

and Carrie Dann, for trespass, the allegation being made that they were grazing their cattle on Federal "Public Land." After going back and forth in the U.S. Federal Appeals Courts several times, the case reached the U.S. Supreme Court in 1984. The Supreme Court ruled "for" because the U.S. Secretary of the Interior had accepted the monetary award from the I.C.C. on Docket 326-K as the "trustee" for the Western Shoshone, the Dann sisters could not defend on the grounds of original Western Shoshone Title. The U.S. Supreme Court specifically based its decision on an erroneous assumption that the I.C.C. had filed its final report with Congress.

#### OAS Investigation of Docket 326-K

In 1990, the Dann sisters petitioned the Organization of American States (O.A.S.) to look into their treatment by the United States. The Dann were joined in their petition by Western Shoshone (W.S.) Reservation Tribal Councils, and by the Western Shoshone National Council. In December of 2002, the O.A.S. released its report, stating that the United States--through the U.S. Indian Claims Commission process--has violated the human rights of the Western Shoshone, that the I.C.C. process lacked due process of law, and that the property rights of the Western Shoshone have been ignored. The United States Government has to this date failed to remedy the violations put forth in the O.A.S. report, though asked by the O.A.S. to do so.

Thus, the U.S. Supreme Court in 1985, ruling on the case, *U.S. v. Dann*, used an Indian Claims Commission process against the Danns that has been found to be in violation of Western Shoshone human rights.

#### The Indigenous Law Institute's Finding on the I.C.C.'s Failure to File A Final Report With Congress in the Western Shoshone Case

In January of 2003, the Indigenous Law Institute, issued its finding that the U.S. Indian Claims Commission failed to file a final report with Congress regarding the Western Shoshone case, Docket 326-K. Sent on 21 of the I.C.C.I.A., "Report of Commission to Congress" requires such a report in order to provide Congress with the information it needs to make an informed judgment in every case. The I.C.C.I. report reveals that the Indian Commission did not complete its work as required by law. The Indian Claims Commission failed to fulfill a legally required ingredient of finality in Section 21(c) of the I.C.C. Act. Therefore, an essential part of the statutory basis that Congress set up for a distribution of the monies in Docket 326-K remains unfulfilled.

#### The Amnesty International Report

In May of 2003, Amnesty International issued its report on the Western Shoshone case, and found that violations occurred in the I.C.C. process concerning Western Shoshone human rights. The violations were lack of due process of law, violations of Western Shoshone human rights, and violations of Western Shoshone property rights. This report gives added credibility to what the O.A.S. and I.C.C.I. reports reveal about the I.C.C. Docket 326-K.

#### Recommendation

A distribution bill came before this Committee on Docket 326-K. The Committee at that time wisely rejected taking action on it by not bringing it out of Committee. With the above referenced reports now bringing to light the major problems with the I.C.C. process as it pertains to the Western Shoshone Territorial rights issue, we request that this Committee not take action on bill H.R. 884, but let it die the death it deserves in Committee.

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The Chairman, Thank you, Mr. Gibbons.

Mr. Gibbons, Thank you very much, Mr. Chairman, and again, I have submitted a formal statement for the record on Bill 884 that we have before us today, and I apologize for my witness not being here for being absent, but other duties kept me away at the time I could have introduced you. And I wanted to welcome you and the other Nevadans that are here today to Washington, D.C. to witness and partake in this Committee hearing, and it is certainly a pleasure to have you before us, and I certainly am very proud to see such great representation here before us today.

Mr. Chairman, I would like to submit for the record of the Committee, several petitions that have been signed by a number of Shoshone Indians, Western Shoshone Indians, that would have been here, but they have submitted their petition in support of 884, and I would like copies of these petitions to be admitted into the record if I could.

The Chairman, Without objection.  
The information referred to follows:

[GRAPHIC] [TIFF OMITTED] T9972.007

[GRAPHIC] [TIFF OMITTED] T9972.008

[GRAPHIC] [TIFF OMITTED] T9972.009

Mr. Gibbons, Mr. Chairman, this is indeed an issue which is long overdue, as I said earlier. And these witnesses- and I think the eloquence of Laura Pifford is certainly to be commended because she put in very clear perspective historical presentation of the whole process the that this thing has gone through over the last few decades, and certainly it is one which I think is timely. It is one which we have to deal with. If we don't deal with it, the money will serve no one. It will sit in an account, a trust fund, and do no good for anyone. I apologize for the double negatives, it will not do anyone any good, we want the bill.

Ms. Pifford, let me say that I have looked over your technical suggestions for the language. I have no problem with working on the bill between now and when it is submitted to the Committee to make those technical corrections that you addressed in your opening statement as well. We will work with you on that to make sure that we take them into consideration.

Ms. Pifford, Thank you.

Mr. Gibbons, I guess I don't know what else to ask, because I think everything that has been said needed to have been said, and I think the record is clear.

I would only turn basically to Chief Yowell and maybe ask him a question. It relates to the Western Shoshone National Council that you represent. My question is, is that an elected body by the Shoshone Nation?

Mr. Yowell, No, it is not. It is the entity that signed the Treaty of 1863 that has continued from that time down to today's times.

Mr. Gibbons, So what you are saying is that the rest of the Shoshone Nation over the years has had no elected effect on the membership of this national council?

Mr. Yowell, Elections came to be the way that tribes' councils were appointed based upon the Indian Organization Act, entities that were established in Shoshone territory in 1938. From that time forward.

Mr. Gibbons, I am not trying to undermine you in any way, but I want to just get some clarity out here. The Western Shoshone National Council, is it a registered nonprofit organization in the State of Nevada?

Mr. Yowell, It is not.

Mr. Gibbons, It is not?

Mr. Yowell, No.

Mr. Gibbons, Is it an IRA sanctioned council, as contrasted to a reservation council?

Mr. Yowell, It is not. It represents a nation based upon the Treaty that it signed with United States.

Mr. Gibbons, And how many members of the Shoshone tribes that are in Nevada, whether you consider the Te-Moak, the Fallon Western Shoshones, Duckvalley, how many of all of those members do you have in your organization?

Mr. Yowell, None of the ones you mentioned. The Ely tribe belongs. The Toiyabe Nation belong, the Traditional settlement

from South York Reservation belongs, the Dano family belongs, the Great Basin Western Shoshone belong.

Mr. Gibbons. And how many members would that be total?

Mr. Yowell. We haven't compiled the membership of those entities.

Mr. Gibbons. Could you guess?

Mr. Yowell. Not at this time. I couldn't give an accurate figure.

Mr. Gibbons. Would either Mr. Ike or Ms. Paffero have an answer to that? Would you have an estimate?

Mr. Ike. I don't have any privilege to their membership.

Mr. Gibbons. Mr. Chairman, I see that my time has expired, and I will certainly hope that members look at this carefully, it does not waive any rights under any treaty organization or treaties that were established, and certainly I think it is time to look favorably upon this part of our cultural history and reward those people with the judgment that the courts have set out for many, many years ago, and it is time to put that money to good use and benefit these people, and I would hope that every member could support this bill.

Thank you.

The Chairman. Thank you, Mr. Gibbons. Mr. Pallone?

Mr. Pallone. I will try to be brief, Mr. Chairman. I don't really have a position on the bill at this point, but I have to say that, you know, I see-two things are sort of weighing on me. One is the fact that I really don't like the idea of Nations having to give up land and, you know, getting some kind of payment in lieu of whatever land claims they might have. So that weighs very strongly on-you know, on the one hand, not being supportive of this type of a settlement.

On the other hand, because of the fact that Nations are sovereign, they should be able to do what they please. In other words, if you have a vote and it is legitimate, there is no reason why you shouldn't be able to do what you think is best. That is the problem.

My guess my concern is, and I have heard some of the testimony and read some of the testimony--I wasn't here for the whole panel--everyone seems to be--on the one hand, Mr. Gibbons and, I guess, the chairman are suggesting that at this land settlement goes through and the bill is approved, that you could still claim title to certain lands. On the other hand, Chief Yowell seems to suggest that that is not the case, you know, that somehow the settlement, if it is granted, will be a contributing factor, if not total factor, toward extinguishing any rights to the land.

So I guess I am a little confused. If either of you could just respond to that--what makes you think that this settlement does or does not preclude you from making claims to the land, and how successful you could be if this settlement and this legislation went through? If I could just ask the chairman and the chief that, quickly, I know you have probably answered already, but just to give me a little more information.

You believe that, if this bill goes through, that essentially the land claims are extinguished, which is why you are not in favor of it in part. Is that true?

Mr. Yowell. Yes, basically that is true. You have to go back to the rejection of the claim to begin with, in 1863, when the question was asked of the hearing officer, by what law did the United States acquire the territory of Western Shoshone. And those laws are explained fully in the main testimony that we have submitted to the clerk of this Committee. That question still remains unanswered to this day. And the very fact that the Indian Claims Commission award contains the wording "per acre" means that the land is, you know--that is payment for the land. And so that is why we take the position that, if we take this award, then we have been paid for the land.

Mr. Pallone. OK, then let me ask the chairman, now, you seem to feel that that is not the case, right? That you could

still exert certain claims successfully?

Mr. Ike. I believe that, because I was in opposition to Kennecott's introduction of a bill in early 1990, and it was suggested at that particular time by Senator Trovato, to the Western Shoshone leadership, to go back to Western Shoshone country and to develop a land package. And we wanted to deal with the highest level of Government. And at that particular time, there was Secretary Babbitt who we were dealing with. We met with him in Denver, Colorado. A couple money was given to the Western Shoshone National Council for the Duckwater Tribe to initiate this process. This process only lasted about four or five years. It fizzled right quick. The Western Shoshones could not get together on a land issue in regard to the expansion of the Reservations. I still believe that if the Western Shoshones themselves, through their Governments, through their Tribal councils, can ask for and will receive additional land base for an expansion of their existing land base that they now have. And that is the hope that we have coming before this Committee, so that we can get that language once more introduced.

Mr. Pallone. OK. Thank you, Mr. Chairman.

Mr. Gibbons. Would the gentleman yield?

Mr. Pallone. Yes, sure. I don't save time, but--

Mr. Gibbons. I appreciate the gentleman yielding his time. The bill only deals with the distribution of a settlement from a court award. In there, in Section 2(D)(9), it says that there is no waiver of any treaty rights in the bill. So that these Tribal Nations that are subject to this settlement still retain their treaty rights as pursuant to the Treaty rights of Ruby Valley that was established. So there is no waiver of any of the rights that are inclusive of Article 7 through Article 9 of that treaty.

Mr. Pallone. And I gather there are some that would argue that the treaty rights were extinguished long ago anyway, right? I mean, I guess none of us agree with that, but that is another argument that is out there, I think you.

The Chairman. Mr. Udall?

Mr. Tom Udall. Thank you, Mr. Chairman. Chief Yowell, let me--just following up on this same question--let me read you part of this bill. In Section 2, paragraph A, it says--and this is not a waiver of treaty rights. It says, "Receipt of a share of the judgment funds under this section shall not be construed as a waiver of any existing treaty rights pursuant to the 1863 treaty of Ruby Valley, inclusive of all Articles 1 through Article 9, and shall not prevent any Western Shoshone Tribe or band or individual Shoshone Indian from pursuing other rights guaranteed by law."

How do you interpret this? If this bill doesn't preclude claims under the Treaty or on other grounds, what is objectionable about the bill?

Mr. Yowell. The very fact that this is referring to Docket 324-K that came out of the Indian Claims Commission, when that commission, which now I have stated is--that the law is incomplete--that the commission failed to file the final report with Congress. The final thing that happens in that, when the finality is achieved--you know, had this report been issued, the finality would have been achieved--is that Section 22(a) of this Indian Claims Commission Act kicks in and that bars any further--since this is based on a land issue--any further land claims to be brought forward.

Mr. Tom Udall. So as I understand your position, you believe the ruling and the money, if that is taken, will actually extinguish the claims and that you feel that to proceed in that manner would extinguish the claims and there is no guarantee of any future land settlement?

Mr. Yowell. Yes. It would make it very difficult for, you know, Western Shoshone to bring that issue forward again.

Mr. Tom Udall. Now, one of the parts in this that is a little bit troubling to me--and I think there is a history out

there when we do these ballots, and everybody talks about the ballots. The options that were laid before people in terms of the ballot was basically saying here is a big pot of money, do each of you want 30,000 of those dollars? I mean, there was no mention of a land settlement, there was no mention that this-- is that correct in terms of characterizing the way the ballot was phrased? I mean, was there any mention one way or another about the history, anything like that?

Mr. Yowell: That is my understanding. I did not partake in that ballot or that voting process, so I didn't get to see the ballot itself. But it is my general understanding that it is only for money--you know, the claim is given only for money.

Mr. Tom Udall: Mr. Piffaro, I would like to ask you the question, because I have a copy of one of the ballots here and it says the ballot presents the following two options: Yes, I am in favor of 100 percent per capita claims payment to persons who have at least one-quarter degree of Western Shoshone blood; No, I am not in favor of receiving any claims payment. Is that basically what the ballot was?

Ms. Piffaro: Yes, it was.

Mr. Tom Udall: So when people were balloting, the issue before them was, You have a big pot of money and do you want it? There was never any discussion about land claims or land settlements or the history that this has had over the last 25 years and how that might impact on the tribe. Is that correct?

Ms. Piffaro: Right. And I would agree with that statement. However, that has been--the lack of communication between our people and the truth is making errors. That is true. There has been a lot of miscommunication, I believe. But in these last few years, that is rising. They are being told the correct information by the correct people. And so, yes, that was in fact a valid statement in the beginning; however, that is progressing, going forward in a positive manner so that they will aware.

Mr. Tom Udall, Chairman Ike, do you foresee a process that is in place today and that is moving along for having a land settlement take place and you receiving a larger share of land? I mean, several administrations--the first Bush administration, I know, had negotiations going, the Clinton administration had negotiations going. My understanding Bush 2, there are no negotiations. I mean, what are because you mentioned in your statement, you know, this doesn't preclude a settlement, what is the process you see reaching some kind of land settlement?

Mr. Ike: That was the beginning of the process which you had just asked in regard to the monetary distribution. Because initially, when the Western Shoshone Tribal Governments were asked to participate in planning for the expansion of their reservations, those negotiations fell apart.

With that being done and that not proceeding, the Western Shoshones claim committee that was developed initiated a different distribution package. And those things were discussed in many meetings in regard to the overall package and the procedure. And there were three questions on that ballot, and the ballot was very straightforward in regard to exactly what this process was going to be all about.

I still do believe that there is a program available for the Western Shoshones, through Congress, to expand our land base. Those plans are still in place. All we have to do is go back, regenerate those plans, introduce them, and then we can move forward.

Mr. Tom Udall, Thank you, Mr. Chairman. I see my time is out. If possible, I would like to ask the sponsor just an issue about this land settlement, but I can do it--

Mr. Gibbons: I am just--I am puzzled by the two positions we have here with the-- you know, I understand the good intent of your bill in terms of getting this money out there and getting it to people. And yet at the same time, you see this tortured history of trying to negotiate a settlement and

linking the two together and there being a lot of fear that if the settlement takes place, Congress will never pick up this issue again.

And I was just wondering what your perspective was on this in terms of--and the chairman's, for that matter, "mean is there a sense of coming back to this issue later on? Are we going to give some directive to the Administration to try to reach a settlement? You know, where are we on that?

Mr. Gibbons. I think, Mr. Udall, first of all, the old saying, "Justice delayed is justice denied." And what we are trying to do with this bill is to allow for the justice to meet the needs of Western Shoshone people in the State of Nevada. And that is because the judgment that the Court ruled said that X number of dollars were to be paid to this Tribe for the taking of their land in the 1850's. There will always be the opportunity for extensions, additions, and acquisitions of new lands to be added to the existing holdings right now by the Shoshone Nations throughout Nevada.

That is a process which is ongoing, which is not the subject of this bill. It is simply one--this bill, as I said earlier, is to ensure that the money does not remain in a trust account for another 20 or 30 years while senior members of the Shoshone Nation pass away without ever receiving the benefit of what this Government took from them decades and centuries ago.

So the point is not--this bill is not the point to be the end-of solution to their needs. This bill is only directed to require the distribution of those funds which the Court had said was an award to be given to the Shoshone Nation for that taking. It has nothing to do with later rights of individual reservations or Tribes to request additional land, to negotiate with the Federal Government for extensions and trust lands to be added to that. This would make this bill an immensely complicated and delay it so long, that I would venture to say that everyone sitting in this room will not be here by the time that was ever negotiated and agreed upon at some point in the future.

What we are trying to do is require justice to be delivered to these people today--not tomorrow, not a decade from now, not 20 years from now. That is all this bill does. And it does not restrict any of the treaty rights, as you have said by reading and quoting that part of the bill.

So the purpose, of course, is just to get the money released and distributed, and it has nothing to do--and does not prevent later or even concurrent negotiations for additional lands for the Shoshone people.

Mr. Tom Udall. If we can just for a second continue this colloquy. I mean, when Senator Reed--he asked that when the ballots were voted on in one of those elections, last a fact sheet be handed out. And the fact sheet said the following--and my understanding, it was handed out. "The United States Supreme Court has ruled that claims to tribal aboriginal land title were extinguished upon the payment into the U.S. Treasury of judgment funds awarded under Docket Numbers 326-K, 326-A1, 326-A1-3 by the Indian Lands Claims Commission. Accordingly, the distribution of these funds neither revives any extinguished claims nor extinguishes any existing future claims against the U.S. Government."

So if this statement is accurate, that the judgment by the claims commission and then further approved by the Supreme Court extinguished all claims--

Mr. Gibbons. That was, as you've read, the aboriginal lands. But it did not, as it said in the last statement of that paragraph, extinguish any future claims that may be brought.

Mr. Tom Udall. Yes. No, I understand.

Mr. Gibbons. I don't understand where you are coming from. We are looking at an historic area that has been taken by the United States. And this bill only pays them \$143 million for that, which has been sent out by the Court to be distributed.

Mr. Tom Udall. I think where--I am trying to understand where the other side is coming from. And I think where they are coming from is saying since this has extinguished all these claims in the past and there isn't anything going on in the future in terms of existing claims or future claims, why don't we try to settle this in one package? I think that has been the basic position that has come up. Why can't we resolve this all at once? And I think there will be--it just, you know, it is just my opinion, I think there will be a strong movement that, once the funds have been paid out, that the Congress is done with this and will never come back to it. And so if there is an issue out there, it seems like there might be an argument for packaging it in one.

But you are very close to this issue and spent a lot more time with it than I have, and I just wanted to raise this with you and the chairman. Thank you, Mr. Chairman, very much for allowing me to carry on this colloquy with my colleague here.

The Chairman. Thank you. I have no problem and I would be more than happy to work with Mr. Gibbons and Mr. Porter and the Tribe is trying to come up with some kind of an equitable expansion in terms of what reservation lands should be there. And as Mr. Gibbons knows, I don't think there is any reason for the Federal Government to own 90 percent of his State or more. And anything that could help rectify that situation, I am in favor of doing. And if there is a way to put this together and do that, I am all for doing that.

But having said that, I think it is crazy to have \$140 million sitting in an account somewhere that belongs to these people and not give it to them. I think that we are dealing with two separate issues here. And the one issue I think we should take care of immediately; the second issue I believe is--we are going to need a lot of help from you folks to do this and come up with an equitable solution for that. And as I've said, I am more than happy to work with you in order to make that happen.

I think most of these issues have been dragging on for way too many years. And, you know, to hear Mr. Yarrow talk about this court case and how let it go back and see this, I mean, you realize that this started 10 years before I was born, this whole thing. And that is just, to me, is unacceptable. So we need to get the money to the people it rightfully belongs to. We need to come up with a solution in terms of what lands should be tribal lands and get that done with. And I think that would, I think, help satisfy some of the concerns that are out there. I think they are legitimate. We do need to take care of that, and I support you in that. But at the same time, I do believe that we need to deal with this money that is in this judgment fund. It is not doing anybody any good where it is right now. We all know that. So I think we just need to deal with that. But I am more than happy to work with all of you to help solve this problem in as short a period of time as we possibly can.

But I thank you very much for your testimony. I think it was very valuable to the members of the Committee to have you in, and I know it is not easy for you to come back. But I do appreciate you doing this.

The members of the Committee will have additional questions. Several of them were unable to stay because of the late hour, but those questions will be submitted to you in writing. If you could answer those in a timely manner so that they can be included in the hearing record, I would appreciate that.

If there is no further business before the Committee, I again thank the members of the Committee and our witnesses for this hearing. The Committee stands adjourned.

[Whereupon, at 1:54 p.m., the Committee was adjourned.]