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CONVEYANCE OF FEDERAL LAND TO THE
UTE MOUNTAIN UTE TRIBE

GOVERNMENT

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HEARING
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2066

TO CONVEY FEDERAL LAND LOCATED IN COLORADO TO THE
UTE MOUNTAIN UTE TRIBE AND TO PAY AN AMOUNT TO SUCH
TRIBE FOR ECONOMIC DEVELOPMENT

FEBRUARY 26, 1980

WASHINGTON, D.C.

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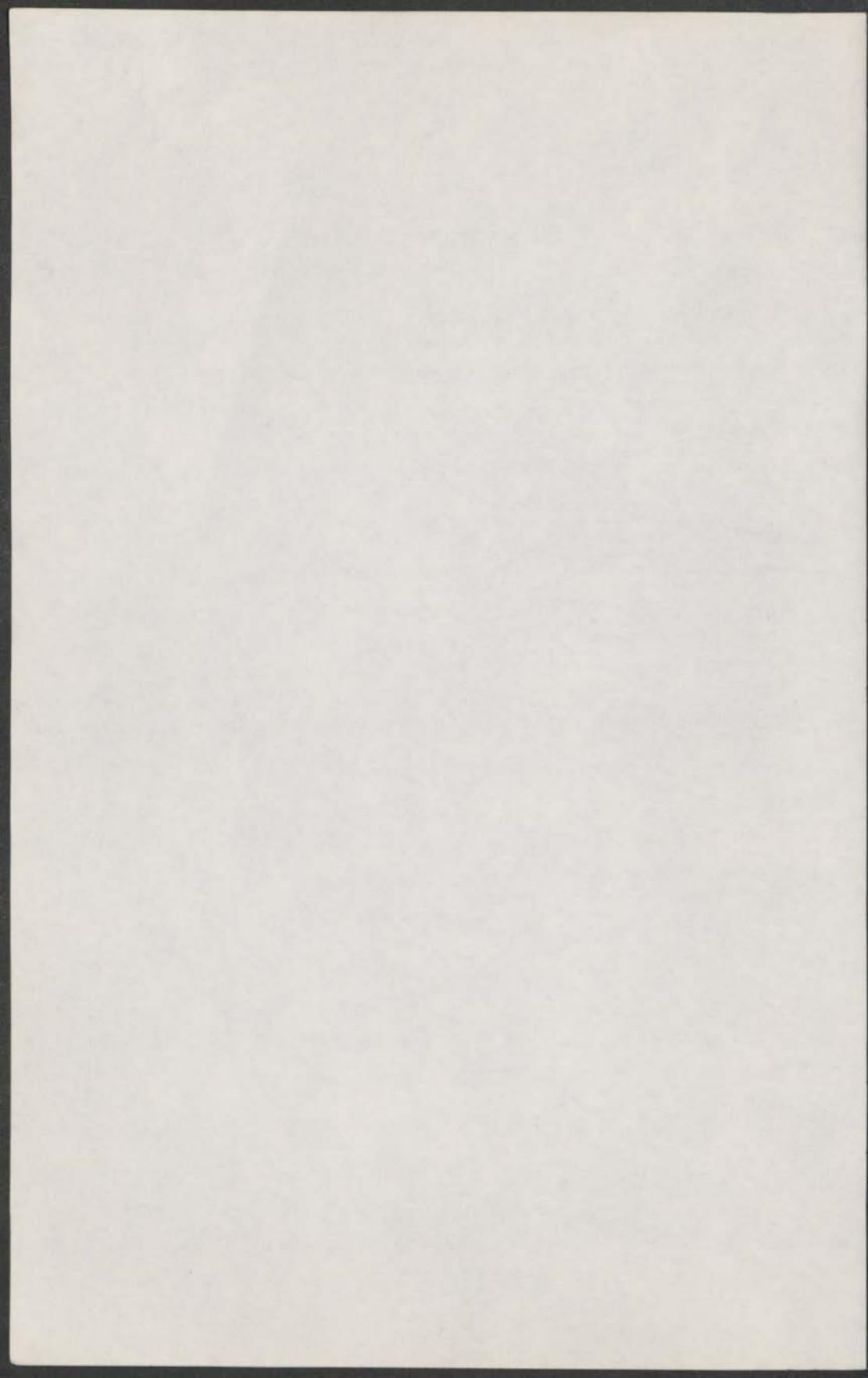
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CONVEYANCE OF FEDERAL LAND TO THE UTE MOUNTAIN UTE TRIBE

TUESDAY, FEBRUARY 26, 1980

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met at 10:56 a.m., pursuant to notice, in room 5110, Dirksen Senate Office Building, Hon. John Melcher (chairman of the committee) presiding.

Present: Senator Melcher.

Staff present: Max Richtman, staff director; Virginia Boylan, counsel; and Doris Ballard, secretary.

Senator MELCHER. The committee will come to order. I apologize for being late. The Interstate Commerce Commission hearing involving the Milwaukee Railroad required that I be present for testimony before that Commission this morning which could not be avoided. In my absence, the committee attempted to find one of the other four committee members to chair the hearing and none were available at the time. We will now proceed and time will necessitate that all witnesses confine their remarks to the pertinent points in their testimony. Their entire testimony that is prepared will be part of the record.

The purpose of our public hearing this morning is to hear testimony on S. 2066, the bill to transfer 3,100 acres of Bureau of Land Management land to the Ute Mountain Ute Tribe and to provide assistance to the tribe for economic development purposes. S. 2066 was introduced by Senators Hart and Armstrong of Colorado. A similar bill, H.R. 6036, sponsored by Representative Kogovsek and Congressman Johnson of Colorado, passed the House earlier this month. The purpose of the bill is to compensate the Ute Mountain Ute Tribe for 15,000 acres of land which were erroneously given by Congress to both the Ute Tribe and the Navajo Tribe, the conflict being that surveys first placed the land in one reservation and then in the other. In 1972, the Supreme Court decided the issue of ownership in favor of the Navajo Tribe. Additionally, the bill would provide economic assistance to the tribe in the amount of \$5,840,000, the same amount that was paid by the Supreme Court to the Navajo Tribe for revenues from oil and gas leases on the disputed lands.

I will now place a copy of S. 2066 into the hearing record.

[The bill follows:]

96TH CONGRESS
1ST SESSION

S. 2066

To convey Federal land located in Colorado to the Ute Mountain Ute Tribe and to pay an amount to such tribe for economic development.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 30 (legislative day, NOVEMBER 29), 1979

Mr. HART (for himself and Mr. ARMSTRONG) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

DECEMBER 20 (legislative day, DECEMBER 15), 1979

Rereferred, by unanimous consent, to the Committee on Energy and Natural Resources and the Select Committee on Indian Affairs

A BILL

To convey Federal land located in Colorado to the Ute Mountain Ute Tribe and to pay an amount to such tribe for economic development.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That within the thirty-day period beginning on the date of
- 4 the enactment of this Act the Secretary of the Interior shall
- 5 convey, without consideration, to the Ute Mountain Ute
- 6 Tribe, all right, title, and interest of the United States in and

1 to the parcel of land located in the State of Colorado de-
2 scribed in section 3 and all mineral interest of the United
3 States in and to the parcel of land located in the State of
4 Colorado, county of Gunnison, commonly known as the Pine-
5 crest Ranch, and described more fully in a warranty deed,
6 book 325, pages 6 through 8 (reception numbered 234174),
7 on file in the Office of the County Clerk and Recorder for
8 Gunnison County. The parcel of land described in section 3
9 shall not be considered Indian country for any purpose and
10 shall be subject to State and local governmental jurisdiction
11 and taxation.

12 SEC. 2. The Secretary of the Interior shall pay to the
13 Ute Mountain Ute Tribe for the economic development of
14 lands owned by such tribe, from sums appropriated therefor,
15 the sum of \$5,840,000 in accordance with an economic de-
16 velopment program submitted to the Secretary by the Ute
17 Mountain Ute Tribe and approved by the Secretary.

18 SEC. 3. The parcel of land conveyed pursuant to the
19 first section consists of—

20 (1) in township 48 north, range 3 west, New
21 Mexico principal meridian—

22 (A) the northwest quarter, the west half of
23 the northeast quarter, and the west half of the
24 southeast quarter, in section 19; and

1 (B) the north half of the northwest quarter
2 and the northwest quarter of the northeast quar-
3 ter, in section 30;

4 (2) in township 48 north, range 4 west, New
5 Mexico principal meridian—

6 (A) the east half of the northwest quarter,
7 the south half of the northeast quarter, and the
8 north half of the southeast quarter, in section 9;

9 (B) the south half, the northwest quarter of
10 the northeast quarter, and the southeast quarter
11 of the northeast quarter, in section 10;

12 (C) the south half of the northeast quarter,
13 the northeast quarter of the southeast quarter,
14 and the south half of the southeast quarter, in
15 section 11;

16 (D) the north half of the northwest quarter,
17 the northeast quarter, and the east half of the
18 southeast quarter, in section 13;

19 (E) the east half of the southeast quarter and
20 the southwest quarter of the northwest quarter, in
21 section 14;

22 (F) the west half of the northeast quarter
23 and the south half of the southwest quarter, in
24 section 15;

1 (G) the northeast quarter of the southeast
2 quarter in section 16;

3 (H) the southeast quarter of the southeast
4 quarter in section 17;

5 (I) the northeast quarter of the northeast
6 quarter in section 20;

7 (J) the northeast quarter of the southeast
8 quarter in section 21;

9 (K) the northeast quarter of the northeast
10 quarter and the north half of the southwest quar-
11 ter, in section 23;

12 (L) the west half of the northeast quarter,
13 the southeast quarter of the northeast quarter,
14 and west half of the southeast quarter, and the
15 northeast quarter of the southeast quarter, in sec-
16 tion 26; and

17 (M) the east half of the northeast quarter in
18 section 29; and

19 (3) in township 47 north, range 4 west, New
20 Mexico principal meridian—

21 (A) the northeast quarter of the northwest
22 quarter in section 10;

23 (B) the west half of the northwest quarter in
24 section 15;

1 (C) the east half of the southeast quarter and
2 the southeast quarter of the northeast quarter, in
3 section 16;

4 (D) the southeast quarter of the southeast
5 quarter in section 20;

6 (E) the north half of the northeast quarter,
7 the southwest quarter of the northeast quarter,
8 the northwest quarter of the southeast quarter,
9 the northeast quarter of the southwest quarter,
10 and the south half of the southwest quarter, in
11 section 21;

12 (F) the northwest quarter of the southeast
13 quarter in section 27; and

14 (G) the northeast quarter of the northeast
15 quarter in section 29.

16 SEC. 4. The enactment of this Act shall fully satisfy all
17 claims against the United States by the Ute Mountain Ute
18 Tribe relating to the dispute over ownership of lands located
19 in Mew Mexico and described as townships 31 and 32, range
20 16 west of the New Mexico principal meridian.

21 SEC. 5. Effective October 1, 1980, there is authorized
22 to be appropriated to the Secretary of the Interior the sum of
23 \$5,840,000 to carry out section 2. Any sums appropriated
24 under the authority contained in this section shall remain
25 available until expended by the Secretary.

Senator MELCHER. Our first witness this morning is Congressman Ray Kogovsek of Colorado. Ray, welcome to the committee.

**STATEMENT OF RAY KOGOVSEK, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF COLORADO**

Mr. KOGOVSEK. Thank you very much, Senator. I appreciate the chance to be here to speak on behalf of the bill introduced by Senator Hart and Senator Armstrong. You are quite correct, Senator, when you say that it is the same bill that I introduced along with Congressman Johnson in the House of Representatives that passed both our full committee and the full House with unanimous consent. In the interest of time, I will not read my prepared statement but I would ask that it be made a part of your record.

Senator MELCHER. It will be made part of the record at the end of your testimony.

Mr. KOGOVSEK. Let me just say with that you did a very good job of summing up just exactly what the bill in fact does.

Members of the Ute Mountain Ute Tribe are here to testify this morning on this request for compensation of land—only 3,100 acres, in comparison with the 15,000 acres lost, and monetary compensation to replace money lost from royalties earned from natural resources on the land now known as the Navajo Reservation. They are here to testify that it is a valid request and I, of course, concur with that. Also supporting the legislation are the State of Colorado and elected officials from the county of Gunnison. We have as part of our record a resolution from the Gunnison County commissioners that they, in fact, support this land transfer.

S. 2066 fulfills the Ute Tribe's request for justice, not charity. The legislation will aid the tribe in becoming economically self-sufficient while still maintaining the culture of their tribe. As one tribal member testified before the hearings on the bill in the House Interior Insular Affairs Committee, and I quote him, "we feel that we have been promised something by the Government and we have not yet received it." I, as one Member of the House, urge you to support Senate bill 2066 and make the Ute Mountain Ute Tribe whole and settle for all time the Ute's claim. With that, Senator, I thank you for the time to be here and would urge your utmost consideration of this piece of legislation.

Senator MELCHER. Thank you very much. Am I to assume, Ray, that the land involved is leased to other parties at this time?

Mr. KOGOVSEK. At the present time, it is in fact owned by the Bureau of Land Management but the Utes are the only ones that have a lease on it.

Senator MELCHER. The Utes have a lease on it currently—

Mr. KOGOVSEK. That is correct.

Senator MELCHER [continuing]. But do not own the land. Thank you very much, Ray, for your testimony and we'll make part of the record here a statement by Senator Hart and a statement by Senator Armstrong.

[The statements follow:]

PREPARED STATEMENT OF RAYMOND P. KOGOVSEK, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF COLORADO

Mr. Chairman and Committee Members, thank you for the opportunity to testify before you on S.B. 2066, passed as House Bill 5036 on February 5 of this year. I come before you today to urge your support and approval of this bill which would settle the claims of the Ute Mountain Ute Indian tribe against the United States by conveying 2,800 acres of federal land in Colorado and \$5,840,000 to be used exclusively for economic development on their reservation in Towaoc, Colorado.

In 1895, the U.S. Congress entered into an agreement which established the Ute Mountain Ute reservation. The intent of Congress was to provide the Weeminuche Band of Indians with a given amount of land on which to settle, establish a livelihood and carry on the traditions of the native Americans as other tribes were doing on other reservations.

Through surveying conflicts, it was later determined that 15,000 acres of the reservation were in conflict with a contiguous reservation granted by Congress to the Navajo Indian tribe.

A series of actions eventually led to a Supreme Court clarification of the land's true owner. The U.S. Supreme Court agreed that the acres in dispute belonged to the Navajos.

The legislation I sponsored in the House of Representatives which was approved without objection by my colleagues compensates the Ute Mountain Utes for their loss. It in no way attempts to argue with the Supreme Court's findings.

However, the court has no means to compensate the Utes. Only Congress can provide them with the amount of land intended for them—15,000 acres more than they now reside on as reservation land.

The Department of Interior has opposed this legislation, stating they have no evidence that the tribe bargained for a specific number of acres or that Congress had in mind a specific number of acres when it created the reservation.

The 1895 agreement gave the Ute tribe six townships. Expert testimony states that in all instances, if Congress intended a fractional township rather than a full township, it was definitely stated. In this instance, fractional townships were not described and the Ute tribe believed for many years it held reservation lands which included six full townships in New Mexico.

The American Indian Policy Review Commission has documented the failure of the Federal government to fulfill its responsibilities to Indian tribes in many instances. It is my belief that not compensating the Ute Mountain Ute tribe for the loss of land would be yet another failure.

There is a special trust relationship between Indian tribes and the Federal government, with Congress acting officially as sole trustee. The Congress must abide by the highest standards of loyalty required by this special relationship. Failure to do so would result in a miscarriage of justice.

The members of the Ute Mountain Ute tribe are here to testify that a request for compensation of land, only 3,000 acres compared to 15,000 acres lost, and money lost from royalties earned from natural resources on the land now known as the Navajo reservation, is a valid request.

Also supporting the legislation are the State of Colorado and elected officials from the county in which the land is located.

S.B. 2066 fulfills the Ute Tribe's request for justice, not charity. The legislation will aid the tribe in becoming economically self-sufficient while still maintaining the culture of their tribe.

As one tribal member testified before hearings on this bill in the House Interior and Insular Affairs Committee, "We feel we have been promised something by the government but we have not received it."

I urge you to support S.B. 2066 and make the Ute Mountain Ute tribe whole and settle for all time the Ute's claim.

PREPARED STATEMENT OF GARY HART, A U.S. SENATOR FROM THE STATE OF
COLORADO

Mr. Chairman, I am pleased to appear before you to testify on behalf of S. 2066, a bill which Senator Armstrong and I introduced. I thank you for your cooperation in scheduling this hearing, so we might build a record for Senate passage of this legislation.

The House has already passed a companion bill, which Representative Ray Kogovsek introduced.

This bill would compensate the Ute Indian Tribe for an injustice caused by Congressional error, by giving the tribe some Federal land in Colorado and some money.

The purpose of this legislation is to correct an unintentional injustice brought upon the Ute Indian Tribe in 1895. As part of a treaty commitment, Congress gave to the Utes land in New Mexico. Congress, however, had earlier given 15,000 acres of that land to the Navajo Tribe under a previous treaty. In 1972, a U.S. District Court ruled that this land—rich in oil, gas, and mineral wealth—belongs to the Navajos, not the Utes. The Utes, therefore, are without land Congress meant to give them to settle a treaty.

To compensate them for this loss, S. 2066 would give the Utes 3,100 acres of Federal land, now managed by the Bureau of Land Management—substantially less than the 15,000 acres Congress originally "gave" the Utes.

The bill also would give the Utes \$5.8 million to replace the far greater amount in gas and mineral revenues they would have received from the the New Mexico lands.

The total value, in land and money, the bill would give the Utes is far less than the value of the land Congress meant to give the Utes in 1895. The Utes, however, are willing to accept the smaller amount of land and money as full settlement for the injustice done by Congressional error.

The 1895 conveyance to the Utes was a direct outgrowth of a treaty that was negotiated by the Federal government in 1880, but never ratified formally. This was an attempt to put to rest the controversy over the proposed resettlement of all the Ute peoples outside of the State of Colorado. Under this agreement, Congress established the Ute Mountain Reservation in Colorado and New Mexico. The Weeminuchi Band of Indians, whom the Ute Mountain Tribe succeed in interest, peacefully settled on the reservation.

The reservation was not surveyed until 1914. As specified in the 1895 agreement, the U.S. surveyor used the standard New Mexico grid system as the basis for his survey. The survey set the western boundary of the reservation at the then eastern boundary of the previously established Navajo Reservation. This omitted some 15,000 acres Congress intended to include in the Ute Reservation, by creating partial townships where full townships had been granted by Congress.

In 1936, a General Land Office replatting of this area indicated that the disputed land was within the Ute Mountain Reservation and contained full townships as originally intended by Congress.

This situation existed until the 1950's when oil and gas leasing of the land began. Then, the companies leasing the property became concerned about the questionable ownership of the land.

In 1957, the Bureau of Indian Affairs refused to allow oil and gas revenues from the leases to be paid to either the Navajo or Ute Mountain Tribes. The tribes, therefore, agreed to put the revenues into an escrow account, pending resolution of a suit, authorized by Congress, to quiet title to the land. This resolution came in 1972 with the U.S. District ruling that the disputed land belonged to the Navajos.

The Court decision did not address the issue of compensation to the Utes for the land which Congress intended to grant them. S. 2066 will provide that compensation. It will give the Ute Indian tribe 3,100 acres of Federal land in Gunnison County, Colorado, which is presently being managed by the Bureau of Land Management. This land is now being used by the Tribe under a grazing permit from the BLM. The land joins and is intermingled with the Pinecrest Ranch, which the Tribe owns as a private landowner. This land would be of great benefit to the Tribe in consolidating their landholdings in and around the Pinecrest Ranch and in providing needed grazing areas for the Tribe's essential cattle business.

The granting of these lands to the Utes will not have any adverse impact on other users, as these lands are now being used solely by the Tribe. In fact, BLM has identified these lands as suitable for transfer to the Tribe. The Utes would pay taxes on this newly acquired land, just as they do for the land they now own.

This bill would also give \$5.8 million to the Ute Indians. This is the amount of the mineral revenues, from the disputed land, in the escrow account when the District Court made its 1972 ruling in favor of the Navajos. Since then, the land has earned another \$1 million from oil, gas and mineral leasing for the Navajos, and will earn much more in the future. All of this money, as well as the grazing rights and the value of the land itself, has been denied the Utes. By contrast, the 3,100 acres S. 2066 would transfer to the Utes has no mineral worth.

The Ute Tribe is in great need of this money to help ease their unemployment and boost their economic development. The money could only be used for tribal economic development—not, for instance, for cash grants to tribal members.

Passage of this bill is the least Congress can do to make up for the serious injustice our century-old error has created.

PREPARED STATEMENT OF WILLIAM L. ARMSTRONG, A U.S. SENATOR FROM THE STATE OF COLORADO

Mr. Chairman. Today I'd like to speak briefly to the matter of the Ute Mountain Indian Tribe and an injustice done to them many years ago because of a Congressional error.

I'd also like to say a few words about the bill that Senator Hart and I have introduced to correct this situation by transferring some Federal land in Colorado to the tribe and granting the tribe some money.

The purpose of this legislation is to correct an unintentional injustice brought upon the Ute Indian Tribe in 1895. As part of a treaty commitment, Congress gave to the Ute Tribe land in New Mexico. Congress, however, earlier had given 15,000 acres of that land to the Navajo Tribe under a previous treaty. In 1972, a U.S. District Court ruled that this land—rich in oil, gas, and mineral wealth—belongs to the Navajos, not the Utes. The Utes, therefore, are without land Congress meant to give them to settle a treaty.

To compensate them for this loss, this bill would give the Utes 3,100 acres of Federal land, now managed by the Bureau of Land Management, within and adjacent to a ranch the Utes own just southwest of Gunnison, Colorado. This is substantially less than the 15,000 acres Congress originally "gave" the Utes.

In addition, this bill would give the Utes \$5.8 million as compensation for the millions they have lost from the oil, gas, and mineral revenues from the land in New Mexico Congress intended to give them. The mineral worth of that New Mexico land is actually far greater than \$5.8 million.

The total value, in land and money, the bill would give the Utes is far less than the value of the land Congress meant to give the Utes in 1895. The Utes, however, are willing to accept the smaller amount of land and money as full settlement.

The 1895 conveyance to the Utes was a direct outgrowth of a treaty that was negotiated by the Federal Government in 1880 but never ratified formally. This was an attempt to put to rest the controversy over the proposed resettlement of all the Ute people outside of the State of Colorado. Under this agreement, Congress established the Ute Mountain Reservation in Colorado and New Mexico. The Weeminuchi Bank of Indians, whom the Ute Mountain Tribe succeed in interest, peacefully settled on the reservation.

The reservation was not surveyed until 1914. As specified in the 1895 agreement, the U.S. surveyor used the standard New Mexico grid system as the basis for his survey. The survey set the western boundary of the reservation at the then eastern boundary of the previously established Navajo Reservation. This omitted some 15,000 acres Congress intended to include in the Ute reservation, by creating partial townships where full townships had been granted by Congress.

In 1936, a General Land Office replatting of this area indicated that the disputed land was within the Ute Mountain Reservation and contained full townships as originally intended by Congress.

This situation existed until the 1950's, when oil and gas leasing of the land began. Then, the companies leasing the property became concerned about the questionable ownership of the land.

In 1957, the Bureau of Indian Affairs refused to allow oil and gas revenues from the leases to be paid to either the Navajo or Ute Mountain Tribes. The tribes, therefore, agreed to put the revenues into an escrow account, pending resolution of the dispute. This resolution came in 1972 when the U.S. Supreme Court affirmed the judgment of a special three-judge U.S. District ruling that the disputed land belonged to the Navajos.

The Court decision did not address the issue of compensation to the Utes for the land which Congress intended to grant them.

This bill will give the Ute Indian Tribe 3,100 acres of Federal land in Gunnison County, Colorado, which is presently being managed by the Bureau of Land Management.

The land being proposed to transfer to the Utes is now being used by the Tribe under a grazing permit from the BLM. The land adjoins and is intermingled with the Pinecrest Ranch, which the Tribe owns as a private landowner. This land would be of great benefit to the Tribe in consolidating their landholdings in and around the Pinecrest Ranch and in providing needed grazing areas for the Tribe's essential cattle business.

The granting of these lands to the Utes will not have any adverse impact on other users, as these lands are now being used solely by the Tribe. The Utes would pay taxes on this newly acquired land, just as they do for the land they now own.

The Utes also have graciously agreed to allow limited access for responsible anglers to Willow Creek, a natural trout-producing fishery located partly on the Pinecrest Ranch and partly on the BLM land proposed for transfer to the Utes. Through their attorney, the Utes have outlined to my staff that they would agree not to alter the stream in such a manner as to have a negative effect on the fishery. It is not our intention or that of the Utes that camping or other activity should be allowed on the stream banks, but instead provide a single access point for fishermen on foot to enter the property and fish along the banks of the creek. Presumably, this area would be patrolled by the BLM to insure trespassing does not occur.

This bill would also give \$5.8 million to the Ute Indians. This is the amount of the mineral revenues, from the disputed land, in the escrow account when the District Court made its 1972 ruling in favor of the Navajos. Since then, the 15,000 acres denied the Utes have earned another \$1 million from oil, gas, and mineral leasing for the Navajos, and much more will be made from it in the future. The \$5.8 million that this bill provides is the least that the Congress can grant for the injustice brought upon these people. The bill stipulates that the money could only be used for tribal economic development—not, for instance, for cash grants to tribal members.

Governor Richard D. Lamm of Colorado, the Colorado Commission of Indian Affairs, and the County Commissioners of Gunnison County have all endorsed this bill.

Thank you, Mr. Chairman.

Senator MELCHER. The next witness is Arnold Petty, Deputy Director for Services, Bureau of Land Management, U.S. Department of the Interior; accompanied by Ralph Reeser, Director, Office of Congressional and Legislative Affairs, Bureau of Indian Affairs.

**STATEMENT OF ARNOLD PETTY, DEPUTY DIRECTOR FOR SERVICES,
BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE IN-
TERIOR; ACCOMPANIED BY RALPH REESER, DIRECTOR, OFFICE
OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS, BUREAU OF
INDIAN AFFAIRS**

Mr. PETTY. Mr. Chairman, we appreciate the opportunity to appear before you and to testify on this bill. In recognition of your request to make our statements brief, I'll ask also that my written statement be incorporated into the record and I will try to keep my remarks as brief as possible.

S. 2066 provides that within 30 days the Secretary of the Interior transfer about 2,900 acres to the Ute Mountain Utes without compensation and in addition transfer the mineral rights to about 9,700 acres in which the Utes own surface rights and in addition pay the sum of about \$5,840,000.

The history of this bill leaves some doubts as to whether or not an error was actually made. At least we cannot tell from the record. The Congress entered into a treaty with the Navajo Nation in 1868 and the area was surveyed in 1869. In 1895 the legislation was passed providing for the Ute Mountain Reservation. In 1914, the survey was completed on that reservation.

The difficulty appears to be whether or not Congress knew at the time that sections 31 and 32 of the New Mexico townships were actually whole townships or parts of townships. There is some evidence to indicate that Congress was aware that these were fractional townships when the House report at that time referred to New Mexico

townships as six fractional townships of unoccupied land in New Mexico. We have no evidence, or at least we can find no evidence that Congress was aware of this at the time that they were actually considering the bill that established the Ute Mountain reservation. However, it has been litigated and confirmed by the Supreme Court that 15,000 acres in question actually belonged to the Navajos. The administration is strongly opposed to S. 2066. We cannot see any equitable claim that the Ute's have either to the land or to the funds. We do have Federal Land Policy Management Act with a provision for the sale or exchange of lands and if the Congress wishes to provide the Utes with this 2,900 acres we would suggest that we use FLPMA as a way of providing that land to them. Now, that would require either an exchange of lands or fair market value payment by the Utes. In summary, all we can say is that the administration is strongly opposed to the enactment of the bill.

Senator MELCHER. You state that 9,700 acres of reserved mineral interest would be conveyed under the first section of the bill. Those are located in the lands the surface of which is already owned by the tribe?

Mr. PETTY. That is correct. The Pine Crest Ranch.

Senator MELCHER. Why didn't the tribe own the mineral rights?

Mr. PETTY. The tribe got that under an act, I've forgotten which one it was, which provided that the Federal Government would retain the mineral interests.

Senator MELCHER. There has been no mineral activity on any of those 9,700 acres?

Mr. PETTY. There has been no mineral activity.

Senator MELCHER. Does the Bureau have any assessment available from the USGS as to whether there is any possibility of minerals?

Mr. PETTY. We have no assessment from USGS. We have no indication that there are any mineral values in there. USGS has no indication that there is. To my knowledge, there has been no exploratory drilling. There has just been no mining activity.

Senator MELCHER. The 2,900 acres of land, I think, have been described as 3,100 acres.

Mr. PETTY. Our staff has calculated, and the descriptions that are contained in the House bill and the Senate bill are calculated as a little over 2,900 acres. It could be more or less.

Senator MELCHER. Whether there is 2,900 or 3,100 acres, it is clear that the Utes now have a lease on the land.

Mr. PETTY. The Utes are now the exclusive leasee of all that land. They use it for grazing. They are paying about \$1,200 a year rent for the grazing rights.

Senator MELCHER. How many cattle or sheep does that involve?

Mr. PETTY. I believe there are about 300 cows. I am not aware that any sheep are involved.

Senator MELCHER. Is that arrived at as just a figure, \$1,200, or is it so much an AUM?

Mr. PETTY. It is so much an AUM, but I've forgotten what. I assume that is the usual fee we charge to the public since none of that is acquired. It is all public domain. I believe the fee is \$1.87 an AUM this year.

Senator MELCHER. Thank you very much, Mr. Petty. Your prepared statement will be made a part of the record.
[The statement follows:]

PREPARED STATEMENT OF ARNOLD E. PETTY, DEPUTY DIRECTOR FOR SERVICES, BUREAU OF LAND MANAGEMENT, AND RALPH R. REESER, DIRECTOR, OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS, BUREAU OF INDIAN AFFAIRS, BOTH OF THE DEPARTMENT OF THE INTERIOR

S. 2066 would provide that within 30 days after its enactment the Secretary of the Interior convey to the Ute Mountain Ute Tribe, without consideration, all interests of the United States in about 2,900 acres of land in Colorado and mineral interests of the United States in about 9,700 additional acres of lands. The bill also would require the Secretary to pay to the tribe the sum of \$5,840,000 for use in an economic development program submitted by the tribe and approved by the Secretary. The bill would further provide that this would fully satisfy all of the tribe's claims against the United States relating to the dispute over land ownership in a certain area in the State of New Mexico.

The Administration is strongly opposed to enactment of S. 2066.

The payment of the \$5,840,000 and conveyance of 2,900 acres called for by the bill are intended to serve as a substitute for lands, which were subject to overlapping claims by the Navajos and the Ute Mountain Utes, and mineral receipts from those lands. The claims were litigated and were decided in favor of the Navajos in the case of in re Title Dispute—Ute Mountain Ute and Navajo Tribes. This decision was affirmed by the Supreme Court in 1972.

The facts leading to introduction of the bill are as follows:

In 1868, the United States entered into a treaty with the Navajo Tribe wherein the boundaries of the tribe's reservation were described. Because the lines of the boundaries had not been established before, the General Land Office contracted to have the land surveyed. In order to comply with the treaty, the surveyor was instructed to survey a special base meridian. That meridian, later known as the Navajo meridian, was the eastern boundary of the reservation.

Congress, by the act of February 20, 1895 provided for a Ute Mountain Ute Reservation, part of which was to be in New Mexico. The New Mexico portion of the reservation so created was described as all of townships 31 and 32 of ranges, 14, 15, and 16 west of the New Mexico principal meridian and lying in the Territory of New Mexico.

After the time of the grant to the Ute Mountain Utes townships 31 and 32 of range 16 west were found by survey to be fractional-width townships because they intersected the Navajos principal meridian at the eastern boundary of lands granted to the Navajos by the 1868 Treaty. If these had been full townships rather than fractional townships, an area of about 15,000 acres would overlap both Ute Mountain and the Navajo Reservations.

In order to resolve this dispute over ownership, Congress enacted the Navajo-Ute Boundary Dispute Act in 1968, under which consent was given for the tribes to sue each other to quiet title to the disputed area. The court decision, referred to earlier, is the outcome of a suit brought by the Utes under the 1968 act.

It is the Department's view that the Ute Mountain Utes have no equitable, monetary or legal claim against either the United States or the Navajos regarding the lands involved in the Navajo-Ute dispute.

In addition, we have no evidence that the Utes bargained for a specific acreage or that Congress had a specific acreage in mind when it created their reservation. Congress was aware that many of the townships granted to the Utes would be of fractional height since several lay on the State line between Colorado and New Mexico, and the House Report at that time refers to the New Mexico townships as six fractional townships of unoccupied land in New Mexico. We have no evidence as to whether Congress was aware that townships 31 and 32 of range 16 west were of fractional width. However, since the Utes received all of the fractional townships granted to them under the legal description contained in the Act, we believe that the tribe would have no legal claim against the United States even if a jurisdictional statute were enacted granting consent to a suit.

The 2,900 acres of lands which would be conveyed under the bill have never left Federal ownership and are now managed by the Bureau of Land Management under the principles of multiple use and sustained yield as mandated by the Federal Land Policy and Management Act. The primary use of the land is for livestock

grazing, and the tribe is the authorized grazing lessee of the land at an annual fee of about \$1,200. In addition, the Willow Creek area provides essential access for public fishing. A preliminary estimate of the value for the land indicated a value of \$600 per acre.

The 9,700 acres of reserved mineral interests that would be conveyed under the first section in the bill are located in lands the surface of which is already owned by the tribe. Information on file in the BLM'S Colorado State Office indicates no mineral activity on these lands or on the 2,900 acres of lands that would be conveyed by S. 2066.

The Federal Land Policy and Management Act of 1976 provides for disposal of public lands through sale or exchange if certain criteria are met.

Under the sales provision, payment of fair market value is required. Under the exchange provisions, equal value for offered and selected lands is required.

If the Congress determines that the land involved should be made available to the tribe, we would support a conveyance only under the provisions of FLPMA. We do not support the payment of \$5,840,000 to the tribe for economic development.

Senator MELCHER. The next witness is Marilyn Youngbird, Executive Director, Colorado Commission on Indian Affairs.

At this time, I will make a part of the record, ahead of Marilyn's testimony, a letter from the Governor of Colorado, the Honorable Richard D. Lamm.

[The letter appears on next page.]

**STATEMENT OF MARILYN YOUNGBIRD, EXECUTIVE DIRECTOR,
COLORADO COMMISSION ON INDIAN AFFAIRS**

Ms. YOUNGBIRD. Good morning, Senator, I'm Marilyn Youngbird, the executive director of the Colorado Commission on Indian Affairs, and on behalf of Governor Richard D. Lamm and Lieutenant Governor Nancy Dick, I am here to present this testimony for the State of Colorado. The State of Colorado is in full agreement with the rationale from which S. 2066 is developed, and strongly indorses the purposes for which it is intended. Since I already have submitted the letter to you, I would like to say thank you very much for giving us the opportunity to express our full support for this important piece of legislation. Thank you very much.

Senator MELCHER. Thank you very much, Marilyn.



State of Colorado

EXECUTIVE CHAMBERS

136 State Capitol
Denver
80203

RICHARD D. LAMM
Governor

839-2471

15 February 1980

The Honorable John Melcher
Chairman, Senate Select Committee
on Indian Affairs
Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

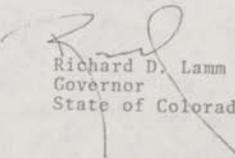
This responds to your request for our views and opinion on S.2066, a bill "to require the Secretary of the Interior to convey a parcel of land located in Colorado to the Ute Mountain Ute Tribe and to pay an amount to such Tribe for economic development".

The State of Colorado is in full agreement with the rationale from which S.2066 is developed and strongly endorses the purposes for which it is intended. I am sure you are aware of the fact that the Ute Mountain Ute was at one time the custodian, if not the owner of large portions of what is now the State of Colorado. Through a series of treaties negotiated by the Federal Government, the Ute People ceded large portions of this property until they were left with their present reservation in the Southwestern portion of the State. As we understand the controversy, the Tribe evidently did not receive the full amount of land for which they bargained in the 1895 treaty. We believe that the land settlement and the monetary compensation provided for in S.2066 is both fair and reasonable.

We have for a long time, been concerned about the economic development of the Southwestern portion of our State. As you may be aware, a number of Federal and State programs are presently in place to attract new business and create employment opportunities in this area. The impact of the passage of S.2066 would be a boom to both the Ute Mountain Tribe and the non-Indian residents of that area. This is certainly one region of the State in which the injection of new capitol, coupled with the multiplier effect of that new capitol, would have a favorable impact in raising the economic standard for all citizens.

Thank you for the opportunity to state our support for this important piece of legislation.

Sincerely,


Richard D. Lamm
Governor
State of Colorado

RL/gn

Senator MELCHER. We will have a panel next. Judy Pinnecoose, chairperson, Ute Mountain Ute Tribe, Ernest House, Terry Knight, Carl Knight, John J. D'Onofrio and David Wagner.

Ms. PINNECOOSE. Good morning, Mr. Chairman. I would like to say that Terry Knight will not be able to testify at this time, but all others whose names were read are present.

Senator MELCHER. If Terry Knight would like to submit a statement for the record, we will accept it.

Ms. PINNECOOSE. The statement that was to be presented by him will be mailed to the committee.

[Statement appears on p. 47.]

Senator MELCHER. Thank you very much. Please proceed.

STATEMENT OF JUDY PINNECOOSE, CHAIRPERSON, UTE MOUNTAIN UTE TRIBE

Ms. PINNECOOSE. Good morning, Mr. Chairman, committee members. As chairperson of the Ute Mountain Ute Tribe, I would like to present my views on S. 2066. This is a bill to convey Federal lands located in Colorado to the Ute Tribe, and to pay an amount to the Ute Tribe for economic development. Today, I am accompanied by several members of the tribal council who will also testify on S. 2066. Also, Professor Delaney from Fort Lewis will present the historical analysis for the basis of this legislation.

In order to understand the reasons for the introduction of this bill, we have to go back many years to the time when the U.S. Government requested the chiefs of the Ute Tribe, including the Weeminuchi Band, who are our ancestors, to enter into a treaty to resolve the white man's claim to our land. The negotiations for the 1895 treaty actually began many years before and represented a final settlement with the Weeminuchi Band and other Ute Indian Bands in Colorado. In 1868, the United States had set aside for the Utes most of the Western third of Colorado as their reservation. Due to pressures, it was gradually reduced to the present size.

Although the concept of landownership was foreign to our people, we were told that we would beneficially own land given to us in the 1895 agreement forever and that the Government would protect our rights to this land by holding it "in trust" for us. For many years our people lived on these townships and used the land to graze their cattle and sheep on that land. My family and some of the other council members with me here today lived on this land until we were told that the United States had given the land to someone else and that we had to leave. Our people did not understand the complexities involved in the "granting" of a reservation by the U.S. Government, and we had no surveyors. We relied upon what was stated in the Agreement and the good faith of the U.S. Government as our trustee in upholding that agreement.

The Ute Mountain Tribe has economic development plans which can greatly decrease our dependency upon the economic Federal transfer payment system. The Ute Mountain Ute people are not asking for charity. We are asking for just compensation and a chance to demonstrate that we can be economically productive and self-sufficient citizens while maintaining our culture and our community

life. We are not asking for more than our share. In fact, we are asking for much less than the land and money that we lost.

In an attempt to resolve this matter, we ask the members of this committee to hear our claim and to compensate the Ute Mountain Ute Tribe for that which was given, but never received.

The Ute Mountain Ute Tribe recognizes that Willow Creek has been a popular fishing area for sportsmen in the area. We would like to state for the record that the request of Senator Armstrong, that the Ute Mountain Tribe has agreed to, allows public fishing and fisheries management along Willow Creek, both where it crosses the requested BLM land and where it crosses land now owned by the tribe. A system to provide rangers to patrol this area will be established by the BLM and the Ute Tribe.

Thank you, Mr. Chairman, for the opportunity to testify before this Senate Select Committee on Indian Affairs.

Senator MELCHER. How is that fishing handled now?

Ms. PINNECOOSE. I believe it is by permits from the State of Colorado.

Senator MELCHER. Why do you want to change that then? Has it been unsatisfactory?

Ms. PINNECOOSE. If the land is transferred to the Utes they would be trespassing on Indian land.

Senator MELCHER. Is the fishing arrangement now unsatisfactory?

Ms. PINNECOOSE. Yes, it is.

Senator MELCHER. I am not aware of any arrangements for the BLM to handle fishing rights in public lands.

Ms. PINNECOOSE. The State of Colorado has been issuing fishing permits for that area.

Senator MELCHER. But, you say it is unsatisfactory.

Ms. PINNECOOSE. Yes, because there is the question of trespassing in that area, if we could get it. The main purpose would be that we would be able to have more control on it. These fishermen do go on the part of the ranch that belongs to the Ute Tribe.

Senator MELCHER. Yes, but you just got through testifying you would work out an arrangement with the BLM.

Ms. PINNECOOSE. I testified that we did not work out an arrangement with the BLM, that we would.

Senator MELCHER. I am pointing out that I know of no arrangement with the BLM where they run a fishing program.

Ms. PINNECOOSE. Well, then, whoever. It could be the State of Colorado. We would be willing to work out an arrangement so that private fishermen could come in and fish.

Senator MELCHER. Working it out with the BLM and working it out with the State of Colorado is two different entities.

Ms. PINNECOOSE. Sir, could I have the attorney make a comment?

Mr. D'ONOFRIO. Sir, the fishing licenses would still be issued by the State of Colorado. The problem that exists, if you could see this map, is that along Willow Creek the land crosses both private tribal land and BLM land. And so, we are willing to work out an agreement with the BLM that people can still fish on all of the land along there, not just what was formerly BLM land, although licenses will still have to be obtained from the State of Colorado.

Senator MELCHER. Will the State of Colorado control the extent of the licenses, the cost of the licenses, and the fishing season?

Mr. D'ONOFRIO. Yes, your Honor, just as on any other private lands that anybody would go on in the State of Colorado.

Senator MELCHER. Ernest House, are you the next speaker?

**STATEMENT OF ERNEST HOUSE, TREASURER, UTE MOUNTAIN
UTE TRIBE**

Mr. HOUSE. Good morning, Mr. Chairman. My name is Ernest House. I am the treasurer for the Ute Mountain Ute Tribe. I am here to testify in regard to S. 2066. I would like to focus my comments on the monetary compensation which is requested in S. 2066.

When oil and gas was discovered on the land which we lost in New Mexico and it became apparent that there was some confusion over the ownership of these lands, the royalties were put into a special escrow account. It is interesting to note that the Bureau of Indian Affairs insisted that these funds be placed in escrow, although they now tell us that it was clear that we never received these lands from the U.S. Government. It is obvious that with their interests at stake, the question of ownership was unclear to the Bureau of Indian Affairs.

In 1972, when the Ute Mountain Tribe lost these funds, there was approximately \$5,840,000 in the escrow account from the royalties from gas and oil. Since that time, approximately \$1 million in additional royalties have been generated from this land. It is difficult to estimate the future value of production. Additional royalties can be expected from this land. In total, the Ute Mountain Tribe has lost approximately \$8 million in royalties over the years.

When the Ute Mountain Tribe lost the 15,000 acres that contained these oil and gas fields, they lost not only grazing land, but also valuable natural resources. While the land which we are requesting in Gunnison County will partially replace the lost grazing lands, it will not replace the loss of oil and gas fields, as the land in Gunnison County has never been found to have such natural resources. Accordingly, we are asking Congress to compensate us for these lost royalties in the amount of \$5.84 million, the amount in the escrow account lost by the Ute Mountain Tribe in 1972.

S. 2066 provides that this payment, along with the transfer of the land in Colorado, will settle forever the Ute Mountain tribe's claim to the land located in New Mexico which has been the subject of this controversy.

It is important to note that in S. 2066, the Ute Mountain Tribe has requested that these funds be disbursed by the Secretary of Interior in accordance with an economic development program submitted to him. We have now a management planning system. We have to our south, in New Mexico, the All Indian Pueblo Council, who are better implementing new accounting systems. We are upgrading the system that we have now so that we can carry on in the future the new outlook that the tribe has.

Our economic development plan will be based upon the lessons we have learned from the past and our goals for the future. Other witnesses will speak in greater detail about the economic plans and give you some examples of projects in which the Ute Mountain Tribe is interested. I thank you for this time before you. Thank you very much.

PREPARED STATEMENT OF ERNEST HOUSE, TREASURER, UTE MOUNTAIN UTE TRIBE

Good morning, Mr. Chairman and committee members, I am here today to testify in regard to S. 2066, a bill to convey Federal land located in Colorado to the Ute Mountain Ute Tribe and to pay an amount to such tribe for economic development. I would like to focus my comments on the monetary compensation which is requested in S. 2066.

When oil and gas was discovered on the land which we lost in New Mexico and it became apparent that there was some confusion over the ownership of these lands, the royalties were put into a special escrow account. It is interesting to note that the Bureau of Indian Affairs insisted that these funds be placed in escrow, although they now tell us that it was clear that we never received these lands from the U.S. Government. It is obvious that with their interests at stake, the question of ownership was unclear to the Bureau of Indian Affairs. It is disappointing to the tribe that our trustee has taken such an inconsistent position at this time.

In 1972, when the Ute Mountain Tribe lost these funds, there was approximately \$5,840,000 in the escrow account, which represented royalties from oil and gas production on the disputed land since the early 1950's. Since that time, approximately \$1 million in additional royalties have been generated from this land. While it is difficult to estimate the future value of production, the U.S. Geological Survey informs us that approximately \$1 million in additional royalties can be expected from the land. In total the Ute Mountain Tribe has lost approximately \$8 million in royalties over the years.

When the Ute Mountain Tribe lost the 15,000 acre tract that contained these oil and gas fields, they lost not only grazing land, but also valuable natural resources. While the land which we are requesting in Gunnison County will partially replace the lost grazing lands, it will not replace the lost oil and gas fields, as the land in Gunnison County has been found to have no significant natural resources. Accordingly, we are asking Congress to compensate us for these lost royalties with a payment in the amount of \$5.84 million, the amount in the escrow account lost by the Ute Mountain Tribe in 1972. S. 2066 provides that this payment, along with the transfer of the land in New Mexico, will settle forever the Ute Mountain Tribe's claim to the land located in New Mexico which has been the subject of this controversy.

It is important to note that in S. 2066, the Ute Mountain Tribe has requested that these funds be disbursed by the Secretary of the Interior in accordance with an economic development program submitted to him. It is our intention that these funds will be used to foster the growth of the Ute Mountain people. We have already made many changes in our managerial systems and in the running of a few businesses which we now have on the Ute Mountain Reservation in order to prepare for the future. We have instituted a new personnel system. We are receiving assistance from the All Indian Pueblo Council in the implementation of a new managerial accounting system. We have hired an executive director to assist the chairman in the day-to-day business operations of the tribe. In this way, we are laying the foundation for future economic growth.

Our economic development plan will be based upon the lessons we have learned from the past and our goals for the future. In the past, our sole goal has been to create employment for the members of the tribe. In the future, while continuing to do this, we will also attempt to diversify our use of funds to include projects which will provide capital growth upon which the tribe can base additional investments. We will look toward the careful development of our natural resources in order to insure that they will provide a base for tribal operations for our children and for generations to come. We will not use these funds for payments to individuals where they do not encourage self-sufficiency and economic growth.

Other witnesses will speak in greater detail about our economic development plans and give you some examples of projects which the Ute Mountain Tribe is interested in pursuing. Let me just say, that a new approach is being taken today with the hope that the Ute Mountain Tribe will once again be free in today's world. We hope to provide jobs and financial security for our people. We also hope to lay the foundations for tomorrow. In requesting the monetary compensation set forth in S. 2066, we hope not only to satisfy a long-standing claim of the Ute Mountain people against the U.S. Government, but to use these funds as a basis for a brighter future for our tribal members. Thank you for the opportunity to speak to the Senate Select Committee on Indian Affairs this morning.

AMENDMENTS TO S. 2066 SUBMITTED BY THE UTE MOUNTAIN UTE TRIBE

1. Page 2, line 5. The words "and described more fully in a warranty deed, book 325, pages 6 through 8 (reception numbered 234174), on file in the Office of the County Clerk and Recorder for Gunnison County." in lines 5-8 should be deleted and the following inserted:

"and more fully fully described in a warranty deed, book 325, pages 6-8 (reception numbered 234174) on file in the Office of the County Clerk and Recorder for Gunnison County."

2. Page 4, line 14. The words "and west half of the southeast quarter, and the" in line 14 should be deleted and the following inserted:

"the west half of the southeast quarter, and the".

3. Page 5, line 19. The words "in New Mexico and described as townships 31 and 32, range" should be deleted and the following inserted:

"in New Mexico and described as townships 31 and 32, range".

Senator MELCHER. Thank you, Ernest.

Terry Knight is not here, but Carl Knight is. Carl.

STATEMENT OF CARL KNIGHT, COUNCILMAN, UTE MOUNTAIN
UTE TRIBE

Mr. KNIGHT. Good morning, Mr. Chairman. I would like to comment on the land part of the bill that we are requesting in this legislation.

First, I would like to indicate the land on the map which shows the Pine Crest Ranch which is outlined in black, and also, indicate the Bureau of Land Management land that we are requesting which is indicated on the map by yellow markings. The Bureau of Land Management has told us that these lands create many administrative problems and we now have grazing permits from the Bureau of Land Management on the land. No ranchers in the area will lose land. We will pay taxes on the land. The Gunnison County Board of Commissioners has indicated that they have no objections to this transfer. Also, along with this land that we are asking, we would like to have the mineral rights with the land. We have knowledge that there are none on the land for which we are asking.

The land transfer will solve the trespass problem due to the Bureau of Land Management land in and around our ranch in the areas where trespassers who claim that they are attempting to reach BLM land cross our ranch. The fishing part of this ground for which we are asking is a very small part that the BLM has, which is not more than maybe three quarters of a mile long.

The land transfer will create a better unit all over for grazing the tribes' cattle and increasing the value of the land now held by the tribe. The land transfer is important to the tribe's most successful business—its cattle operations. We will be able to graze all the tribal owned cattle on this land and most of our people have no skills other than cattle. The cattle business operation is a way of life for most of our people.

We are requesting only 3,000 acres—although we lost 15,000—for two reasons. This land has created greater value as pastureland and we don't want to take Bureau of Land Management permits away from other ranchers in the area.

I want to take this opportunity on behalf of the Ute Tribe to thank you for the opportunity to present our views. Thank you.

Senator MELCHER. Thank you, Carl. Your prepared statement will be included in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF CARL KNIGHT, COUNCILMAN, UTE MOUNTAIN UTE TRIBE

Good morning, Mr. Chairman and committee members, I would like to present my views on S. 2066, a bill to convey Federal land located in Colorado to the Ute Mountain Ute Tribe, and to pay an amount to such tribe for economic development. In particular, my comments relate to the request for land contained in S. 2066.

S. 2066 would give the Ute Mountain Tribe approximately 3,100 acres of land now under the jurisdiction of the Bureau of Land Management to compensate us for 15,000 acres of land which we lost due to a mistake in the 1895 agreement with the United States creating the Ute Mountain Reservation. The 15,000 acres of land were used by our people for grazing our cattle during the summer months. In fact, my family used these lands for many years before being forced to leave in 1972. The land was taken away because of a surveying error by the United States which decreased the size of two of the six townships we received in the 1895 agreement. The language in the agreement clearly indicates that it was the intent of Congress to give us six full townships and our subsequent occupation of the land shows that we interpreted the language in this way.

The Bureau of Land Management land that we are requesting is located within and around deeded land now owned by the tribe in Gunnison County known as the Pinecrest Ranch. The accompanying map indicates the location of this land, which is just south of the Blue Mesa Reservoir between Gunnison and Montrose. We have attempted to minimize the adverse effect of this land exchange for the ranchers and citizens of Gunnison County, by requesting only lands which we currently use under grazing permits with the Bureau of Land Management. In essence, we have used these lands as our own for many years and only request a formal transfer of ownership. By asking for these lands, no rancher will be adversely effected by a decrease in available permits for grazing lands.

We are also willing to pay property taxes to Gunnison County on this land, just as we pay taxes on the land that we now own. We have contacted the Board County Commissioners for Gunnison County and they have indicated that they have no objection to the transfer of this land. I also understand that a representative from the State of Colorado is here to testify in support of this legislation.

We have been informed by officials of the Bureau of Land Management in Montrose, Denver, and Washington that this land creates many administrative problems as one can surmise from the map. The land is interspersed with the tribe's ranch and control is a difficult problem. Over the years, we have experienced many problems with trespassers who claim that they are attempting to reach Bureau of Land Management land by crossing our ranch. Just this past winter we had problems with trespassers removing Christmas trees. The transfer of this land will do much to eliminate these problems.

From a more positive point of view, the unification of these parcels of land with the Pinecrest Ranch would result in a much more viable economic unit for the Tribe and increase the overall value of our current land holdings. More importantly, it will increase the productivity of one of our chief economic enterprises, the breeding and sale of cattle.

Although the tribe lost over 15,000 acres of land, we feel that the 3,100 acres we are requesting have a higher value as grazing land. However, we have not requested additional lands because this would have an effect upon the availability of the Bureau of Land Management lands to other ranchers in the area. The Bureau of Land Management has informed us that they will transfer all mineral interests to this land.

In addition, we would also request that the mineral interests in the land which we now own also be transferred to the Tribe, although we understand these have no significant value.

I would like to point out to the committee that the land that we are requesting will support the approximately 300 head of tribally owned cattle. The cattle business has been a continually successful operation for the Ute Mountain and the importance of cattle grazing lands to the Ute Mountain Tribe cannot be overestimated. It is hoped that the transfer of these lands to the Tribe will not only increase the overall value of the lands that we presently own, but also result

in additional income to the Ute Mountain Tribe by providing the grazing lands necessary for the growth of our tribally owned cattle business.

Thank you for the opportunity to present my views on S. 2066 to the Senate Select Committee on Indian Affairs.

Senator MELCHER. Thank you very much, Carl. Now we will hear from counsel for the tribe. We have your written testimony and we would appreciate it if you would summarize whatever point you would like to make at this time.

**STATEMENT OF JOHN J. D'ONOFRIO, WAGNER, D'ONOFRIO, WALLER
& STOUFFER, COUNSEL, UTE MOUNTAIN UTE TRIBE**

Mr. D'ONOFRIO. Mr. Chairman, the only point we would like to bring out is that there has been some discussion of a Supreme Court case by the administration. This court case was a direct outgrowth of a 1968 jurisdictional statute which was passed by the Congress. This statute specifically stated that an action could be brought to quiet title to the land. It did not deal with compensation for either tribe depending on how the court case came out. So that the issue of compensation has never been addressed by the courts, only the fact that if you give the same piece of land twice, only one person can get it and that is what the court case decided. We are here on an entirely separate issue which has not been heard by the courts. Thank you.

Senator MELCHER. Thank you, Mr. D'Onofrio. I understand your point. It is a point well made. It is a point that will not be lost on the committee.

Your prepared statement will be made a part of the record at this point.

[The statement follows:]

PREPARED STATEMENT OF JOHN J. D'ONOFRIO, WAGNER, D'ONOFRIO, WALLER &
STOUFFER, COUNSEL FOR THE UTE MOUNTAIN UTE TRIBE

UTE MOUNTAIN TRIBE BOUNDARY DISPUTE

CONGRESSIONAL BRIEFING PAPER

INTRODUCTION

This paper contains a summary of the events surrounding the controversy between the Ute Mountain Tribe of Indians and the Navajo Tribe of Indians over a strip of land approximately 15,000 acres in area, which was granted by the U.S. Government to both tribes (hereinafter the disputed land). The disputed land is claimed by the Ute Mountain Tribe as a result of their agreement of 1895 (hereinafter the 1895 agreement) with the Federal Government (see 28 Stat 677). In 1972, the U.S. District Court for the District of New Mexico decided that the disputed land belonged to the Navajo Tribe, but did not address the question of compensation to the Ute Mountain Tribe for their loss of this land. Having exhausted all administrative and judicial remedies, the Ute Mountain Tribe presents its case to Congress in the hope of obtaining appropriate relief.

HISTORY

Members of the Ute Mountain Tribe are descendants of the Weeminuchi Band of Ute Indians who, together with other Ute Indian bands, at one time owned and occupied a substantial portion of what is now the State of Colorado. The various Ute peoples ceded their land to the Federal Government through a series of transactions and were given reservation land in exchange. (See map 1.) At issue here is the 1895 agreement, passed by Congress which set up the present Ute Mountain Reservation (see map 2).

The 1895 Agreement came as a direct outgrowth of a treaty that was negotiated by the Federal Government in 1880, but never ratified. This new legislation was an attempt to put to rest the controversy over the proposed resettlement of all the Ute peoples outside of the State of Colorado. Under this 1895 Agreement, Congress provided for the establishment of the Ute Mountain Reservation in Colorado and New Mexico. The Weeminuchi Band of Indians, whom the Ute Mountain Tribe succeed in interest, peacefully settled as a Tribe thereon. The description of the property given to the Ute Mountain Tribe is as follows:

"* * * all that portion of their present reservation lying west of the range line between ranges thirteen and fourteen west of the New Mexico principal meridian, and also all of townships thirty-one and thirty-two of ranges fourteen, fifteen, and sixteen west of the New Mexico principal meridian and lying in the Territory of New Mexico, * * * (Italic added.)

This area was finally surveyed in 1914 by U.S. surveyor, Clayton Burt. As specified in the 1895 agreement, he used the standard New Mexico grid system as the basis for his survey. Mr. Burt set the western boundary of the reservation at the then eastern boundary of the Navajo Reservation, which at that time had been platted under a special grid system, based upon the Navajo special meridian. (See map 3.) The effect of this was to omit some 15,000 acres of reservation land, by creating partial townships where full townships had been granted by Congress.

In 1936 the General Land Office abolished the Navajo special meridian and caused all land in New Mexico to be platted in accordance with the New Mexico principal meridian. The replatting indicated that the disputed land was within the Ute Mountain Reservation, and contained full townships as originally intended by Congress.

This situation existed until the 1950's, when oil and gas leasing began to be conducted on the disputed land and the companies engaged in such leasing became concerned about a possible cloud on the title to the disputed land. In 1957, after the Bureau of Indian Affairs refused to allow oil and gas revenues arising from the disputed land to be paid to either the Navajo or Ute Mountain Tribe, the tribes agreed to put the revenues into an escrow account pending resolution of the dispute. This resolution came in 1972 when the U.S. Supreme Court affirmed the judgment of a special three-judge court in the U.S. District Court for the District of New Mexico (*Ute Mountain Tribe of Indians vs. Navajo Tribe of Indians*, 409 U.S. 809, 34 L.Ed.2d 70, 93 S. Ct. 68, October 10, 1972) and found that the disputed land belonged to the Navajos. However, the Court did not address the issue of compensation to the Utes for the land which Congress intended to grant to them.

DISCUSSION

The case before the U.S. District Court was only meant to determine title to the land. Therefore, the U.S. District Court did not address the question of compensation to the Ute Mountain Tribe for their loss of the disputed land through the government's oversight in the 1895 Agreement. Two issues remain. The first is whether Congress, in 1895, intended that the Ute Mountain Reservation include full-width townships in township 31 and township 32, range 16. (See Map 3). If so, the Ute Mountain Tribe received full-width townships in 1895, even though the Courts subsequently awarded this land to the Navajo Tribe. The second issue is, assuming Congress intended full-width townships, what is the measure of reasonable compensation for the Tribe's loss under the 1895 Agreement.

As to the first issue, the statute is absolute, and does not on its face give any indication that the grant is fractional; therefore, it is clear that full townships were granted, to the extent that they could be full townships in New Mexico. Since Congress intended to grant the Ute Mountain Tribe full-width townships, then whether or not Congress realized it was taking part of the Navajo Reservation is irrelevant. The fact remains that the Ute Mountain Tribe was not given the land it was promised, through Congressional oversight or otherwise. Therefore the Tribe should be compensated for this loss.

It is clear from a long line of precedents that treaties and acts of Congress dealing with the Indians are to be liberally construed in favor of the Indians. They are to be interpreted to the benefit of the Indians for whom the agreement was written, and are to be understood as the Indians would understand them by oral agreement.

The Ute Mountain people had no surveyors in 1895 and were not familiar with the complexities of transfer of real property. They could not be expected to determine whether the U.S. Government had rightful title to the land they were given. They relied upon what was actually stated in the 1895 Agreement and what was

verbally represented to them by the Indian agent. They then acted upon this understanding by claiming this land and exercising rights of possession for many years.

The Ute Mountain Tribe believes that it has a moral claim for damages caused by the Federal Government's grant under this Agreement. The Tribe was given land under the 1895 Agreement as a final settlement for the vast relinquishments of real property which they had previously owned. To further penalize the Tribe for the Government's error in mistakenly granting this land would be unconscionable.

As to the issue of compensation for damages, the most appropriate remedy in this situation is to make the Tribe whole. This would necessarily involve both compensation for lost mineral interests and the transfer of some additional real property to compensate the Tribe for their loss of land.

The claim by the Ute Mountain Tribe in this case is one grounded on a notion of elementary fairness. Approximately 15,000 acres of summer grazing land have been lost by the Ute Mountain Tribe. In addition, this 15,000 acre area contains oil, gas and minerals for which the Tribe has received no value. The relief sought by the Tribe is replacement of this land through the substitution of grazing land now under the jurisdiction of the Bureau of Land Management and the payment of approximately 5.84 million as compensation for lost oil, gas and mineral rights, past and future.

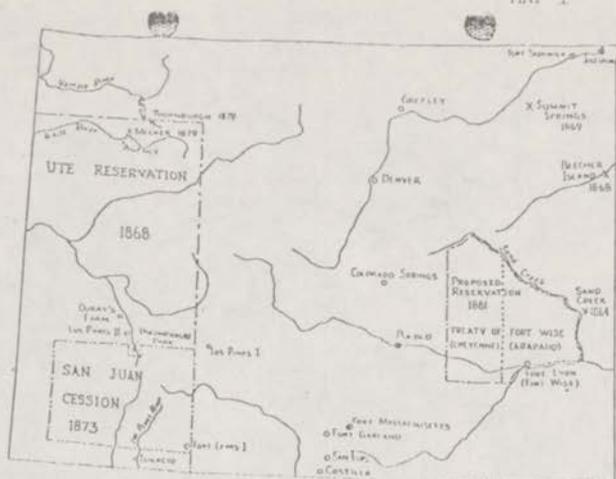
The Ute Mountain Tribe has lost approximately \$7,000,000 in royalty payments for oil and gas leases on the disputed land, including \$5,840,000 previously held in escrow and turned over to the Navajo Tribe on May 1, 1973. Based upon current production trends, the future loss of oil and gas royalties will amount to an additional \$1 million in the next five years. In light of these facts, the Ute Mountain Tribe's request for \$5.84 million, the original escrow amount lost by the Tribe in 1973, is a reasonable request for monetary compensation.

The Ute Mountain Tribe has identified approximately 3,000 acres of Bureau of Land Management grazing land located in the State of Colorado which it would accept as replacement for and in full settlement of the 15,000 acres lost in New Mexico. All of this land is now being used by the Tribe under permit from the Bureau of Land Management and adjoins and is intermingled with the Pinecrest Ranch, which is deeded to the Ute Mountain Tribe and is located in Gunnison County, Colorado. It is important to note that the granting of these lands to the Ute Mountain Tribe will not have an adverse impact on the other grazers, as these lands are now being used by the Ute Mountain Tribe. This land would be of great benefit to the Tribe in consolidating their landholdings in and around the Pinecrest Ranch and in providing needed grazing areas for the Tribe's essential cattle business.

NEED FOR CONGRESSIONAL ACTION

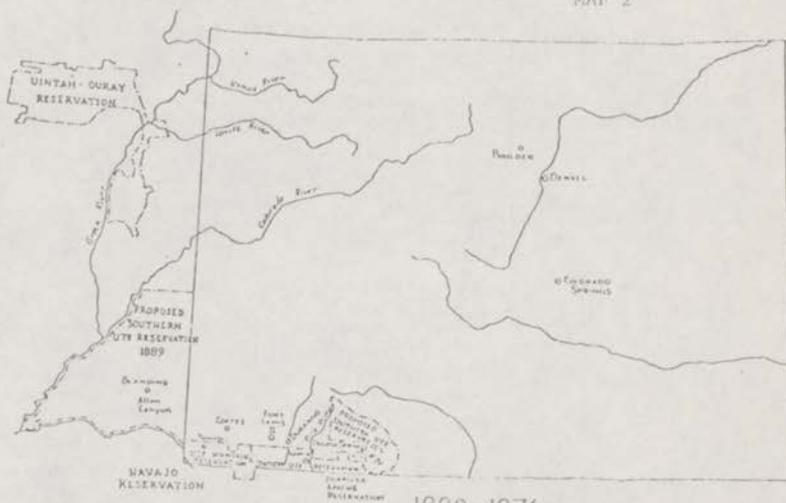
The District Court in New Mexico has already awarded the disputed land to the Navajo Tribe. There is no further administrative or judicial recourse available to the Ute Mountain Tribe. The two most likely avenues for relief are suits under the Indian Claims Commission Act, 60 Stat 1049, 25 U.S.C. § 70, or in the Court of Claims under 63 Stat. 102, 28 U.S.C. § 1505. The Indian Claims Commission Act requires that the claim accrue prior to August 13, 1946, and by any reasonable interpretation, this claim accrued in 1972, when the true status of the ownership of the disputed land was resolved. On the other hand, any Court of Claims case must be limited to a prayer for damages. Therefore, Congressional relief is the only available remedy.

MAP 1



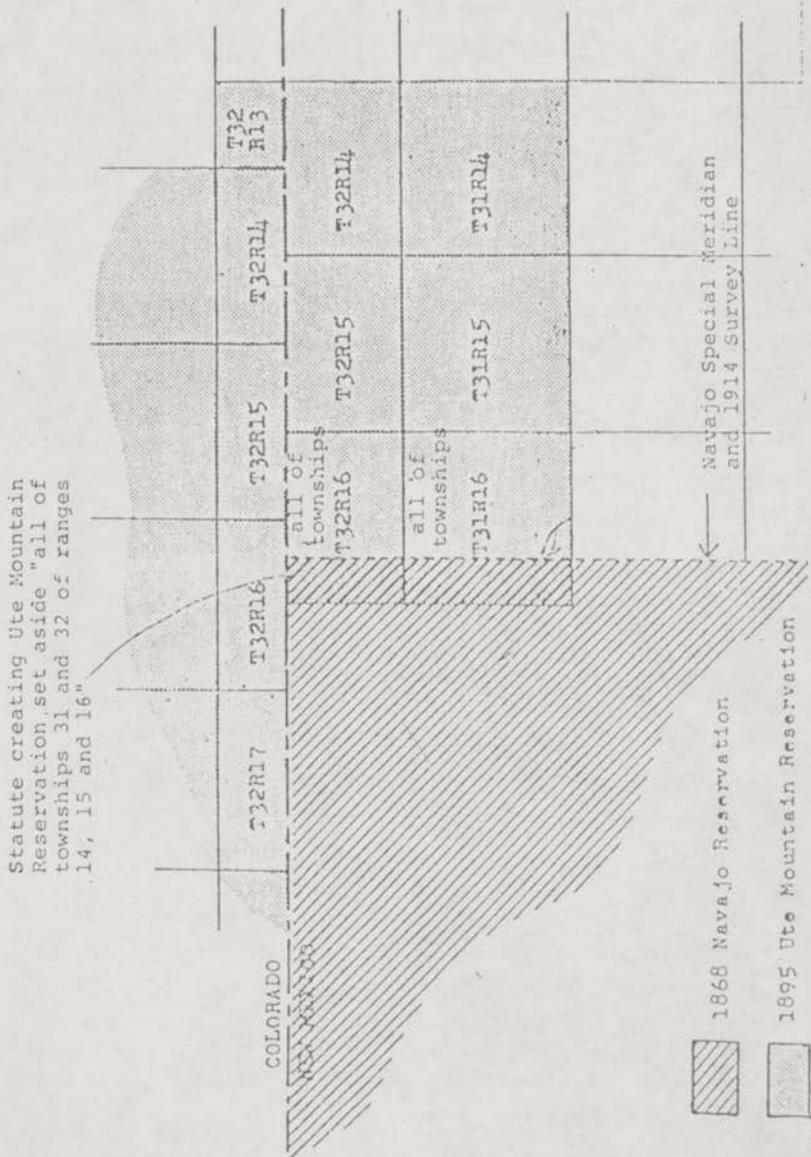
1848-1879

MAP 2



1880-1976

MAP 3
 DIAGRAM OF UTE MOUNTAIN - NAVAJO OVERLAP



Senator MELCHER. Professor Delaney, you are at the stand there. I have glanced through your testimony. Do you have anything beyond this historical documentation?

Mr. DELANEY. Thank you very much, Senator. I ask that my prepared statement be entered in the record.

Senator MELCHER. It will be made a part of the record following your oral testimony.

**STATEMENT OF ROBERT W. DELANEY, PROFESSOR OF HISTORY
AND SOUTHWEST STUDIES, FORT LEWIS COLLEGE, DURANGO,
COLO.**

Mr. DELANEY. Thank you. I would like to emphasize three points and then make a little graphic demonstration of land that the Ute Mountain Utes have lost over the many years.

First of all, I would like to emphasize that, beyond the shadow of a doubt, the intent of Congress in 1895 was to include six full townships in New Mexico in the reservation that was set aside for the Ute Mountain Utes at that time. Now, about those six full townships—I find, that Congress was very, very careful about land. Every land document that I have gone through from that period of time, say in the 1890's and through the early part of that century, Congress was extremely careful to say fractional townships if, indeed, it meant fractional townships. It always did. It was very, very careful regarding Indian lands in that respect, I think, perhaps more careful than in some of the other lands the United States held in trust.

I would also like to emphasize that certainly the 1895 law which set up the reservation for the Ute Mountain Utes intended to use the New Mexico principal meridian as the north-south line. All of the lands surveyed in New Mexico from 1854 on, when the surveyor general's office for New Mexico was set up, used the north-south line of the New Mexico principal meridian. And yet a different line was used for a different reason, and therefore the overlap.

I would like to say, too, that from 1895 to 1972, the Ute Mountain Utes thought that land was theirs and they grazed it and they used it and then all of a sudden, in 1972, for reasons they didn't understand at all, the land was taken away.

Finally, I would like to say, Senator, that on this map on the board there, I have depicted—I'm not a great mapmaker, as you can see—I have depicted the land in Colorado that belonged to the Utes. For instance, in 1849 the first treaty with the Utes was made at Abiquiu, New Mexico. The land in Colorado was generally considered to be that land that I have outlined in red there, the eastern line there is the Continental Divide, and that was considered to be Ute land. There were some common hunting grounds with the Arapaho, Cheyennes, and others off to the east of that.

Then, as Mrs. Pinnecoose said, in 1868, that treaty gave approximately the western one-third of Colorado to the Utes—now, that was all seven Bands of Utes at the time. But observe, sir, that they had ceded the land that is outlined in black there and just the straight north-south, that rectangle, was Ute land as of 1868.

That was fine. Hardly was the ink dry on that treaty of 1868 when silver, gold, and other precious metals were discovered in the San Juan Mountains. Miners entered against the agreement of 1868.

The United States could do little to stop the trespassers, and it seemed that the only way to avoid conflict was, somehow, to get the Utes to cede the so-called San Juan Cession. The Brunot agreement was finally arrived at through the great Chief Uray and other people and that rectangular area outlined in black was ceded then in 1874 by the Brunot agreement. That left the reservation practically in two parts with a 20-mile strip along the western boundary.

Then in 1879 there occurred the famous "Meeker Massacre." Because of the outcry in the press, because of the outcry from the citizens of Colorado to get the Utes out of Colorado, the rest of that reservation, except what is in red down at the bottom, went. Three Bands, the Capote, and Mouache, the present-day Southern Utes, and the Weeminuche Band, the present-day Ute Mountain Utes—that is all the land they had as of 1882.

Then, the 1895 agreement down on the lower left-hand corner shows that those who did not want to take land in severalty were allotted the western part of that reservation plus six full townships, all of townships 31 and 32 of ranges 14, 15, and 16 west. It was definitely and unequivocally the intent of Congress to include that land in New Mexico. It is barren land, and the idea was—I have read the congressional debates at that time—that it was poor grazing land and they would add some territory down in New Mexico to the land in Colorado. Certainly, those six full townships were entered on maps then by the Commissioner of Indian Affairs beginning in 1896, the next year.

Finally, I would like to point out, the Utes ceded more land for Mesa Verde National Park. They were given more land in compensation and therefore, the rough outline of their land as of 1938. My point, Senator, is that the Utes have ceded and lost an awful lot of land over the years. Thank you, sir.

Senator MELCHER. Thank you very much.

[The prepared statement follows:]

PREPARED STATEMENT OF ROBERT W. DELANEY

Mr. Chairman and Members of the Committee: Thank you very much for this opportunity to present to you the results of my studies regarding H.R. 5036 and S. 2066.

By way of summary, I wish to emphasize the following four points:

1. It was, without a doubt, the intent of Congress in 1895 to include six full townships in New Mexico in the reservation set aside for the Ute Mountain Utes.

2. From the time that U.S. surveys began to be made in New Mexico, the New Mexico Principal Meridian was used as the north-south line from which surveys were conducted. (The office of Surveyor General for New Mexico was set up in 1854).

3. The six full townships in New Mexico (*i.e.*, Twps. 31 and 32 N of Ranges 14, 15, and 16W) were available to Congress to designate for the "sole and exclusive use and occupancy" of the Ute Mountain Utes in 1895.

4. From 1895 to 1972, the Ute Mountain Utes believed that the six full townships in New Mexico were theirs. They grazed it in the winter time despite encroachments from the Navajos until forced to leave part of Townships 31 and 32 of Range 16 West in 1972.

A BRIEF OVERVIEW OF THE HISTORY OF THE UTE MOUNTAIN UTES

There is no exact agreement on when the ancestors of the modern Utes entered present-day United States. Their intrusion into the area may have been the reason why the Anasazi moved from mesa tops to cliff dwellings throughout the region. It is generally agreed that the Utes became concentrated into seven bands:

1. The Mouache band lived generally in southeastern Colorado and northeastern New Mexico, mainly east of the Sangre de Cristo and Culebra ranges.

2. The Capote band inhabited part of the San Luis Valley in Colorado and the area of New Mexico where the towns of Chama and Tierra Amarilla are now located.

3. The Weeminuche (the present-day Ute Mountain Utes) band occupied the valley of the San Juan River and its northern tributaries in Colorado, northwestern New Mexico, and southeastern Utah.

4. The Tabeguache (also called Uncompahgre) band lived generally in the valley of the Gunnison and Uncompahgre Rivers in Colorado but also spread over into the "park" areas of Colorado.

5. The Grand River Utes lived in the vicinity of that river in Colorado and Utah.

6. The Yampa band inhabited the Yampa River Valley and adjacent land.

7. The Uintah Utes lived generally in the Uintah Basin in Utah.

Of these 7 bands, the first two mentioned (Mouache and Capote) are today the Southern Utes with headquarters at Ignacio, Colorado. The Weeminuche are now the Ute Mountain Utes headquartered at Towaoc, Colorado. The other four groups (Taneguache, Grand, Yampa, and Uintah) now make up the Northern Utes on the Uintah-Ouray Reservation with headquarters at Fort Duchesne, Utah. (In earlier times, the Grand and Yampa bands especially are sometimes referred to as the White River Utes).

In general, the Weeminuche band lived to the west of other Ute groups. They were later to get the horse and contact with people of European descent was later and less frequent. Their general habitat of the Four Corners area offered little in the way of wealth to attract non-Indians. The Weeminuche remained on the outer fringes of Spanish and Mexican Colonization during the 17th, 18th and early 19th centuries. Certainly, they could see the advantages of metal over stone tools and certainly they became acquainted with the horse, cattle, sheep, and other livestock and could see the advantages that these livestock offered over their accustomed ways of hunting wild game.

In 1846, the U.S. moved to acquire the current southwestern portion of the U.S. from Mexico. Of concern to General Kearny was the possibility that lines of communication to California might be threatened. Accordingly, William Gilpin was sent from Santa Fe to northern New Mexico and southern Colorado to induce Ute leaders to come to Santa Fe and confer with military leaders. Sixty Ute leaders accompanied him to Santa Fe. The Utes agreed to remain at peace with the United States.

On December 30, 1849, the first treaty between the Utes and the U.S. (9 Stat. 984) was signed at Abiquiu. The Utes agreed to recognize the sovereignty of the U.S., to perpetual peace and friendship with the U.S., and to the establishment of military posts and agencies in their country. No boundaries were defined but the Utes agreed not to depart from their accustomed territory without permission.

The next few years saw the U.S. establishing agencies for the Utes at Taos, Cimarron and Abiquiu in New Mexico. The Weeminuche band came very infrequently to Abiquiu after an agency was established there in 1854. In 1872, that agency was moved to Tierra Amarilla and to Amargo in 1881. (Some Weeminuche were served at Abiquiu until 1877).

Largely because of pressure to remove the Utes from Northern New Mexico, on March 2, 1868, at Washington, D.C. another treaty was negotiated with representatives of all seven Ute bands (15 Stat. 619) and a single reservation was provided for all the Ute bands (except the Uintahs who had a reservation in Utah in 1864). The area comprised roughly the western 1/3 of Colorado. Two agencies were to be established; one on the White River for the northern groups and one on the Pine River for the Southern Utes. The Utes were assured that this reservation would forever be theirs and they would be protected from white trespassers.

Before the ink on the Ute Treaty of 1868 was dry, precious metals were discovered in the San Juan Mountains on the Ute Reservation. Miners poured in and the U.S. was not able to enforce the provisions of the Treaty. The government responded to the crisis by calling the Ute leaders together. Eventually the Utes,

seeing the inevitable, agreed to the Brounot Agreement or San Juan Cession of 1874 (18 Stat. 36) by which they ceded a rectangular area roughly 60 miles by 90 miles. Only a twenty mile wide strip along the western border of Colorado connected the two parts of the reservation. The southern part of the reservation became a strip 110 miles long and 15 miles wide, roughly the land held today by the Southern Utes and the Ute Mountain Utes. By 1877, all the Utes in New Mexico were moved to the southern part of Colorado.

In 1879 occurred the famous "Meeker Massacre." The result was pressure on the government to remove all the Utes from Colorado. With some bribery involved, the Utes finally agreed to a compromise. By Act of June 15, 1880 (21 Stat. 199), the White River Utes were to be removed to Utah, the Tabeguache Utes were to settle near the mouth of the Gunnison River in Colorado or in Utah, and the Southern Utes (Mouache, Capote, and Weeminuche) agreed to settle in severalty on unoccupied lands along the La Plata River in Colorado or in the vicinity of that river in New Mexico if sufficient good land were not found in Colorado.

The lands designated for the Southern Utes were poor and incapable of supporting them and there was pressure on Congress to remove all Utes from Colorado. From 1880 to 1895, bill after bill was introduced in Congress to solve "the Ute question." They all died in committee or were rejected by one of the houses of Congress. Finally, in 1895, Andrew J. Hunter from Illinois introduced a bill to provide land in severalty for those Southern Utes who desired and land in common for those who did not want to engage in individual agricultural pursuits. Almost the entire Weeminuche band was opposed to taking allotments and so the western forty miles (approximately) of the reservation plus six full townships in New Mexico were set aside for the Weeminuche who became known as the Ute Mountain Utes (28 Stat. 677).

The area set aside for the Ute Mountain Utes is quite barren and desolate. Scarcity of water has been a constant problem. The range is too poor to support many livestock. The Ute Mountain Utes have remained disadvantaged economically and far from the mainstream of society socially. It is hoped that better days will come for them with the completion of the Dolores and Animas-La Plata water projects.

ITEMS 1 TO 4 OF THE SUMMARY ON PAGE 28.

The intent of Congress when it set up the Ute Mountain Reservation in 1895 was clear and unequivocal: (see 28 Stat. 677)

Sec. 3. That for the sole and exclusive use and occupancy of such of said Indians as may not elect or be deemed qualified to take allotments of land in severalty, as provided in the preceding section, there shall be, and is hereby, set apart and reserved all that portion of their present reservation lying west of the range line between ranges thirteen and fourteen west of the New Mexico principal meridian, and also all of townships thirty-one and thirty-two of ranges fourteen, fifteen, and sixteen west of the New Mexico principal meridian and lying in the Territory of New Mexico, subject, however, to the right of the Government to erect and maintain agency buildings thereon and to grant rights of way through the same for railroads, irrigation ditches, highways, and other necessary purposes; and the Government shall maintain an agency at some suitable place on said lands so reserved.

I have looked at most agreements with Indian groups around that time plus executive orders. In all instances, if Congress or the executive intended a fractional township, it was definitely stated. Also it is very clear that the New Mexico Principal Meridian was the north-south line to be used for survey. It seems clear that by 1895 the Utes in general had given up a great deal of land in Colorado. Thus, the contract of 1895 with the Weeminuche specified their land in Colorado plus six full townships in New Mexico.

Further research on the land in New Mexico shows that beginning in 1896, the Board of Indian Commissioners put on the map accompanying each annual report the land in New Mexico. Although it doesn't say so specifically, it can reasonably be concluded that the land in New Mexico represents that land reserved to the Ute Mountain Utes in 1895.

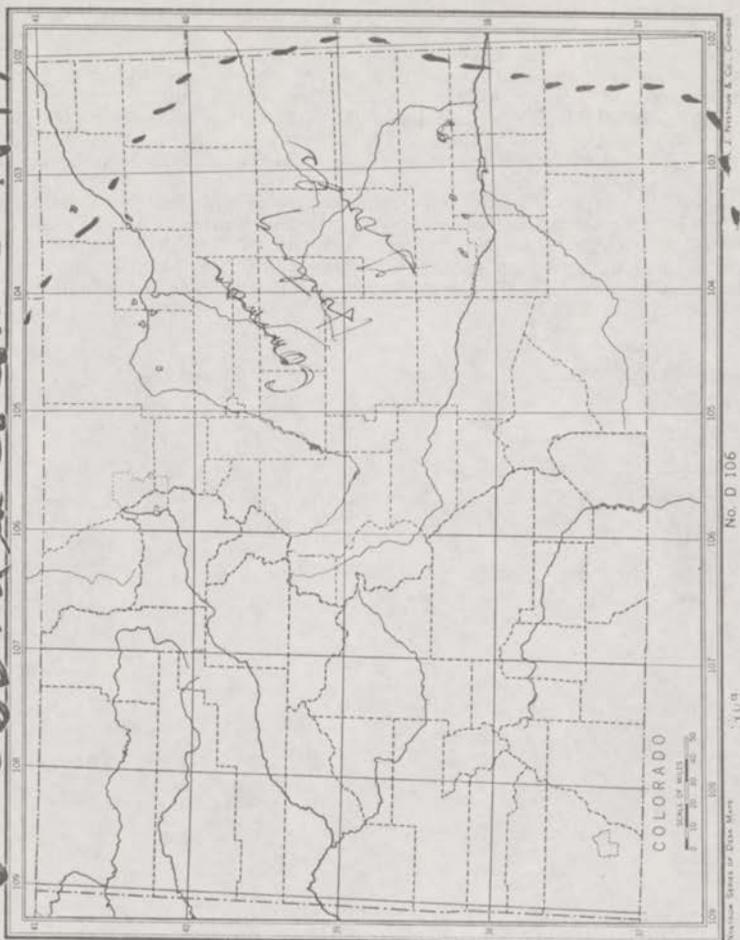
On Royce Map, New Mexico 2, which is the Bible for Indian Land Cessions, it is shown that the Navajo Reservation did not include Twps. 31 and 32 of Range 16 W, New Mexico Principal Meridian. The area marked 615 on that map apparently stops to the north on the line between Twps. 28 and 29. The area marked 563 on that map is land restored to the public domain by Executive Order of July 18, 1876 from land set aside for the Jicarilla Apaches by Executive Order of March 25,

1874. Royce 563, New Mexico 2, apparently ended to the West on the line between Ranges 16 and 17 West. Thus, the Navajo Reservation did not include any parts of Townships 31 and 32, Range 16 W and those townships were available to Congress to designate for the Weeminuche in 1895.

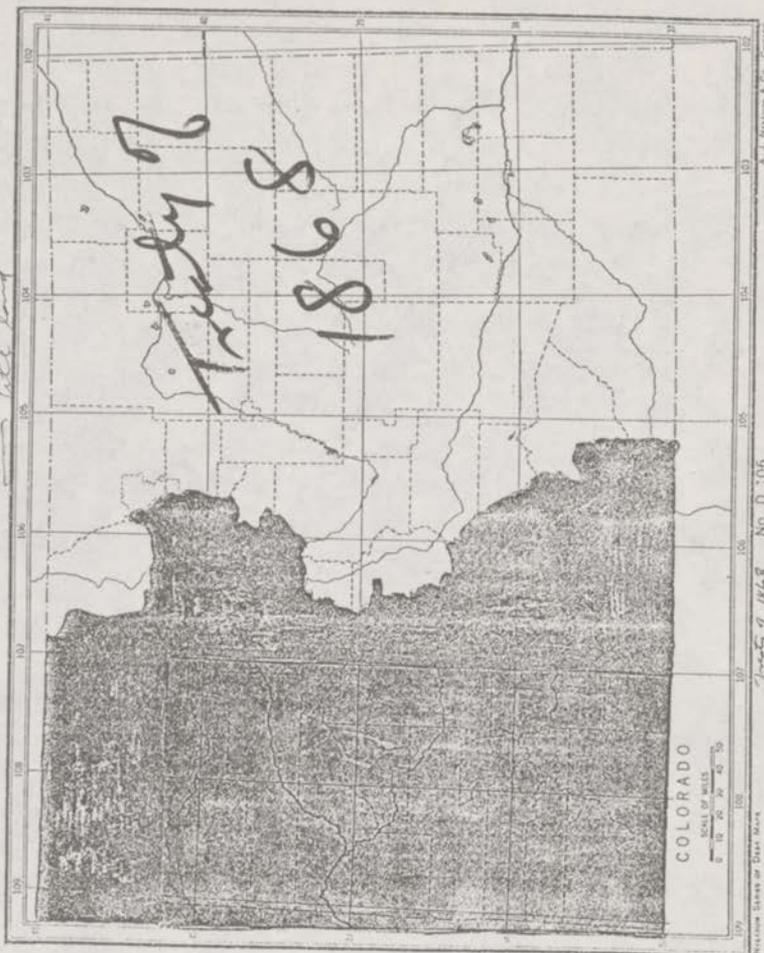
I have looked at the Statutes and Executive Orders regarding Indian lands in New Mexico and Arizona both before and after 1914. I find no difference in the use of the New Mexico Principal Meridian for the survey of lands in New Mexico and the Gila and Salt River Meridian for the survey of lands in Arizona. The New Mexico Principal Meridian was consistently used for lands in New Mexico after 1914.

In spite of this former use by governmental agencies of the New Mexico Principal Meridian and the intent of Congress in 1895, the Supreme Court in 1972 upheld the U.S. District Court for New Mexico in its use of the "Burt" survey of 1914, which used a different north-south line for surveying the Navajo Reservation. Thus, the Ute Mountain Utes were further reduced in their land holdings.

Water Land in Colorado 1849

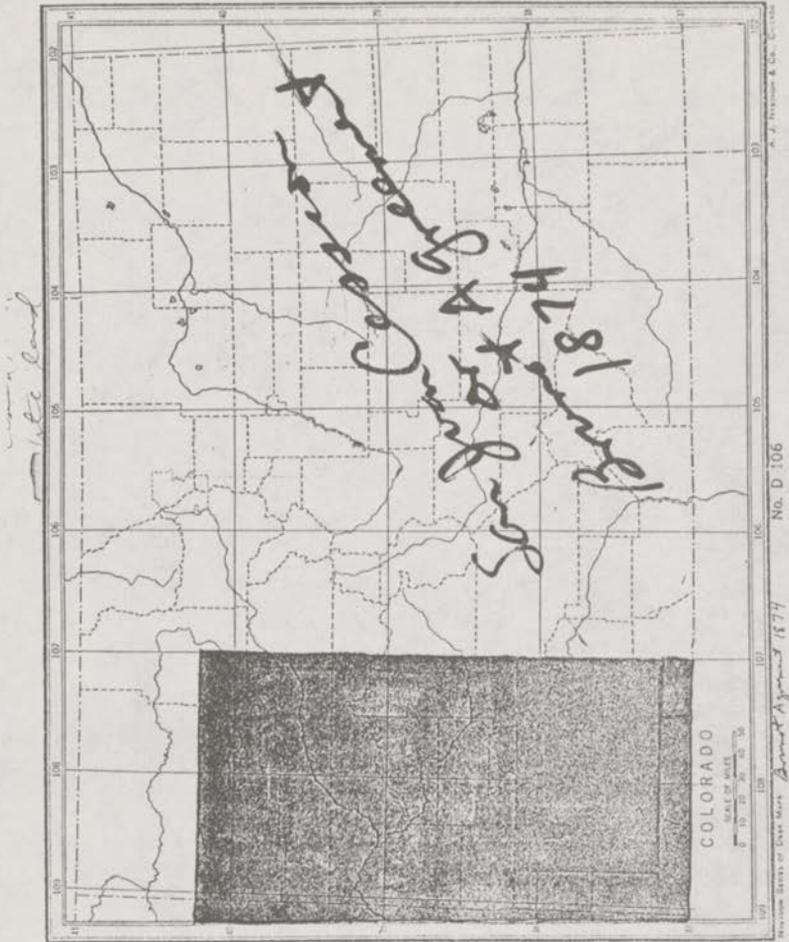


— *canon road*
1st 1/2 mile

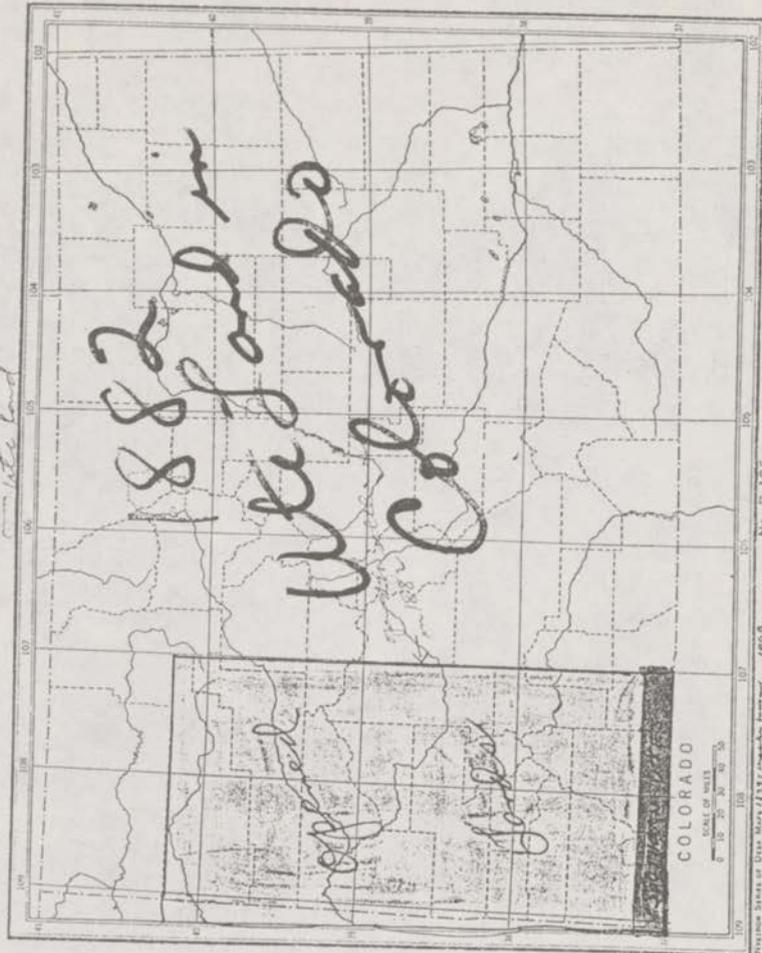


July 8 1868 No. D. 106

Previous Survey on Deer Park



Water Land



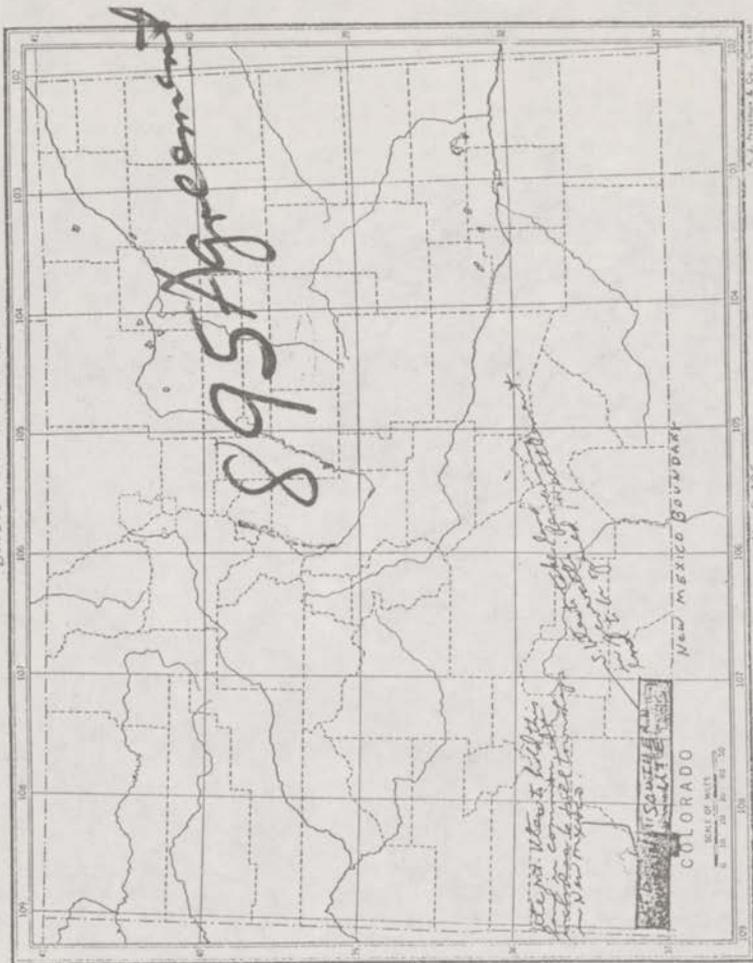
COLORADO
SCALE OF MILES
0 10 20 30 40 50

No. D 106

All cities, towns, &c. and year.

J. J. Williams & Co., Denver

Sutton Well Land



No. 106

1895 Agreement

New Mexico State of Ever Map

Senator MELCHER. Mr. Gabriel, would you please come to the witness table.

Mr. GABRIEL. Thank you, Mr. Chairman.

Senator MELCHER. Do you have written testimony to be made part of the record?

Mr. GABRIEL. Yes; I have, Mr. Chairman.

Senator MELCHER. Good. It will be made a part of the record following your oral testimony.

Do you have any particular points you wish to emphasize?

STATEMENT OF ED GABRIEL, EXECUTIVE DIRECTOR, COUNCIL OF ENERGY RESOURCE TRIBES

Mr. GABRIEL. Yes, I would like to comment on the \$6 million grant. We have worked with the tribe over the past year to look at ways in which that money could be used for economic development purposes. If carefully managed it could become a foundation for the overall economic development needs of the tribe. We look to projects that could result from energy production which could bring revenues to tribal government, jobs, income for tribal members, and for incentives for businesses to locate on the reservation.

We look to two particular examples as to how the money could be used. One is that the tribe owns a considerable amount of coal reserves. The most profitable method to develop those reserves for the tribe would be for them to develop their own financial package and develop their own coal venture. In order to do that, we are going to have to prepare a financial package that could result in several million dollars to make these options bankable. The several million dollars could go into the coal-venture project for the tribe. Based on a couple million dollar venture in the front-end the tribe would then be able to go to insurance companies to finance their own coal development projects.

Senator MELCHER. Where is this coal?

Mr. GABRIEL. In the New Mexico area.

Senator MELCHER. It is not involved with this land?

Mr. GABRIEL. No, we are just talking about the ability to use this money.

Senator MELCHER. Who has identified the coal?

Mr. GABRIEL. We have a search conducted by the USGS and also the CERT staff has reverified that and done some additional work on it. The Colorado School of Mines has been hired to assist CERT in that.

Senator MELCHER. Is the coal to be deep mined, shaft mined, on strip mined?

Mr. GABRIEL. Surface.

Senator MELCHER. How thick are the seams?

Mr. GABRIEL. Well, you are talking about a total of 50 million, so it is very small. The seam is very thick.

Senator MELCHER. Fifty million what?

Mr. GABRIEL. Tons. We are looking at the possibility of combining that 50 million with some coal in two other potential places, Southern Ute and Navajo, for an intertribal venture. It is not enough on its own to really—

Senator MELCHER. How thick are the seams?

Mr. GABRIEL. Thirty feet thick.

Senator Melcher. What Btu is it?

Mr. Gabriel. 9,900.

Senator MELCHER. Are you talking about one section of coal?

Mr. GABRIEL. Yes.

Senator MELCHER. One section—640 acres, or what?

Mr. GABRIEL. I think it may be two sections. Do you know, John?

Mr. D'ONOFRIO. It runs across from just below the six townships we have been talking about. There is a seam that goes from New Mexico right up through the tribe. It cuts diagonally across those six townships. It runs about 15 miles in a strip, strip-fashion. It is very thick at the top, outcrops, and then narrows down as it continues up and so it gets less and less economical to mine as it continues on.

Senator MELCHER. How deep is the seam? How much overburden is there?

Mr. D'ONOFRIO. In spots, not much at all. It gets as deep as about 40 feet, that's all.

Senator MELCHER. You're talking about a 30-foot seam but of not uniform width. The seam is not of uniform width?

Mr. D'ONOFRIO. It varies. Actually, we have identified the seam, we've gotten our projections on reserves. Additional drilling has to be done and this is the part of the program we are talking about. When you have the companies coming in to do this drilling they take a much larger share of the profits. If the tribe can put together some venture money tied in with some industry money, for example, from insurance companies, we can do some of this on our own and thus make it a more profitable operation.

Senator MELCHER. Where would the coal be used?

Mr. D'ONOFRIO. San Juan power plant is about—well, from the border of the reservation it is about 2 miles to the San Juan power plant.

Mr. GABRIEL. And there are two other potential sites it could be used. By the year 1987, it is projected that there will be another power plant in that area, much closer.

Senator MELCHER. What value are you placing on the coal?

Mr. GABRIEL. I really don't know Senator. The per ton value would probably be \$30 to \$40.

Senator MELCHER. All the current contracts are about \$6.

Mr. GABRIEL. To utilities?

Senator MELCHER. No; at the mine mouth. What is this San Juan power plant using now and what are they paying for it?

Mr. GABRIEL. I have no idea.

Senator MELCHER. Coal may be worth more down there, I don't know. I'm talking about what it is worth in Montana loaded in a car. There are contracts galore at less than \$6.

Mr. GABRIEL. We have not done any engineering design work on the plan at all, as a matter of fact all we have conducted so far is the initial feasibility, or, the initial study.

Senator MELCHER. I hope that before the tribe gets \$6 million, I hope they don't spend it on trying find out that it isn't economical to develop that coal.

Mr. GABRIEL. I agree with you 100 percent. There are two things that could be done. One is a prefeasibility must be done. Just a quick

look at the factors that you are raising. I don't have that information, the technical staff would. Second, once it looks feasible—assuming it did—we would have to put in a couple of million dollars in options to prove out the feasibility of developing it. You may be very well correct in that after we look at it we will find that it is unprofitable. That is why we use the phrase of a prefeasibility before we put a penny into it.

SENATOR MELCHER. I just don't want to see the tribe's money wasted on something that could be ascertained, probably for about \$10, as to whether or not the San Juan powerplant or any powerplant down there is willing to buy the coal.

MR. GABRIEL. It could be ascertained for free.

MR. D'ONOFRIO. These are just examples of some of the things we might do. Part of the legislation is that there be an economic development plan, approved by the Secretary of the Interior, who is very concerned that we take a very careful look at where we are going to put this money. It is very hard to say, now, exactly where. We just wanted to give the committee some ideas about where it might be put and then we will have a more complete program to submit to the Secretary.

MR. GABRIEL. We looked at one other idea, too, and that was a gas processing plant, propane. That just came up in the last 2 weeks. These are all ideas that have come up either based on the region, the market for the region, or the resources that the tribe has.

SENATOR MELCHER. Are there producing gas wells on the land that the tribe owns?

MR. GABRIEL. Yes, sir. The greatest revenue for the tribe does come from the oil and gas wells. We've just completed a survey of our existing production, trends for future production, and in this way we are able to make more intelligent decisions about what we are going to do. Obviously, if we are going to be running out of gas, we aren't going to put up a liquification plant. So we are taking a very close look at that.

SENATOR MELCHER. Mr. Gabriel mentioned in his testimony the possibility of scrap aluminum processing plants. Would this be a good place in this part of Colorado?

MR. GABRIEL. Regionally, it seems to make sense to us right now. We have had a couple of consultants look at that area and they think it would be very feasible. The market for the product would be no problem. The question is transportation.

SENATOR MELCHER. The scrap aluminum is being processed. The question is whether or not it's worth risking three or four million dollars, as you have testified, Mr. Gabriel, that it would cost to find out whether or not it is economical at that point. Three or four million dollars would probably exhaust most of what the tribe might get if this bill would pass.

MR. GABRIEL. We try to put the least costly feasibility up front in determining the project. We have developed a process by which we go through three stages, as we mentioned earlier, a prefeasibility stage, feasibility stage, and an implementation stage.

SENATOR MELCHER. What does it cost the tribe to have CERT figuring these things out for them?

MR. GABRIEL. It is free to the tribe.

Senator MELCHER. All right, where does CERT get the money to figure them out?

Mr. GABRIEL. Federal grants.

Senator MELCHER. Federal grants? So, either we give Federal grants to CERT or we give money to the tribe.

Mr. GABRIEL. Traditionally, our work is ended at the prefeasibility stage. In other words, when you go into the full-blown feasibility, which would require a couple of hundred thousand dollars or more, that's when CERT is really not getting to do the work. One, because of the money, and two, because you want to go with the consulting firms that have a reputation to be able to market the package and make it bankable. I don't think CERT's name is as strong as some of the other engineering and financial consultants that can do feasibility. So there is a point at which CERT probably would spin its wheels in that feasibility process.

Senator MELCHER. The prefeasibility is where CERT fits in, then.

Mr. GABRIEL. Technical assistance, yes.

Senator MELCHER. Thank you very much.

Mr. GABRIEL. Thank you, sir.

[The prepared statement follows:]

PREPARED STATEMENT OF ED GABRIEL, EXECUTIVE DIRECTOR, COUNCIL OF ENERGY RESOURCE TRIBES

Mr. Chairman and committee members, thank you for the opportunity to testify before you on S. 2066, a bill to convey Federal land located in Colorado to the Ute Tribe and to pay an amount to such tribe for economic development. I would like to comment this morning on CERT's role in assisting tribes with natural resource and economic development, the efforts of the Ute Mountain Tribe to responsibly plan for the future use of its resources, and to give you some examples of potential economic development programs for the Ute Mountain Tribe.

The Council of Energy Resource Tribes or CERT is a non-profit organization representing 25 American Indian Tribes owning a large share of the energy resources of the western United States. The tribes formed CERT in 1975 to promote the well being of their members through the protection, conservation, control and prudent management of their natural resources.

As a Charter member of CERT, the Ute Mountain Tribe has recognized that their energy resources can, if carefully managed, become the foundation for overall economic development. Energy production can bring revenues to tribal governments, jobs and income to tribal members and incentives for businesses to locate on the reservation. This, in turn, can provide greater tribal revenue, more personal income and more jobs. The ultimate goal: prudent management of the tribe's natural resources which will provide economic security for Tribal members, both now and when their natural resources are gone.

Among the projects which the Ute Mountain Tribe and CERT are working on together are an oil and gas production computer model which will give the tribe complete information on oil and gas wells on the reservation. It will allow them to check on royalty payments, predict revenue trends and plan oil and gas lease sales to provide a steady flow of revenue to the tribe. Another project is a complete analysis of all natural resources on the Ute Mountain Tribe so the many proposals for development received by the tribe can be analyzed in perspective.

The Ute Mountain Tribe has also requested CERT to provide suggestions and background information on economic development projects which would involve both their presently developed natural resources and which would best utilize portions of the capital requested in S. 2066. I would like to set forth two examples which meet these goals while providing employment for the Tribe's greatest resource—its people.

The Ute Mountain Tribe is known to have considerable coal reserves which have not been developed. The most profitable method to develop these resources is through the use of private capital, which CERT has made available to Tribes through a consortium of insurance companies. However, before these companies

commit large amounts of capital to a project, "seed" money in the millions must be expended by the developer to determine the exact extent of coal deposits, to develop mine plans, to negotiate supply agreements and to prepare a package for presentation to the suppliers of capital.

Some of the funds requested by the Ute Mountain Tribe could be used to analyze their coal reserves and prepare such a package. These funds would be repaid by the coal operation which would also employ hundreds of tribal members at all skill levels.

A more comprehensive program involves the use of the Ute Mountain Tribe's most prevalent natural resource—gas. In all oil and gas leases, the tribe retains the right to take its royalty in kind, that is, an appropriate share of the actual product. CERT has proposed to the Ute Mountain Tribe the use of in kind gas as the power source for a modular scrap aluminum processing plant. A number of these plants have been operating with great success in the United States and in developing countries.

The advantage of this industry is its flexibility. The initial investment to establish a plant is in the range of \$6-7 million. However, only 25-50 percent of this investment would come from the tribe. The remainder could be borrowed from the insurance companies mentioned earlier. Conservative estimates suggest that the financial return on investment to the tribe would be in excess of 25 percent.

More importantly, the plant would provide jobs for 100-125 members of the tribe. CERT has found that training is relatively easy and has access to people who have provided training for this type of facility in developing countries.

An added advantage is that the plant could be expanded beyond initial rolled aluminum production into such areas as aluminum sheds and garages to aluminum siding with insulation backing for homes to modular housing and trailers.

CERT's preliminary research indicates a good market for aluminum products, both in the local and regional areas of the Ute Mountain Tribe. Scrap aluminum, the raw material for the plant, could be collected by tribally owned, off-reservation collection centers, creating even greater job opportunities.

This project would use the tribe's natural resources, capital resources and human resources to create additional capital and employment, while providing a sound economic unit to build on for the future. However, this can only be accomplished with an initial investment of \$3-4 million.

These are only a few examples of economic growth opportunities for the Ute Mountain Tribe and I hope that these examples are helpful to the committee. Additional background material will be provided at your request. The important point is that the Ute Mountain Tribe has shown its commitment to building an economic base for the future by prudent use of its natural resources.

Thank you again for the opportunity to testify here today. If you have any questions, I would be happy to answer them.

Senator MELCHER. I do have a couple of questions of the Department if their witnesses will please return to the table.

The case that has been mentioned as a 1973 decision followed an act of Congress in 1968 that gave the tribes the right to sue to quiet title to the land. Now, testimony that we have received this morning was to the effect that Utes figure that they are on their own land and that therefore the oil and gas revenue that had accrued from that land would be theirs. The Department held those revenues from those producing gas and oil leases in escrow for several years until the suit was settled so, at least in the minds of the Department, there was a question as to who owned the land, was there not?

Mr. PETTY. There was a dispute between the Navajos and the Utes, yes, sir. The only way it seemed possible to settle it was through litigation which is why Congress, in 1968, passed the act which allowed them to go into court and get the matter settled.

Senator MELCHER. Apparently, all that time the Utes grazed the land under question.

Mr. PETTY. My understanding, sir, is that the Utes used that land all these years and it wasn't until oil and gas was discovered that the Navajos got real interested and, understandably so. The land was not

worth much until oil and gas were discovered and then they asserted their claim.

Senator MELCHER. The Department didn't act during those interim years to prevent the Utes from grazing the land, did they?

Mr. PETTY. Not that I know of, no.

Senator MELCHER. It is obvious then that the Department did not fully understand who had claim to the land.

Mr. PETTY. I would assume that is correct. The question had not arisen.

Senator MELCHER. So, then it was settled by the court. We are going to accept that, and we are not going to argue about that. But, the Ute's question now is on the basis of equity. Since they thought it was their land, and the Department thought it was their land apparently by the fact that they allowed the Utes to graze it, they feel now that they have something coming on the basis of equity. I read your testimony, listened to your testimony, and I know the position of the Department that they are not approving of any equitable settlement.

Mr. PETTY. That is correct, sir.

Senator MELCHER. Then I guess everybody can accept, I hope, on the record, that it is a question of equity and therefore it is a proper question to pose to Congress, and the proper avenue to propose that is through this committee and the Senate, as well as in the House through the Indian Affairs Committee of the House Interior Committee—well, the Indian Affairs portion of the House Interior Committee. It is no longer a separate subcommittee but the responsibility clearly is within the House Interior Committee.

Part of this equity hinges on whether it was the intent of Congress to allow for full townships instead of fractional townships. You have heard that discussed. Now, if Congress really meant full townships then the error in its being fractional townships lends itself to the question of equity. Does it not seem likely that Congress made an error in not recognizing the overlap with the Navajo reservation?

Mr. PETTY. Well, it's possible, sir; that I will acknowledge. I think it is more reasonable, in my mind at least, to assume that Congress knew then what it was doing. Remember, as you heard earlier in our testimony, Congress said all of townships 31 and 32. Congress did not, to my knowledge, even mention an acreage figure nor did the tribes mention an acreage figure. Acreage was never negotiated, never discussed. When they said all of townships 31 and 32, it is just as reasonable to assume that they meant whatever acreages were contained in townships 31 and 32. It was not uncommon then to have fractional townships.

Senator MELCHER. Would you agree that, based on what you know now, the loss of this public land would only involve grazing fees of about \$1,200 per year?

Mr. PETTY. Per year.

Senator MELCHER. Because as of now, you know of no particular mineral value on the land. Now, is it likely or is it possible that mineral development might occur more likely if the Utes had control of the mineral?

Mr. PETTY. Sir, I learned a long time ago not to speculate on that.

Senator MELCHER. I think you have good judgment not to speculate on that. I am just pointing out that if mineral development is there,

the contribution that has to be to the economy of the United States shouldn't be lost.

What we have involved here is 15,000 acres that the Utes thought they owned—they grazed it. When the oil and gas production got going they found out they didn't own it. The court decided that. If part of this question of equity is some sort of replacement of mineral value—what's involved in this bill is replacement of mineral value for the loss of 15,000 acres—it certainly is not going to exceed or even match the mineral revenue that has been obtained by the Navajo.

Mr. PETTY. Well, the thing that intrigues me about this particular bill is the amount of money, \$5.84 million, I cannot believe it is a coincidence. It is exactly the same amount that was held in escrow that the court determined belonged to the Navajos. Now, those are producing oil and gas wells as you heard earlier. The estimates exceed that appreciably.

Senator MELCHER. Yes.

Mr. PETTY. \$5.84 million is just a convenient figure.

Senator MELCHER. It just happens to be what was held in escrow. That is the very basis. I think the author of the bill that testified—and I think Senator Hart's testimony on the Senate bill—Congressman Kogovsek said very frankly that that is why that amount is in there. So, I think this all boils down to a question of equity. It is properly placed before Congress. If there was an inequitable action taken, do we want to correct it or not?

One final question. The tribe testified that since there is customarily fishing by nontribal members on Willow Creek that they would be willing to enter into agreement with the State of Colorado on continuation of those fishing privileges for the public under the direction and licensing terms of the fishing season and so forth of the State of Colorado. Do you have comments on that?

Mr. PETTY. What we are really discussing about this is right of access. As the bill now stands, the tribe would have the right to stop all access to Willow Creek for public fishing. From the testimony today, and I am very pleased to hear it, they are willing to give the right of access to the public. Our staff will be very happy to work with the committee staff on working out what will be required to put in this bill to give the right of access to the public.

Senator MELCHER. The question now is the precedent of the State of Colorado issuing the licenses.

Mr. PETTY. No, sir, I wouldn't say that was the precedent.

Senator MELCHER. You don't think that is the precedent?

Mr. PETTY. We are really just talking about the tribe giving the right of access to the public to get to the fishing.

Mr. REESER. I think there is one point that we have not made. This land is not going to be trust land and it is not going to be part of the reservation.

Senator MELCHER. Oh, I see, then it is not a precedent. The precedent would be involved if it were part of the reservation. So, this is not a precedent and you do concur that the State of Colorado would be the best.

Mr. REESER. They would have jurisdiction, yes, sir.

Mr. PETTY. They would be the owner.

Senator MELCHER. If it is not reservation land it would be a precedent if they did not have jurisdiction. And you are in favor of that.

That is not part of the bill, is it? Does S. 2066 cover that? Or the House-passed bill?

Mr. REESER. No, sir. It does not call for any change in governmental jurisdiction nor for any right of public access through the land to reach fishing sites.

Senator MELCHER. I guess then that we should make it clear to the Ute Band that we will consider that as an amendment, the committee will. Do you have any problem with that?

Mr. D'ONOFRIO. Your Honor, we feel that we can make that, as stated by Chairperson Pinnecoose, a part of the record that we have agreed to grant access to it. We don't feel that it is necessary to amend the bill in order to do this since it would be clear on the record that we agree to that.

Mr. WAGNER. Mr. Chairman, historically the tribe has granted access to individuals who come to fish on the property.

Senator MELCHER. With the State of Colorado running the licensing program, fishing, and everything?

Mr. D'ONOFRIO. It has always been private land. So the State of Colorado has always had jurisdiction.

Senator MELCHER. Yes. And, the tribe would be explicitly satisfied if that is specified out.

Mr. WAGNER. Mr. Chairman, from a legal standpoint, what we would be talking about is some reservation on the part of the Secretary of Interior of an easement in the granting of the land to the tribe, as opposed to doing it in the bill. That would be an easement that would be more properly recorded in the county clerk's office as a recorded easement on the land to be conveyed.

Mr. D'ONOFRIO. May I state for the record that we are in agreement with giving that easement.

Senator MELCHER. All right. Thank you very much.

This concludes our hearing this morning. The committee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 12:00 p.m., the committee was adjourned.]

[Subsequent to the hearing, the following material was received for inclusion in the record.]

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington, D.C., February 25, 1980.

Hon. JOHN MELCHER,
Chairman, Select Committee on Indian Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 2066, a bill "To convey Federal land located in Colorado to the Ute Mountain Ute Tribe and to pay an amount to such tribe for economic development."

The Administration strongly opposes the enactment of S. 2066 for the reasons stated below.

S. 2066 would provide that within 30 days after its enactment the Secretary of the Interior convey to the Ute Mountain Ute Tribe, without consideration, all right, title, and interest of the United States in and to certain specifically described parcels of land in Colorado, aggregating approximately 2,900 acres, and all reserved mineral interests of the United States in the land known as the Pinecrest Ranch. The bill also would require the Secretary to pay to the tribe the sum of \$5,840,000 for use in an economic development program submitted by the tribe and approved by the Secretary. The bill further provides that the enactment of the bill would fully satisfy all of the tribe's claims against the United States relating to the land dispute described below. A final provision authorizes the appropriation of the sum referred to above.

The intent of the bill is to pay the Ute Mountain Utes the sum of \$5,840,000 for economic development and to convey lands to the tribe. These monies are equal to the sum of the funds held in escrow while a land dispute over title to lands claimed by the Ute Mountain Utes and the Navajos was being settled. The lands proposed to be conveyed would be a substitute for lands which were subject to overlapping claims by the Navajos and the Ute Mountain Utes. These claims were decided in favor of the Navajos in *In re Title Dispute—Ute Mountain Ute and Navajo Tribes*, Civ. No. 7653 (D.C.N.M. 1972) *aff'd*, *Ute Mountain Tribe of Indians v. Navajo Tribe of Indians*, 409 U.S. 809 (1972).

We do not believe that the Ute Mountain Utes have any equitable, monetary, or legal claim against either the United States or the Navajos regarding the lands involved in the Navajo-Ute dispute. Congress, by the Act of February 20, 1895 (20 Stat. 677), provided for a Ute Mountain Ute Reservation, part of which was to be in New Mexico. The New Mexico portion of the reservation so created was described as:

"all of townships thirty-one and thirty-two of ranges fourteen, fifteen, and sixteen west of the New Mexico principal meridian and lying in the Territory of New Mexico."

After the time of the grant, townships 31 and 32 of range 16 west were found by survey to be fractional-width townships adjacent to the Navajo Principal Meridian, which marked the eastern boundary of lands granted to the Navajos by the Treaty of June 1, 1868 (15 Stat. 667).

We have no evidence that the Utes had bargained for a specific acreage or the Congress had a specific acreage in mind when it created the reservation. Congress was aware that many of the townships granted to the Utes would be of fractional height since several lay on the State line between Colorado and New Mexico, and the House Report at that time refers to the New Mexico townships as "six fractional townships of unoccupied land in New Mexico." H.R. Rep. No. 799, 53rd Cong., 2d Sess., 3 (1894). We have no evidence as to whether Congress was aware that townships 31 and 32 of range 16 west were of fractional width. However, since the Utes received "all" of the fractional townships granted to them under the legal description contained in the Act, we believe that the tribe would have no legal claim against the United States even if a jurisdictional statute were enacted granting consent to a suit.

In any event, this situation resulted in overlapping claims to 15,000 acres by the Ute Mountain Utes and the Navajos. In order to resolve the dispute over ownership, Congress enacted the Navajo-Ute Boundary Dispute Act in 1968, under which consent was given for the tribes to sue each other to quiet title to the disputed area. The court decision, referred to earlier, is the outcome of a suit brought by the Utes under the 1968 Act.

The land which would be conveyed under the bill has never left Federal ownership and is now managed by the Bureau of Land Management under the principles of multiple use and sustained yield as mandated by the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) The primary use of the land is for livestock grazing, and the tribe is the authorized grazing lessee of the land at an annual fee of \$1,200. In addition, the Willow Creek area provides essential access for public fishing. A preliminary estimate of the value for the land indicates a value of \$600 per acre. No mineral claims with respect to the mineral interests to be conveyed under the bill have been recorded under section 314 of FLPMA and no mineral leases or lease applications involve such interests.

If the Congress determines that the land involved should be made available to the tribe, we would support a conveyance only under the provisions of FLPMA, rather than in special legislation such as S. 2066. FLPMA provides for disposal of public lands through sale or exchange if certain criteria are met. Under the sale provision, fair market value is required; under the exchange provision, equal value for offered and selected lands is required. Thus an exchange of land and mineral interests could be used to consolidate the surface and nonsurface interests involved and thereby facilitate their management. We do not support the payment of \$5,840,000 to the tribe for economic development.

The Office of Management and Budget has advised that there is no objection to the presentation of this report and that the enactment of S. 2066 would not be in accord with the program of the President.

Sincerely,

RICK LAVIS,
Acting Assistant Secretary.

UTE MOUNTAIN UTE TRIBE,
February 26, 1980.

Re S-2066.

HON. JOHN MELCHER,
Chairman, Senate Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR SIR: It is an honor and a privilege to present this testimony to you and your fellow committee members regarding the need for an equitable and just resolution of the pending land claims of the Ute Mountain Ute Tribe.

Being from Montana, you know that the mountains and deserts of the area can be harsh and unforgiving and yet man's resolve, human energy and determination have often successfully met these challenges of harsh environments. The Ute Mountain Utes have historically shared the resolve to maintain their culture and their community in the face of continually changing government policy and vacillating congressional and judicial decisions.

The Ute Mountain Ute Tribe is not asking for charity, only the just restoration or just compensation for an economic resource long denied them by judicial and congressional action.

The Tribe has economic development plans which, if implemented, can greatly decrease its dependency upon the uneconomical Federal Transfer Payments System. The Ute Mountain Ute people wish only to demonstrate that they can be economically and productively self-sufficient citizens while still maintaining their culture and community life.

It is not surprising that, in terms of economic development, the Ute Mountain Ute Tribe has a tendency to be cautious and conservative. Historically, the most economically advanced Tribes have been terminated and almost destroyed; no one bothers a poor Tribe. The development of economic development for the Ute Mountain Ute Reservation is a task that requires efforts on the part of the Tribe and support from the Federal Government.

In closing my prepared comments, I offer my full cooperation and support to the oversight and review work of the committee. I appreciate this opportunity to appear before you.

Respectfully submitted

TERRY KNIGHT,
Secretary/Custodian, Ute Mountain Ute Tribe.

PREPARED STATEMENT OF TERRY KNIGHT, UTE MOUNTAIN UTE TRIBE OF INDIANS

I. HISTORY OF THE UTE MOUNTAIN TRIBE

In 1849, the United States Government moved by treaty three (3) Tribes to a Reservation comprising most of southern Colorado. In 1873, because of the discovery of gold in the San Juan Mountains, the Tribes were moved by treaty to the southwest corner of Colorado. It then became the Government's plan in 1895 to make the Mouche, Capote and Weeminuche Indians self-sufficient family farmers by distributing land allotments to the individual family units. The Weeminuches rejected this plan since it would have destroyed their Tribal integrity and divided their land. They moved to the extreme southwest corner of the Reservation to hold their land (lightly over one-half million acres) as one unit under common ownership and to become the Ute Mountain Ute Tribe of today.

The Weeminuche's decision has had a great impact on the economic development of the Ute Mountain Ute Reservation. The Reservation land is arid, making agricultural growth difficult. As a result, the Ute Mountain Utes existed through the remaining 1800's and the first half of the 1900's as subsistence stockmen. The Ute Mountain Utes did maintain their Tribal integrity. Their Reservation has continually been held in trust and, on June 6, 1940, the Ute Mountain Utes became a constitutional Tribe. Unlike the Southern Utes to the east who accepted land allotments and became a charter Tribe, the Ute Mountain Utes maintained their essentially sovereign nature and, except as controlled by Congress of the United States, the Ute Mountain Utes maintained their own sovereign Tribal Government.

In 1950 the Ute Mountain Utes received a \$6 million share of a judgement for the Confederated Ute Tribes against the United States Government for lands wrongfully taken during the gold discoveries of the 1800's. At about the same time, the Ute Mountain Utes began receiving royalties from gas and oil that were being removed from their land. Under the terms of the judgement, the Ute Mountain Utes were required to create a plan for the use of the land claims money and

with the help of the Bureau of Indian Affairs, a plan was created in 1953. The plan was called A Plan for the Rehabilitation of the Ute Mountain Ute Indians of the Ute Mountain Reservation, Colorado and its one stated goal was:

"There is a strong desire for a program instituted to improve the social and economic conditions of the people and to place the Ute Mountain Utes in a position to grasp the fundamental concept of self-determination."

With the approval of the Bureau of Indian Affairs, the plan was implemented by the Tribe and its social and economic programs showed good results. The social programs considerably improved the welfare of the Ute Mountain Utes and their material standards of living were raised substantially. There was, however, one problem in the area of economic development. Over the years, Tribal income was insufficient to cover all expenditures and there was a continual drain on capital.

In 1963, this problem was revealed when planning was instituted to formulate a new ten year plan. The Ute Mountain Utes in Resolution No. 1240 held to their objective of self-determination and established three goals:

1. Develop the Reservation to maximum potential.
2. Provide job opportunities.
3. Provide Tribal income.

The Tribal program was developed around the idea of making every effort to utilize and develop the Reservation to keep Tribal members on the Reservation and provide enough employment opportunities and Reservation income to sustain them as individuals, families and as a Tribe. The Bureau of Indian Affairs, however, in its ten year planning report to the Secretary of the Interior, presented four different goals for the Ute Mountain Utes:

1. Improved general education.
2. Decrease in the size of family units.
3. Well-prepared Tribal members voluntarily seeking off-Reservation employment.
4. Full development, utilization and prudent stewardship of Reservation resources.

The Bureau of Indian Affairs based its plan and goals on the assumption that "the Reservation land base is not capable of adequately supporting the entire Tribal population". This assumption was reasonable considering the continuing decrease in Ute Mountain Ute capital and the type of Indian Reservation economic development analysis and planning techniques available to the Bureau of Indian Affairs at the time. In 1963, there was a total lack of scientific economic development research on the Indian Reservations and it was virtually impossible to apply modern economic development theory to the problem.

Over the past years, the Ute Mountain Ute Reservation economic development, under The Ute Mountain Ute Tribal Comprehensive Plan, has proceeded in a project-by-project fashion utilizing small business type enterprises. The primary economic projects the Tribe has undertaken are some service stations, a trading post and restaurant, a pottery factory, livestock industry, development work on a south entrance to Mesa Verde National Park and recently a sewing business. These projects do not have the potential to support the Tribe in its entirety. Tribal income has continued to be insufficient for growth and there has been a continuing decline in Ute Mountain Ute capital.

II. BARRIERS TO RESERVATION ECONOMIC DEVELOPMENT

Clearly, there are a number of barriers to Reservation economic development, inadequate federal efforts are not the only reason that little development has taken place on the Ute Mountain Indian Reservation. Some of these barriers are shared by all or nearly all Reservations while others are specific to the Ute Mountain Reservation. To begin with, the former, the great majority of Indian Reservations, are remote from major market areas. This greatly limits opportunities for industrial development. It does not mean that industrial development is impossible. But it does mean that for those situations where an unfinished product is being shipped in, processed and shipped out, only a few industries will prove feasible. Indeed, only those industries where both raw materials and the finished products are relatively small, are likely to be realistic possibilities for the Reservation. Transportation costs will eliminate the others.

A second barrier to economic development and this is common to Reservations everywhere, is less tangible but is of tremendous importance. To put it bluntly, there is a pervasive lack of belief among Indian people that the future will be much better; and, in turn, an equally pervasive feeling that not much can be done about

it. One hundred years of paternalism and enforced dependency, systematic efforts to strip Indians of their language and cultural heritage, mishandling and sometimes outright theft of what few resources the Indian people retained after the establishment of Reservation systems have had their impact. Hope for the future is tenuous on Indian Reservations, the notion of self-determination, the energy crisis and discovery that the biggest part of the nation's fossil fuel lay under Indian lands has led at least some Indian people to assert that they can do something about the future. But most remain skeptical. Every effort at Reservation development must take this fact into account.

A third barrier which is common to Indian Reservations everywhere is a shortage of management skills. Once again, one hundred years of federal awards, of enforced dependency, have had an impact. Until recently, Indians had little or nothing to manage. And, of course, there were no Indian managers on the Reservation to serve as role models. Consequently, both Tribal and individual Indian enterprises have suffered managerial problems.

A fourth barrier to Reservation economic development that is common to all Indian Reservations is the dismally poor quality of technical assistance that Reservations have received. The February, 1978 GAO Report on federal development efforts on Indian Reservations discusses this topic at considerable length. It finds both quantity and quality of technical assistance provided by federal agencies totally inadequate.

Other barriers to economic development that are common to only the Ute Mountain Ute Reservation could be described; for example, Indians, by and large, are not used to thinking in terms of money making schemes and so creating successful business ventures does not come easily. However, the four barriers that have been detailed above are probably sufficient to give some sense of, first, why economic development is difficult on the Ute Mountain Ute Indian Reservation and, second, some of the problems to the Ute Mountain Ute Indian must be corrected to bring successful development.

III. RESERVATION ECONOMIC DEVELOPMENT TODAY

Significant economic development remains a hope for the future on the Ute Mountain Ute Indian Reservation. The level of economic activity on the Reservation is low; unemployment ranges from 56 to 78.7 percent, depending on the season of the year; Indian income ranges make other minorities seem prosperous. An even more dismal statistic is the amount of federal and Tribal dollars that have been lost in successful efforts at economic development. This lack of success can be documented; indeed, much of it is highly visible. Too many times the Federal Government has provided funding for projects which were designed by the Federal Government not by the Tribes themselves. Agencies such as the Bureau of Indian Affairs have never established, much less implemented, a policy for economic development on Indian Reservations. There are several possible reasons why the Ute Mountain Ute Reservation is faced with such a high unemployment problem. One obvious reason is typically found in economic depressed environments—structural unemployment.

On the other hand, there have been some successful grant funds provided to upgrade community facilities and to help establish industrial and commercial business. The Economic Development Administration has funded a small industrial park which presently houses a small pottery manufacturing plant and a garment manufacturing facility. The impact on the unemployment rate of these two facilities has been minimal. Previous summaries of economic activity on the Ute Mountain Ute Reservation indicate that employment for the people is limited to three major employment factors; Tribal enterprise (pottery factory, livestock, Ute Mountain Ute Indian Park, and the garment factory); Federal Government; and Tribal Government. It is apparent that job opportunities to be found in these factors is totally inadequate to deal with the Tribe's high rate of unemployment.

IV. OPPORTUNITIES FOR RESERVATION DEVELOPMENT

The Planning Commission of the Ute Mountain Ute Reservation has outlined three goals in conjunction with an on-going planning program on the Reservation. These include:

1. The improvement of the general living standards on the Reservation;
2. The integration into the social, political and economic structure of the region while retaining the unique character of the Ute Mountain Ute Reservation;
3. The assessment of future growth trends on the Reservation and the demands stimulated by that growth.

These three major goals are interrelated into subgoals specifically related to the physical, social, economical and governmental development of the Reservation.

V. ENVIRONMENTAL AND PHYSICAL DEVELOPMENT

Environment and Physical Development

1. Development of a general land use plan for the Reservation as a guide for future development of new housing, tribal office, community facilities, parks and industrial and commercial use;
2. Improvement and maintenance of existing facilities, and establishment of new community facilities in conjunction with priority assessment of the need for such facilities;
3. Development of recreational areas, green belts and parks for use by the Tribe;
4. Continued improvement and expansion of the road system on the Reservation;
5. Establishment of a long-range capital improvements program;
6. Elimination of the problem associated with solid waste disposal;
7. Continuation and expansion of housing programs to establish sound economical and suitable housing for all members of the Tribe.

Social Development

1. Assessment of existing programs and development of new programs for the social and recreational betterment of Tribal members;
2. Establishment of the best possible health care program for members of the Tribe;
3. Acquisition for all members of the Tribe of the same educational opportunities which exist for the larger population in the region and especially the establishment of new programs particularly suited to the needs of the Tribe;
4. Establishment and coordination of a financial system for savings and credit opportunities for all members of the Tribe.

Natural Resources and Economic Development

1. Continued economic activity on the Reservation to develop alternative revenue sources for the Tribe and to develop job opportunities for individual Tribal members;
2. Establishment of proper management and development of existing natural resources: By effectuating a forest and range management program to obtain maximum yield and to prevent overgrazing; by designating an efficient land base for Ute Mountain Ute families who desire to enter agricultural enterprises; by promoting and regulating the lease and extraction of mineral resources to provide income and employment while protecting the existing environment of the Reservation;
3. Expansion and improvement of the present water delivery system to Towaoc and to agricultural lands.

Governmental Development

1. Reorganization of the structure of the Tribal Office and support programs to provide for more efficient management and greater coordination of the affairs and programs of the Ute Mountain Ute Tribe;
2. Updating of the Constitution of the Tribe, to provide for equal representation for all members of the Tribe and greater political participation by members in the election process.

VI. ECONOMIC DEVELOPMENT POTENTIAL

The Ute Mountain Ute Reservation is fortunate to possess certain natural resources on the Reservation; especially in the form of gas, oil and some coal deposits. The Tribe also has a tremendous asset in its water rights which are to be developed through the Dolores River Project and the Animas - La Plata River Project. Both of these projects will provide water for irrigation, municipal and industrial use, domestic use, rural domestic use and fish and wildlife enhancement.

The position of the Tribe as a royalty owner has not, however, led directly to employment of the men and women of the Tribe. An implicit position that relates to all of the activities outlined is support for Indian ownership and control of economic progress on Indian Reservations. It is not surprising that, in terms of economic development, the Ute Mountain Ute Tribe has a tendency to be cautious and conservative. Historically, the most economically advanced Tribes have been

terminated and almost destroyed; no one bothers a poor Tribe. The development of economic development for the Ute Mountain Ute Reservation is a task that requires efforts on the part of the Tribe and support from the Federal Government.

In closing my prepared comments, I offer my full cooperation and support to the oversight and review work of the committee. I appreciate this opportunity to appear before you.



