

# H.R. 1239 AND H.R. 2742

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## LEGISLATIVE HEARING

BEFORE THE

### COMMITTEE ON RESOURCES U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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**LEGISLATIVE HEARING ON H.R. 1239, TO ESTABLISH A MORATORIUM ON APPROVAL BY THE SECRETARY OF THE INTERIOR ON THE RELINQUISHMENT OF A LEASE OF CERTAIN TRIBAL LANDS IN CALIFORNIA; AND H.R. 2742, TO AUTHORIZE THE CONSTRUCTION OF A NATIVE AMERICAN CULTURAL CENTER AND MUSEUM IN OKLAHOMA CITY, OKLAHOMA.**

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**Wednesday, October 17, 2001  
U.S. House of Representatives  
Committee on Resources  
Washington, DC**

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The Committee met, pursuant to other business, at 10:24 a.m., in Room 1324, Longworth House Office Building, Hon. James V. Hansen (Chairman of the Committee) presiding.

The CHAIRMAN. We are now ready to start our hearing. I welcome our colleagues, both from California, as I notice there. Mr. Duncan and Mr. Filner, appreciate you coming up and being part of this hearing today.

We are on somewhat of a tight schedule. Mr. Carson, maybe you would stay right here and we will take you where you are. Is that okay? And Mr. J.D. Hayworth is supposed to take this Chair, and in the absence of Mr. Hayworth—you may have to.

I do appreciate you being here, and we will start with the member of our Committee, Mr. Carson, for his opening comments.

**STATEMENT OF HON. BRAD CARSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. CARSON. Thank you, Mr. Chairman, and thank you for agreeing to hold this hearing on the Native American Cultural Center for Oklahoma City, Oklahoma, which is different than my colleagues are going to testify about as well. We are fortunate to have today several distinguished members from the community of Oklahoma City: the mayor of Oklahoma City, Kirk Humphreys; State Senator Kelly Haney, from Seminole, Oklahoma; and many other people involved in this project as well.

I would also like to thank Ranking Member Rahall and the entire Committee on Resources staff for their leadership and their hard work in bringing this hearing to fruition.

As an enrolled member of the Cherokee Tribe and representing the most Native American district in the country, H.R. 2742, about which I am commenting, and the Native American Cultural Center and Museum which is planned for Oklahoma City carry especially great significance for me.

The area encompassed by the boundaries of the State of Oklahoma, often referred to as "Native America," has had a special relationship with Indian Nations since long before it became a State in 1907. Beginning in the 1820's, the Five Civilized Tribes from the southeastern United States were relocated to Indian Territory over numerous routes, the most famous being the Cherokee "Trail of Tears." Forced off their ancestral lands by State and Federal Governments, the tribes suffered great hardships during these rigorous trips West. This forced march of Eastern tribes to the West under the Indian Removal Act of 1830 is the best-known movement of American Indians to what is now Oklahoma.

Thirty-nine tribes are recognized by my State, including both tribes forced to Oklahoma and tribes native to the Plains. These tribes collectively and individually have played an invaluable role in the evolution of the State of Oklahoma. The culture and history of Oklahoma are inseparable from that of the 39 recognized tribes. Nevertheless, before the creation of the Native American Cultural and Educational Authority of Oklahoma, there has been little statewide effort to recognize the contributions and sacrifices made by the tribes and no Federal effort in Oklahoma.

In 1994, the Oklahoma Legislature, acting under the enlightened leadership of Senator Haney, created the Native American Cultural and Educational Authority to promote the history of Native Americans for the mutual benefit of the State of Oklahoma and its Indian and non-Indian citizens. By that legislation, the Authority was authorized and empowered to construct and operate a cultural center and museum on a chosen site in Oklahoma. Since 1994, various entities, including the Authority, the State Legislature, the Office of the Governor, Native American groups, and a stellar design team have worked together and developed an impressive and extensive plan for the creation of the Native American Cultural Center and Museum in Oklahoma City which three cities in Oklahoma initially bid for.

The approximately 300-acre site, donated by Oklahoma City, where the center will be located, as I mentioned, will have a Great Promontory, a Court of Nations, a Court of the Wind, a Hall of the People, Permanent and Temporary Galleries, a "Who We Are" Theater, a Multi-Purpose Theater, a Demonstration Gallery, Family Center, Study Center, Discovery Center, a Lodge Hotel and Conference Center, a Visitor Center, as well as Dancing Grounds. As an affiliate of the Smithsonian Institution, the museum will be able to rotate exhibits with the Native American Smithsonian Museum being built in Washington, enriching both of the museums' collections and presentation.

Some of the main goals tied to the creation of the Native American Cultural Center and Museum are: to link the past, present,

and future of Indian Nations and present them to the visitor in a way that he or she can experience and understand fully; to preserve and promote the living cultures of Native Americans; and to strive for economic self-sufficiency and to engender the principles of environmental sustainability.

This massive endeavor, representing and promoting all 39 tribes in Oklahoma, is truly awe-inspiring and worthy of Federal financial and technical support. The design team includes Ralph Appelbaum, whose achievements include the United States Holocaust Museum, and Bill Fain, who helped design the TransAmerica building in San Francisco. Bob Schaffer, another member of the design team from Johnson Fain Partners, is in the audience today. This world-class team—and I ask anyone to look at the design, and you will truly be astounded. That team has enjoyed the support of the entire delegation from Oklahoma as well as our Governor, Frank Keating.

H.R. 2742 would authorize the appropriation of \$33 ml over a period of 4 fiscal years beginning in 2003. However, appropriation of Federal dollars is contingent upon private, city, and State sources accounting for 66 percent of the total cost. Thus, the center is neither wholly dependent upon Federal funds nor given access to Federal funds until a local commitment has been adequately demonstrated. Nevertheless, Federal funds are necessary and are reasonable.

Given the Federal Government's significant role, indeed responsibility, in relocating many of the 39 tribes now a part of Oklahoma, it seems more than appropriate for the Federal Government to award grants to the Native American Cultural and Educational Authority for the development of this museum committed to preserving the history and culture of these tribes.

Furthermore, a precedent has been set for the Federal funding of State museums, not to mention today when we just did that for the State of Utah. Other examples include the Steamtown Railroad Museum in Pennsylvania which was appropriated \$80 million in Federal funds.

In conclusion, as you will see from the testimony of Mayor Humphreys, Senator Kelly Haney, Governor Bill Anoatubby of the Chickasaw Nation, and Tommy Thompson of the Native American Authority, such a museum is not only necessary for the preservation of Indian cultures, but it carries deep significance in the State of Oklahoma.

I appreciate this opportunity to make some comments. Mr. Chairman, I know you represent a district with many Native Americans as well, indeed, the one in which I was born when my father worked for the Navajo Tribe. And I think, as Felix Cohen said in his "Authoritative Guide to Indian Law," how we treat Native Americans is really the canary in the mine shaft that says how strong our democracy will be.

It is a great move today to finally celebrate and promote what for so long in this country we have denigrated and destroyed. I would ask for this Committee's support in doing that.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Carson follows:]

**Statement of Hon. Brad Carson, a Representative in Congress from the  
State of Oklahoma**

I would like to begin by expressing my sincere appreciation to Chairman Hansen, Ranking Member Rahall, and the entire Committee on Resources staff for their leadership and hard work in bringing this hearing to fruition. As an enrolled member of the Cherokee Tribe and representing the most Native American district in the country, H.R. 2742 and the Native American Cultural Center and Museum, planned for Oklahoma City, Oklahoma, carry great significance for me.

The area encompassed by the boundaries of the State of Oklahoma, often referred to as "Native America," has had a special relationship with Indian Nations since long before it became a State in 1907. Beginning in the 1820s, the Five Civilized Tribes from the southeastern United States were relocated to Indian Territory over numerous routes, the most famous being the Cherokee "Trail of Tears." Forced off their ancestral lands by state and federal governments, the tribes suffered great hardships during the rigorous trips west. This forced march of Eastern tribes to the West under the Indian Removal Act of 1830 is the best-known movement of American Indians to what is now Oklahoma. Thirty-nine tribes are recognized by the state, including both tribes forced to Oklahoma and tribes native to the Plains. These tribes collectively and individually have played an invaluable role in the evolution of the State of Oklahoma. The culture and history of Oklahoma are inseparable from that of the 39 tribes. Nevertheless, before the creation of the Native American Cultural and Educational Authority of Oklahoma, there has been little statewide effort to recognize the contributions and sacrifices made by the tribes and no federal effort in Oklahoma.

In 1994, the Oklahoma Legislature created the Native American Cultural and Educational Authority to promote the history of Native Americans for the mutual benefit of the State of Oklahoma and its Indian and non-Indian citizens. By that legislation, the Authority was authorized and empowered to construct and operate a cultural center and museum on a chosen site in Oklahoma. Since 1994, various entities, including the Authority, the State Legislature, the Office of the Governor, Native American groups, and a stellar design team have worked together and developed an impressive and extensive plan for the creation of the Native American Cultural Center and Museum in Oklahoma City which three cities in Oklahoma initially bid for.

The approximately 300 acre site, donated by the Oklahoma City, where the Center will be located, will have a Great Promontory, a Court of Nations, a Court of the Wind, a Hall of the People, Permanent and Temporary Galleries, a "Who We Are" Theater, a Multi-Purpose Theater, a Demonstration Gallery, Family Center, Study Center, Discovery Center, a Lodge Hotel and Conference Center, a Visitor Center, and Dancing Grounds. As a Smithsonian affiliate, the museum will be able to rotate exhibits with the Native American Smithsonian Museum being built in Washington, enriching both of the museums' collections.

Some of the main goals tied to the creation of the Native American Cultural Center and Museum are as follows:

1. To link the past, present and future of Indian Nations and present them to the Visitor in a way that he or she can experience and understand fully.
2. To preserve and promote the living cultures of Native Americans, in language and history, dance, arts, cultural values and spirituality.
3. And to strive for economic self-sufficiency and to engender the principles of environmental sustainability.

This massive endeavor, representing and promoting all 39 tribes in Oklahoma, is truly awe inspiring and worthy of federal financial and technical support. The design team includes Ralph Appelbaum, whose achievements include the United States Holocaust Museum, and Bill Fain, who helped design the TransAmerica building in San Francisco. Bob Schaffer, another member of the design team from Johnson Fain Partners, is in the audience today. This world class team has enjoyed the support of Governor Keating of Oklahoma, Senators Nickles, Inhofe, and Campbell, the Oklahoma State Legislature, and Representatives Watkins, Watts, Largent and Istook of the Oklahoma Delegation, to name a few.

H.R. 2742 would authorize the appropriation of \$33 million dollars over a period of four Fiscal Years beginning in 2003. However, appropriation of federal dollars is contingent upon private, city and state sources accounting for 66% of the total cost. Thus, the Center is neither wholly dependent upon federal funds nor given access to federal funds until a local commitment has been adequately demonstrated. Nevertheless, federal funds are necessary and are reasonable. Given the federal govern-



ment's significant role in relocating many of the 39 tribes now a part of Oklahoma, it seems more than appropriate for the federal government to award grants to the Native American Cultural and Educational Authority for the development of this museum committed to preserving the history and culture of these tribes. Furthermore, a precedent has been set for the federal funding of state museums. To name a few examples, from 1986 to 1994, the Steamtown Railroad Museum in Pennsylvania was appropriated \$80 million in federal funds. From 1996 to 1997, the Hispanic Cultural Center in New Mexico was appropriated \$16 million. And, under the Omnibus Indian Advancement Act of the 106th Congress, appropriations amounting to over \$18 million dollars were authorized for the Wakpa Sica Reconciliation Place in Fort Pierre South Dakota.

In conclusion, as you will see from the testimony of Mayor Humphreys, Senator Kelly Haney, Governor Anoatubby of the Chickasaw Nation, and Tommy Thompson of the Native American Authority such a museum is not only necessary for the preservation of Indian cultures, but it carries deep significance in the State of Oklahoma.

Thank you again Mr. Chairman and Mr. Rahall. I truly appreciate the opportunity to testify before this Committee on this subject.

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

Mr. HAYWORTH. [Presiding.] I thank the gentleman from Oklahoma for his explanation of the proposed legislation and look forward to hearing from the panel, and I appreciate the fact that for purposes of full disclosure, he pointed out that he was born in what is now the 6th Congressional District of Arizona, I believe in Winslow, if I am not mistaken.

I appreciate the fact that so many of our colleagues have joined us on this first panel. If I could offer an opening statement, then I will turn to my friend, the ranking member, from Michigan.

As we have this first full Committee hearing on Native American issues and as co-Chair of the Native American Caucus along with my friend from Michigan, it has been true that over the years we have kept active on Native American issues on a bipartisan basis. Once again, it is my honor and opportunity to rejoin the Resources Committee and have a great responsibility to effect Indian policy through this legislative process.

As has been pointed out already from the gentleman born in Arizona, now representing Oklahoma, Native American issues are important to Arizona, Oklahoma, Michigan, and the 47 other States, and I am honored to once again have a critical role in assuring that the proposed legislation and the other issues are heard before this Committee.

As the Chairman of the full Committee may have pointed out earlier, we are going to be hearing testimony on two bills.

H.R. 1239, to establish a moratorium on approval by the Secretary of Interior of a relinquishment of a lease of certain tribal lands in California, introduced by our friend Congressman Duncan Hunter. Congressman Hunter introduced H.R. 1239 to provide a time period during which all groups and individuals impacted by the changes to the location of the health clinic might fully understand the ramifications of the relinquishment/lease agreement that will lead to the changes. At issue is land taken into trust by one tribe for the purpose of location a health clinic that provides service to seven southern San Diego Indian tribes and the surrounding non-Indian community. The tribe now desires to change the use of the land from a health care facility to a gaming facility while pro-

viding continued and improved health care. By changing the use of the land, the health clinic and those it serves will be impacted. This hearing is designed to provide information to all the affected parties.

The second piece of legislation, H.R. 2742, wonderfully explained by the gentleman from Oklahoma in his opening statement, talks about establishing a Native American Cultural Center and Museum in Oklahoma City, and so we appreciate his efforts there.

I would turn at this juncture—oh, one final note before turning to the ranking member for his statement. I would ask unanimous consent that Congressman Hunter, once he finishes his them, and Congressman Knollenberg of Michigan be allowed to join members of the Committee on the dais and participate in the hearing. Is there objection? Hearing none, it is so ordered, as we continue apace.

Now we turn to our good friend from Michigan, the ranking minority member.

[The prepared statement of Mr. Hayworth follows:]

**Statement of the Hon. J.D. Hayworth, a Representative in Congress from the State of Arizona**

Good morning. Welcome to the first Full Committee hearing on Native American issues. As Co-Chair of the Native American Caucus I have kept active in Native American issues. Now, once again as a Member of the Resources Committee, I have the opportunity to effect Indian policy through the legislative process. Native American issues are very important to my constituents as well as to me and I am pleased that I have a critical role in assuring that they are heard before this Committee.

We will be hearing testimony on two bills this morning. The first bill, H.R. 1239, To establish a moratorium on approval by the Secretary of the Interior of relinquishment of a lease of certain tribal lands in California, was introduced by Congressman Duncan Hunter. Congressman Hunter introduced H.R. 1239 to provide a time period during which all groups and individuals impacted by the changes to the location of the health clinic might fully understand the ramifications of the relinquishment/lease agreement that will lead to these changes. At issue is land taken into trust by one tribe for the purpose of locating a health clinic that provides service to seven southern San Diego Indian tribes and the surrounding non-Indian community. The tribe now desires to change the use of the land from a health care facility to a gaming facility while providing continued and improved health care. By changing the use of the land, the health clinic and those it serves will be impacted. This hearing is designed to provide information to all affected parties.

The second bill, H.R. 2742, To authorize the construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma, was introduced by a member of this Committee, Congressman Brad Carson. H.R. 2742 directs the Secretary of the Interior to offer to award financial assistance grants and technical assistance to the Native American Cultural and Educational Authority of Oklahoma for the development of the Native American Cultural Center and Museum in Oklahoma City, Oklahoma. The total amount of funding shall not exceed \$33,000,000 We look forward to learning more about this project from today's witnesses. I now yield to the Ranking Democrat for an opening statement.

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

Mr. KILDEE. I thank the Chairman and also the co-Chair of the Native American Caucus, along with myself. I look forward to hearing the testimony on 1239, and I will have some questions of the witnesses. And I would like to go on record reporting 2742 as introduced by our friend from Oklahoma. This has the support of the Native American Caucus in the Congress, which consists of 105 members. It has the support of Governor Keating of Oklahoma,

Senators Nickles, Inhofe, Campbell, the Oklahoma State Legislature, Representatives Watkins, Watts, Largent, Istook, and the Oklahoma delegation. I think you have done a very good job in putting this all together and I support you on that.

I look forward to the testimony of our other colleagues.

Mr. HAYWORTH. And I think the ranking member and, of course, other members, as is our practice, can submit their opening statements for the record.

Now we turn to a dynamic duo from the State of California. We thank them for their patience to testify here on panel one, and we will first hear from our friend, Congressman Duncan Hunter. Congressman Hunter?

**STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. HUNTER. Thanks for allowing us to appear before you. I know you have got a number of people that want to talk on this issue, and let me try to summarize my remarks. I don't have a prepared statement, but I want to kind of paint a picture for you with respect to this issue and perhaps take a few minutes on the dais with you.

If I could ask Tom to give to you my letter of 1985, June 13th of 1985, I think it lays this issue out fairly effectively. It gives you a good background.

Back in 1985, the seven tribes in my congressional district were part of what is known as the Southern Indian Health Council, and at that point we had very temporary facilities for the Health Council. And they came to me and informed me that they needed to have a permanent Indian Health Council clinic that was centrally located and convenient to all tribes, and also that it would be available to folks that lived in Alpine, California, a small community on Highway 8 heading directly toward your district, Mr. Chairman, about 15 miles out of what is known as Greater San Diego.

After we were looking around for a piece of land—and, in fact, in this letter, as you can see, it says—and this is a letter to the Acting Assistant Secretary of the Interior for Indian Operations, BIA, of 1985. It basically laid out what I have just told you, that we have a number of reservations and the Indian Health Council does not feel that it has adequate facilities. And, therefore, we had been searching and had found an 8.5-acre or 8.6-acre tract in Alpine.

I want you to kind of visualize this, if the members could kind of think about this. The tribes lay around the eastern portion of San Diego County, some of them 20, 30, 40, 50 miles from Greater San Diego. The Cuyapaipe Tribe in whose name we bought this 8.6-acre piece of land, is about 40 miles from the town of Alpine itself. So their reservation is about 40 miles from the area where we bought the 8.6-acre piece of land. And the other reservations are, some of them, a few mile away, some of them many miles away.

But we bought this piece of land specifically for putting the Indian Health Council, Southern Indian Health Council clinic at that location and constructing it. And as I stated—and I am looking at the fourth paragraph of this letter in 1985—I wholeheartedly en-

dorse the SIHC's proposal to acquire this 8.6-acre tract upon which they intend to construct a new medical center to serve all seven reservations within the 45th Congressional District, San Diego County.

Since time is pressing, I believe it is essential that we move at once to initiate the site acquisition process. Toward this end, I strongly urge you to take whatever action is necessary to expedite placing this 8.6-acre tract in trust by the Department of the Interior for the Cuyapaipe Reservation so that the construction of a new health center can begin in a timely manner.

Last paragraph: It is also important to note here that the Cuyapaipe Reservation and the SIHC, the Health Council, has successfully secured a \$446,000 grant from the Federal Department of Housing and Urban Development, HUD, to be used for the new medical center.

So we bought this piece of land specifically for a medical center to be used for the benefit of all seven tribes. And HUD money was obtained, at least according to this letter, before the purchase of the property itself.

It is a little bit for us—and let me just say all parties here I think are to be commended for the way they have pursued this issue. The Cuyapaipe have done this. They have pursued this in a businesslike manner with integrity. So have the other tribes, including those who oppose placing a casino on this particular piece of land.

Well, time marched on, Mr. Chairman, and as we all know, casino operations became in vogue in California, as they did in other places. And the Cuyapaipe at one point—and they are going to explain their case, I think very effectively—were approached about taking the health clinic and converting that piece of land, that 8.6 acres that is 40 miles from their traditional reservation into a casino on the outskirts of Alpine, California, and moving the health clinic or maybe moving it to another piece of property or moving it to the back of the property, but continuing to maintain a health clinic at some location. In fact, they have described, I think, a very attractive health clinic package if they were allowed to place a casino on this location.

Well, you have got seven members in this Indian Health Council, and two of the members, Barona and Viejas, objected to relinquishing the 25-year lease that the Health Council took from the Cuyapaipe who had the pink slip on this land. The Cuyapaipe then applied to the Health Council to allow the lease to be relinquished, and in a majority vote, with two of the members—that is, Viejas and Barona—voting no, but my last information is in a majority vote the Health Council agreed to relinquish this piece of land.

Now, here are the issues from my perspective. One is that it is still unclear as to exactly what role the community development block grants played in the acquisition of the health clinic property. Were they used to purchase the property? That was the initial response from the administration a couple of years ago when we first looked at this issue. Later, the Cuyapaipe brought in evidence that tended to rebut that, that actually one of the members of the tribe had come up with some cash and that was the down payment.

The other aspect of the utilization of the community development block grant money was that it was used as collateral for the acquisition of the 8.6 acres. Certainly it was definitely used to construct, obviously, the health clinic.

So an issue of whether or not taxpayer dollars were used in direct purchase or as collateral for this property is I think at issue and something we could explore today.

But the second aspect is this: We are now, I think, pretty familiar with the autonomy that is accorded reservations throughout this country that allow them to undertake operations that would not be allowed if they were private citizens using private property. And that autonomy, I think, is something that used to be respected, and we have respected it in California, and you know that we now have gaming operations in a number of reservations in California.

On the other hand, the idea of extending that philosophy to allow a tribe which is located 50 miles away from an urban area to purchase a small piece of property within the urban area at a location that will avail itself of greater traffic and greater utilization and place that property in trust--and, obviously, at the time nobody intended to build a casino on the property. I think that is very clear. The intent was to have it in an urban area because that was the ideal place to have a health clinic, not 50 miles out from the urban area. So to go 50 miles from the reservation and purchase a small piece of property for purposes of having a health clinic and then convert that into a casino operation at a later date I think to some degree moves beyond the idea and the principle of reservations being able to have autonomy and do with trust land what they want to do, even though it in some cases would conflict, if it was private land, with the local laws and State laws.

So it is a somewhat unusual case, Mr. Chairman. That is a brief illustration of the issues and the background, and we look forward to answering any questions that you folks might have, and also listening to the tribal members who are going to testify soon.

Thanks.

Mr. HAYWORTH. I thank my colleague from California.

Now we turn to his neighbor, who joins him there as a witness, our friend Bob Filner, also of California.

**STATEMENT OF HON. BOB FILNER, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. FILNER. I thank the Chairman. We recently went through re-districting in California, and I was moved all the way to the Arizona border. But I didn't know I had been moved all the way to Oklahoma. I am sure Mr. Carson would like additional Democratic help, but—

Mr. HAYWORTH. Wishful thinking on the part of the gentleman from Oklahoma.

Mr. CARSON. Most of my constituents moved out there about 50 years ago, Bob.

[Laughter.]

Mr. FILNER. That is why I am a Member of Congress. Thank you. I am here to support Duncan Hunter's bill, H.R. 1239, and our colleagues from San Diego County, Duke Cunningham and Darrell

Issa. And you know, Mr. Chairman, if Hunter and Filner agree, there probably should not be any opposition.

Mr. HAYWORTH. There could even be peace in our time.

Mr. FILNER. I think Mr. Hunter explained the controversy amongst the group of Indian tribes in San Diego County as to the disposition of this health clinic. Last year, in fact, an identical bill passed the House unanimously with the support of both the Republican and Democratic sides of this Committee, and I hope you will take similar action this year.

Mr. Hunter testified to the importance of the health clinic in question, and everybody agrees to that importance. I would urge this Committee to focus on making sure that any changes that affect the health clinic be the subject of consensus amongst the tribes and in the interest of all people, Indian and non-Indian, who depend on this facility.

This is not a gaming issue. I don't believe you will hear testimony from anyone today who doesn't support the sovereign rights of tribes to conduct gaming operations on tribal lands if they so desire. Most gaming questions involve balancing the rights of the tribes with the rights of States or the Federal Government. This issue focuses on the rights, responsibilities, and obligations tribes have with respect to each other. The land in question was taken into trust at the request of seven tribes, with the support of seven tribes, and for the benefit of seven tribes. It would never have been taken into trust for the benefit of any one tribe, particularly for the purpose of a gaming facility.

But I would emphasize that H.R. 1239 is not about prohibiting or restricting gaming on the site. Its purpose is to foster discussion and hopefully consensus amongst the tribes before the clinic can be used for any other purpose--whether it is gaming or a shopping mall or a parking lot.

I submit, as have others, that the Bureau of Indian Affairs erred back in the mid-1980's when it decided to take a parcel into trust for seven tribes but only title it to one, and the Jamul and Manzanita Tribes showed considerable foresight when they opposed that. Of course, the error is easy to understand, as the decision was made in the days before Indian gaming took hold on any large scale. It is hard to blame the BIA for failing to foresee a day when one tribe might seek to use the parcel for any use other than a health clinic.

However, my California colleagues and I have written to BIA urging them not to approve the lease relinquishment as long as controversy continues to surround it, and with representatives from BIA in the room, let me re-emphasize that point. As I said, it is easy to understand the failure to foresee potential problems back in 1985. However, it will be far harder to understand if that agency now takes precipitous action to exacerbate those problems.

H.R. 1239 is an effort to partially correct the administrative error by requiring consensus amongst the tribes before the property use can be changed. This does not give all seven tribes equal title to the parcel, but it does give all seven tribes equal say over how that parcel will be used, if it is to be used for anything other than the original purpose.

It is my understanding that this Committee will hear testimony to the effect that the change in land use will actually provide better care for the users of the clinic than today. If this is the intent of the Cuyapaibe tribe, that is good news, and you ought to consider that. However, I would urge the Committee to make sure that any promises of improved health care be specific and enforceable and that the resources for improved health care are assured regardless of the fate of any casino.

I am aware that some information is available in the proposed lease between Cuyapaibe and the Southern Indian Health Council, but my concern is that the other tribes have no recourse should the conditions in that lease not be met. As I understand the issue, if the BIA approves the lease relinquishment, only one thing is certain: A casino will go up on a site that was designed for a health clinic. To the extent that the Committee can put additional commitments from the Cuyapaibe Tribe, the Health Council and the investor into a record, this Committee will have served our constituents.

However, even if every promise from supporters of the casino is true, and even if they were enforceable, I would still have concerns about the propriety of allowing the change in land use in the absence of consensus amongst the tribes as a matter of principle. Another benefit that may come from this hearing is that the give and take between the two tribes at the center of this controversy might be the first step toward achieving that consensus.

Mr. Chairman, I thank the Committee for your attention. These matters are critical to our county. I know that this Committee has many issues to consider, and thank you for focusing on this one. Hopefully, with your oversight and intervention, we can take this controversial matter and make it one of consensus and reach a resolution that all will agree to.

I thank the Chair.

[The prepared statement of Mr. Filner follows:]

**Statement of the Hon. Bob Filner, a Representative in Congress from the State of California**

Mr. Chairman and Members of the Committee, I would like to thank you for this opportunity to testify on the subject of H.R. 1239, which I cosponsored along with my California colleagues, Duncan Hunter, Duke Cunningham and Darrell Issa. As you know, this legislation seeks to address a controversy among a group of Indian tribes in San Diego County, as to the disposition of an Indian health clinic. Last year, an identical bill passed the House unanimously with the support of both the Republican and the Democratic sides of this committee. I hope the committee will take similar action this year.

Mr. Hunter testified as to the importance of the health clinic in question for people in San Diego County, and I would add my unqualified agreement. I would urge this committee to focus on making sure that any changes that affect the health clinic be the subject of consensus among the tribes, and in the interest of all people, Indian and non-Indian, who depend on the facility.

Let me state my strong opinion that this is not a gaming issue I don't believe you'll hear testimony from anyone today who doesn't support the sovereign rights of tribes to conduct gaming operations on tribal lands if they decide to do so. Most gaming questions involve balancing the rights of tribes with the rights of states or the federal government. This issue focuses on the rights, responsibilities, and obligations tribes have with respect to each other. The land in question was taken into trust at the request of seven tribes, with the support of seven tribes, and for the benefit of seven tribes. It would never have been taken into trust for the benefit of any one tribe, particularly for the purpose of a gaming facility.

But I would emphasize that H.R. 1239 is not about prohibiting or restricting gaming on the site it's purpose is to foster discussion, and hopefully consensus among

the tribes before the clinic site can be used for any other purpose whether gaming, a shopping mall or a parking lot.

I submit, as have others, that the Bureau of Indian Affairs (BIA) erred back in the mid-1980's when it decided to take a parcel into trust for seven tribes and only title it to one, and the Jamul and Manzanita Tribes showed considerable foresight when they opposed this. Of course, the error is easy to understand, as the decision was made in the days before Indian gaming took hold on any large scale. It is hard to blame the BIA for failing to foresee a day when a tribe might seek to use the parcel for any use other than as a health clinic.

However, my California colleagues and I have written to BIA urging them not to approve the lease relinquishment as long as controversy continues to surround it, and with representatives from BIA in the room, let me re-emphasize that point. As I said, it is easy to understand BIA's failure to foresee potential problems from the perspective of 1985; however it will be far harder to understand if that agency now takes precipitous action to exacerbate those problems.

H.R. 1239 is an effort to partially correct that administrative error by requiring consensus among the tribes before the use of the property can change this does not give all seven tribes equal title to the parcel, but it gives all seven tribes equal say over how that parcel will be used, if it is to be used for anything other than its original purpose.

It is my understanding that the committee is likely to hear testimony to the effect that the change in land use will actually provide better care for the users of the clinic than they have access to today. If this is the intent of the Cuyapaaibe tribe, that is good news, and news that deserves to be considered. However, I would urge this committee to make sure that promises of improved health care are specific and enforceable, and that the resources for this improved health care are assured regardless of the fate of the casino. I am aware that some information is available in the proposed lease between Cuyapaaibe and the Southern Indian Health Council (SIHC), but my concern is that the other tribes have no recourse should the conditions in that lease not be met. As I understand the issue, if the BIA approves the lease relinquishment, only one thing is certain: A casino will go up on a site that was designed for a health clinic. To the extent that the committee can put additional commitments from the Cuyapaaibe tribe, the SIHC and the investor into a record, the committee will have served my constituents well.

However, even if every promise from supporters of the casino is true, and even if they each were enforceable, I would still have concerns about the propriety of allowing the change in land use in the absence of consensus among the tribes, mainly as a matter of principle. Another benefit that may come from this hearing is that the give-and-take between the two tribes at the center of this controversy might be the first step toward achieving that consensus, and making the legislation unnecessary.

Mr. Chairman, I thank the committee for its attention to these matters at this critical juncture. I know that this committee has many issues to consider, and I appreciate your focusing on one of importance to my constituents. Hopefully, with your oversight and intervention, we can take a matter of controversy and turn it into a matter of consensus, and reach a resolution satisfactory to all involved.

Once again, thank you for the opportunity to testify.

Mr. HAYWORTH. Congressman Filner, we thank you for your testimony, likewise Congressman Hunter, and, again, for purposes of full disclosure, the nickname "Zonies" is often applied to Arizonans who come to San Diego County during the summer months. So we have more than a casual concern about what transpires in your respective districts.

Mr. HUNTER. We welcome you.

Mr. HAYWORTH. Thank you very much.

Mr. FILNER. But go home afterward.

Mr. HUNTER. No, don't go home. We want lots of Zonies.

Mr. HAYWORTH. Well, already mixed messages start from the panelists.

Mr. HUNTER. Come to my district.

Mr. HAYWORTH. Okay. Congressman Hunter, I thank you for providing the correspondence here. Just one note. In 1985—and, of



course, you came here, you are a venerable member of this institution, I believe, having been elected in 1980. But fill me in on legislative history.

As I look at the State, in 1985, that obviously occurred before the Indian Gaming Regulatory Act was passed by the Congress of the United States.

Mr. HUNTER. Yes, and, Mr. Chairman, that is why I provided this letter, because the letter, I think, clearly shows the intent of all parties. The tribes all came to me, all seven tribes, and said we desperately need a permanent health clinic for the Southern Indian Health Council, and that is why we need to buy the property. And that was clearly why we got the community development block grant money, and we had that really in hand before we purchased the property.

And let me just say, all parties come here, I think, with good will, and certainly the situation changed, and nobody anticipated that we would have gaming and we would have these issues before us. But it is very clear that this piece of property was acquired specifically for a health clinic. It is in an urban area. And the reservation that got the pink slip to this property—and I think it is reasonable that one of them held title. That was easier than having all seven tribes hold title. They were all working together in a friendly manner, and so the seven members understood they would get a lease. And I think it is \$1 a year that they leased it from the Cuyapaipa.

So the idea that one tribe would hold title was something that was done for convenience, and certainly without anticipation that at some point the one tribe that held the pink slip would say now we want to use it for gaming and we are going to move the health clinic back or off.

And so it is clear that that was the purpose, Mr. Chairman, and I think that is probably the most compelling reasons not to allow this casino to be constructed on this small piece of land. It is not a part of the traditional reservation. It is in the urban area 50 miles away. And two of the members of the Health Council—that is, Barona and Viejas—who I think will testify before you, who had an interest in this, who helped put this thing together, opposed this. And I think even if they didn't oppose it, I think that you have a strong question of policy here. And the question of policy—and we are going to see this more and more. You are going to see tribes that have 5-acre pieces, 6-acre pieces, and other small pieces, what I call to some degree promoter gaming operations that will be identified that are in strategic locations. And in some cases, they will be separated from the reservation by some distance.

In this case, this place is separated from the traditional reservation by almost 50 miles. And I think that we have an interest in preserving the autonomy that attaches to the traditional reservation. Indeed, I have sponsored legislation in the past that has added contiguous land that was owned by the Forest Service and BLM to almost all the reservations in San Diego County. We have turned over some 5,000 acres that bordered them because it was more convenient for them to administer the land than for other Federal agencies.

But to go 50 miles away to an urban area, have a strategically located corner, and place that land in trust and then convert a health clinic to a casino I think goes beyond the intent of the law that accords now this autonomy that allows gaming to take place on reservations. So I think you have a philosophical question here.

Mr. HAYWORTH. And, of course, Congressman Hunter, changing conditions, changing laws necessitate the presence of us being here today.

Just a couple of things, tomato/tomato, Ewiiapaayp/Cuyapaibe, I am getting different pronunciations here.

Mr. HUNTER. Cuyapaibe.

Mr. HAYWORTH. Okay. I will go with your pronunciation.

Mr. HUNTER. I am going to wait until they come up and let them—

Mr. HAYWORTH. Well, let me ask you, does that band, in fact, have a gaming compact with the State of California?

Mr. HUNTER. No, to my knowledge, no.

Mr. HAYWORTH. Okay.

Mr. HUNTER. And I will let them testify.

Mr. HAYWORTH. Okay. One thing about the Cuyapaibe, has the band agreed to build new health facilities to replace the existing ones?

Mr. HUNTER. Yes. They came in and laid down a very attractive package which would—initially we were going to—they were going to move, have a health clinic in the back of the property. But I think the new proposal is to have—and I will let them explain that, but to have a health clinic on a piece of adjoining property or adjacent property and, in fact, to expand health care services.

And, incidentally, right now about 60 percent of the folks that use the health clinic are non-members, so the health clinic itself performs a vital function in East County San Diego.

Mr. HAYWORTH. Further amplifying that, has the Cuyapaibe band agreed to build and open those new facilities before the existing ones are closed down?

Mr. HUNTER. I think that they will. I mean, I think that is—that is my memory of the briefing that they brought in and laid down several months ago, that they—I think the Cuyapaibe—and I will certainly let them speak for themselves. I think that they are anxious to accommodate the community and the Indian Health Council, the other six tribes, with just about anything that is requested, as long as they are allowed to build a casino.

Mr. HAYWORTH. I really thank my colleague from California, and I appreciate his remarks saying that people are trying to deal with this issue with the best of intentions. And I am even encouraged to see Brother Filner here alongside Mr. Hunter, as I mentioned earlier, to see the bipartisanship. It is indicative of what happens on this Committee, and that is why I turn to the ranking member now from Michigan from any questions he might have.

Mr. KILDEE. Thank you, Mr. Chairman. I appreciate the time you have yielded to me.

Let me ask the sponsor of the bill, Mr. Duncan—we have served together in this Congress for many, many years. I think I came a few years before you, but you have been here a long, long time also, and we have worked together on many issues. Why should Con-

gress inject itself into the matters of seven sovereign tribes and the affairs of a California nonprofit corporation? The California nonprofit corporation has seven entities, votes in that. Why should we inject ourselves into their decision? Why should Congress do that?

I have been involved in Indian matters now, Duncan, as a legislator, as a lawmaker, for 37 years. And I think we set a bad precedent when we—especially when the BIA has a procedure to address these matters, for Congress to inject itself into matters involving several Indian tribes, when they have the ability to work it out themselves, why should Congress inject itself?

Mr. HUNTER. Yes, I would say to my colleague—and I certainly respect him, and you are right, we were here a long time before Mr. Filner came here from Oklahoma.

For this reason, Dale: It is very clear that when I was approached by the tribes to secure this land for a health clinic, no one intended nor did I intend that this would become a casino. And so in this case, we did something with an intent—kind of an unusual thing because this—we placed this land in trust for a tribe which is located many, many miles away. We basically gave them a small reservation in a community. And the reason we did that was specifically because it was a central location for all the people to come for health care, not for gaming but for health care.

And so if I had been approached in 1985 by somebody who said we have a proposition, Congressman Hunter, we want you to help us get 8 acres in Alpine, California, in the town at a strategic location so we can open a casino, my answer would have been no. But the question was: We have a compelling need for health care. As you noted, I use the word “urgent” in here, and I was strongly convinced of that case. And because of that, we went and not only got the property, but we got taxpayer money, community development block grant money to develop this health clinic.

So, once again, I am an advocate for and do support very strongly the autonomy that we have attached to the traditional reservation boundaries, and even when that is something that may involve uses of that property that the local government may not like, obviously, like gaming operations. But when you do something that is an extraordinary thing, that is, go 50 miles from the reservation and buy a piece of land specifically to give people health treatment, and then the health clinic land is turned into a casino, I think that is an extraordinary event. And so I think that is, Dale, what merits our review.

It was our actions that initiated this acquisition. That is why I did it. I certainly didn’t initiate my actions predicated on building a casino here. But now that is what is requested.

So I think those extraordinary circumstances merit some pretty close scrutiny.

Mr. KILDEE. Well, many years ago, probably about the time you arrived in Congress, I had a bill passed which reaffirmed the sovereignty of a tribe in Michigan, Lac Vieux Desert, and they have land, and at that time that was prior to the Indian Gaming Act. And I have been fairly conservative on gaming itself. As a matter of fact, I voted not to change the Michigan Constitution to permit any gaming in Michigan, not even put it on the ballot. So I have been rather conservative on gaming.

But when Lac Vieux Desert had their sovereignty reaffirmed by the Federal Government, they are the ones to determine how they use their sovereignty; otherwise, it is not sovereignty.

I think that we have to—we should be very reluctant to inject ourselves into the matters of sovereignty of one tribe or a combination of tribes. So Lac Vieux Desert had their sovereignty reaffirmed. It is a retained sovereignty, as John Marshall has told us, and they chose using their sovereignty to take gaming. That was their sovereign decision. And I think that this Resources Committee particularly, which has guidance and direction over Indian affairs, should be most reluctant, have only the most compelling reasons to interfere with how a tribe uses its sovereignty.

Mr. HUNTER. Just one rejoinder here, Dale, and that is this: As I told you, I worked back in the 1980's to take 5,000 acres of land that was owned by BLM and the Forest Service that adjoined reservations and transfer that to the reservations, thereby increasing their tribal boundaries.

I would agree with you totally with respect to that property. That property was put in trust within the traditional reservation land area and was additional land that they got. And there were no strings attached. We didn't say we want to turn this land over so that they can use it for agriculture or use it for industry. That was intended to expand the tribal area within which all the rights of the autonomy that attend these reservations would attach.

But this 8.5 or 8.6 acres of land was put in very specifically for the health clinic, and the reason it was located downtown was so the people that could get health care would be able to come into this urban area, and it was centrally located only for that reason. So I would agree with you totally with respect to the 5,000 acres that we put into the reservations throughout San Diego County, which was intended to have all the rights of sovereignty.

But I think my letter makes it very clear that this location and this purpose was solely for health care, and I think you would agree with that if you read the letter.

Mr. KILDEE. The trust deed itself does not contain any restrictions on the tribe to whom this land was given.

Mr. HUNTER. Well, certainly not. I mean, nobody contemplated in those days anything but—we had already had a community development block grant that was approved for the purpose of building the health clinic. So I don't think anybody thought there was any reason to say this can't be used for a glue factory or it can't be used for gaming. It was very clear, though, from this correspondence that we—and I will tell you my own experience. I was approached by the tribes who said we urgently need a central health care clinic, and that is what I did. And if I had thought that there was any reason or any chance of having a casino there, I can just tell you personally obviously I would have consulted all the local folks, I would have been very concerned. I wouldn't have pursued this.

Mr. KILDEE. Just one final thing, if I may, Mr. Chairman.

Mr. FILNER. Mr. Kildee, may I add something to the question, if I may, Mr. Chairman? Just very briefly. Mr. Kildee, you asked for a Federal nexus and, of course, the land is in trust by Federal action. CDBG funds were used to build the clinic.

I, like you, am a strong advocate of sovereignty, although I have, like you, personal philosophical problems with gaming. But the land was titled to one or convenience purposes out of the seven that were involved in the issue. And that is the basis of the problem here, that it was titled to one, whereas seven were involved. And what Mr. Hunter's bill is trying to do is say, no, all seven have to agree on any change in the use, as I understand it.

So the Federal Government's action led to this. That is why the Federal Government's action has to be resolved here.

Mr. KILDEE. I would just repeat, I think, again, we would all agree that we should be most reluctant to interfere with how a sovereign Indian nation uses its sovereignty, most reluctant.

One other question just quickly. Will there be any interruption of health care or would health care be improved under the plan which they have projected?

Mr. HUNTER. To give the Cuyapaipe their due, they laid out a very attractive package for constructing a new clinic and, of course, whether or not that would occur, in fact, remains to be seen, but that is what they do propose. They propose to provide uninterrupted service, and I think they will testify to that.

And, Mr. Kildee and Mr. Chairman and other members, everyone comes here, I think, in good faith. All the tribes involved had no idea back in 1985 what was going to happen. But I think there is a compelling reason because of the very focused, very limited nature of this acquisition for us to be involved in this. And I want to thank everybody. I have got to go Chair a conference, an Armed Services meeting, but I want to thank you for all the time you have given us, and I want to thank all of our tribes for coming out to make their case.

Mr. HAYWORTH. I thank the gentleman from California and the ranking member for his questions.

The bells have rung. There is a vote in progress. So what I would suggest is we thank panel one, unless anyone has any pressing questions for this first panel. Seeing none, we will thank you, gentlemen, for your attendance as colleagues and offering your input.

We will adjourn to vote, or recess to vote, I should say, and please come back as quickly as possible because we want to hear from panel two on the pending legislation.

So, with that, we stand in recess until we can get back.

[Recess.]

Mr. HAYWORTH. The Committee is back in session. I thank everyone who is here on what is turning out to be a day where we have to make some schedule shifts.

The Chair would advise those waiting to testify, it is the intent of the Chair to reverse order of the panel, to bring up panel three in what is noncontroversial legislation, to have them briefly extol the virtues of the legislation, and then we will return to panel two.

It is the intent of the Chair, even as I introduce panel three now, to be mindful of that fact. All your testimony will be submitted for the record. If you could synopsise what it is you have to say so that we could perhaps finish this collectively—and no disrespect is intended. But if we could collectively get this done in 5 minutes' time, I would be greatly appreciative. We understand that for all

members there will be some action on the floor coming in fairly short order, so I would like to bring back panel two very quickly.

Panel three, the Honorable Wayne Smith, the Deputy Assistant Secretary for Indian Affairs, Department of the Interior; the Honorable Kirk Humphreys, the Mayor of Oklahoma City; from the Oklahoma State Senate, Senator Kelly Haney; Executive Director Tommy Thompson of the Native American Cultural and Educational Authority of Oklahoma; and the Honorable Bill Anoatubby, who is the Governor of the Chickasaw Nation.

We welcome you all. Secretary Smith, I understand you have written testimony from our good friend, Neal McCaleb, and we would ask you to synopsise that. Again, that total testimony will be submitted for the record.

**STATEMENT OF WAYNE SMITH, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR**

Mr. SMITH. I bring greetings first from Assistant Secretary McCaleb, who, as you well know, is an Oklahoma native. He couldn't be here this morning because we made a deal, and all the bills that we oppose I get to testify on and the ones that we support he gets to testify on, which doesn't work out very well for me, but that is why I am here this morning.

First, good morning, Mr. Chairman and members of the Committee that are here. I will try to cut through the prepared statement as fast as I can in respect for your admonishment.

First, I would like to tell you that we are here in support of the objective of this project. It is an excellent example of what can be accomplished when the State, tribal, and local governments work together on a project to work toward economic and educational benefit of all parties concerned.

However, we believe that the use of limited Department appropriations to fund grant programs for the design, construction, and operation of projects of this type at non-Federal locations is inappropriate. This is especially true today when Federal budgetary resources are being redirected to America's war on terrorism and to protect Americans at home. Furthermore, any funds appropriated for this Cultural Center and Museum would not be available to reduce the Department's long list of deferred maintenance and construction projects for repairing Indian schools and preserving heritage and stewardship assets. Given the Department's large backlog of deferred maintenance and construction projects, we have established clear priorities for our very limited resources.

H.R. 2742 authorizes the Secretary of the Interior, subject to the availability of appropriations, to award a grant to the NACEA, an agency of the State of Oklahoma, to pay for a Federal share of the cost of the final design, construction, furnishing, and equipping of the Native American Cultural Center and Museum that will be located directly in the southeast corner of I-35 and I-40 in Oklahoma City and will encompass 298 acres. The Federal share of the cost for this project is 34 percent, and a total of about \$34 million is authorized to be appropriated for use as grants.

We urge the Native American Cultural Center and Museum to apply for existing Federal museum preservation and collection

management programs since it is an agency of the State of Oklahoma. A list of those programs are provided in my written testimony.

Thank you.

[The prepared statement of Mr. McCaleb follows:]

**Statement of Neal A. McCaleb, Assistant Secretary, Indian Affairs, U.S.  
Department of the Interior on H.R. 2742**

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Administration on H.R. 2742, a bill to authorize funding for the construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma, a museum designated to display the heritage and culture of Indian tribes.

As an Oklahoman, I can honestly say that this is a project that I have enthusiastically supported for several years. I believe this is an excellent example of what can be accomplished when the State, Tribal and local governments work together on a project to work toward the economic and educational benefit of all parties concerned. I believe, as do others, that this is a project worthy of support. The Cultural Center and Museum will serve as a place of learning and as a home for collections that showcase many features of the history of America's past to showcase the significant contributions that American Indians have provided to this nation.

The Administration appreciates the interest of the Native American Cultural and Educational Authority (NACEA) seeking to construct such a cultural center and museum devoted to providing a state-of-the-art facility and providing the highest level of care to the objects contained in its collection. However, the Administration believes the use of limited Department appropriations to fund grant programs for the design, construction, and operation of projects of this type at non-Federal locations is inappropriate. This is especially true now that Federal budgetary resources are being redirected to America's war on terrorism and to protect Americans at home. Furthermore, any funds appropriated for this Cultural Center and Museum would not be available to reduce the Department's long list of deferred maintenance and construction projects for repairing Indian schools and preserving heritage and stewardship assets. Given the Department's large backlog of facility rehabilitation and replacement projects, we have established clear priorities for our limited resources. These priority needs cannot be addressed if large portions of our construction funds are diverted to non-Federal facilities.

H.R. 2742 authorizes the Secretary of the Interior, subject to the availability of appropriations, to award a grant to the NACEA, an agency of the State of Oklahoma to pay for a Federal share of the cost of the final design, construction, furnishing and equipping of the Native American Cultural Center and Museum that will be located directly at the southeast corner of I-35 and I-40 in Oklahoma City, and will encompass 298 acres. The Federal share of the cost for this project is 34 percent and a total of \$33 million is authorized to be appropriated for use as grants, with the condition that the NACEA, or Oklahoma State or local government agencies, provide commitments of at least 66 percent of the cost of the activities.

The Administration urges the Native American Cultural Center and Museum to apply for existing Federal museum preservation and collection management programs since it is an agency of the State of Oklahoma. The following list of programs provide a variety of Federal funding:

*National Endowment for the Humanities (NEH)*

*Challenge Grants:* Challenge grants help institutions and organizations secure long-term support for, and improvements in, their humanities programs and resources. In special circumstances challenge grants can also help with limited direct costs, such as the purchase of capital equipment, construction and renovation, and even debt retirement. Because of the matching requirements, these NEH awards also strengthen the humanities by encouraging non-Federal sources of support.

*Preservation Assistance Grants:* These grants can help museums enhance their capacity to preserve their humanities collections. Applicants may request support for general preservation assessments or consultations with preservation professionals to develop a specific plan for addressing an identified problem. Awards will also be made to purchase basic preservation supplies, equipment, and storage furniture.

*Institute for Museum and Library Services (IMLS)*

*General Operating Support:* The IMLS General Operating Support program encourages the best in museum service. Museums use these funds to strengthen collections care and raise funds from other sources. The two-year award provides unrestricted funds for ongoing institutional activities.

*Conservation Project Support:* Grants are available for five broad types of conservation activities, including collections treatment and environmental improvements.

*National Science Foundation:*

The Biological Research Collections (BRC) program provides support for collection improvement, for collection computerization, and for research to develop better techniques of curation and collection management. Physical improvements typically involve rehousing a collection, replacing inadequate equipment, providing new tools for continued growth, or incorporating one or more collections donated by another institution or individual. Allowable costs generally include the purchase and installation of new storage systems, the purchase of curatorial materials, as well as new curatorial and technical assistance specifically designed to effect the proposed improvements for the duration of the proposed project.

*National Park Service*

*Save America's Treasures:* Grants are available for preservation and/or conservation work on nationally significant intellectual and cultural artifacts and nationally significant historic structures and sites. Intellectual and cultural artifacts include artifacts, collections, documents, monuments and works of art. Historic structures and sites include historic districts, sites, buildings, structures and objects. Grants are awarded through a competitive process. Each grant requires a dollar-for-dollar non-Federal match.

Once again, I would like to thank you for the opportunity to testify on what I believe is an important recognition of American Indians within the State of Oklahoma. I am advised that the Department can provide any technical assistance, in coordination with the Oklahoma State Historic Preservation Office, to determine ways to protect these cultural resources once they are acquired. I am pleased to answer any questions you may have.

Mr. HAYWORTH. I thank you very much, Assistant Secretary Smith.

Mayor Humphreys, welcome, and we are sorry for the abbreviation of your statement, but, again, your entire statement will be included in the record.

**STATEMENT OF HON. KIRK HUMPHREYS, MAYOR, OKLAHOMA CITY, OKLAHOMA**

Mr. HUMPHREYS. Thank you, Mr. Chairman. I am Kirk Humphreys, Mayor of Oklahoma City. My ancestors come from both the Choctaw and Cherokee tribes.

Oklahoma City is the midst of a massive urban revitalization, highlighted by the MAPS projects, which is a \$390 million investment in ourselves. Over the last 5 years, we have built three dams on our river, a new downtown baseball stadium, fully rebuilt our concert hall, a one-mile canal through the Bricktown area just across the Cultural Center site, a new downtown sports arena, a new library learning center, and full rehabilitation of our convention center.

My reason for mentioning the MAPS project is to emphasize that the new Native American Cultural Center will be integrated into a viable urban revitalization effort, and this will be the capstone of this rejuvenation effort. Here, Native American heritage will be defined and displayed for our children, for the citizens of Okla-



homa, and citizens from across the Nation, indeed, people from around the world. The center will seek to engage the visitors in exploring and understanding the rich heritage of our Native American citizens and that impact on our culture.

Thank you for hearing us today.

[The prepared statement of Mr. Humphreys follows:]

**Statement of Kirk Humphreys, Mayor, Oklahoma City, Oklahoma**

My name is Kirk Humphreys and I am the Mayor of Oklahoma City.

The purpose of my testimony today is to express the strong commitment of Oklahoma City to the development and construction of the Native American Cultural Center and Museum which is to be located on the 300-acre site on the North Canadian River near downtown Oklahoma City.

Oklahoma City competed with other jurisdictions within Oklahoma to become the designated site for this new Center. Our proposal included:

- Provision of \$5 million from the City
- Provision of the 300-acre tract of land for the site. This site is located at the intersection of I-35 and I-40, which is considered to be the Crossroads of America. The land abuts the renewed North Canadian River with its three dams and navigable water pools.

Oklahoma City is a uniquely appropriate location for the placement of the Native American Cultural Center and Museum. The City has invested over \$390 million in a Metropolitan Area Program (MAPS) over the past five years to build three dams on the river, a new baseball stadium, a fully rebuilt concert hall, a one-mile canal through the Bricktown area which is just across the river from the Cultural Center site, a new 18-thousand seat arena, a new library learning center and a full rehabilitation of the Myriad Convention Center. The new Cultural Center & Museum will be integrated into this viable revitalization effort as a jewel centerpiece, a location to enhance our tourism industry and economic development as well as a major forum for all people Native, non-Native, city, state and national to celebrate our Native American heritage and learn of the history, diversity and richness of the culture.

The time to tell the story of the tribes and their history in Oklahoma is long overdue. We are at a time and have an honorable opportunity to present this story in a manner of integrity and pride. The Center's education and public programming will be centered on this mission, creating a mechanism by which Native people can tell their story.

Education, public programs and visitor services are key to the long-term success of the Center: active public exploration of, participation in and dialog by and between Native Americans and non-Natives are foundations of the Center's concept. It is through programs that the Center will develop and sustain relationships with visitors, constituents and stakeholders, and create experiences that will attract audiences to Oklahoma and serve worldwide audiences through the Internet and publications. The interpretive content and means of expression in exhibitions or through the programs, activities, landscape and the building interconnect to form the visitor experience. Visitors will learn about the diversity of Native American nations and their stories of adversity, courage and endurance. Educational and public programs targeted to a variety of audiences will enhance this exhibition program. Curriculum-based school programs, teacher resource materials, teacher training programs, school outreach and a co-op and internship program will all serve to strengthen the Native American Cultural Center & Museum as an extremely valuable local, national and state resource that discusses Native American cultures and arts like no other place. An active schedule of programs for youth, children and adults will enrich and deepen the Cultural Center and Museum experience.

Of great importance for the Center and the Native American people who will shape it are the arts and performance programs: studio space for artists to create and teach in, artists-in-residence, and a scholarship program will all make it the venue for an explosion of ideas, colors and creativity that will establish the Center as the epicenter of Oklahoma Indian artist production. Dance and theater are an integral part of this artistic outpouring. The Center will host intertribal powwows and social dances, and feature traditional and contemporary music and theater production.

Oklahoma City is increasingly becoming a major focal point for Oklahoma and Native American cultural expression and cultural education. Oklahoma City is home

to the annual Red Earth Festival, which is considered to be one of the top Native American art festivals in the world. It also sponsors a week-long arts festival in the downtown area. In addition, we are constructing a new \$40 million art museum. These ongoing activities and promotion of the arts and culture will serve to complement the existence and operation of the Cultural Center.

It is fitting that this project be developed now as a partnership between the City, state and federal government, and our tribes. Oklahoma is home to the largest number of tribal governments of any other state by far. We are home to 39 tribes today, most of whom were moved to Oklahoma by the federal government before statehood. At the State Centennial Celebration in 2007, the opening of the Museum and Cultural Center will send a clear message of Oklahoma's celebration of its Native American culture and will provide a true opportunity for the citizens of our state, country and the world to better understand and appreciate this valuable heritage. I urge the passage of HR 2742 as soon as possible so that we can move the bill to the Senate.

Mr. HAYWORTH. Thank you, Mr. Mayor. Brevity is the soul of wit.

Senator Haney, welcome, and thank you, sir, for joining us today.

**STATEMENT OF HON. ENOCH KELLY HANEY, SENATOR,  
OKLAHOMA STATE SENATE**

Mr. HANEY. Thank you, Mr. Chairman. I am honored to provide testimony to this Committee in regards to House Resolution 2742. I want to extend my personal appreciation and the State of Oklahoma to Congressman Carson, who has introduced the bill, and for the Oklahoma delegation both in the Senate and the House who are supporting this bill, and also to Congressman Kildee, who has represented the Native American Caucus in your distinguished body. We appreciate the support you have given to us.

The vision for such a place as the Native American Cultural Center is at least a 40-year dream for me. In talking with the elders who, I guess, gave me the commission for this years ago, and through many efforts, in 1994 the Oklahoma Legislature created the Native American Cultural and Educational Authority by statute, and with that, appropriations did come for funding of the staff, and eventually we had put some dollars into the project.

This project, although it started with the legislature, is now a product of Oklahoma. It is, as you stated earlier, Mr. Chairman, a bipartisan effort of all Oklahomans to see that this program comes to fruition.

I think one of the things that intrigues me about coming to this body is that when you look at the Oklahoma tribal entities, there were five indigenous tribes to Oklahoma. Today there are 39 federally recognized tribes in Oklahoma. And the reason most of us are there is not by choice but rather by force as a result of the Indian Removal Act of 1830. We are there because of that reason, but in spite of that, Native people have become contributing members to society in Oklahoma. We feel like it is time to tell the story of the removal, that tragic part of our history in this country, and we think we can do it with great integrity. We want to tell that story and to rewrite history to some degree through the words of the Native American people themselves.

I remember growing up as a child, I spoke two languages, the Seminole language and the English language. I was very weak on the English language. But having grown up in that kind of society, today I may be one of the last of my people to speak the language

as we do. And it would be a tragedy to see that part of our history, a wonderful part of our history that is a tapestry that makes America what it is, the wonderful colors that it is that makes it work for all people.

With that, we hope that this Cultural Center can be a place where we can nourish the traditions and the practices of Native people because there is a correlation between the really good theological and philosophies that exist in Native culture, along with our own philosophies as a government in this great country.

For that reason, we come to you to ask for your help because the Oklahoma story is a compelling story. It is one that tells of all of the tribes that come from every part of this great country and that was placed in the place called Oklahoma. It is time to tell that story. It is past time to the story. And the State of Oklahoma and Oklahoma City, together we have contributed over \$30 million of land and actual dollars to the project to date. We have a world-class design group that is working with us to develop this concept, and we are very pleased—you will get a copy of the books, as I understand—to show you the quality of work that we are looking for. We are looking for a world-class Native American Cultural Center in Oklahoma, second to none in the world.

With that, Mr. Chairman, I certainly appreciate your allowing us to come before you. Finally, I think a very important part of this request is that 2 years ago we met with the National Congress of American Indians. They with resolutions supported the Concept of the Native American Cultural Center in Oklahoma. Last year we met with that same group and received the endorsement of the National Congress of American Indians in terms of the funding. And we only have approached the BIA as a funding mechanism to get funds to us, so hopefully we will be able to work with your and your Committee will see your way to help us in this great effort.

We are in this effort together in Oklahoma, and we ask for your help. I appreciate the opportunity to visit with you. Thank you, sir.

[The prepared statement of Mr. Haney follows:]

**Statement of Hon. Enoch Kelly Haney, Oklahoma State Senator and  
Chairman of Appropriations**

I am honored to be here today to provide testimony to this Committee relating to House Resolution 2742, authorizing the construction of a Native American Cultural Center & Museum in Oklahoma City, Oklahoma.

The vision for such a special place began several years ago when, in 1994, the Oklahoma Legislature created the Native American Cultural & Educational Authority to build and operate the Native American Cultural Center & Museum. However, this vision took on a life of its own many years ago. There has been a longtime, profound expression of needs, hopes and expectations of Oklahomans, Native and non-Native people alike regarding the existence and operation of a Native American Cultural Center & Museum in Oklahoma, a central place to unify and connect our Tribal governments as well as place to tell a story a story of many tribes from many places. Oklahoma is now home to these diverse and distinct peoples.

There is a great need to develop a Center to tell the story of the tribes in Oklahoma, to perpetuate Native American art, to nurture cultural concepts and practices, and, in general, to educate people on the Native culture across the Nation. The added benefit is a stronger economic base for Oklahoma because of increased tourism activity. There is no doubt that such a place is needed. This concept has been discussed and dreamed about for many years by many who feel that such a center should be located in Oklahoma, because of its central location in the United States. Oklahoma is also home to 39 tribal governments and is home to many more Native people who are members of tribes outside of the State or tribes whose history is tied to Oklahoma, as it was once known as Indian Territory.

Historically, Oklahoma was home to five indigenous tribes. The rest of the tribes are in Oklahoma because of the Indian Removal Act of 1830. Our Federal Government played a significant role in this unique history. We are all at a time of healing and it is time to tell a story. The Oklahoma story is a compelling one. It tells of many tribes from many diverse cultures, backgrounds, and regions. It is, in itself, a testimony of devastation, struggle, courage, survival and victory.

The vision of telling such a story is now being carried through by the people who have become a part of the project. This group of people not only consists of the Staff and Board of Directors of the Native American Cultural & Educational Authority; but, it also consists of the people of Oklahoma, the Oklahoma Indian community and tribal governments, as well as the collective voice of tribal governments nationwide. To date, we have received support through formal Resolutions from our National Congress of American Indians for the construction, development, and legislation of the Native American Cultural Center & Museum. In addition, we have received similar Resolutions of support from entities such as the All Indian Pueblo Council of New Mexico among others. The support of the Oklahoma State Legislature is obvious by its passage of legislation creating the Native American Cultural & Educational Authority and providing funds to begin its development.

Oklahoma is the proper forum to tell this story that has affected our Nation as a whole. Since 1994, the Native American Cultural & Educational Authority has made tremendous progress in telling a story in a way that is truthful and good. The Center is under design and development by a world-class twelve-member design team, including Johnson Fain Partners, Hargreaves Associates, Ralph Appelbaum Associates, LORD Cultural Resources, Harrison Price Company, Hornbeek Larsson Architects, Rick Carter and others.

There is a strong consensus among all those consulted in this effort that the Native American Cultural Center and Museum should be a place that "rewrites" the stories of the past and present in the words of American Indians, and becomes a forum for the shaping of the future. This Center should be a place where all people across the Nation can explore the history of adversity, injustice and survival experience by the tribes. It will be a place where stereotypes can be broken and myths expelled, a place where all people gather to witness a celebration of survival.

The final story can tell of the possibility of hope and prosperity when people of good will come together to build a sense of family in one nation.

I thank you for this opportunity to provide this testimony and express my great appreciation for your consideration of House Resolution 2742. I invite you to join us in meeting this vision to an incredible reality for all people. Thank you.

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Mr. HAYWORTH. Senator Haney, we thank you very much for your testimony and welcome you to Washington and appreciate your remarks.

Executive Director Thompson?

**STATEMENT OF TOMMY THOMPSON, EXECUTIVE DIRECTOR,  
NATIVE AMERICAN CULTURAL AND EDUCATIONAL AUTHORITY OF OKLAHOMA**

Mr. THOMPSON. Thank you very much. It is a pleasure being able to speak before this Committee today. I am Tommy Thompson, and I am serving as the executive director for the Native American Cultural and Educational Authority, a State agency. I am also a proud member of the Chickasaw Nation. I want to emphasize or mention that Congressman Carson did mention that we have applied for a Smithsonian affiliation and a partnership with the Oklahoma Historical Society. And with this mechanism, this will allow us to be able to have access to over 1 million exhibits out of the Smithsonian, as well as having access to the Oklahoma Historical Society's Indian Art and Artifacts Collection, which is one of the finest in the world.

At the same token, as Congressman Carson mentioned, we went through a selection process on site selection with the city of Oklahoma City being selected for this site. They have offered approxi-

mately 300 acres of ground, as Congressman Carson has mentioned, and also, in addition, have offered us \$5 million in a CDBG grant for the construction of this program.

We have just completed Phase II of our project, which included the program brief, master plan, and final building concept, spearheaded by Johnson Fain Partners out of Los Angeles and the Appelbaum Group out of New York. We feel like it is one of the finest design teams assembled to date.

Also, there is a tremendous environmental healing process going on with the site. In a partnership with the city of Oklahoma City, the State, and Federal agencies, the site at one point occupied over 60 oil wells in that particular site, and there is a tremendous process of healing this process, of cleaning it up environmentally to make it a safe, sound site for the museum.

Phase III will include the story line, the exhibitory, and the design of the Cultural Center, and we are beginning to start that process in the near future. Visitors will learn about the diversity of Native American Nations and their stories of adversity, courage, and endurance.

This will be a destination attraction. The Native American Cultural Center and Museum will welcome all visitors to explore the history, culture, traditions, and experiences of Native Americans. And we will work collectively with the tribes and institutions to preserve Native American heritage.

On the fundraising feasibility, we have just completed a fundraising study. Our fundraising goal is currently being established by the Authority to raise finances in the private and public sectors. We have created a 501(c)(3) for that mechanism, and it will be underway shortly. These funds will assist in the construction and ultimately the maintenance of the site. Also, future commercial facilities are planned to assist in the ongoing maintenance of the project. And being a State project, future State appropriations are also expected to assist in the ongoing maintenance of the project.

We are also continuing with a partnership with the city of Oklahoma City working on several grants through the T-21 funding processes as well as the establishment and preservation of the wetlands there.

Lastly, it is going to have a tremendous economic impact on the city of Oklahoma City. We expect to draw 650,000 visitors to the area with 2 percent growth per year. So we will be providing quality jobs and have a tremendous economic impact on it.

Thank you very much.

[The prepared statement of Mr. Thompson follows:]

**Statement of Tommy Thompson, Executive Director, Native American Cultural and Educational Authority**

*Smithsonian Affiliation/Oklahoma Historical Society Partnership*

The Native American Cultural Center and Museum has applied in a joint application with the Oklahoma Historical Society to become a Smithsonian Affiliate. With this affiliation, this opportunity will offer the Cultural Center a chance to be in a position to have access to over one million Native American exhibits from the Smithsonian. This will give the Native American Cultural Center and Museum the chance to become the "Smithsonian of the Midwest." In addition, this partnership will allow the NACEA to have access to the Oklahoma Historical Society's Indian Art and Artifact Collections, known to be one of the finest in the world. Building

these institutional ties and cooperation will help determine what will be possible in presenting the story as well as in what programs and activities will be available.

The Center will preserve and promote the living cultures of Native Americans, in the history, dance, arts, and education of historical ways. The Center will have a unique role in the development of partnerships with Tribes and other cultural institutions in preserving cultural aspects such as language.

#### *Market Analysis/Financial Analysis Context*

##### *Phase I Site Selection*

In accordance with State of Oklahoma regulations governing procurement, the Native American Cultural and Educational Authority issued a Request for Proposal (RFP) seeking applications for possible site locations for the Cultural Center and Museum. Responses from Ponca City, OK, Edmond, OK and Oklahoma City, OK. The City of Tulsa was also considered, but chose not to participate in the selection process. The Authority appointed a selection committee to review the proposals. After careful consideration, the City of Oklahoma City was selected. Its generous offer of approximately 300 acres in fee simple and a \$5 million Community Development Block Grant (CDGB) was the deciding factor in the selection process.

##### *Phase II Program Brief, Master Plan, Final Building Concept, Environmental Healing Process of Site*

The conceptual design of the site, which consists of the Program Brief with building concepts and the Master Plan, was recently completed. We are working in partnership with local environmental firms and the City of Oklahoma City to restore the land to a safe and beautiful site for the museum.

There is a tremendous environmental cleanup process that has been taking place over the past 1 ° years to “heal” the site from previous oil and gas production. These state and federal individual groups involved with the healing process include the Environmental Protection Agency, the U.S. Coast Guard, the Oklahoma Corporation Commission, the Oklahoma Department of Environmental Quality, and the Oklahoma Energy Resources Board.

##### *Phase III Story Line, Exhibitory and Design of Cultural Center and Museum*

This Phase will commence in the near future and will include the actual design work of the Cultural Center and Museum, including the exhibitry expressing the compelling story behind the 39 tribes’ histories and survival in Indian Territory now known as Oklahoma.

##### *Story Line, Exhibitory Phase*

Visitors will learn about the diversity of Native American Nations and their stories of adversity, courage and endurance. A wealth of unique and personalized encounters by Oklahoma Native Americans will be characteristic of a visit to the Center, beginning with the multi-sensory presentation in the “Who We Are” theater and carrying through to the strongly narrative long-term exhibits, the exciting and engaging “Family Discovery Gallery,” the vital and vibrant changing and community exhibits, and the contemplative and reflective outdoor exhibits.

As a destination attraction, the Native American Cultural Center and Museum will welcome all visitors to explore the history, culture, traditions and experiences of Native Americans. Our public education and performance programs, permanent and changing exhibitions, and events focus first on the Tribal Nations of Oklahoma, but are inclusive of all native peoples throughout the Americas. By creating opportunities for established and emerging artists, the Cultural Center preserves traditional fine arts and crafts, song, dance and encourages the exploration of contemporary cultural expression. We are a resource for the study of and a forum for the discussion of the Native American social, cultural, and justice issues past, present and future by providing access to information sources and dissemination of ideas through symposia, research projects and publications.

We will work collectively with the tribes and institutions to preserve Native American heritage. We collaborate with tribes and governments, as well as educational, cultural and community organizations at the local, state, national and international level to promote a deeper understanding among all people of the diverse Native American cultures.

##### *Construction Phase*

The second part to Phase III will be the actual design of the Cultural Center and Museum with projected landscaping, infrastructure and site work. The projected costs include the total construction cost initial phase, total consulting costs which include the design and project management, and the total project costs which include the “soft costs” composed of the surveys, legal, title fees, permits, etc. Total

costs of the project are estimated to be near the \$100 million mark. \$60 million is estimated for the costs of the buildings, \$30 million is estimated for the landscaping and site work, and \$10 million is estimated for the "soft costs."

*Fundraising Feasibility Study*

Phillips & Associates, of Los Angeles, CA conducted a fundraising feasibility study for the proposed Cultural Center and Museum, and fundraising goals are being planned by the Authority to solicit public and private funds from Corporate and private foundations and individuals who are known nationally to contribute to projects like the Cultural Center and Museum.

*Partnership with the City of Oklahoma City*

The City of Oklahoma City and the Native American Cultural and Educational Authority are currently engaged in a partnership to apply for T-21 Funds through the Oklahoma Department of Transportation for landscaping improvement of the site; the Transportation Enhancement Program application for surface transportation system for the project; and an EPA fiscal year 2002 Grant for research and studies pertaining to the protection of wetlands. In addition, the City of Oklahoma City maintains its continued and valuable commitment to the restoration and development of the river and the site overall.

*Economic Development Impact*

Research by the project consulting team has indicated that the project will attract 650,000 new visitors to Oklahoma. They estimate that this number will grow approximately 2% per year.

The development of this project should make a very positive economic development impact for Oklahoma City and the State of Oklahoma by providing new quality jobs and services. The project will be a "world class project" with dignity.

Mr. HAYWORTH. I thank you very much, Director Thompson. As we hear the bells are ringing, it is reminiscent of school. So we will have to depart in fairly short order. But even as I introduce Governor Anoatubby from the Chickasaw Nation, I want to welcome to the dais and ask unanimous consent for our friend, Congressman Istook, who joins us here.

We will hear from the Governor first, and then prior to running over for the vote, a brief statement from our friend, Mr. Istook.

Governor Anoatubby, welcome.

**STATEMENT OF BILL ANOATUBBY, GOVERNOR, CHICKASAW NATION, OKLAHOMA**

Mr. ANOATUBBY. It is good to be here, Mr. Chairman, and thank you for this hearing and thank you for the support of members of the Committee. We are very pleased that Mr. Carson has shown his support and introduced the bill. We are very pleased that Mr. Kildee has shown his support.

We would ask obviously for the support of this Committee for this bill. It is a grand project. It is one that, as has been pointed out, is a project that is a joint project, a community one, one which is not only that of the State but of the city and of the tribes. And I come here today to speak to you on behalf of supporting this bill, but I wanted to let you know also that the tribes in Oklahoma are also supportive.

There was an effort on part of the Cultural Center staff to educate and seek the support of the tribes in the State of Oklahoma, and to my knowledge, there is not a single tribe that is opposed.

As with any project like this, there will be those that say, yes, yes, let's go for it and then those who say, yes, if, yes, we can if certain things are done. And we intend to cater to the tribes of Oklahoma.

Representing the Chickasaw Nation, I know how our people feel. We are in great support, and we ask for the support of this Committee for this bill and this funding.

[The prepared statement of Mr. Anoatubby follows:]

**Statement of Bill Anoatubby, Governor, Chickasaw Nation and Chairman,  
Native American Cultural and Educational Authority**

It is a pleasure to provide testimony to this Committee relating to House Resolution 2742, authorizing the construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma.

Before I begin my comments, please allow me this opportunity to extend sincere appreciation for being allowed to have input into this Committee's work. The task of the Committee is not an easy one, but it is indeed an important one.

Preservation of cultures is a task which is incumbent upon all of us. As the United States of America is a true melting pot of cultures and peoples from all over the earth, preserving those various cultures provides us with a glimpse of where we have been, and details the possibilities and potential goals for where we are going as a united people.

The Oklahoma Native American Cultural Center and Museum will provide an opportunity to showcase the cultures of the 39 Native American tribes which call Oklahoma "home." Operating in an international, national, state and local context of cultural centers and museums, the center and museum will provide exposure to the unique cultures and histories of the forebears of this great land. That exposure will be provided to people from all walks of life, from all over the planet.

Throughout the United States there is a growth in Native American cultural institutions, as Native Americans and their governments reclaim their own histories and cultural patrimony. In 1990, when Congress adopted the Native American Graves Protection and Repatriation Act, directing federal institutions to return objects of cultural patrimony to tribes, a great breath of enthusiasm and hope was breathed into the efforts of the tribes to gather, protect and preserve their various, unique cultures and identities.

Since 1990, museums across the country have been working with tribes to return collections or to negotiate agreements for the care, handling and display of collections which present the various tribal histories. More and more, tribes are taking ownership of what has been taken from them, and are creating their own institutions to tell their special stories. Within Oklahoma alone, there are more than 20 institutions and organizations responsible for presenting to the public the histories and cultures of select tribal peoples, preserving objects of cultural patrimony or carrying out research. Yet, magnanimous as those effort might be, they lack cohesion in presenting the overall picture.

The state government, through its tourism campaigns, calls Oklahoma, "Native America." The history of the state is inextricably woven into the recent histories of the 39 tribes in Oklahoma. Each of those tribes has contributed not only to the overall development of Oklahoma, but to America as well. Because most of the tribes which are now located in Oklahoma were removed here by the federal government, the story must be told of how the Indian people acclimated themselves to their new home. The story must be told of how, out of many, one was born.

The Native American Cultural Center and Museum will serve as a satellite institution. It will complement and connect other institutions through programming and tribal-initiated cultural tourism activities. It will tell the story from the perspective of the tribes and through the eyes of those peoples, exposing all visitors to a history which has never, not ever, been gathered into one, central location.

I ask the Committee to also note that the Native American Cultural and Educational Authority is in joint application with the Oklahoma Historical Society State Museum of History to become a Smithsonian Affiliate. This realization would present an outstanding opportunity for the Cultural Center to become a "Smithsonian of the Midwest." Through this partnership, the Cultural Center would be able to borrow collections from and draw upon the considerable professional and museological resources of both institutions. The Cultural Center will have a unique role in this evolving context of cultural institutions, primarily as a partner and collaborator with the tribes and other cultural institutions in preserving and nurturing cultural aspects such as language, telling the stories to a broad audience and protecting cultural patrimony.

The tribes are very much in support of this effort. We endorse the proposal for the Oklahoma Native American Cultural Center and Museum, and urge the members of this Committee to also endorse making this concept a reality.



Thank you very much for allowing me the opportunity to provide these comments. I wish you every success in the tasks which lie before you. Your consideration of House Resolution 2742 will be appreciated, not only by Native America and the great state of Oklahoma, but by all who will visit this magnificent facility. Thank you.

Mr. HAYWORTH. Governor, we thank you for that succinct testimony.

Let me turn briefly to the gentleman from Oklahoma who joins us on the dais.

**STATEMENT OF HON. ERNEST J. ISTOOK, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF OKLAHOMA**

Mr. ISTOOK. Thank you, Mr. Chairman. I appreciate the courtesy of being allowed to speak, and I want to thank Congressman Carson for his efforts on this legislation.

I think what is probably clear from the array of people representing the multiplicity of interests, the bipartisan support on this, this is something that enjoys wide support because it has involved so much careful planning. There have been many things that people wanted to have adjusted before the consensus came together, but I think that consensus has come together. When you can have the city, the State, the community, the tribes, the Federal Government all participating to preserve the enormous heritage and role of the American Indians in this country, to preserve Native American history and culture, I think that it would be great for this Committee to reflect that consensus with its approving action and, of course, go forward with that approval on the floor.

I want to commend again everyone that has put such patient effort into this, Mr. Chairman, because what you see here represents many years of efforts, years that preceded my coming to this Congress, for example, and that patience I think needs to be rewarded, especially when the mechanism that is set up assures that that partnership will be continued.

We have the thresholds that are involved with Federal funding that I think is a lot better protection for the taxpayers' money than we see in many of the things that are presented to us in Congress.

So I thank you for the opportunity to be heard, Mr. Chairman, and I certainly urge favorable consideration of the legislation.

Mr. HAYWORTH. Thank you very much, Congressman Istook.

I see my friend from Oklahoma, Mr. Carson, would like to say a couple of words here.

Mr. CARSON. Could I ask unanimous consent to submit for the record a brochure detailing what the Native American Cultural Center will look like? It has the benefit of having a portrait of some Indian leaders from Senator Haney, who is a nationally renowned Indian artist himself.

Mr. HAYWORTH. Without objection, we welcome the artwork of the good senator from the Oklahoma State Senate.

[The brochure, "Native American Cultural Center - Oklahoma City," has been retained in the Committee's official files.]

Mr. HAYWORTH. Thank you for the testimony. As the bells prepare to ring again, the Chairman would make this point: The Chair is fully cognizant of the fact that many people have traveled a great distance, and even though there are other meetings that will

take place at the noon hour or shortly thereafter, the Chair is constrained to indicate that we will return for panel two. And while it may be an abbreviated form, we will take the testimony.

The Chair would also point out that it is his intent to allow the Committee to submit written questions to both of the panels. The record will remain open for 10 days, even as we have to move through in somewhat of a truncated fashion today. We thank panel three. Panel two, hang on. We will return after votes.

The Committee stands in recess until the completion of votes on the floor when we will reconvene.

[Recess.]

Mr. CANNON. If the second panel would take their seats, we will get—oh, I am sorry, Mr. Chairman.

Mr. HAYWORTH. Somebody has been sitting in my chair.

[Laughter.]

Mr. CANNON. This chair is way too big for me.

Mr. HAYWORTH. Oh, golly. Well, if the gentleman from Utah means that in terms of big shoes to fill, we appreciate that a great deal.

The Committee is back in session. Panel two includes the Honorable Wayne Smith, from whom we heard earlier, the Deputy Assistant Secretary for Indian Affairs; the Honorable Michael Liu, the Assistant Secretary for Public and Indian Housing from HUD. I know that he has to run to a luncheon engagement, so we will probably call on him first in the interest of time. The Honorable Michael Garcia, Vice Chairman of the Cuyapaape or Ewiiapaayp—which—okay, thank you, Michael. I appreciate that. I guess Congressman Duncan Hunter helped me out with that. Steve TeSam, Chairman of the Viejas Indian Reservation; and Ralph Goff, the Board Chairman of the Southern Indian Health Council, Inc.

Again, the Chair would remind everyone we will allow the Committee members to submit written questions to the panels, and the record will remain open for 10 days. Given the time constraints which we follow, let's begin with Assistant Secretary Liu. Welcome, sir, and we appreciate you making accommodations in your schedule.

**STATEMENT OF MICHAEL LIU, ASSISTANT SECRETARY FOR  
PUBLIC AND INDIAN HOUSING, UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Mr. LIU. Thank you very much, Mr. Chairman. In the interest of time, I will just move to those comments that begin with the title "Specific Comments on H.R. 1239."

House Resolution 1239, the bill that is the subject of this hearing, would establish a moratorium on the ability of the Secretary of the Interior to approve the relinquishment of a lease on 8.78 acres of trust land in San Diego County unless all seven tribes or bands involved in this dispute approve the relinquishment by tribal resolution.

What was HUD's role in all this? Beginning in 1985 and ending in 1993, the Department approved the award of a series of four Indian CDBG grants, totaling \$1,139,002, to assist in the construction and expansion of the Southern Indian Health Council's Alpine, California, clinic. The funds were used for some of the construction

costs for the facility, to later expand the clinic to include space for medical and dental services, and to further expand it by providing administrative offices. The last of the four grants was awarded in 1993 and closed out on March 21, 1996.

Under HUD's Indian CDBG regulations, a grantee may not change the use of real property assisted in whole or in part with Indian CDBG funds prior to or within 5 years after the closeout of the grant, unless certain conditions are met.

The regulatory conditions include: notifying affected citizens of the proposed new use and offering them an opportunity to comment on the proposed change; and reimbursing the Indian CDBG program in the amount of the current fair market value of the property, less any value attributable to the non-Indian CDBG funds used for the acquisition of, and improvements to, the property.

All regulatory conditions on the use of the Alpine health clinic expired on March 20, 2001, 5 years after the last grant was closed out.

I would like to point out that these Indian CDBG regulations on oversight and closeout procedures are identical to the regulations used in the Entitlement and Small Cities Community Development Block Grant programs, which are under the jurisdiction of my colleague Roy Bernardi, HUD's Assistant Secretary for Community Planning and Development.

This concludes my statement, and I would be happy, of course, to answer any questions. Thank you, sir.

[The prepared statement of Mr. Liu follows:]

**Statement of Michael Liu, Assistant Secretary for Public and Indian Housing, U.S. Department Of Housing and Urban Development**

*Introduction*

Mr. Chairman and Members of the Committee: Good morning, my name is Michael Liu, and I am HUD's Assistant Secretary for Public and Indian Housing. I am responsible for the management, operation and oversight of HUD's public housing program, which aids the nation's 3,300-plus public housing agencies in providing housing and housing-related assistance to low-income families. In addition, my jurisdiction encompasses virtually all of HUD's Native American programs. These programs serve federally-recognized Indian tribes and their tribally designated housing entities by providing grants and loan guarantees designed to support affordable housing activities and viable community and economic development in Native American communities, including Indian reservations, Alaska Native Villages, and other traditional Indian areas.

*Overview of the Indian Community Development Block Grant Program*

Among my responsibilities is the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, usually referred to as the Indian Community Development Block Grant program, or Indian C-D-B-G. This program, authorized by the Housing and Community Development Act of 1974, as amended, provides eligible recipients with direct grants to develop viable Indian and Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities, primarily for low- and moderate-income persons.

Eligible applicants for assistance include any Indian tribe, band, group, or nation (including Alaska Indians, Aleuts, and Eskimos) or Alaska Native Village, which has established a relationship with the Federal government as defined in our program regulations. In certain instances, tribal organizations may be eligible to apply.

The Indian CDBG program can provide funding for recipients in the following categories:

*Housing*—Housing rehabilitation, land acquisition to support new housing construction, and, under limited circumstances, new housing.

*Community Facilities*—Infrastructure construction, such as roads, water and sewer facilities; and single or multi-purpose community buildings.

*Economic Development*—A wide variety of commercial, industrial and agricultural projects, which may be recipient-owned and operated, or which may be owned and/or operated by a third party.

The program is administered directly by the six Area Offices of Native American Programs, with policy development and oversight provided, under my direction, by the ONAP National Office. Each Area ONAP is responsible for a geographic jurisdiction that includes from 26 to over 200 eligible applicants.

The program regulations provide for two categories of grants, Imminent Threat and Single Purpose. Single Purpose grants are awarded on a competitive basis, pursuant to the terms published in the annual HUD Super NOFA (Notice of Funding Availability). Each Area ONAP receives a proportional share of all annual Indian CDBG grant funds available; it rates, ranks and awards grants to the eligible recipients within its jurisdiction.

The Department may set aside in the NOFA a percentage of each year's allocation for the noncompetitive, first come-first served, funding of grants to eliminate or lessen problems which pose an imminent threat to public health or safety.

Area ONAPs assist grantees throughout the grant period, which can be up to several years. Successive grants are often awarded.

*Specific Comments on H.R. 1239*

H.R. 1239, the bill that is the subject of this hearing, would establish a moratorium on the ability of the Secretary of the Interior to approve the relinquishment of a lease on 8.78 acres of trust land in San Diego County, California unless all seven tribes or bands involved in this dispute approve the relinquishment by tribal resolution.

What was HUD's role? Beginning in 1985 and ending in 1993, the Department approved the award of a series of four Indian CDBG grants, totaling \$1,139,002, to assist in the construction and expansion of the Southern Indian Health Council's Alpine, California clinic. The funds were used for some of the construction costs for the facility, to later expand the clinic to include space for medical and dental services, and to further expand it by providing administrative offices. The last of the four grants was awarded in 1993 and closed out on March 21, 1996.

Under HUD's Indian CDBG regulations at 24 CFR 1003.504, a grantee may not change the use of real property assisted in whole or in part with Indian CDBG funds prior to or within five years after the close-out of a grant, unless certain conditions are met.

The regulatory conditions include:

- notifying affected citizens of the proposed new use and offering them an opportunity to comment on the proposed change; and
- reimbursing the Indian CDBG program in the amount of the current fair market value of the property, less any value attributable to the non-Indian CDBG funds used for the acquisition of, and improvements to, the property.

However, all regulatory conditions on the use of the Alpine health clinic expired on March 20, 2001, five years after the last grant was closed out.

I would like to point out that these Indian CDBG regulations on oversight and closeout procedures are identical to the regulations used in the Entitlement and Small Cities Community Development Block Grant programs, which are under the jurisdiction of my colleague Roy Bernardi, HUD's Assistant Secretary for Community Planning and Development.

*Conclusion*

This concludes my prepared statement. I would be happy to answer any questions you might have. Thank you again for providing me with the opportunity to testify before the Committee.

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Mr. HAYWORTH. Thank you very much, Mr. Secretary.  
Let me turn to Secretary Smith.

**STATEMENT OF WAYNE SMITH, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR**

Mr. SMITH. I will remember your admonishment about being brief and quick. Up front, the Department opposes this legislative solution. We believe that by having a Secretary obtain enacted tribal resolutions from each of the seven Indian tribes who comprise the nonprofit corporation infringes upon the internal workings of a legitimate corporation under California State law as well as the authority of the tribes who are members of the corporation. Clearly, we would want to confirm that any request for the relinquishment—that is a tough one, you are right—by the Health Council and/or the Cuyapaipe accurately reflects the desires of the parties to the lease and that the decision was reached in accordance with the council's bylaws.

Federal legislation should not attempt to interfere with those requirements which govern the corporation's actions under State law. Let me assure you, though, that we take our mandate to make leasing decisions that are in the best interest of the tribe very seriously, and we would do in making any lease decision affecting all the tribes involved in this issue.

Thank you.

[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. 1239**

Mr. Chairman and Members of the Committee, thank you for the opportunity to provide the Department's view on H.R. 1239, a bill to establish a moratorium on approval by the Secretary of the Interior of relinquishment of a lease of certain tribal lands in California.

The Department opposes this legislative solution as it purports to provide the Secretary with authority to interfere with the operations of a not-for-profit corporation organized under state law, pursuant to the choice of the tribal members of the corporation.

*Background:*

In 1981, the Cuyapaipe (pronounced "Kwee-ah-pie) Indian Tribe of San Diego County, California, along with seven other tribes (Barona Band, Campo Band, Jamul Band, LaPosta Band, Manzanita Band, Sycuan Band and Viejas Band) formed the Southern Indian Health Council, Inc. ("Council" or "SIHC"), a not-for-profit corporation (C1127659 filed on 10/18/1982), to serve the basic medical needs to tribal members. The corporation was formed under the laws of the State of California. A clinic was originally located on the Sycuan Reservation but relocated to the Barona Reservation in 1984, and subsequently relocated to land acquired by the Cuyapaipe Tribe 1986. The Sycuan Band has since withdrawn from the Council.

In 1986, the Cuyapaipe Tribe acquired title, in trust, to a parcel of land comprised of 8.6 acres located along Interstate 8 in the County of San Diego in the State of California. The purchase of the land was made with private funds and the acquisition was approved by the Secretary on April 1, 1986.

The Department of Housing and Urban Development had awarded four Indian Community Development Block Grants (ICDBG) from 1985 to 1993 to the Southern Indian Health Council for construction and expansion of a health care facility. Statements have been made that a portion of the ICDBG grant funds were used to purchase the 8.6 acres. However, a letter dated December 12, 2000, from the Deputy Assistant Secretary for Native American Programs for HUD states that funds for the purchase of the land did not come from the ICDBG program.

In February 1997, the Secretary approved a 25-year lease with an option for one additional 25-year period between the Cuyapaipe Band and the Council for the purpose of constructing and operating a health care facility.

In October 1997, the Cuyapaipe acquired an additional 1.42 acres of land in trust. The land is contiguous to the previously acquired 8.6 acres. The purpose of the ac-

quisition was to establish a "Pinto Home for Girls, a drug abuse facility" and the acquisition was approved by the Secretary on October 29, 1997.

In October 1997, the Secretary approved a 25-year lease with an option for one additional 25-year period between the Cuyapaipe Band and the Council for the newly acquired 1.42 acres of land.

In December 2000, the Cuyapaipe Tribe and Council submitted documents to the Bureau of Indian Affairs for a partial relinquishment of the leased premises lease.

*Proposed Legislation:*

The legislation proposes that the Secretary obtain enacted tribal resolutions from each of the seven Indian tribes who comprise the SIHC prior to taking any action to approve a relinquishment of the lease.

The Department believes that the imposition of such a requirement infringes upon the internal workings of a legitimate corporation organized under state corporations law, as well as the choices made by the Tribes that are members of the SIHC. As previously noted, the SIHC is a not-for-profit corporation comprised of seven tribal members, which elected to organize the corporation under California law. Every corporation has articles of incorporation and by-laws that govern how the corporation is run and how internal disputes are settled, which must be in accordance with the law of the jurisdiction where the corporation is organized. Accordingly, as long as any request for relinquishment of the lease complies with the SIHC's by-laws and relevant California State law, its action is legal and is the legitimate action of the corporation.

Although the Department would want to confirm that any request for relinquishment by SIHC and/or the Cuyapaipe accurately reflect the desires of the parties to the lease, and that the decision was reached in accordance with SIHC's by-laws. Federal legislation should not attempt to interfere with those requirements, which govern the corporation's actions under state law, pursuant to the choice of the tribal members of the SIHC.

Let me assure this committee, however, that the Department of the Interior and the Bureau of Indian Affairs would not take a request for relinquishment of this lease lightly. We would examine the request closely, as we do every leasing decision, in accordance with the authority granted to the Secretary by Congress and the United States' trust responsibility to the Cuyapaipe and the tribal members of the SIHC. Our mandate is to make leasing decisions that are in the best interest of a tribe. We take that mandate very seriously and would do so in making any lease decision affecting the Cuyapaipe and the seven member Tribes of the SIHC in this case, as well.

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Mr. HAYWORTH. Thank you very much, Mr. Secretary.  
Let's turn to Vice Chairman Garcia.

**STATEMENT OF MICHAEL GARCIA, VICE CHAIRMAN,  
EWIIAAPAAYP (CUYAPAIPE) BAND OF KUMEYAAY INDIANS**

Mr. GARCIA. Thank you, Mr. Chairman. Members of the Committee, my name is Michael Garcia. I am the Vice Chairman of my tribe, the Cuyapaipe Band of Kumeyaay Indians, a federally recognized tribal government in San Diego County. On behalf of my tribe, I would like to thank the Department of HUD and the Department of Interior for their comments and their testimony today.

I also serve as my tribe's representative on the seven-member board of directors that governs the Southern Indian Health Council, a nonprofit organization chartered under California State law. I am glad for the opportunity to testify on H.R. 1239 to set the record straight on matters of vital importance to my tribe. Simply put, this bill poses a serious threat to our tribal sovereignty.

Let me summarize my statement as follows: My tribe believes this bill is misguided and should be abandoned for several reasons.

First, the bill would override fundamental principles of tribal sovereignty by destroying legal agreements my tribe has reached with our tenant, SIHC, Incorporated. The bill would override a majority vote rule that SIHC adopted for itself pursuant to State law

over a decade ago. The bill's retroactive unanimous consent rule would vest any one of our seven member tribes with unilateral veto decisions over decisions already made. How can it be fair for the Congress to step in and give one tribe this kind of veto power?

Second, this bill would override SIHC Board decisions made last year in the open by local people about local matters and by a majority vote of the directors under SIHC rules of procedure consistent with California law. Should Congress be in the business of overturning local decisions lawfully made?

Third, this bill would keep my tribe from spending \$11.5 million to construct and equip a much needed new health clinic facility. The bill would also deny Indians and non-Indians served by SIHC the benefit of expanded health facilities and services. In addition, my tribe will also contribute an estimated \$100 million in supplemental funding over the following 15 years. Can anyone point to any other tribe that will have to spend as much as \$11.5 million up front on governmental services before they construct a gaming facility?

Fourth, this bill is premised on a series of falsehoods. Here are the facts. Cuyapaipe is the sole beneficial owner of the Alpine trust land. The land was purchased with non-Federal funds. Cuyapaipe is bound by legally enforceable agreements with SIHC to construct bigger and state-of-the-art clinics to replace SIHC's scattered clinic buildings. Our contractual obligations guarantee that clinic and gaming facility construction will not disrupt ongoing health services in any way. Only after the new replacement clinics are operating will the old clinic buildings be removed and gaming-related construction begin.

As mentioned before by the HUD representative, all HUD compliance requirements have been satisfied. Irresponsible allegations of unlawful activities are reckless and totally unfounded. We have extensive local community support for the project. Given the disparity between Viejas band's preposterous allegations in its testimony, I question whether the leadership has even read the lease amendment agreements.

Fifth, this bill deeply offends us. It would cause—it would strip my Cuyapaipe Tribe from our right to start gaming in our land. Cuyapaipe waited to pursue any gaming until after the voters of California voted twice overwhelmingly to permit Class III gaming by all tribes until after we had a Tribal-State Compact under IGRA. Other tribes did not wait. Are we to take a lesson from this bill that Cuyapaipe should have begun gaming when it was unlawful.

Sixth, the further delay called for by H.R. 1239 will kill this project. My project and SIHC have been talking about this for 5 years. The talk has turned into protracted and intense negotiations throughout 1999 and 2000 in which all seven SIHC board members actively participated. This resulted in the agreement, the approval of which has been pending at the Department of Interior since December 26th of 2000.

I think everybody's favorite words in all these testimonies is: In conclusion, my tribe has committed substantial revenues at unprecedented levels for health care, education, and other needs identified for our local communities. Millions of these dollars will be spent in

advance of any gaming activity. We have obtained the agreement of our tenant to vacate part of our pre-IGRA trust land. The BIA as trustee should applaud and approve this and allow us to dramatically improve health care services and become economically self-sufficient. Likewise, Congress should reject all calls to interfere in this process. In particular, Congress should reject H.R. 1239 because it is premised on falsehoods. It would carry out a misguided, inequitable, and unsound policy that violates the Department's trust responsibility to Cuyapaipe, and it runs roughshod over our tribal sovereignty.

Thank you for this opportunity to testify, and I appreciate the attention this Committee has given to this issue, especially during this time of national crisis.

[The prepared statement of Mr. Garcia follows:]

**Statement of the Honorable Michael Garcia, Vice-chairman, Ewiiapaayp (Cuyapaipe) Band of Kumeyaay Indians and Alternate Director, Southern Indian Health Council, Inc.**

*Introduction.*

Good morning, Mr. Chairman and members of the Committee. My name is Michael Garcia. I reside in San Diego County, California. I appear today as the elected Vice-Chairman of my Tribe, the Ewiiapaayp Band of Kumeyaay Indians, also known as the Cuyapaipe Band of Mission Indians, a federally-recognized tribal government. I also serve as my Tribe's alternate Director on the seven-member Board governing the Southern Indian Health Council, Inc., commonly known as SIHC, Inc., a non-profit, public benefit corporation chartered by the State of California. Each of seven member tribes appoints a representative to the SIHC, Inc. Board of Directors. I appreciate the opportunity to testify on H.R.1239 and related matters that are vital to my Tribe and to our Tribal Sovereignty.

*Summary Statement.*

I am here to explain why my Tribe believes H.R. 1239 is misguided and should be abandoned. Our reasons can be summarized as follows:

First, the bill would over-ride fundamental principles of Tribal Sovereignty by voiding legal agreements my Tribe has reached with SIHC, Inc., our tenant. The bill would dictate that certain tribes cannot set our own rules for how we make decisions in organizations we govern. The bill plainly tells my Tribe we cannot carry out internal matters of self-government without Federal interference.

Second, the bill would overturn a year-old decision by SIHC, Inc. that was made (a) in the open, (b) by local people, (c) about a local matter, and (d) by a majority vote under rules of procedure adopted by SIHC, Inc. consistent with California law.

Third, as a practical matter, the bill would remove all possibility that my Tribe can use very substantial non-Federal funds to develop and expand critically-needed health facilities and services in our community. The bill would destroy a development project that will bring both construction and operation jobs and economic activity to our community. The bill is an affront to our right, founded in basic doctrines of Tribal Sovereignty and federal law, to conduct lawful gaming on our own trust land.

Fourth, a few detractors have spread misinformation about the Cuyapaipe project that we have repeatedly been forced to correct, as we do again in this testimony below. Cuyapaipe is the sole beneficial owner of the Alpine clinic trust land. The land was purchased with non-Federal funds. HUD funds supported the construction of the old clinic facilities. With non-Federal funds, Cuyapaipe will construct two or three new, bigger, and state-of-the-art clinics to replace these aging, scattered clinic buildings. Contractual obligations guarantee that the construction will not disrupt ongoing health services in any way. Only after the new replacement clinics are open and operating will the old scattered clinic buildings be removed and gaming-related construction begin. All HUD compliance requirements have been satisfied.



*What are the Local Decisions Which H.R. 1239 Seeks to Over-ride?*

My Tribe, the landlord, signed an agreement with our tenant, SIHC, Inc.,<sup>1</sup> to amend their lease so as to reduce the amount of Cuyapaipa trust land which SIHC, Inc. now uses in Alpine from 8.6 acres to about 2.5 acres.<sup>2</sup> In simple terms, my Tribe's Agreements with SIHC, Inc. involve an exchange. We get some of our land back from our tenant earlier than scheduled, and in exchange, SIHC, Inc. gets two or three new, state-of-the-art health clinic facilities to replace their aging and scattered buildings. My Tribe's contractual obligation is to provide approximately \$11.5 million to build the new replacement clinic facilities for SIHC, Inc. as well as an additional 15-year stream of Cuyapaipa contributions estimated to total \$100 million for further facility and operational support of SIHC, Inc. plus additional revenue sharing over a total of 36 years.

Once made, such a decision by a landlord and tenant should ordinarily be the end of the matter. But the lease in question involves land held in trust for my Tribe by the U.S. Department of the Interior. With respect to this land, and this lease, my Tribe alone is the sole beneficiary of that trust responsibility. Thus, the Department's sole and only duty as trustee is to protect the interests of my Tribe. Like any trustee, the Department's approval must be obtained before a decision made by its beneficiary is given legal effect. Accordingly, as soon as our agreements were given final approval and ratification by the SIHC, Inc. Board of Directors in December, 2000, my Tribe asked the Department to approve the lease amendment agreements, also known as the lease relinquishment agreements.

We are astounded that H.R. 1239 is being given any consideration whatsoever. The bill's basic premise is the time-worn and discredited notion that imperial Washington, D.C. "knows better than the local Indians what is best for the Indians" and thus the Federal government should reverse a local decision.

*H.R. 1239 Would Interfere with the Department's Trust Duties Owed to Cuyapaipa.*

By seeking to over-ride the SIHC, Inc. vote to accept the lease amendment, H.R. 1239 would prevent the Department from approving the early return of Cuyapaipa trust land to the Cuyapaipa. There can be no dispute that this land is held for the sole benefit of the Cuyapaipa Band. Congressman Hunter, the sponsor of H.R. 1239, years ago supported our efforts to have this land placed in trust for the Cuyapaipa Band. In a June 13, 1985 letter to the Department, Mr. Hunter wrote: "I strongly urge you to take whatever action is necessary to expedite placing this 8.6-acre tract in trust, by the Department of the Interior (Bureau of Indian Affairs) for the Cuyapaipa Reservation, so that construction of a new health center can begin in a timely manner." (emphasis added). In recent months, one rationale given for H.R. 1239 is that the land was never intended for the benefit of the Cuyapaipa alone. Mr. Hunter's own words at the time of the 1985 purchase indicates otherwise.

*Congress Should Stay Out of It; The Department's Approval of the Lease Amendment Agreements is Ministerial.*

For several reasons, the Department's decision to approve the lease amendment Agreements should be properly seen as a simple, ministerial act to be given without delay. The proper role of the Department as legal trustee is quite limited on such an issue. Its only question on review should be: 'Is an early return of the trust land to the Tribe, the sole trust beneficiary, in the best interest of the Tribe?' The answer to that appropriately narrow question has to be 'yes'. The Cuyapaipa, like any landlord, should be permitted to renegotiate its lease with a willing tenant if the landlord finds a better use for its land. Likewise, the tenant has concluded, without any need for Congressional advice or second-guessing, that the lease amendment Agreements are very much in its interests. The Department, as trustee, is obliged to approve such an amendment that benefits its trust beneficiary. The Department should expedite the approval in order to avoid delays that risk competitive harm and loss of opportunity for its beneficiary.

<sup>1</sup> SIHC, Inc. is a California non-profit corporation governed by its own rules and by-laws as are all similar corporations in California. The seven Directors of SIHC, Inc. represent seven area Indian Bands (Barona, Campo, Cuyapaipa, Jamul, La Posta, Manzanita and Viejas). Today, the SIHC, Inc. Alpine clinic encompasses some 26,500 sq. ft. spread among three primary buildings and some modular units, all tiered into the hillside north of Willows Road. Over the past year this clinic has received more than 61,000 patient visits with roughly 50% of those patients being non-Indian fee-for-service patients.

<sup>2</sup> This is practical since we would be consolidating a number of buildings and temporary facilities now scattered across a steep hillside into one new and larger consolidated clinic building that will ease patient access and increase administrative efficiencies.

*H.R. 1239 Seeks to Overturn Bona Fide Local Votes of the SIHC, Inc. Board.*

The Cuyapaipe Band has not rescinded or revoked its lease with SIHC, Inc. The Board of the SIHC, Inc. took a series of votes during 2000 as the lease amendment Agreements took shape. The last and definitive vote was taken on December 18, 2000, when its seven-member Board of Directors approved the final lease amendment Agreements by a vote of four in favor, one opposed, one present but abstaining, and one absent. The Chairman of the SIHC, Inc. Board of Directors, Mr. Ralph Goff, Chairman of the Campo Band of Mission Indians, was present but did not vote, abstaining in his capacity as Chairman. Chairman Goff today will testify in opposition to HR 1239 and in support of the lease amendment Agreements. The only Director absent was the representative of the Viejas Band of Mission Indians who, although the meeting was lawfully and adequately noticed, chose not to attend or to send an alternate Director to this important meeting of the SIHC, Inc.

At an earlier July 10, 2000 meeting of the Board of Directors, six directors were present for the vote on Resolution 00-07-10-01 approving the transactions between the Cuyapaipe Band and SIHC, Inc. Three directors voted in favor, two voted against, and one abstained. The Director appointed by the Cuyapaipe Band, by agreement of the Board, purposefully absented himself for this vote.

The SIHC, Inc. Board of Directors has intended, understood, and treated abstentions as neutral; such abstentions have not been counted in determining whether there is a majority vote. As of July 10, 2000, however, the SIHC, Inc. by-laws did not specifically address this understanding. Thus, after proper notice the Board voted 5-2 on November 27, 2000 to amend the bylaws to clarify this original Board intention.

*No HUD Funds Were Used to Purchase our Trust Land in 1985.*

Some Members of Congress have been erroneously told that we used Indian community development block (CDB) grant funds received from HUD when in 1985 we purchased the land we now hold in trust, and that facilities funded with HUD grants are being inappropriately disposed. In fact, last year Congressman Hunter introduced legislation (as H.R. 5477) that would have prohibited the Cuyapaipe Agreements if Federal funds were used for land acquisition. After the Cuyapaipe Band documented the fact that no Federal funds were used, Congressman Hunter amended his legislation to its present focus of dictating unanimous consent rules upon SIHC, Inc.

Here are the facts. In 1985, an initial CDB grant was awarded to the Cuyapaipe Band for construction, contract services and administration of the SIHC, Inc. health clinic. None of the federal funds provided by this grant were used for land acquisition. Instead, a private bank loan from the Pacific Commerce Bank was used to purchase the Alpine Site for a total of \$85,000. A portion of those funds was contributed personally by former Cuyapaipe Chairman Tony Pinto. In a letter sent to the Chairman of the Viejas Indian Tribe, dated December 12, 2000, the U.S. Department of Housing and Urban Development stated: "The audit of the project supports the claim that the 8.9 acre parcel was not purchased with federal funds." (See attached December 12, 2000 letter from HUD).

Four CDB grants funded construction of the SIHC, Inc. facilities on the Cuyapaipe trust land leased to SIHC, Inc. A HUD letter (attached) to Viejas Tribal Chairman Steve TeSam dated September 14, 2000 confirmed, pursuant to ICDBG regulations at 24 CFR 1003.504, that the first three CBD grants had been previously "closed-out" properly. The fourth and last CDB grant closed out on March 20, 2001. The HUD letter concludes that after March 20, 2001 there are no more constraints on the use by SIHC, Inc. of these facilities. Of course, this inquiry begs the question—why would the U.S. object to us replacing these Federally-funded buildings and modular units with modern, bigger, better, and consolidated facilities paid for by non-Federal funds?

*The Viejas Band's Opposition Is Transparent.*

Who, one might reasonably ask, would benefit if they could block the dramatic improvements in SIHC, Inc. health facilities and programs that will come from the Cuyapaipe-SIHC, Inc. Agreements? It can only be those with interests and agendas other than health care. Perhaps those interests include those of the present Viejas tribal leadership who operate a casino one mile east of Cuyapaipe's trust land in Alpine where we intend to develop our gaming.

Since the key SIHC, Inc. vote at which they were absent, the present Viejas leadership have not availed themselves of any of the numerous opportunities they have had to resolve whatever issues they may have with our lease amendment Agreements. Until seven days ago, the Cuyapaipe Band has not been able to obtain an answer from Viejas as to why Viejas opposes our Agreements. The Cuyapaipe Band

wrote letters to Viejas dated November 6, 2000, December 11, 2000, June 14, 2001, and June 29, 2001, without ever receiving a substantive response. Cuyapaipe Tribal officials made repeated telephone calls to Viejas Tribal officials without a response until Viejas Tribal Chairman Steve TeSam returned Cuyapaipe Tribal Chairman Harlan Pinto's telephone calls on October 10, 2001, and offered, as an explanation for his opposition, only that the Viejas membership had voted more than one and one-half years ago that the SIHC, Inc. should remain "status quo." But that "vote" occurred many months before the terms of our lease amendment Agreements with SIHC, Inc. were negotiated.

By avoiding every opportunity to address any concerns they may have about our Agreements, present-day Viejas leaders have failed to allow established processes to work. Rather than Viejas conferring and consulting with SIHC, Inc. and the Cuyapaipe Band, Congress has been asked to insert itself into a local issue and over-ride a local decision made under state-sanctioned corporate bylaws adopted by representatives of seven sovereign tribal governments for purposes of their internal governance.—

The Indian Gaming Regulatory Act of 1988 (IGRA), the agreements between SIHC, Inc. and the Cuyapaipe Band, California Corporations law, Proposition 1A, Cuyapaipe's Tribal-State Compact, other applicable federal laws, and applicable HUD regulations provide appropriate protection for all interests and all interested parties. Legislation like H.R. 1239 has absolutely no merit, especially, where as here, it is based upon distortions and misrepresentations which would serve, if believed, to protect the Viejas Band's present gaming monopoly at the expense of public health improvements and at the expense of a small neighboring Tribe. For the Congress to permit H.R. 1239 to be enacted would be contrary to the principles of free enterprise, market capitalism, fair competition, and fair play that are at the very heart of American political values.

*Our Pending Lease Amendment Agreements Do Not Involve Gaming Approvals.*

Our request to approve our lease amendment agreement is the only decision now pending before the Department of the Interior before we can proceed to implement the Agreements. All gaming-related compacts and authorities are already in place and approved. In 1986, two years before the Indian Gaming Regulatory Act of 1988 (IGRA) was enacted, the land at issue was accepted into trust for the Cuyapaipe Tribe. In 1998, the people of the State of California voted overwhelmingly to permit Indian tribes to conduct gaming on tribal trust lands pursuant to IGRA. In September, 1999, the Governor entered into a Tribal-State compact with my Tribe. In March, 2000, the people of the State of California again overwhelmingly voted to permit Indian gaming on tribal trust lands pursuant to IGRA. In May, 2000, the U.S. Department of the Interior approved the Cuyapaipe-California Tribal-State Compact. Unlike Viejas, my Tribe waited until tribal government gaming was unquestionably lawful and permitted before we began to develop plans to conduct gaming on our trust land.

Our Agreements are fully consistent with Proposition 1A; my Tribe's trust land is eligible for tribal government gaming pursuant to IGRA. Our Tribal-State Compact contemplates our Band's trust land to be among those lands eligible for gaming (Sec. 4.2. Authorized Gaming Facilities - "The Tribe may establish and operate not more than two Gaming Facilities, and only on those Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act").

*Waiting Until Gaming was Lawful Has Resulted in a Cruel Irony for Cuyapaipe.*

We find H.R. 1239, and the fact of this hearing, to be painfully ironic since the California voters' proposition campaign was supported by all the Tribes of California, including those already conducting so-called grey-market gaming as well as those, like Cuyapaipe, who were not, was premised on each Tribe having the right to conduct lawful gaming under IGRA on tribal trust land. Consider the words of the immediate past Chairman of the Viejas Band, Anthony Pico, after Proposition 1A, the California Indian Self-Reliance constitutional amendment, received a 64.6% approval by statewide voters, with a 71% majority in San Diego County, the highest support percentage of any county in California:

"Despite what the opposition has said, Prop 1A was not about slot machines, religion or regulation. Like Prop 5, Prop 1A was about jobs and justice. Specifically it was about whether Indians would have the right to the same economic venues as other governments and commercial interests. More importantly, Proposition 1A was about our right to exist into the future.

The Cuyapaipe Band thought, and I would submit that 71% of the voters in San Diego County thought, that Proposition 1A was about the future existence of all fed-

erally-recognized tribes in California, including both the Cuyapaipe Band and the Viejas Band.

The Viejas Chairman went on to say: "Tonight's victory is a vindication of the voters' will over the power of a few to change the course of the future through legal technicalities and political obstruction." Now, the Viejas Band is asking the U.S. Congress to use legal technicalities to politically obstruct the outcome of a majority vote by the Board of SIHC, Inc. so as to prevent my Cuyapaipe Band from building a casino on our own land and dramatically improving health care for Indians and non-Indians alike in East San Diego County. I ask, on behalf of my Tribe, that this Committee not permit the Congress to interfere in our local affairs. I ask this Committee to stand up for what is right and stop this bill from moving forward.

*Cuyapaipe's Agreements Represent the Highest Fulfillment of IGRA.*

During the extensive congressional debate which preceded enactment of IGRA, numerous Members of Congress stated that one of the many goals intended to be achieved by this new statute was the creation of a process through which tribes could generate revenues which could be used to supplement the enormous shortfall in Federal funds needed by those tribes for tribal purposes including the construction and operation of health facilities. Cuyapaipe believes there is no better way for us to advance the intentions and goals of IGRA than to devote gaming revenues to the task of replacing aging health facilities, supplementing dwindling federal health appropriations, and supporting other community projects. There is presently no more critical governmental function in eastern San Diego County than the provision of health care. Our tribal members, and those of our neighboring tribes, and indeed a majority of our non-Indian neighbors, all agree that improving and expanding health care is a top priority.

If H.R. 1239 is enacted, the Cuyapaipe Tribe's carefully laid plans to develop lawful gaming and substantially support health care will be shredded. Is it acceptable public policy to punish a Tribe that has strictly adhered to Federal law, while others who have not waited for lawful authority are rewarded? Surely it is not.

It is unprecedented for a Tribe like Cuyapaipe to pledge and spend such a considerable sum of money in advance of any gaming revenue. The Cuyapaipe Tribe is able to allocate these very substantial contributions to our Indian and non-Indian neighbors because we are a small Tribe and because Cuyapaipe tribal leadership has insisted that our Band continue our strong support for SIHC, Inc. We know of no other Tribe in which its initial and long-term financial contributions to health care are so large, and for the benefit of so many non-members of the contributing Tribe. We are surprised, frankly, that our generosity is met with such mis-information and hostility by a few people.

*Local Community Support for the Cuyapaipe Agreements is Strong.*

We have extensive local support within the Alpine community. Cuyapaipe has worked closely with the Alpine community for the past year to identify community projects that could benefit from financial contributions by my Tribe. Health care, particularly the provision of urgent care services, is of increasing concern given the recent closure of the nearest emergency services hospital, and appears to be the top priority. Increased funding for education, police and fire protection are very urgent priorities as well. The Cuyapaipe Tribe is engaged in extensive, ongoing discussions with various groups within the Alpine community to identify projects which the Tribe will support with substantial financial contributions. The construction of these health clinics and casino, as well as their operations, will sharply boost the number of jobs in eastern San Diego County with resulting benefits from increased economic activity and tax revenue.

If the Congress abandons H.R. 1239 and the Department approves our lease amendment agreements, our next step will be to build a \$1.5 million replacement clinic on the Campo Reservation for SIHC, Inc., a \$5 million replacement clinic on 2.5-acres of the present 8.6-acre leased parcel, and in just the first 15 years of our gaming operation, provide an estimated \$100 million to SIHC, Inc. as a percentage share of our gaming revenues. We have also engaged in discussions with the local Alpine community regarding our plan to provide an estimated \$11 million in charitable contributions to the community over the first seven years, after we begin operating our tribal government gaming enterprise, to be used for education (construction of a new Alpine high school), open space, recreation, a new Alpine library, an Alpine community center, Alpine Fire Protection District, San Diego County Sheriff's Department, and land for a San Diego County Sheriff Department Alpine sub-station. In addition, if, before we begin construction of the \$5 million replacement clinic on the 2.5 acres (discussed above), the Interior Department can approve our pending application to accept into trust status the 17 acre Alpine Boulevard prop-

erty we recently purchased across the interstate from our present trust parcel, we will divert that \$5 million to combine it with another \$5 million we will contribute to construct a larger \$10 million clinic with the potential for urgent health care services at the Alpine Boulevard property.

*Enactment of H.R. 1239 Would Reward Unfair Competition.*

If H.R. 1239 is enacted and the Interior Department otherwise fails to approve our lease amendment Agreements, none of the financial commitments or activity recited in the preceding paragraph can occur. In fact, the only “winner” is the protection of the Viejas Band Enterprise’s gaming casino that will continue to operate without nearby competition.—On September 14, 1999, the San Diego Union–Tribune quoted immediate past Viejas Tribal Chairman Pico about the prospect of competition from other tribes following the voters’ approval of Proposition 1A:

“Pico said Viejas isn’t worried about competing for the local gambling business because ‘there’s plenty enough to go around’...Pico said market constraints would dictate the size of new casinos in rural areas of the county and state.”

The present Viejas leadership now appears to have done a complete about-face. Viejas recently amplified its opposition to our lease amendment Agreements in its letter to the BIA dated September 20, 2001 that opposes the Cuyapaipe Band trust application for the Alpine Boulevard property we want to lease to SIHC, Inc.

In that letter, Viejas states: “Viejas has focused its community and economic development efforts on its own reservation, with recent success in the viability of the tribal economy...” But what Viejas leaves unsaid is that eight years of its success was accomplished through unlawful Class III gaming without a gaming compact with the state of California and without federal regulation.

The Viejas letter also claims: “Ewiiapaayp is attempting to undermine the Viejas Reservation economy...”—But the Cuyapaipe Band’s economic development is authorized by Federal law, by State law, and will be developed pursuant to a Tribal–State compact approved by the Governor, the California Legislature, and the Interior Secretary in conformity with the overwhelming majority of the California voters. Our development plan represents the finest in free enterprise, capitalism, and fair competition that is intended to lead to self-sufficiency. How can this Committee and the Congress be against this? Yet H.R. 1239 is designed to kill our development at its roots.

The Viejas letter also states: “This type of encroachment on the Viejas tribal community’s economic sustainability cannot be tolerated...” There is only one conclusion to draw from this—Viejas is trying to use power it obtained through eight years of unlawful gaming to get the Congress to—block the Cuyapaipe Band and SIHC, Inc. from exercising their lawful powers of self-determination and free-enterprise to—improve—health care for—Indians and non-Indians alike, and to restore the Cuyapaipe economy.—

The Viejas letter then concludes that: “The BIA cannot, therefore, take any action which would facilitate Ewiiapaayp off-reservation gaming at the direct expense of the Viejas Band...” First, let me be clear, the Viejas reference to “off-reservation” is mis-placed. Our eight acre parcel is tribal trust land, and the Indian Gaming Regulatory Act of 1988 specifically authorizes Class III gaming under our September 10, 1999 Tribal–State Compact on that land. Second, with this statement the Viejas Band is saying the Interior Department has a trust responsibility to Viejas to override the Department’s trust responsibility to Cuyapaipe. If this policy were adopted, it would violate fundamental Federal–Indian principles of the government-to-government relationship the United States has with each Tribe. Viejas is voicing opposition to decisions that were made a long time ago. Congress enacted IGRA in 1988. The Governor signed and the Department approved our Compact in 1999 and 2000, respectively (when Viejas likewise first received its lawful gaming compact).

H.R. 1239 would require any alterations to leases entered into by SIHC, Inc. to have the approval of the tribes of all seven SIHC, Inc. Directors by tribal resolution in order to be given effect. This would vest unilateral power in any single one of the seven member tribes of SIHC, Inc. to veto the Agreement, which is the apparent intention of the Viejas Band in supporting H.R. 1239. We believe it is an inappropriate use of Congressional power to dictate changes to the by-laws of but one specific non-profit corporation in the entire country. Such a vote requirement is inconsistent with the requirements of California corporations law and imposes an almost insurmountable barrier to the conduct of business. It is not a proper role for the federal government to “fix” the outcome of corporate Board actions by giving one member the power to thwart the will of the majority, particularly when the outcome serves the self-serving interests of the one at the expense of the interests of the majority, and especially when the financing and political influence of the one to promote such a change in law were primarily derived from unlawful activities.

*Cuyapaipe Has Always Given Significant Leadership to the SIHC, Inc. Health Program.*

The Cuyapaipe Band, and most specifically our recently-retired Chairman Tony Pinto, has a long history of leadership in the area of Indian health care and social services. "Uncle Tony" (as so many know him), has been the catalyst for many developments and improvements in East County. He was a key founder of SIHC, Inc. Uncle Tony led the effort to rescue the SIHC, Inc. clinic when it sought a new location. SIHC, Inc. is no stranger to moves. It had to move from the Sycuan Reservation to the Barona Reservation in the early 1980s. When it had to move again in 1984, Uncle Tony stepped forward. He identified Alpine as a location well suited to respond to the twin problems besetting SIHC, Inc. in 1984: (a) an insufficient land base to allow for needed clinic expansion; and (b) the need for a central location to allow for ease of access by SIHC, Inc. member tribes. Alpine was centrally located within the Kumeyaay homelands. The Viejas Band then had about 1,657 trust acres in the Alpine community and SIHC, Inc. appealed to Viejas for a long term lease of 10 acres.

In a letter from the Viejas Band to SIHC, Inc. dated October 18, 1984 the Viejas Band declined the SIHC, Inc. request for lease of a 10-acre site for the clinic. Viejas Tribal Chairman Anthony Pico stated:

"...[W]e have carefully considered your request for a 10-acre site on the Viejas Reservation with a long term lease and can not offer you such a site. The Viejas Reservation is pursuing a vigorous development plan and all suitable sites are presently identified for development. Also, the facts are there is heavy concern from the tribal general council which prevents us from offering a site. Hope your efforts are successful."

The Cuyapaipe Band offered to do more than just hope SIHC, Inc. would be successful. The Cuyapaipe Band found available land suitable for the clinic in Alpine, acquired the land with non-federal funds, conveyed this fee land to the United States in trust, and leased the land to SIHC, Inc. for 25-years plus 25-year option for a rent of \$1 per term.<sup>3</sup> The Cuyapaipe Band went to these great lengths despite the fact that the rest of our trust land base could not support economic development, located as it is in the remote Laguna Mountains 35 miles northeast of Alpine, and comprised of 4,102 acres of sharp mountain ridges and steep slopes at elevations between 5,600 ft and 6,600 feet with but 2% of the land base suitable for buildings.<sup>4</sup>

*The Cuyapaipe Agreements Offer a Unique Opportunity to Expand and Improve Health Care Provided by SIHC, Inc.*

As a result of the Agreements with the Cuyapaipe Band, SIHC, Inc. will receive either a \$5 million clinic in Alpine on Willows Road and later another \$5 million clinic on Alpine Boulevard, or a \$10 million clinic on Alpine Boulevard should the BIA expedite the trust approval of the 17-acre Alpine Boulevard property and its lease to SIHC, Inc. In addition,<sup>5</sup> the Cuyapaipe Band will contribute over the first

<sup>3</sup>In exchange for this nominal rent, SIHC, Inc. helped pay off the mortgage with non-Federal funds.

<sup>4</sup>This trust land has a single-lane access road that is 12 miles of steeply graded, narrow, unmaintained dirt road crossing private, U.S. Forest Service, Bureau of Land Management, and San Diego County properties with two locked gates. This land lacks all basic utility services, and it would be cost prohibitive to do so. Congress enacted the California Indian Land Transfer Act of 2000 that returned Bureau of Land Management surplus land to six tribes, including 1,360 acres to our land in the Laguna Mountains. However, of this acreage, 928 acres was previously part of a trust land there, but was removed on paper by errant BLM surveys, with no relief provided by the BIA despite repeated complaints by the Band. As a result, the Cuyapaipe trust land will only increase by 432 acres, all of which is on ridge tops or steep slopes. I doubt that in my lifetime my Tribe will ever be able to make any significant economic development use of our 4,102-acre trust land in the remote Laguna Mountains. The best and highest use of our Alpine trust land, both for the Band and SIHC, Inc., is to return its right of use to the Band in order to significantly improve SIHC, Inc.'s ability to provide health care to all residents of East San Diego County.

<sup>5</sup>Our development plan is carefully calculated so as to not disrupt the delivery of any health care services at any time. The existing clinic buildings will remain fully accessible and functional throughout the entire construction process of their new replacement clinics in Alpine and Campo. Only after SIHC, Inc. certifies that each new facility is ready for occupancy will they move from the old buildings to the new. Roadway access in Alpine will be totally separate from access to the future gaming construction and facility site. Only after the new consolidated clinic is fully occupied will the old clinic buildings be torn down and the construction of a casino begin. Throughout all phases, from construction through to operations, roadway and parking lot access will be kept intact, with the old and new clinic traffic at all times kept separate from the construction and casino traffic.

15 years of its gaming operations an estimated \$100 million to SIHC, Inc. from the Band's casino revenues. These very significant benefits include:

- The \$100 million contribution will permit SIHC, Inc. to develop a world class clinic to serve the people of our community - Indians and non-Indians alike. Among many other benefits, we expect this to permit SIHC, Inc. to respond to our community's desperate need for urgent care/emergency services.
- The Band will build SIHC, Inc. a new clinic building on the northern-most 2.5 acres of our current Alpine trust parcel. This 33,500 sq. ft. facility (the "CCB" or consolidated clinic building) will consolidate all existing scattered facilities and operations under one roof, providing more modern and spacious amenities as well as the possibility of adding additional services. It has been designed by one of the foremost clinic design firms in the Country.
- The Band will also build SIHC, Inc. a new clinic building on the Campo Reservation (the "Campo Clinic"), to serve residents of the outer reaches of what we call East County. This 8,000 sq. ft. facility will replace an existing 2,500 sq. ft. modular building.
- The Band recently acquired a 17-acre parcel of land on Alpine Boulevard just across the interstate from our Alpine trust site. We have applied to the BIA to accept this land in trust for the Tribe, following which it will be dedicated to the exclusive use of SIHC, Inc. The Band is committed to funding a \$5 million clinic (the "Alpine Boulevard Clinic" or "ABC") on this site, to form the centerpiece of the major clinic to be developed over the coming years (utilizing some of the \$100 million noted above). Under our Agreement with SIHC, Inc., this 17-acre parcel must be accepted in trust by the Department before we can build a clinic on it for SIHC, Inc. for a number of reasons. The chief reason is that locating SIHC Inc.'s operations on trust land insulates SIHC, Inc. from being subjected to costly union organizing and collective bargaining and other requirements of the National Labor Relations Act (NLRA) that infringes on Tribal Sovereignty and that would divert funds from the provision of critically needed health care. The NLRA does not contain language expressly applying the NLRA to tribal governments nor expressly exempting such governments. In a 1988 case involving SIHC, Inc., and in several other cases, the National Labor Relations Board (NLRB) has consistently held that a tribally owned and operated enterprise located on Indian trust lands is exempt from the NLRA.<sup>6</sup> At the time its case was before the NLRB, the SIHC, Inc. clinic was located on Barona trust lands. Its location on trust lands was cited as a key factor in the NLRB's decision precluding attempts at union organizing on tribal trust lands. In addition, locating on trust land allows SIHC, Inc., to operate as a federally qualified health center subject to review by the IHS.

The Band has supplied financing to construct the clinics, secured by an irrevocable letter of credit. Construction of the CCB will proceed soon after the BIA approves the Tribe's lease amendment Agreements with SIHC, Inc. Development of the Alpine Boulevard Clinic site will proceed once that land is taken into trust by the BIA. If both these BIA actions occur virtually simultaneously, this would then permit the \$5 million earmarked for the CCB to be combined with the \$5 million intended for the Alpine Boulevard Clinic and result in a larger \$10 million Alpine Boulevard Clinic. The Alpine Boulevard Clinic fee-to-trust application is not essential to the success of our lease amendment Agreements, but common sense would dictate that its acceptance into trust be expedited in order to get greater health benefits sooner to the entire Alpine community.

*The Cuyapaipe Agreements Offer a Unique Opportunity to Bypass the IHS Facility Replacement Backlog.*

In its most recent facilities needs review (1994), the IHS determined that deteriorating conditions require that it replace, renovate or modernize 41 hospitals, 153 health clinics and 289 part-time health centers. In addition, it found that 12 completely new health clinics and 21 new health stations were in need of construction. Now, years later, these unmet federally-supported facility needs are even greater. The backlog is even bigger. The SIHC, Inc. clinic facilities are among those needing to be replaced or modernized. The President's recent Budget Request stated that the total unfunded amount identified on the five-year IHS Health Facilities Planned Construction Budget for fiscal year 2002 was approximately \$938 million. That's

<sup>6</sup>Fort Apache Timber Company, 226 N.L.R.B. 503 (1976); Southern Indian Health Council, Inc., 290 N.L.R.B. 436 (1988); Sac & Fox Industries, Ltd., 307 N.L.R.B. 241 (1992).

just the 5-year plan. The IHS's assessment of its overall facilities backlog need is \$7 billion for health facilities infrastructure, maintenance and equipment needs.<sup>7</sup>

The House and Senate Appropriations Committees have recently noted in their Committee Reports that billions of dollars are necessary to remove the IHS facility backlog. In response, the Congress has supported - and encouraged IHS to support—tribes in identifying and implementing alternative approaches to facilities construction funding, including a joint venture demonstration projects program under which a tribe is encouraged to use a combination of tribal, private sector or other available non-federal funds. Our Cuyapaipe-SIHC, Inc. Agreements represent the perfect model of an alternative approach to funding the critically needed construction of Indian health care facilities. The \$11.5 million in non-federal funds dedicated immediately, not under some future multi-year plan, to the prompt construction of replacement facilities would relieve the federal government of one of its financial obligations to Indians in San Diego County, California.

*The Cuyapaipe Agreements Offer a Unique Opportunity to Reduce the IHS Services Funding Shortfall.*

A severe shortage in funding for IHS-supported health services compounds the \$7 billion backlog in facility replacement needs. Funding for operations, services and staffing for IHS-funded programs is woefully inadequate. \$7.5 billion (in 1999 dollars) is needed each year, estimates the IHS, to address the disparities in health in the American Indian and Alaska Native populations by providing access to basic health services. If the goal is to meet basic health care standards, and bring American Indians and Alaska Natives up to a standard of health care available to federal employees under the federal health plans, it will take some \$8 billion a year.<sup>8</sup>

Congress has urged tribes to find alternate funding sources to supplement the meager federal appropriations. The Cuyapaipe-SIHC, Inc. Agreements represent a clear and effective response. We are surprised we must defend it, especially in a time of recession and deficit spending constraints.

*The Cuyapaipe Agreements Offer a Unique Opportunity to Our Alpine Community.*

While the specific avenues for making these contributions are currently being negotiated, it is my Tribe's intent to donate several million dollars a year to our local community once our gaming begins. We view this as consistent with our obligations under the Indian Gaming Regulatory Act - assuring that our non-Indian neighbors benefit from gaming facilities developed in our area.

Over the past year we have consulted with numerous Alpine residents in an attempt to better understand the needs facing our community. We commissioned a nationally-recognized polling organization to provide us unbiased and statistically accurate feedback on those issues, surveying over 400 households to determine the interests and concerns of the Alpine community. We also delivered direct mail to over 3,500 households in Alpine, and received express support from 96% of those who responded to our request for feedback on our project. We formed a Community Advisory Council and have regularly consulted with them, seeking input and guidance about our plans. We have attended meetings of many community organizations both to share our plans and to learn about their goals and objectives. Those organizations

<sup>7</sup>The fiscal year 2002 budget request for Indian health facility construction totaled \$37.6 million, and would enable IHS to provide full funding to complete just two health care facility construction projects. The IHS has completed construction of only 17 hospitals and 24 health clinics in the past 22 years. Meanwhile, the backlog is growing because buildings are deteriorating faster than they are being replaced. If the only option for a modern health care facility is to be funded under the IHS system, tribes lowest on the queue, or not yet even on the list, are not likely to see construction begun for at least 30 more years.

<sup>8</sup>IHS itself estimated in fiscal year 2000 that its per capita expenditure for an Indian or Alaska Native person was \$1,442, compared to the \$3,200 spent on health care for each non-Native U.S. civilian citizen. According to the IHS-chartered Level of Need Funded Workgroup, charged with developing a common estimate of health care funding needs for Indian people, for insured individuals under a Federal Employee Health Benefits plan, \$3,391 is available, compared with \$1,244 being available for the average Indian or Alaska Native person with comparable Blue Cross/Blue Shield benefits currently available under an IHS or tribal health program. At the request of the Senate Indian Affairs Committee over the past several years, the Congressional Research Service has prepared reports which document the continued under-funding of tribal programs, in constant dollars. Although the level of IHS appropriations increased during fiscal year 1975 - fiscal year 2001, that increase was at a lower rate than appropriations for other Department of Health and Human Services programs. The fiscal year 2002 appropriations conference report provides an increase of \$130 million over fiscal year 2001 enacted levels, far less than the \$275 million increase needed simply to maintain current service levels because of inflationary cost adjustments, population increases, and disease onsets. The total IHS fiscal year 2002 funding of \$2.8 billion pales in contrast to the \$15.1 billion needed on an annual basis to bring Indian health services up to minimally acceptable levels.



include the Alpine Citizens High School Committee, Alpine Friends of the Library Committee, Alpine Planning, the Alpine Chamber of Commerce, San Diego County General Plan Amendment Goals 2020, Sage and Songbirds, the Back Country Land Trust, the Sheriff's Department, the Alpine Fire Department, PTAs, Lions Club, East County Chamber of Commerce, and others. In addition, our intended contributions to improved health care in our community have already been mentioned.

One of our objectives is to ensure that each organization has an equal opportunity to benefit from our support. To that end we are working with community leaders to develop a fair and equitable process for allocating our annual contributions.

*Conclusions.*

The Cuyapaipe decisions pending before the Interior Department cannot, in all fairness, be deemed controversial. The Cuyapaipe Tribe has waited to begin to develop gaming until it became unquestionably legal to do so. The Tribe has voluntarily and remarkably committed itself to devoting substantial gaming revenues to health care, education and other needs identified by the local community. The Tribe has obtained the agreement of its tenant to vacate part of its pre-IGRA trust land. The BIA, as trustee, should applaud this, approve it, and get out of the way. Likewise, the Congress should shelve H.R. 1239 because it is mis-guided, inequitable, and unsound policy that is premised on inaccuracies and that interferes with the Department's trust responsibility role. Additionally, the BIA should expedite the acceptance of the Cuyapaipe Tribe's new 17 acres for an expanded health facility in trust, since the Tribe and its tenant would then have the opportunity to combine a portion of the donations earmarked for both Alpine clinics to construct a single larger facility on the 17 acre site permitting future clinic expansion.

The Cuyapaipe Band and SIHC, Inc. have taken every action in our power to guarantee that the benefits of our Agreements will be realized by SIHC, Inc. These actions include: (1) a definitive set of Agreements that contain specific performance provisions and remedies; (2) the funding of an irrevocable letter of credit with \$6.5 million for the construction of the new SIHC, Inc. clinics on Campo and Cuyapaipe trust lands; (3) the lease of the 17-acre property to SIHC, Inc. for a 25-year plus 25-year option term; and (4) the Cuyapaipe Band's offer to the BIA to restrict the deed trust of the 17-acre property to limit its use to health care uses only.

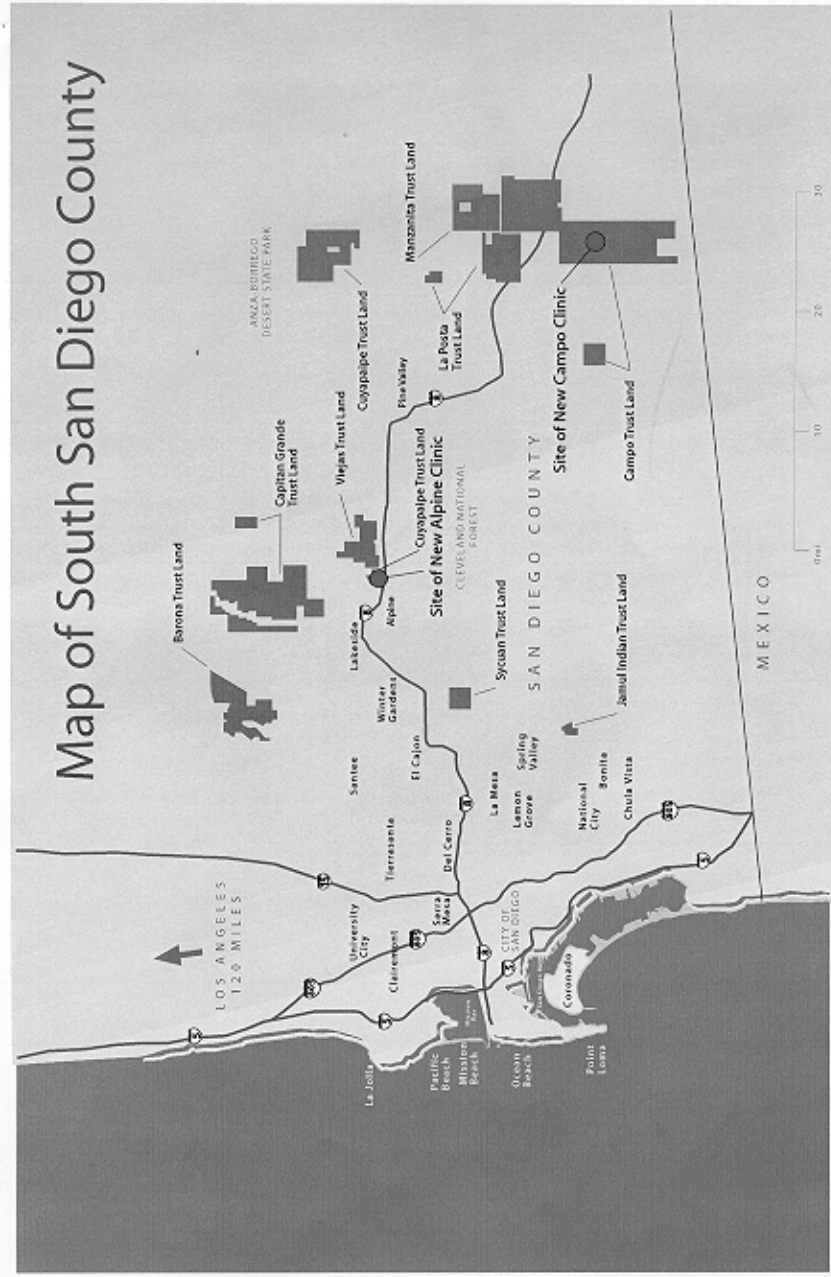
Accordingly, we ask that the Committee stop any further consideration by the Congress of H.R. 1239, and that the Committee urge the Department to expedite its review and approval of the Cuyapaipe lease amendment Agreements as requested by the Cuyapaipe Tribe. In a separate but related effort, we ask the Committee to urge the Department to expedite its acceptance of the Cuyapaipe Tribe's additional 17 acre parcel into trust for a new and expanded Alpine Boulevard Clinic as requested by the Tribe.

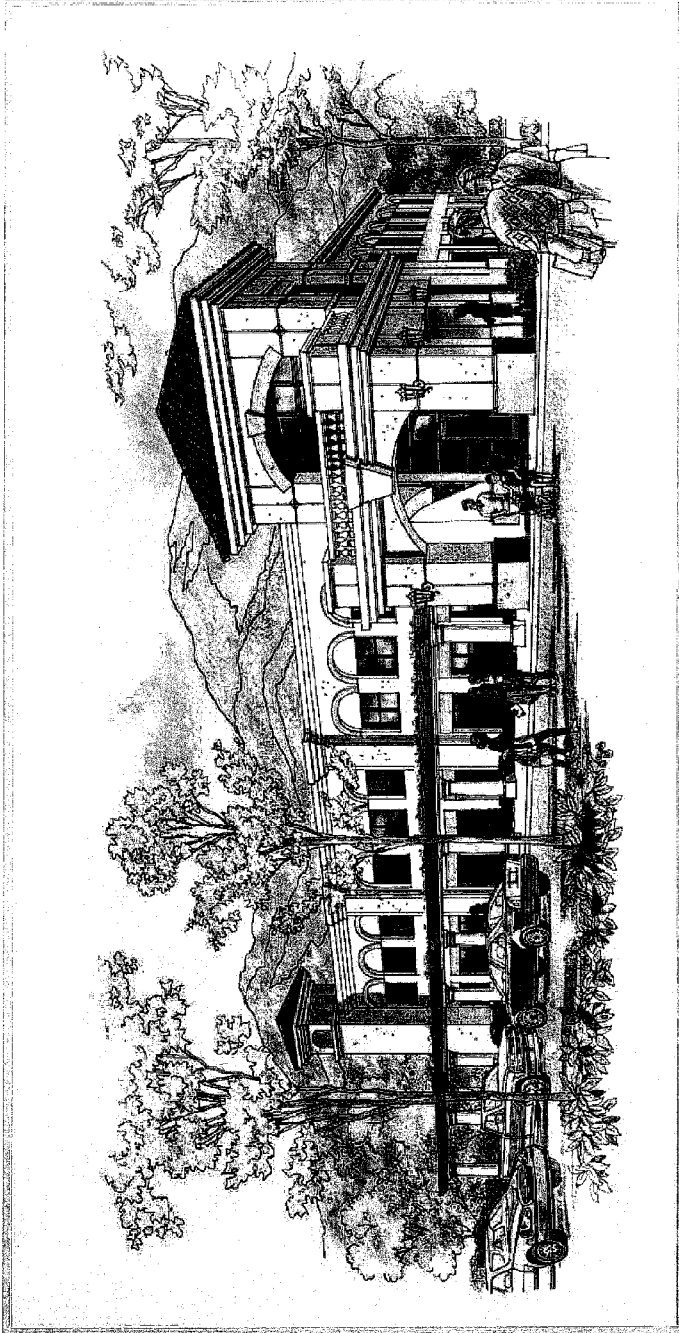
This concludes my remarks. I would be pleased to answer any questions the Committee may have. I ask that all exhibits I have attached to our testimony be admitted into the record of this hearing. Thank you.

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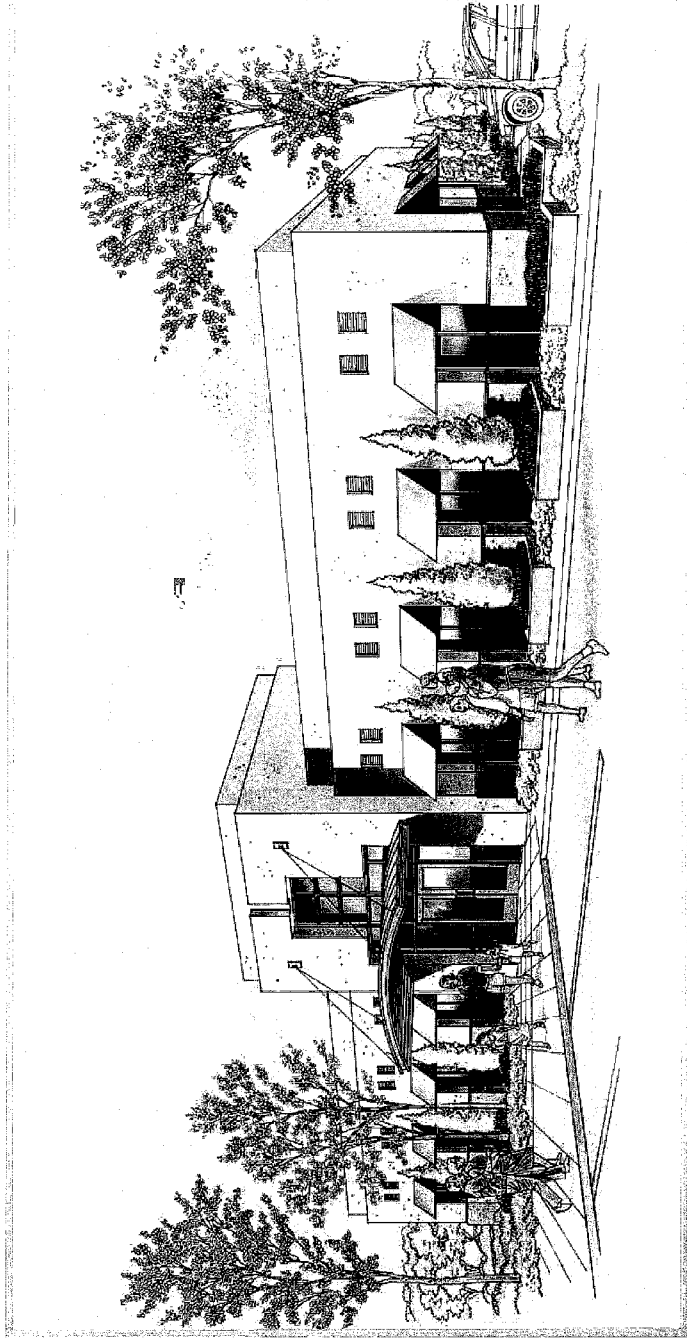
[Six letters submitted for the record by Mr. Garcia have been retained in the Committee's official files.]

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



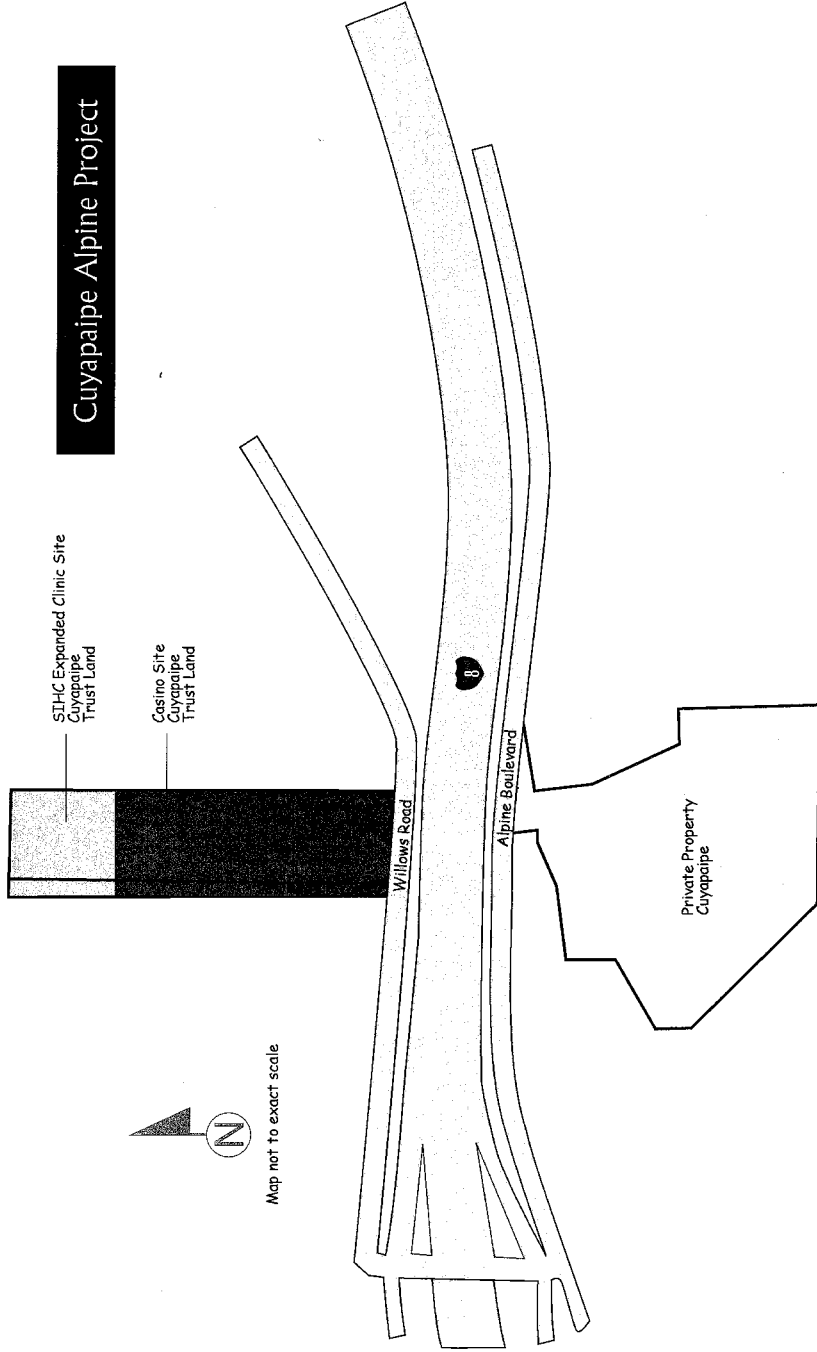


New Alpine Clinic



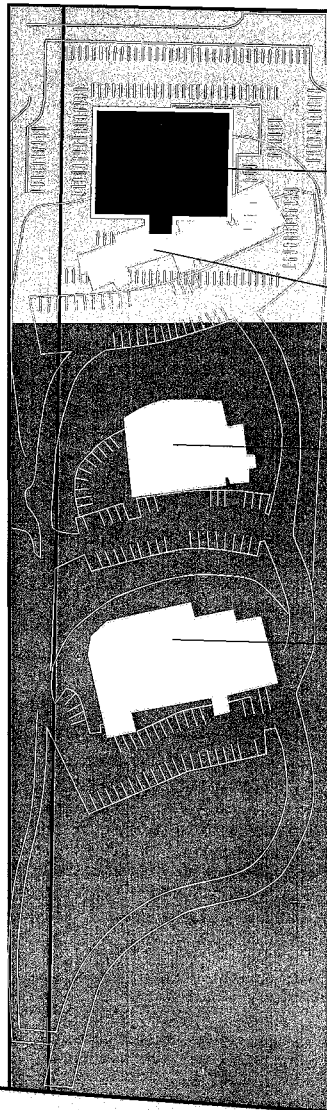
New Campo Clinic

# Cuyapaibe Alpine Project



SIHC Expanded  
Alpine Clinic Site -  
Cuyapaipa Trust Land

Casino Site -  
Cuyapaipa Trust Land

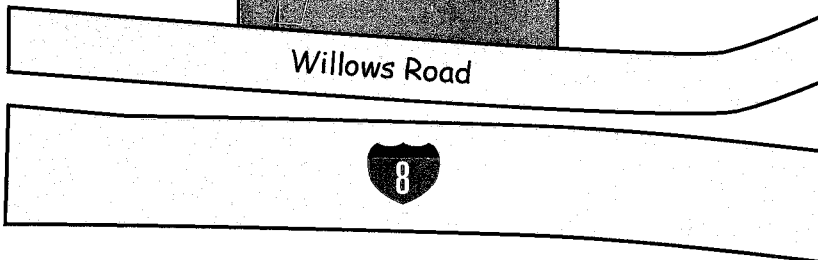


NEW CLINIC  
BUILDING

Existing

Existing

Existing



Willows Road



Mr. HAYWORTH. Thank you, Mr. Vice Chairman. Hearing you use those two words reminds me of a bit of doggerel that many public speakers, especially Members of Congress, could utilize. Speaker, Dear Speaker, please suffer no delusion; the two words we most want to hear from you are the two words "in conclusion."

Chairman TeSam of the Viejas Indian Reservation, that in no way would prompt you to go any faster than your colleague. But we would ask you to offer your testimony now.

**STATEMENT OF STEVEN TESAM, CHAIRMAN, VIEJAS BAND OF KUMEYAAY INDIANS**

Mr. TESAM. Thank you. Chairman of the Committee, honorable members of the Committee, I would like to thank you for the opportunity to testify on the subject of H.R. 1239. As Chairman of Viejas Band of Kumeyaay Indians, I am deeply involved with issues surrounding the SIHC Health Clinic. My appearance here today is with full authority and direction from the Viejas Tribal Council and our general membership. While the issue may seem less significant than many others of the wider issues faced by this Committee, the preservation of the Southern Indian Health Clinic is an important issue, not only because it preserves access to health care for thousands of people, both tribal and non-tribal, but also because of the precedents that could be set in Indian Country.

As you know, the clinic that currently occupies the site in Alpine, California, was a result of many years of work on the part of seven tribes to provide health care for tribal members in a remote area of San Diego County. The clinic was previously located on two reservations at different times, but these arrangements were unsatisfactory for a number of reasons. In the mid-1980's, the tribes unanimously decided that the fairest resolution would find a neutral site, located as centrally as possible for the seven reservations, and to construct a new, permanent facility at that neutral site.

The question of how the land became titled to the Cuyapaipe is not entirely settled. There seems to be some memory among different elders from different tribes, that it was done by drawing straws or some other arbitrary means. Although others have argued that the fact that Cuyapaipe was the smallest tribe played a role. One thing is certain: the titling of the land to one tribe rather than all seven was done for an administrative convenience, but that seems to have caused more problems than it solved.

There was controversy involved with taking the land into trust in Cuyapaipe's name alone, as evidenced by different other tribes' resolutions in the decision by the BIA, calling for land taken into trust for all seven tribes, some tribes have said. In retrospect, this position seems to be the correct one. However, at the time Indian gaming was in its infancy, and no one could possibly have foreseen that any tribe might use this land for anything other than the stated purpose.

The Southern Indian Health Council Health Clinic served the tribal community well for the ensuing decade and began to accept non-tribal members as patients as a means of enhancing operating revenue. Recently, the Cuyapaipe tribe announced their plans to change the use of the Alpine site by moving the health clinic to temporary structures on the current health clinic site for a casino.

To this end, the Cuyapaipe Tribe sent the BIA request to relinquish the 25-year lease on that land. That request was rejected by BIA on the basis of incomplete information, but a new proposal was submitted.

In addressing this request to terminate the lease of Southern Indian Health Council, I should note that Viejas supports the rights of tribes to have gaming facilities on reservation lands. Viejas is a gaming tribe, and we believe that there is a fundamental question of tribal sovereignty. The issue here is the land upon which the health clinic sits today was taken into trust for one purpose and one purpose only: to provide a permanent health clinic for the benefit of the members of the seven tribes. The fact that the land was titled to the Cuyapaipe Tribe as a matter of administrative convenience does not give one tribe the right to change its use.

The fundamental issue is the land was taken into trust to benefit seven tribes, and its use should not be changed without the approval of the seven tribes. This concept was incorporated in H.R. 5744, the Hunter-Filner-Cunningham bill from legislation last year, which passed the House unanimously. It is again incorporated into this bill before this Committee today. That is the position supported by the county supervisor, and by the entire delegation from that part of San Diego County, as expressed in the BIA letter.

Mr. Chairman, I should be clear that BIA's primary concern and only relevant concern is the preservation of the Indian Health Clinic. Some will accuse us of fearing competition from a nearby casino, but we should emphasize that we do not actually know if having another casino in the area would be a benefit or harm. Rather, our general membership listened carefully to the council, some of the tribal elders, about their efforts to establish a health clinic for all seven tribes and get the land into trust for that purpose. They know that it was done at a time before gaming, when resources were extremely scarce. They were and are concerned about the current plan to undo the elders' hard work and to jeopardize the health care access, all for financial gain of just one tribe and their outside investor.

I should emphasize that the Hunter-Filner bill does not say that Cuyapaipe may never have a casino on that site. Rather, it says that the lease relinquishment may not be approved until there is consensus among all seven tribes. This bill is intended to foster discussion and negotiation, and Viejas will be an active and constructive participant in any such negotiation.

We have always supported the reasonable efforts of other tribes to improve their economic situation, and we will be similarly open with Cuyapaipe. However, as things are proceeding today, Cuyapaipe is seeking to press forward without regard for the concerns or wishes of the other tribes involved, and we believe they will continue to do so unless Congress intervenes.

In closing, Mr. Chairman, I should emphasize that Congress is dealing with many weighty issues in these difficult times, and as grateful as I otherwise would be for your attention to this matter, I and the Viejas tribe are very appreciative of your Committee colleagues for taking time for us against the backdrop of the war on terrorism.



Thank you again, and I look forward to answering any questions you may have.

[The prepared statement of Mr. TeSam follows:]

**Statement of Steven TeSam, Chairman, Viejas Band of Kumeyaay Indians**

Chairman Hansen and members of the Committee, I would like to thank you for the opportunity to testify on the subject of H.R. 1239. As Chairman of the Viejas Band of Kumeyaay Indians, I have been deeply involved with issues surrounding the SIHC Health Clinic from its inception. My appearance here today is with full authority and direction from the Viejas Tribal Council and our general membership. While this issue may seem less significant than many of the wider issues faced by this committee, I submit that the preservation of the SIHC Health Clinic it is an important issue, not only because it preserves access to health care for thousands of people, both tribal and non-tribal, but also because of the precedents that could be set for Indian Country.

In some ways, this issue is unique many knowledgeable people have told us that they are aware of no other situation where land was taken into trust for the benefit of multiple sovereign Indian tribes. Unlike many Native American issues before this committee, however, the SIHC Health Clinic issue is not about the rights of tribes versus the state or federal government, but rather the rights and obligations of tribes with respect to other tribes.

As you may know, the clinic that currently occupies the site in Alpine, California was the culmination of many years' work on the part of seven tribes to find the best way to provide access to health care for tribal members in a remote area of San Diego County. The clinic was previously located on the reservations of two other tribes at different times, but these arrangements were unsatisfactory for a number of reasons. In the mid-1980's, the tribes unanimously decided that the fairest resolution would be to find a neutral site, located as centrally as possible between the seven reservations, and to construct a new, permanent facility on the neutral site.

This proposal for a permanent clinic site might never have become a reality without the help of the author of H.R. 1239, Rep. Duncan Hunter. I would refer you to Attachment A, which is Rep. Hunter's letter to the Bureau of Indian Affairs, dated June 13, 1985 seeking to have the Alpine site taken into trust for the new health clinic.

The question of how the land came to be titled to the Cuyapaibe tribe is not entirely settled. Attachment B, the BIA memo describing the land to be taken into trust, yields little information on this. There seems to be some memory among our elders that it was done by drawing straws or some other arbitrary means, although others have argued that the fact that Cuyapaibe was the smallest tribe played a role, and there is some evidence of this in the BIA memo. One thing is certain: the titling of the land to one tribe (rather than all seven) was done as an administrative convenience, and like many other things done for administrative convenience, it seems to have caused more problems than it solved.

There was clearly some controversy involved with taking the land into trust in Cuyapaibe's name alone, as evidenced by Attachments C and D: the Manzanita Tribe's letter protesting the BIA decision, and the Jamul Tribal Council Resolution calling for the land to be taken into trust for all seven Tribes, respectively. In retrospect, Jamul's position seems to have been the correct one. However, at the time, Indian gaming was in its infancy, and no one could possibly have foreseen that any tribe might want to use this land for anything other than its stated purpose, so the argument seemed largely academic.

One sub-issue that seems to command a lot of attention is the question of whether federal Community Development Block Grant funds were used to pay for the acquisition of the land. There is no dispute that CDBG funds were used for the development of the clinic, but there seems to be some disagreement as to whether they were used to acquire the land; the Cuyapaibe tribe maintains that they were not.

In the interest of clarity, let me emphasize this: Viejas does not believe that CDBG grants are the most important issue here, and we only pursue it because some in Congress seem to consider it important, and because others have accused us of misrepresenting the facts. But we do believe that CDBG funds were used to purchase the land. I would refer you first to the third paragraph of the BIA memo, which reads "[t]he Band received a Community Development Block Grant in the amount of \$446,840 from the Department of Housing and Urban Development for the purpose of purchasing the land (emphasis added) and constructing a health care center"

We are aware of two contradictory letters sent by HUD's Office of Public and Indian Housing on the subject. The first (Attachment E) said very clearly that CDBG funds were used to purchase the land. The second (Attachment F) partially retracted the assertions of the first, and said instead that HUD's records were insufficiently specific to say exactly how the funds were used, and that Cuyapaipe's accounting seemed to indicate that they were not used to purchase land.

Cuyapaipe's version of the story, to the extent that it has been consistent, is that the funds were used to collateralize a loan, the proceeds of which were used to purchase the land. Setting aside the fact that this, if true, represents a criminal violation of federal law, Viejas insists that this still constitutes federal funds being used to purchase the land. Perhaps the funds were used indirectly, but value gained from the federal grants contributed to the acquisition of the land.

Again, Viejas doesn't consider the question of CDBG funds to be the essential argument in favor of H.R. 1239.

In any case, the SIHC Health Clinic served the tribal community well for the ensuing decade, and began to accept non-tribal members as patients as a means of enhancing operating revenue. Recently, the Cuyapaipe tribe announced their plans to change the use of the Alpine site by moving the health clinic to temporary structures and to use most of the current health clinic site for a casino. To this end, the Cuyapaipe tribe sent to the BIA a request to relinquish the 25-year lease on the property in question. That lease relinquishment request was rejected by BIA on the basis of incomplete information, but a new proposal has been submitted (attachment G).

In addressing this request to terminate the lease of the SIHC Health Clinic, I should start by saying that Viejas supports the rights of tribes to have gaming facilities on reservation lands; Viejas is a gaming tribe, and we believe that there is a fundamental question of tribal sovereignty involved. The issue here is this: the land upon which the health clinic sits today was taken into trust for one purpose and for one purpose only: to provide a permanent health clinic for the benefit of the members of seven tribes. The fact that the land was titled to the Cuyapaipe tribe, as a matter of administrative convenience, does not give one tribe the right to change that use.

It is true that some members of the board of directors of the Southern Indian Health Council voted to approve the change in land use three voted yes, two voted no, and two abstained. There is a legitimate legal question as to whether this vote satisfies the requirement of a true majority vote under California corporation law. But there is a more fundamental question: Should a piece of land that was taken into trust by the federal government as a way to provide health care access for the members of seven tribes have its designated use and purpose changed without the approval of all seven of those tribes. We at Viejas believe that the appropriate answer to that question is no.

We have heard any number of promises from the Cuyapaipe tribe about new and better health clinics that will result if only they can get their casino into operation on the current SIHC Health Clinic property. However, there has been no guarantee or actual movement in this direction. No land has been taken into trust for the purpose of establishing the new clinic. If the proposed lease relinquishment is approved, construction of the casino is in no way contingent upon construction of a new health clinic. None of the promises about new health clinics, remote health clinics, or anything else related to health clinics are in any way enforceable, either by the SIHC Corporation, or by the thousands of persons now served by the current clinic.

In fact, if the proposed lease relinquishment is approved, the only thing that is certain is this: the current clinic will shut down and be moved to trailers on the back of the property; a casino will go up on the current site, and the Indians and non-Indians alike who have used the clinic for the last decade will have to drive through a casino complex to get to the trailers they will then have to call their clinic.

Viejas does not question the integrity of the members of the Cuyapaipe tribe. While we have no doubt of their good intentions, there are still reasons to doubt the feasibility of the new health clinic facilities they have promised as a replacement for the current clinic. The Cuyapaipe tribe does not have the money to pay for a new health clinic. They have indicated that they intend to pay for the new health clinic with profits from their proposed casino. But they may be in for a surprise: the existence of a casino does not assure profits at all; it certainly doesn't assure immediate profits. Many tribal gaming facilities in San Diego are currently cutting staff and reducing hours, based on economic necessity. Furthermore, all their efforts to date (including a very expensive lobbying effort that eight-member tribe may be the only tribe with more lobbyists than members) appear to have been paid for by a casino management company, Action Gaming Corporation from Michigan.

We assume that Action Gaming will seek to recoup their investment before any profits are made available to construct a new clinic. While all this may seem like speculation, so to are the prospects for the replacement clinic facilities.

To repeat, the fundamental issue is this: the land was taken into trust for the benefit of seven tribes, and its use should not be changed without the approval of those seven tribes. This concept was incorporated in H.R. 5744, the Hunter-Filner-Cunningham (Attachment H) legislation from last year, which passed the House unanimously in the closing days of the 106th Congress. It is again incorporated in the bill before this committee today. That position is supported by the County Supervisor, and by the entire delegation from that part of San Diego County, as expressed in their letter to BIA.

Mr. Chairman, I should be clear that the Viejas Tribe's primary concern, and our only relevant concern, is the preservation of the health clinic. Some will undoubtedly accuse us of fearing competition from another nearby casino, but we should emphasize that we do not actually know if having another casino in the area would be a harm or a benefit. Rather, our general membership listened carefully to the accounts of some of our Tribal Elders about their efforts to establish a health clinic for all seven tribes and to get land into trust for that purpose. They know that this was done at a time before gaming, when resources were extremely scarce. They were and are concerned about the current plan to undo the elders' hard work, and to jeopardize health care access, all for the financial gain of just one tribe and their outside investor.

I should emphasize that the Hunter-Filner bill does not say that Cuyapaibe may never have a casino on that site. Rather, it says that the lease relinquishment may not be approved until there is consensus among all seven tribes. The bill is intended to foster discussion and negotiation, and Viejas will be an active and constructive participant in any such negotiations. We have always supported the reasonable efforts of other tribes to improve their economic situation, and we will be similarly open with Cuyapaibe. However, as things are proceeding today, Cuyapaibe is seeking to press forward without regard for the concerns or wishes of other involved tribes, and we believe they will continue to do so unless this Congress or the BIA intervene.

In closing, Mr. Chairman, I should emphasize that the Congress is dealing with many weighty issues in these difficult times, and as grateful as I would otherwise be for your attention to this matter at any time, I and the Viejas tribe are doubly appreciative of your and your committee colleagues' taking time for us against the backdrop of the war on terrorism. Thank you for your time, and I look forward to answering any questions you may have.

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Mr. HAYWORTH. Chairman TeSam, we thank you very much for your words of courtesy and your insight from your testimony. We hear the bells ringing once again. We thank you for the brevity of testimony.

Chairman Goff, it is not our intent to give you short shrift, even as our pagers emit some sort of bizarre interference. I don't know who is jamming that. But, sir, we welcome your testimony. If it would be possible to hold it to just a couple of minutes, that would be most appreciated.

**STATEMENT OF RALPH GOFF, BOARD CHAIRMAN, SOUTHERN INDIAN HEALTH COUNCIL, INC.**

Mr. GOFF. Thank you, Mr. Chairman and members of the Committee. I will be very brief.

I think there is a fundamental issue here as you have heard the testimony. I don't have a script here, but I want to emphasize that we went through a very due process of working with this issue. The project proposal was presented to us in 1996. Through this period of time, we went back and forth and talked about it and dealt with it until 1999 when we decided to find out more information on it. And it wasn't until 2000 that we actually said—we entered into the

agreement. The documents are such that it protects the clinic. And I come here as the clinic board chairman.

So we went through a very tedious process to get to this point. We have a process. We have a legal and binding agreement. This bill would strip us of our authority to do our business, as we do it every day. We do this business every day, and it would give the potential for this to set precedent on any other nonprofit organization to do business anywhere. I mean, this to me is just unthinkable.

I urge the sponsors of the bill to withdraw it, and I urge Chairman TeSam to withdraw his support of the bill.

That is it. Thank you.

[The prepared statement of Mr. Goff follows:]

**Statement of Ralph Goff, Board Chair, Southern Indian Health Council, Inc.**

Thank you for the opportunity to be here today to present testimony in regard to H.R. 1239. My name is Ralph Goff and I am chairman of the Board of Directors of Southern Indian Health Council, Inc. (hereinafter SIHC). I also serve as the Tribal Chairman of the Campo Band of Mission Indians. With me today is Joe Bulfer, Executive Director of SIHC. Also in the audience are Kenneth Mesa, SIHC Board member and Chairman of the Jamul Band of Mission Indians, and Robert Brown, SIHC Board member.

SIHC is a tribal organization providing health care services to the approximately 8,000 Indians living on and near seven (7) Indian Reservations in Southern San Diego County, California, through an Indian Self-Determination Act, P.L. 93-638, contract with the U.S. Department of Health & Human Services, Indian Health Service (IHS). We have provided health services through P.L. 93-638 contracts since our inception in 1981 (and incorporation in 1982). SIHC is a consortium of the following seven (7) federally-recognized Indian tribes which joined together to provide ambulatory health care services to their members and other eligible Indians in their service area:

Barona Band of Mission Indians  
 Campo Band of Mission Indians  
 Ewiiapaayp (Cuyapaip) Band of Mission Indians  
 Jamul Band of Mission Indians  
 La Posta Band of Mission Indians  
 Manzanita Band of Mission Indians  
 Viejas Band of Mission Indians

Through SIHC, these seven tribes provide health care and related services to their tribal members and other eligible Indians through the establishment of a comprehensive health care system for the Indians of Southern San Diego County. Besides providing health care services, SIHC works to improve the environmental health and sanitation conditions on Indian Reservations in San Diego County; to provide improved health care for children and adults through a program of home visitation and counseling of Indian parents on health practices, nutrition and general care of children and adults; to provide health education to the Indian community; and to inform the member tribes and the Indian community of the various medical and related services available in the surrounding community and assist them in obtaining the services through a social services department. We do so through a system of four clinics: one on the Campo Reservation and one on the Cuyapaip Reservation, one outpatient substance abuse center at the La Posta Reservation, and one inpatient Youth Regional Treatment Center, also at the La Posta Reservation.

From the Indian Health Service (IHS), SIHC receives funding for provision of health care services for approximately 8,000 Indians in its service population. SIHC receives approximately \$4.5 million from IHS and approximately \$5.5 million from other grants and contracts with other agencies. However, according to IHS's own figures, SIHC only receives about 60% of the funds we need to provide comprehensive health care services for service population.

As the Committee is aware, the IHS has historically not provided the same services or level of services for federally-recognized Indian tribes in California as it does for tribes in other parts of the country. Although the Federal Courts ordered IHS

to correct these funding inequities in the early 1980's in the case of Rincon Band of Mission Indians v. Harris, IHS never fully complied and corrected these inequities.

IHS has never provided funding for facilities in California, nor has it built or operated any health care facilities or hospitals for Indians in California. The only services provided for the 117 federally-recognized tribes in the State of California are those that the tribes themselves are providing through Indian Self-Determination Act contracts in facilities which the tribes have built with funding from a variety of sources, but none from IHS.

With the history of underfunding and neglect by IHS, the Committee should be able to clearly see the importance of the SIHC agreement with the Ewiiapaayp Tribe that will provide us with a new and enlarged facility in Alpine, a new clinic on the Campo Reservation, and with additional funding every year for the next 36 years. All that we had to do to obtain these substantial advantages was to give up a portion of our existing leasehold property on the Cuyapaipe Reservation. Despite rumors to the contrary, the agreements we have entered provide that SIHC is not required to move until a new clinic facility is built for us and ready for our occupancy. No other SIHC member tribe has offered to provide SIHC funding to improve SIHC's health care services and facilities. All were given the opportunity.

We would appreciate the Committee reviewing and understanding this opportunity provided by Ewiiapaayp in the context of the funding deficiencies that SIHC has suffered through the years. Because there were no IHS facilities on any Indian reservation in our service area, or anywhere in California, we started out in small tribally-rented trailers on the Sycuan Indian Reservation. From there we moved the trailers to the Barona Reservation; and, finally, we moved to new buildings on the land in Alpine where our clinic is currently located. Although we wanted to have the land in Alpine put into trust for all seven SIHC member tribes, the BIA would not do so at the time. Therefore, Ewiiapaayp agreed to have the land that was purchased put into trust in its name and leased the land back to SIHC for the maximum term allowed by law (25 years plus a 25 year extension) at a cost of \$1 per term. We subsequently obtained funding from HUD to build our original clinic buildings on that land. Through the entire 20 years of our existence, SIHC has struggled to provide the highest level of services possible to the Tribes and to all eligible Indians in our service area, but we have been forced to do so in the face of significant underfunding, lack of adequate facilities, and the need to purchase all hospital and specialty care from outside providers with a limited IHS/Contract Health Services budget.

About five years ago the Ewiiapaayp Tribe came to the SIHC Board with a proposal to substantially enhance SIHC's facilities and health care funding. After many delays and lengthy debate, an agreement was finally negotiated that provides that SIHC would relinquish a portion of the currently leased lands back to the Ewiiapaayp Tribe (hereinafter "the Tribe"). In exchange for the relinquishment of a portion of that land, the Tribe will finance, construct, and equip a new \$5 million clinic for SIHC that will be all in one building, rather than several, and which will be significantly larger and more efficient than the current clinic on the leasehold property. The Tribe will also build a badly needed new \$1.5 million facility for SIHC's use on the Campo Indian Reservation. In addition, the Tribe has agreed to purchase approximately 18 acres of land across the freeway from the existing clinic, and, contingent upon federal approvals lease that land to SIHC for fifty years and finance the construction of a \$5 million new clinic on that property. Finally, the Tribe agreed to pay SIHC a portion of its annual revenues through the year 2036 which will come from the Tribe's construction and operation of a gaming facility on the portion of the currently leased premises that SIHC would vacate when the new facility was fully constructed and ready for occupancy. These provisions will clearly allow SIHC to provide better services to our eligible Indian patients. The Board, therefore, determined that these Agreements were in the best interests of SIHC and our patients.

In each of these transactions, SIHC's patients and services are fully protected because no move out of any existing facility can or will be required until the new facility is built, equipped, and ready for occupancy. Contrary to rumor, never can SIHC be required to move into trailers, temporary buildings, or other inadequate facilities. Nor will there ever be a disruption in services because of the specific provisions of the contracts protect SIHC in this regard and insure that SIHC will not be required to vacate any facility until the new replacement facility is completely ready for occupancy, as determined by the SIHC.

Questions have apparently been raised with this Committee about the internal workings and decisions of the Board of Directors of SIHC. SIHC is incorporated as a California non-profit corporation. The SIHC Board consists of seven members,

with one Board member selected by each tribe being served by the program who represents his or her tribe on the Board. Although each of the seven tribes appoints its own representative to the SIHC Board of Directors in accordance with the corporate Bylaws, the tribes themselves do not have any direct right to vote on the decisions of SIHC except through their designated representatives on the Board.

Clearly, H.R. 1239, under consideration by this Committee, allows any one tribe to veto the duly-adopted decisions of the Board of Directors of SIHC. This Bill also allows any one tribe to thwart SIHC's attempt to improve health care for all the Indians in the region in accordance with our duly-adopted Bylaws and mission statement. If H.R. 1239 were enacted, that legislation would, in effect, give one tribe unprecedented veto power over the decisions of the other six tribes. It would also give any one tribe veto power over the duly-adopted decisions of the Board of Directors of SIHC, which flies in the face of SIHC's Bylaws and California corporations law.

SIHC is governed by its Bylaws and California non-profit law. At a meeting on July 10, 2000, the Board of Directors voted on Resolution 00-07-10-01 to approve the above-described transactions because they found that the expansion of health care, as stipulated in the agreements, were in the best interests of all of SIHC's patients. This original resolution was approved by a vote of three in favor, two against, and one abstaining. The Director appointed by the Ewiiapaayp Tribe was absent. Historically the Board has treated abstentions as neutral in its votes (i.e., abstentions have never been counted in determining whether there is a majority vote). Because the SIHC Bylaws did not specifically address this issue, after proper notice, the Board voted 5 to 2 on November 27, 2000 to amend the Bylaws to clarify and reaffirm its long term interpretation of its own Bylaws. Then, to eliminate any further question, on December 18, 2000, the Board reaffirmed its intention to enter into the agreements by a vote of 4 in favor and one abstention.

In summary, the July 10, 2000 Board approval of the transactions with the Ewiiapaayp Tribe was a valid act of the Board which was subsequently reaffirmed by a vote on December 18, 2000. Since the decision was made to enter the agreements with Ewiiapaayp, the entire SIHC Board has moved forward together to see that the decision is implemented because of the advantages it would provide for the health care of their tribal members. In other words, although one or two of the member tribes might have initially disagreed with the decision to approve the agreements with Ewiiapaayp for reasons having nothing to do with the provision of health care, there is full and equivocal support for those agreements within the SIHC Board, now that the vote has been taken and a decision made.

The proposed legislation, H.R. 1239, would prevent SIHC from improving the health care for the approximately 8000 Indians in our service population through the new facilities and additional funding that the agreements with Cuyapaip would provide. Therefore, we urge that the Committee refuse to approve the proposed legislation, or any similar legislation.

Thank you for the opportunity to appear here today. We will be happy to answer any questions which the Committee might have.

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Mr. HAYWORTH. Chairman Goff, we thank you. We thank all the witnesses.

The Chair again would remind Committee members that we will allow you to submit written questions to the panels. The record will remain open 10 days to do that.

We thank you for the brevity of your testimony, for the insight you offer in rather complete fashion, and we will have questions for you that we will submit in writing. We look forward to getting those back for the record.

I thank the indulgence of the ranking minority member and also my friend from Utah who stayed here for the duration.

I thank the audience and the panelists for their indulgence given the truncated nature of this day.

And this hearing is now adjourned.

[Whereupon, at 12:45 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

1. Statement of Hon. Frank Keating, Governor of Oklahoma.
2. Response to questions submitted to Michael Garcia.
3. Response to questions submitted to Steven TeSam.
4. Response to questions submitted to Ralph Goff.

**Statement of Hon. Frank Keating, Governor of Oklahoma**

I regret that I could not be with the Committee today, but pressing matters in Oklahoma demand my presence. I do want to express my wholehearted support for the proposed appropriation of \$33 million, introduced by Congressman Carson, and for the message Oklahoma's representatives will bring to you today. We have a chance to create a cultural and historical jewel through a rare federal-state-local partnership, and I believe it is important that we seize that chance.

Oklahoma is home to more Native American citizens than any other state save California. Our very name means "Land of the Red People." We have within our borders the governments of 39 federally recognized tribes. Where other states may have sequestered their Native American citizens on reservations, Oklahoma has fully integrated them into the mainstream of our cultural, civic, business and political life. A member of my state cabinet, former Oklahoma Secretary of Transportation Neal McCaleb, now serves as Director of the Bureau of Indian Affairs. Our state's greatest ambassador, Will Rogers, was of Cherokee descent. Oklahoma has long been home to famed Indian artists, ballerinas and authors. Our largest military installation, Tinker Air Force Base, is named for an Oklahoman of Osage descent who gave his life in World War II. Native American culture permeates our state, and outstanding Native American citizens play vital and central roles in every aspect of our lives. Now, we have an opportunity to celebrate and enshrine that rare heritage by creating a world-class Native American Museum and Cultural Center in Oklahoma City.

The Center will be located at the junction of two of America's primary travel routes, Interstates 35 and 40, on land valued at \$15 million which has already been donated and dedicated for this use by the City of Oklahoma City. The city has also committed \$5 million to construction of the Center, along with a down payment of \$6.5 million in state funds to complete this unique facility. I strongly support additional state funding for this most worthy project. The proposed federal appropriation would create a vital local-state-federal partnership to build a historical and cultural resource of national importance.

Others who will testify today will brief the Committee on the Center's proposed design, features and value as an educational and cultural treasure. My role is equally important—to emphasize the full support of Oklahoma state government and our determination to build this Center. Once it is completed, it will be America's finest and most complete resource celebrating our Native American heritage, as well as a key center for the preservation of Native American culture.

I am proud to urge Congressional support for this appropriation.

**Responses of Michael Garcia, Vice Chairman, Ewiiapaayp (Cuyapaibe)  
Band of Kumeyaay Indians to Post-Hearing Questions**

*1. How did the land which was put in to trust for the benefit of seven tribes come to be placed in only your tribe's name?*

In 1986, the Ewiiapaayp Band of Kumeyaay Indians ("Cuyapaibe" or "Tribe"), using private, non-federal funds, purchased in its name alone the property from William and Diane Bishop. The application to the U.S. Department of the Interior then requested that the land be placed in trust for the Cuyapaibe Band. The Tribe's land was accepted in trust status by the United States on April 1, 1986, after a fee-to-trust process in 1985 and 1986 which provided for public notices and requests for comment. No adverse comments were received during that process, particularly from any of the SIHC, Inc. member tribes. The Tribe did not execute a federal lease of this land to SIHC, Inc. until January 1986, which was approved by the Bureau of Indian Affairs (BIA) in February 1987. Other tribes benefited from this land only after SIHC, Inc. accepted the landlord Tribe's offer of tenancy to SIHC, Inc. and then only through each tribe's participation in the SIHC, Inc. as members of the state chartered non-profit corporation Indian health organization. Consistent with the fee-to-trust application, the BIA placed no other tribes on the title. Among other

supporting documentation, Representative Hunter's June 13, 1985 letter in support of the trust application states "I strongly urge you to take whatever action is necessary to expedite placing this 8.6-acre tract in trust, by the Department of the Interior (Bureau of Indian Affairs) for the Cuyapaipe Reservation, so that construction of a new health center can begin in a timely manner." The Viejas Band of Kumeyaay Indians (Viejas) claims that the Cuyapaipe land was supposed to have been taken into trust for the benefit of all seven tribes, but offers up as its only evidence a document that was written six (6) months after the date the land was accepted in trust by the United States. Today, ownership of the land by the Cuyapaipe Band presents a unique opportunity to SIHC, Inc. a chance to obtain supplemental, non-federal funds and new facilities that would not otherwise be available to the SIHC, Inc. if the Viejas position was adopted. The bottom line is that health care services will be expanded and enhanced only because of Cuyapaipe's trust ownership and conforming use of the land.

*2. According to your testimony, your tribe asked the Department of Interior to approve the lease relinquishment agreement in December 2000. What is the status of the approval of that lease relinquishment agreement?*

It remains pending. The three agreements between the Cuyapaipe Band and SIHC, Inc. were submitted to the Department of the Interior, Bureau of Indian Affairs on December 26, 2000, for approval or written confirmation that approval is not required. As of December 18, 2001, the Department has not approved the agreements or provided written confirmation that approval is not required. The Tribe is ever hopeful that the Department's approval or written confirmation that approval is not required will be provided in the near future, since, as a legal matter, the BIA owes a trust responsibility as to this piece of trust property solely to the Cuyapaipe Tribe as the sole trust beneficiary of the land and as landlord in the lease. Additionally, it is inconceivable that the trustee could conclude that it is not in the best interest of a trust beneficiary to get a portion of its land back earlier than it would otherwise regain control of it under the existing lease.

*3. Have you received notice on the status of your application to place the 18-acre parcel of land into trust? When was the completed land into trust application submitted to the Department of Interior?*

The Cuyapaipe Band's fee to trust application for its approximately 18-acre parcel of land was submitted to the BIA on March 21, 2001. Pursuant to the National Environmental Policy Act, a Finding of No Significant Impact (FONSI) was issued by the BIA's Pacific Region Office on November 7, 2001. We understand that the Department is in the process of completing its review of the title to the parcel and is taking steps to ensure compliance with the National Historic Preservation and Endangered Species Acts. As of December 20, 2001, a Notice of Decision has not been issued by the BIA.

*4. In your testimony, you make reference to \$11.5 million which are contractually obligated to build new clinic buildings. Where does this substantial amount of money come from?*

The money comes from the Tribe. The money is essentially an "advance" of the Tribe's funds to be spent for SIHC, Inc. for health care purposes before any of the Tribe's other funds are spent to construct a casino. Pursuant to the contracts between Cuyapaipe and SIHC, Inc. now under review by the Department, the Tribe is required to fund the construction of a Consolidated Clinic Building up to a total of \$5 million ("Project Costs") and to post an irrevocable letter of credit in the amount of \$6.5 million to secure its obligations to construct the Southern Clinic and the Campo Clinic. See Consolidated Clinic Building Construction and Partial Lease Relinquishment Agreement §2(A); Construction, Relocation and Lease Relinquishment Agreement §2(C); and Campo Clinic Construction Agreement §5. On December 26, 2000, the Tribe and its development partner, Luna Gaming San Diego LLC, posted the \$6.5 million irrevocable letter of credit. The remaining \$5 million will be funded by the Tribe and Luna Gaming San Diego LLC as necessary to construct the Consolidated Clinic Building. The \$11.5 million is but a portion of the total project funds already provided or to be provided as needed in advance of casino construction. Failure to construct a new clinic into which SIHC, Inc. will voluntarily relocate would bar the Tribe from subsequently constructing its proposed casino.

*5. What will be the impact on health care for SIHC patients if the agreements are not enforced?*

If the agreements are not enforced or implemented, efforts to provide health care for SIHC, Inc. patients will continue to labor under a crippling and chronic shortage



of funding from the U.S. Indian Health Service. If the Interior Department does not approve the landlord-tenant agreements made between the Tribe and SIHC, Inc., the SIHC, Inc. clinic will be confined to the Tribe's current parcel of property and its current medical clinic structures. The SIHC, Inc. clinic is now housed in three separate buildings on three hill-side tiers of the property. This layout makes further expansion of health care services nearly impossible. Furthermore, the current layout sharply limits SIHC, Inc.'s goal of expanding its medical and dental services to include much needed community emergency services, urgent care, expanded social services, cultural services and retirement services. Under the Agreements, SIHC, Inc. possesses full rights to enforce the agreements in the state courts. If SIHC, Inc. failed to enforce the agreements, any of the tribes who control SIHC, Inc. could sue SIHC, Inc. in state courts to compel enforcement of the agreements in accordance with fiduciary duties reflected in California state public benefit corporation codes.

*6. You reference that the Department of Interior must approve of the lease relinquishment agreement for it to be given "legal effect." Can we assume, then, that these contracts, if or when approved, will be legally binding contracts? Are they binding now?*

The lease relinquishment agreements are binding. They need to be approved because they amend the current lease between the Tribe and SIHC, Inc. The current lease requires that any amendments or modifications to the lease must be approved by the Secretary to be effective. See 1987 Lease §32. The Tribe and SIHC, Inc. signed an agreement to amend the lease so as to reduce the amount of trust land which SIHC, Inc. now uses from 8.6 acres to approximately 2.5 acres. The approval by the Tribe's trustee of this lease relinquishment or amendment is a simple ministerial act that should be granted without delay. The Tribe and the SIHC, Inc. have entered into enforceable and effective contracts. To the Tribe's knowledge, no written approval by the Secretary of the Interior of the contracts is required and the contracts are binding now, provided, however, that some of the obligations are the subject of conditions precedent as stated in the contracts. In other words, until the agreements are approved, or disapproved, the agreements legally bind the Tribe and SIHC, Inc. to specific performance, including, but not limited to, the Tribe's funding of the \$6.5 million irrevocable letter of credit, the establishment of the 18-acre parcel of land in trust, and the design of the new health clinics.

*7. What assurances do the SIHC and the tribes have that you will honor the agreements? What recourse do they have if the agreements are not honored?*

The agreements are binding and enforceable. The contracts are between two parties the Southern Indian Health Council, Inc., and the Ewiiapaayp (Cuyapaipé) Band of Kumeyaay Indians. Each party has entered into the contracts with the intent of fully performing its obligations. However, should the Tribe fail to perform its obligations, all of the contracts contain appropriate waivers of the Tribe's sovereign immunity, consent to suit, and arbitration provisions in favor of the SIHC, Inc. See Consolidated Clinic Building Construction and Partial Lease Relinquishment Agreement §§16-18; Construction, Relocation and Lease Relinquishment Agreement §§14-16; and Campo Clinic Construction Agreement §§10-12. Such provisions allow the SIHC, Inc. to exercise its rights and seek its contractual remedies through arbitration, including the ability to compel arbitration and enforce any arbitration award in a court of competent jurisdiction.

*8. If the casino should fail at any time or not materialize, how would this impact the health care improvements and revenue sharing outlined in the agreements?*

It depends. If the required federal approvals are not obtained, no money will be available for health care facility and service improvements. If all federal approvals are obtained, the new clinics will be built. Any subsequent, albeit highly improbable, casino failure would affect only the promise of a future share of the gaming revenues. However, the Tribe is confident that it will open and operate a successful casino. The contracts are structured in such a fashion as to limit the risk to the SIHC, Inc. by requiring various federal approvals prior to any construction of the new clinics, relocation of the SIHC, Inc. to a new clinic, or construction of the proposed casino. Should the required federal approvals not be obtained, the clinics and the casino will not be constructed. In the unlikely event that the Tribe's casino should fail or not be constructed, the SIHC, Inc. would not receive any additional funding. In the event that the clinics and casino are constructed and the casino subsequently fails, the health care facility improvements would remain in place because the actual construction, installation of equipment and relocation to the new clinics will have been completed prior to any casino construction or operation. After the clinics are built, and the casino is subsequently constructed and operated, additional pay-

ments are due to SIHC, Inc. from the Tribe pursuant to Section 7 of the Consolidated Clinic Building Construction and Partial Lease Relinquishment Agreement.

*9. Is there any scenario in which the clinic would not be in operation for any amount of time?*

Absolutely not. The Tribe cannot conceive of a situation in which the Tribe would cause the clinic not to operate for any amount of time due to the carrying out of this project. Clinic operations will never be shut down. See Consolidated Clinic Building Construction Agreement at §§ 8-11. The consolidated clinic building will be approximately 33,500 square feet (much larger than the current facility space) with access to 154 parking spaces and a dedicated access road. See Consolidated Clinic Building Construction Agreement at § 8. The SIHC, Inc. will have authority to approve the preliminary design and final specifications for the consolidated clinic building. See Consolidated Clinic Building Construction Agreement at § 8(D). SIHC will not have to relocate to the new clinics until those clinics are certified by the SIHC's construction consultant and the architect as ready for occupancy and use by the SIHC, Inc. The Tribe and SIHC, Inc. have contractually agreed to take all commercially reasonable steps to avoid interference with the operation of the clinic. See e.g., Consolidated Clinic Building Construction and Partial Lease Relinquishment Agreement § 11. If the 18-acre parcel is accepted into trust before the consolidated clinic building construction is begun, then there is an opportunity to combine the two clinic project funds into one \$10 million account to build a new clinic on the 18-acre parcel.

*10. Do you feel that there should be restrictions placed on the administrative process of taking land into trust that would limit the use of the land to the use stated when the land was taken into trust?*

No. The Tribe agrees with the Department that this would result in an unworkable public policy as circumstances and conditions change over decades and centuries. Accordingly, the Tribe does not agree with any restrictions being placed on the administrative process to take land into trust. Likewise, the Tribe does not agree with limiting the highest and best use of Tribal property. If the 18-acre parcel is placed in trust status by the United States, the title should not contain a restriction or other covenant prohibiting the use of the land as deemed proper by the Tribe. In this case, however, the Tribe has agreed to a use restriction of a particular type a lease of the 18-acre property to SIHC, Inc. for \$1 for 25 years for a health clinic, with the option to renew the lease for an additional 25-year period. At the expiration of the lease or if terminated earlier for some reason, the Tribe should not be required to limit its use of the land only to a health clinic forever because it is entirely possible that some day a health clinic feasibly could not be operated on the site. In contrast to use restrictions on more temporary lease agreements, permanent use restrictions on trust title would be an administrative nightmare for the Department and would artificially limit the potential beneficial uses of the land by the Tribe.

*11. Why do you believe the Viejas tribe opposes the lease relinquishment and the new agreements?*

For anti-competitive, economic protection reasons. According to the Viejas Band's September 21, 2001, letter to the United States Department of the Interior, "Ewiiapaayp is attempting to undermine the Viejas Reservation economy. This type of encroachment on the Viejas tribal community's economic sustainability cannot be tolerated." The Indian Gaming Regulatory Act of 1988 (IGRA), the agreements between the SIHC, Inc. and the Tribe, California State corporations law, California Proposition 1A, the Tribe's tribal-state compact, other applicable federal laws, and applicable HUD regulations provide adequate protection for all interests and all interested parties. The Tribe has waited patiently to begin to engage in lawful gaming under IGRA and a tribal-state compact, unlike Viejas who for years conducted so-called grey-market gaming without a tribal-state compact. Undoubtedly, Viejas has created a market for its product, gambling, yet such economic protectionist measures funded by years of unauthorized gaming should not be tolerated by Congress and used to hinder the efforts of a federally recognized tribe seeking to exercise its rights to economic development and self-sufficiency on its own land.

*12. Is it your impression that the Viejas tribe is willing to have the current level of health care remain "status quo" in order to protect their gaming interests?*

Actually, Viejas Chairman TeSam said as much to Cuyapaipe Chairman Pinto in an October 10, 2001 telephone call, when Chairman TeSam said Viejas wanted to keep SIHC, Inc. health services at the "status quo." Viejas' activities attempting to

“protect” its gaming interests will effectively deprive the SIHC, Inc. of any opportunity to expand and will, at best, maintain the severely under funded “status quo.” A severe shortage in funding for IHS-supported health services compounds the \$7 billion backlog in facility replacement needs. Funding for operations, services and staffing for IHS-funded programs is woefully inadequate. \$7.5 billion (in 1999 dollars) is needed each year, estimates the IHS, to address the disparities in health in the American Indian and Alaska Native populations by providing access to basic health services. If the goal is to meet basic health care standards, and bring American Indians and Alaska Natives up to a standard of health care available to federal employees under the federal health plans, it will take some \$8 billion a year. Congress has urged tribes to find alternate funding sources to supplement the meager federal appropriations. The Cuyapaipe–SIHC, Inc. Agreements represent a clear and effective response. Yet, the Viejas Band seeks to deprive SIHC, Inc. and its patients of the opportunity to access expanded, high quality health care. The Tribe finds it more than ironic that the Tribe must defend its unusually generous proposal, especially in a time of economic recession and federal deficit spending constraints.

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**Response to Questions Submitted to Steven TeSam, Chairman, Viejas Band of Kumeyaay Indians**

*Question 1.*

*You state that none of the promises about the construction of the new facilities are enforceable by the SIHC or the people it serves. Is it your understanding that the lease relinquishment contracts are not enforceable by law—please elaborate?*

**Answer:**

The contracts are not enforceable. It is the understanding of the Viejas Band that the Cuyapaipe Tribe has made no enforceable waiver of tribal sovereign immunity. Please note that the purported waiver in the document submitted references “. . . permitting actions in any court of competent jurisdiction . . .” Since Cuyapaipe is a federally recognized Indian tribe, and since Cuyapaipe has no tribal court, there is no “court of competent jurisdiction.” Additionally, the purported waiver is further diluted by the provision requiring arbitration (paragraph 19), and by the language that purports to limit court jurisdiction to only those disputes requiring injunctive relief.

It is well settled that a waiver of tribal sovereignty, to be enforceable, must be clear and unequivocal. Cuyapaipe’s waiver is neither. Additionally, a waiver of the sovereignty of a tribe is usually documented by a Tribal Council resolution authorizing a tribal leader to execute a document containing such a waiver. It is uncommon for one tribal official, acting alone, to possess that authority. Please note that the documents submitted do not include any resolution of the Cuyapaipe Tribal Council (or any other document) which authorizes a waiver of the tribe’s sovereign immunity.

Because of the ambiguities, limits, and qualifications of the waiver, we believe a court would likely find that the waiver, as made in the current documents, is ineffective to waive the Cuyapaipe Tribe’s sovereign immunity from suit. There is no party who would have authority to enforce the many promises that have been made by Cuyapaipe. Without a valid waiver of immunity, Cuyapaipe is free to do as it pleases with the current trust property if the lease is relinquished. Without an enforceable waiver of tribal sovereignty, the current SIHC Clinic lease is the only protection for health care services at the SIHC.

Additionally, the BIA has indicated that land taken into trust for an Indian tribe does not generally have restrictions that run with the land. Therefore, any new land taken into trust could be used for a casino, and the Cuyapaipe would be under no obligation to build a new clinic on any of their trust land.

It is important to note that Cuyapaipe’s investor, Action Gaming LLC, gets the benefit of the sovereignty waiver, if one is found to have been made, (Paragraph 25 of the Agreement), but is not a party to the Agreement in other respects, and therefore cannot be sued to enforce any of the promises the Cuyapaipe tribe has made concerning the construction of a new clinic. This is significant because Action Gaming is the only party with substantial resources; should they decide not to finance a new clinic, the SIHC clinic, its patients, and its member tribes will be left without meaningful recourse.

*Question 2.*

*Your testimony includes language that suggests that the only certainty about the lease agreement is that the clinic will be shut down and moved to trailers behind the casino. However, Article 8 of the Consolidated Clinic Building agreement, “The*

*SIHC agrees that the consolidated clinic building comprising 33,500 square feet, with access to 154 parking spaces and a dedicated access road, will be constructed by the Tribe in accordance with the requirements for construction on the Current Site." How do you reconcile these different scenarios?*

Answer:

The SIHC is a California Corporation, which can be dissolved by vote of the directors. The SIHC's promise that a clinic will be built is enforceable only against SIHC, not the Cuyapaipe tribe, and has no value whatsoever if SIHC ceases to exist. A promise by SIHC that a clinic will be constructed must be weighed against the reality that SIHC lacks any resources to finance a new clinic, and is depending on 'promises' of gaming revenue contributions which may never materialize.

The SIHC has no power to enforce its "agreement" that a clinic will be constructed by the Cuyapaipe tribe. Without the enforceable promise of the Cuyapaipe Tribe (with a valid waiver of immunity as referenced in the answer to Question 1), the SIHC and its member tribes have no power to force the Cuyapaipe to build, or to permit the construction of, any new clinic on tribal trust land.

*Question 3.*

*In your testimony, you state that if the proposed lease relinquishment is approved, construction of the casino is in no way contingent upon the construction of a new health clinic. Do you mean by this that it is possible for a casino to be built without a new health care facility being built? In the Consolidated Clinic Building Construction and Partial Lease Relinquishment Agreement, Recitals B. "The tribe and the SIHC have agreed that in exchange for the Tribe constructing a new consolidated clinic building (CCB) on that certain parcel of land (current site) the SIHC will relocate its current Clinic operations to the CCB, relinquishing back to the Tribe that portion of the land it no longer needs, while retaining all rights and obligations to the remainder." How do you reconcile these different scenarios?*

Answer:

See the answer to Question 1. Once again, the lack of an enforceable waiver of sovereignty means that the SIHC, its member tribes, and the clinic patients are left at the mercy of whatever the Cuyapaipe band and its gaming investor decide to build.

*Question 4.*

*Does any of your gaming revenue go to the SIHC?*

Answer:

The Viejas Band has redirected its federal funds for health care to the SIHC for many years, as have a number of tribes in San Diego County. (For example: Tribal Priority Allocation funds (TPA funds) under the ICWA in the amount of \$30,000 were redirected to SIHC in fiscal year 2001; TPA funds of \$29,462 were redirected in fiscal year 2000; and similar amounts have been redirected in previous years. For 2002, the expected amount is \$29,397.

Additionally the Viejas Band created an inter-tribal revenue sharing program, which made gaming revenue available to all non-gaming tribes in San Diego, including Cuyapaipe, beginning in late 1995. Cuyapaipe received monthly payments under this plan for over three years.

With the signing of the Tribal-State Gaming Compacts in California, Viejas is required to contribute gaming revenue into a statewide revenue sharing fund, which is then redistributed to tribes that do not have gaming operations, or that have fewer than 350 machines, including Cuyapaipe.

*Question 5.*

*Why did you choose not to attend or send an alternate Director to the December 18 meeting where the vote was taken regarding the relinquishment of the lease?*

Answer:

To the best of the knowledge of the Viejas Band, the Band's appointee to the SIHC Board was present at the meeting held December 18, 2000.

*Question 6.*

*Do you feel that the SIHC is not taking into consideration the needs and desires of the Board members regarding improving health care? If the agreements are realized, wouldn't health care improve for the community?*

Answer:

No, health care would not improve. An existing, successful clinic would be uprooted in favor of a proposed, yet-to-be-built casino, which may or may not operate at a profit.

Promises about the improvement of health care are illusory, because there is no mechanism by which the SIHC or its patients could enforce the claims made by Cuyapaipe or its gaming investors. Also, it is important to note that the Cuyapaipe Tribe has sought to generate public support by promising unspecified sums to the local community for a number of purposes, including education (a new local high school), parks and recreation, a new library, fire protection, and a new sheriff's sub-station. These promises unfortunately overlook the fact that the tribal gaming industry in Southern California is highly vulnerable to economic downturns, so there is no guarantee that a future casino on the current clinic site will produce sufficient revenue to fund a new clinic in addition to funding all the other pledges that have been made by the Cuyapaipe tribe.

*Question 7.*

*If a tribe takes land in to trust and then changes the use of that land, should the tribe be required to relinquish the trust status of that land?*

Answer:

It is the position of the Viejas Band that no land taken into trust for an Indian tribe should ever be relinquished from its trust status, unless such action is taken at the request or direction of the tribe for which the land is held.

*Question 8.*

*You mention in your testimony that the economic competition from the Cuyapaipe casino is not an issue or that you do not know if it will be harmful or beneficial to have a casino one mile from your casino. What was your intention when, in a letter to the BIA on 21 Sept 2000, that "Cuyapaipe is attempting to undermine the Viejas Reservation economy by moving its economic development efforts 40 miles off its reservation and within one mile of the Viejas Reservation. This type of encroachment on the Viejas tribal community's economic sustainability cannot be tolerated." Could you clarify your view on this in regard to these two seemingly contradictory statements?*

Answer:

It is simply not clear what the impact of a proposed Cuyapaipe casino would be. On the one hand, it is certainly possible that nearby competition might lessen the revenues of the Viejas Casino; on the other hand, some have argued that having two casinos nearly adjacent might create more of a destination and thereby increase the customer base for both properties. Obviously, at the time of the September 2000 letter, the prevailing view was that the competition would be detrimental, and that opinion may prevail today. However, that issue is not now and never has been the focus of Viejas' objections to the change in land use. If Viejas' position on the competition question seems unclear, that is because the issue of competition is not the main concern of the Viejas Band, and it is irrelevant with respect to the protection of healthcare issues that underlie H.R. 1239.

It should also be noted that the Cuyapaipe tribe has a large reservation, (located approximately 70 miles east of San Diego) and could certainly construct its gaming facility on its reservation, which is the path that every other gaming tribe in California has been required to take. Instead, Cuyapaipe seeks to subvert the process by conducting gaming on trust land that is not part of a reservation, and has recently filed an application with the BIA to have the SIHC Clinic site re-classified as "reservation property."

We would note that the Cuyapaipe Tribe has no aboriginal claim to land in the Viejas Valley area, which is where the SIHC clinic is now located. The only reason Cuyapaipe has land in trust in this area, (in addition to their actual reservation, which is some 40 miles away), is that the Cuyapaipe Tribe was named as steward of the land where the clinic was to be built. This was done because of the impossibility of taking the land into trust for all seven SIHC consortium tribes.

*Question 9.*

*What are the yearly revenues your gaming venture produces for your tribe? Would you be willing to substitute that amount for the California revenue-sharing program payment of 1.1 million per year?*

Answer:

Viejas gaming operations yield substantial annual revenues for the Viejas Band. We made significant investment, undertook a great deal of risk, and invested more than substantial effort in establishing our casino, which we consider a success. Today, we would not trade it for revenue-sharing funds.

The reference in Viejas' testimony to the revenue sharing funds that Cuyapaipe is eligible to receive is simply a response to a message Cuyapaipe has been using that they are an impoverished group for whom the proposed casino represents the

only hope of economic development. This is in fact not the case the revenue sharing program could provide each Cuyapaibe tribal member roughly a six-figure annual income with no risk, no investment, and no disruption of the health care services on which the SIHC patients depend.

However, the relevant point is this: Viejas has no position on the question of whether the Cuyapaibe tribe should engage in gaming it is Cuyapaibe's sovereign right to make that determination. However, Viejas is strongly opposed to the events that allow Cuyapaibe to take advantage of administrative error giving them title to the health clinic site by establishing a casino 30 miles from their reservation over the objection of some of the tribes that were intended to benefit from that site.

All other tribes in San Diego County had to make economic decisions about the feasibility of gaming based on their reservation location and market for gaming. Only Cuyapaibe has the unfair advantage of claiming trust land and operating gaming in an area far removed from their reservation. Viejas feels this is a violation of the representations made by California tribes during the campaign to pass Proposition 1A, which gave California tribes the right to conduct slot machine gaming.

*Question 10.*

*What are your concerns regarding the Cuyapaibe/SIHC lease relinquishment agreement when it appears to favor both parties and the patients of the SIHC?*

Answer:

To summarize the concerns of the Viejas Band, we feel that it is wrong for Cuyapaibe to take a parcel of land into trust with the understanding that the land is to be used for the benefit of seven tribes, and then to make a substantial change in the use of that parcel without the consent of each of the seven tribes who will be affected by the change.

Second, we believe that Cuyapaibe's commitments to the SIHC are not legally enforceable, as explained in the response to question 1. If the existing lease is relinquished, the patients of the SIHC will have no standing and no legal recourse to enforce the promise of a new clinic.

Third, we know that the revenues needed to fulfill the Cuyapaibe's promises are speculative the casino may not get built for other reasons, the investor may decide to fund the project at a reduced level, and the economy of Southern California may not yield the level of gaming revenue that has been projected. The only party that may have present funds to fulfill the commitments is the gaming investor, and the SIHC patients have no recourse against that investor, according to the lease relinquishment documents.

In summary, the new clinic depends on the whim of the Cuyapaibe Tribe and the projected profit from a casino that does not exist, and that may or may not make money in its first few years, if ever.

*Question 11.*

*This issue seems to be disputed mainly by your tribe and the Cuyapaibe tribe. What effort has been made between the two tribes to reconcile this issue?*

Answer:

The Viejas Band wants this issue to be resolved by consensus; we have always been willing to talk to the Cuyapaibe Tribe about this. However, Cuyapaibe has very little reason to negotiate again, because of an administrative decision on the part of the BIA, the land is held in trust for Cuyapaibe, although it was intended to benefit seven tribes.

H.R. 1239 does not prohibit the establishment of a casino; rather it says that for a defined period of time, the land use may be changed only if there is a consensus among the tribes. We would emphasize to the committee, however, that as of this writing, Cuyapaibe is seeking to push the lease relinquishment through the BIA without any attempt to address Viejas' concerns.

*Question 12.*

*You testified that the land was title to the Cuyapaibe as a matter of administrative convenience. Did your tribe offer to take land into trust for the original site for the health clinic?*

Answer:

The reference to 'administrative convenience' describes a situation where the BIA took the clinic site into trust for the benefit of seven tribes and found it easier to title the land to only one tribe this over the stated objections of two of the tribes. Viejas did not offer to take land into trust because this was not intended to be a Viejas clinic, or a Cuyapaibe clinic; it was supposed to provide health care to the members of all seven tribes. Viejas supported the effort to establish the SIHC clinic, because tribal leaders at that time believed that a neutral site would be in the best

interest of all tribal members who would depend on the health care services of the SIHC clinic.

The whole point of choosing a new site (as Rep. Hunter's 1985 letter describes) was to have an independent, neutral site for the clinic. Viejas did not seek 'control' of the land where the clinic would be built, because the objective at the time was not to have any tribe or group 'control' the site. Cuyapaipe's current efforts to control the site demonstrate the importance of the "neutral site" goal.

*Question 13.*

*Did your tribe ever offer some of its land for the original site of the clinic?*

Answer:

No, for two reasons. First, the Viejas reservation is very small. It could not easily accommodate the clinic along with the homes of tribal members and the tribe's essential services. But more importantly, tribes were seeking an independent site at the time the clinic site was acquired, because previous efforts to house the clinic on other local reservations had proved unworkable. The Viejas Band felt that an independent, neutral home for the clinic would be preferable.

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**Responses to Questions Submitted to Ralph Goff, Chairman, Southern Indian Health Council**

*1. Did you seek land for the original site of the health clinic from all seven tribes? What was the response?*

SIHC sought a site that was well-situated for access by members of the seven consortium tribes and that was available. All consortium tribes were well aware of SIHC's needs, and the Cuyapaipe offered to provide SIHC land in Alpine for a clinic site. Because locating a clinic in Alpine was in the best interest of SIHC and its patients, the SIHC Board of Directors (comprised of members from all seven tribes) approved the arrangement.

*2. Why did you settle on the current site for the health clinic?*

The site is well-situated and was available. The SIHC Board approved it.

*3. If the new agreements do not take effect, what funds will you use to make improvements to the health clinics?*

IHS facility funding has never been available in California. Therefore, without the financial benefits from the new agreements, SIHC will have difficulty making even modest facility improvements and would not be able to make the improvements specified in the new agreements. The improvements specified in the new agreements are to be paid for without federal funds.

*4. Are the agreements between the SIHC and the Cuyapaipe legally binding?*

Yes.

*5. What assurances do you have that the agreements will be honored?*

Because the agreements are legally binding, their terms may be enforced in a court of law.

*6. What recourse do you have if the agreements are partly honored or not honored at all?*

The recourse is a legal suit.

*7. What will happen if the Cuyapaipe casino fails or is never opened? How would this impact the SIHC in regard to the current services it provides?*

The worst case scenario for SIHC is that it remains at its current location in Alpine. There is no risk or downside to the new agreements for SIHC. SIHC is not required to move out of its current facilities until a new clinic is fully built and equipped to its satisfaction. As such, current services will not be adversely impacted even if the casino never opens or fails. If the casino is realized, however, the upside for SIHC is very substantial. SIHC would get a comprehensive building, a new clinic, and annual payments from Cuyapaipe for many years.

*8. In the agreement, you are promised certain amounts of revenue from the Cuyapaipe over the next 35 years. How do you plan to use this money?*

The SIHC Board will determine based on short and long-term planning how to allocate amounts received from Cuyapaipe. The funds will certainly be used to maintain, improve, and increase the services offered through SIHC, consistent with its

mission of providing quality health care for Indians of the SIHC consortium and its service area.

*9. Have any of the other tribes approached the SIHC with proposals for improvement of health care services through building improvements, increased funds, etc?*

No.

*10. When was the most recent SIHC vote regarding the relinquishment of the lease and what was the result of that vote?*

The most recent vote was on December 18, 2000. On that date, the SIHC Board passed a resolution by a vote of four in favor and one abstention to reaffirm a prior resolution dated July 10, 2000 approving the agreements with Cuyapaipa.

*11. Were the board members of the SIHC aware that at the December 18 meeting that a vote on the relinquishment of the lease was to be held?*

Yes, pursuant to SIHC Bylaws a 30-day notice was given.

*12. It is our understanding that the SIHC is composed of one representative from each of the seven tribes. Do you feel that each tribe is adequately represented on the board? Statements have been made that the opinions of all seven tribes have not been taken into account regarding this matter - do you feel this is true - please elaborate.*

The SIHC Board is comprised of a member (and an alternate) from each of the seven consortium tribes. Each consortium tribe selects its director. As such, each consortium tribe is equally represented on the SIHC Board. We add that this matter being addressed by the House Committee was deliberated by SIHC for approximately five years and that all consortium tribes had ample opportunity to comment upon and discuss the proposal through their representative on the Board.

*13. According to the SIHC bylaws, do the tribes have any right of representation to the board other than the representatives sent to the board by each tribe?*

No, each tribe is fully represented by appointing a representative to the Board.

*14. What is the major opposition to the lease relinquishment agreement?*

The only opposition that SIHC is aware of is the opposition that has been expressed to the House Committee on Resources. This opposition appears to be motivated by gaming considerations and an attempt to limit casino competition in San Diego County.

*15. In Mr. Garcia's testimony, he mentions that the SIHC made a request for land on the Viejas reservation prior to the acquisition of the current site in Alpine and that this request was refused. If this is true - please provide details regarding this request for land. Were other tribes asked for land?*

Current SIHC staff is unable to locate documents to specifically verify Mr. Garcia's statements. However, we can confirm that SIHC Board members were given an opportunity to propose alternatives to acquiring the original land in Alpine. None did so. The Board therefore decided to locate the clinic at its current site in Alpine.

We hope that these responses are helpful to the Committee.

