H.R. 103, H.R. 3476 and H.R. 3534

LEGISLATIVE HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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LEGISLATIVE HEARING ON H.R. 3476, TO PROTECT CERTAIN LANDS HELD IN FEE BY THE PECHANGA BAND OF LUISENO MISSION INDIANS FROM CONDEMNATION UNTIL A FINAL DECISION IS MADE BY THE SECRETARY OF THE INTERIOR REGARDING A PENDING FEE TO TRUST APPLICATION FOR THAT LAND, AND FOR OTHER PURPOSES; H.R. 103, TO AMEND THE INDIAN GAMING REGULATORY ACT TO PROTECT INDIAN TRIBES FROM COERCED LABOR AGREEMENTS; AND H.R. 3534, TO PROVIDE FOR THE SETTLEMENT OF CERTAIN LAND CLAIMS OF THE CHEROKEE, CHOCTAW, AND CHICKASAW NATIONS TO THE ARKANSAS RIVERBED IN OKLAHOMA.

Wednesday, April 17, 2002
U.S. House of Representatives
Committee on Resources
Washington, DC

The Committee met, pursuant to call, at 10 a.m., in room 1334, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Committee) presiding.

STATEMENT OF THE HON. JAMES V. HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

The CHAIRMAN. The Committee will come to order. Good morning. It is good to see you all here. I notice there is a group of folks standing. We are not going to use this bottom tier here today. If you want to come up and take it, if you can stand the embarrassment of sitting up there, we would love to have you come up and take it.

[Laughter.]

The CHAIRMAN. We normally like to use 1324 for our hearings. That is the room on the other end, but there is some work being done on it right now, so we all are stuck in this little room.

Today's hearing is on three bills of distinct subject matter. The first is H.R. 3476, which protects from condemnation certain fee land belonging to the Pechanga Band—and I will probably foul up all of these words, so just ignore that, will you?—of the Luiseno Mission Indians, is that close, Darrell?—until the Secretary of the Interior renders a final decision on the tribe's pending fee to trust application. H.R. 3476 was introduced by Congressman Darrell Issa of California. Mr. Issa will be testifying on his bill this morning, and we thank you for being here.

The CHAIRMAN. The second bill is H.R. 103, introduced by Mr. Hayworth. H.R. 103 amends the Indian Gaming Regulatory Act to protect tribes from coerced labor agreements in tribal state gaming compacts. H.R. 103 has generated some controversy, but it raises issues that are important to members on both sides of the aisle.

The CHAIRMAN. The third bill, H.R. 3534, was introduced by Mr. Carson. H.R. 3534 settles claims asserted by the Cherokee, Choctaw, and Chickasaw Nations for damages for the United States use or mismanagement of tribal trust resources from the Arkansas riverbed. The legislation extinguishes all the nations' claims to the riverbed lands at issue, and authorizes $41 million in appropriated claim settlement funds to be allocated among the Cherokee, Choctaw, and Chickasaw Nations.

The CHAIRMAN. We look forward to some enlightening testimony this morning. I understand that one of our witnesses, California Senator Brulte, may have an unavoidable scheduling conflict requiring his early departure. I hope our other witnesses will not object to the Senator moving up in order and testifying immediately after Mr. Issa.

[The prepared statement of Chairman Hansen follows:]

Statement of The Honorable James V. Hansen, Chairman, Committee on Resources

Today's hearing is on three bills of distinct subject matter. The first is H.R. 3476, which protects from condemnation certain fee land belonging to the Pechanga Band of Luiseno Mission Indians until the Secretary of the Interior renders a final decision on the tribe's pending fee to trust application. H.R. 3476 was introduced by Congressman Darrell Issa of California. Mr. Issa will be testifying on his bill this morning and we thank him for being here.

The second bill is H.R. 103, introduced by Mr. Hayworth. H.R. 103 amends the Indian Gaming Regulatory Act to protect tribes from coerced labor agreements in tribal-state gaming compacts. H.R. 103 has generated some controversy, but it raises issues that are important to Members on both sides of the aisle.

The third bill, H.R. 3534, was introduced by Mr. Carson. H.R. 3534 settles claims asserted by the Cherokee, Choctaw, and Chickasaw Nations for damages for the United States' use and mismanagement of tribal trust resources from the Arkansas Riverbed. The legislation extinguishes all of the Nations' claims to the riverbed lands at issue, and authorizes $41 million in appropriated claim settlement funds to be allocated among the Cherokee, Choctaw, and Chickasaw Nations.

We welcome our witnesses and look forward to hearing from you.

The CHAIRMAN. Excuse me. Mr. Miller, did you have any opening comment you wanted to make?

Mr. MILLER. No, sir.

The CHAIRMAN. Mr. Kildee?

Mr. KILDEE. Are we dealing first with H.R. 3476, Mr. Chairman?

The CHAIRMAN. Pardon me, sir?

Mr. KILDEE. Are we dealing first with H.R. 3476?

The CHAIRMAN. Yes.

Mr. KILDEE. I would like to make a statement on that, Mr. Chairman.

The CHAIRMAN. All right.

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

Mr. KILDEE. Mr. Chairman, I am in strong support of H.R. 3476, a bill to protect certain lands held in fee by the Pechanga Band of Luiseno Mission Indians from condemnation proceedings until the Secretary of Interior makes a final decision regarding the pending fee to trust application for that land.

Mr. Chairman, since last fall you and I have worked together with Chairman Macarro to find a legislative solution to protect the land in question from condemnation proceedings until the Secretary makes a final decision. Last month the Department of Interior gave notice of its intent to take the land in trust for the Pechanga Band.

The Federal administrative process for taking land into trust for tribes should continue without interruption. We therefore should act swiftly to protect that land from the actions of corporations that wish to begin condemnation proceedings on the Pechanga ancestral lands.

Mr. Chairman, I look forward to working with you on this and hearing the testimony today.

[The prepared statement of Mr. Kildee follows:]

Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan, on H.R. 3476

Mr. Chairman, I am in strong support of H.R. 3476, a bill to protect certain lands held in fee by the Pechanga Band of Luiseno Mission Indians from condemnation proceedings until the Secretary of Interior makes a final decision regarding the pending fee to trust application for that land.

Mr. Chairman, since last fall, you and I have worked together with Chairman Macarro to find a legislative solution to protect the land in question from condemnation proceedings until the Secretary makes a final decision. Last month, the Department of Interior gave notice of its intent to take the land in trust for the Pechanga Band.

The Federal administrative process for taking land into trust for tribes should continue without interruption. We, therefore, should act swiftly to protect that land from the actions of corporations that wish to begin condemnation proceedings on the Pechanga ancestral lands.

I look forward to hearing the testimony today. Thank you.

The CHAIRMAN. I thank the Gentleman.

I ask unanimous consent that following his testimony, the Gentleman from California, Mr. Issa, be allowed to sit on the dais and participate in the hearing. Is there objection?

Hearing none, so ordered.

We are honored to have our colleague from California with us, and we will turn the time to him.

STATEMENT OF HON. DARRELL ISSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ISSA. Thank you, Mr. Chairman, and thank you for convening this hearing. H.R. 3476 will protect 724 acres known as the

Great Oak Ranch property from condemnation by San Diego Gas and Electric until, and only until, a final decision is made by Secretary Gale Norton regarding the pending trust application.

Mr. Chairman, just as I was sworn into office, the Pechanga Band of Mission Indians purchased the Great Oak Ranch. That is not because of any coincidence of my election, but in fact because they had sought this land for more than 30 years and its owner had sought to retain it, I guess until their death. As soon as this property was available, Pechanga paid the full list price to purchase this land, and did so because it takes land which has previously been missing from reuniting two portions of their tribal and now makes them whole. This is a perfect example of where land should be placed in trust because it makes their reservation contiguous.

Unfortunately, the celebration surrounding the purchase of land was short-lived. On March 23, 2001, San Diego Gas & Electric released a map proposing 17 different alignments for a 31-mile stretch of what is now a 500,000-volt line known as the Valley-Rainbow transmission line. Unfortunately, one of the alignments goes through the heart of the Great Oak Ranch property and the city of Temecula. The city of Temecula has objected to this alignment, as have the Pechanga Band of Indians.

I think it is best to try to shape if I can for you the nature of this land in trust request. If this were the preferred route that went through the Pechanga Reservation, I certainly would be looking differently upon it. It is not. As a matter of fact, the San Diego Gas & Electric, in meetings directly with me, has said that the preferred route is an alignment which is presently not available to them, because what they would like to do is either be just on Federal property, part of a national forest, or on existing land, land in trust of the Pechanga Indians. Negotiations have been ongoing on that alignment, and I would expect them to continue.

So it was with more than a little bit of consternation when I discovered that steadily San Diego Gas & Electric was opposing this land being placed in trust, and intends to appeal the Notice of Decision. When I asked why they would do so, I received no official answer. However, based on earlier discussions, it is very clear that this piece of land represents, appropriate to San Diego Gas & Electric but inappropriate in my opinion, leverage to get a preferred alignment.

Additionally, it has come to my attention that one of the alignments, and you may hear about it today, which I call the western alignment, which goes through national forest lands, was never submitted, although another organization wishing to do a water, hydroelectric project, has requested that alignment. When asked why San Diego Gas & Electric did not choose to request that one, they said although it was a good alignment, it was difficult, and the water project would not go through.

Today you will also hear from State Senator Brulte, who not only is a State Senator and former State Assemblyman, but who has been working on these issues for his entire tenure in the State House.

Mr. Chairman, I would ask that my entire statement be put in the record, and I will abbreviate it in hopes that I be able to join you on the dais and witness if there are any new developments.

[The prepared statement of Mr. Issa follows:]

Statement of The Honorable Darrell E. Issa, a a Representative in Congress from the State of California, on H.R. 3476

Mr. Chairman, I want to thank you for holding a hearing on H.R. 3476, which will protect a 724-acre parcel of land known as the Great Oak Ranch Property from condemnation by San Diego Gas and Electric until a final decision is made by Secretary Gale Norton regarding their pending trust application.

First, I want to give you a brief background on why I introduced this bill. Last April, I was approached by the Pechanga Band of Luiseno Mission Indians concerning a developing situation involving land they recently purchased for the purpose of making their fragmented reservation whole again.

The celebration surrounding the purchase of this property was short-lived. On March 23, 2001, San Diego Gas & Electric (SDG&E) released a map proposing 17 different alignments for a thirty-one mile, 500,000-volt Valley–Rainbow transmission line project. Unfortunately, one alignment goes through the heart of the Great Oak Ranch Property. The City of Temecula has come out in opposition to this alignment and this project, questioning its need and justification.

The interesting thing is that the Great Oak Ranch Property alignment selected is not SDG&E's preferred route. The preferred route is intended to go around the periphery of the existing reservation and SDG&E is using a threat of a transmission line through the Great Oak Ranch Property to gain an unfair advantage against the tribe into granting an easement.

On March 21, 2002, the Department of Interior registered a Notice of Decision to accept the Great Oak Ranch Property in trust. That same day, a SDG&E spokesperson stated in a local paper that they would plan to appeal this Notice of Decision. If this happens, an appeal could potentially delay the Pechanga Indians' land into trust application for years, with the threat of condemnation hanging over them the entire time.

I respect the committee's stance that placing land into trust should be done administratively, based on the application's merits, with the benefit of an environmental assessment and community input. My bill simply allows the Pechanga Indians application to continue through the administrative process and prevent any encumbrance from being placed on the land until a final decision is issued by the Secretary of Interior.

The Pechanga reservation has received overwhelming public support regarding their attempts to protect the Great Oak Ranch property from condemnation. The city councils, state legislators, such as State Senator Jim Brulte, who will be testifying shortly, and members of Congress, including Congresswoman Mary Bono and Congressman Ken Calvert, a distinguished member of this committee, have all voiced or written support for this endeavor. Mr. Chairman, I would like to submit for the record a packet of letters in support of Pechanga's land into trust application. Many of these letters are from California State Assembly Members, demonstrating how important this application is to the state.

Mr. Chairman, H.R. 3476 is a good bill. It will protect the Pechanga Indians' land from condemnation, while Secretary Norton decides on the application. Having finally connecting the two parcels of the reservation with the Great Oak Ranch Property, the Pechanga Indians shouldn't have to worry about the land being condemned and divided again.

Thank you again for the opportunity to testify before for your committee. I stand ready to answer any questions that you may have.

The CHAIRMAN. Without objection, and all the testimony will be put in in its entirety, if people would like to speak off the cuff.

I appreciate the Gentleman. Do we have any questions for our colleague from California? Mr. Miller?

Mr. MILLER. I have no questions. I am obviously in strong support of the legislation. I thought we were going to get this done last year, and it didn't happen. Hopefully we will have the success this

year. Thank you for your testimony, and I look forward to Senator Brulte's testimony.

The CHAIRMAN. I thank the Gentleman from California.

The Gentleman from Arizona, Mr. J.D. Hayworth, has done us an exceptionally good job on these matters, Indian matters, and J.D. happens to be our expert on it. I have a military issue I have to take care of, so I am going to turn the chair over to Mr. Hayworth, who does such an admirable job in this area, and ask our friend from California to please join us on the dais.

Mr. ISSA. Thank you, Mr. Chairman.

The CHAIRMAN. And thanks to all the witnesses. And let me reiterate for you folks standing there, we are not going to use this bottom tier. If you are so inclined, come on up and sit there. If it embarrasses you to death, so be it. We go through that every day.

[Laughter.]

STATEMENT OF THE HON. J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. HAYWORTH. [Presiding.] Mr. Chairman, thank you, and I hope the embarrassment does not extend to yielding the gavel to me.

We also welcome the Ranking Member of the Full Committee, Mr. Rahall. Thank you for joining us this morning. And for those who join us on the lower dais, I think it lends credence to the notion that this is in fact the people's House.

Mr. Issa, of course you are free to come join us here, as well, and we thank you for that. In fact, unanimous consent came earlier. It pays to be on time, Mr. Rahall. Don't start.

Now, commensurate with staying on time, we will move now to Panel 2, and that means we call on our friend, Wayne Smith, the Deputy Assistant Secretary of Indian Affairs for the Bureau of Indian Affairs.

[The prepared statement of Mr. Hayworth follows:]

Statement of The Honorable J.D. Hayworth, a Representative in Congress from the State of Arizona, on H.R. 103

H.R. 103 amends the Indian Gaming Regulatory Act to prohibit tribal-state gaming compacts from including or being conditioned on any agreement containing any provision relating to labor terms or conditions for employees of tribally owned businesses located on Indian lands. The legislation voids any such provisions that have been entered into before, on, or after the legislation's enactment.

In 1998, the California Supreme Court overturned Proposition 5, which confirmed California tribes' right to gaming enterprises. As a result, the United States attorney declared that all tribal gaming in the state would cease unless Tribal–State compacts were signed by October 13, 1999. Faced with the prospect that their most valuable economic assets (which help fund health care facilities, education facilities, and other social and economic endeavors), would be shut down, 61 California tribes were essentially coerced into signing gaming compacts with Governor Gray Davis that carried separate labor agreements. It was made very clear by Governor Davis that a gaming compact would not be signed without a labor agreement.

As a matter of Federal law, the National Labor Relations Act does not apply to Indian tribes because they are recognized as sovereign governmental entities under the Constitution. Nevertheless, under the time-sensitive deadline set in California, tribes in that state were forced to cede their sovereignty—their constitutional rights—to the State of California in order to save their enterprises from being shut down.

The issue here is not whether tribes should unionize their gaming facilities, but who should make that decision. Should it be up to the sovereign tribal governments, or should it be up to the states or the Federal Government? The U.S. Constitution

states that it is the tribes, as sovereign government entities, that have the right to make this decision.

Recently, referring to the San Juan Pueblo of New Mexico tribe's right-to-work ordinance, the 10th U.S. Circuit Court of Appeals stated that the ordinance was "clearly an exercise of sovereign authority over economic transactions on the reservation."

H.R. 103, the Tribal Sovereignty Protection Act, will ensure that states do not force Indian tribes to unionize their casino employees as a condition of a tribal-state gaming compact made under the Indian Gaming Regulatory Act. The bill will allow sovereign tribes to have the freedom to determine their own labor policies, rather than be blackmailed by the state and/or Federal Government.

Mr. HAYWORTH. Oh, I beg your pardon. There has been a late change, speaking of time. Forgive me, Wayne. We will bring you up all in due time, but mindful of the schedule that Senator Brulte must keep to return to serve the people in Sacramento and the State of California, we welcome him to the table for his testimony. So, Senator Brulte, welcome, and again, your entire statement will be put into the record and you may summarize in the time for which we recognize you. Welcome.

STATEMENT OF HON. JAMES BRULTE, STATE SENATOR, STATE OF CALIFORNIA

Mr. BRULTE. Thank you, Mr. Chairman and members, and thank you for the opportunity to testify on this legislation today. I am here to support H.R. 3476, and the reason is quite simple. A vast majority of State and local interests support the protection of the Great Oak Ranch and its return to the Pechanga Reservation. This support is demonstrated by a list and a stack of letters that I would like to provide the Committee today.

I think the depth and breadth of the support here is a strong indication of the uniqueness of the property in question and the need for this legislation. Later in this hearing Chairman Macarro will provide you a moving and powerful story about this land, a particular tree and its cultural significance. It is a story that he has shared quite effectively throughout Riverside County and the corridors of our State Capitol. It is a story of pictures, one of which is here today, this 1500-year-old tree with its 26-foot diameter trunk.

I am here today on behalf of myself and many State legislators and local officials to ask the Committee to take favorable action on the bill introduced by Congressman Issa and cosponsored by Congresswoman Bono, so that our efforts to protect the Great Oak Ranch are successful.

H.R. 3476 does not impede California's right to act through its Public Utilities Commission to determine the need for better electrical transmission capability. H.R. 3476 does not take a position on the March 2002 position of the United States Department of Interior to take this land into trust. H.R. 3476 simply calls a time out in the condemnation process until the United States Department of Interior makes a final determination on taking that particular piece of land into trust.

Mr. Chairman, thank you for allowing me the opportunity to speak, and particularly for allowing me the opportunity to speak out of order, and I will provide my written testimony to the Committee.

[The prepared statement of Mr. Brulte follows:]

Testimony of The Honorable James Brulte, Senator, California State Senate—31st District

Mr. Chairman and Members, thank you for the opportunity to testify today on this important legislation. I also want to publicly thank our Congressman, Darrell Issa, for his leadership role on this matter.

I am here in support of H.R. 3476. My message to you is simple. A vast majority of state and local interests support protection of the Great Oak Ranch and its return to the Pechanga Reservation. This support is demonstrated by this list and the stack of letters I am providing the committee.

I do not need to tell members of this committee how unusual it is to have such strong local support for the protection of lands on behalf of a tribe. I think the depth and breadth of the support here is a strong indication of the uniqueness of the property in question and the need for this legislation.

Chairman Macarro has presented to you the moving and powerful story of this land, its tree, and its cultural significance. It's a story that he has shared quite effectively throughout Riverside County and in the corridors of our state capitol. It's a story with pictures, one in particular, that he has shared with you today—that 1500-year old tree with its 26-foot diameter trunk. As incredible as that picture is, it still doesn't do the tree justice. The next time you're in our part of the world, I hope you will contact me or Chairman Macarro and arrange a visit so you can stand under the tree and really grasp its grandeur.

I am here on behalf of myself and many other state and local officials to ask the committee to take favorable action on the bill introduced by Congressman Issa and co-sponsored by Congresswoman Bono so that our efforts to protect the Great Oak Ranch are successful.

It should be no surprise to anyone here today that as a state senator, I am quite partial to the final amendment in the Bill of Rights. The 10th Amendment is the foundation of our Federalist form of government and is what protects the notion that what might be good for Californians isn't always the best solution for Arizonians—and vice versa.

I'd be remiss if I did not thank those of you who first looked at this legislation with a skeptical eye and through the prism of the 10th Amendment. However, as demonstrated by the chart on the easel and by my attendance at this hearing today, rest assured that the action taken by you and the Department of Interior is not only appropriate in the eyes of local officials, but, in my opinion, is required.

As a legislator, I could give you a very technical overview about Section 625 of the California Public Utilities Code, which has been cited here today. But, in a nutshell, SDG&E's efforts to condemn this property before the CPUC has made a decision on the necessity of the line is why we are here today and why this legislation is necessary. But rather than get into a detailed discussion about Public Utilities Code Section 625, I am submitting a briefing on the issue for the record.

The bottom line is that the community supports the protection of the Great Oak Ranch and this legislation. The Issa/Bono bill tracks our state law in the sense it gives the benefit of the doubt to the private property owner and puts the burden of proof on the utility company.

This legislation merely protects the status quo with respect to this particular piece of land that the Federal Government has deemed worthy of being taken into Federal trust on behalf of the Pechanga Tribe.

Mr. Chairman, I again thank you for the opportunity to testify today and I again urge the Committee's favorable and expeditious action on H.R. 3476. I look forward to answering the committee's questions.

Mr. HAYWORTH. And, Senator, we thank you for that, and we thank the other witnesses and the Full Committee for the accommodation to allow you to appear at this point.

If you could, briefly summarize and just reaffirm for the Committee the benefits, in your opinion, that the transfer of the Great Oak Ranch into trust would bring to the surrounding community.

Mr. BRULTE. Well, this is a historic growth. We have so much land in California. Much of it is being taken into development. This is a piece of land that divides a reservation. It is land that is part

of the ancestral home of the Pechanga Indian Nation. It is land that ought to be saved, set apart, and not devastated by any type of development, by any entity whatsoever.

Mr. HAYWORTH. Senator, what are the adverse impacts to the county or State resulting from removal of this land from the tax rolls? Are there any adverse impacts, in your estimation?

Mr. BRULTE. No, the tax rate on this property isn't that great to begin with, but the State of California is quite capable of dealing with any problem that might be created by that.

Mr. HAYWORTH. It has been argued by some this legislation is a Federal intrusion on the right of a State-regulated utility to condemn land. What is your response to that accusation?

Mr. BRULTE. Well, the Federal Government is charged with the responsibility of dealing with other sovereign entities, in this case the sovereign Nation of the Pechanga Indians. Our California Public Utilities Commission has not ruled today on whether or not this land should be condemned and taken into action. This simply calls a time out in the process pending a final determination by the Federal Government.

Mr. HAYWORTH. Senator, I thank you for those answers.

Any questions from the minority side? The Ranking Member.

STATEMENT OF THE HON. NICK J. RAHALL II, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WEST VIRGINIA

Mr. RAHALL. Thank you, Mr. Chairman. I have no questions, and certainly no objection to the bill. I just wanted to make a comment here that we have seen Indian sacred sites around the country being damaged or destroyed at quite an alarming rate. In this regard, it is my opinion we do need a nationwide bill to address protection of Indian sacred sites. I do have legislation that would provide that nationwide protection, and we are working very closely with the tribes, because it is their feeling that we need such a Federal law as well.

But in this particular instance there is this 1500-year-old tree on land that the Pechanga bought, and it is almost humorous to think that a Federal law may be needed, that we may need to pass a Federal law to buy the tree a little time, as you have just stated, while the BIA decides on the tribe's trust application. We can only imagine what this tree has been through over the hundreds of years it has stood there, and now its fate may be in the hands of the BIA's ability to make a quick decision. This could be the most sacred time of this tree's life.

I do commend the Gentleman from California, my good friend, Mr. Issa, for introducing this legislation. Let's just hope and pray that the BIA will work to bring the land into trust status for protection in some sort of expeditious fashion, if that is possible.

I yield my time back, Mr. Chairman. Thank you.

Statement of The Honorable Nick J. Rahall, II, Ranking Democrat, Committee on Resources, on H.R. 3476, H.R. 103 and H.R. 3534

Mr. Chairman, there are three bills on the schedule this morning and it is my understanding we will be allowed an opening statement on each one.

Mr. Miller will address H.R. 103, Mr. Carson his bill, H.R. 3534 and I will speak to H.R. 3476 for the time being.

This legislation by my good friend, Darrell Issa, would protect land containing a valuable piece of history and sacred sites of the Pechanga Tribe from possible condemnation. The Tribe has bought land in its ancestral area and has an application pending for it to be brought into trust status and it should be.

Indian sacred sites are being damaged and destroyed at an alarming rate all across our nation. I believe we need to pass legislation to address the problem nationwide and am working with tribes on such a bill.

In this particular instance, there is a 1,500 year old tree on the land the Pechanga bought. It is almost humorous to think that a Federal law may need to be passed to buy the tree a little time while BIA decides on the tribe's trust application.

Imagine what that tree has been through over the hundreds of years it has stood there—and now—its fate may be in the hands of the BIA's ability to make a quick decision,

This could be the scariest time of this tree's life. Let us just hope and pray that the BIA will work to bring the land into trust status for protection in an expeditious fashion.

As I noted, George Miller will have some comments to make on H.R. 103 when it is brought up for consideration.

I would simply observe that the bill an anti-labor, anti-worker, and a not even thinly disguised assault on labor unions. No surprise there "

The surprise is, however, that it has been dressed up to look something like a pro-tribal sovereignty and that is just a bad political ploy.

I welcome our witnesses and I thank them for traveling here.

Mr. HAYWORTH. Thank you, Mr. Rahall.

Anyone on this side with other questions?

The Gentleman from California, Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman. I just want to say, Jim, welcome to the Committee, and thank you for all your work on behalf of these lands. You and Congressman Issa have done a great job in seeking to protect these lands, and work out all the intricacies and the nervousness of the utilities and everyone else.

When we think of what is happening in some of the oak forests in northern California that are succumbing to sudden oak disease and we are losing magnificent trees, this may be more important than we thought when we originally started to save this tree and the surrounding environment. So thank you for your effort, and thank you for making the effort to come back and testify on the bill.

Mr. BRULTE. Thank you, sir.

Mr. HAYWORTH. Our friend from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

Senator Brulte, would it be fair to say that the question of whether or not this power line is needed and where the appropriate alignments are to be placed is a State issue, and whether or not this particular one of 17 stated alignments is available is a Federal issue? Would you say that is sort of the balance we are considering here today?

Mr. BRULTE. Sure, and the California Public Utilities Commission, if and when this bill is passed, will still be charged with the responsibility of determining whether or not the line is needed, and San Diego Gas & Electric will still have condemnation rights everywhere but this land. So I don't think States' rights are being impeded at all. If it were, Senator Burton, my majority party counterpart, and local elected officials numbering in the hundreds, wouldn't be in support of this legislation.

Mr. ISSA. Senator Brulte, just one last follow-up. Would my observation be correct that there is virtually no support on either side

of the aisle in California, in the Senate, the Assembly, or local, in the surrounding areas, for this project at this time, and certainly this alignment?

Mr. BRULTE. I am not aware of any support for it, Congressman Issa.

Mr. ISSA. Thank you, Senator. Thank you for being here today. I realize this was quite a detour for you.

Mr. BRULTE. Well, thank you very much.

Mr. HAYWORTH. Thank you, Mr. Issa.

The Gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Just briefly, Senator, having served in my State Senate, I am always pleased when I find a representative of one of our sovereign States being sensitive to the concerns of our sovereign native tribes, and I just commend you for your position and commend you for testifying today.

Mr. BRULTE. Thank you, sir.

Mr. KILDEE. Thank you very much.

Mr. HAYWORTH. And I thank my friend from Michigan for waxing nostalgic and hopeful all in one great statement.

If there are no other questions or comments for our witness, again, Senator Brulte, thank you, and safe travels back to your home State and up to Sacramento. We appreciate you being here.

And now a fellow who warmed up for moving front and center is now prepared to do that, and that again is the aforementioned Wayne Smith, the Deputy Assistant Secretary of Indian Affairs from the Bureau of Indian Affairs. Good morning, Mr. Smith. We apologize for the false start earlier, but we trust you are ready to offer testimony on these three pieces of legislation, and we welcome you.

STATEMENT OF WAYNE SMITH, DEPUTY ASSISTANT SECRETARY, INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SMITH. Good morning, Mr. Chairman. Thank you for allowing me to be here. It is always fun to testify before this Committee. As a matter of process, do you want me to testify to all three bills at this time, or just the bill that is being heard at this time?

Mr. HAYWORTH. We would like you to go for it. Maybe I shouldn't use the term "trifecta" but all three bills.

Mr. SMITH. Yes, that is good. I have never done very well at the horse track, so I won't do that.

I thought in the interest of time and brevity I will leave some of the background information out of all three of the bills, because there are Gentlemen that will testify after me that are much more knowledgeable about those than I am. So what I would like to do is talk more about either the policies or the law that affects any one of these three bills.

In terms of the instant bill, as to the Pechanga Reservation, on March 21st of 2002 the Acting Regional Director of the BIA's Pacific Region issued a Notice of Decision to accept the ranch property into trust status pursuant to the Indian Land Consolidation Act. A copy of that notice is attached to my complete testimony, for all of you gentlemen here today.

Under 25 C.F.R. Part 151, unless an acquisition is mandated, the BIA must consider the following factors before determining to take the land into trust. One is the tribe's need for additional land. Two is the purpose for which the land will be used. Three is the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls. Four is jurisdictional problems, potential conflict on the land which may arise. Five is whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land. And, six, whether or not contaminants or other hazardous material may be present on the property.

The BIA found in its decision that the tribe did have need for the additional land; that the land would be used for religious and cultural preservation purposes; that there would be no adverse impact on the local government's financial situation; that there would be no jurisdictional problems or potential conflicts after the transfer of the title into trust; that we are indeed equipped to administer additional responsibilities resulting from the acquisition; and that there are no contaminants or other hazardous substances present on the property.

This decision, however, is not a final decision, a final agency action as defined by the Administrative Procedures Act, and any party who is adversely affected may file an appeal of a Notice of Decision with the Interior Board of Indian Appeals within 30 days of the initial decision. Upon the conclusion of the 30-day period, unless there is an appeal to the IBIA, the Regional Director will publish notice of final agency action pursuant to 25 C.F.R. 151.12(b), to allow for 30-day judicial review.

The Department believes that in this case the procedures set out in 25 C.F.R. Part 151 should continue to be followed. We recognize Congress has the plenary power to take the land into trust on behalf of the tribe. However, we remain seriously concerned with congressional intervention once the administrative process has been initiated.

This concludes my testimony on this bill. If you would like to ask me some questions, I would be happy, before we move to the next bill, Mr. Chairman.

[The prepared statement of Mr. Smith follows:]

Statement of Wayne Smith, Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, on H.R. 3476

Good morning, Mr. Chairman, Members of the Committee. I would first like to take the opportunity to thank you for the invitation to present testimony today on H.R. 3476, a bill to protect certain land located in Riverside County, California, that is held in fee simple by the Pechanga Band of Luiseno Mission Indians ("Tribe") from condemnation until a final decision is made by the Secretary of the Interior on a pending application for trust status of the lands.

BACKGROUND

The Pechanga Reservation was established by Executive Order on June 27, 1882, in what is now Riverside County, California and currently consists of 4,396 acres of trust lands. In 2001, the Pechanga Band of Luiseno Indians acquired a parcel of land in fee simple consisting of 697.35 acres of land and known as the Great Oak Ranch ("Ranch"). In June 2001, the Tribe applied to the Department's Bureau of Indian Affairs ("BIA") to have the land placed into trust status, pursuant to the provisions of 25 CFR, Part 151.

The Ranch is contiguous to the Pechanga Indian Reservation and is home to the largest natural-growing, indigenous live oak tree in the United States, estimated to

be over 1,500 years old. The tree serves as a spiritual place and has been used by the Tribe for generations for ceremonies.

Additionally, there are other cultural resources located within the Ranch property which are of importance to the Tribe. There are seven archaeological sites located on the property, and along with the tree, the tract is eligible for inclusion on the National Register of Historic Places. The Tribe's stated purpose for acquiring the ranch is to preserve and protect the cultural resources of the Luiseno people.

CURRENT SITUATION

On March 21, 2002, the Acting Regional Director of the BIA Pacific Region issued a Notice of Decision to accept the Ranch property into trust status pursuant to the Indian Land Consolidation Act of 1983 (25 U.S.C. 2202 et seq.). A copy of the Notice of Decision is attached.

Under 25 CFR, Part 151, unless an acquisition is mandated, the BIA must consider the following factors before determining to take land into trust:

1. the Tribe's need for additional land;
2. the purpose for which the land will be used;
3. the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
4. jurisdictional problems and potential conflict of land use which may arise;
5. whether the BIA is equipped to discharge the additional responsibilities resulting from the acquisition of the land;
6. whether or not contaminants or other hazardous materials may be present on the property.

The BIA found that the tribe did have the need for additional land; that the land would be used for religious and cultural preservation purposes; that there would be no adverse impact on the local governmental financial situation; that there would be no jurisdictional problems or potential conflicts after the transfer of the title into trust; that BIA is equipped to administer additional responsibilities resulting from the acquisition; and that there were no contaminants or hazardous substances present on the property.

This decision is not a final agency action as defined by the Administrative Procedures Act, but any party who is adversely affected may file an appeal of the Notice of Decision with the Interior Board of Indian Appeals ("IBIA") within thirty days of the initial decision.

Upon the conclusion of the thirty day period, unless there is an appeal to the to the IBIA, the Regional Director will publish notice of final agency action pursuant to 25 CFR 151.12(b), to allow 30 days for judicial review.

Lands held in trust by the United States for the benefit of Indian tribes enjoy a number of protections that land held in fee simple status do not. Lands held in trust are removed from local tax rolls. Additionally, lands held in trust may not be condemned without agreement of the Indian tribe involved and the lands are exempt from certain zoning laws.

The procedure for taking land into trust set out at 25 CFR, Part 151, sets high standards tribes must meet before the Department of Interior determines to take property into trust. It is a fair process which provides for a comment period during which affected parties may provide information to the Bureau of Indian Affairs regarding positive or adverse effects the decision may have, and it provides an opportunity for these parties to appeal a decision which is adverse to their interests.

The Department believes that in this case, the procedure set out in 25 CFR, Part 151 should continue to be followed. We recognize Congress has the plenary power to take the land into trust on behalf of a tribe. We remain seriously concerned, however, with congressional intervention once the administrative process has been initiated.

This concludes my personal statement. I would be pleased to answer any questions you may have.

[Attachments to Mr. Smith's statement follow:]

IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

MAR 2 1 2002

NOTICE OF DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED – 7001 0320 0004 5948 1565

Mr. Mark Macarro, Chairman
Pechanga Band of Luiseño Mission Indians
P.O. Box 1477
Temecula, California 92593

Dear Mr. Macarro:

This is notice of our decision upon the Pechanga Band of Luiseño Mission Indians application to have the below-described real property accepted by the United States of America in trust for the Pechanga Band of Luiseño Mission Indians:

That certain real property situated in the unincorporated area of the County of Riverside, State of California, described as follows:

DIVISION I:

PARCEL 1:

PARCELS 1 THROUGH 20 INCLUSIVE OF PARCEL MAP 6708-1, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 36, PAGES 57 THROUGH 62 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 2:

THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, EXCEPT THAT PORTION LYING WITHIN PARCEL MAP 6708-1.

PARCEL 3:

GOVERNMENT LOT 3 AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, EXCEPT THAT PORTION LYING WITHIN PARCEL MAP 6708-1.

PARCEL 4:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 33, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, EXCEPT THAT PORTION LYING WITHIN PARCEL MAP 6708-1.

DIVISION II:

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN ON THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE ON JUNE 10, 1914. SAID LAND IS ALSO SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 10, PAGE 53 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS.

DIVISION III:

THOSE PORTIONS OF THE EAST HALF OF THE EAST HALF OF SECTION 29, AND OF THE WEST HALF OF THE SOUTHWEST QUARTER AND OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, INCLUDED IN TRACT "B" AS SHOWN UPON THE JUDICIAL MAP OF SURVEY OF LANDS OF MACHADO BROTHERS AND WOLF, ON FILE IN THE OFFICE OF THE COUNTY CLERK OF SAN DIEGO COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE, AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHEAST LINE OF THE LITTLE TEMECULA RANCHO AND THE SOUTHWEST LINE OF PALA ROAD; THENCE SOUTH 50° 34' 30" EAST, 660.00 FEET ON THE SOUTHWEST LINE OF PALA ROAD; THENCE LEAVING THE SOUTHWESTERLY LINE OF PALA ROAD SOUTH 52° 45' 00" WEST, 1,452.00 FEET; THENCE NORTH 37° 15' 00" WEST, 642.00 FEET TO THE SOUTHEAST LINE OF THE LITTLE TEMECULA RANCHO; THENCE NORTH 52° 45' 00" EAST, 1,300.00 FEET ALONG SAID SOUTHEAST LINE TO THE POINT OF BEGINNING.

DIVISION IV:

PARCEL 1:

THE EAST 660 FEET OF THE WEST 1,320 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886. SAID DISTANCES BEING MEASURED ALONG THE NORTH AND SOUTH LINES OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION.

PARCEL 1A:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER AND ACROSS THE EAST 60 FEET OF THE SOUTH 750 FEET OF THE WEST 660 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886, WHICH EASEMENT IS FOR THE BENEFIT OF AND APPURTENANT TO THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 32.

PARCEL 2:

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886; EXCEPTING THEREFROM THE NORTH 660 FEET; ALSO EXCEPTING THEREFROM THE WEST 1320 FEET; SAID DISTANCES BEING MEASURED ALONG THE NORTH AND SOUTH LINES OF SAID SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 32.

PARCEL 2A:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER AND ACROSS THE EAST 60 FEET OF THE SOUTH 750 FEET OF THE WEST 660 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886, WHICH EASEMENT IS FOR THE BENEFIT OF AND APPURTENANT TO THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 32.

PARCEL 2B:

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER AND ACROSS THE SOUTH 60 FEET OF THE NORTH 690 FEET OF THE WEST 1,350 FEET OF THE EAST 1,980 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 8 SOUTH, RANGE 2 WEST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 10, 1886, WHICH EASEMENT IS FOR THE BENEFIT OF AND APPURTENANT TO THE EAST 1,980 FEET OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 32, AND TO EACH AND EVERY PARCEL INTO WHICH THE SAME MAY BE SUBSEQUENTLY DIVIDED; EXCEPTING THEREFROM THAT PORTION LYING WITHIN PARCEL 2.

The above-described property is referred to as Riverside County Assessor's Parcel Numbers: 918-210-008, 918-210-010, 918-210-012, 918-220-006, 918-220-007, 918-220-008, 918-220-009, 918-220-011, 918-220-012, 918-230-001, 918-230-019, 918-230-020, 918-230-021, 918-230-022, 918-230-023, 918-230-020, 918-250-006, 918-250-008, 918-250-010, 918-250-011, 918-250-012, 918-250-013, 918-250-014, 918-250-015, 918-250-016, 918-250-017, 918-250-018, 918-250-019, 918-260-015, 918-260-016, 918-260-017 and, 918-260-018 and comprises 697.35 acres, more or less. The subject property is contiguous to the eastern boundary of the Pechanga Indian Reservation.

The regulations specify that it is the Secretary's policy to accept lands "in trust" for the benefit of tribes when such acquisition is authorized by an Act of Congress and, (1) when such lands are within the exterior boundaries of the tribe's reservation, or adjacent thereto. or within a tribal consolidation area, or (2) when the tribe already owns an interest in the land, or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing.

In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. §2202 et seq). The applicable regulations are set forth in the Code of Federal Regulations, Title 25, INDIANS, Part 151, as amended. The proposed acquisition of land contiguous to the exterior boundaries of the Pechanga Indian Reservation is necessary for the Band to protect important cultural resources to help facilitate tribal self-determination. This acquisition falls within the land acquisition policy as set forth by the Secretary of Interior.

On April 13, 2001, by certified mail, return receipt requested, we issued notice of, and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Ms. Sara J. Drake, Deputy Attorney General, State of California; D. Robert Shuman, Deputy Legal Affairs Secretary, Office of the Governor of California; Office of the Assessor, Riverside County; Riverside County Building Services; Ms. Mary Ann Martin, Chairperson Augustine Band of Mission Indians; Mr. Antonio Heredia, Jr., Spokesperson, Cahuilla Band of Mission Indians; Mr. Dean Mike, Chairman, Twenty-Nine Palms of Mission

Indians; Mr. John A. James, Chairperson, Cabazon Band of Mission Indians; Ms. Mary Belardo, Chairperson, Torres-Martinez Desert Cahuilla Indians; Ms. Mary Ann Martin-Andreas, Chairperson, Morongo Band of Mission Indians; County of Riverside Planning Department; Mr. Manuel Hamilton, Representative, Ramona Band of Mission Indians; Ms. Vivian Scribner, Pro Tem Spokesperson, Santa Rosa Band of Mission Indians; Mr. Robert Salgado, Sr., Spokesman, Soboba Band of Mission Indians; Riverside County Sheriff's Department; County of Riverside Board of Supervisors; Riverside County Treasurer and Tax Collector; Honorable Barbara Boxer; Honorable Gray Davis; Honorable Diane Feinstein; Honorable Mary Bono; and Mr. Patrick Webb, Webb and Carey. **The April 16, 2001 Notice of Application also included Riverside County Assessor's Parcel Number 913-220-010, which is not included in this decision.**

Sempra Energy, responded with a letter dated May 24, 2001, stating in relevant part: *"The Pechanga's application for trust status for its recently acquired Boseker (Great Oak) Ranch property may adversely impact SDG&E's application before the California Public Utilities Commission ("CPUC") in that a proposed route traverses that property."* The Metropolitan Water District of Southern California, responded with a letter dated June 4, 2001, stating in relevant part: *"Metropolitan currently has a proposed pipeline and tunnel project which would utilize a small portion of the Boseker (Great Oak) Ranch property recently purchased by the Pechanga Indian Reservation. Please add Metropolitan to the list for notification for copies of notices and other materials regarding this application."* The Pechanga Cultural Resources (PCR) Department, responded with a letter dated June 15, 2001, stating in relevant part: *"The PCR has had an opportunity to review the cultural resource survey for the Great Oak Ranch which was completed and submitted by CRM Tech. The survey located and identified a total of eight historical/archaeological resources within the Great Oak Ranch. The Pechanga Band is committed to protecting and preserving the invaluable and irreplaceable cultural resources of the Luiseño people."*

In addition, we have received over 2,500 letters of support from the local community including: individuals, local businesses, local and state governments, members of the State of California Legislature, U.S. Senators, and members of Congress, for the transfer of the Great Oak Ranch "into trust" status for the Pechanga Band.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) need of the tribe for additional land; (2) the purpose for which the land will be used; (3) impact on the State and its political subdivisions resulting from removal of the land from the tax rolls; (4) jurisdictional problems and potential conflict of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status, and (6) whether or not contaminants or hazardous substances may be present on the property. Accordingly, the following analysis of the application is provided:

Factor 1 – Need for Additional Land

The Pechanga Indian Reservation was established by Executive Order on June 27, 1882 and now contains 4,396.44 acres. The Great Oak Ranch is located between the Kelsey Tract of the Pechanga Indian Reservation, and the Pechanga Indian Reservation. The Great Oak Ranch shares common boundaries with both portions of the Pechanga Reservation. The acquisition of the 697.35 acres of land into trust for the Pechanga Band will connect both portions of the Reservation, which has been a long-term goal of the Pechanga Band for many years.

As stated above, the Pechanga Band is very committed to the protection of the Luiseño people's cultural resources. The Tribe proposes to take the 697.35 acres of land into trust to maintain the existing cultural and natural resources of high sacred value that are present throughout the project site. The tribe has identified numerous historical/archaeological sites within the Great Oak Ranch. In addition to the cultural resources located on the subject property, the Great Oak Ranch is also home for the largest natural growing indigenous live oak tree in the United States, estimated at over 1,500 years old, which has served as a spiritual place used for Tribal ceremonies for generations.

The cultural resources that exist within the 'Great Oak Property' are of high value and traditional importance to the Pechanga Band of Luiseño Mission Indians. The seven archaeological sites and the 'Great Oak' traditional cultural property are being treated as eligible for inclusion to the National Register of Historic Places. By bringing the land parcels into federal trust status these resources will be afforded an additional level of protection that would not be available if the land were to remain in fee status.

It is our determination that the Pechanga Band of Luiseño Mission Indians has established a need for additional land, for the purposes of exercising governmental jurisdiction and assuring the long-term protection of the Luiseño people's natural and cultural resources, thus further enhancing tribal self-determination.

Factor 2 - Proposed land Use

The proposed project involves the acquisition of land that is contiguous to the exterior boundaries of the Pechanga Indian Reservation. The sole purpose of the acquisition is the preservation and the protection of Luiseño people's natural and cultural resources. The Pechanga Band is committed to protecting and preserving the invaluable and irreplaceable cultural resources of the Pechanga and Luiseño people. The cultural resources located within the Great Oak Ranch provide the Pechanga Band with unique opportunity to protect and preserve such resources on property owned by the Band itself. The Band has identified the following measures to preserve and maintain the identified cultural resources on the Great Oak project site:

- Create a buffer around each of the resources identified to prevent any impacts to the resources

- Protect in perpetuity, the resources identified;
- Set aside the resources and their respective buffers as a "cultural preserve";
- Devise a plan, in conjunction with an archaeologist and other qualified professions, for the long term protection and preservation of the resources; and
- Install a security gate with a guard building to control access into the project site.

In addition, the site also contains vegetation that has significant cultural value to the Tribe. The project site contains many plants important to the Tribe including elderberry bushes, buckwheat, sage and oak trees. This vegetation plays an important role in their tribal rituals and diet. It is the goal of the Tribal Council to preserve and maintain this important vegetation.

Factor 3 – Impact on State and Local Government's Tax Base

Tax-exempt status is not the reason for the acquisition of land in trust for the Pechanga Band of Luiseño Mission Indians. The Band has established a need for governmental jurisdiction over the subject property in order for the Band to help facilitate self-determination.

The annual Riverside County property taxes on the subject property for the tax year 2001 were $32,129.42, which is .0000321% of the County's tax base. The County does not currently collect sales tax from any business on the subject property. As such, the County is not losing any sales tax from the transfer of the subject property in trust for the benefit of the Pechanga Band of Luiseño Mission Indians. The Pechanga Band of Luiseño Mission Indians has responded by stating the following contributions to off-set impacts:

1. The Pechanga Band and the Pechanga Entertainment Center employs approximately 1,700 people. Most of the employees reside in northern San Diego County and Riverside County and contribute to the local economy.

2. The total employee wages, benefits, and taxes paid by the Pechanga Band through its tribal enterprises totaled just over $50,000,000 for the 2001 fiscal year. A great deal of this money was spent within the Temecula Valley and Riverside County, which help to spur the growth and sustainability of the local economy.

3. The Pechanga Band has assisted the City of Temecula in capturing funds to address infrastructure concerns. Specifically, the Pechanga Band helped to secure over $2 million to build and expand the Pala Road Bridge. Additionally, the Pechanga Band has pledged $4.4 million towards the improvement and expansion of Pala Road, which is scheduled to begin in March of 2002.

4. The Pechanga Tribal Government and the Pechanga Entertainment Center have contributed over $500,000 to local and regional organizations over the fiscal year 2000/2001. Donations were made to the area high schools, legal aid organizations, heath and welfare organizations, and many other local organizations that serve the community.

5. The Pechanga Band has entered into a Memorandum of Understanding (MOU) with the County of Riverside to provide "automatic aid" in the form of firefighting and paramedic services. This is important for it cuts down on the amount of time it takes for County residents to receive fire services. The Pechanga Band's Fire Department will assist the County with coverage of those areas that are rural, easier, and served quicker by the Pechanga Band Fire Department. Response time is shortened, and lives may possibly be saved as a result of this MOU.

We conclude that removal from the tax rolls will not incur an adverse impact on the County's financial situation.

Factor 4 - Jurisdictional Problems/Potential Conflicts

Indian lands in California are subject to P.L. 83-280; therefore, there will be no change in criminal jurisdiction. The Band Pechanga Band of Luiseño Mission Indians will assert civil/regulatory jurisdiction.

On April 13, 2001 we notified the California State Clearinghouse, Office of Planning and Research; Office of the Governor State of California; Office of the Assessor, Riverside County; Riverside County Building Services; County of Riverside Planning Department; Riverside County Sheriff's Department; County of Riverside Board of Supervisors; and the Riverside County Treasurer and Tax Collector. None of the aforementioned local government's have expressed concerns or identified potential jurisdictional issues.

On March 23, 2001, Sempra Energy ("Sempra") and its subsidiary, San Diego Gas & Electric Company ("SDG&E") notified the BIA that SDG&E had recently submitted an application for a proposed route for the Valley Rainbow Interconnect to the California Public Utilities Commission (CPUC). Sempra and its subsidiary, SDG&E, oppose the acquisition because the subject property is a "possible" route for a new 500,000-volt power line.

On May 1, 2001, the BIA responded to the March 23, 2001 letter from Sempra and its subsidiary, SDG&E; we provided guidance to Sempra regarding the process for a right of way across Indian land. Our May 1, 2001 letter included a copy of Part 169 of Title 25, INDIANS, of the Code of Federal Regulations (25 CFR 169). The BIA also advised Sempra to contact Mr. Mark A. Macarro, Chairman for the Pechanga Band of Luiseño Mission Indians.

On June 4, 2001, the Metropolitan Water District of Southern California responded with a letter to the BIA that the Metropolitan Water District of Southern California currently has a proposed pipeline and tunnel project, which would utilize a small portion of the Boseker (Great Oak) Ranch property recently purchased by the Pechanga Indian Reservation.

On January 30, 2002, the BIA received letters of support for the Great Oak Fee to Trust application from the following: the Honorable James L. Brulte, Senate Republican Leader, California State Senate; the Honorable John L. Burton, President Pro Tempore, California State Senate; the Honorable Raymond N. Haynes, Senator, California State Senate; the Honorable Dennis Hollingsworth, Assemblyman, California Legislature; the Honorable Herb J. Wesson, Jr., Speaker of the Assembly, California Legislature; the Honorable Abel Maldonado, Assemblyman, California Legislature.

On January 31, 2002, the BIA received letters of support for the Great Oak Fee to Trust application from the following: the Honorable Barbara Boxer, United States Senator; the Honorable Mary Bono, Member of Congress; and the Honorable Tony Strickland, Assemblyman, California Legislature.

On February 1, 2002, the BIA received letters of support for the Great Oak Fee to Trust application from the Honorable Cruz M. Bustamante, Lieutenant Governor, State of California and the Honorable Darrell Issa, Member of Congress.

On February 4, 2002, the BIA received a letters of support for the Great Oak Fee to Trust application from the Honorable Joe Baca, Member of Congress and the Honorable Bill Leonard, Assemblyman, California Legislature.

On February 6, 2002, the BIA received a letter of support for the Great Oak Fee to Trust application from the Honorable Mike Honda, Member of Congress.

Once the Great Oak Ranch is accepted in to trust for the Pechanga Band of Luiseño Mission Indians, Sempra and/or Metropolitan Water District of Southern California will no longer be able to condemn a corridor across the property through eminent domain and the Band will be able to exercise self-determination and jurisdiction over irreplaceable Luiseño people's natural and cultural resources located on the subject property. Conversely, if we do not place the land in trust and Sempra Energy and/or Metropolitan Water District of Southern California condemns a corridor, the First Amendment rights of the Pechanga Band may be severely compromised. Sempra Energy and the Metropolitan Water District of Southern California, can pursue negotiations with the Pechanga Band for rights of way pursuant to 25 CFR Part 169 after the land is accepted "in trust" for the Pechanga Band of Luiseño Mission Indians. However, 25 CFR 169.3 (a) specifies "No right-of-way shall be granted over and across any tribal land, nor shall any permission to survey be issued with respect to any such lands, without prior written consent of the tribe." Furthermore, Sempra Energy's proposed route across the Great Oak Ranch is only one of several possible routes for a new 500,000-volt power line; likewise, the Metropolitan Water District of Southern California's proposed route across the Great

Oak Ranch is only one of many options. Sempra has submitted almost weekly requests for any and all data pertaining to this application under the Freedom of Information Act, and they have had representatives visit our office to review data. Yet, neither Sempra nor the Metropolitan Water District of Southern California have advanced any reasons why these other routes should not be considered or whether or not they have already determined they are not feasible.

Additionally, the overwhelming support the BIA has received from the State of California's Lieutenant Governor, the State's Legislature, U.S. Senators, and members of Congress, for the transfer "in trust" of the Great Oak Ranch, offers more evidence for the need for protecting these sacred Luiseño sites. Based on the aforementioned, we conclude that there will be no jurisdictional problems or potential conflicts after the acquisition of the subject property "in trust" for the Pechanga Band of Luiseño Mission Indians.

Factor 5 – Whether the BIA is equipped to discharge the additional responsibilities

The Bureau of Indian Affairs has a trust responsibility for all lands held in trust by the United States for tribes. This acquisition anticipates no change in land use. Any additional responsibilities resulting from this transaction will be minimal. As such, the Bureau of Indian Affairs is equipped to administer any additional responsibilities resulting from this acquisition.

Factor 6 – Whether or not contaminants or hazardous substances are present

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability for, hazardous substances or other environmental remediation or injury. The record includes a negative Level 1 "Contaminant Survey Checklist" reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in Part 30 of the Bureau of Indian Affairs Manual (30 BIAM), Supplement 1. Within 30 BIAM Supplement 1, reference is made to actions qualifying as "Categorical Exclusions," which are listed in part 516 of (Interior) Department Manual (516 DM 6, Appendix 4). The actions listed therein have been determined not to individually or cumulatively affect the quality of the human environment, and therefore, do not require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A categorical exclusion requires a qualifying action, in this case 516 DM 6, Appendix 4, Part 4.4.I., Land Conveyance and Other Transfers of interests in land where no change in land use is planned.

An Environmental Assessment, dated July 2001, was distributed for public review and comment for the period beginning July 13, 2001, and ending August 13, 2001. Comments on the EA were received from Latham & Watkins, Attorneys at Law, representing Sempra Energy (Sempra) and its subsidiary San Diego Gas & Electric Company (SDG&E); the California Department of Toxic Substances Control; and the Metropolitan Water District of Southern California. A revised EA, dated August 2001, reflecting consideration of comments received during the previous EA public review and comment period, and a Finding of No Significant Impact (FONSI), dated August 31, 2001, were distributed on August 31, 2001.

On October 1, 2001, Latham & Watkins on behalf of Sempra Energy and San Diego Gas & Electric Company filed a Notice of Appeal to the Interior Board of Indian Appeals (IBIA). The decision appealed was the Regional Director's FONSI on the proposed trust acquisition. The Appellants brought the appeal "in order to preserve and protect important local and state-wide interests in electric reliability." The Appellants point to a potential conflict in land use and state that the environmental documents have failed to adequately evaluate the consequences of the proposed action including a failure to evaluate a reasonable range of alternatives, and specifically, an alternative that provides a 500-KV transmission line corridor through the subject property. The Appellants claim "The Revised EA is procedurally flawed, substantively inadequate and does not appropriately evaluate the environmental effects and impacts of the proposed action as required by NEPA, particularly with respect to the proposed Valley Rainbow transmission line." The Appellants point out that considerable time, money, effort and other resources have been expended on the Valley Rainbow project and if the fee-to-trust request is granted, SDG&E's powers of condemnation to obtain a right-of-way may be precluded. According to the Appellants, "Should the BIA determine to take this land into trust based upon this flawed EA and FONSI, SDG&E, which is clearly an interested party in this proceeding, may be required to seek additional immediate relief from the federal courts at significant additional expense. Accordingly, SDG&E is adversely affected by decisions set forth by the BIA's flawed NEPA analysis, and requires review of this matter by the IBIA."

In a letter dated October 19, 2001, the Pacific Regional Office informed the Appellant's attorney that the FONSI might only be appealed in conjunction with the decision to acquire the land in trust. Additionally, on October 23, 2001, the IBIA issued an Order Staying Proceedings, allowing comments from parties, and authorizing the Regional Director to proceed with the trust acquisition decision. The Law Offices of Holland & Knight, on behalf of the Pechanga Band of Luiseño Mission Indians, and Latham & Watkins, on behalf of the Appellants, made comments to the IBIA Order. Both comment letters were dated November 19, 2001. The IBIA reviewed the comments, concluded that a continued stay of proceedings was appropriate, and on November 26, 2001, issued an order continuing the stay of proceedings.

On August 16, 2001, the BIA submitted documentation to the State Historic Preservation Officer, in accordance with Section 106 of the National Historic Preservation Act (NHPA), with our determination of no adverse effect resulting from the proposed action.

The State Historic Preservation Officer concurred with this determination in a letter dated October 10, 2001.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. Subject acquisition will vest title in the United States of America in trust for the Pechanga Band of Luiseño Mission Indians in accordance with the Indian Land Consolidation Act of 1983 (25 U.S.C. §2202 et seq).

Should any of the below-listed known interested parties feel adversely affected by this proposed decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St. Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within 30 days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior, 1849 C Street, N.W., MS-4140-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures.

If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b).

Sincerely,

/s/ Amy L. Dutschke

Acting Regional Director

Enclosures
43 CFR 4.310–4.340
cc: See attached

Mr. HAYWORTH. Questions on H.R. 3476? Anyone have a question? The Gentleman from California.

Mr. ISSA. Thank you, Mr. Chairman. I really just have the one.

In making the finding, you laid out the elements. The fact that this rejoins their reservation into a contiguous single reservation, was that a major part of the consideration or at least a part of the consideration?

Mr. SMITH. It is certainly a part of the consideration, absolutely.

Mr. ISSA. And is this almost universally, as long as the other elements of not having hazardous waste and so on, one of the cases in which if you are rejoining a reservation that is split, that you almost always come in on the side of rejoining reservations? Is that pretty much a universal stand that the bureau tries to do?

Mr. SMITH. If all the standards that I read out, that I just read, are followed or found, certainly trying to restore a reservation would be a policy concern, I guess, of this department.

Mr. ISSA. And, last, in your due diligence you did look at and were made fully aware of San Diego Gas & Electric's position of potentially this being one of 17 alignments?

Mr. SMITH. Yes.

Mr. ISSA. So although they undoubtedly will make their point known again here today, this was something that was fully considered and by the action was found not to be a compelling issue that would stop this from being placed in trust?

Mr. SMITH. I would phrase it more that our responsibility is to the Indian nation, and we looked under these regulations as to what is best for the Indian nation under these regulations. While we were aware of the power lines and so forth, our real concern and the things that we look at are those that I enunciated in my testimony.

Mr. ISSA. Thank you very much.

Mr. HAYWORTH. Thank you, Mr. Issa.

Questions on the minority side? The Gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Mr. Smith, generally the criteria you use for taking land into the trust, those criteria do apply to this particular piece of land?

Mr. SMITH. Absolutely.

Mr. KILDEE. And do you believe, then, that the BIA should take this particular land into trust?

Mr. SMITH. Yes.

Mr. KILDEE. Thank you very much.

Mr. HAYWORTH. Thank you, Mr. Kildee.

The Chair has a couple of questions, Mr. Smith. On March 21, 2002, the administration released a Notice of Decision to take the Great Oak Ranch property into trust. Would that notice, in your opinion, would that Notice of Decision negate the need for H.R. 3476?

Mr. SMITH. We believe that the process that we have in place right now is adequate to sort of protect this piece of property. We would like to see the administrative process go forward, and we think that there is adequate appeal, judicial appeal, for that. I recognize you have plenary powers. I would be very cautious to say that it negates the need for you gentlemen to do anything.

Mr. HAYWORTH. And we thank you for being respectful of the separation of powers. The diplomacy, Wayne, with which you replied to that, is great.

Now, a chance to analyze another assertion that is often made, the argument that H.R. 3476 is a Federal intrusion on the right of a State to condemn land. What is your response to that assertion?

Mr. SMITH. Well, again, we have a process, the fee to trust process, that is actually a Federal process, and certainly that process would preempt, if you will, a State's ability to condemn land. So, again, I would refer to my first answer and say that I think the process we have already is based on the statute and based on regulations, and it certainly is a preemption of some of the State's ability to do things, but it has a complete judicial review and we are more than happy to let that judicial review run.

Mr. HAYWORTH. Thank you, sir.

I believe the Gentleman from California, Mr. Miller, had a couple of questions.

Mr. MILLER. I really had no questions. I just wanted to make sure that we understood—I appreciate there are problems with the testimony, but it is the position, your position, that this land should be taken into trust?

Mr. SMITH. That is correct.

Mr. MILLER. Thank you.

Mr. HAYWORTH. Reaffirmed and amplified through testimony again. Thank you, Mr. Miller.

Any questions from the majority side? Any others from the minority side? Oh, the Gentleman from Montana.

Mr. REHBERG. Thank you, Mr. Chairman. It is a pretty simple question. I was just trying to work on these acreages, and one briefing that I have says it is 4,396 acres of trust land and 697.35 of the Great Oak Ranch, and the other briefing says 3,163 acres and 724 acres in the Great Oak Ranch. Which is it?

Mr. SMITH. From my recollection of what we put down in my testimony, it is 4,396 acres of trust land, with 695.35 as the current Great Oak Ranch that is being put into trust.

Mr. REHBERG. OK. Thank you.

Mr. SMITH. I was just informed by my learned counsel that is correct.

Mr. REHBERG. That your numbers are correct?

Mr. SMITH. Yes.

Mr. REHBERG. Our other briefing is incorrect? OK, thank you.

Mr. SMITH. Again, I hesitate to say you are incorrect. I just say mine are correct.

[Laughter.]

Mr. HAYWORTH. The Gentleman from California, Mr. Issa, wanted to make a point.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Smith, just one last follow-up. This legislation, H.R. 3476, am I to understand, though, it in no way ties the hands or does anything to limit the execution by the Bureau of Indian Affairs in reaching a final decision. Is that correct?

Mr. SMITH. Yes. The process that we have in place is going to go forward regardless of this bill.

Mr. ISSA. OK, because in crafting the bill we wanted to be respectful of your separation of powers and the job that you are already tasked by the Congress to do, and do very well. So hopefully we have constructed this in a way that, although it protects the tribe in the interim, it in no way would limit your final decision, whatever it may be.

Mr. SMITH. That is correct.

Mr. ISSA. Thank you. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Issa.

Any other questions or comments from the minority side on this particular piece of legislation? If not, then, Mr. Smith, if you would address your perspective and comments on H.R. 103.

Mr. SMITH. OK. Actually, I will be really brief on this bill. This bill, H.R. 103, is the Tribal Sovereignty Protection Act, whose purpose is to ensure that Indian tribes are not forced to provide access to or otherwise unionize their casino employees as a condition of obtaining Federally approved Tribal-State Class III gaming compacts under the Indian Gaming Regulatory Act or IGRA.

The bill in its present form amends the Act by adding a subsection which would prohibit the inclusion of provisions pertaining to labor agreements in Class III gaming compacts. It also provides that such provisions in existing compacts shall be severed and considered null and void.

This legislation, if enacted, would affect the tribal-State compacting process in different ways from State to State. The Department of Interior is not prepared to speculate at this time on how those effects will change the balance of negotiations between the tribes and the States.

The Department is, however, concerned about Section 11(d)(3)(D) of the bill. It would reach back into existing compacts that have already been agreed to by States and tribes and approved by the Department. This would have immediate impacts on existing labor agreements, and could raise a number of unforeseeable contract issues the Department is unprepared to discuss at this time.

If you have any questions, I would be happy to answer them.

[The prepared statement of Mr. Smith follows:]

Statement of Wayne Smith, Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, on H.R. 103

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to provide testimony on H.R. 103, the "Tribal Sovereignty Protection Act," whose purpose is to ensure that Indian tribes are not forced to provide access to or otherwise unionize their casino employees as a condition of obtaining a Federally approved Tribal–State Class III gaming compact under the Indian Gaming Regulatory Act (IGRA).

The bill, in its present form, amends Section 11(d)(3) of IGRA, 25 U.S.C. 2710(d)(3), by adding a subsection which would prohibit the inclusion of provisions pertaining to labor agreements in Class III gaming compacts. It also provides that such provisions in existing compacts shall be severed and considered null and void.

This legislation, if enacted, would affect the Tribal–State compacting process in different ways from state to state. The Department of the Interior is not prepared to speculate on how those effects will change the balance of negotiations between the Tribes and the States.

The Department is concerned about section 11(d)(3)(D) of the bill because it would reach back into existing compacts that already have been agreed to by States and Tribes and approved by the Department. This would have immediate impacts on existing labor agreements and could raise a number of unforeseeable contract issues that the Department is not prepared to discuss.

This concludes my remarks and I will be happy to answer any questions you may have.

Mr. HAYWORTH. Mr. Smith, would lack of preparation prevent you from articulating the administration's view on the role of organized labor in the tribal-State compact process?

Mr. SMITH. I think that is correct.

Mr. HAYWORTH. So you are really just saying today you don't feel that you can comment, or is there a position, or is it being formulated, or you are just maintaining radio silence?

Mr. SMITH. Probably the latter. No, I am just kidding. We have no formal position about what part labor might play in the compacts. We do believe, however, the compacts are negotiated between the tribes and the State, and the degree to which either the tribes or the State wish to bring any other parties into or any other concerns into the compact process is theirs. So we are more mindful of the two parties that are at the table negotiating the compact, and so we are very reluctant at this time to say someone else should either have a place or not have a place.

Mr. HAYWORTH. All right, sir. Let's turn for questions or comments to the minority side. The Ranking Member, the Gentleman from West Virginia.

Mr. RAHALL. Mr. Chairman, I don't have any questions right now. I would just like to ask Mr. Smith if he will be around later, after we have heard the other witnesses on this bill, or if a member of your staff will be around?

Mr. SMITH. I could certainly—I would be around or somebody could be around, yes.

Mr. RAHALL. OK. Thank you.

Mr. HAYWORTH. Thank you, Mr. Rahall.

The majority side, any questions or comments?

The minority, the Gentleman from Michigan.

Mr. KILDEE. And I will later on be asking some questions on H.R. 103, but not at this time.

Mr. HAYWORTH. OK. I thank you, sir.

The Gentleman from Hawaii, Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you.

Mr. Smith, I want to make sure, are you for or against this bill? I don't mean you personally, but I mean does the administration have a position?

Mr. SMITH. No, we have no real position on this bill.

Mr. ABERCROMBIE. If you have no position, does that mean you are not opposing it?

Mr. SMITH. That means we are not opposing or supporting it. We do have some concerns with the retroactive application of one provision of the bill.

Mr. ABERCROMBIE. Doesn't it hurt your joints to be stretched that far?

[Laughter.]

Mr. SMITH. I don't run the whole department, nor the administration. I am here to give you our position.—

Mr. ABERCROMBIE. There is not a member in here who doesn't understand that. Thank you.

Mr. HAYWORTH. Actually, it is a part of a cultural exchange with our friends from Switzerland, neutrality.

[Laughter.]

Mr. HAYWORTH. Other questions or comments at this point on H.R. 103 for Mr. Smith?

If not, then, friend, it is time to turn to H.R. 3534. I know Mr. Carson has more than a casual interest in this.

Mr. SMITH. Hopefully on my third strike.

This bill has a long and rather sordid legal history. I will skip over that. It is in my testimony, but the chiefs of the tribes that will come after me are much more knowledgeable than I am about that history. I will let them speak to that.

What I would like to speak to is the status of the current negotiations to try to settle this case, and the Department has appointed a team to attempt to negotiate a settlement of the Court of Federal Claims cases that are currently pending. The team is composed of representatives of the BIA, the Solicitor's Office, and the Bureau of Land Management.

Representatives of the team have met on numerous occasions with the attorneys of the Cherokee, Choctaw, and Chickasaw Nations to reach agreement on the support of the Department of Interior for the bill. Such discussions have centered on the valuation of elements of damages claimed by the nations.

The parties are working toward an agreement as to the amount that can be recommended to Congress for settlement of the claim. While agreement has not been reached, the parties are making substantial progress on the agreement. At this time it appears there exists substantial disagreement on only one element of damages. That element is the subject of ongoing meetings between the Federal negotiating team and the nations' attorneys. I would like to emphasize here that I believe we are very close to an agreement.

The Court of Federal Claims is also interested in the settlement of the pending claims, and has held a series of status conferences to ensure that settlement discussions are proceeding. The next status conference is scheduled for June 19th. We believe the Congress should not proceed in ratifying a settlement until the parties have reached agreement on all issues.

We believe that continued discussion by the parties may result in a negotiated settlement between the Department and the Nations. The settlement should achieve two goals: one, resolve the financial elements; and, two, resolve the quiet title issues.

In addition, the Federal negotiation team has discussed amending certain parts of the bill. The team will be working with the Committee to clarify the description of lands disclaimed, the transfer of real property interest, particularly in the areas where the navigation system was channelized across fee lands acquired by the U.S. Army Corps of Engineers, and certain other matters, including express waiver of certain future claims.

This concludes my prepared statement. I would be happy to answer questions.

[The prepared statement of Mr. Smith follows:]

Statement of Wayne Smith, Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, on H.R. 3534

Good morning, Mr. Chairman and Members of the Committee. I am pleased to appear before you today concerning the Department's views on H.R. 3534, the "Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act". Since the subject of this legislation is pending litigation, I can only provide you with a background and status of the issue.

BACKGROUND

This case originated in the mid–1960's when the Cherokee, Choctaw and Chickasaw Nations (Nations) filed suit against the State of Oklahoma for a declaratory judgment regarding ownership of the Arkansas Riverbed. The case culminated in a decision by the United States Supreme Court holding that ownership of the Arkansas Riverbed remained in the Nations. See Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970). The Supreme Court did not attempt to designate the particular tracts owned by the United States in trust for the Nations.

Thereafter, the United States District Court for the Eastern District of Oklahoma, held that the State of Oklahoma had no further interest in the Arkansas Riverbed. Again, there was no ruling as to the ownership of the particular tracts of land. The Court transferred the ownership of certain oil and gas leases executed by the State of Oklahoma to the Bureau of Indian Affairs (BIA) for the benefit of the Nations. See Cherokee and Chickasaw v. Oklahoma, No. 6219–Civil (Judgment filed Jan. 21, 1977) and The Choctaw and Chickasaw Nations v. the Cherokee Nation, No. 73–332–Civil (Judgment filed April 15, 1975).

The Nations then sued the United States arguing that the construction of the Kerr–McClelland Navigation System was a taking by the United States of the Tribe's ownership of the riverbed. This case ultimately went to the United States Supreme Court. The Court held that the Nations' interest was subject to the navigation servitude retained by the United States. See United States v. Cherokee Nation of Oklahoma, 480 U.S. 700 (1987). The Court stated that the United States has the power to deepen the water or erect structures which it may believe to aid navigation.

What is not directly resolved by the 1987 case is the ownership of specific tracts of dry lands owned by the Nations after avulsive changes in the river's course, as discussed by the Supreme Court in the first decision. After the 1970 decision, the United States obtained a study done by Holway and Associates, a private company located in Oklahoma City, Oklahoma. This study outlined the dry land areas that were considered to be owned by the Nations. As a result of the Holway study, the United States began leasing the minerals located in those areas. The BIA determined that there might be problems with the Holway study, and a second study was done by the Bureau of Land Management(BLM). This study, like the Holway study, examined the entire length of the riverbed.

In 1989, the Nations filed two lawsuits against the United States in the Court of Federal Claims. See Cherokee Nation of Oklahoma v. United States ; No. 218–89–L (Ct.Fed.Cl.) and Choctaw and Chickasaw Nations v. United States, No. 630–89–L (Ct. Fed. Cl.), seeking damages from the United States for the failure to restore the Nations possession of the tracts claimed. The cases have been pending since that time.

Quiet title lawsuits have been filed regarding certain tracts of land along the Arkansas River. The Cherokee Nation quieted title to one tract of land, in Cherokee Nation of Oklahoma v. Mathis, Case No. 87–193–C (E.D. Okla. Judgment filed Nov. 27, 1989). This judgment quiets title in a single tract of land containing 124.942 acres in Section 9, Township 10 North, Range 24 East, of Sequoyah County, Oklahoma.

The United States initiated a quiet title lawsuit covering the claim areas in two sections of the Riverbed. See United States v. Pates Farms, et al., Case No. CIV–97–685–B. This lawsuit sought to quiet title to tracts in Sections 31 and 32, Township 11 North, Range 27 East, Sequoyah County, Oklahoma. The case was dismissed by the Court on technical grounds and has not been refiled because of the pending settlement efforts.

CURRENT STATUS

The Department has appointed a team to attempt to negotiate a settlement of the Court of Federal Claims cases. The team is composed of representatives of the BIA, the Solicitor's Office and BLM. Representatives of the team have met on numerous occasions with the attorneys for the Cherokee, Choctaw and Chickasaw nations to reach agreement on the support of the Department of the Interior for the bill. Such discussions have centered on the valuation of elements of damages claimed by the

Nations. The parties are working towards an agreement as to the amounts that can be recommended to Congress for settlement of the claim. While agreement has not been reached, the parties are making substantial progress on the agreement. At this time, it appears that there exists substantial disagreement as to only one element of damages. That element is the subject of ongoing meetings between the Federal negotiation team and the Nation's attorneys.

The Court of Federal Claims is also interested in the settlement of the pending claims and has held a series of status conferences to insure that settlement discussions are proceeding. The next status conference is scheduled for June 19. We believe the Congress should not proceed in ratifying a settlement until the parties have reached agreement on all issues.

COMMENTS ON H.R. 3534

We believe that continued discussion by the parties may result in a negotiated settlement between the Department and the Nations. The settlement should achieve two goals: (1) resolve financial elements, and (2) resolve quiet title issues. In addition, the Federal negotiation team has discussed amending certain parts of the bill. The team will be working with the Committee to clarify the description of lands disclaimed, the transfer of real property interests, particularly in areas where the Navigation System was channelized across fee lands acquired by the U.S. Army Corps of Engineers and certain other matters, including an express waiver of certain future claims.

This concludes my prepared statement. I regret that I cannot speak more specifically on the proposed legislation due to the litigation of the matter. We look forward to working with the Committee on the settlement legislation once an agreement has been reached by all parties involved.

Mr. HAYWORTH. Thank you, Mr. Smith.

The Committee is aware that the United Keetoowah Band of Cherokee has concerns about whether this bill will adequately protect its interest. To what extent has the United Keetoowah Band been involved in the development of the settlement agreement?

Mr. SMITH. I am not really aware of that. I can't answer that.

Mr. HAYWORTH. Could you check on that?

Mr. SMITH. I can check and get back to you, I think. Sure.

Mr. HAYWORTH. We would appreciate that. Can the administration account for or summarize the values placed on the various elements of H.R. 3534 and how these values arrive at a total of over $41 million?

Mr. SMITH. We have a chart I would be happy to submit to you, rather than read it on the record, if you want me to, and give you the amounts that the different positions—the amounts that were agreed to. I would be happy to submit that to you. The only thing that is outstanding, Mr. Chairman, is the sand and gravel cost, and that is the one that is still under negotiation. All the rest of them have been agreed to.

Mr. HAYWORTH. Mr. Smith, if the United States is unable to reach a settlement with the three nations on the issues in H.R. 3534, what would be the administration's course of action?

Mr. SMITH. To continue litigation, but I don't believe that is what is going to happen. The litigation could go on probably 10, 15, 20 more years, and that is just not tenable for either party. Like I testified to, I believe that both the government as well as the nations are very close to settlement, and I think you will hear from the nations that that is indeed the case.

Mr. HAYWORTH. Thank you, sir.

I turn to the Ranking Member. Any questions or comments?

Mr. RAHALL. No, thank you.

Mr. HAYWORTH. Any questions or comments? The Gentleman from Oklahoma, Mr. Carson.

Mr. CARSON. No real questions for Mr. Smith, other than to thank you for being here today and thank you for the ongoing negotiations, and I think you have answered a couple of questions I had to Mr. Hayworth, and I look forward to talking about the issue more here in a few minutes, as well. Thank you.

Mr. HAYWORTH. I thank the Gentleman from Oklahoma, who was born in Winslow, Arizona. We always appreciate that, the Sixth District of Arizona. For purposes of full disclosure, Mr. Rahall, we had to point that out.

The Gentleman from Michigan.

Mr. KILDEE. I will probably wait until Governor Anoatubby and Chief Smith and Chief Pyle will be testifying, and have some statements and questions at that time.

Mr. SMITH. Thank you. They are far more knowledgeable than I.

Mr. KILDEE. Thank you.

Mr. HAYWORTH. Thank you. Any other questions or comments for Wayne?

If not, then, Mr. Smith, we thank you, and we appreciate your offer to stick around or have capable folks who work with you to hang around, lend an ear and an opinion as the day continues along.

Mr. SMITH. Thank you, Mr. Chairman. I will get someone more capable than I to stick around. Thank you.

Mr. HAYWORTH. Thanks very much. Now, panel three. we will call on Mark Macarro, the Chairman of the Pechanga Band of Luiseno Mission Indians, and also James P. Avery, the Senior Vice President of San Diego Gas & Electric. Gentlemen, if you would join us front and center, we would appreciate it.

Again, gentlemen, we welcome you, and we reaffirm from the Chair that your entire statements will be included in the record of today's proceedings, and we would appreciate a summarization of those statements. Chairman Macarro, when you are prepared to commence, we welcome you and we look forward to your testimony. Thank you, sir.

STATEMENT OF MARK MACARRO, CHAIRMAN, PECHANGA BAND OF LUISENO MISSION INDIANS

Mr. MACARRO. [Greetings in native language.] My name is Mark Macarro. I am the Tribal Chairman for the Pechanga Band of Luiseno Mission Indians, and I simply said greeting in our Luiseno language. Hello, and it is good to be with all of you here today. Thank you for being here, and hi to all my friends and relations from here, and fellow Indians.

Mr. Chairman, I want to thank also Congressman Darrell Issa for introducing this bill, and Congresswoman Bono and Congressman Calvert for cosponsoring this bill on behalf of our people. With all my heart, I ask for your full support of H.R. 3476. Simply, H.R. 3476 would temporarily protect unique and sacred lands called the Great Oak Ranch. While we want the Great Oak protected forever, H.R. 3476 just keeps these special lands from utility line condemnation until a final decision is made by the U.S. Secretary of Interior on our pending fee to trust application.

Last May we culminated a 20-year effort to purchase the 697 acres now known as the Great Oak Ranch, to join together the two existing portions of our reservation. Our people have worked long and hard over many years to reacquire these ancestral lands, so we filed an application with Interior through the BIA to have the Great Oak Ranch placed into trust as part of our existing reservation.

For the people of Pechanga, returning ancestral lands to our reservation is a duty that transcends easy expression by me here today. For example, in 1875 our last aboriginal village for our people, we were the subject of an eviction through a Federal decree of ejectment. It was a forced eviction that took place in the Temecula Valley. And for 7 years, until the establishment of our reservation in 1882 by executive order, we had no lands.

So the rugged, undeveloped landscape of the Great Oak Ranch is rich with spiritual, cultural, and archaeological resources. These lands are where the Pechanga people came into being, and these lands are where the Pechanga people will always be.

These lands are likewise important to the entire Temecula community and valley, and home to many irreplaceable resources, both cultural and natural. These ranch lands include the former home of Erle Stanley Gardner, author of the famed Perry Mason novels.

And the centerpiece of these lands is its namesake, the Great Oak. Dated by UCLA at more than 1,500 years, it is heralded as the oldest known coastal live oak, Quercus agrifola. It stands majestically at more than 96 feet in height with a massive trunk nearly 20 feet in circumference. Each branch, larger than most live oak trunks, rises to touch the sky and then bends down to touch the earth, creating a natural, serene, cathedralesque sanctuary. It was underneath these great branches that Pechanga members held sacred ceremonies eons ago, and now at the dawn of a new century the Pechanga people are once again gathering under the Great Oak canopy.

Just days ago we were notified by the BIA Pacific Regional Office of their intent to take the Great Oak Ranch into trust for the Pechanga people, acknowledging the following, and I quote:

"The sole purpose of the acquisition is the preservation and protection of Luiseno people's natural and cultural resources. The Pechanga Band is committed to protecting and preserving the invaluable and irreplaceable cultural resources of the Pechanga and Luiseno people. The cultural resources located within the Great Oak Ranch provide the Pechanga Band with unique opportunities to protect and preserve such resources on property owned by the Band itself."

These words from the Federal Government validate the emotion in our hearts about the Great Oak Ranch, and that it should come home to its native family.

It is our understanding, however, that this decision by the BIA will be appealed by Sempra Energy so that they can run a massive power line within feet of the Great Oak Ranch itself. And while Interior's Notice of Intent specifically states, I quote, "Sempra Energy's proposed route across the Great Oak Ranch is only one of several possible routes for a new 500,000-volt power line," Sempra has relentlessly pressed for this route. They have indicated to the

court, the Department of Interior, and the public that they will appeal the proposed Notice of Decision, and we know these precious lands are vulnerable to their condemnation unless you, who are charged with the protection of America's natural wonders and America's first people, act to preserve the status quo.

Just as the Great Oak does not stand alone, the people of Pechanga do not stand alone. Elected local officials, Republicans and Democrats, business and community leaders, the elderly and Boy Scouts, have all stepped forward to stand with this Temecula Valley gem.

Our Members of Congress, Mr. Issa, Ms. Bono, Senators Diane Feinstein, Barbara Boxer, and our State legislators, including State Senator and Republican leader Jim Brulte, Assemblyman Dennis Hollingsworth, and our Lieutenant Governor Cruz Bustamente, have all stepped forward, and we now ask you to step forward. Stand with them, stand with us, and stand with the Great Oak. And Mr. Calvert, I add you to the list, too. Thank you. And I thank the Committee. Thanks.

[The prepared statement of Mr. Macarro follows:]

Statement of The Honorable Mark Macarro, Chairman, Pechanga Band of Luiseno Mission Indians

Mr. Chairman, I thank you and the other distinguished members of the Committee for the opportunity to present testimony on behalf of the Pechanga Band of Luiseno Mission Indians ("Tribe" or "Pechanga Band"). I am here today to respectfully ask your support of H.R. 3476 which, if passed into law, would protect the Great Oak Ranch property from condemnation until the Secretary of the Interior makes a final decision regarding our pending fee to trust application for that land.

In this testimony, I will describe the efforts that my Tribe has taken to return and protect the Great Oak Ranch as part of the Pechanga Indian Reservation. I will also describe the unique and irreplaceable resources of this land, including the 1500 year old Great Oak, as well as other cultural, religious, archaeological and biological features. I will outline the unanimous local support that we have received for our trust application, and the ongoing efforts of San Diego Gas & Electric Company ("SDG&E") to impede and threaten the Great Oak Ranch with continuing threats of appeals and condemnation of our property.

THE PECHANGA TRIBE'S FEDERAL PETITION TO TAKE THE GREAT OAK RANCH PROPERTY INTO TRUST AS A LEGACY FOR THE TRIBE AND ITS MEMBERS

On June 29, 1882, an Executive Order issued by the President of the United States established the Pechanga Indian Reservation ("Pechanga Reservation"), which is located within the ancestral and aboriginal lands of the Tribe. Additional acreage has been added over the years, for a total of 4,396.44 acres. The Pechanga Reservation consists of Federal trust property held for the beneficial use of the Tribe. The Reservation is intended to be a permanent homeland in order to further the Federal policy of Indian self-determination, including economic development and self-sufficiency.

On May 15, 2001, the Tribe acquired thirty-one parcels totaling 688.73 acres, and owns the property in fee. This land is located adjacent to the Reservation. These parcels (also referred to as the "Great Oak Ranch" property) are located within portions of Sections 28, 29, 32 and 33, Township 8 South, range 2 West, San Bernardino Base Meridian, in Riverside County, California. The property is located approximately 5 miles southeast of Temecula, and is adjacent to the boundary of San Diego County, California.

As part of its trust relationship with Indian tribes, the United States may take title to property in trust for Federally-recognized Indian tribes pursuant to the provisions of Section 5 of the Indian Reorganization Act, 48 Stat. 985, Act of June 18, 1934, 25 U.S.C. Section 465, and Section 203 of the Indian Land Consolidation Act of 1983, 25 U.S.C. Section 2201, et seq., as amended. The United States Department of Interior has adopted regulations that specify the procedures and substantive

criteria used to process tribal applications to take land into trust for the benefit of Federally-recognized Indian tribes. See 25 Code of Federal Regulations Part 151.

On December 31, 2000, the General Council of the Tribe, consisting of all adult members of the tribe, duly adopted Resolution 001231–C. This resolution directed the Tribal Chairman to submit an application to the United States to take the Great Oak Ranch property into trust. This resolution also directly requested that the Secretary approve the application. [See Exhibit A] For the people of Pechanga, returning these lands to our reservation is paramount. The rugged, undeveloped landscape of the Ranch is rich with spiritual, cultural, and archaeological sites. This Ranch is Pechanga's legacy.

In June 2001, the Tribe submitted an application to the United States Department of the Interior, pursuant to regulations found at 25 CFR ¶151 et seq., to take the Great Oak Ranch property into trust by the United States for the benefit of the Tribe. As outlined in the application, the Tribe's intended use of the property involves the continuation of existing agricultural activities, maintenance and use of three existing residences on site, and maintenance and preservation of the existing Luiseno Indian cultural resources found throughout the site. [See Exhibit B]

Our property is home to many irreplaceable resources—both cultural and natural. The primary goal in acquiring the parcels of land covered by the trust application is to preserve and protect the ancestral homelands and cultural resources of the Tribe, including many sacred sites, archeological sites, and items. These ranchlands also include the historically significant former home of Erle Stanley Gardner, author of the famed Perry Mason novels.

Yet the centerpiece of these lands is its namesake—The Great Oak. The Great Oak is believed to be more than 1500 years old and is heraldedas the oldest known coastal live oak tree. It stands majestically at more than 96 feet in height with a massive trunk nearly 20 feet in circumference. Each branch, larger than most live oak trunks, rise up toward the sky and then come down to land—creating a natural, serene sanctuary. It was underneath these great branches that Pechanga members held sacred ceremonies eons more than a hundred years ago. As we sit at the dawn of a new century, the people of Pechanga are once again gathering under the canopy of the Great Oak.

We believe the resources found on the Great Oak Ranch should be preserved and remain within the Ranch. The sole purpose of the acquisition is the preservation and the protection of Luiseno people's natural and cultural resources. The Pechanga Band is committed to protecting and preserving the invaluable and irreplaceable cultural resources of the Pechanga and Luiseno people. The cultural resources located within the Great Oak Ranch provide the Pechanga Band with the unique opportunity to protect and preserve such resources on property owned by the Tribe itself. These words spoken by the Federal Government validate the emotion in our hearts that the Great Oak Ranch should come home to its native family.

Once the Great Oak Ranch property is accepted into trust by the United States, it will become part of the Pechanga Reservation. The Tribe will exercise powers of self-government, including civil regulatory jurisdiction, to protect the unique archaeological, biological and cultural resources, as well as the historic and sacred sites on the Great Oak Ranch.

THE TRIBE RECEIVES UNANIMOUS LOCAL SUPPORT FOR ITS TRUST APPLICATION

The people of Pechanga do not stand alone in their commitment to protect the Great Oak Ranch. From elected officials to business and community leaders, many have stepped forward to ensure the preservation of this Temecula Valley gem. Our Federal representatives in Congress Darrell Issa and Mary Bono; Senators Barbara Boxer and Dianne Feinstein; representatives from the state including State Senator Jim Brulte and Assemblyman Dennis Hollingsworth; and the Save South Riverside County Association, which represents the citizens of Riverside County, and the Temecula Valley Winegrowers Association, a vital part of the Valley's tourism and business sectors. Support for the Great Oak Ranch has transcended traditional geographic and political lines and serves as a symbol for all the people of Temecula Valley. [See Exhibit C]

SDG&E'S THREATENED CONDEMNATION ACTION AND FURTHER LITIGATION

The Tribe needs legislation to protect the fee-to-trust application process from SDG&E's threatened use of eminent domain powers. The Tribe is concerned that SDG&E continues to threaten the initiation of condemnation proceedings against the Great Oak Ranch property, even though SDG&E has not received a

determination from the California Public Utilities Commission that the Valley Rainbow Interconnect Project is necessary or in the public interest.

On March 23, 2001, SDG&E filed an Application for a Certificate of Public Convenience and Necessity and its Proponent's Environmental Assessment for the Valley–Rainbow 500-kilovolt (kV) Interconnect Project with the California Public Utilities Commission ("CPUC"). The CPUC application identifies both a preferred and proposed alternative route for the transmission line. The route preferred by SDG&E is along the easternmost and a portion of the southern-most sides of the Pechanga Indian Reservation, adjacent to the Cleveland National Forest. One of SDG&E's seven "alternative" routes pass through the Great Oak Ranch property, threatening several archaeological sites and the root system of the Great Oak tree.

California public utilities have historically had broad powers of eminent domain. This has been necessary so that utilities could construct necessary improvements to their utility systems. However, as the concept of utility deregulation developed in California, the California Legislature determined that certain limitations would need to be placed upon the utilities' use of this power of eminent domain, in order to prevent the inappropriate use of this power as a competitive tool. In order to prevent the abusive use of this power, the California Legislature enacted Public Utilities Code Section 625. [See Exhibit D]

As enacted, the law requires (with certain limited exceptions) public utilities to obtain prior approval by the CPUC before any eminent domain powers may be exercised by a public utility for competitive purposes.

The section specifically provides a procedure for the review by the CPUC of condemnation proceedings initiated by public utilities. The public utility must file a petition or complaint, and provide personal notice to the owners of the property that is to be condemned. Before making a finding pursuant to this subdivision, the Commission must conduct a hearing in the local jurisdiction that would be affected by the proposed condemnation.

SDG&E has argued that this section does not limit its ability to condemn the Great Oak Ranch. Last year, SDG&E initiated pre-condemnation proceedings in Riverside Superior Court to survey the property of 320 property-owners along a 1,000 foot-wide corridor for its proposed alternative route. In this recent related litigation against 320 landowners, SDG&E argued that the proposed Rainbow–Valley Interconnect Project is not a "competitive service," and therefore a Commission finding under Section 625 (a)(1)(A) is not required. SDG&E has also argued that the Project is required to fulfill a CPUC ordered obligation to serve (that would satisfy the exception to the requirement for a hearing found in (a)(1)(B) of Section 625). Both assertions are, at best, premature, as the CPUC is considering SDG&E's Application for a Certificate of Public Convenience and Necessity at this time.

SDG&E, has repeatedly threatened and continues to threaten the initiation of eminent domain proceedings for purposes of a right of way. In a August 7, 2001, letter from Carolyn F. McIntyre, SDG&E Vice–President to California Assemblymember Rod Pacheco, SDG&E took the position that CPUC approval of the project was not a condition precedent to bringing a condemnation action [See Exhibit E]:

> In response to the legal questions raised in your letter, SDG&E has the legal authority to enter private land to conduct these activities [notify 320 property owners along a 1,000 foot wide transmission line study corridor] before the CPUC approves the project.
>
> In Pacific Gas & Electric Co. v. Parachini (1972) 29 Cal. App. 3d 159, 166, the court stated that: "...a certificate from the Public Utilities Commission is not a condition precedent to the acquisition of property by a regulated utility." Similarly, in Pacific Gas & Electric Co. v. Hay (1977) 68 Cal. App. 3d 905, 912, the court reiterated that "...in any event, Parachini supports the view that agency approval is not a condition precedent to the commencement of a condemnation proceeding...."

On March 21, 2002, the Bureau of Indian Affairs, Pacific Regional Office issued a notice of decision to have the Great Oak Ranch property taken into trust for the Tribe ("Notice of Decision"). [See Exhibit F] The Notice of Decision found that the Tribe established the need for additional land for purposes of exercising governmental jurisdiction and assuring the long-term protection of the Luiseno Mission Indians' cultural resources and in the enhancement of tribal self-determination. The Notice of Decision also found that the Tribe established the need to protect the biological resources of the Great Oak Ranch property, in addition to the Great Oak, elderberry bushes, buckwheat and sage species. The Notice of Decision noted that "Sempra and its subsidiary, SDG&E, oppose the acquisition because the subject property is a 'possible' route for a new 500,000-volt power line," but granted the

Tribe's application because the Tribe had made the required showing of need under the regulatory process in 25 CFR Part 151.

It is our understanding that this decision by the BIA will be appealed by SDG&E given the possible routing over the Great Oak Ranch for its proposed Valley–Rainbow Interconnect project. [See Exhibit G] After devoting years to secure these lands we are disappointed that our efforts may be further delayed. The latest evidence of SDG&E's intentions were outlined in a March 29, 2002, letter from Steven C. Nelson, Esq. to Michelle Cooke, Administrative Law Judge. In that letter, SDG&E stated its position to oppose the Tribe's trust application by appealing through the administrative process:

> In these appeals, SDG&E will explain, as it has done so in its other filings at BIA, that SDG&E is not opposed to the land being taken into trust so long as a right-of-way is preserved for the Project. SDG&E also will reiterate that it remains open to further discussions of these issues with the Tribe.

SDG&E continues to threaten more litigation and the right to bring a condemnation action against the Tribe for the power to take a right of way corridor over the Great Oak Ranch property. The Tribe needs this legislation to preserve the status quo until its trust application has been fully decided on the merits, and all appeals have been exhausted.

CONCLUSION

Mr. Chairman and Members of this Committee, thank you for granting me the opportunity to represent the Pechanga Band of Luiseno Indians today. The Great Oak Ranch represents the return of our homelands and its resources to our people and our community. But most importantly, protection of the Great Oak Ranch allows us to preserve and share Pechanga's history with generations to come. I respectfully request the expeditious passage of H.R. 3476.

Mr. HAYWORTH. Mr. Chairman, we thank you for your testimony and your awareness of the atmospherics with us on the dais.

Mr. Avery, welcome. Your testimony, please, sir.

STATEMENT OF JAMES P. AVERY, SENIOR VICE PRESIDENT, SAN DIEGO GAS & ELECTRIC

Mr. AVERY. Thank you. This is an emotional issue, there is no doubt about it, but in trying to sum up my testimony, SDG&E is trying to preserve reliability that we provide to the people of Southern California.

The region of San Diego is an area that is highly constrained. We rely upon two transmission corridors, one that extends to the east over toward Palo Verde nuclear generating plant, one that extends up to the north through the San Onofre nuclear generating facility. Essentially, we are in a bottlenecked area.

There are no other routes available. We have identified three potential routes. One of those routes would require us to work or to go through the Pechanga Reservation. In our early discussions with them, they have told us they are opposed to that route. We have identified two other routes. One of those would go through the Great Oak Ranch. We did also have one other route which would require us to condemn homes and businesses.

Now, we are in a situation where in moving forward on the Great Oak Ranch, it is not something that we want to in any way interfere with their right to take this land into trust. In fact, we are supportive of that. All we are asking for is that a small piece of this land be set aside until a final determination is made by the Public Utilities Commission that the need is verified and that we can move forward.

We have not taken any action to condemn this land, nor will we take any action until the State determines there is a need and tells us to move forward with that. Any action under this bill would essentially circumvent or override the State's authority to move forward with condemnation.

Now, as for the tree itself, it is a beautiful tree. I am not going to deny that. It is magnificent. Now, as for where we would locate our line, we are more than willing to work with the Pechanga Reservation and anyone else who can give us the ability to move the line further away. As to what we have proposed, we are roughly a tenth of a mile from the tree. We do not believe we will have any impact on this at all.

I think I would also like to point out the fact that essentially we believe this bill is not necessary. We believe that we should be allowed to continue. Allow the Indians to move forward with their request to take this land into trust.

As my colleague here has pointed out, we will be appealing the BIA's action to take this into trust, but it is not because we don't think the land should go into trust. All we are asking for is a corridor through this land, and that is it.

Thank you.

[The prepared statement of Mr. Avery follows:]

Statement of James Avery, Senior Vice President, San Diego Gas & Electric, on H.R. 3476

Good afternoon, my name is Jim Avery, Senior Vice President of San Diego Gas & Electric (SDG&E). I am responsible for managing all aspects of electric transmission for SDG&E, a distribution utility that provides service to 3 million customers through 1.3 million electric meters and 775,000 natural gas meters in San Diego and southern Orange counties. SDG&E is a California Public Utilities Commission (CPUC)-regulated subsidiary of Sempra Energy, a San Diego-based Fortune 500 energy services holding company. I appreciate the opportunity to provide testimony on H.R. 3476.

SDG&E opposes H.R. 3476. If enacted into law, this legislation would preempt the laws of the State of California by overriding the state's authority to condemn and compensate private landowners for land that is needed for a public purpose. More specifically, H.R. 3476 would exempt a parcel of private land that the Pechanga Band of Luiseno Mission Indians owns in fee from the operation of state condemnation law until a final decision is reached on the Tribe's request to take the land in question into trust. It would have the practical effect of blocking indefinitely SDG&E's construction of the Valley Rainbow Interconnect, a major new transmission project that will serve as a critical link in the Southern California electricity system, providing increased reliability and access to electricity supplies for customers throughout southern California.

H.R. 3476's proposed preemption of state law authorities raises serious Federalism concerns that go beyond the facts of this case. California has only recently been able to end the need for instituting blackouts and bring spiraling prices under control, and has a long way to go before it will completely emerge from a severe energy crisis that threatened the State's economic future and well being. Although the crisis was caused by many factors, a lack of transmission and an insufficient supply was identified as a leading contributor. Constraints on electricity production and transmission in California continue to create uncertainties in the marketplace; passage of H.R. 3476 would send the wrong message to citizens and businesses in California. The bill would hold out a single parcel as being above state law and off-limits for a critical right-of-way that is needed to help resolve California's uncertain electricity situation.

In addition to raising serious questions about the relative role of Federal and state authorities in installing needed electricity infrastructure in California and other states, H.R. 3476 represents an unnecessary and unwise overreaction to a land use conflict between the Tribe's desire to convert fee land into trust land and SDG&E's need to obtain a suitable right-of-way for its Valley Rainbow Interconnect project. This bill is the latest in a series of attempts to legislatively circumvent or

influence the regular process of administrative review and decision. SDG&E does not oppose the Tribe's request to take the Great Oak Ranch property into trust, so long as a right-of-way corridor is identified and set aside for public use at the same time. The Company has made it clear that it is interested in moving forward with a consensual resolution of its land use conflict with the Tribe; there is no need to preempt a condemnation action that may never arise. The siting of this line would not be an act by SDG&E alone, but would be the result of a multi-year review by state agencies to identify the need and the optimum resolution. So no condemnation is pending. SDG&E is concerned that removing any possibility of such an action in the future, however, would send a message to the Tribe that there is no need to participate in discussions or negotiations on this issue. Indeed, SDG&E believes that Congress should encourage the Secretary of the Interior to assist in resolving this conflict, rather than helping to create more barriers to a common-sense solution to this matter.

BACKGROUND AND NEED FOR THE VALLEY RAINBOW INTERCONNECT TRANSMISSION PROJECT

The Valley Rainbow Interconnect project is a proposed 500,000-volt electric transmission line that would connect the existing Valley substation in Riverside County to a new substation 30 miles south in the community of Rainbow in San Diego County. The Interconnect will provide an important new link between the growing San Diego market and the rest of the State. The California Independent System Operator (ISO), the agency responsible for managing and planning the California transmission grid, has confirmed the important role that the Valley Rainbow Interconnect will serve in California's electricity system. I have attached the ISO's letter of support from September 2001.

The business community in the greater San Diego region also recognizes the importance of the Valley Rainbow Interconnect project. In a November 2001 letter (attached for the record), the San Diego Regional Chamber of Commerce, the San Diego Regional Economic Development Corporation, and the San Diego–Imperial Counties Labor Council agreed that the proposed transmission line is "critical to helping to solve the long-term energy demands of the San Diego region" and would "help maintain a strong regional economy and job base for many years to come."

SELECTION OF A RIGHT–OF–WAY CORRIDOR FOR THE VALLEY RAINBOW PROJECT

San Diego Gas & Electric studied more than 80 different routes and hundreds of miles of alternatives to determine the corridors for its Valley Rainbow project that would have the least impact on the residents, businesses and environment in Riverside and San Diego counties. Three primary corridors in the southern region of Riverside County emerged as potential alternatives. The first route, identified as the preferred route, is located on the southern and eastern boundary of the Pechanga Reservation. This route would have the least impact on the environment and communities of Southwest Riverside County. A second route was also identified; it would go through a large undeveloped parcel of land known the Great Oak Ranch, west of the city of Temecula. This route appeared to be feasible, and potentially desirable, because it traversed private land, and it raised fewer environmental concerns than the third potential option. The third route, situated west of Interstate 15, has been recognized as problematic because it would traverse an environmentally sensitive area and, in addition, would enter populated areas, triggering the need to remove several businesses and homes.

Based on the outcome of its extensive route analysis, San Diego Gas & Electric initially sought Tribal approval to site the Valley Rainbow line over the preferred route along the southern and eastern edge of the Pechanga Reservation. In June 2000, we met with Chairman Mark Macarro to discuss the Valley Rainbow Interconnect and our desire to acquire an easement along the eastern and southern borders of the Pechanga Reservation to locate the transmission line. During the following year, numerous meetings were held with the Pechanga Tribal Council, between Ed Guiles, CEO of the Sempra Energy Utilities and Chairman Macarro, and with many other members of the Pechanga Tribe.

Unfortunately, SDG&E's efforts to negotiate a right-of-way for the preferred route was unsuccessful, and the Tribal Council passed a resolution opposing the proposed siting of the Valley Rainbow Interconnect line along the preferred route. Because of the Tribe's opposition, SDG&E focused its attention on the second route through the privately owned Great Oak Ranch, adjacent to the reservation. In March 2001, SDG&E filed an application with the CPUC for approval of the Valley Rainbow line and the Great Oak route.

In April 2001, SDG&E once again met with the tribe to discuss the possibility of using the preferred route over the proposed route. In May 2001, shortly after SDG&E indicated that it would be proceeding with the Great Oak route for the Valley Rainbow project (rather than the preferred route, which was opposed by the Tribe), the Pechanga Tribe purchased the Great Oak Ranch. When the Company learned that this private property had changed hands, we continued our dialogue with the Pechanga Tribe, making a formal offer for an easement over the Great Oak property and requesting another meeting between Mr. Guiles and Chairman Macarro to explore potential solutions. On August 14, 2001, Mr. Guiles and members of SDG&E management met with Chairman Mark Macarro, John Macarro and Tribal Council Members at the Great Oak Ranch to discuss alternatives. Shortly thereafter, we were informed that the Tribe opposed the siting of the Valley Rainbow Interconnect on the Great Oak property, much as it had previously opposed the inclusion of such a transmission corridor on tribal lands.

21SDG&E'S INTEREST IN REACHING A NEGOTIATED RESOLUTION OF THE RIGHT–OF–WAY ISSUE

During the summer and fall of 2001, the Tribe sponsored an Interior appropriations rider that would have overridden statutory authorities and mandated that the Great Oak Ranch be taken into trust without undergoing the required review, thereby blocking the proposed use of a narrow corridor on the property for the Valley Rainbow transmission line. That rider was removed by the House–Senate Conference Committee. A subsequent effort to offer a rider similar in approach to H.R. 3476 to the Defense appropriations bill did not advance. Throughout these efforts, SDG&E has continued to emphasize that the Company does not oppose the Tribe's request to take additional land into trust, so long as the State's legitimate needs for a narrow transmission corridor are accommodated. For its part, SDG&E has not sought a legislative remedy, but instead has consistently recommended that the corridor issue be addressed, and resolved, through negotiations among the parties, under the auspices of the U.S. Department of the Interior.

Earlier this year, the Interior Department agreed to seek a negotiated resolution of this matter. Indeed, the Department took the initiative and arranged for face-to-face negotiations among the parties in a meeting that was scheduled to take place in southern California on March 20, 2002.

Regrettably, a few days before the March 20 negotiating session, the Tribe informed the Interior Department that it would not participate in the scheduled talks, and the Interior Department was forced to cancel the meeting. The very next day, on March 21, 2002, the Bureau of Indian Affairs regional office in Sacramento, California released a Notice of Decision to accept the Great Oak Ranch in trust for the Pechanga Indians without any hold-back of a transmission corridor, and without any effort to seek a negotiated resolution of the issue.

SDG&E is appealing BIA's decision. The decision contains serious flaws, particularly with regard to its mischaracterization of the real availability of alternative routes for the siting of the Valley Rainbow Interconnect. Even more importantly, the decision was issued without apparent regard for serious public policy issues raised by the conflict between the Tribe and SDG&E, and prior to the convening of a dispute resolution process among the parties. SDG&E believes that the decision should, and will, be reversed on appeal. The Company continues to prefer, however, that the corridor issue be addressed through Interior-led negotiations with the Tribe. If the Department is to take any action on the pending action, it should take the land into trust with the reservation of a corridor for the Valley Interconnect transmission line, so that the land in trust process is not used inappropriately to block this needed project.

CONCLUSION

In summary, SDG&E opposes H.R. 3476 and asks that the Committee take no action on the legislation. SDG&E renews its request to Congress, and to the Secretary, to help it negotiate a resolution of the existing conflict in a manner that will meet Tribal needs, while also addressing the state's needs for a new right-of-way for the installation of the Valley Rainbow Interconnect transmission project.

[Attachments to Mr. Avery's statement follow:]

Southern Californians for Valley Rainbow

www.supportvri.com

November 19, 2001

The Honorable Darrell Issa
United States House of Representatives
North County Government Building
325 South Melrose
Annex Building, Suite 100
Vista, CA 92083

Dear Congressman Issa:

We are writing to you to express our concerns about your position on the Valley Rainbow Interconnect transmission line project. As you may be aware, the San Diego-Imperial Counties Labor Council and the Boards of Directors of the San Diego Regional Chamber of Commerce and the San Diego Regional Economic Development Corporation have endorsed this project. We view the proposed transmission line as critical to helping to solve the long-term energy demands of the San Diego region. By ensuring a reliable delivery of competitively priced power, the Valley Rainbow Interconnect will help maintain a strong regional economy and job base for many years to come.

In the past, you have expressed an understanding about the energy crisis and its effect on your constituents. You have also worked diligently to explore potential solutions in your District that would help avoid future energy shortfalls and outrageous price fluctuations. As a result, we are unclear why you have chosen to publicly oppose this project. The large majority of your District is in the service territory that stands to benefit most from the Valley Rainbow Interconnect.

In addition to current energy needs, San Diego County continues to expand and grow. In fact, SANDAG estimates that at least 800,000 more people will live in San Diego by 2020. New power plants and transmission lines must be built in order to meet the projected demand for energy or we could suffer regular service interruptions in the future. The Valley Rainbow Interconnect project is an essential component of meeting this projected energy demand and avoiding future power outages.

Together with the San Diego-Imperial Counties Labor Council, the Chamber and the EDC have formed a coalition to support the approval and construction of the Valley Rainbow Interconnect. Called Southern Californians for Valley Rainbow, the coalition is comprised of businesses and labor unions throughout Southern California that are concerned about protecting the integrity of our regional economy and stability of related jobs.

402 West Broadway, 10th Floor • San Diego, CA 92101 • 619.544.1309 • (fax) 619.744.7460

When completed, the Valley Rainbow Interconnect will be capable of delivering enough power to fully meet the energy needs of 700,000 homes and businesses. The line will also ensure the reliable delivery of power throughout Southern California, ensuring that the future energy demands of residents and businesses in your District, and our entire region, are met.

Despite these benefits, we have watched, with concern and confusion, your efforts in joining Senator Boxer in seeking to undermine this project on behalf of the Pechanga Indian Tribe. We can appreciate your commitment to your constituents and the preservation of historic landmarks such as the Great Oak tree near the Pechanga Reservation. However, the Valley Rainbow Interconnect could clearly be constructed without impact to the Great Oak tree. It is our understanding that if the Pechanga Tribe agreed to the environmentally preferred route, the project would be constructed more than a mile away from the Great Oak Ranch property.

Several companies have proposed to build new power plants throughout California and Mexico. There is no doubt these facilities will help address projected power shortages. But building new power plants is only half of the solution. New transmission lines are also needed so energy can be delivered freely to where it is needed most in California. Earlier this year, the California Independent System Operator concluded that there is a "clear and pressing need for a project like the Valley Rainbow Interconnect." We are hopeful that, after the California Public Utilities Commission reviews the relevant facts of this project, they too will come to the same conclusion.

It is our hope that you will reconsider your position on the Valley Rainbow Interconnect and join others in recognizing the critical importance of this much-needed regional energy infrastructure project. Your leadership is needed in order to prevent future reliability problems that could have a detrimental impact to residents and businesses in our region and your District.

Sincerely,

Jessie J. Knight, Jr. San Diego Regional Chamber of Commerce	Julie Meier Wright San Diego Regional Economic Development Corporation	Jerry Butkiewicz San Diego-Imperial Counties Labor Council

CALIFORNIA ISO

California Independent
System Operator

Terry M. Winter
President and Chief Executive Officer

September 21, 2001

Honorable Spencer Abraham
Secretary of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Honorable Gale A. Norton
Secretary of the Interior
1849 C Street, NW
Washington, DC 20240

Honorable James L. Connaughton
Chairman, Council on Environmental Quality
And Chairman, White House Energy Task Force
Executive Office of the President
17th and G Streets, NW
Washington, DC 20503

Dear Secretaries Abraham and Norton and Chairman Connaughton:

I am writing to alert you to a situation in California that underscores the need for a comprehensive policy for the siting of electricity corridors nationwide.

The California Independent System Operator (ISO) is a not-for-profit, public benefit corporation that ensures open and reliable transmission along more than 25,000 circuit miles of California's long-distance, high-voltage power lines. In this pivotal year for California's electricity market, the ISO and other entities throughout the State are actively pursuing solutions to stabilize and balance the market. One of the most important of these solutions is ensuring the development of adequate transmission capability.

A major impediment to achieving adequate transmission resources is the inability to site transmission facilities. Currently, there is only one major transmission interconnection between the San Diego Gas and Electric (SDG&E) system and the rest of the State of California. This line has limited capacity to import or export power between San Diego and the rest of the State, and it represents a potential bottleneck that could affect reliable service to the southern part of the State in the future. While the ISO is not responsible for siting transmission lines, we did evaluate a number of transmission alternatives to determine whether they would meet current and future reliability requirements. In March, 2001, the ISO recommended that a new 500 kV transmission line be constructed linking the SDG&E system with the rest of the State's electrical grid by the year 2004.

Upon this recommendation, SDG&E filed its application for a Certificate of Public Convenience and Necessity for a 500 kV Interconnect Project ("Valley-Rainbow") with the California Public Utilities Commission (CPUC). The proposed transmission line, which is part of a broader strategy to support reliable service to California consumers, would extend from an existing

Southern California Edison substation in Riverside county to a proposed substation in San Diego county. The line would significantly increase the import and export capacity of the SDG&E system to California load centers, benefiting all of the State's consumers.

The CPUC application identified both a preferred and a proposed alternative route for the new transmission line. The preferred route was along the easternmost and a portion of the southernmost sides of the Pechanga Indian Reservation, adjacent to the Cleveland National Forest and the Agua Tibia Wilderness Area. However, because the Pechanga Tribe expressed concerns with the location of the transmission line on existing Reservation land, SDG&E proposed the alternative route through a property ("Great Oak property") owned in fee by private citizens. After SDG&E selected this alternative route and filed its application with the CPUC in March, 2001, the Pachanga Tribe purchased the property and asked that the land be taken into trust administratively by the U.S. Department of the Interior. Subsequently, and after SDG&E expressed concern in the record for the administrative action, a legislative rider which would mandate that the land be taken into trust was attached to the Senate Interior Appropriations bill, S. 2217, as Section 132.

The California ISO is concerned that these actions, if carried out, will effectively block any transmission line, since the Tribe has stated publicly that it would not allow a right-of-way across these or other Reservation lands. Given the critical need for new transmission capacity in southern California and the significant investment in planning and evaluation that has already been devoted to this matter, I hope that both the federal government and the Congress refrain from decisions on the pending land-in-trust issues until SDG&E and the Tribe have had adequate opportunity to achieve a negotiated agreement on an appropriate corridor for the line.

The Valley-Rainbow situation illustrates an increasing problem that we are facing in the siting of transmission resources, particularly as energy markets and transmission systems become more regional in nature. I believe that the United States would greatly benefit from a national policy on transmission planning, in which appropriate corridors are identified through coordinated efforts of the federal government, the states, tribes and other interested parties. Once corridors have been identified, the federal government should have the authority to determine rights of way for transmission and to prevent late intervention in the process by legislative or administrative means. Without such protections, it will be increasingly difficult to ensure that consumers have reliable and affordable electricity.

Thank you very much for your consideration of this request. Please don't hesitate to contact me if you have any questions.

Sincerely,

Terry M. Winter

Terry M. Winter
President and Chief Executive Officer

Mr. HAYWORTH. Thank you, Mr. Avery.

Chairman Macarro, does the Pechanga Tribe have any plans for development of any kind on the Great Oak Ranch property?

Mr. MACARRO. No, we don't. As stated in our application to Interior/BIA, we stated or have designated there is no change of use in the property, and the intended use and purpose is to preserve and protect the resources that are there.

The cultural resources in particular are also very significant. Along the base of all the foothills there are significant old village sites, dark midden soil area, cremation areas and associated sacred sites, one key site which we believe it appears the proposed transmission line would go over, and a tower would come either near or on that site.

I think this information, from what I recall, actually comes from SDG&E's own cultural resource sensitivity maps, which I would like to introduce into the record. I understand it will be open for another 2 weeks.

Mr. HAYWORTH. Without objection, we would welcome that. Just one follow-up, and for purposes of the record, Mr. Chairman, does the tribe plan to use the Great Oak Ranch for gaming purposes or any purposes other than what you have just outlined?

Mr. MACARRO. No, the tribe does not. Half a mile down the road, if you have the briefing book in front of you, in Tab 1 there is an aerial photo and then there is a graphic, a two-color graphic map. The smaller trapezoidal piece of land, it is almost a square, not quite, is labeled as the Kelsey tract, and our casino, our gaming operation, is on that piece of land currently.

We are nearly complete on a major expansion of that operation. In fact, that expansion will open up at the end of June, and we have invested over $100 million of revenue and over $150 million in loan dollars for that project. It is a substantial facility. We are not going to be building a separate facility or having any ancillary gaming purpose type things just a half a mile up the road from that facility. Everything is integrated on existing tribal lands.

Mr. HAYWORTH. Thank you, Mr. Chairman.

Mr. Avery, of the numerous possible routes for a new 500,000-volt power line, why has SDG&E chosen this route, one that initially was not preferred by your company, by your utility, as we understand it?

Mr. AVERY. OK, let me just set the record straight. There are only three routes that we have identified. The first route is on existing reservation land, and we do not have any rights to that, absent the reservation being willing to enter into an agreement where we could have a right-of-way. That is the preferred route.

The proposed route is the route that goes through the Great Oak Ranch. The third route is further west from there, and that would require us to condemn about seven homes and two businesses. And we felt that the best way to proceed would be to go in an area where we did not have to condemn and tear down people's homes, and yet we would still be willing to work with the exact routing with the people who own the land, to essentially accommodate their needs.

Mr. HAYWORTH. But, to reiterate and amplify, Mr. Avery, the initial preferred route was through reservation land that obviously the tribe controls, correct? That was the—

Mr. AVERY. That is correct.

Mr. HAYWORTH. And that is seen as a profound difficulty to work that out, the preferred route?

Mr. AVERY. They have told us that they will not negotiate with us on that.

Mr. HAYWORTH. OK, sir.

Other questions for the Chairman or for Mr. Avery? The Gentleman from West Virginia.

Mr. RAHALL. Thank you, Mr. Chairman.

Just hearing this debate and the testimony that has just been given reminds me of many a power line fight I have been through in my home State of West Virginia, so I am no stranger to power lines wanting to put their lines across sacred sites in West Virginia. Our sacred site is the New River, and the power company proposed some years ago to put a power line across the New River, and we were able to stop them.

I think what I found out through that fight is, sometimes the utility companies just need a little nudge. I think they can find an alternative route, maybe not the one that was their No. 1 priority. Sometimes in life we don't always get our No. 1 priorities. But they can find another route that will get the job done, but is just not their No. 1 preferable routing.

Mr. HAYWORTH. Thank you, Mr. Rahall.

The Gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

Mr. Avery, I understand that there are three routes that you are most considering, but in consultation and conversation with executives at your company, the question of a further west alignment, one that would go through the national forest nonwilderness area, that would also line up with the proposed LEAPS project, what would be your reasons for not considering that, even though it wasn't in your original consideration?

Mr. AVERY. Essentially, it would require us to go through Federal land, and we do not feel we have the opportunity or option to pursue that.

Mr. ISSA. So, if I can summarize what I am hearing here today, not asking for a route going on the edge, skirting a national forest, because obviously the alignment, it would potentially go either in the national forest or on the edge of it, is rejected even though it is one that could potentially have been on the list of those you would like to do but may not be able to get approval for, and yet one going through other Federal land which happens to belong to the Pechanga Band was put on.

Now, I am trying to understand why Federal land belonging to Indians is acceptable to put onto an alignment, but Federal land belonging to the people in general, and by definition available for the public good, wasn't considered. I mean, doesn't there seem to be something where in retrospect you would say, "Jeeze, we should have put all those possible areas on. If we were going to take Federal land or would like to take Federal land, shouldn't we list it all?"

Mr. AVERY. I think we have to look at opportunities that we can, through the process we go before in California, review all available options to us, and we did not view that as an available option to us.

With respect to other interveners who have participated in the process in the State, they have identified the opportunity to move forward with another corridor. The CPUC has the right to review any and all opportunities that are presented before it, and review those. At the same time, they have the right to reject any opportunity or any area that we have presented.

With respect to the corridors that we present, we have an obligation to pursue areas that we believe are viable. We are to present those to the CPUC for their jurisdiction to determine where is the best routing, and then once approved by them we would move forward with acquiring that land. We did put on our application that the preferred route would be to work with the Pechanga Indians to see if we could secure a route through the reservation.

And this project, by the way, goes back well over 20 years. This is not something new for San Diego Gas & Electric. Roughly 2 years ago we first approached the tribe with the notion of trying to work with them in going through the reservation. That is when we identified that as the preferred route. The proposed route was land that was owned in fee simple by another party. It wasn't until after we had moved forward with our application that the Pechanga acquired that land.

Mr. ISSA. Well, one question. On the proposed route, not preferred, when it was held fee simple by private parties for more than 20 years, did you approach those parties to get an easement?

Mr. AVERY. Again, the process we go through is to identify the need and work with the CPUC on routing, and then at that point in time move forward with the acquisition of land. It isn't to acquire the land in advance of the identification of need.

Mr. ISSA. So the answer would be no?

Mr. AVERY. That is correct.

Mr. ISSA. In the case of the other route, the one you said would disrupt several houses and I think, I believe you said two businesses, what would be the difference in the cost of acquisition between Pechanga's land as you would calculate it and paying a fair price to each of those people you would ask to relocate?

Mr. AVERY. Off the top of my head, I don't know. I imagine it would be a small percentage of the overall project cost.

Mr. ISSA. So it would be fair to say that you would be in a position to pay a price to these few homes and two businesses where they would be delighted to relocate, since in all likelihood there is nothing sacred about their business location.

Mr. AVERY. I am not aware or familiar if you are aware of ever going through a condemnation proceeding with a house or a business, but in my case I have never come across anyone who is delighted to have their house condemned.

Mr. ISSA. Well, no. I appreciate that, but I come from a business background, as you do, Mr. Avery, and we always feel that something which money can resolve amicably is a business decision, and something which cannot be resolved and thus has to be taken care of in the courts or administratively is a problem.

And I am getting the feeling that for absence of a business decision to purchase the other tract, which you could do without condemnation—you could choose to make offers to these people and purchase and pay them a very fair sum—you have decided instead to go through an administrative route, which in this case asks for relief that you wouldn't get from a willing seller. Is that fair to say?

Mr. AVERY. No, I don't believe that is a fair characterization. What we have presented is the proposed route and an alternate to those proposed routes. It is up to the CPUC to decide which they want, which route they want us to pursue. Once they have identified that, we will move forward with that course of action and try in good faith to negotiate with every land owner. With respect to condemnation, that is really the last right we move forward with. But right now that right is vested in the State to tell us to move forward.

Mr. ISSA. It does seem like you are here before you have got the State right, asking for us to hold off doing something which, if we had never taken this land from the Pechanga more than 100 years ago, they would have had and this wouldn't be under debate here today.

Thank you, Mr. Chairman.

Mr. HAYWORTH. The Gentleman's time has expired.

The Gentleman from California, Mr. Miller, do you have any questions or comments?

Mr. MILLER. No.

Mr. HAYWORTH. The Gentleman from Michigan.

Mr. KILDEE. Basically you have a third route which Mr. Issa referred to, where there is about seven homes and one or two businesses. It would seem to me that the piece of land you wish to run your power lines through, we have numerous cultural and archaeological sites. Hard to put a value on that, but they are things that once changed, forever lose their cultural and archaeological value.

It would seem to me that you should really be looking at that third site. No one likes to have their land condemned, whether it be an Indian tribe owning some land in fee which they hopefully will get into trust, or homeowners, but it would seem to me that you should pursue that third site because you would not be destroying or modifying archaeological and cultural sites, which I think is very, very important.

And I think that as a—I mean to say this in a very sensitive way—as a representative of your company, you should probably go back and tell your superiors that there is kind of a bipartisan problem down here for your company.

Mr. AVERY. If I may, just again to fulfill or fill your record here, there are two commercial establishments which I mentioned. There are seven private residences. There are 79 residences that would be within 500 feet of this third alternative. There is an elementary which is within 350 feet of the third alternative.

There are 3.7 miles of the Santa Margarita Ecological Reserve which would have to be bisected by this third alternative. It would also impact important habitat for nearly 50 sensitive species, including two species that are on the endangered species list. One is the Keno checkerspot butterfly, and one is the Stevens kangaroo

rat. So it is not as if the third route is just affecting just people and homes.

Mr. KILDEE. But it is a possible route, and I think that very often we at this Committee, looking over the history of the taking of Indian land, the loss of Indian land—so much Indian land has been lost. My own State of Michigan, it is just incredible. I have got certain tribes, their sovereignty reaffirmed, not granted, it is a retained sovereignty, and they were down to zero acres of land. The land was taken away from them illegally, extralegally, or just gone.

But I think that this land which the tribe is seeking to get back full control over, sovereignty over—they own it in fee right now—that this Committee is inclined to try to undo some of those things in the past that were unfair to the tribes, and I think that we are more likely to support putting this land back under trust with full sovereignty by the Pechanga Tribe. So I think you should probably go back and talk to your company and say that there is a problem and that this problem is in the minds of both Democrats and Republicans down here, and that you possibly should look at that third site or maybe even a fourth site. But I think you really have a problem with this Committee.

Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Kildee.

The Gentleman from California, Mr. Calvert.

Mr. CALVERT. I thank the Chairman.

I am going to go back to the route that you didn't apply for, the Cleveland National Forest. Metropolitan Water District worked toward and got an easement, working through the environmental documentation, to put a water line to serve south Orange County in the future, to put a filtration plant in the Corona area and move a significant water line to service future water needs in that part of south Orange County.

And the fact of the matter is that easements are given in national forests in a nonwilderness area, and again I would respectfully say to San Diego Gas & Electric, whoever made the determination unilaterally not to even consider that, I think made an improper decision, because I think many of us would help San Diego Gas & Electric work on that, that we can potentially mitigate for any environmental problems. You are going to have that wherever you put that line, on any of the alternative routes.

It seems to me that the least opposition that you would have, as far as the general public and the Pechangas and everyone else, would be to pursue that route. And I know that I would be willing to try to assist you with the administration and with the Department of Agriculture and others to pursue that route. And I would again say that you didn't even take serious consideration to take a look at that. Is that correct?

Mr. AVERY. No, sir, that is not correct. Underneath the provisions of the Federal act that have the land for the Federal Government, it requires us to look at the use of private land first.

Now, with respect to the development of a hydroelectric facility, if we were doing generation, for example, then we would have the right to look at transmission corridors through the national forest as part of that project, but we have no project for the development of a hydroelectric facility.

And with respect to the LEAPS project that Mr. Issa referred to, that is a project that has been proposed and at this point in time is not moving forward. Should that project move forward and provide us an opportunity, that would perhaps free up or create another route, but at this point in time we do not see that as an option for ourselves.

Now, should you be able to, through an act of Congress, provide us that route, we would love to have that, and I am more than willing to work with you, perhaps, and others to try to create or find that opportunity. But for us as a public utility working in the State of California, we do not have that option.

Mr. CALVERT. Well, I would say that we ought to take a look at pursuing that option. You may have a better opportunity through an act of Congress than the present route that you are taking a look at.

Mr. AVERY. I would also suggest, though, that should we look to move on a national forest, I think there would be a lot of opposition from a lot of different groups.

Mr. CALVERT. Well, I think you are going to have, in my opinion you are going to have less opposition with that route than you would with the route you are pursuing at the present time.

Thank you.

Mr. ISSA. Would the Gentleman yield?

Mr. CALVERT. I will yield my time.

Mr. ISSA. I would like to echo my colleague's statement just very, very briefly and say that should you give us all of the possible alignments that you would look at from a standpoint of topography, and at least give us the opportunity to have the Federal Government explore them to find out whether or not appropriate mitigation for taking of that or using of that land would be possible, it would at least untie our hands here in the Federal Government in trying to work toward your goal of getting this power line.

Right now, as someone who this power line is going through my district, I was never given those tools. And I will mention that when I asked one of your executives, in the case of the LEAPS one, they said, "Well, the real problem is, it would take until 2007," but that is because it was never considered. You never thought outside the box 20 years ago.

I yield back.

Mr. HAYWORTH. Thank you, Mr. Calvert.

Any other questions or comments from either side for these two witnesses?

If not, gentlemen, we thank you for your time and attendance, and we appreciate you making your perspectives part of our record. You are excused. Thank you. And let me thank the Gentleman from California for joining us.

Mr. HAYWORTH. Now we are going to move to panel four, as we move to a more complete discussion of H.R. 103. Included on panel four: Joe Garcia, Tribal Council Member from the Pueblo San Juan; Deron Marquez, the Chairman of the San Manuel Band of Mission Indians; and Keller George, President of the United South and Eastern Tribes.

As those gentlemen come forward, the Chair would like to offer some perspectives and then turn to the Ranking Member to talk more about H.R. 103.

H.R. 103 amends the Indian Gaming Regulatory Act to prohibit tribal-State gaming compacts from including or being conditioned on any agreement containing any provision relating to labor terms or conditions for employees of tribally owned businesses located on Indian lands. The legislation voids any such provisions that have been entered into before, on, or after the legislation's enactment.

In 1998 the California Supreme Court overturned Proposition 5, which confirmed California tribes' right to gaming enterprises. As a result, the United States Attorney declared that all tribal gaming in the State would cease unless tribal-State compacts were signed by October 13, 1999.

Faced with the prospect that their most valuable economic assets, which help fund health care facilities, educational facilities, and other social and economic endeavors, would be shut down, 61 California tribes were essentially coerced into signing gaming compacts with Governor Gray Davis that carried separate labor agreements. It was made very clear by Governor Davis that a gaming compact would not be signed without a labor agreement.

As a matter of Federal law, the National Labor Relations Act does not apply to Indian tribes because they are recognized as sovereign governmental entities under the Constitution. Nevertheless, under the time-sensitive deadline, California tribes in that State were forced to cede their sovereignty, their constitutional rights, to the State of California in order to save their enterprises from being shut down.

The issue here is not whether tribes should unionize their gaming facilities, but the issue is, who should make that decision? Should it be up to the sovereign tribal governments or should it be up to the States and the Federal Government? The U.S. Constitution states that it is the tribes as sovereign governmental entities that have the right to make this decision.

Recently, referring to the San Juan Pueblo of New Mexico tribe's right-to-work ordnance, the 10th U.S. Circuit Court of Appeals stated that the ordnance was "clearly an exercise of sovereign authority over economic transactions on the reservation."

H.R. 103, the Tribal Sovereignty Protection Act, will ensure that States do not force Indian tribes to unionize their casino employees as a condition of a tribal-State gaming compact made under the Indian Gaming Regulatory act. The bill will allow sovereign tribes to have the freedom to determine their own labor policies, rather than being coerced, or some would say blackmailed, by the State and/or the Federal Government.

The Ranking Member, the Gentleman from West Virginia.

Mr. RAHALL. Thank you, Mr. Chairman. Mr. Chairman, I am just going to be brief in this opening statement, then get into it later on, but let me just say pure and simple, cut through the chaff and get right to the point, this bill is anti-labor, it is anti-worker. It is not even a thinly disguised assault on labor unions, and that is really no surprise there, considering the author of it.

But what is surprising, though, I would say, is that it has been dressed up to look like something that is pro-tribal sovereignty.

That is how the bill has been dressed up, and it is just a bad political ploy. It is bad legislation. And I expect during the course of this hearing we will go into further details about it, but I just want to say that at the very top of the agenda, so that everybody knows where I am coming from on this legislation.

I now yield the balance of my time to my colleague from California, Mr. Miller.

Mr. MILLER. I thank the Gentleman for yielding, and I quite concur in what he has said. The purpose of this bill in this hearing really is not about supporting Indian tribes or preserving the sanctity of the tribe-State compact negotiations. It is nothing more than an outright attack on the rights of working men and women and unions to which they choose to belong.

The author and many supporters of this bill have more or less always been anti-union. It is not a question of whether unions are representing people on tribal lands, it is whether they represent people in any working places in America, and I think the congressional supporters know exactly what they have done with the introduction of this bill.

This is just a continued crusade by our friends on the other side of the aisle against the rights of working people and the rights of working people to collectively organize and to freely associated. They are using this forum in this Committee to see whether or not they think they can force people on our side of the aisle to choose between the people they support on the tribal lands of this Nation and union organizations and working families across this country.

Simply not going to work. It is not how we work. We don't trade loyalties. And, first and foremost, it is a false choice. The idea that somehow we would have to choose the rights of collective bargaining over our friends in the tribal nations is simply a false choice. They are not inconsistent.

As we know, a number of California tribes already have entered into collective bargaining arrangements, even predating the compact. Others have entered into it in other timeframes. And I also want to say that if you read this bill, it is a misstatement of the facts.

And I am not sure that the Indian tribes in California would believe, as the bill states, that the Governor of California acted in bad faith. I am not sure that the Indian tribes in California would agree that they were essentially forced into signing these compacts.

They had been trying for 8 years to get the previous Governor of the State of California to even talk to them. And when he finally did, it was such an egregious compact that almost all of the tribes would not agree to it, and even that compact had far stronger, under Governor Wilson, had far stronger language with respect to unions and representation on the State lands.

What really was entered into was the right of people to decide, should they do so, to join a union. Upon a showing of 30 percent, people who freely make that decision can choose to have a vote and decide whether or not to have a union. If they have a union and later they don't like it, 30 percent of the people can say, "We want to decertify, we want to have an election," and they can vote not to have a union.

So the notion that somehow this forces unionization, forces union membership, is simply not accurate. Simply not accurate. If you read from the agreement, it says "Eligible employees shall have the right of self-organization to form, to join, to assist employee organizations to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection," and shall also have the right to refrain from doing any of that. That is according to the compact.

So this is built on a mischaracterization of the situation. It is built upon the role, it is built upon the mischaracterization of the role of the Governor of the State of California, and it is built on the mischaracterization of what the compacts actually say.

The fact of the matter is that, as set up under IGRA, when the tribes establish that they have a legal right to Class III gaming, as was done in California—it was subject to court review, later was dealt with in Proposition 1A—they then have the ability to compact, as under IGRA, with the Governor. Those are free and open negotiations, each party brings its agenda to the table, surrounding the issue of Indian gaming.

Clearly, clearly the work force on tribal lands is a subject, a matter of concern of any Governor of any State. One Governor may choose to do something else. This Governor chose to make sure that collective bargaining was available to the employees. Not all the employees of Indian gaming, in fact a minority of Indian gaming employment are individuals who are members of the Indian nations.

We also note that Governors have sought to do a number of other things, many of which I disagree with. We are well aware of the fact that the tribes now feel that they have been disadvantaged because of the Supreme Court decision on Seminole, which took away the rights of the tribes to sue. I wrote the legislation giving the tribes the right to sue. The Supreme Court said we have overstepped our bounds. And the real question is, are we going to fix, are we going to see whether or not we can address the Seminole decision to once again get a level playing field in the negotiations between the State and the gaming tribes who are seeking a compact?

But that is not what is happening here. We are not addressing Seminole. We are not addressing the issue of sovereignty. We are not addressing the issue of parity of bargaining positions. What we are addressing here is, we simply want to batter down the rights of worker protections, and it is simply wrong for us to do that.

My understanding, and it has been echoed to me or been told to me numerous times, that the Gaming Association seeks no amendments in IGRA until the Seminole case has been addressed, and that that has not changed. The fact of the matter is, to open up IGRA is something that we have tried to avoid because of the very substantial anti-gaming component of the Republican Caucus in this Congress, and we were concerned what was going to happen with IGRA and with many of the financial adversaries, if you will, the competitors of Indian gaming who would love to have an opportunity to erect additional hurdles under IGRA and to keep people from doing that.

There is also the question of opening it up, and there have been concerns about then that people would load in other items that must be compacted, that have nothing to do with Indian gaming: the use of tribal lands, hunting and fishing rights, there has been a whole list of agendas of people who would love to be able to get the leverage of these compacts to settle a whole list of other scores with respect to sovereignty, reservations, and governance of the tribal lands.

So I would hope that members of this Committee would reject this legislation. I would hope that they would see it immediately for what it is, a battering ram against collective bargaining, a policy that is absolutely inconsistent with our positions, and that we ought to reject it and understand that it is trying to present a false choice, a false choice to the Congress, suggesting that somehow the collective bargaining rights to be voluntarily entered into or not entered into by the employees of these entities, that somehow that is inconsistent with Indian gaming.

The fact of the matter is, the proof every day on the land is, that is not the case. This is a situation set up under Federal law between the States and the tribes seeking a compact, and that is where it ought to remain.

An item that was dealt with in California is the question of revenue sharing. Some I think almost $40 million has been distributed to poorer tribes who really don't have access to gaming because of their location or other circumstances, and we have created revenue sharing, I really think one of the hallmarks of the California compacts in terms of helping other tribes to provide for education, for housing, for health and welfare of their members.

Other States have chosen not to do that. Some States have chosen to extract huge amounts of money, huge amounts of money from the tribes, for entering into the compact. Call it whatever you want, that is what is going on. Maybe that ought to be addressed in this situation.

The State of Arizona I think even suggested that the gaming nations create a charity, contribute a huge amount to charity, but then the money would be given away in the State's name. Sounds like the government, sort of, you know; we take your money and then we give it away in our name.

So there is no shortage of people's imagination about what they would want to put on the table in compacting, but I think clearly employee-employer relationships are central to the issue of Indian gaming, and its impact on the reservation and off the reservation is a proper item for compacting. And I would hope that we would reject this legislation.

Mr. HAYWORTH. The Chair thanks the Gentleman from California, and the Chair would note that in addition to having the Ranking Member yield the time, we certainly gave the Gentleman from California his own 5 minutes. But not to interrupt a seamless point of view, we chose just to let him continue, so—

Mr. MILLER. I appreciate that.

Mr. HAYWORTH. And we appreciate perhaps that, the relevance or the facts notwithstanding, certainly my friend from California is always eloquent. And the Chair also welcomes the fact that both the Ranking Member and the Gentleman from California chose not

to indulge in personalities or get personal as to the authorship of the proposed legislation.

[Laughter.]

Mr. HAYWORTH. But, be that as it may, we do have a choice here. The Gentleman from Michigan would like to make a statement. I think perhaps we ought to hear from the witnesses, but if you feel compelled to go now, certainly I am always happy to yield to my friend from Michigan.

Mr. KILDEE. Thank you, Mr. Chairman. I appreciate that, and I am going to get personal but I am going to praise you. I praise your established record for protecting the sovereign rights of tribes. You and I have worked very closely in the vineyard on that, and I certainly praise you for that.

I do, however, oppose H.R. 103, a bill that would amend the Indian Gaming Regulatory Act to prohibit tribal-State gaming compacts from including any provision relating to labor terms or conditions, or from being conditioned by collateral agreements dealing with labor terms. Mr. Chairman, I will briefly explain the reasons why I oppose the bill.

The bill addresses the core problem of coerced collateral agreements. I think that that is what we should really be addressing. Since the U.S. Supreme Court ruling in Seminole Tribe v. Florida, tribes are prevented by the Eleventh Amendment, as Mr. Miller has stated, from suing States in Federal court without their consent. States failing to negotiate in good faith have a complete defense against tribes who seek to enter into gaming compacts. This situation has caused the States to have an unfair advantage over tribes in State-tribal negotiations that can lead to coerced collateral agreements.

By enacting IGRA, Congress ought to ensure the rights of tribes to reach gaming compacts with States by allowing tribes to sue States where States refuse to negotiate in good faith. However, because of the Seminole decision, these tribes cannot sue States for refusal to negotiate in good faith. I think we should work together to return to the tribes the authority Congress sought to give them in IGRA and allow the tribes to sue States where they refuse to negotiate in good faith.

Second, the bill deals only with labor issues. It does not address other core sovereign rights that States may seek to coerce tribes to give up, such as treaty rights. In addition, I am concerned that coerced collateral agreements extend beyond the gaming arena. In my own State of Michigan, the tribes are being asked to negotiated treaty hunting and fishing rights before the Governor will enter into State-tribal tax agreements. A similar situation exists in Wisconsin. I believe that we need to study the larger issue of coerced collateral agreements.

I am concerned about opening up IGRA to amendments. I believe that we must first address the core problem of coerced agreements and provide a legislative fix to the Seminole case. By working together, we can find a solution to the issue of coerced agreements.

I look forward to the testimony of the three friends who are ready to testify, I think now. Thank you Mr. Chairman.

[The prepared statement of Mr. Kildee follows:]

Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan, on H.R. 103

Mr. Chairman, while I praise your established record as an advocate for protecting the sovereign rights of tribes, I oppose H.R. 103, a bill that would amend the Indian Gaming Regulatory Act (IGRA) to prohibit tribal/state gaming compacts from including any provision relating to labor terms or conditions, or from being conditioned by collateral agreements dealing with labor terms.

I will briefly explain the reasons for which I oppose this bill.

First, while I share your concern that the State of California may have pressured some tribes into signing labor agreements before entering into gaming compacts, I do not believe that this bill addresses the core problem of coerced collateral agreements.

Since the U.S. Supreme Court ruling in Seminole Tribe v. Florida, tribes are prevented by the Eleventh Amendment from suing states in Federal court without their consent. States failing to negotiate in good faith have a complete defense against tribes who seek to enter into gaming compacts. This situation has caused the states to have an unfair advantage over tribes in state/tribal negotiations that can lead to coerced collateral agreements.

By enacting IGRA, Congress sought to ensure the rights of tribes to reach gaming compacts with states by allowing tribes to sue states where states refused to negotiate in good faith. However, because of the Seminole decision, tribes cannot sue states for refusal to negotiate in good faith.

We should work together to return to the tribes the authority Congress sought to give them in IGRA and allow the tribes to sue states where they refuse to negotiate in good faith.

Second, the bill deals only with labor issues. It does not address other core sovereign rights that states may seek to coerce tribes to give up, such as treaty rights.

In addition, I am concerned that coerced collateral agreements extend beyond the gaming arena.

In my own State of Michigan, the tribes are being asked to negotiate treaty hunting and fishing rights before the governor will enter into state/tribal tax agreements. A similar situation exists in Wisconsin.

I believe that we need to study the larger issue of coerced collateral agreements.

Finally, although I am concerned about opening up IGRA to amendments, I believe that we must first address the core problem of coerced agreements and provide a legislative fix to the Seminole case.

By working together, we can find a solution to the issue of coerced agreements.

I look forward to hearing the testimony. Thank you.

Mr. HAYWORTH. I thank the Gentleman from Michigan. The Chair is constrained to point out, the concerns that are raised by my friend from Michigan and the Gentleman from California, the only way I would bring this bill to the floor is under a rule that would prevent any other amendments. If that doesn't happen, it would not go forward, and I wanted to make that part of the record.

But, as my friend from Michigan points out, we have witnesses who very patiently have been waiting to offer their testimony. We will have that testimony now, beginning with Council Member Garcia from the Pueblo of San Juan. Welcome, and your complete statement will be made part of the record.

STATEMENT OF JOE A. GARCIA, TRIBAL COUNCIL MEMBER, PUEBLO OF SAN JUAN

Mr. GARCIA. [Remarks in native language.] I have asked for your guidance and I have asked for your respect in allowing me to speak at this time. So, Mr. Chairman, I will speak.

Mr. Chairman, Committee members, and one of our own, Mr. Tom Udall from New Mexico, greetings from San Juan Pueblo. My name is Joe Garcia, and I am a former Governor. One of the issues we addressed some time ago when I was Governor, it dates back

a few years, but it has to do with labor and unions. Nonetheless, thank you for inviting me and allowing me to come before you. It is an honor always to speak before congressional delegates.

I am here to give testimony on H.R. 103, a bill to amend the Indian Gaming Regulatory Act of 1988 to protect Indian tribes from coerced labor agreements. I want to make one point clear, that although our court case did not deal with gaming per se, it dealt with labor and the right for tribes to set their own ordinances, policies and acts. My tribe, the Pueblo of San Juan, supports this bill.

On January 11, 2002, the 10th Circuit Court of Appeals in National Labor Relations Board v. Pueblo of San Juan, 276 F.3d 1186, 10th Circuit, affirmed the power of my pueblo to outlaw compulsive union membership on its land. In this case, the NLRB wanted to force every employee working for the sawmill on our land to financially support a certain union. The Tribal Council, of which I am a member, felt strongly that the Tribal Council rather than the NLRB should make the labor policy for Pueblo land. By a vote of 9 to 1, the 10th Circuit agreed.

The important principle of this case is that Congress has recognized that the Indian tribes are solely responsible for making the labor policy for Indian lands, not any Federal agency. We understand that some States believe that they can and should make the labor policy for Indian lands. The States of California and New York, for example, are forcing Indian tribes to enact tribal laws that mandate labor unions in Indian casinos. Otherwise, the States threaten not to sign compacts with the Indian tribes.

Unfortunately, these Indian tribes have no legal recourse against these bad faith actions because of Seminole Tribe v. Florida. Consequently, these tribes may ultimately be forced to accept the State's labor policy demands or give up any hope of obtaining a gaming compact.

The Pueblo of San Juan believes that Congress never meant for these States to use the Indian Gaming Regulatory Act in this fashion. Moreover, nothing in the Indian Gaming Regulatory Act gives these States the power to extort tribal labor policy in exchange for a gaming compact.

Congress made it clear that only those matters that are directly related to the regulation and licensing of gaming are proper subjects for negotiation of a compact. Senate Report No. 100-446 states, "The committee does view the concession to any implicit tribal agreement through the application of State law for Class III gaming as unique, and does not consider such agreement to be precedent for any other incursion of State law onto Indian lands.

Gaming by its very nature is a unique form of economic development, economic enterprise, and the Committee is strongly opposed to the application of the jurisdiction elections authorized by this bill to any other economic or regulatory issue that may arise between tribes and States in the future." 1988 U.S.C.C.A.N. 3071, 3084, and others: "Congress does not intend for the States to use the gaming compact as a tool to impose their regulatory or public policy will on Indian tribes."

The presence or absence of labor unions in Indian casinos has nothing to do with the direct regulation and licensing of gaming. We urge Congress to restore the balance in the Indian Gaming

Regulatory Act that was lost by the Seminole decision. I believe that H.R. 103 is a step in the right direction.

And the testimony is available. I will take any questions if there are any, Mr. Chairman.

[The prepared statement of Mr. Garcia follows:]

Statement of Joe A. Garcia, Tribal Council Member, Pueblo of San Juan, on H.R. 103

Thank you for inviting me to give testimony on H.R. 103, a bill to amend the Indian Gaming Regulatory Act of 1988 to protect Indian tribes from coerced labor agreements.

H.R. 103 is about protecting tribal sovereignty'sovereignty that has not been taken away by the National Labor Relations Act or the Indian Gaming Regulatory Act. Several States, such as California, have improperly tried to take away this sovereignty from Indian tribes through the so-called compact "negotiation" process. The balance intended in the Indian Gaming Regulatory Act has been upset by the Supreme Court's Seminole decision, and States now have the power to force illegal compact provisions on Indian tribes. H.R. 103 would restore that balance, at least, in the area of labor relations.

At the outset, I want to say that my tribe, the Pueblo of San Juan, recognizes the contributions that labor unions have made in this Country. I am here in support of H.R. 103 solely because it confirms the sovereign governmental right of Indian tribes to make their own labor relations policies based on the economic conditions existing on Indian reservations. Many Indian tribes may well exercise that sovereign authority to welcome labor unions and encourage union organization. But that is a choice for Indian tribes, not for States, and, ultimately, not for the Federal Government.

It is imperative that the Committee on Resources understand that labor policy on Indian lands is an important aspect of economic regulation that should be, and heretofore has been, left to Indian tribes as sovereign governments. The National Labor Relations Board has concluded that the National Labor Relations Act does not apply to Indian tribes and their wholly-owned business entities, including tribal casinos, on Indian lands because of the Act's exemption for governments. Absent the unbalanced compacting process, it is undisputed that Indian tribes can and do make policy decisions regarding labor relations for their tribal casinos without State interference.

Indian tribes also retain regulatory authority over labor relations with respect to non-tribal employers on Indian lands to the same extent as States. My tribe, the Pueblo of San Juan, has won every round of litigation over precisely that issue. On January 11, 2002, the Tenth Circuit Court of Appeals, in National Labor Relations Board v. Pueblo of San Juan, 276 F.3d 1186 (10th Cir. 2002) (en banc), affirmed the power of my Pueblo to outlaw compulsory union membership on its land. In that case, the NLRB wanted to force every employee working for a sawmill on our land to financially support a certain union. The Tribal Council, of which I am member, felt strongly that the Tribal Council, rather than the NLRB, should make the labor policy for Pueblo land. By a nine to one margin, the Tenth Circuit agreed. The important principle of this case is that Congress has recognized that the Indian tribes are solely responsible for making labor policy for Indian lands, not any Federal agency and certainly not the States.

Thus, it is clear that States cannot lawfully impose their policies regarding labor relations on Indian tribes. Nevertheless, we understand that some States believe that they can and should make the labor policy for Indian lands. The States of California and New York, for example, are forcing Indian tribes to enact tribal laws that mandate labor unions in Indian casinos. Otherwise, these States threaten not to sign gaming compacts with the Indian tribes.

Unfortunately, these Indian tribes have no legal recourse against these unlawful and coercive tactics because of Seminole Tribe v. Florida, 517 U.S. 44 (1996). As you may recall, the Supreme Court's ruling in the Seminole case prevents Indian tribes from suing States for negotiating compacts in bad faith, even though Congress expressly intended to maintain the balance of power between Indian tribes and States by allowing the Indian tribes to sue States in Federal court. Consequently, Indian tribes can now be illegally forced to accept the States' labor policy demands (and a host of other demands, for that matter) or give up any hope of obtaining a gaming compact.

The Pueblo of San Juan is certain that Congress never meant for the States to use the Indian Gaming Regulatory Act in this fashion. The Senate Committee Report on the IGRA put it plainly:

> "The Committee does not intend that compacts be used as a subterfuge for imposing State jurisdiction on tribal lands." (S. Rep. No.100–446, at 14, reprinted 1988 U.S.C.C.A.N. 3071, 3084.)

And yet, that it essentially what the States of California or New York have done or are attempting to do: they have forced their views of labor policy on the Indian tribes in those states.

Other statements by members of Congress at that time underscore that gaming compacts were not meant to be tools for States to impose their policies on Indian tribes, especially when those policies are not directly related to gaming. As Senator Inouye, IGRA's sponsor, stated on the floor shortly before IGRA cleared the Senate:

> "There is no intent on the part of Congress that the compacting methodology be used in such areas such as taxation, water rights, environmental regulation, and land use. On the contrary, the tribal power to regulate such activities, recognized by the U.S. Supreme Court . . . remain fully intact. The exigencies caused by the rapid growth of gaming in Indian country and the threat of corruption and infiltration by criminal elements in Class III gaming warranted utilization of existing State regulatory capabilities in this one narrow area. No precedent is meant to be set as to other areas." (134 Cong. Rec. S24024–25, Sept. 15, 1988)

As the Senate Report and Senator Inouye made clear, the intent of IGRA was to allow States a sufficient role in the regulation of Class III Indian gaming to insure that issues, such as infiltration by organized crime were addressed. The compacting process was not intended to allow States to impose their will regarding ancillary issues, such as taxation and labor relations. Labor relations is simply not "directly related to, and necessary for, the licensing and regulation of such [Class III gaming] activity," as IGRA, 25 U.S.C. § 2710(d)(3)(C), requires.

In summary, the skewed compacting process under IGRA is being used improperly by the States to impose non-gaming related regulatory or public policies on Indian tribes. We urge Congress to restore the balance in the Indian Gaming Regulatory Act that was lost by the Seminole decision. I believe that H.R. 103 is a step in the right direction.

Mr. HAYWORTH. And we thank you very much, Council Member Garcia, for your testimony.

Now, Chairman Marquez of the San Manuel Band of Mission Indians, welcome, and we appreciate your testimony today.

STATEMENT OF DERON MARQUEZ, CHAIRMAN, SAN MANUEL BAND OF SERRANO MISSION INDIANS

Mr. MARQUEZ. My name is Deron Marquez, and I am the Chairman of the San Manuel Band of Mission Indians located in San Bernardino County in California. I am too speaking in support of H.R. 103 sponsored by Congressman J.D. Hayworth, to amend the Indian Gaming Regulatory Act in a way that would protect Indian tribes from being forced, through the withholding of State compact approvals, to enter into labor agreements. I will be testifying from our own historical and tribal perspectives and experiences, which we would appreciate being considered by you as you debate the merits of this important bill.

By way of tribal background, we are among the earliest tribes to enter gaming, which in our case began in the mid-1980's before IGRA was enacted. For many years our tribe has operated, on its own and without any outside management company or financing, one of the most successful tribal government casinos in California and perhaps in the country. Our gaming project is not only vitally important to our tribe and our reservation, having lifted us out of poverty, high unemployment and limited educational opportunities, but also to our entire community, which continues to have one of

the highest unemployment and personal bankruptcy rates, not related to gaming, in the country.

We are a relatively small tribe, so many of our employees are nontribal. Our casino employees number in the thousands in total, work entirely on the reservation, and are employed by our tribal government. Both members and nonmembers alike seek to become our employees because of our solid reputation as a fair, safe, and secure work place. We rank among the best and the highest paying and benefitted employers in our community.

We are not unique among tribes, however, in believing that employees deserve a safe and healthy environment and that tribal governments should be, and typically are, responsive to their needs. Indian gaming is dedicated, structured, and oriented to benefit tribal self-sufficiency and people, not Wall Street or private businesses and their interests.

Our tribe, like other tribes engaged in gaming throughout the Nation, continue to rank at the top among those participants in the gaming industry that make charitable contributions, assist local governments and other public institutions with our profits, and, importantly, combat compulsive gambling. Those activities and achievements reflect the fact that our priorities and goals are substantially different than those who engage in gaming solely as a business. Congress understood that basic difference when it enacted IGRA to enable us to protect those objectives, a fact that must not be lost in the dialog over this bill.

It is also important in considering my remarks that you know that a few years ago, without any compulsion whatsoever from the State or Federal Government, or anyone else for that matter, our tribe engaged in voluntary negotiations with a major labor union that was representing some of our employees, and that we reached a collective bargaining agreement that is still in effect. We are one of the few tribes that have done so in the gaming industry, although labor agreements have been reached in other tribal industries in the past. Indeed, tribes have sometimes been frustrated, and had to be vigilant in their efforts to ensure that unions admitted its members and provided the job training and employment opportunities on reservations that were being made available in the same location to the non-Indian community.

Therefore, neither my testimony nor the support of this bill by the others should be viewed as for or against employers or employees, or as pro or con for labor unions. Just as State governments have strong interests in regard to their own employees as well as others employed by others within their jurisdiction, tribes have fundamental policy and governmental interests in regulating employment relationships and activities that take place within their jurisdiction.

This is particularly true in the case of the tribal governmental gaming which is so important for funding tribal functions, the arbitrary disruption of which could be disastrous to governmental programs and operations. How those relations are governed must be determined in accordance with tribal governmental policies, since to do otherwise gives rise to the potential and to the assumption that forces outside the reservation can and should control tribal governmental operations. That is a concept that has been sought

by some who seek to destroy tribal existence, but has never been the law of this country.

Our support for H.R. 103 demonstrates an unfailing belief that attempts by those who would seek to leverage control of tribal governmental operations and work places through the potential economic leverage available through the IGRA compact process should be resisted and prohibited. Let me illustrate these dangers through what happened, and nearly happened, in our own State of California.

In the mid-1990's the California tribes and the State, following years of negotiations, were at best able to reach an agreement on a tribal gaming compact that was acceptable to only a handful of over 100 Federally recognized tribes within the State. Tribal-state compacts are required under IGRA where the nature of the gaming is neither based on bingo, on games traditionally associated with bingo, such as pull tabs and the like, or on nonbanking card games such as poker.

Other forms of gambling require a compact, the purpose of which, as stated in the act, is to govern the conduct of gaming activities. A compact is intended to be reached by good faith negotiations between the State and the tribe over such traditional gaming regulatory matters as employee licensing, the kinds of gambling games that will be permitted, regulatory standards, and other topics specific to the operation of gaming activities.

The act is full of references to the regulation of gaming, but nowhere suggests that a State can use its own compact consent opportunity under IGRA to obtain control over tribal governments and their employees. Yet that was exactly what was attempted in order to further the agenda of a few commercial interests that were opposed to any gaming by tribes in California in the late 1990's.

When the majority of California tribes opposed a compact that was being negotiated in secret, but that was clearly intended to serve as a model for all California tribes, they proposed that the issue be taken to the people in the form of a constitutional amendment setting forth the proposed terms of a compact, so that it can be openly debated and voted up or down by everyone.

That suggestion appeared to have overwhelming bipartisan support of the State legislature, only to be thwarted, ironically, by some out-of-State gaming interests who persuaded some that the compact initiative should compel collective bargaining on terms far beyond what is required under law, and certainly far in excess of any terms those companies would have supported or tolerated if anyone had tried to enact them under the laws of their own State. As a result, the debate became highly politicized, and the tribes were left with no alternative but to place the measure on the ballot as a statutory initiative without legislative support.

The problem should have never arisen. It is simply inappropriate to permit the compact process, which was intended to govern the fundamentals of regulating gaming, to be hijacked by unrelated goals, such as the opportunity to serve competitors and to otherwise control tribal jurisdiction. Labor relations was one vehicle for such an attempt, but there are others as well. They stray from the gaming regulation under the guise of trying to solve complex issues of tribal-State relations. The compact process is not the place for

that to occur, and to permit the process diminishes not only tribal sovereignty but the role that Congress has historically played in this debate.

The footnote to California's story is of course that the first compact did go to the people without any labor provisions, but with significant protections for workers which were written in at the insistence of the tribes themselves, and which passed by 64 percent, only to be stricken down by the courts because, due to the legislative split over the labor issue, it could not be placed in the constitution as originally intended.

A second initiative, this time amending the California constitution, did pass, but only as to the forms of gaming to be included in a compact. Simultaneously, tribes reached agreement with a new Governor and agreed to compromise provisions governing negotiations, but not agreements for collective bargaining.

Even those provisions, however, which each compacting tribe is required to enact as a tribal labor relations ordinance as a condition of obtaining the compact, violates the tribe's sovereign right to govern the subject of employee labor relations within its jurisdiction, just as other governments now do, and strays dangerously far from the gaming regulation which the compacts were intended to address. One would be surprised to find labor relations provisions in a section of State law governing gaming regulation, but that is essentially what results when compacts like these contain such provisions. They are inappropriate and beyond the scope of IGRA.

This bill would correctly uncouple the gaming regulatory process from a State's goals or agendas with respect to labor relations. In fact, my only criticism would be that it does not go far enough in prohibiting negotiations over all unrelated issues. IGRA calls for two areas to be negotiated, scope of gaming and regulation. These critical programs should not be used as a shortcut to try and coerce solutions to complex and serious questions regarding the relationship between tribes and States that have been and will continue to be with us for many years.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Marquez follows:]

Statement of Deron Marquez, Chairman, San Manuel Band of Serrano Mission Indians

Good morning. My name is Deron Marquez. I am the Chairman of the San Manuel Band of Serrano Mission Indians, a Federally recognized Indian tribe with a reservation in San Bernardino County, California. I am speaking in support of H.R. 103, sponsored by Congressman J.D. Hayworth, to amend the Indian Gaming Regulatory Act in a way that would protect Indian tribes from being forced, through the withholding of state compact approvals, to enter into labor agreements. I will be testifying from our own historical and tribal perspectives and experiences, which we would appreciate being considered by you as you debate the merits of this important bill.

By way of tribal background, we were among the earliest tribes to enter gaming, which in our case began in the mid–1980's before IGRA was enacted. For many years our tribe has operated, on its own and without any outside management company or financing, one of the most successful tribal governmental casinos in California, and perhaps in the country. Our gaming project is not only vitally important to our tribe and our reservation, having lifted us out of poverty, high unemployment, and limited educational opportunities, but also to our entire community, which continues to have one of the highest unemployment and personal bankruptcy rates in the country.

We are a relatively small tribe, so many of our employees are non-tribal. Our casino employees number in the thousands in total, work entirely on the reservation, and are employed by our tribal government. Both members and nonmembers alike seek to become our employees because of our solid reputation as a fair, safe and secure workplace. We rank among the best and highest paying and benefitted employers in our community. We are not unique among tribes, however, in believing that employees deserve a safe and healthy environment, and that tribal governments should be, and typically are, responsive to their needs. Indian gaming is dedicated, structured and oriented to benefit tribal self-sufficiency, and people; not Wall Street or private business interests. Our tribe, like other tribes engaged in gaming throughout the nation, continually rank at the top among those participants in the gaming industry that make charitable contributions, assist local governments and other public institutions with our profits, and, importantly, combat compulsive gambling. Those activities and achievements reflect the fact that our priorities and goals are substantially different than those who are engaged in gaming solely as a business. Congress understood that basic difference when it enacted IGRA to enable us to protect those objectives, a fact that must not be lost as the dialogue over this bill continues.

It is also important in considering my remarks that you know that a few years ago, without any compulsion whatsoever from the state or Federal Government, or from anyone else for that matter, our tribe engaged in voluntary negotiations with a major labor union that was representing some of our employees, and that we reached a collective bargaining agreement that is still in effect. We are one of the few tribes that have done so in the Indian gaming industry, although labor agreements have been reached in other tribal industries in the past. Indeed, tribes have sometimes been frustrated, and have had to be vigilant, in their efforts to ensure that unions admitted its members and provided the job training and employment opportunities on reservations that were being made available in that same location to the non–Indian community. Therefore, neither my testimony nor the support of this bill by other tribes, should be viewed as for or against employers or employees, or as pro or con labor unions. Just as State governments have strong interests with regard to their own employees as well as those employed by others within their jurisdiction, Tribes have fundamental policy and governmental interests in regulating employment relationships and activities that take place within their jurisdiction. That is particularly true in the case of tribal governmental gaming, which is so important to funding tribal functions, the arbitrary disruption of which could be disastrous to governmental programs and operations. How those relations are governed must be determined in accordance with tribal governmental policies, since to do otherwise gives rise to the potential, and to the assumption, that forces outside the reservation can and should control tribal governmental operations. That is a concept that has been sought by some who would seek to destroy tribal existence, but has never been the law in this country. Our support for H.R. 103 demonstrates an unfailing belief that attempts by those who would seek to leverage control of tribal governmental operations and workplaces, through the potential economic leverage available through the IGRA compact process, should be resisted and prohibited. Let me illustrate these dangers through what happened, and nearly happened, in our own state of California.

In the mid–1990s, the California tribes and the state, following years of negotiations, were at best able to reach agreement on a tribal-state gaming compact that was acceptable to only a handful of the over 100 Federally recognized tribes within the state. Tribal-state compacts are required under IGRA where the nature of the gaming is neither based on bingo, on games traditionally associated with bingo, such as pull-tabs and the like, or on non-banking card games such as poker. Other forms of gambling require a compact, the purpose of which as stated in the Act is to govern "the conduct of gaming activities."[1] A compact is intended to be reached by good faith negotiations between the state and a tribe over such traditional gaming regulatory matters as employee licensing, the kinds of gambling games that will be permitted, regulatory standards, and other topics specific to the "operation of gaming activities." The Act is full of references to the regulation of gaming, but nowhere suggests that a state can use its own compact consent opportunity under IGRA to obtain control over tribal governments and their employees. Yet that was exactly what was attempted in order to further the agenda of a few commercial interests that were opposed to any gaming by tribes in California in the late 1990's. When the majority of the California tribes opposed a compact that was being negotiated in secret, but that was clearly intended to serve as a model for all California tribes, they proposed that the issue be taken to the people in the form of a constitutional

[1] 25 U.S.C. ♦2710 (d)(3)(A). All future references to the Act are in Title 25 of the U.S. Code.

amendment setting forth the proposed terms of a compact, so that it could be openly debated and voted on, up or down, by everyone. That suggestion appeared to have overwhelming bipartisan support of the state legislature, only to be thwarted, ironically, by some out of state gaming interests who persuaded some that the compact initiative should compel collective bargaining on terms far beyond what is required under law, and certainly far in excess of any terms those companies would have supported or tolerated if anyone had tried to enact them under the laws of their own state. As a result, the debate became highly politicized, and the tribes were left with no alternative but to place the measure on the ballot as a statutory initiative, without legislative support.

The problem should have never arisen. It is simply inappropriate to permit the compact process, which was intended to govern the fundamentals of regulating gaming, to be hijacked by unrelated goals, such as the opportunity to serve competitors and to otherwise control tribal jurisdictions. Labor relations was one vehicle for such an attempt, but there are others as well. They stray far from gaming regulation under the guise of trying to solve complex issues of tribal-state relations. The compact process is not the place for that to occur, and to permit that process diminishes not only tribal sovereignty, but the role that Congress has historically played in these debates.

The footnote to the California story is, of course, that the first compact did go to the people without any labor provisions, but with significant protections for workers which were written in at the insistence of the tribes themselves, and which passed by 64%, only to be stricken down by the courts because, due to the legislative split over the labor issue, it could not be placed in the constitution as originally intended. A second initiative, this time amending the California constitution, did pass, but only as to the forms of gaming to be included in a compact. Simultaneously, tribes reached agreement with a new governor and agreed to a compromise provision governing negotiations, but not agreements, for collective bargaining. Even those provisions, however, which each compacting tribe is required to enact as a "Tribal Labor Relations Ordinance" as a condition of obtaining the compact, violates the tribe's sovereign right to govern the subject of employee labor representation within its jurisdiction, just as other governments now do, and strays dangerously far from the gaming regulation which the compacts were intended to address. One would be surprised to find labor relations provisions in a section of state law governing gaming regulation, but that is essentially what results when compacts like these contain such provisions. They are inappropriate and beyond the scope of IGRA.

This bill would correctly uncouple the gaming regulatory process from a state's (or others') goals or agendas with respect to labor relations. In fact, my only criticism would be that it does not go far enough in prohibiting negotiations over all unrelated issues. These critical programs should not be used as a shortcut to try and coerce solutions to complex and serious questions regarding the relationship between tribes and states that have been, and will continue to be, with us for many years.

Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you very much, Mr. Chairman.

And now our friend, President George of the United South and Eastern Tribes. Welcome, Mr. President, and we would appreciate your testimony.

STATEMENT OF KELLER GEORGE, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES

Mr. GEORGE. Good morning, Mr. Chairman, Congressman Rahall, and members of the Committee. My name is Keller George. I am President of the United South and Eastern Tribes, known as USET, which is a confederation of 24 Federally recognized tribes ranging from the tip of Florida to Maine and from South Carolina out into Texas. We cover 12 States in the USET region. And I am also a member of the Oneida Nation Tribal Government.

Thank you, Mr. Chairman, for convening this hearing to address the issues of unionization clauses to tribal-State gaming compacts. This is an increasingly controversial issue, and it is one that is important for Congress to take a strong look at.

As I have stated in my written testimony, I do not believe that this issue has anything to do with whether you support or oppose unions. Many enrolled Oneida people are proud card-carrying members of unions. They are carpenters, construction workers, iron workers, and the other skilled tradesmen that are needed with strong union representation.

In addition, when the Oneida Nation begins a new project, we open the bidding process to all companies, and we don't care if we get a bid from a union shop or a nonunion shop. In the end, we approve a bid strictly on the merits.

Also, I think we can agree that unions have championed many workers' rights that we now take for granted. They work for good wages, reasonable hours, and decent benefits. A recent radio ad said that unions were even responsible for creating the weekend, so let me just say on a personal note to any union representative here, thank you for that.

The reason that I agree to testify is that I believe Congressman Hayworth's bill raises an important, very important to Indian country, an issue that is very, very important to Indian country. As you know, a controversy has developed over so-called unionization clauses which would be included as part of a tribal-State gaming compact, and we know that happened in California, and recently in New York the State legislature passed a law that would include unionization clauses in future gaming compacts.

Unfortunately, States are using the process in the Indian Gaming Regulatory Act to undermine the National Labor Relations Act. In other words, one Federal statute is being used to overturn a different one, in a way Congress did not intend. I am not a labor lawyer, but I know that when Congress passed the National Labor Relations Act, it struck a delicate balance between the rights of companies and the rights of unions. What Congress accomplished, however, is now being undermined by some States.

For example, in New York the legislature passed a law requiring that future tribal-State gaming compacts include a provision that Indian governments must remain neutral during union campaigns. This provision means that Indian nations cannot educate their employees on issues relating to unionization. As a result, employees are forced to decide whether or not they want a union with only the union's version of the issue. This one-sided approach is not only unfair to employees, it is also contrary to the system established by Congress under the National Labor Relations Act.

As I understand it, Congress through the National Labor Relations Act specifically allows employers to express their views on whether they thing it is a good idea for the employees to organize. States are changing that by making it a breach of the compact for an Indian nation to exercise its right to express its opinions. That is not fair, and that is not what I believe that Congress intended.

The New York law also undermines another fundamental concept of the NLRA, that elections take place by secret ballot. The reasons for a secret ballot are obvious. Congress recognized that employees should be free to cast a vote for or against unionization without fear of retaliation. The New York legislation, however, would require Indian-run casinos to recognize a union based merely on a card count.

A card count is simply where union organizers try to get workers to sign a card that indicates the worker's support for the union, and there is no time limit on it. If they do it the first time around, they don't get enough signatures, then they can continue and it could go on for maybe years until they get the correct amount and then present it, and we have to accept that union. Under the New York law, once the union presents the Indian nation with cards from a majority of the employees, the Nation must recognize that union.

The problem with a card count, it is a system that can be abused both by the employer and the union. Employees obviously may vote differently if they know that their vote won't be secret. They might be afraid of retaliation by the union; they might be afraid of retaliation by the employer. And that is why secret ballots make sense. That is why Congress included them when it passed the National Labor Relations Act.

But this issue is more than just a conflict between two different Federal laws. This issue also involves tribal sovereignty. Sovereignty is a word that gets thrown around here quite a lot, and I know because I am probably one of those people that throws it around a lot, and I am always careful to raise it in a way that doesn't diminish the meaning and importance of the word.

What does sovereignty mean in this case? It means that Indian governments ought to be able to decide whether they want unions in their government businesses. Again, this has nothing to do with being for or against unions. American Indians have a long and proud history of participating in trade unions, but an Indian government should have the right as a sovereign entity to decide whether it is in its best interest to allow unions into its work place. And it appears that the Federal courts time and time again have agreed with me.

This Committee knows Indian casinos are government businesses, and by law are used to support tribal government operations and services. Indian gaming supports schools, health care, roads, affordable housing, insurance, law enforcement, and many other government activities. Many of you have seen firsthand how these revenues have enabled Indian nations to support their people.

In the Oneida Indian Nation's case, not only has it allowed the Nation to provide for its people, it has also allowed us to be the first Indian nation in the country to turn back Federal tribal priority allocation funds, back to the BIA. To date, we have turned back more than $3 million in Federal assistance.

Why do we turn these back, that we are lawfully entitled to? It is because of sovereignty. Our people decided that sovereignty meant that we would no longer ask for Federal handouts, as soon as we were economically able to support ourselves. This distinguishes Indian casinos from their private sector counterparts in Las Vegas and Atlantic City.

Without gaming revenues, many Indian governments would no longer be able to provide essential services currently given to their members. Because this revenue is so essential to many Indian governments, I can understand why some Indian nations would feel that the possibility of a strike or work stoppage would threaten

their ability to provide essential government services, and I can understand why some Indian nations feel that they cannot subject the welfare of their people to the threat of a labor dispute.

This is why I believe that whether you support unions or not, Indian nations ought to be left with making the choice for themselves. They ought not to be coerced into unions, into unionization, or be forced to adopt policies that undermine Federal labor law.

Mr. Chairman, I appreciate the invitation to appear before this Committee, and would be glad to answer any questions.

[The prepared statement of Mr. George follows:]

Statement of Keller George, President of the United South and Eastern Tribes, Assistant to the Nation Representative, Oneida Indian Nation, Chairman of the Oneida Indian Gaming Commission, on H.R. 103

Mr. Chairman, Congressman Rahall, Members of the Committee, my name is Keller George. I am President of the United South and Eastern Tribes ("USET"), which is a confederation of 24 Indian nations ranging from Florida to Maine, South Carolina to Texas. In addition to being President of USET, I am an enrolled member of the Oneida Indian Nation in New York, where I serve as Special Assistant to the Nation Representative. I am also Chairman of the Oneida Indian Gaming Commission, the principal regulatory body that supervises gaming at Turning Stone Casino and Resort, an enterprise of the Oneida Indian Nation.

Thank you for this opportunity to appear before the Committee on Resources to present our view on the increasingly controversial matter of adding "unionization" clauses to tribal-state gaming compacts.

Included among the members of USET are some of the largest gaming tribes in the United States, such as the Mashantucket Pequots, the Mohegan Tribe, the Oneida Indian Nation, the Mississippi Band of Choctaw, the Seminole Tribe, and the Miccosoukee Tribe.

In fact, of the 24 Indian nations that comprise USET, 15 engage in Indian gaming pursuant to the Indian Gaming Regulatory Act of 1988 ("IGRA" or "the Act"). Nine tribes conduct Class III gaming pursuant to a tribal-state compact, and six tribes engage in Class II gaming. To the best of my knowledge, none of these gaming facilities has a unionized workforce.

Let me make it clear that the purpose of my testimony is not to oppose unions. I have nothing against unions. I think most reasonable people would agree—no matter which side of the political spectrum they represent—that unions have been responsible for many very positive developments in the workplace. They have championed the fundamental rights of employees to a safe place to work. They have advocated on behalf of employees for reasonable wages and decent benefits. The have successfully argued in support of reasonable shifts and for time off to spend away from the workplace. In fact, I recently heard on the radio an advertisement by a labor union, which said: "This ad was paid for by the people who brought you the weekend." So, let me just say on a personal note to the union representatives here: "Thank you for that!"

In addition, at the Oneida Nation, when we begin a new business development project, we accept bids from any company regardless of whether it is a union shop. And, the bid we approve is based solely on the merits of the application. I should also mention that quite a few enrolled Oneida men and women are proud, card-carrying members of labor unions. We have Oneida members that are carpenters, ironworkers, and other trades that have significant union representation.

Just as the purpose of my testimony is not to oppose unions, I am not here to endorse them either. In fact, I believe that this issue should have nothing to do with whether you support or oppose organized labor.

The reason that I agreed to testify is that I believe that Congressman Hayworth's bill, H.R. 103, the "Tribal Sovereignty Protection Act," raises some important issues and questions that deserve Congress' attention.

As the committee is aware, a controversy has developed over so-called "unionization agreements," which would be included as part of tribal-state gaming compacts. In California, it has been asserted that tribes were pressured into signing labor agreements before they could execute gaming compacts with the governor. In other cases, like New York, the legislature has passed a law that would include several "unionization clauses" to be made a part of any future compact.

My concern is that some states are using the process set up by the Indian Gaming Regulatory Act to undermine Federal labor policy as endorsed by Congress under

a different Federal statute—the National Labor Relations Act ("NLRA"). In other words, one Federal statute is being used to overturn a different one in a way that Congress did not intend. Let me explain.

I am not a labor lawyer; however, my understanding is that in passing the National Labor Relations Act, Congress worked very hard to find a middle ground, protecting the rights of employees to determine whether they wish to join a labor union. Congress struck a delicate balance between the interests of unions conducting organizational campaigns and employers to oppose unions.

The National Labor Relations Act strikes just the right balance of allowing the unions and employers each a right to present their positions to the employees who must ultimately decide whether they want a union.

What the NLRA has accomplished, however, many states are now taking away. These states are using IGRA to circumvent the NLRA by imposing rules that tip the delicate labor-management balance strongly in favor of unions. These provisions deny employees of Indian-run casinos the right to a free choice in deciding whether or not they want to joint a union. As a matter of Federal policy, Congress already decided through the NLRA that employees should have that free choice. The states' use of IGRA to take away the employees' free choice should be illegal.

Here are some examples of what I am talking about. In New York, the legislature recently passed a law requiring that tribal-state gaming compacts include a provision that Indian governments must remain neutral during certain union organizational campaigns. I understand that a similar requirement was included in the California unionization agreements.

This provision means that Indian nations cannot educate their employees on issues relating to unionization. As a result, employees are forced to decide whether or not they want a union with only the union's version of the issue. This one-sided approach is not only unfair to employees; it is also contrary to the system established by Congress under the National Labor Relations Act.

The NLRA specifically includes a section protecting the right of employers to express their "views, argument, or opinion" in written, printed, graphic, or visual form. The law expressly states that the employer's presentation of its opinions to its employees does not constitute an unfair labor practice. Yet states like New York and California have single-handedly changed that law by making it a breach of the compact for Indian tribes to exercise their right under the National Labor Relations Act.

The New York law also undermines another fundamental concept of the NLRA'that elections take place by secret ballot. The reasons for a secret ballot are obvious. Congress recognized that employees should be free to cast a vote for or against unionization without fear of retaliation by either their employer or by the union.

My understanding is that the National Labor Relations Board has repeatedly stressed the importance of a secret ballot. The NLRB stated:

> "The Board is under a duty to preserve [the secret ballot] and it is a matter of public concern, rather than a personal privilege subject to waiver by the individual voter. Moreover, to give effect to such a waiver would remove any protection of employees from pressures, originating with either employers or unions, to prove the way in which their ballots had been cast, and thereby detract from the laboratory conditions which the Board strives to maintain in representative elections."

Despite the obvious importance of secret ballots, the New York legislation requires Indian-run casinos to recognize unions based merely upon a "card count," in which union organizers can pressure their peers and co-workers to sign union authorization cards. Under the New York law, once the union presents authorization cards from a majority of the employees in a bargaining unit, the Indian nation must recognize the union—even if the employees were coerced into signing the cards. This destroys the whole purpose of the secret ballot and is contrary to the intent of the NLRA to protect the free choice of employees in selecting a union.

I have been informed that in some instances, unions are able to collect authorization cards from a majority of employees in a bargaining unit, but during the election by secret ballot the employees reject the same union that collected cards. Why does this happen? Well, it could happen because union organizers pressured employees to sign the cards. Or, it could happen because employees thought that unionization was a good idea when they signed the card, but they changed their minds when they were able to hear the employer's perspective.

Whatever the reason, it is no wonder that Congress felt that secret ballots and employer participation in campaigns were important tools to maintain the delicate balance between the rights of employers, employees, and the unions.

This issue also involves tribal sovereignty. Indian governments ought to be able to decide whether they want to accept unions in their government businesses. Again, this has nothing to do with being for or against unions. American Indians have a long and proud history of participation in trade unions. But an Indian government should have the right as a sovereign entity to decide whether it is in its best interest to allow unions into its workplaces.

As this committee well knows, Indian casinos are government businesses that by law must be used to support tribal government operations or programs; provide for the general welfare of the Indian tribe and its members; and promote tribal economic development. Indian gaming supports schools, health care, roads, affordable housing, insurance, law enforcement, and many other government activities. This is an essential distinction between Indian casinos and their private sector counterparts in Las Vegas and Atlantic City. Without this gaming revenue, many Indian governments would no longer be able to provide the essential services currently given to their members. Gaming revenues have allowed some Indian nations to end the centuries-old cycle of poverty and reliance on Federal dollars.

Because this revenue is so essential to many Indian governments, I can understand why some Indian nations would decide that they cannot afford to allow unions to organize in their businesses. I can understand why some Indian nations would feel that the possibility of a strike or work stoppage would threaten their ability to provide essential government services. I can understand why some Indian nations feel that they cannot subject the welfare of their people to the threat of a labor dispute.

That is why I believe that whether you support unions or not, Indian nations ought to be left with making the choice for themselves. They ought not to be coerced into unionization. And, as I have mentioned, states should not be allowed to let the one Federal statute undermine Federal labor policy as decided by Congress under the National Labor Relations Act.

I appreciate that this Committee is holding this hearing to highlight and discuss this important and complicated issue. Thank you for the opportunity to participate in this hearing, and I would be glad to answer any questions from the Committee.

Mr. HAYWORTH. Thank you, President George, and our thanks to all three witnesses.

Chairman Marquez, in the episode in California, coercion is a strong term, but was it your perception that to come up with compacts the Governor of California essentially forced tribes to adopt rules forcing unionization?

Mr. MARQUEZ. I wasn't present at the actual compact process, but it was my understanding from those who were there as well as our legal staff that in the eleventh hour the compact was dropped on the table and said basically, "Agree to this, or no compact." So to me, no, it is not a strong word. It is very appropriate and fitting for the occasion.

Mr. HAYWORTH. So again, to amplify, there was in essence coercion, take it or leave it, here is the deal, you make way for unions regardless of sovereignty to get this compact?

Mr. MARQUEZ. Yes, sir.

Mr. HAYWORTH. Thank you, Mr. Chairman.

President George, you talked about in your testimony the challenge confronting some tribes in terms of delivery of vital services if compulsory union agreements are demanded or coerced, as we saw in California by virtue of the compact situation. Could you amplify on that a little bit?

Mr. GEORGE. Yes, Mr. Chairman. Under the State law that has just recently passed in New York, we don't have much of a choice. We don't have the ability to say the reasons why we believe that unions should not be established in our country. We had that obligation.

We are probably one of the most liberal nations in giving benefits to our people. We provide health insurance to all of our employees, also with the option of them including in there, on a pro rata basis, for their entire families to be included in that health insurance policy. It is very liberal.

We have probably two more holidays than the Federal holidays that we have. We have a National Indian Day in New York—not a national, but a State Indian Day in New York, where we give all our employees that particular day off, and also the day after Christmas and the day after Thanksgiving, so there have been added—we of course do not acknowledge Columbus Day, so we added one holiday to make up for that.

But we have a very liberal benefits package, and we feel like the reason why no unions have started to try to unionize with us is because we offer that liberal package and have a system. If there is a problem with an employee, there is a system that they go through, through our Human Resources Department, on getting rid of those issues, similar to what you would have with a committee person at a union that goes through and advocates for that employee for whatever grievances they might have.

Mr. HAYWORTH. Thank you, Mr. President.

Councilman Garcia, what do you see as the future effect of the 10th Circuit Court of Appeals Decision, NLRB v. Pueblo San Juan, in gaming compact negotiations?

Mr. GARCIA. I think, Mr. Chairman, that the two are tied. If the decision had gone the other way, it is a wide open shop all over Indian country, because that is the impact that it would have. But there are some potential fixes in labor relations.

I think that had the union, the local union in San Juan Pueblo, had been courteous enough to come before the tribal council at our invitation, we would not have even reached this point. But it was the force of the local entity that forced itself upon the company, and I think that is really where it all started. We were forced, in essence, to pass the ordinance, and the ordinance was questioned, and the local union went up to the national level.

But I think that absent any local negotiations, any local respectful ways of operating, there is really the answer. And it is the same thing with the compacts, that negotiations, the tribes have been so willing to negotiate but, you know, there are terms within the gaming compacts that are used to—not to that respectful approach but different approaches.

And I hope that this legislation at least will also reach the other party, in that the real solutions are mutual solutions, and that they are not one party versus another or one entity versus another. I think that we are all one nation, and if we don't begin to do that as family members, community members, extended families, then we will continue to see legislation here, legislation there.

And the solutions are not in that, in a roundabout way. The solutions are mutual. We should work toward that end, and if this legislation forces us to that point, come to the table. Let's talk about it. Let's find some real solutions. And it is well-intended, so—

Mr. HAYWORTH. I thank you, Councilman Garcia. My thanks to all three witnesses for their support of the legislation. Again, what I think we are going to see subsequently is a case study about how

some perceive sovereignty to be situational, and that is something that is a cause for concern.

Having said that, I am pleased to recognize the Ranking Member, the Gentleman from West Virginia.

Mr. RAHALL. Thank you, Mr. Chairman. Mr. Chairman, this legislation is so abhorrent—mind, I just said this legislation, not the author, whom we love very dearly, so it is not a personal attack—that I am just simply going to repeat my opening statement.

And since, Mr. Chairman, you were so impressed with my colleague from California's eloquent opening statement, I am going to yield my time plus what time he has of his own so that he may further impress you. I yield my time to the Gentleman from California.

Mr. MILLER. I thank the Gentleman for yielding. And President George and Chairman Marquez and Council Member Garcia, welcome to the Committee and thank you very much for your testimony.

It has been suggested that—and I am more familiar with the California situation—that somehow the California situation mandates unionization, and let me make it very clear that it doesn't, because if it did, all the tribes would have unions in their casinos.

But the fact is, what it says is that people have a right to engage in collective bargaining with the casino operators, should they so desire to do so and they get the 30 percent required to go forward. The fact of the matter is that a very small minority of the casinos have union representation within their casino operations, among the eligible employees, so this isn't about mandating that.

But let us also understand—and I think I will match my credentials on sovereignty, in defense of sovereignty of the Indian nations over my 28 years here, with anyone in the Congress—that it isn't absolute, just as nations all over the world find out from time to time their sovereignty isn't absolute, and that is a fact of life.

That is not to suggest that it should not be robustly protected, and obviously the Indian nations have done a very good job of that. But we had the situation where we could have had free and open gaming, under Cabizon, among all the Indian nations in the country, and it is very clear that the Congress of the United States decided that that was not going to be acceptable, for whatever reasons. Some were good and some were not so good. Some motivation was proper and some was improper. But the fact of the matter is, an overwhelming majority of the Congress said this isn't going to happen.

So once again the Congress has stepped in, as it has from time to time, and developed laws that govern the tribes, and part of that was the arrival of compacts. We thought there would be more parity between the parties to the compact. Seminole obviously changed all that.

But even the tribes understand it is not a question, Mr. Chairman, of whether it is situational. The question is in what context does the sovereign, can a sovereign power survive. Even the tribes are recognized. They are recognized in Proposition 5. They are recognized in Proposition—I believe also in 1A, that they could not ask the people of California to approve the gaming and say that we are not going to comply with the Clean Water Act, we are not going

to comply with health and safety codes, we are not going to comply with those kinds of operations. Not that they would, but they had to make an affirmative statement that they would in fact provide for that.

And in the negotiations they also said that they would comply with the health and safety codes, that they would provide for nonmembers of the tribe to pay into unemployment insurance, to collect taxes, to develop a worker's compensation policy equal to, or let us know, or get into the State system. So they understood that these are conditions that people would start to think about when you are talking about a major employer, and these are major and successful employers. So they agreed to, and later it was reflected in the contract, that State inspectors can come onto land to look at health and safety codes, to look at occupational codes, to look at food safety, to look at water quality issues.

The question of employment is central to this. That is why the question was raised and was put into the compact and was put into the propositions, about the employees would be eligible for unemployment, they would be eligible for worker's compensation. Alcoholic beverage, central to the operation, applicable laws would apply, State laws.

So it is not situational sovereignty. The question was, under the system that was set forth by the Congress of the United States, that there would be an agreement reached. If the tribes had come in and said, "We're going to serve minors alcohol, we're going to use child labor, we're going to do all these things," obviously the compact would have never been agreed, but Proposition 5 would have never passed and Proposition 1A would have never passed. Because the sovereign understood you are going to have to conduct business in a manner which is acceptable to the general community of, in this case, the State of California.

In those negotiations that resulted, the Governor, the State legislature, felt very strongly that people ought to have a right to engage in collective bargaining. It goes to the conditions of employment on the reservation, just as worker's compensation, just as unemployment and others do.

I don't think this is a question of bad faith. I mean, I am very disturbed in the legislation that it says that the Governor of the State of California acted in bad faith. I don't think that is in bad faith. And the suggestion, and Chairman Marquez, I disagree with you, a take it or leave it offer is not coercion.

Take it or leave it offers are made every day in business transactions all over the country and in negotiations in this Congress and in your tribe and in your family and a lot of other places. You will say, "Hey, you want to use the car Saturday night? Be home by 10. You don't want to be home by 10:00, don't use the car." The person figures out how important it is I use the car on Saturday night. So I think we ought to be careful about the use of these words, because the suggestion obviously is a reflection on our Governor and also a reflection on the process.

So what are we left with? We are left with a piece of legislation, that its intent and purpose is to deny people the access to collective bargaining. I happen to believe that collective bargaining or the access to collective bargaining is a proper subject for the compact

negotiations, the terms and conditions of employment on a reservation by a major economic entity.

And so I think it is very important that we understand what this legislation is about. This legislation isn't saying sovereignty and only sovereignty, because it isn't saying we shouldn't use IGRA to negotiate health and safety codes. It isn't saying we shouldn't use IGRA to make sure that liquor laws are applied with, we shouldn't use IGRA to make sure that child labor is applied with, abusive work places aren't applied with. We wouldn't do that. That would be an unacceptable definition of sovereignty. We wouldn't do that with any other sovereign, with, you know, a city, county, State situation.

And so I really think that we have got to have some clarity here to what it is, and I appreciate—look, many of the situations you describe are traditional labor negotiations that go on, day in and day out, and you have had some have had success. You with the Communication Workers. You didn't do, I guess it was Millworkers, or I don't know who was trying to organize the sawmill. And you are right, you are right in your lawsuit, that the NLRB does not apply. That was a determination lawsuit. You are right to pursue that, absolutely.

But I think in this situation we ought to clearly understand what this legislation is about, and obviously if I have time, Mr. Chairman, I would certainly welcome response by any of the panelists to anything I have said. You may and probably very well do disagree with me.

Mr. HAYWORTH. Are there any responses you would like to offer?

Mr. MARQUEZ. I do. With all due respect, sir, when you are left with the alternative of not having revenue share, not having your special distribution share by the State of California, not having funds to operate in my tribe, to write health care for my membership, that is not an alternative.

And I take issue with the fact that you say I had a choice. We did not have a choice. You know as well as I know, the process starts 10 years from the day it was finalized. So just to walk away from the table at the last hour when you are told, "Take it or leave it," what are you left with? A court case that says you can't operate. That is not a choice.

Mr. MILLER. That is the law of the land.

Mr. MARQUEZ. Yes, but you make it sound like that we had other alternatives. We did not.

Mr. MILLER. No, I didn't say you had other alternatives. I said this is a rough and tumble negotiations, but that the suggestion that—

Mr. MARQUEZ. With all due respect—

Mr. MILLER. —the offer itself is coercive, I don't think is accurate.

Mr. MARQUEZ. With all due respect, you made it sound like we had another avenue to pursue. We did not, so I just want to be clear on that. And that is all I have to say, sir. Thank you.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Miller.

The Gentleman from Michigan.

Mr. KILDEE. I appreciate the testimony of my friends, and I really have no questions of you, look forward to working with you on many other issues. Thank you very much for your testimony.

Mr. HAYWORTH. Thank you very much.

The Gentleman from Oklahoma? The Gentlelady from California, any other questions?

Ms. SOLIS. Thank you. I also appreciate the testimony given by the witnesses, but as someone coming from the State Legislature in California, we spent many, many years discussing this matter, and in fact I worked very hard with some of the local unions to see that we could work toward agreements, collective bargaining agreements.

And I feel very strongly about that aspect because many of the folks that work at these different casinos and halls are not necessarily just Native American. Many of them, especially in southern California, happen to be Latino, at least in southern California. I want to make my remarks specific to that area.

And there are a lot of folks that are striving to have a better life, as well. They don't have health care benefits. If it is not given to them in their work place, they are not going to get it where they live, in Palm Springs or other areas, because they are high distressed areas. We have a lot of people, especially from my population, that are uninsured, that need to have some sense of security to make better wages.

That is not to say that you don't provide in some way maybe competitive wages, but there is also that sense of having some security and being able to be treated right, and not being harassed or being discriminated because maybe you are not a Native American, as well. I mean, I have heard of those instances as well.

So I am empathetic to what you have to say, but I am also equally concerned about the work force, particularly in the case of California, where I know many people right now are losing their jobs. And let's face it, the service industry is one area right now where a lot of folks are unemployed, and particularly in California.

I know that there are issues with respect to trying to provide other health-related services and educational services, and I am wholly in support of trying to provide that. In fact, I even have a bill to recognize a Native American organization group in my district, not for the purposes of gaming but so that they could receive assistance through the Federal Government to provide health care and education.

To me, those are the No. 1 issues about keeping family, keeping unity, and making sure that people have good working conditions, and I think we can agree on that. I haven't heard anyone really say that they are not for providing a good work place, but again, there are laws in place in California. We do have high standards, and I would hope that all of us could work toward that.

I would just want to associate my comments with my colleagues on this side of the aisle, and just state my opposition to this legislation. I don't think we have to go this route. And I know that there are other Native American tribes who are much better off financially than some of the tribes in California, and they can afford to maybe make those payroll payments that they need to. But it is not all competitive. I mean, it is not all crystal clear.

So I would just ask you to take a look at those factors and to work with those of us that really do want to see some good work happen in the next few years. And I really am disappointed that this piece of legislation has to be discussed here in this manner, because I do take it personal, that it is a shot at our Governor and at those of us that really do care about trying to provide some protections for people in the work place and obviously on tribal lands.

Thank you.

Mr. HAYWORTH. I thank the Gentlelady for her comments.

In the time remaining, do you Gentlemen have any comments you would like to address to the Gentlelady and to the Committee? Yes, sir.

Mr. GARCIA. Mr. Chairman, no, I just wanted to relay my thanks from our tribal council and from our Governor, Wilford Garcia, for this opportunity, and that I know it is a hard job for all of you, and I know that you also do what is best in your heart for the real solution. So thank you for this time.

Mr. HAYWORTH. Thanks. Thanks to you, Councilman Garcia. And Chairman Marquez?

Mr. MARQUEZ. I just want to say thank you as well, and to point out the fact that San Manuel, we are not anti-labor. We don't propose that we don't allow unions into a facility. Obviously, we allowed that to take place prior to Prop 1A and the compacts.

I am proud to state the fact that the people who have unionized under the CWA are looking to get out of that union because they no longer want to be part of that union because we have offered better benefits than the union allows. You bring a good point. We can do that. We can provide 100 percent medical and the likes, so we do provide a better work place. What I don't agree with is being told by another sovereign that we have to do this. Give the choice back to us.

Thank you.

Mr. MILLER. Mr. Chairman, will the Gentleman yield? Just yield, if I might, on that comment.

The choice is really there because, as you said, if the people want to leave the CWA, they will make that decision to leave. The fact is that you can probably argue that you have made organizing very difficult by the fact that of jobs that you do provide, the benefits that you do provide, the wages that you do provide. Otherwise, you know, people would be in there in constant turmoil, trying to organize, thinking this is ready for it.

I mean, that is a comment on the fact that the law in many ways is working. Collective bargaining is a means by which employees who feel disenfranchised or somehow disrespected in some fashion with respect to their job, have an outlet to try to bring an action against the employer. The fact that that isn't happening on these properties suggests that they are probably very well run, and they are offering not only competitive but maybe better jobs than in the surrounding area.

But the choice is there to ask for that because you don't think your employer is responding, and the same choice is what you may be talking about, to say "We no longer want to participate in the unionized operation, in the collective bargaining arrangement, and we therefore want to petition for decertification." I mean, so the

fact of the matter is, that is about the way it is supposed to work, and the choice is there.

You know, the suggestion was in one of the testimonies that this mandated that you had to have the union. It doesn't do that at all. And so it sounds to me like it is kind of working the way it should, with people freely determining whether or not they want to trade their work place or not.

You know, my mother used to run a restaurant, and the unions went to organize her restaurant. She put it up to all the employees and they said no. So then they started picketing it because, you know, her son was a Congressman, and she kept saying no and no and no and no. I never ate at my mother's restaurant, OK, because I couldn't cross the picket line. But her employees made a choice, you know. That is kind of the system.

Mr. MARQUEZ. Our tribe made a choice to allow unions to come in and do that—

Mr. MILLER. I understand that, right.

Mr. MARQUEZ. But also, as your mother has done, it is also a sovereign right to say no.

Mr. MILLER. No, no.

Mr. MARQUEZ. And a tribe should have that right—

Mr. MILLER. It is the right of her employees to have that choice.

Mr. MARQUEZ. Yes, yes, but the tribe should have that right to allow a union to come in or to adopt an ordinance to allow the unions to come in. That is a tribal decision.

Mr. MILLER. I appreciate that, but I still think it is a legitimate part of compacting.

Mr. HAYWORTH. Any other—

Mr. GEORGE. Mr. Chairman?

Mr. ABERCROMBIE. Mr. Chairman?

Mr. HAYWORTH. I would be happy to recognize the Gentleman from Hawaii. I just think President George had a comment, I believe.

Mr. GEORGE. Mr. Chairman, I too would like to give you my thanks for having us here and letting me reiterate the nation's views. But under New York law it is different than in California. It is very different, the law that the legislature passed, and that is what we are concerned about.

We have been operating our casino for almost 10 years now under the—when we got our compact in 1993, and the compact works. But in this new legislation, that we have to allow unions to come in and collect cards, we don't have—we have to remain neutral. We can't say these are the benefits that we have offered, this is what the jobs start with.

I dare say that we are probably $2 over the minimum wage for entry-level jobs, and that is why we are able to get our employees and retain our employees with health insurance, liberal benefits for time off, liberal benefits for sick time and all of those types of things. But with this we don't have any option. We have to let them come in. Say if we have 2,000 employees and they get the majority of cards signed over a period of time, the law says we have to recognize that union, and that is pretty much what we are concerned with.

So we have been in that situation, too, because we do offer jobs above the pay scales that you can get in the general community or other jobs in the State. We have been able to retain our employees, and we have a very satisfactory level. That is why we haven't had any attempts of unions to organize up to now, but it is mandated by law, and that is what we are saying.

But if we had that same authority or same ability such as grocery stores that are in the news lately, that they can tell their employees, "These are the benefits you are going to get," and offset what the unions are telling them that is all we are saying.

I am not against the union and I am not necessarily for unions. I have never belonged to a union because the majority of my time of being around was in the military and then working for my nation. So we are not opposed to unions, but there should be a level playing field on how the process is. That is all we are saying, and we appreciate this, because the debate has started and I think we have to take a closer look at this, because some States, as I said, are using this one law to bypass another law, and we are very concerned about that.

Mr. HAYWORTH. The Gentleman from Hawaii, Mr. Abercrombie.

Mr. ABERCROMBIE. Well, I couldn't help but observe, Mr. Chairman, that even though Mr. Miller couldn't eat in his mother's restaurant, he apparently was able to find some other venues. He doesn't look too undernourished to me.

[Laughter.]

Mr. HAYWORTH. Rising to the defense of my colleague on the minority side—

Mr. ABERCROMBIE. Well, Mr. Chairman, I might observe you are not exactly the one that should be rising to—

[Laughter.]

Mr. HAYWORTH. I was going to point out, Mr. Abercrombie, that though you are blessed with the figure of Adonis, you also perhaps have some—

Mr. MILLER. I think we ought to stop this whole conversation.

Mr. HAYWORTH. But we are not going to go there any longer. We all appreciate the chance to understand that there is a preponderance of physical evidence that we certainly enjoy the finer points of gourmet eating.

Mr. MILLER. Mr. Abercrombie has been known as a scratch knife and fork man for a lot of years.

Mr. ABERCROMBIE. Mr. Chairman, I will admit that I did bulk up for winter, but I have seen the light.

Mr. HAYWORTH. Well, that is good to know, and we look forward to other nutritional guidelines in the days ahead, perhaps not through an act of Congress but informal advice for all of us.

We also welcome to the dais the Gentleman from Idaho, and he is happy to be here. And I would ask, as I thank our witnesses for being here with this panel, we will continue to have the debate and we appreciate you coming in and being with us today. Thank you for your time and your testimony.

As we welcome up panel five, I would also ask unanimous consent that the Gentleman from Oklahoma, Mr. Watkins, be able to join us here for the testimony. Objection?

Hearing none, so ordered.

Mr. HAYWORTH. And we welcome Congressman Watkins even as we welcome Governor Bill Anoatubby of the Chickasaw Nation, Principal Chief Chad Smith of the Cherokee Nation, and Gregory Pyle, the Chief of the Choctaw Nation of Oklahoma, as they come to testify on H.R. 3534, to provide for the settlement of certain land claims of the Cherokee, Choctaw, and Chickasaw Nations to the Arkansas River bed in Oklahoma. Thank you gentlemen for coming. Governor Anoatubby, welcome. Appreciate your coming, Bill, and look forward to your testimony.

STATEMENT OF BILL ANOATUBBY, GOVERNOR, CHICKASAW NATION

Mr. ANOATUBBY. Good morning, Mr. Chairman and members of the Committee. Thank you very much for including us in this hearing, and to say we are privileged to be here to speak to the gist of an issue that is certainly of great importance to us and to the other two tribes here. You have my written testimony, Mr. Chairman, and we certainly know that is part of the record so we will keep the comments brief this morning, or excuse me, this afternoon.

This is an issue that has been on our table for many, many years. In fact, as a result of the Supreme Court ruling in 1970, these three tribes have been restored ownership of the bed and banks of the Arkansas River, and you will hear more of the details regarding that ownership and history of that ownership and the legal history from the other two witnesses.

Let me just simply express a few thoughts here. For 32 years, actually for 95 years, the three tribes were denied access, denied the fact that they owned this property. Then after the Supreme Court ruling, we have actually been denied access. It is time for us to bring this to a settlement.

At this point we are further ahead and closer to settlement than perhaps we have been in many years.

We are thankful that this Congress is taking up this legislation. We are thankful for the authors, for Mr. Carson and his effort to bring this bill forward, and we are also thankful at this point for the Bureau of Indian Affairs; some people may wonder how you could hear those words uttered from the lips of a tribal chairperson and a Governor, but we are thankful that they have come to the table and appointed a negotiation team to deal with this. We are so very close now in coming to agreement.

This legislation that you have before you is beneficial not only to the Indian tribes in question but also to many citizens of the State of Oklahoma, especially those who are residing in property, on property, or utilizing property that is in question here. So this is not just a good thing for the tribes but it also is good for Oklahoma to settle this issue.

I listened to Mr. Smith's testimony, and I think that if you listened carefully you see that it shows some encouragement and that there are some decisions that we are getting close to making. But one thing that he indicated that I respectfully request that this Committee please do not take into account and listen wholeheartedly, we do not need to delay this legislation in any way.

In fact, this bill has brought us closer and closer to reaching a settlement or calculating a number that we can agree to. Also the court case, the judge is awaiting how this legislation should proceed. So I would ask humbly that this august body continue to consider this legislation and to move it forward. We have been trying to resolve this issue for over 30 years, and if it weren't for this legislation and the court case, it is highly likely we would not be where we are today and as near to a settlement as we are.

So I am here to support the legislation. I am here to ask your consideration and your support for it, and I ask you please, move it forward. Thank you.

[The prepared statement of Mr. Anoatubby follows:]

Statement of The Honorable Bill Anoatubby, Governor, Chickasaw Nation

Mr. Chairman and members of the Committee:

I am Bill Anoatubby, Governor of the Chickasaw Nation. It is a pleasure for me to appear before this committee and I appreciate your inviting me to do so. As you will be hearing (or have already heard) from the other tribal leaders, I will keep my remarks brief.

This committee is presented with the opportunity to begin to right an injustice on behalf of the United States that has endured for almost a century. We are here before you after an almost 40-year struggle in dozens of courts, including the U.S. Supreme Court; however, it has been made abundantly clear to all who have visited this situation that it can only be resolved by Congress. We seek your help.

Please allow me to briefly outline the history of this matter that brings us to where we are today. In the early 19th century, these three tribes entered into treaties with the United States Government to give up millions of acres of land in the east and to remove westward to allow for growth and expansion of the country's frontiers. In exchange, we were conveyed lands in what is now Eastern Oklahoma. For the remainder of the century, the tribes had complete governance over their respective territories and domains; however, subsequent actions by Congress, particularly the allotment process under the Dawes Act, reduced their domains to a little more than 100,000 acres. Those lands include the bed of the Arkansas River from its confluence with the Canadian River eastward to the Arkansas–Oklahoma state line, approximately 65 miles.

It has been determined through various court decisions and agreements that from Muskogee, Oklahoma to the confluence of the Canadian, Cherokee Nation owns the entire riverbed. From the Canadian confluence down to the Arkansas State Line, the Cherokee Nation owns the north half of the riverbed and the Choctaw and Chickasaw nations own the south half. Due to meanderings of the river over the past century, the wet bed and dry lands of the bed comprise over 25,000 acres of land, the title to which is held by the United States in Trust for the three tribes.

The tribes' problems began when Oklahoma became a state in 1907. Relying on an erroneous opinion in 1908 by the solicitor, the U.S. Department of the Interior incorrectly assumed that Oklahoma became the owner of the riverbed. In 1946, the government began construction of the Kerr–McClellen Navigation System on the river. Because of the misplaced belief that the state of Oklahoma owned the riverbed, the tribes were neither consulted nor compensated for the taking of thousands of acres and extensive damage to their property.

In 1970, the U.S. Supreme Court ruled that the title to the riverbed was in the tribes when Oklahoma became a state and, therefore, it could not have passed to the state under the Equal–Footing Doctrine. Thus, the tribes continued to own the riverbed as they did in 1907 and 1946, and as they do today.

For 60 years prior to 1970, the Bureau of Indian Affairs did not exercise its trust responsibility to protect and exploit these tribal lands. As a result, adjacent landowners began to occupy the portions of riverbed that were dry land and continue to be in possession today depriving the tribes of the use of their dry surface lands. Mineral interests either went undeveloped or were exploited by others claiming to own them. Millions of tons of sand and gravel were mined from the riverbed and used to construct the structures required in the navigation system without compensation to the tribes. The tribes have lost tens of millions of dollars for which they would have otherwise been compensated but for the mistaken belief by the government that they were not the rightful owners.

In 1989, the tribes brought suit in the Claims Court seeking damages for the failure of their Trustee to properly manage this property. That litigation is still pending but would be dismissed if this settlement is approved.

For 20 years after the 1970 decision, the boundaries of the tribal lands went undetermined. Finally, in 1990, the Bureau of Land Management began and has completed a cadastral survey of the riverbed lands. However, due to the fact that the boundaries were created by river meanderings, the title to the lands remained in question until the survey was completed about 1995. During this 25-year period, it was difficult to properly and completely exploit the oil and gas interests due to the title situation. Thus, income was not received that would otherwise have been paid to the tribes, contributing to the tens of millions of dollars already lost.

The tribes have spent countless hours over the past 30 years and hundreds of thousands of dollars calculating their losses, meeting with various government officials and litigating in the courts. Our experts and advisors have meticulously studied the records and made estimates and appraisals to determine those losses and evaluating our riverbed property. You have or will have that information before you.

As I said earlier, the government and the tribes can only extricate themselves from the quagmire they find themselves and achieve justice with your help. The legislation you are considering will benefit everyone concerned. The tribes will finally be compensated for the long-standing damages they have endured because of the circumstances that bring us here. The litigation in the U.S. Court of Claims will end. The tribes will disclaim their interest to the thousands of acres of land occupied by others who thought they were the rightful owners. For this, the tribes would also be fairly and justly compensated. The government will be relieved of its Trust responsibility to remove the thousands of third-party occupants which could take up to 20 years to litigate at a cost of tens of millions of dollars. But, just as importantly, with the passage and implementation of this legislation, this tragic saga would finally come to an end.

Thank you very much for having me here today. I respectfully ask you to approve H.R. 3534.

Mr. HAYWORTH. Thank you, Governor, and now we will hear from Chief Smith. Welcome.

Mr. SMITH. Mr. Chairman, with regard, Chief Pyle goes next.

Mr. HAYWORTH. OK, then, we will turn to Chief Pyle and we will await Chief Smith after a while.

STATEMENT OF GREGORY E. PYLE, CHIEF, CHOCTAW NATION OF OKLAHOMA

Mr. PYLE. Thank you, Mr. Chairman, and members of the Committee. My name is Greg Pyle. I am Chief of the Choctaw Nation of Oklahoma. Today I had submitted 10 pages of written. I will condense it down to one page, if it pleases everyone, for time constraints.

I am here today to support passage of a long-awaited resolution, the tribal claims relating to the Arkansas River bed in eastern Oklahoma. That would be H.R. 3534, introduced and supported by Congressmen Carson, Watkins, Kildee, and Largent. The Choctaw, Cherokee, and Chickasaw Nations come before you today to present a proposal of settlement of disputes regarding Arkansas River bed. We prefer a settlement rather than litigation to displace thousands of occupants along the river.

Prior to the 1800's, the three tribes lived in the southeastern region of the United States. The lands occupied by the tribal people made tempting targets for European neighbors moving in during the late 1700's and early 1800's. Aggressive efforts were made to force the tribal people to move off their lands, and in 1831 the Choctaws were the first of three tribes to travel the Trail of Tears to what is now Oklahoma.

As part of the resettlement process, the tribes signed treaties giving up lands in the homelands and taking ownership of lands and waters in the new territories. The terms of the treaties were dictated by the United States, and included transfer in fee simple of all title and rights to the riverbed of the Arkansas River.

Over the course of the years, the riverbed has shifted, creating over 7,500 acres of dry land. Farmers moved onto the property and are farming it today without legal authority. Also, sand, gravel, coal and gas resources associated with the river were extracted and sold by non-Indians, without any consideration or compensation to the tribes. This creates a problem with tribal ownership being asserted.

In the 1940's the Kerr-McClellan Dams and power generation system was developed and built on the Arkansas River. Without any regard to tribal rights, millions of tons of sand and gravel and stretches of useable land associated with the river were taken by the Federal Government. To this day, there has been no compensation to the tribes for this taking. This is possibly the only instance where tribal trust property supposedly under Federal protection was taken by the Federal Government without any consideration or compensation.

In 1970 the Supreme Court held that the three tribes owned all rights to the Arkansas River and its resources. In 1989, action was filed in Federal court for damages for mismanagement of tribal trust properties.

We do not want the disruption of personal lives and fortunes which would be caused if the United States had to file between 600 and 800 cases to clear the tribal title and displace current possessors of the 7,500 acres of land on the river and that the tribes are reclaiming. Once the first acts are filed, title to property along the river could be clouded for decades.

We proposed to the congressional committee that compensation be paid from the Federal Government rather than penalize the individuals using the property along the riverbed. The tribes proposed legislation beginning at over $100 million, and now proposed at $41 million, in compensation of loss of tribal resources, and it buys 7,500 acres of land, minerals, as well as makes provision for the government to take steps to clear the title of land for the current occupants. The bill also contains a one-time payment of about $8 million for the continued production of electricity by power heads located on the river.

Simply speaking, the tribes are willing to give up all their rights, past and present and future, in the 7,500 acres of land created by this wandering Arkansas River, in return for these payments. Thank you.

[The prepared statement of Mr. Pyle follows:]

Statement of The Honorable Gregory Pyle, Chief, Choctaw Nation of Oklahoma

Mr. Chairman, Members of the Committee, ladies and gentlemen.

My name is Greg Pyle and I am the Chief of the Choctaw Nation of Oklahoma. I am here today to support the passage of a long-awaited resolution to the tribal claims relating to the Arkansas Riverbed of Eastern Oklahoma, H.R. 3534, introduced and supported by Congressmen Carson, Watkins, Kildee and Largent. I say long awaited, since claims involving the River itself and the resources and lands associated with it have been before the Courts, the Tribal Councils and the Con-

gress continuously over the past 35 years. We are asking today for legislative support which would lay to rest all these issues, and which would benefit the United States, the Tribes and all the citizens of Oklahoma. We are asking for your support today as a matter of equity and as a matter of fulfilling the government to government and trust relationships between our tribes and our Country.

Background

Prior to the 1800s, the Choctaw and the Cherokee and Chickasaw Nations lived, and had lived from time immemorial, in the Southeastern region of the United States. We were good friends to the colonists, supporters of the fledgling Nation and had been very successful in accommodating our agrarian lifestyle to that of our new, European neighbors. Unfortunately, our lands made tempting targets, and soon, various factions were lobbying to take over the lands of the Choctaws. For a period we resisted, but, with the other tribes of the Southeast, we were forced to give up our lands. Our Tribes were forcibly removed to what was then the newly purchased territory of Oklahoma, the so-called Indian territory. This removal, known as the Trail of Tears, took place in stages in the 1830s. As part of this policy and resettlement, our Tribes signed treaties giving us title to lands and waters in the new territories. These treaties, the terms of which were dictated by the United States, included transfer, in fee simple, of all title and rights to the riverbed of the Arkansas River.

The ownership by the Tribes of the River, its bed and its resources, was renewed by the Federal government by the Act of April 30, 1906 (34 Stat. 137), which held that all the rights of the tribes were reserved to them, but were to be held in trust by the United States. Unfortunately, when the State of Oklahoma was admitted to the Union, a Solicitor in the Department of the Interior gave an erroneous opinion on the River's ownership. In response to a State request for clarification, the Solicitor gave an opinion stating that the River was now the property of the State. Strange as it seems at this time, no one challenged this opinion (as a matter of fact, it is questionable at this time as to how many people knew of it). Based on this opinion, the State treated the river as part of its property, and dealt with the United States and other parties as if it owned the River. The Tribes complained a number of times that their rights in the River were being ignored, but the United States, which under law had the responsibility to protect the interests of the Tribes, refused to take any action.

During the 50 years following the creation of the State of Oklahoma and the erroneous opinion, two major changes in the River occurred. First, the riverbed of the Arkansas River shifted. Over time, the course of the River moved in a meandering fashion. Through the process of accretion and avulsion, former riverbed became dry land. More than 7,500 acres of land was created in this fashion. Though by law, this land became part of the tribal property, no Federal agency took this into consideration. I don't know what it is like in your States, but in Oklahoma, if land, which is good for farming or pasturage, is left vacant, the neighboring farmers have a tendency to move in. That is what happened. Over the past 80 years, non–Indian farmers have moved onto the property and are farming it or using it, without any legal authority. At the same time, under the authority from the State, sand and gravel and coal and gas resources associated with the River were extracted and sold by non–Indians, without any consideration or compensation to the Tribes. This causes a problem, now that the tribal ownership has been reasserted.

Second, in the 1940's, as part of the Federal move to control floods and watercourses, the giant Kerr–McClellan Dams and power generation system was developed and built. Without any regard to tribal rights (which at the time existed but were not recognized) millions of tons of tribal sand and gravel and stretches of useable land associated with the River, were taken by the Federal Government. To this day, there has been no compensation to the Tribes for this taking. This constitutes the only instance, of which we are aware, where tribal trust property, supposedly under Federal protection, was taken by the Federal government without any consideration or compensation.

In 1965, the Tribes finally gained permission to sue the State of Oklahoma for clarification of the title to the Arkansas River. In 1970, the United States Supreme Court, 396 U.S. 620 (1970), held that the three Tribes, together, owned all rights to the Arkansas River and its resources.

Current suit against the government

For the last three decades, the Tribes have sought redress for the wrongs associated with past mismanagement by the Interior Department of the River. These include:

- Failure of our trustee to protect Indian interests to the 7,500 acres of new property;
- Failure of our trustee to protect Indian interests to minerals, including sand and gravel and coal and gas.
- Failure to compensate the Tribes for the taking of resources involved with the Kerr–McClellan Dam system, takings which were done by the Federal government itself;
- Failure to make plans for the utilization of these properties for the benefit of the Tribes in the future.

Sporadic negotiations with the United States have been unsuccessful, despite an Interior opinion in the 1970s that if the United States had known when the water projects were built that the tribes owned the river, compensation would have been paid. While negotiations have had their ups and downs over the years, experience has taught us that no one will protect our interests, if we do not do it. For that reason, an action was filed in Federal Court in 1989 for damages for mismanagement of tribal trust properties. Delay after delay has happened, and we are still in Court with the Department of the Interior over these charges.

In the meantime, another factor has developed. The United States now realizes that as the trustee for the Tribes, it is the responsibility of the government to sue the current occupants of the land to quiet title and gain possession for the Tribes of the 7,500 acres in new property. These lawsuits would involve at least 600 litigants (that we have identified). One such action, which was filed by the United States, was dismissed without prejudice of renewal, for procedural grounds. However, the precedent for such suits has been established.

If these actions go forward, total chaos regarding property rights and values along the Arkansas River will occur. Unless a settlement can be reached, the United States will have to file between 600-800 cases involving thousands of litigants and occupants, to clear the tribal title and displace current possessors. Once the first actions are filed, title to property along the river will be clouded for decades. The Tribes do not want this end to the tale, but know they must come to Congress to protect their rights. Mr. Chairman, let me state on behalf of the Choctaw Nation that we hope there will never be a need for these lawsuits. We do not want the disruption of personal lives and fortunes which these suits will cause, and we know that the political costs of such actions will be great. At the same time, the status quo, where the rights of the Tribes have not been protected, is unacceptable.

The proposal

Due to the delay in the lawsuits and the cost involved in pursuing them, along with our desire to resolve these issues in such a way that does not disrupt the lives of any Indian or non–Indian, we have joined with our fellow Tribes, the Cherokee and the Chickasaw, to put forward a legislative proposal to resolve, once and for all and in a comprehensive fashion, all issues regarding the Arkansas River. In its entirety, the proposal is:

- Agree to pay the Tribes a sum of approximately $41M for compensation of loss of tribal resources for the last 9 decades of BIA mismanagement. It also buys 7,500 acres of land and the sand and gravel, coal and gas, and any other minerals, from the Tribes and makes provision for the government to take steps to clear the title of this land for the current occupants. Also, the bill contains a one time payment of about $8 M for the value of land used for the continued production of electricity by powerheads located in the River.
- The three Tribes agree to give up all rights to the 7,500 acres of land transferred, and to settle all claims against the U.S. for damages from past mismanagement. No interest on the past claims is sought.
- Funds would be deposited in tribal shares in accounts which the Tribes could use for various social, educational, health and other programs, including the purchase of very specifically designated property to replace part of the 7,500 acres transferred.

That's essentially it. Seems simple enough, and it is, though the attorneys take 4 pages to say it in statutory language. The Tribes, in exchange for one payment, give up all rights, past, present and future, in the 7,500 acres of land created by the Arkansas River, and claims for damages arising for past mismanagement, and any rights to resources taken from the property in the future.

We have a representative of the Administration here to testify today, but it has been plain for some time that the Department of the Interior has supported the concept of such a political solution without caveat. Let's be plain in this statement, this goes way beyond a simple lawsuit. This is a problem crying for a political solution. This is the only taking of tribal property for a Federal use, without compensation, on record, and it continues to this day. The fact that this was all based on

one Solicitor's misunderstanding of the law is irrelevant. This is where we are. The people in Interior, and in my opinion, many in Justice, are aware of this fact and want there to be an end to these problems.

Our problem in resolving this with the Departments seems to be a matter of money, and to be more specific, a matter of budget. For decades, the Federal government has offered to settle for a $10 M token payment. IN ALL OF THAT TIME, NO RATIONALE FOR THIS AMOUNT HAS BEEN PRODUCED. We have been told this is the cost the Federal government would spend to sue for possession of the property. We have been told this is what the "nuisance value" of dealing with the Tribes is going to be. We have been told that this is the amount, because that's all there is.

To be blunt, Mr. Chairman, we are caught in a budget squeeze. The Department of the Interior is concerned that any settlement reached will ultimately have to be accommodated within their budget allocation. Likewise, the Department of Justice is concerned that the claim will come out of its judgment fund. We know times are hard with budget constraints, but we are tired of being the pawns in a Departmental budget chess match.

In contrast, the Tribes, with Federal support, have conducted several studies to show that the value of the land and the resources the Tribes have lost, or which will be lost, is much higher. Originally, we started this process over 15 years ago asking for over $100 M. dollars. Through a process of "negotiating with ourselves", we have now arrived at a figure for which we are willing to settle our issues for $49M. This includes a one time payment to cover the loss of revenue caused by the production of electricity in the future. Frankly, Mr. Chairman, we have come to the end of our patience. If the Tribes are not able to settle for a reasonable figure for these claims, we have to consider proceeding with our Court actions, including those for restitution of control over the 7,500 acres of land.

If a statutory settlement can be reached, millions of dollars in attorney and litigation expense on the part of the government, the Tribe, and the current constituent possessors of the property can be saved. Finally, let me add for the benefit of my representatives, it is a fact that any settlement figure paid to the Tribes will stay in Oklahoma. It will provide the Tribes with sorely needed capital for economic development, and such tribal services as health care and education. It will benefit the entire State.

Mr. Chairman, I want to thank you for asking me to testify on this measure so crucial to my tribe, and I want to ask you to fully support H.R. 3534.

Mr. HAYWORTH. And we thank you very much, Chief Pyle. And now we hear from Chief Smith.

STATEMENT OF CHAD SMITH, PRINCIPAL CHIEF, CHEROKEE NATION

Mr. SMITH. Let me begin by thanking you, Chairman, and other members of the Committee for this opportunity to testify today in support of this bill, H.R. 3534. I would also like to thank the members of the Oklahoma congressional delegation who sponsored the bill, Representatives Brad Carson, Wes Watkins, Steve Largent, as well as Representative Kildee of the Committee, who has always been a friend of the Cherokees and other Indian tribes in the United States.

My name is Chad Smith, and I am the Principal Chief of the Cherokee Nation, the second largest tribe in the United States. The Cherokee Nation is located in northeastern Oklahoma, and we share a common boundary along the Arkansas River from basically Muskogee down to Fort Smith. The river is not only our common boundary, but it is also a wonderful and valuable resource that the three nations share.

I just want to point out to you, for reference, what we are talking about. This is a map. If you would look, Muskogee, Oklahoma is here. Tulsa is probably up here. And Fort Smith is here. We own this riverbed from Muskogee down to Fort Smith.

The river has moved, through natural and manmade causes, in the last 100 years, and really what we are talking about is damages to the whole river, but also lands that are now dry lands which are located in the lower portions of the river, and you can hardly see, but these are 7,700 acres that is indicated in brown here. It is those lands that are in dispute. We believe we own them. There are folks who have farmed those. As part of this bill, we would give up our claim to that title and let it be vested in those occupants.

What I wanted to share with you in these few moments is really the dignity of the title of the Cherokee Nation and the other two tribes. In 1830 the Indian Removal Act was passed, which was unique because Congress allowed the President to exchange lands in the southeast for our five tribes with those in the Indian Territory. And what was so unique about it, it was an exchange of land from government to government. In fact, in the following treaty with the Cherokees in 1885, the Treaty of New Echota, which led to the infamous Trail of Tears, the Cherokee Nation ceded its interest in the southeast and the United States ceded its interest to the Cherokee Nation in Indian Territory.

At statehood, when the lands were allotted, it was a mistake that the State acquired these lands, but in 1970 the U.S. Supreme Court quieted title to this riverbed to our three tribes. Since 1966 we have been litigating this matter. Let me share with you why we believe compensation is in order.

Because of the adherence to this erroneous legal opinion referred to by the Department of Interior, BIA did nothing between statehood and 1970 to protect these riverbed interests. In the process, after World War II there was a mammoth economic project, the McClellan-Kerr navigation system, in which the U.S. Government dredged the river, changed the river, and did not compensate the tribes for the use of that riverbed or the damage to it. In fact, two power heads now exist, producing power for the last 50 years.

If it was known then that the title vested in our three tribes, I believe the government would have compensated us for it. In fact, in the last decade Congress enacted a second settlement for damages to the Standing Rock Sioux and three affiliated tribes arising from the construction of the Garrison and Oahe Dams. Also, in 1994 the United States negotiated a legislative settlement with the Colville Tribe for the use of its land for power and reservoir sites, boasting to be the largest claims settlement ever negotiated, $53 million plus an annual payment of $15 million in perpetuity.

This is a bill that is good for Oklahoma. There is 300 landowners and we anticipate there are 7,000 interests in the 7,500 acres that would have to be litigated. The Department of Justice anticipates it would take 20 years and at least $10 million to litigate. So what we propose in this bill is to resolve that. We give up title to those lands. We receive damages for the construction of the navigation way and other damages to that riverbed, and it is something that is good for not only our three tribes but for the State of Oklahoma and all of our constituents.

Thank you, sir.

[The prepared statement of Mr. Smith follows:]

Statement of The Honorable Chad Smith, Principal Chief, Cherokee Nation, on H.R. 3534

Mr. Chairman and members of the Committee:

Let me begin by thanking you, Chairman Hansen and the other members of the Committee, for the opportunity to testify today in support of this bill, H.R. 3534. I would also like to thank the members of the Oklahoma congressional delegation who sponsored the bill, Representatives Brad Carson, Wes Watkins and Steve Largent, as well as Representative Dale Kildee of the Committee, who has always been a friend of the Cherokees and other Indian tribes in the United States.

My name is Chad Smith, and I am the Principal Chief of the Cherokee Nation, the second largest Federally-recognized Indian tribe in the United States. Cherokee Nation is located in northeastern Oklahoma, and we share a common boundary along the Arkansas River, from the point of confluence of the Canadian River to the Arkansas state line, with two other great Indian nations, the Choctaw and Chickasaw Nations. The River is not only our common boundary, but it is also a wonderful and valuable resource that the three Nations share.

As the members of this Committee no doubt know, the Cherokee, Choctaw and Chickasaw Nations have not always been in Oklahoma, and I am sure that you know that how we came to be in Oklahoma is by no means a happy story. Although culturally and linguistically the Cherokee people are very different from the Choctaw and Chickasaw people, the members of our three Nations, along with our neighbors the Creeks and Seminoles, were all forcibly uprooted from our aboriginal homelands in what is now the southeast United States about 140 years ago and marched over the Trail of Tears to lands west of the Mississippi in the Indian Territory. The story of how that came to be, how the Government of the United States swept us up from our homelands east of the Mississippi River and deposited us in a completely unfamiliar country is the sad part of our histories that the three Nations share along with our brothers the Creeks and Seminoles. It is also the story of how we came to own the bed and banks of the Arkansas River within the State of Oklahoma.

It should come as no surprise that the events of Indian removal were an integral part of the legal history of tribal ownership of the bed and banks of the Arkansas River in Oklahoma, because the Indian removal was accomplished only in part through force; it was facilitated by treaties of territorial cession—cessions by the Indian Nations and cessions by the United States. I will attempt to give the Committee an overview of that legal history and then explain why this is a good bill, one that Congress should pass into law.

The Cherokee Nation executed treaties both with Britain and, after Independence, with the United States. Our first treaty with the U.S. was the Treaty of Hopewell, on November 28, 1785, which purported to set out the boundaries of the Cherokee Nation. A mere 36 days later, also at Hopewell, the Choctaw Nation executed its own treaty with the United States, one similar to that of the Cherokees. In these treaties and a few others that soon followed, the Cherokees and Choctaws were placed under the protection of the United States; their rights to the exclusive use and occupancy of lands not cede were "solemnly" assured by the United States [1] and assured of our right to pursue our own ways and govern ourselves under our own system of laws.

Despite solemn guarantees of protection by the United States expressed in treaty, waves land-hungry non–Indian settlers began invading the Cherokee Nation, occupying and "improving" lands owned by the Nation and used communally by its citizens for centuries. Less than 20 years after the signing of the Hopewell treaties, the United States Government first conceived of a new Indian policy'the first of a long series of Federal policies that would have devastating effects on Indian people everywhere'that would eventually come to be known as "Indian removal," whereby it was determined that the best way to protect Indians from the consequences of the invasions of white settlers would be to move them en masse to the remote country west of the Mississippi River that had just been acquired in the Louisiana Purchase. [2]

In 1817 and 1820, respectively, the Cherokee Nation and the Choctaw Nation executed treaties with the United States agreeing to cede portions of their lands east of the Mississippi River in exchange for large tracts of land in the Arkansas Territory. Although some Cherokees, who came to be known as "Old Settlers," did move soon thereafter to the Arkansas Territory, before the Government could follow through with removal it discovered that it had miscalculated the rate of westward

[1] See Treaty of Holston, July 2, 1791, 7 Stat. 39, 40.
[2] See the Act of March 26, 1804, 2 Stat. 289.

expansion, for the lands in Arkansas the U.S. had promised to the Indian Nations had already been occupied by non–Indian settlers. The two Nations were then forced to relinquish their lands in the Arkansas Territory and to accept instead lands farther west in the "Indian Territory." This time, the United States assured them, their lands would, "under the most solemn guarantee of the United States, be, and remain, theirs forever." [3]

The failure of the Arkansas removal program did little to inspire confidence among Cherokees and Choctaws that the Federal Government had the political will to protect them from non–Indian settlement in the promised lands of the Indian Territory. Those who had not already moved to the Arkansas Territory became more determined than ever to remain in their aboriginal homelands in the east. At the same time, however, pressure was building in the states of Georgia and Mississippi for Congress to rid them of their Indians, and laws were passed in the state legislatures purporting to extend state jurisdiction into the Indian Country. Then, in 1830, Congress passed the Indian Removal Act. [4]

Although the Cherokees successfully challenged the validity of the state laws asserting jurisdiction over Cherokee territory in now famous court cases that are part of foundation of modern Federal Indian law, [5] the Indian Nations received no support whatsoever from the Andrew Jackson administration as political pressure for Indian removal continued to grow.

Eventually the Indian Nations decided that removal was inevitable, that they should make the best deal they could with the United States while there was still time to do so. The Choctaw Nation signed the Treaty of Dancing Rabbit Creek [6], another removal treaty, on September 27, 1830; in it they agreed to move to new lands west of the Arkansas Territory. Similarly, on December 29, 1835, the Cherokees ended their resistance to removal by executing the Treaty of New Echota [7], and those Cherokees who had not moved earlier to the Arkansas Territory "agreed" to move to lands in the Indian Territory ceded to them by the United States. [8] Later, by treaty with the United States, the Chickasaw Nation was granted a 1/4 interest in the lands of the Choctaws west of the Mississippi in the Indian Territory. [9]

In their removal treaties, the Indian Nations were to be given their lands in the Indian Territory by way of patents executed by the President of the United States granting title to the property in fee simple. The Indians were assured that they would be free to govern themselves and never again be moved, and that their domains would never be embraced within the limits of any state or territory. [10]

The years following the Trail of Tears were a time of great turmoil in the Cherokee Nation, when internecine fighting among Cherokee factions erupted over the actions of the so-called "Treaty Party," who were alleged to have acted illegally in ceding tribal land in the removal process. Some members of the Treaty Party, including Elias Boudinot, were executed for what they did. This turmoil, though it happened long ago, reflects the strength of attachment of Cherokee people to their tribal lands and explains their strong bias against relinquishing title to those lands except when absolutely necessary.

Although peace was eventually restored in the Cherokee Nation in the mid–1840s, in part through the efforts of the Government, [11] it was not a long-lasting peace. The Civil War brought political and economic destruction and chaos to the Indian Territory. The membership of the Cherokee Nation, not unlike that of the other four Nations, was divided between the Union and the Confederacy, but for their unfortunate choices in taking sides in the War the Indian Nations were rewarded with yet another generous round of punitive treaties. [12] Despite the many onerous provisions

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[3] See treaties of January 20, 1825, 7 Stat. 234, and May 6, 1828, 7 Stat. 311.

[4] 4 Stat. 411.

[5] Cherokee Nation v. Georgia, 5 Pet. 1, 8 L.Ed. 25 (1831); Worcester v. Georgia, 6 Pet. 515, 8 L.Ed. 483 (1832).

[6] 7 Stat. 333.

[7] 7 Stat. 478.

[8] A small number managed to avoid removal and remain near their homelands. Their descendants are members of the Eastern Band of Cherokee Indians.

[9] See treaty of January 17, 1837, 11 Stat. 573, and treaty of June 22, 1855, 11 Stat. 611.

[10] See Article 5 of the Treaty of New Echota, 7 Stat. 478, 481.

[11] See treaty of August 6, 1846, 9 Stat. 871, declaring amnesty for crimes committed within Cherokee Nation during the factional struggles and making special monetary provisions for the Old Settlers. Article 1 of this treaty also affirms that the Cherokee Nation's new lands in the Indian Territory "shall be secured to the whole Cherokee people for their common use and benefit."

[12] See treaties of March 21, 1866, 14 Stat. 755 (Seminole Nation), April 28, 1866, 14 Stat. 769 (Choctaw and Chickasaw Nations), June 14, 1866, 14 Stat. 785 (Creek Nation), and July 19,1866, 14 Stat. 799 (Cherokee Nation).

in these treaties, however, they did expressly reaffirm all not inconsistent obligations of prior treaties.[13]

Other provisions in the 1866 treaties with the five Nations contemplated the creation of an Indian state from the Indian Territory, to be governed by an inter-tribal council consisting of representatives of the Indian Nations[14]. This idea would never become a reality: once again, political pressure began building to do away with the tribal governments in the Indian Territory. Congress eventually succumbed to this pressure and, in 1893, created the Commission to the Five Civilized Tribes.[15] The purpose of the Commission was to negotiate allotment agreements with the five Nations and thereby pave the way to the dissolution of the tribal governments. It is important to note here that the reason allotment agreements were necessary was that the United States did not hold title to the lands of the Cherokee, Choctaw, Chickasaw, Creek and Seminole Nations'their tribal lands had been ceded to them by patents of the United States'so that the U.S. was not in a position to convey title to allotted lands. This legal fact would eventually play an important role in how the Cherokees, Choctaws and Chickasaws came to own the bed of the Arkansas River.

The Indian Nations resisted allotment as long as possible. They continuously rebuffed the Commission in its efforts to negotiate allotment. Then Congress passed the Curtis Act of 1898[16], legislation that in effect put an ultimatum to the Indian Nations—allot your lands by agreement or they will be allotted by force of law. Within four years passage of the Curtis Act, all five Indian Nations had executed allotment agreements, and their tribal lands were soon allotted in severalty.

In 1906, Congress passed a law[17] that was intended to begin the process of winding up the affairs and existence of the five Nations. Although the 1906 Act clearly contemplated the eventual dissolution of the governments of the five Indian Nations, neither it nor any other act of Congress ever accomplished that end[18]. Section 27 of the 1906 Act did, however, expressly provide that any tribal lands remaining after allotment would be held thereafter in trust for the Indians another important legal fact in the history of our Nations' ownership of the bed of the Arkansas River.

At the time of allotment through statehood in 1907, the Department of Interior assumed that the United States owned the bed and banks (to the highwater mark) of the Arkansas River, with the consequence that the bed of the River was never allotted. Until 1970, in fact the Department and the Federal Government persisted in the belief and an erroneous legal opinion that title to the riverbed went to the State of Oklahoma upon statehood under the "Equal Footing Doctrine," whereby title to the beds of a navigable stream is passed to the state whose borders encompass it upon admission of that state into the Union[19].

The Cherokee, Choctaw and Chickasaw Nations disagreed with the Government's position. Instead, these Nations contended that when the United States ceded lands to them pursuant to their respective removal treaties and the Federal land patents executed by the President, the United States granted all of its interest in the bed and banks of the Arkansas River, along with the other lands described in those treaties and patents, to the three Indian Nations, so that at the time of Oklahoma statehood the U.S. was possessed of no title to transfer to Oklahoma under the Equal Footing Doctrine. The Indian Nations followed this with an argument that by operation of section 27 of the 1906 Act, these unallotted riverbed lands went to the United States in trust for the Indian Nations.

In 1966, the Cherokee Nation took these very arguments to the United States District Court for the Eastern District of Oklahoma in a lawsuit naming the state of Oklahoma and various oil and gas companies with riverbed leases from the state. Subsequently, the Choctaw and Chickasaw Nations intervened in the action. The Indian Nations lost at the trial court and again on appeal to the Tenth Circuit[20]. The Supreme Court accepted review of the case on certiorari and reversed[21]. The Court reviewed the three Nations' various treaties with the United States, the land patents executed by the President, and the historical and legal context in which those treaties and patents were made, and held that (1) when the United States ceded

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[13] See article 31 of the Cherokee's 1866 treaty, 14 Stat.799, 806.

[14] See article 12 of the Cherokee's 1866 treaty, 14 Stat. 799, 802.

[15] See the Act of March of March 3, 1893, 27 Stat. 645.

[16] Act of June 28, 1898, 30 Stat. 495.

[17] Act of April 26, 1906, 34 Stat. 148.

[18] For an excellent legal analysis of how the governments of the five Nations continued to survive after and despite the 1906 Act, see Harjo v. Kleppe, 420 F. Supp. 1110 (D.D.C. 1976), aff'd. sub nom., Harjo v. Andrus, 581 F.2d 949 (D.C. App. 1978).

[19] See memorandum of Duard R. Barnes, Acting Associate Solicitor, Division of Indian Affairs, Department of Interior, to Legislative Counsel dated August 12, 1976.

[20] 402 F.2d 739 (10th Cir. 1968).

[21] Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970).

lands to the three Indian Nations in the Indian Territory, it intended to cede the bed and banks of even the navigable segment of the Arkansas River, from Three Forks near present day Muskogee down to the Arkansas territorial line, and (2), by operation of the 1906 Act, the bed and banks of the River went to the United States in trust for the Indian Nations.

Because of its adherence to the erroneous legal opinion referred to above, the Department of Interior did nothing between the time of statehood and 1970 to protect the three Indian Nations' interests in riverbed resources. When Congress authorized the construction of the McClellan–Kerr Navigation System along the Arkansas River after the Second World War, no provision was made for compensating the three Nations for the use of their resources in constructing the dams, revetments and levies within the system. Nor did the Department take steps to prevent depletion of the Nations' oil and gas reserves under the river, or to prevent landowners from occupying thousands of acres of the riverbed that became dry or "fast" as the result of natural or man-made changes in the course of the River. Today, in the lower reaches of the Arkansas River near the Oklahoma–Arkansas state line, there are approximately 7,750 "dry" acres of riverbed lands that belong to the Nations but are occupied and used by adjacent landowners without consent of, or compensation to, the three Nations.

In 1989, the three Nations filed suit against the United States in the United States Court of Federal Claims,[22] after receiving special permission from the Congress to do so, seeking compensation from the Government for the taking of tribal resources along the riverbed and for it breach of trust to protect the Nations' beneficial interests in the riverbed. Those lawsuits are still pending today. In 1997, the United States brought a quiet title action against many dozens of landowners occupying tribal lands along a small segment of the River[23]'representing only a small percentage of the total number of persons who might be occupying or claiming an interest in the Nations' riverbed lands but the lawsuit was dismissed without prejudice on technical grounds. Thus, the task of removing persons occupying tribal lands along the Arkansas has not even begun.

Mr. Chairman and members of the Committee, this legislation is the culmination of many years of work by a succession of tribal administrations to resolve the complex controversies surrounding the Nations' ownership of the bed and banks of the Arkansas River in Oklahoma. Our earliest efforts to reach a settlement for lost riverbed resources began in the late 1970s. My predecessors in office, Principal Chiefs Ross Swimmer and Wilma Mankiller, worked diligently with the tribal leaders of Choctaw and Chickasaw Nations to bring closure to these controversies, not only through litigation but also through negotiation with Interior and Justice, but always, for one reason or another, settlement has proven to be an elusive thing.

The current bill, H.R. 3534, would settle the three Nations' damage claims against the United States now pending in the Court or Federal Claims, and it would give them, in a single lump sum, the past and future fair rental value of the lands being used for the two powerheads that were constructed on tribal lands on the bed of the Arkansas. The bill would also compensate the Nations for the lands being occupied by adjacent landowners and other potential claimants in the lower segments of the River. In exchange for the appropriated sums, the three Nations would dismiss their lawsuits against the Government and disclaim any right, title or interest in the 7,750 of lands being occupied by non-tribal interests. Those disclaimers will serve to eliminate the cloud of tribal claims in the title to lands being occupied by these people and relieve the Government of the very expensive burden of having to bring ejectment litigation against a very large number of Oklahoma citizens.

Mr. Chairman and members of the Committee, this is a good bill and I urge that you give it your unqualified support. I also thank you for taking the time in the Committee's busy schedule to set this matter for hearing and for providing me the opportunity to testify on behalf of a bill that will be of great benefit not only to the people who are my constituents, the Cherokee people, but to many non–Indian citizens of Oklahoma as well.

Mr. HAYWORTH. And we thank you very much, Chief, and the Chair would note that we are joined by two Oklahomans here on the dais. Our friend Mr. Carson is the principal sponsor. We will

[22] Case Nos. 218–89L and 630–89L.

[23] United States of America v. Pates Farms, Inc., et al., Case No. Civ.97–685–B, United States District Court for the Eastern District of Oklahoma.

hear from him first, and then recognize our good friend and special guest. Wes Watkins. Mr. Carson?

STATEMENT OF THE HON. BRAD CARSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. CARSON. Thank you, Mr. Hayworth, and I would like to thank Chairman Hansen and Ranking Member Rahall for scheduling this hearing today, and thank you, Governor Anoatubby, Chief Smith, and Chief Pyle, for your patience in sitting through the other hearings as well. You know this is a laborious, sometimes tedious process. I know you have been through it before, and we are grateful to have you here today.

All three of you have ably outlined the history of this particular dispute, but let me just for the record say a bit more about that and why a settlement of this issue is so needed today. Disputes involving the Cherokee, Choctaw, and Chickasaw lands along the riverbed, as has been pointed out, have been ongoing since 1907, the year of statehood in Oklahoma, and in order to achieve justice and compensate these three tribes for the land and resources that have been wrongfully taken from them, misused and left dormant, a settlement today must occur. Everyone agrees on that, both the administration as well as tribal leaders and most of us here in Congress.

As Chief Smith was also outlining, and also abetted by Chief Pyle's testimony and Governor Anoatubby's testimony, the tribes of course were relocated to Oklahoma in the 1830's.

They were to occupy land ceded to them in the new Indian Territory on which the Arkansas River now runs.

But in 1970, as Chief Smith pointed out, an erroneous legal opinion by the U.S. Government, because of that the Arkansas River bed was conveyed to the new State of Oklahoma. All navigable rivers of the United States were deemed property of the State under the Equal Footing Doctrine.

However, the treaties of the three tribes came long before the Equal Footing Doctrine, and in 1970 in the landmark Supreme Court case of Choctaw Nation v. Oklahoma, the U.S. Supreme Court ruled in favor of the tribes and determined that the tribes indeed were the rightful owners of the riverbed, and not the State of Oklahoma.

Despite the tribes' ownership of those lands, between 1907 and 1970 the BIA acted on the assumption that Oklahoma owned the riverbed, and therefore took no action to protect tribal resources such as oil and gas production, sand and gravel, grazing, and croplands.

Since the Supreme Court decision of now 32 years ago, there has been little disagreement that a settlement should be reached. However, there have existed substantial differences in thought regarding the settlement amount that should be awarded to the tribes.

In 1974 Congress appropriated $1.2 million to the BIA to conduct an appraisal of the entire riverbed, and to survey the riverbed from the Arkansas line to the Three Forks area north of Muskogee, Oklahoma. The value of the riverbed and related assets were determined to be $177 million. Senator Henry Bellman, the Senator

from Oklahoma at that time, introduced legislation to authorize the United States to pay the tribes for the value of the riverbed. However, this legislation was not passed, and now, 30 years later, the tribes still await settlement of this issue.

Enactment of this legislation will bring about clear and tangible benefits. First, it will eliminate the need for the Department of Justice to bring hundreds of defendants into court due to their occupancy of parts of the nearly 8,000 acres of dry bed lands that the chiefs and Governor Anoatubby were talking about. Second, the settlement will pay the three tribes for the actual present value of the loss of past and future assets they would have had if not for the construction of the McClellan-Kerr navigation system.

Third, positive movement of the legislation will result in the dismissal of the mismanagement case against the BIA. And, finally, the settlement will provide the tribes with resources that will in turn be used to further economic development in the region, benefitting Indian and non-Indian members of the communities alike.

I hope that everyone on this Committee can support the legislation. I would like to thank Chairman Hansen and Ranking Member Rahall and you, Mr. Hayworth, for your past support. And if I could ask the panelists here to discuss something that Mr. Smith from the BIA testified to, you hear earlier this morning, let me talk to you about the ongoing status of the settlement negotiations. Can you tell us how those are coming along, what the hurdles are going to be, and the potential resolution of the sand and gravel matter that he was saying still remains a roadblock?

Statement of The Honorable Brad Carson, a Representative in Congress from the State of Oklahoma, on H.R. 3534

Chairman Hansen and Ranking Member Rahall, I would first like to express my sincere appreciation to you both for scheduling this hearing on H.R. 3534, the Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act, and for inviting the leaders of the three Indian nations here today to testify. They certainly understand this issue better than anyone and can speak most eloquently about the need for this legislation. I would also like to take this opportunity to thank Congressman Wes Watkins, Steve Largent, and Dale Kildee for their strong support and co-sponsorship of this legislation.

Disputes involving the Cherokee, Choctaw and Chickasaw lands along the Arkansas River have been ongoing since 1907. In order to achieve justice and compensate these three tribes for the lands and resources that have been wrongfully taken from them, misused, and left dormant, a settlement must occur.

In order to understand the need for this legislation, I believe you must first turn to the history of these tribal lands. As you well know, in the 1830s, the Cherokee, Choctaw, Chickasaw, Creek and Seminole Nations were forcibly removed to the Indian Territory of Oklahoma to occupy lands ceded to them by the United States, through which the Arkansas River runs. In 1907, due to an erroneous legal opinion, the Arkansas riverbed was conveyed to the new State of Oklahoma. All navigable rivers of the United States were deemed property of the State under the Equal Footing Doctrine. However, the treaties of the three tribes came long before the Equal Footing Doctrine. And, in 1970, in Choctaw Nation vs. Oklahoma, the U.S. Supreme Court ruled in favor of the tribes and determined that the tribes, indeed, were the rightful owners of the riverbed and not the state of Oklahoma.

Nevertheless, from 1907 through 1970, the Bureau of Indian Affairs acted on the assumption that Oklahoma owned the riverbed and, therefore, took no action to protect tribal resources such as oil and gas production, sand and gravel, grazing and croplands. The Government itself constructed hydroelectric powerheads and other improvements in the channel of the river on tribal lands, using sand and gravel belonging to the three Indian Nations. Due to the Bureau's inaction, individuals with property near the Arkansas River also began to occupy the three Indian Nations'

"dry-bed" lands—amounting to approximately 7,750 acres of land that was under water at the time of statehood but that is now dry due to changes in the course of the river.

Since the Supreme Court decision of 1970, there has been little disagreement that a settlement should be reached. However, there have existed substantial differences in thought regarding the settlement amount that should be awarded the tribes. In 1974, Congress appropriated $1.2 million to the BIA to conduct an appraisal of the entire riverbed and to survey the riverbed from the Arkansas line to the three forks area north of Muskogee. The value of the riverbed and related assets was determined to be $177 million. Senator Henry Bellmon, at that time, introduced legislation to authorize the United States to pay the tribes for the value of the riverbed. However, this legislation was not passed, and, almost thirty years later, the tribes are still awaiting settlement of this issue.

Recent discussions between Federal, state and tribal entities involved in this dispute have been extremely productive making the 107th Congress a most appropriate time for settlement.

Enactment of this legislation, H.R. 3534, will bring about clear, tangible benefits. First, it will eliminate the need for the Department of Justice to bring hundreds of defendants into court due to their occupancy of parts of the 7,750 acres of drybed lands. Second, the settlement will pay the three tribes for the actual present value of the loss of past and future assets they would have had if not for the construction of the McClelland–Kerr navigation system. Third, positive movement of the legislation will result in the dismissal of the mismanagement case against the Bureau of Indian Affairs. And, finally, the settlement will provide the tribes with resources that will, in turn, be used to further economic development in the region, benefitting Indian and non–Indian members of these communities alike.

I ask my colleagues on the Committee to support this important legislation. Thank you Mr. Chairman.

Mr. SMITH. We have looked at different assets under actually the disputed lands. The value of the land has been agreed to. The value of the oil and gas has been agreed to. The value of methane gas has been agreed to. The last thing that we haven't come to an agreement on, and we are making great progress, is the value of sand and gravel.

I can tell the Committee that in 1989 we came—our strategy then was to piecemeal the damages out, and in 1989 we had an agreement with the Bureau of Indian Affairs for the Cherokee portion, which we don't have, to agree for compensation of $8.5 million for our portion of the sand and gravel. I believe that gives us a benchmark. I think we can get to a settlement in the near future, especially with the encouragement of Congress and this Committee.

Mr. CARSON. You also in your testimony referenced the fact that there are numerous lawsuits involving title to some of the dry bed lands. Is there any estimate from the tribes about the expense and duration of litigation if settlement is not reached through Congress or working with the administration?

Mr. SMITH. In 1989 the Department of Justice anticipated it would be the year 2009 before they could bring all the quiet title suits. In the first filing, which was dismissed based on technicalities, there were over 100 named defendants in one particular tract. We anticipate 300 to 400 named defendants and probably as many as 7,000 interests, individual interests in these lands, including mortgage companies, insurance companies, oil and gas companies, the farmers themselves. We have had widespread support all up and down the Arkansas River by these other parties wanting to settle this issue.

Mr. CARSON. I see my time has expired. Mr. Chairman, I would ask for leave to enter my full statement into the record.

Mr. HAYWORTH. I am certainly happy to allow that to take place, Mr. Carson. The Chair would only take exception to your comment that somehow this hearing was tedious today, but that is OK.

Perhaps you will find support from our other special guest, Mr. Watkins of Oklahoma. Welcome, and you are recognized.

STATEMENT OF THE HON. WES WATKINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

Mr. WATKINS. Thank you, Mr. Chairman, and I appreciate Mr. Rahall's being here. And Dale, it is always good having you here. I know you have always been quite popular in the Durant area, Chief Pyle.

This is I think a landmark piece of legislation, no pun intended by "landmark" because it is riverbed legislation, but it has been a long time. Speaking of tedious, it has been a lot longer. It is not very long sitting out here, right, because over these many years there has been a long delay.

And let me say this to the Committee. This has been of interest to me along with a lot of other activities because I think, as a cosponsor, let me say this is also a bipartisan piece of legislation, my colleague from Oklahoma being a Democrat and part of the minority side in the Congress at this time. I have joined him. We have joined together, my being a Republican on the majority side, in helping to show the kind of support that we want and hopefully can gain from this Committee in moving forward.

I would like to say to Mr. Chairman, when I left the Ways and Means Committee and he sits, Chairman Hayworth sits right next to me on Ways and Means Committee and we discuss a lot of Native American activities and legislation, they were still going strong when I left there. I don't know if they are still are. I am going to go back.

But H.R. 3534 is, like I say, a long time in coming, and it will settle I think a situation that needs to have been done a long time ago. You have heard the history of it, but Mr. Chairman, really the BIA recognized or reported, they reported for about 60 years that this belonged to Oklahoma, the State of Oklahoma. But a lawsuit in 1970, the U.S. Supreme Court stated this river bed and all belonged to the Choctaws and the Chickasaws and the Cherokees. That was brought about from a lawsuit in 1966, if I recall correctly.

And so it has been over 30 years since the Supreme Court has ruled, and they have made a lot of effort, spent a lot of time over these years. In 1989 there was further activity, a filing of lawsuits, and hopefully this legislation will prevent an expansion of this. I think Chief Smith hit on the head. When you look at it from a practical standpoint and a reasonable standpoint, working out a settlement is much better than could involve as many as up to 7,000 interests that are involved in the potential of the lawsuits, including hundreds of landowners along that river.

So I don't think it is—I think all of us who watched these settlements over the years realize that that would be a whole lot more. This is 7,500 acres of land. It looks like to me we all know the hydro power situation there, the water value that continues to flow

there, and that is going to continue throughout our lifetime and throughout many hundreds of years. And this is basically, without question, settled, the ownership of that has been settled. We just got to get now settling the value and settling the compensation for this.

So I appreciate you, Mr. Chairman, and I appreciate my colleague from Oklahoma, Mr. Carson, and his leadership on this Committee and all of your interests in this legislation, and I ask that for a positive vote, Neil, if I could, later on when markup takes place and we move this legislation forward, and I can assure you will be trying to do what I can from the majority side to move this legislation.

Thank you, Mr. Chairman.

Statement of The Honorable Wes Watkins, a Representative in Congress from the State of Oklahoma, on H.R. 3534

Mr. Chairman, Mr. Rahall, and Members of the Committee, I thank you for conducting this hearing today and join as a co-sponsor on the Legislation offered by Mr. Carson of Oklahoma. Today you will hear about a bill that would have a significant impact on the members of the Cherokee, Choctaw, and Chickasaw Indian tribes of Oklahoma. The Cherokee, Choctaw and Chickasaw Nations Claims Settlement Act is a piece of legislation I fully support, and hope will be passed by the House of Representatives this year. H.R. 3534 would bring closure to both current and forthcoming lawsuits between the United States, and the Chickasaw, Choctaw, Cherokee tribes, and hundreds of individuals in Oklahoma.

The Bureau of Indian Affairs for more than 60 years, reported that the State of Oklahoma owned the Arkansas Riverbed. However, in 1970 the Supreme Court of the United States ruled in Choctaw Nation v. Oklahoma that the tribes mentioned above owned the Arkansas Riverbed. After many attempts to settle with the Government in1989, the Cherokee, Chickasaw, and Choctaw Nations filed lawsuits against the United States seeking damages for the use and mismanagement of these tribal trust resources. These lawsuits are still pending in Federal court, and without this legislation future lawsuits will be filed.

The Arkansas Riverbed encompasses over 7,500 acres of the Indian Nations' Drybed Lands have been occupied by a large number of adjacent landowners in Oklahoma. Without a settlement, further litigation against thousands of landowners would be likely. The potential of these lawsuits and the time and increased expense to not only the government and tribes, but also to private citizens is in my opinion a valid and strong reason to settle the Arkansas Riverbed. It is in the best interest of not only the tribes, but also the United States to pass this legislation.

This legislation would bring a quick settlement to a claim the tribes have had against the United States for over 30 years. It would end pending lawsuits between the tribes and the United States. Most of all settling with the tribes would avoid thousands of future lawsuits brought by the United States against individuals who currently own the Drybed lands.

Mr. HAYWORTH. Thank you very much.

The Gentleman from Michigan, any questions?

Mr. KILDEE. Thank you, Mr. Chairman. I am very happy to be one of the cosponsors of this bill, glad to see my three friends here. I would try to speak, if I could, in Choctaw and Chickasaw, but I have a Potawatomi accent in that, but I will say in Cherokee, "O-see-o," and I am glad that you are here, Chairman Smith, and also "Owado," thank you very much for being here. Kim Chee behind me, she teaches me my Cherokee, so I probably have a Flint, Michigan accent in that, also.

But I think you have been very, very patient in this action, more than patient, and you are certainly being more than reasonable in the figure, and I think that we should act very expeditiously on this to make sure that you are given some compensation so you can

take care of the needs of your tribe. Justice is extremely important, and I think justice delayed is justice denied. It has been delayed for a long, long time. That is why I would hope that we would very, very good have a markup.

And it is very good when we—I think Indian issues have risen above partisanship. When J.D. Hayworth and I established the Native American Caucus, we decided at that point to make it a bipartisan caucus because these things are of a bipartisan nature, and J.D. and I have worked very closely together. Wes and I came to Congress together, we won't say how many years ago, but we arrived in Congress together. And Brad Carson has been, of course, a citizen of the Cherokee Nation and certainly added a great deal to this Committee and to the Congress.

So I just thank you for your testimony. I don't really have any questions. I think you have a very, very strong case here and I will do everything I can to support it.

Thank you, Mr. Chairman.

Statement of The Honorable Dale E. Kildee, a Representative in Congress from the State of Michigan, on H.R. 3534

Mr. Chairman, I am in strong support of H.R. 3534, a bill that would settle certain claims of the Cherokee, Choctaw, and Chickasaw Nations to the Arkansas riverbed in Oklahoma. I want to thank Congressman Carson for his leadership in trying to resolve this legal dispute, which has been without resolution for more than three decades. I am proud to be an original cosponsor of this legislation.

Since the Supreme Court first ruled in 1970 that the three tribes retain title to the Arkansas riverbed, the tribes have been seeking damages in Federal court for the mismanagement and uncompensated use of the Arkansas riverbed lands and resources.

I want to commend the three tribal nations, the Cherokee, Choctaw, and Chickasaw Nations for working together to reach an agreement among their respective nations about settlement terms. I know firsthand by working with the Michigan tribes on the Michigan Indian Claims Settlement Act how difficult it can be to get sovereign nations to come together and agree to settlement terms.

This bill would:

1. Extinguish the claims of the three tribes against the United States related to the Arkansas riverbed;
2. Puts an end to the threat of trespassing suits by the Department of Justice against hundreds of private landowners that occupy the drybed land;
3. Authorizes an appropriation of nearly $50 million for full settlement of claims against the U.S.; AND
4. Reserves the tribes' interest in the riverbed except for the disclaimed drybed lands.

Mr. Chairman, it is my hope that we will honor the agreement of these sovereign nations and urge the Department of Interior and the Department of Justice to finalize negotiations soon so that we can finally put an end to this legal dispute by passing a settlement bill.

I look forward to hearing the testimony today. Thank you

Mr. HAYWORTH. Thank you, Mr. Kildee.

The Gentleman from Hawaii?

Mr. ABERCROMBIE. Thanks very much, Mr. Chairman.

Gentlemen, I want to make sure that I understand. I want to be supportive of this legislation. I want to make sure I have it down right, because I heard a couple of different figures.

Is the intention of the legislation, in your understanding, to provide a continuing income, or is this a final settlement and some kind of—in other words, continuing income if there is money being made or income being derived from the selling of hydroelectric

power and so on. Does that provide a continuing income to the tribes?

Mr. PYLE. If I may, no, it is a one-time settlement.

Mr. ABERCROMBIE. OK, and land disputes is the same thing?

Mr. PYLE. Although we could change on that electric if you would like us to.

Mr. ABERCROMBIE. No, no. I am just interested. So title then goes to the State. Is that right? Or it is no longer in dispute?

Mr. SMITH. The disputed lands, the 7,700 acres, title would vest with the present land occupants, individual land occupants.

Mr. ABERCROMBIE. Yes, I understand that, but I am talking about the riverbed now.

Mr. SMITH. No, the Cherokee and the Chickasaw and the Choctaw Nations retain title to the wet bed, to the wet bed.

Mr. ABERCROMBIE. But not the energy that is derived from the water that is flowing over it?

Mr. SMITH. That is correct. Congress has decided that with their navigational easement they are entitled to put that dam there, and it will stay there without compensation.

Mr. ABERCROMBIE. The reason I am asking is not to try to recreate a dispute or to urge any kind of renegotiation, but rather that in reading over this, I mean, this has been years and years and years this has been going on. I just want to make sure that if we pass thing, we don't end up missing something in the process, that then becomes a further grounds for dispute.

You said the sand and the gravel hadn't been quite resolved. Does this take care of that, or is that going to continue to hold this up, if we do pass it, from being implemented?

Mr. SMITH. We anticipate a settlement on the sand and gravel.

Mr. ABERCROMBIE. Well, would this appropriation—it is $49 million, right, approximately?

Mr. SMITH. Yes

Mr. ABERCROMBIE. Would that handle that?

Mr. SMITH. It would.

Mr. ABERCROMBIE. And so you are anticipating, this $49 million anticipates a settlement that would be within the range of what your negotiations are now?

Mr. SMITH. Yes.

Mr. ABERCROMBIE. And the last thing is, will that cover all your attorneys fees?

Mr. SMITH. Yes.

Mr. ABERCROMBIE. Because this has gone on for 30 years or whatever it is. Is that intended to cover—does that cover the fees for this particular negotiation, or are you on the hook for whatever you have done in the past, or has that already been paid?

Mr. SMITH. We are on the hook, and this settlement will take care of it.

Mr. ABERCROMBIE. The only suggestion I would make in this, Mr. Chairman, is that—and I would be supportive. You know, I don't want to mess with your figures or try and change anything around. This would have to be something we would have to decide, but I would just like to be absolutely clear as to what is required of the tribes in terms of taking care of attorneys fees, so that everything is cleared, that all decks are cleared, and that perhaps we might

think about adding more money to this rather than less to pay for those fees, so that the $49 million all goes to the tribes.

Mr. CARSON. If you would yield, Mr. Abercrombie—

Mr. ABERCROMBIE. Sure, I will.

Mr. CARSON. —we will certainly accommodate you on that, and I will talk to you personally and get your staff information, and we will try to make sure you are satisfied with what the bill says about attorneys fees and that it addresses all your concerns.

Mr. ABERCROMBIE. Yes. I would add them in. I mean, it is easy for me to say, but—

Mr. WATKINS. If I might mention to the Gentleman, too, I think Mr. Carson is correct. That is one thing. Surely all this is going to take care of that, and that is one big thing we are trying to—we don't want to continue a lot of lawsuits or allow them to continue on all these other interests. That is the one thing for settling this thing.

If we can settle this, we will get out of all these maybe thousands of lawsuits it could be—

Mr. ABERCROMBIE. Oh, no, I agree absolutely. It is just in Section 5 here it says "At the time the funds are paid to the Indian nations, the funds derived to be appropriated, the Secretary shall pay the Indian nations' attorneys those fees provided for in the individual tribal attorney fee contracts as approved by the respective Indian nations."

I read that to say that the Secretary—that we could have the Secretary pay it out of funds that we establish to pay it. It doesn't say, as I read this, that it has to come out of the Indian nations' end of this settlement figure. That is all. Do you see what I am driving at?

Mr. WATKINS. I think there is an allowable percent in the bill for attorney fees.

Mr. ABERCROMBIE. Ten percent, I think.

Mr. WATKINS. That is pretty hefty.

Mr. ABERCROMBIE. That is what I meant.

Mr. WATKINS. That is a lot.

Mr. ABERCROMBIE. It takes a lot, so that—

Mr. WATKINS. That is going to be negotiated with the tribal leaders and their attorneys.

Mr. ABERCROMBIE. Well, I wouldn't mind making this, if it is 10 percent, that means about $5 million, right?

Mr. CARSON. $41 million total in the settlement, so about $4.1 million.

Mr. ABERCROMBIE. OK, $4.1 million. Well, why don't we just add $4.1 million to this settlement and let them pay the fees out of it? You know, I am serious about it.

Mr. CARSON. I am sure we could find a lot of agreement from our panelists to do that. I think it is anticipated that the $41 million encompasses the $4.1, or $4 or $5 million in attorneys fees, already.

Mr. ABERCROMBIE. Oh, OK, that is included.

Mr. CARSON. But we will work with you on that, and perhaps the panelists can—

Mr. ABERCROMBIE. But this is years and years, decades. It is not fair to cut the compensation any more than it has to be. Or did you

take, does the $41 million take into account the fees, so that the settlement is what you thought it should be?

Mr. SMITH. The $41 million actually is the value of our compensation, so we are taking out of the compensation our attorney fees, so we really—

Mr. ABERCROMBIE. I will conclude with this, Mr. Chairman. I am just saying to you that it is not their fault, and I don't see why the hell that the attorneys fees—in a lot of court cases, when you lose a case, and this is not losing exactly but it should be—you know, the judge can order you to pay the attorneys fees for the winning side. And the fact that this settlement in effect recognizes, that is what I am trying to say, that the claims of the tribes were legitimate, it seems to me the United States should pay those attorneys fees. That is my only point.

Mr. HAYWORTH. I thank the Gentleman—

Mr. ABERCROMBIE. I appreciate it. I don't want to screw up the legislation or hold it up, but I am just telling you I believe that it is not the tribes' responsibility to pay these attorneys fees, because in effect this settlement is admitting that the United States owed this money, and therefore the attorneys fees should be paid by the United States. That is all.

Mr. HAYWORTH. I thank the Gentleman from Hawaii for his point of view, and recognize the Gentleman from Oklahoma.

Mr. WATKINS. I would like to close. You know, Mr. Carson here has Cherokee ancestry and all that, and he is going to make sure, I think, things are fair. I grew up with the Choctaws down in the southern part of Oklahoma, and many of them I have worked with all my life, and lived with them literally, and Governor Anoatubby and I shared a home town together in the Chickasaw Nation for over 20-some-odd years, and I think they know that we have tried to work to have a fair settlement and one that—the main thing right now I think is, if they can get that, they can pay attorneys and get that over with, and they can have economic growth and development moving in a way that can be very positive for those tribes, for those members of those tribes.

Mr. HAYWORTH. Thank you, Mr. Watkins.

Mr. Carson, any closing comments?

Mr. CARSON. I would just ask that the record be kept open for 2 weeks on all three bills to supplement the record. And I was remiss in not thanking Mr. Watkins in my comments for his leadership and activity on this matter.

Mr. HAYWORTH. The Gentleman from Michigan?

Mr. KILDEE. Mr. Chairman, I have a statement for the record also.

Mr. HAYWORTH. Without objection, all statements will be there in their entirety, as will the statements of our witnesses. Again, gentlemen, we thank you very much, as we thank all the different panelists on the three different pieces of legislation that we considered today in this hearing, and this hearing stands adjourned.

[Whereupon, at 1 p.m., the Committee was adjourned.]

[A statement submitted for the record by Mr. Pallone follows:]

Statement of The Honorable Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, on H.R. 3476

I commend you, Mr. Chairman, for holding this hearing on American Indian and Alaska Native (AI/AN) legislation. Such hearing opportunities serve as valuable forums to further research and understand the social, economic, legal and political complexity of AI/AN realities, before related legislation is brought to the House of Representatives for voting purposes. As Congressional history demonstrates, the decisions we make as Representatives can either positively or negatively impact these people, and their nations (i.e., tribes, bands, villages and communities).

For example, between 1887 and 1934, the U.S. Government took over 90 million acres of land from American Indians without compensation. More recently, between 1945 and 1968, Congress decided that Federal recognition and assistance to more than 100 tribes should be terminated. This termination policy created economic disaster for many American Indians, and their nations, resulting in millions of acres of valuable natural resource land being lost through tax forfeiture sales. This is a primary reason why AI/AN families have the highest poverty level of any group in the country, at a rate of 31% on some Indian reservations.

By holding hearings on the impact of legislation related to American Indians and Alaska Natives, Congress moved to rectify its prior decisions by passing self-determination and self-governance policies. As a result of such polices, AI/AN nations and villages have greater control over their lands and resources, and have made great strides toward reversing the economic blight that resulted from previous Federal policies, and have revived their unique cultures and nations. Congress must withstand pressure from those individuals and groups that call for back tracking to old AI/AN policies, such as termination and reduction of AI/AN sovereign rights. We must acknowledge and learn from our mistakes, and not repeat them in the future because AI/AN nations and villages are relying upon our commitments.

As is becoming more widely known, the United States Constitution recognizes that American Indian Nations are sovereign governments. Hundreds of treaties, the Supreme Court, the President and the Congress have repeatedly affirmed that Indian Nations retain their inherent powers of self-government. In addition, the United States Government is committed to a trustee relationship with the Indian Nations. This trust relationship requires the Federal Government to exercise the highest degree of care with tribal and Indian lands and resources.

I have thoroughly reviewed H.R. 3476, a bill to protect 697-acres of land, known as The Great Oak Ranch, held in fee by the Pechanga Band of Luiseno Mission Indians from condemnation until a final decision is made by the Secretary of the Interior regarding a pending fee to trust application for that land. I have also listened to those views that are in opposition to the passage of this legislation. I believe that there exists some misunderstanding between these two opposing sides. I am here today to clear the record.

This property is part of the ancestral homelands of the Pechanga and contains many historical, cultural and archaeological resources and sites that are significant to the Band. In addition, it is home to the largest known naturally growing California live oak tree, estimated to be more than 800 years old. And despite statements made to the contrary, there are no plans for an Indian casino to be built on this land.

H.R. 3476 simply maintains the status quo until the Federal process for taking land into trust has run its course and the application is evaluated on its merits. Furthermore, it prevents a change in the status of the land until Interior makes a FINAL determination on taking the land into trust. There is no guarantee Interior will take this land into trust; however, I do believe that this process should be allowed to run its course unabated. This legislation does not take a position on the land to trust application, infringe on states' rights, nor prevent opposing groups from appealing Interior's decision. It does, however, allow adequate time for the Department of Interior to make a final determination on taking this land into trust.

Therefore, I support passage of H.R. 3476 and would urge my colleagues to do the same.

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