appears that there is a consensus growing among leaders of Shoshone tribal governments and other interested parties toward a comprehensive solution to the Western Shoshone claims. At the request of Senators Reid and Bryan, I have agreed to help facilitate a series of meetings with tribal leaders and others regarding the outstanding claims of the Western Shoshone against the United States.

I believe it is imperative for the Committee, Shoshone tribal governments and the Department of the Interior to work together toward development of a Western Shoshone legislative initiative. Accordingly, I am requesting the establishment of an inter-agency negotiations team which will not only assist in the development of a legislative proposal, but will continue throughout the legislative process to work toward the resolution of any federal issues which may arise.

I look forward to working with you.

Sincerely,

DANIEL K. INOUYE
Chairman

APPENDIX K

DOCUMENTARY FILMS ON WESTERN SHOSHONE LAND RIGHTS STRUGGLE — TITLES AND BRIEF DESCRIPTIONS

APPENDIX K

DOCUMENTARY FILMS ON THE WESTERN SHOSHONE LAND RIGHTS STRUGGLE

1. "Broken Treaty at Battle Mountain," 1974, Cinnamon Productions, Inc. Produced and directed by Joel Freedman.

This 60 minute film delineates the recent history of the Western Shoshone people--those who have sworn to uphold the ancient ways--in their efforts to recover ancestral lands and rights now disputed by U.S. governmental agencies. The film documents the views of Shoshones, including interviews with elders and leaders, regarding the proceedings of the Indian Claims Commission and the destruction of pinon forests on their ancestral lands. The treaty referred to in the title is the 1863 Treaty of Ruby Valley.

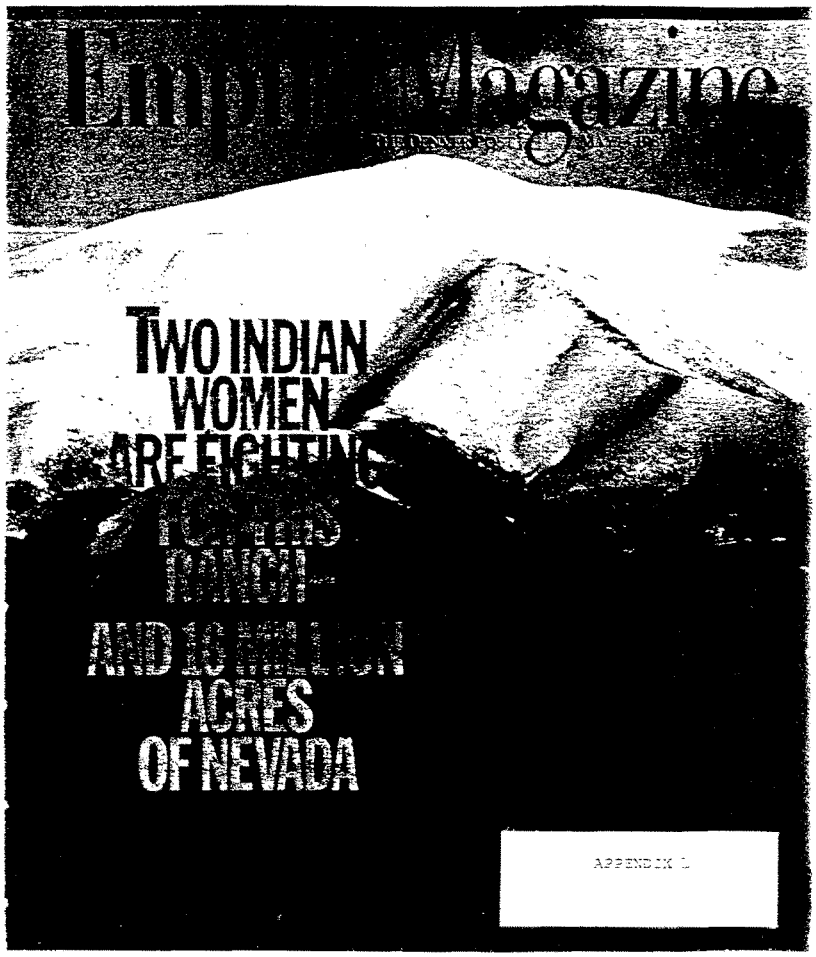
2. "To Protect Mother Earth: Broken Treaty at Battle Mountain II," 1989, Cinnamon Productions, Inc. Produced by Ann Maytag and Joel Freedman.

This second Freedman film continues the story of the Western Shoshones' struggle to recover ancestral lands and rights. Freedman records the Dann sisters' resistance to government efforts to prevent them from grazing livestock on lands claimed by the government without paying grazing fees. The film also traces the intricate court cases concerning Western Shoshone land title and rights as well as the actions by Western Shoshones in protesting the decisions and findings by the ICC and the courts.

Both films can be obtained from Cinnamon Productions, Inc., 508 E. Broadway, N.Y., N.Y. 10012, Ph. (212) 431-4899.

APPENDIX L

ARTICLE - "TWO INDIAN SISTERS ARE FIGHTING FOR THIS RANCH --
AND 16 MILLION ACRES OF NEVADA,"
THE DENVER POST EMPIRE MAGAZINE, MAY 13, 1984


Empire Magazine
TWO INDIAN WOMEN ARE FIGHTING FOR HIS RANCH—
AND 13 MILLION ACRES OF NEVADA

APPENDIX L

THE SIXTEEN MILLION-

[illegible]

Northern Nevada is an unlikely place for a bitter land battle. A person could go for days in this state without seeing another human being — and you can see a long way out here. The land is bare, since precipitation is about as common as people. Mary Dunn must have been surprised that afternoon in 1973 when she rode out to check on her herd and saw the man from the federal government waiting for her.

He asked for her grazing permit. She didn't have one. "You're trespassing," said the man from the Bureau of Land Management.

"No, I'm not," Mary said. "This is our land. If there's anyone we might be trespassing against, it'd be the Paiutes." The government man told Mary to get a license for grazing her cattle.

"No," said Mary. "It's my land." He told her to go to the BLM advisory board.

ACRE QUESTION

that maybe they could work something out.

"No," she said. "I'm not going."

She didn't go to the advisory board, and the United States eventually filed suit against the Dann sisters, Mary and Carrie, for trespassing. Ten years later, the U.S. Supreme Court has been asked to take a look at the case. If the Danns win, there will be a good moral — and legal — argument that they and their fellow Western Shoshone Indians own more than sixteen million acres of Nevada, an area larger than Massachusetts, Connecticut, Rhode Island, and New Jersey combined. The Western Shoshone maintain that the land belongs to them, if for no other reason than because the government forgot to steal it from them, and one of the highest courts in the land agrees with them. In more populated areas of the country, pieces of paper prove that land was appropriated, or battles were fought in which U.S. armies conquered Indian tribes. In this case, no one has been able to identify any documents or battles that indicate the acreage was taken.

The Western Shoshone land battle is a complicated tale that weaves its way through a huge cultural gap and the delicate question of equity for Indians. The players include Indian claims lawyers who, to many of the Shoshone, appeared more interested in their huge fees than in what their clients wanted. And, of course, there are Mary and Carrie Dann, who stood up to the U.S. government because, they said, they had no choice. "Had it not been for the Danns, the Western

Shoshone wouldn't be in a position of strength," says tribal leader Raymond Yowell. "They laid their personal lives and everything they had on the line for the Western Shoshone."

"I WAS BORN here," Carrie Dann says. "Our people have been here from the time the living things started. Our belief says that the Creator placed different people in different places on the earth. It's simple. We look at you as visitors." The Danns and their family live in a world governed by the seasons, by ancient ritual and belief. It is a harmonious existence when they do not have to deal with the white world. Although they are nearly self-sufficient, the Danns raise cattle for sale, drive automobiles, deal with banks.

Their land is eighty miles from Elko, Nevada, down long, straight stretches of empty roads. You pass through towns that loom large on the maps, dots that would mean bustling metropolises elsewhere. In Nevada, those dots usually mean a couple of houses, maybe a broken gas pump, a cafe. The instructions for finding the Dann place end by telling the prospective visitor to drive to the only clump of trees in the valley.

The trees and the simple, rough houses on the Dann homestead are dwarfed by the Cortez Mountains rising behind them. Across the wide valley, other mountain ranges color the distance. It is a world of sweep and grace and terrible barrenness. This is where Mary and Carrie Dann and their relatives have made their lives for centuries. Now, they have one hundred eighty acres their father homesteaded to keep other ranchers from running them off, but they use land as far as the eye can see — or, as Carrie puts it, as far as she can see from a pickup truck — for grazing horses and cows, gathering herbs for medicine, finding food such as pine nuts and wild asparagus.

The homestead's buildings house about fifteen Danns, assorted sisters and cousins and nephews. There are two hired hands. Surrounding the houses are barns, trucks, and decades worth of ranching debris, with an emphasis on rusted cars and machinery. A summer or so ago some of the boys built a generator that hums nearby. The Danns say they don't know how many horses and cows they have, but other estimates peg the Dann herds at about eight hundred horses and a breeding herd of six hundred cows.

What the Danns want is clear title to what they say belongs to them and their tribe, the Western Shoshone. Mary and Carrie are more traditional than some of the tribe's members, and because of that — and because they are outspoken — they have been in the center of the controversy. Being traditional to them means that under no circumstances will they accept money from the sale of land, as some of their fellow Western Shoshone would like to do.

To the Danns' way of thinking, land is not something that can be sold. That belief, which forms the basis of their religion, gives them moral certainty. "Whoever heard of buying a church?" Mary asks.

"Earth is a spiritual being," Carrie says. "When a child is born it feeds on its mother, but you can only feed on your human mother so long. Then you live on mother earth."

This viewpoint is foreign to white America, and that fundamental gap in belief has affected the decades-long struggle between the United States and the Shoshone — and between the Shoshone and the various lawyers who have represented them. "I have to explain to them the way the white European tradition works," says attorney John O'Connell, who represents the Danns. "We push until somebody pushes back." O'Connell says he has been shocked by the form the cultural gap has taken. "In 1977 in a meeting, a Western Shoshone man said, 'If we don't stop with this business, they'll send soldiers to kill us.' I was overwhelmed with shame that people inside this country believed if they stood up for what was theirs, the government would kill them."

INSIDE THE sisters' house, Carrie is sitting at the Formica table in the kitchen while Mary is out feeding the new calves. Carrie's daughter, Patricia, dries the dishes and listens. There is a strong sense of continuity here, a sense that the only time that matters is the light changing into days and then into seasons. Carrie can remember when her grandmother came to live with them. "We were fortunate," she says. "She had four daughters and she chose us. Grandma would sit at the kitchen table and tell stories every day. I don't remember them all, but now that I'm a grandmother it's my job to pass it on." On the Danns' living room wall, in a place of honor near the television, is a tinted picture of their grandmother, a stern, strong-looking woman beside a teepee.

John O'Connell offers what he calls an amateur anthropologist's explanation for the crucial role the Danns have played in the Western Shoshone land drama: "Among oppressed people, the women do the fighting. The men are cut down first, so they keep their mouths shut. Grandmothers don't get involved unless it's really wrong and really bad."

Carrie is the indefatigable spirit in the family, a sharp-witted, vocal woman who wears her tennis shoes, sweatshirt, and pants whether she's on the land or in court. She has black hair that is just beginning to shine with strands of silver, a broad smile, and a warm brown face carved with the lines of her fifty years.

Carrie was married for years, then got divorced. "I'll probably never get married again," she says. "I've been the boss too long." During her marriage, she gave birth to Patricia and a twelve-year-old son, Mark, who is severely retarded. "The

debris from decades of ranching

doctors told me that he'd never live," she says. "When they saw he was still alive after years, they said it was because of love."

Her sister Mary is about ten years older. She's quiet, but will interject to support Carrie's recital of an indignity perpetrated by a lawyer or the government. Although Mary is shy and somewhat solemn, a smile can split her face as wide as the Nevada skies. The world of law and commerce does not interest her, except as it deals with her land. Her manner is somewhat uncomfortable, even rough, when she is inside the tar-papered house. She would rather be on the range, where sweet and sharp smells waft up whenever the sagebrush rustles.

The life the Danns lead now is not so different from the life they lived growing up. By then, the family had become an economic part of the white world by raising cattle, but horses had not yet been replaced by automobiles. Carrie raised sheep as a youngster, spending hours in the hills overlooking the homestead, although she graduated from high school.

"I used to love government, the way the United States government was set up," Carrie says. "But somewhere along the line the United States government said we weren't people. Somewhere along the line I got bitter." She went to school thinking she was a Christian, like everybody else, until she realized that meant believing Jesus Christ was the son of God. "Today I look at Jesus Christ as one of the greatest medicine men of the whites," she says.

She remembers as a child her parents going to a meeting once or twice a year to discuss progress on enforcing the Treaty of Ruby Valley, which the Western Shoshone signed with the government in 1863. The treaty says that whites may pass through Shoshone territory in peace, that mines, railroads, military posts, and ranches built by the whites shall be allowed, and that the United States is willing to fairly compensate the Indians for disrupting the wild game and farming the settlements by giving the Shoshone $5,000 yearly for twenty years.

In 1932, the Western Shoshone hired lawyer Milton Badt to enforce their treaty rights. Robert Barker, a Washington, D.C., lawyer who joined the case in 1948 and worked on it for thirty-three years, says that at first Badt wanted to get the Indians back their land. But "in the course of some senatorial hearings in Nevada . . . where he was seeking land," Barker says, Badt "was in effect advised by the committee he probably couldn't get land, but he might want to consider suing the United States for damages."

According to Barker, Badt's firm helped develop the Indian Claims Commission, which was formed in 1946. The commission is empowered to give Indians money for land taken from them, but title to land requires an act of Congress. Attorney Tom Luebben, who represents a group of traditional Shoshone, calls the commission the "Lawyers Relief Act." He says it is set up so "the more you can prove your clients don't own, the more money you make." O'Connell takes the same dim view of the commission: "In Washington, it's conceded that the Indian Claims Commission ripped off the Indians."

In 1951, a suit was filed with the claims commission to get money for the land taken from the Western Shoshone. According to tribal members, it became clear that the Shoshone had different ideas of what was going on. Some believed that the money would reimburse the Indians for damages under the treaty — and the land was still theirs. Other Shoshone maintain that the lawyers told them their land had been taken decades ago, and the only recourse was to get money. "When I was twelve years old, the grandfathers talked about a claim," says tribal leader Raymond Yowell. "It was kind of a mystery. They didn't understand what was happening."

Barker, however, says the Western Shoshone knew exactly what was going on. "We had many meetings with them," Barker says. "They knew of the efforts to get land, and realized they were dead ends, and felt this was the only solution for them." Barker has said in court, however, that the Shoshone told him they wanted their land.

Carrie and Mary maintain that had the Shoshone known what Barker was up to, they would have rebelled against the lawyer back in the 1950s. The Shoshone, though, have always been an isolated group with little sophistication, largely because of their unpopulated homeland. When the lawyers were first hired, very few of the Shoshone understood the legal system. Today, many do.

As the petition wound its way through the commission, more Shoshone began to disagree with the lawyers. Barker says a few people such as Carrie Dann had been vocal opponents since he became involved. "I despised that man," Carrie says. "He stood up there and told us the government had taken the land."

"I asked him when," Mary adds. "He didn't say."

"Finally I talked to the Indians," Carrie says. "'This man is telling us lots of lies. If you want to listen to him, OK. I'm leaving.'" Barker says Carrie was just frustrated because no one agreed with her.

For the next few years, the Shoshone continued to watch the seasons come and go in the Nevada desert. The claims commission came to the conclusion that the land was taken from the Shoshones by the "gradual encroachment of white settlers." According to Barker, "There was a strong feeling in the 1940s and 1950s" that if a federal agency such as the Bureau of Land Management patrolled lands, that meant the federal government owned them.

"The idea of encroachment by white settlers is utterly absurd," Luebben says. "The federal government, not white settlers, is sitting on sixteen million acres." According to O'Connell, even under the theory of gradual encroachment the Danns still owned their grazing lands until 1973, because the BLM had never asked for their grazing permits.

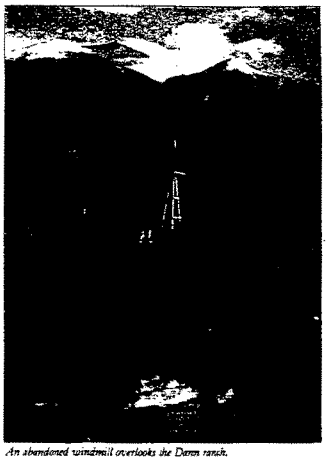
The Shoshone at this point were bitterly divided. They were a tribe without a history of conflict, but the question of the claim had split the traditionals from the more progressive factions. In the past, the Shoshone had a system of decision-making by consensus, but that form of governance had fallen apart.

The traditional method of disagreement in Shoshone leadership meetings was just to walk out, a method of problem-solving easy to understand in a land so large that neighbors can avoid each other for decades if they wish. Barker and the other claims lawyers either did not understand or disregarded this custom. As a result, O'Connell and Luebben say, decisions were made by only those who remained — those who supported the claims lawyers.

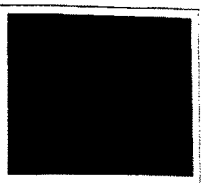
While Barker worked on the claim, the BLM kept writing the Danns, threatening to take the cattle off the land if the Danns wouldn't. "I wrote them back finally that if they thought they were God, to take them off," Carrie says. The BLM didn't remove the cows, but set a date for a trespassing hearing.

As the time for the hearing neared, the sisters began to realize they needed a lawyer. Finally, the Danns found a Salt Lake City lawyer named John O'Connell who was sympathetic but had never practiced Indian law.

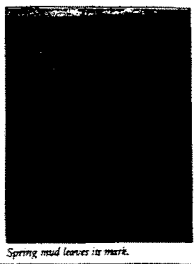
O'Connell soon found himself involved in what has become a decade-long obsession. First, he decided the trespassing charge was a good way to try the Danns' claim that they owned the land. The Indian Claims Commission, which had been processing the money claim, cannot deal with property law. "To me, the Dann case was a good old-fashioned property law case," O'Connell says. "It's very simple. There's been one owner since the dawn of time. They're in possession. What could be more simple?"



An abandoned windmill overlooks the Dann ranch.



A golden eagle soars over the road to the Danns' ranch.



Spring mud leaves its mark.

After Carrie and Mary's case was filed, tribal sympathies shifted as the Western Shoshone began to think there was another way to resolve the land question besides admitting the land was gone. "For a long time the Danns were viewed as people who were holding back the money payment," says tribal leader Raymond Yowell. "Then they showed the Western Shoshone they were right all along." Yowell had been one of those disagreeing with the Danns, but "The more I got involved the more it didn't ring right. The more I got involved the more of a ripoff I knew it was," he says. The Shoshone who disagreed with the claim became energized by the Dann case and formed the Sacred Lands Association to prove the land still belongs to them.

O'CONNELL SAYS he tried to work with Barker to allow those who wanted land and those who wanted money to be satisfied, but Barker refused. Barker says splitting up the case was technically impossible. According to O'Connell, "They got so used to suing for money, they didn't consider people like the Danns, people who would lose something."

The Temoak Bands fired Robert Barker in 1976. "I believed that the lawyers were hired to do what the Indians asked them to do. But they didn't. They did what they pleased and told us we didn't have any land," said Shoshone elder Saggie Williams. Cherokee John Pope, who is married to a Western Shoshone woman, said Barker "often got angry. When he got angry he would use a lot of words no one in the audience understood."

The Temoak Bands had been designated the representative of the tribe, but when Barker was fired, he said the bands no longer represented the Western Shoshone because they had gone against the wishes of the majority. Barker began working for a group that supported him; the other Shoshone charged the group was designed and controlled by Barker.

In 1979 the Indian Claims Commission awarded the Western Shoshone $26 million for their land, but they never got it. An act of Congress is required to hand out the money, and a congressional committee that routinely approves payment decided not to because the Shoshone disagreed on what they wanted. The majority of the Shoshone say they will not accept the money.

The Dann case ended up in the 9th Circuit Court of Appeals, which ruled that the government had not shown that the Indians ever lost title to their land, and that the Shoshone owned the land because they had never been paid.

The government is appealing the decision to the

U.S. Supreme Court, saying that since the Shoshone were awarded the $26 million, payment for the land has been made and the Shoshone don't own it. The Supreme Court is expected to rule soon on whether it will hear the case.

The land claim runs smack into a huge moral and legal dilemma for the government. Luebben says, "You can't purport to have a democratic nation where you give everybody citizenship and then appropriate assets of one class for the benefit of another class." The result, Luebben says, is "such a complex legislative framework nobody can figure out what's happening."

For the Shoshone to get clear title to the land they say is theirs, an act of Congress will still be necessary. A source in the solicitor general's office, which filed the appeal to the Supreme Court, said the appeal was made in the hopes of making it easy for Congress to refuse the Shoshone claim.

The Western Shoshone have mended many of the fences between the factions. The tribe has resumed its consensus system of government, and the tribal leaders are unanimously supporting the Danns. There are a few Shoshone who don't agree with the leadership, however. "It's not split as bad as it was," Carrie Dann says. "If they'd really understand, we'd have no problem. When you live in poverty and need money, though, I can't really blame them sometimes."

ALTHOUGH THE Shoshone payment is still sitting in the U.S. treasury, Robert Barker collected $2.6 million for his work getting the award. In 1980 several groups of Western Shoshone tried to block the payment in the Court of Appeals, citing what they consider the malpractice that occurred over the decades when Barker was handling the case.

Luebben got affidavits from Western Shoshone who testified that through the decades their lawyers misled them just so they could get their percentage of the money award. Barker says of the accusations, "People get so emotionally involved. I believe they actually in due course convinced themselves certain things happened."

Barker was exonerated by the claims court. In the opinion, they praised him for performing his duty to his clients and said that if the allegations had had any merit they should have been raised earlier.

For now, the Danns and most of the other Western Shoshone ranchers are not paying grazing fees to the BLM. The saga will be resolved only when Congress decides what to do with the Western Shoshone out in their barren land.

If the Western Shoshone win clear title to the

nteen million acres, the grazing fees and other rentals will be about $10 million a year, according o tribal leaders. the government and the Shoshone eaders expect the congressional solution will be omething between granting them all or nothing.

The Nevada Cattlemen's Association, which is atching the case with great interest, is taking a entral stance. "Apparently they've got quite a ase," says president Wayne Matteney. "The ay they laid it out to us, they'd work with us in very way. I don't think they'd be any worse than he bureau." The Western Shoshone have said hey have no intention of kicking anyone off land hey are living or working on.

Since that day in 1974, the Dunns have become sophisticated and confident. "I have a right to what belongs to me," Carrie says. "I have to live in this economic world, too." Carrie says if the Supreme Court decides against them, "the United States will be on the same basis as Russia — but they at least send out tanks and say they're taking land." If the Dunns lose, Carrie and Mary say they won't leave their land. "If they want to put me in prison, fine, but I think an execution would be better. I would never be a whole person again," Carrie says.

In 1985, the Dunn sisters were given a national Wonder Woman Award, which is sponsored by Warner Communications, in the "taking risks" category. The nomination said, in part, "The courageous stand taken by the Dunn sisters will insure that their people will have a future for many generations." The award ceremony was in New York City, but Mary was sick and Carrie had to take care of Mary and of her own retarded twelve-year-old, so they didn't attend.

The Dunns have been to New York to raise funds. Carrie defines New York in terms of the landscape she has known since birth: "Have you ever been in a canyon where the rocks are creeping up on you? I felt like that. We walked through the New York Stock Exchange. Did you ever see those ants running on top of each other? That's what it looked like. In New York you have to walk like little ducks in front of each other."

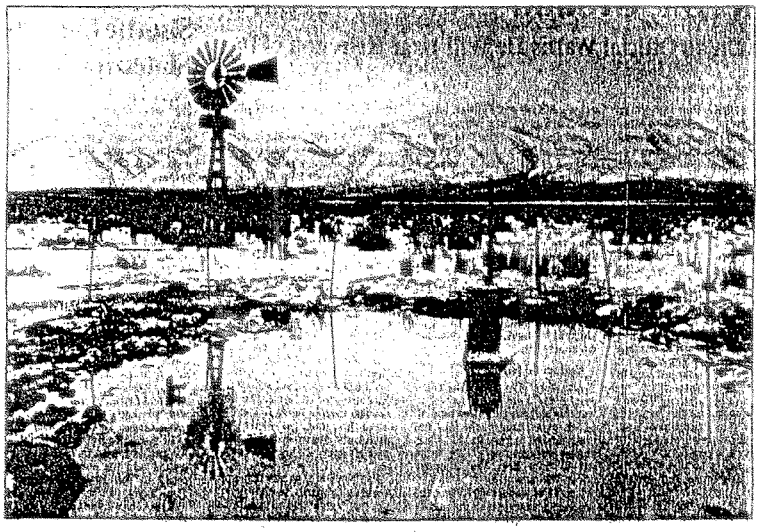
The Dunn sisters live far from the world of New York streets. They continue to herd their cattle and horses, go to the mountains to gather foods and medicines. They meditate in the morning and evening and every other day ride the mile to a hot spring in a nearby mountain, where they have placed a bathtub and washing machine that runs on gasoline. They are planning to build a sweat lodge into the spring this year; for now they content themselves with sitting in the bathtub and watching the summer stars. Despite the decades of battle with the cold machinery of American law, the Dunns live according to their beliefs, responsible only to the land and the changes of time, as they always have.

The Cortez Mountains near the Dunns' ranch glint off the surface of ponds formed by the spring runoff.

APPENDIX M

ARTICLE - "INDIAN SISTERS SPUR LAND RIGHTS BATTLE," LOS ANGELES TIMES, MARCH 24, 1985

Los Angeles Times ☆ Sunday, March 24, 1985/Part I



A watering hole, windmill and mountains are the ranch tableau for the battle of Mary Dann, right, and her sister Carrie against the Bureau of Land Management. At bottom, the ranchers give medication to a sick bull. In challenging the federal government, the Western Shoshone sisters have becomes heroines to fellow Indians and feminists alike.

Photos by LARRY ARMSTRONG, Los Angeles Times

Western Shoshones Lay Claim to 24 Million Acres

Indian Sisters Spur Land Rights Battle

By RONALD B. TAYLOR, *Times Staff Writer*

BEOWAWE, Nev.—In the fall of 1978, an Indian woman on horseback was herding cattle in remote north-central Nevada when she was stopped by a federal agent who advised her that her animals were trespassing on government land.

"I told him he was wrong; the land was ours because the Western Shoshone have been here since time began," said Mary Dann, who, along with her sister, Carrie, grazes the Dann herds in the high deserts and rugged mountains 80 miles southwest of Elko.

In the years since, the sisters have ignored demands to pay grazing fees, as well as orders to appear before a Bureau of Land Management appeals board, and threats of eviction. They continue to ranch on tens of thousands of acres in an area so remote that the nearest telephone is 11 miles away by dirt road. It is 18 more miles to Beowawe, a mere speck of a village just off Interstate 80.

Meanwhile, Mary Dann's confrontation 15 years ago led to a simple trespass suit that has mushroomed into an unresolved, complex legal battle between the government and the entire Western Shoshone "nation" over title to 24 million acres extending southwest from Great Salt Lake across Nevada to Death Valley in California.

Throughout the years, the Dann sisters' stubborn resistance has made them folk heroes, not only to Indian activists but to feminists as well. Last year, they received the national Wonder Woman Foundation Award, along with astronaut Sally Ride, and they were profiled in Ms. magazine.

"I just wish they'd leave us alone," Mary Dann said of the federal government and the media.

That is not likely to happen. Although the case has twice gone to the U.S. Supreme Court, the battle for title to these lands in Nevada is far from over, according to many legal experts, some of whom believe that the issues may ultimately have to be resolved by Congress.

Ironically, the Dann sisters were treated like tribal outcasts for years because of their unsettling way of opposing the white man's

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INDIANS: Sisters Spur Land Rights Battle

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attempts to take over tribal lands. Now they are hailed as heroines and the once badly divided Shoshone clans have unified around the Dann case in a tribal effort to save Newe Sogobia, their sacred Mother Earth.

They 'Woke Us Up'

"The Danns were right (to fight). Their strength and their courage woke us up," said a once skeptical Jerry Millett. Millett is the chief of the newly formed Western Shoshone National Council, which represents a tribal majority.

Historically, the Shoshones roamed in small family bands across the millions acres of harsh deserts and jagged mountains, each band independently governing itself as it followed the seasons, hunting and gathering food across areas that now include many Nevada cities, most of Nellis Air Force Base and all of the Nevada Nuclear Test Site.

Argonauts and settlers headed for California considered these Great Basin lands inhospitable and worthless. For a while, the Shoshones fought the whites, but in 1863 the various chiefs signed the Treaty of Ruby Valley.

That treaty, ratified by the U.S. Senate, allowed the whites to cross the land, build railroads, prospect for gold, even settle on ranches—but it never conveyed any land titles. The Shoshones were to be compensated for this land use, and a reservation acceptable to the Indians was to be established.

'Our Earth Mother'

The Dann Band—ancestors of the sisters—roamed the lands that are now called Crescent Valley and the Cortez Mountains, an area of about 332,000 acres. "No one owns the land. We were born here and we just use the land; it is our Earth mother, a part of our religion," Carrie Dann said in an interview.

In the early days of this century, the encroaching white settlements threatened to push the Indians off the land and the Danns and a few other "traditionals" began to demand that the government enforce the Treaty of Ruby Valley, but to no avail.

"Indians didn't have any rights then, so my father homesteaded (160 acres) in the 1920s to protect our water rights and have a place for our ranch headquarters," Carrie Dann said. Today, she and her sister pasture more than 300 cows and an equal number of horses on the surrounding ranges, according to the government.

The ranch headquarters is situated in the only stand of trees in the vast, desolate valley, an oasis visible for miles across the seemingly endless desert. Behind the rambling, run-down ranch houses, corrals and equipment sheds, the snow-covered mountains stand tall against the sky.

On a recent wintry day, Carrie Dann sat at an old table in the kitchen talking as she chain-smoked and sipped coffee brewed in a giant pot on a wood stove. "My grandmother used to sit at this table telling us stories of the traditional ways of our people," she said.

The Danns will not reveal their age—Carrie is in her 50s, Mary is about 10 years older—nor do they volunteer much about their private lives, although they are open and even eager to talk about their fight with the government.

As Carrie talked, Mary was getting out medicines, preparing to go out into the subzero cold to "doctor" a sick bull. The sisters do most of the work on the ranch. Sometimes a brother helps them repair machinery or bale hay and a niece often rides with Mary when she rounds up cattle.

There is no electricity on the ranch and time is measured by the passing seasons: In the winter, the cows calve; in the spring the herds are driven to the mountains; summer is a time to put up hay, and in the fall, the cattle are gathered and driven back down to the ranch with fat calves at their sides, ready for market.

Fiercely Independent

The Danns gather herbs and pine nuts, just as their ancestors did. They fish and hunt and their garden provides most of the produce they need to feed whatever members of the clan are staying at the ranch. Carrie Dann, divorced and the mother of two, made it clear that the Danns consider themselves self-sufficient and fiercely independent "traditional" Western Shoshones.

And she is quick to let visitors know that it is not unusual for women to do men's work.

"Unlike Christians, we (Shoshones) see women in a strong role," she said. "It is wrong to put women down. We can think and work, and we can fight the stupidity of men."

It is that feisty attitude that kept the Danns isolated from many of the other Western Shoshone bands during the 40 years when male tribal leaders were attempting to resolve the land dispute with the government.

Hired an Attorney

Early in the 1930s, a group called the Temoak Bands, from the Battle Mountain area 100 miles northwest of the Danns' land, hired an attorney to enforce the Treaty of Ruby Valley. But little could be done because all Indians were classed as a conquered people whose land titles were subservient to the demands of the U.S. government.

In 1946, Congress passed the Indian Claims Commission Act, designed to pay the Indians for lands already taken. The Temoak group filed a claim in 1951, but it has never been clear what the majority of the Western Shoshones wanted

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LARRY ARMSTRONG / Los A

Carrie and Mary Dann on their ranch in Crescent Vall

INDIANS: Feisty Sisters Provoke Land Rights Battle

Continued from Page 34

or expected.

Traditionalists like the Danns contend that only a few Indians were willing to exchange land for money. They say that most believed that they had a treaty right to "compensation" for the whites' use of their lands and wanted to stop further encroachment.

However, Robert Barker, the Washington attorney approved by the Bureau of Indian affairs to represent the Temoak Bands before the Claims Commission, disagreed.

'Title Extinguished'

"The general view then (1951) was that title had been extinguished and that the Indians would never get it back," he said in a telephone interview. "The only thing that was available was to go after money.

"The majority wanted to get what money they could, but from the start the Danns sang just one song. They did not want to go along with the claims for money."

The Indian Claims Commission ruled in 1962 that all Western Shoshone land titles had been extinguished by the gradual encroachment of white settlers in the 19th Century. The Indians were awarded $26 million for their 24 million acres.

Shocked by the ruling and coming around to the Danns' point of view, the Temoak Band fired attorney Barker. A newly formed group, calling itself the Western Shoshone Legal Defense and Education Assn., filed appeals in the U.S. Court of Claims and the U.S. Supreme Court, contesting the Claims Commission's decision and rejecting the money.

The tribes' appeals were denied and the firing of Barker was nullified. In 1979, the Indian Claims Commission deposited $26 million in an account for the Western Shoshones and awarded Barker his $2.6-million legal fee.

"By the time the Indians woke up to the fact that the government had never legally taken title to their lands and that they had an arguable right to that land, it was just too late for them to argue their case," explained a top government official involved in the case who asked not to be identified.

The tribe's legal battles began to overlap the Danns' in 1973, when white ranchers complained to the Bureau of Land Management that the Danns' cattle were on federal lands alloted to the whites.

The Danns hired Salt Lake City lawyer John O'Connell to defend them against the trespass charges that were filed in U.S. District Court in Reno in 1974. And not long after that, the Western Shoshone tribal leaders, stymied in their own efforts to reverse the Claims Commission's ruling, elected to join the Dann defense.

Rules They Trespassed

The Danns argued before U.S. District Judge Bruce R. Thompson that the tribe still owned the land and that the Indians individually had aboriginal title by right of occupancy. But Thompson ruled that the Dann sisters had been trespassing since 1978 when the Indian Claims Commission payment to the tribe had been made.

The U.S. 9th Circuit Court of Appeals reversed Thompson's ruling and upheld the Indian position, finding that title had never been extinguished and that deposit of $26 million in an account for the tribe did not constitute payment.

The Danns cheered the victory. But then, last Feb. 20, the U.S. Supreme Court, in a unanimous decision, reversed the 9th Circuit Court, ruling that the $26 million was an appropriate land payment, whether the Western Shoshones have accepted the money or not. The justices, however, did not rule on the Danns' individual claims to the land, leaving that to the lower courts.

U.S. Solicitor General Rex E. Lee said the decision "imparts an element of finality and stability to Indian land titles."

'A Landless Tribe'

But, Peter Taylor, counsel for the U.S. Senate Select Committee on Indian Affairs, argued, "The result renders them (the Western Shoshones) a landless tribe and that was not the intent of Congress when it set up the commission."

However, most experts agree that the decision's narrow focus failed to settle many of the issues raised by the Dann sisters' case.

For the Western Shoshone "nation," the "only recourse now is to Congress," according to Reid Chambers, a former Department of the Interior solicitor who now represents major Indian groups.

Regardless of the outcome, the Dann sisters remain defiant.

"We won't leave. They'll have to throw us off," Carrie said.

'No one owns the land. We were born here and we just use the land; it is our Earth mother, a part of our religion.'

—Carrie Dann

APPENDIX N

ARTICLE - "WESTERN SHOSHONE TO TAKE NEVADA LAND BATTLE TO CONGRESS," RENO GAZETTE-JOURNAL, JANUARY 17, 1989

Western Shoshone to take Nevada land battle to Congress

By Doug McMillan/Gazette-Journal

The Western Shoshones will ask Congress to investigate "the whole history of the government's efforts to defraud us of our lands," Raymond Yowell, chief of the Western Shoshone National Council, said Monday.

Yowell made the vow at a news conference at the Reno-Sparks Indian Colony called to explain his people's latest setback in their 14-year legal battle to assert title to 30 million acres of their ancient aboriginal lands.

The 9th Circuit Court of Appeals in San Francisco ruled last week that the only Western Shoshone claims still alive in the courts are the individual aboriginal rights of Western Shoshone sisters Carrie and Mary Dann to graze the number of livestock their parents were running on the open range before 1934: 26 cows and 79 horses.

The ruling reversed a 1986 decision by District Court Judge Bruce Thompson, who found the Dann sisters had aboriginal rights to graze 768 head of cattle and 850 horses on 530,000 acres of public domain in central Nevada without regulation by the Bureau of Land Management.

It also overturned the appeals court's own 1983 decision concluding that aboriginal title to the land had never been extinguished.

The effect of the decision, Yowell said, is that "the United States has successfully stolen our land."

The tribe originally claimed 30 million acres, stretching diagonally across Nevada from San Bernardino County to the Snake River in Idaho.

The case started its long trail through the courts in 1974 when the government sued the Danns for grazing their cattle on eight square miles of public lands surrounding their Crescent Valley ranch, 40 miles southeast of Battle Mountain.

The Dann sisters claimed they could not be held in trespass because the United States had never obtained title to the land from the Western Shoshones.

The 1863 Treaty of Ruby Valley, the only written agreement between the government and Shoshones, merely gave white settlers the right to cross Nevada on their way to California, Yowell

While the court case revolved around only the Danns' claims in Crescent Valley, it followed that if their arguments were successful, Western Shoshone title to a wide swath of Nevada had never been relinquished.

But as the case wended its way through three federal court hearings in Reno, three court of appeals reversals and one U.S. Supreme Court ruling, the courts held that title was extinguished when the Indian Claims Commission awarded the Shoshones $26 million in 1979 for the taking of their lands. The Claims Commission picked an arbitrary date of 1872 for "the taking."

In its decision last week, the three-judge appellate panel said: "We agree that is the most appropriate date."

However, the Shoshones have refused to take the money, which, with interest, has grown to at least $55 million in a trust fund kept by the Bureau of Indian Affairs.

Yowell said what the appellate court leaves the Danns is obviously not enough to make a living.

But Carrie Dann vowed to remain on her ranch and continue grazing her family's cows and horses at their current level, even if it means going to jail.

"The Creator placed us on this land," she said. Traditional Shoshones can no more sell their land than "Americans can sell their Christian churches for money," she said.

"You are destroying our home," she said, breaking into sobs as about 30 Western Shoshone and a half-dozen reporters listened.

The 9th Circuit chose still another pivotal date in its ruling last Wednesday. While noting the Dann sisters still might have individual aboriginal rights, despite the Indian Claims Commission award, the appellate court said those rights ended when Congress passed the Taylor Grazing Act in 1934. The three-judge panel said the 1934 act, which partitioned unappropriated public lands into grazing districts, closed the public domain to further settlement by whites and Indians alike.

Thus the court remanded the case back to Thompson for the fourth time to rule on the narrow question of what rights the Dann Band, a traditional Shoshone extended family, held in 1934. No date has been set for that hearing.

Carrie Dann said that if the BLM orders them to remove their livestock after the hearing, they will refuse.

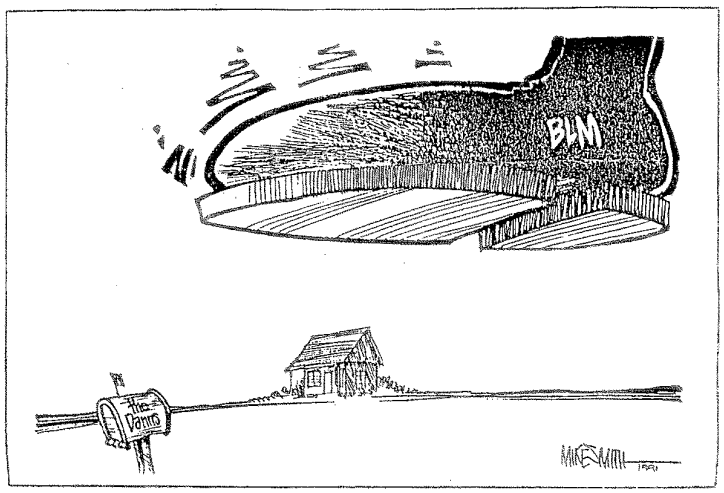
Tom Luebben, an Albuquerque, N.M., attorney representing the Western Shoshone National Council, said he and Dann attorney John O'Connell will try to prevail upon the government "to hold off putting the Danns out of the cattle business.

APPENDIX O

EDITORIAL - "GIVE SHOSHONES COURTESY OF WORKING THEIR LAND"
LAS VEGAS SUN, JULY 1, 1991

EDITORIAL PAGE

WHERE WE STAND LV-SUN 7/1/91



Give Shoshones courtesy of working their land

Once again the U.S. government is acting like the Big Bad Wolf.

This time it's the Bureau of Land Management huffing and puffing and kicking Mary and Carrie Dann's livestock off land that was theirs long before the bureau was a glint in Papa Wolf's eye.

The Danns are Western Shoshone sisters who have been ordered to remove more than 1,000 head of livestock from the Elko District range in Northern Nevada.

After a federal judge ruled June 6 that Shoshones have no inherent right to the land, the BLM sprang into action.

The BLM says the Danns have permits to run 138 head of livestock, not a single horse or head of cattle more.

After 17 years with an Indian burr in its paw, the BLM must be licking its chops at the prospect of absolute control over the 200,000 acres of former Shoshone land.

Since 1973, the Danns have had a running battle with the BLM and the U.S. government.

That's when a BLM agent told them that they would be required to pay a fee to continue grazing their cattle.

They decided to fight the agency's decision, however, claiming the land was theirs and had been from time immemorial.

To the Danns, that was common sense, but to the government that was hogwash.

In the end, hogwash prevailed: The Shoshones were stripped of title to their ancestral lands and also were denied use of the land.

Now, the BLM will probably move in on the other Shoshone tribes that have refused to pay grazing fees – and have numbers of livestock higher than the BLM mandate – and force them to pare them to the bone.

That will take away the Shoshones' primary income and put them into an economic death throe.

Native Americans are the most economically depressed minority in the country. They have a 45 percent poverty rate and 35 percent unemployment rate. More than 20 percent of American Indian homes lack toilets and more than 50 percent do not have telephones.

How can the government justify taking away Shoshone ancestral lands – lands that still only allow them to scratch out a meager existence?

The Shoshone people know their lands will never be given back to them.

They should at least be given the courtesy to use the land they have cared for so long.