

Congress of the United States
House of Representatives
Washington, DC 20515-0307
November 17, 2003

The Honorable Gale Norton
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Norton:

I am writing regarding H.R. 884, "The Western Shoshone Distribution Bill" and the Department of Interior's involvement in and analysis of that bill. The Resources Committee of the House of Representatives is currently considering this bill, the underlying land base of which covers approximately 24 million acres of land, the majority of which are classified as federal lands. The bill calls for a one time payment to the Western Shoshone of monies amounting to approximately 15 cents per acre. These monies were appropriated by the Indian Claims Commission in 1979 (Docket 326K).

Previous judgment payout measures (H.R. 3384 in 1990; H.R. 3897 in 1992; S. 2795 in 2000; S. 958 and H.R. 2851 in 2001) died. Numerous questions about Shoshone land and claims history have troubled Congress for many years. In addition, there has been strong opposition and resistance to this distribution for several decades by the Western Shoshone and the general public. In the present session, concerns have been raised regarding the treatment of Western Shoshone land and treaty rights, specifically with regard to actions taken by the Department of Interior in the management of these lands and in enforcement actions against Western Shoshone people on the lands. If these concerns are accurate, this bill may be contrary to federal policies with regard to treatment of Native Americans and in conflict with the Department of Interior's position as a Trustee and its obligation to uphold the laws of the United States. To that end, I request information on the following matters:

A. The Indian Claims Commission Docket 326K

1. Has there been any analysis performed, and if so, what are the results of that analysis, with regard to whether or not the procedure and substance of Indian Claims Commission (ICC) Docket 326K is in compliance with:

- The 1863 Treaty of Ruby Valley,
- The Northwest Ordinance and the Nevada Organic Act, and
- The statute creating the ICC – specifically regarding the requirement of a "Final Report" to be submitted to Congress.

2..Given that "gradual encroachment" is not a legally valid method of taking or extinguishing title and the Western Shoshone have never sold, ceded or in any manner transferred title, by what law does the United States claim to have taken or extinguish Western Shoshone title?

3..The ICC was created by President Truman in 1946 knowing that the ICC had "international repercussions" and would be "viewed as a touchstone of the sincerity of our national professions

of fair and honorable dealings...” The Organization of American States, Inter American Commission on Human Rights, recently determined that the U.S., by claiming title to Western Shoshone lands through Docket 326K, is in violation of fundamental human rights (Case No. 11.140), including the rights to property, due process and equal protection of the law. That decision calls upon the U.S. to provide a fair process to resolve the Western Shoshone land dispute and it formally asks the U.S. to ensure that Western Shoshone land rights are not threatened by distribution of the ICC judgment award. Amnesty International has submitted a report supporting the findings of the Inter American Commission and has expressed concern over the situation of the Western Shoshone. Has Interior considered the repercussions of ignoring these findings? If so, how – please provide notes of all meetings, memos, and other communications regarding same.

4. What attempts have been made by Interior, to seek a comprehensive, negotiated resolution with the Western Shoshone? Please provide any and all documentation of these attempts.

5. Finally, there is much concern about public statements made by employees of your Department with regard to the underlying basis of the monies set aside in Docket 326K. Accusations include that Interior has misled the public, members of Congress and the Western Shoshone by claiming these monies are for mere “damages” rather than a clear explanation of how the monies were determined to be valuations per acre of lands in California and Nevada and certain minerals on or before July 1, 1872. Please provide documentation on the communications made by Interior in this regard and its current position.

B. Interior’s Involvement in Legislation to Distribute Monies Set Aside by Docket 326K

1. To what extent has Interior been involved with the drafting of H.R. 884 or any of its predecessors? Please provide any and all documentation relating to same.

2. There are serious accusations of Interior’s failure to conduct government to government relations and potential involvement in internal tribal matters. Please describe and provide documentation of how Interior fulfilled its mandate to conduct government to government negotiations with the tribes. Explain the decision by Interior to deal directly with the steering committee, a non governmental, non recognized entity, composed of a “group of individual Western Shoshone” in opposition to the federally recognized tribal governments. Finally, please describe and provide any and all documentation of Interior’s position with regard to internal tribal disputes now taking place in any of the Western Shoshone communities.

3. Pursuant to a September 7, 1999 memo to BIA Western Agency from Steering Committee Member Nancy Stewart, the BIA role in May 1998 Shoshone Claims Referendum in Elko and Fallon is noted. Please describe the role Interior played in that “referendum” and any other “referendum”, “vote”, straw poll, or similar event relating to the current bill or any of its predecessors. Also, as requested by Representative Tom Udall’s office at the June 18, 2003 hearing and again on September 24, 2003, please provide documentation for Interior’s position that 90% of the Western Shoshone are in favor of distribution.

4. A July 1, 1999 e-mail from Cathy Wilson to Western BIA offices reflects a discussion with Robert Laidlaw about a water matter wherein Mr. Laidlaw inquired as to the status of the “BIA preparation of the Western Shoshone roll for purposes of judgment fund distribution.” Please provide a description of the involvement of Mr. Laidlaw in the decision-making process regarding the Western Shoshone Distribution of Docket 326K.

5. The testimony given by your Department in August 2002 before the Senate Committee on Indian Affairs is in contradiction to the testimony given before the Resources Committee on June 18, 2003. In particular, with the regard to the question relating to the Treaty of Ruby Valley and Western Shoshone land rights. In the 2002 testimony it was stated that the Treaty was in full force and effect with the exception of Section V regarding land boundaries. In the 2003 testimony, reference was made that there was a question as to whether the Treaty ever recognized land rights. Please provide an explanation of the conflicting testimony. Also, please provide an analysis of whether or not HR 884 would constitute an act of Congress that either directly or indirectly ratifies or accomplishes the extinguishment of Western Shoshone land rights and/or the abrogation in whole or in part of the 1863 Treaty of Ruby Valley.

C. Enforcement Actions by Interior Against Western Shoshone and Interior's Management of the Land Base in Question

1. There have been concerns raised that your Department, through the Bureau of Land Management, has been engaging in activities which seriously threaten a fair and honorable resolution of this matter. These actions include ongoing armed and helicopter surveillance of Western Shoshone ranchers who are exercising their treaty vested rights to be agriculturalists pursuant to Article VI of the Treaty, heavily armed livestock seizures and removals, and continued notices of further impoundment and removal. Please provide any and all documentation of justifications employed by Interior to conduct said impoundments, including details and documents of meetings held by J. Stephen Griles in the year preceding the May 2002 seizure of the cattle of Raymond Yowell and Myron Tybo and the September 2002 and February 2003 seizure of livestock belonging to Mary and Carrie Dann, as well as any other meetings, communications or orders and cost analyses performed.

2. Please describe in detail and provide documentation of any and all communications, meetings or other correspondence regarding third party interests and the ongoing Western Shoshone land dispute. This includes industries, individuals or companies investing in or proposing to invest in or doing business on lands identified within the Treaty of Ruby Valley. In particular those third party interests involved in or connected to the mining, energy, water or nuclear industries. Please provide all documentation of current, discussed or proposed memorandums of understanding, leases, or other relationships between third party interests doing business on these lands and any U.S. agency or Department.

3. Identify all sites identified for potential energy development within the land area discussed herein. In particular, those areas cited in Interior and the Department of Energy's report entitled "Opportunities for Near-Term Geothermal Development on Public Lands in the Western United States" released earlier this year. What discussion or analysis has occurred regarding impacts on the Western Shoshone and how does the bill (H.R. 884) address those impacts?


4. The Appraisal Foundation's recent report was highly critical of the Bureau of Land Management's handling of land exchanges in Western states. The report faulted not only pending public exchanges but agency practices generally. One BLM office which has been noted specifically is the Carson City, Nevada office where a private company, Nevada Land and Resources, is conducting appraisals of lands it is selling to itself. Widespread violations of laws, deviation from rules and deficiencies in procedures were cited by the Foundation. Such issues, if true, will be extremely detrimental not only to the Western Shoshone, but to the public interest as a whole. What plans, discussions, meetings, or other communications have been or are being

made for any of the areas currently being treated as “public” lands and located within the boundaries of the area identified within the Treaty of Ruby Valley and/or the areas identified in the mapping employed by the ICC in Docket 326K? What discussions, meetings or plans are being made for these areas under any proposed or pending legislation? This includes, but is not limited to any form of the Northern Nevada Public Lands Management Act, introduced in 1999 as Senate Bill 719/House Bill 1506. What is the current status of the Department of Justice investigation of “violations of law” occurring in BLM land deals, in general, and specifically with regard to the land area referenced herein?

5. What measures has Interior taken to ensure that no conflicts of interest arise given the dual nature of Interior’s relationship with the Western Shoshone, i.e. as a “Trustee” v. the managing agency of the disputed lands and the enforcer or trespass and other actions taken against Western Shoshone as they assert their rights to use and access these same lands and their resources.

Thank you in advance for your prompt response to these questions. As you may be aware, this issue has a long history and I would like to see a fair resolution soon. Your Department’s cooperation will be appreciated.

Sincerely,


Raúl M. Grijalva