

BISHOP PAIUTE TRIBE

HEARING TESTIMONY BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

CONTEMPORARY TRIBAL GOVERNMENTS: CHALLENGES IN LAW ENFORCEMENT RELATED TO THE RULINGS OF THE UNITED STATES SUPREME COURT

JULY 11, 2002

I. INTRODUCTION.

My name is Monty Bengochia. I am the Chairman of the Bishop Paiute Tribal Council. I was born and raised on the Bishop Paiute Reservation, and I have lived on or near the Reservation most of my life.

I want to thank Chairman Inouye and the members of the Committee for inviting me to testify here today on important issues of tribal sovereignty and jurisdiction.

Our Reservation is located in the Owens Valley of East-Central California about 250 miles north of Los Angeles and 200 miles southeast of Reno. The Reservation consists of 875 acres adjacent to the town of Bishop. There are about 1600 members of the Bishop Paiute Tribe.

II. HISTORICAL SUMMARY.

Our Paiute people have occupied the Owens Valley and surrounding areas since time immemorial. We had been here, exercising full national sovereignty, for several thousand years when non-Indians first arrived. Although there was armed conflict between my people and whites, particularly after the acquisition of the Southwest by the United States under the 1848 Treaty of Guadalupe-Hidalgo, my people were never "conquered" by the United States. We do not have a ratified treaty with the United States, and we never ceded our land to the United States. We have continuously exercised our tribal sovereignty to the greatest extent allowed by your laws. As far as we are concerned, our sovereignty is inherent because it pre-existed the United States. It was not, and could not have been, granted to us by the United States or the Congress.

Thanks to the high Sierra Nevada mountains to the west of the Owens Valley, and the Great Basin Desert to the east, south and north, we survived the Spanish and Mexican occupations of California and the mission system that made slaves of California Indians near the coast. We also survived the Indian genocide of the Gold Rush period because of the geographical barriers and the fact that little or no gold was found in our area. We practiced irrigated agriculture in the Owens Valley from long

before our first contact with Europeans. We used the abundant water supply from Sierra Nevada runoff until the Los Angeles Department of Water and Power began appropriating our water in the early Twentieth Century. We have continued our traditional culture and lifeways to the present, although under ever-increasing pressure from non-Indians and the American government during the late Nineteenth and Twentieth Centuries.

The Bishop Paiute Tribe is virtually landless today. This is because our land rights were not respected by the United States, despite requirements to the contrary in the Treaty of Guadalupe-Hidalgo and under federal common law. The Indian Claims Commission found that our title was extinguished as of March 3, 1853, the deadline to file claims under the California Private Land Claims Act of 1851, because we didn't file a claim. Of course, at that time we knew little or nothing about the existence of the United States, much less that Congress had passed the 1851 Act. The constitutional due process of law issues raised by the fact that the 1851 Act did not actually require California Indians to file claims, and that we had no notice whatsoever of the Act or the need to file claims, were not considered or raised before the Indian Claims Commission.

In 1912 President Taft signed an Executive Order establishing a 67,164 acre Paiute Reservation on the Casa Diablo or Volcanic Tablelands tract. President Hoover revoked the Casa Diablo Reservation by Executive Order in 1932. However, we believe that President Hoover's revocation of the Casa Diablo Reservation was invalid. In addition to the Casa Diablo Reservation, we believe we have eight or more smaller unresolved land claims.

As a result of the seizure of our land and water by non-Indians, the federal government, and the Los Angeles Department of Water and Power, we have been deprived of economic opportunity for more than 100 years. One of the results of this economic deprivation is that we lack the financial resources required for a tribal law enforcement system, including a tribal court and a police force. We have no tribal police officers. We recently obtained a three-year grant from the Justice Department to establish a tribal court system and hire two police officers. We can only hope to find a way to continue to fund our tribal court and law enforcement program after the grant runs out. We do have a successful, small casino, but its revenues are insufficient to meet our many tribal governmental financial needs.

One of our land rights issues is Coso Hot Springs. It is a sacred site located on the China Lake U.S. Naval Ordinance Test Station. It is the place of our origin – the place of our creation. Coso Hot Springs has always provided the strongest healing powers that we know of. The federal government has leased that area for geothermal energy development. We are very saddened by the fact that geothermal development for private economic gain has changed the nature of the hot springs, probably forever, and denied us its healing benefits.

We also have sacred sites on the Casa Diablo Reservation tract that are not being protected and are being steadily vandalized and destroyed by the public. These

are our ancient rock art sites. People have shot at them and chipped and defaced them. In some cases they have actually chipped off slabs of rock that include the petroglyphs themselves so that they could steal them. One of the reasons we want to recover the Casa Diablo Reservation is so that we can adequately protect these sites.

III. TRIBAL SOVEREIGNTY, JURISDICTION AND LAW ENFORCEMENT ISSUES.

Mr. Chairman, I believe you may have invited me to testify at this hearing because of the importance of current federal litigation involving the Bishop Paiute Tribe. The 9th Circuit Court of Appeals recently decided the case of Bishop Paiute Tribe v. County of Inyo, 275 F.3d 893 (rehearing en banc denied and opinion modified, May 20, 2002). The defendant, Inyo County, is now in the process of deciding whether to file a petition for certiorari to the Supreme Court

In March 2000 the Inyo County Attorney and the County Sheriff literally broke into our casino using deadbolt cutters to execute a warrant to search casino employee records as part of a welfare fraud investigation.¹ Although the warrant was for the limited purpose of obtaining payroll records for three tribal members being investigated, the County Attorney and the Sheriff also seized confidential records concerning 78 other tribal member casino employees who were not mentioned in the warrant. The following July, the County Attorney demanded personnel records for six additional tribal member casino employees. We filed the complaint in Bishop Paiute Tribe v. County of Inyo in federal district court on August 4, 2000. Our lawsuit seeks declaratory and injunctive relief against further violations of our tribal sovereignty by the County, and damages under 42 U.S.C. Sec. 1983 for violations of our civil rights by the County, the County Attorney and the Sheriff.

The Ninth Circuit's decision in Bishop Paiute Tribe was a resounding victory for our Tribe. The Court held that the County, the County Attorney and the Sheriff violated our tribal sovereign immunity when they obtained the search warrant and broke into our casino to execute the search warrant. The court also held that the County Attorney and the Sheriff were acting as county officers and that the County is subject to liability under 42 U.S.C. Sec. 1983. The Court further held that the Attorney and the Sheriff are not protected by qualified immunity because they violated well-established law.

In June of 2001, the United States Supreme Court decided Nevada v. Hicks, 533 U.S. 353. Hicks held that state and local law enforcement officers may execute a search warrant on Indian reservation lands without tribal consent for the purpose of the investigation and prosecution of state-law crimes committed by a reservation Indian off-reservation. By extension, this decision must mean that state and local law enforcement officers can enter Indian reservations without consent to investigate and

¹ Criminal proceedings initiated against the three tribal member casino employees for welfare fraud have since been dismissed on the County's own motion for "lack of probable cause."

prosecute state-law crimes committed by Indians or non-Indians on or off-reservation. The court held that there is a presumption against tribal court civil jurisdiction over non-members, regardless of whether the conduct took place on fee land within the reservation or on tribal trust land. That presumption can only be overcome by a showing that tribal interests in exercising such jurisdiction outweigh whatever state interests are at stake. This is, of course, a very difficult rule to apply because the outcome of the analysis depends entirely on the particular circumstances. In fact, the analysis will almost always be conducted *ex post facto* in the course of litigation as to the limits of tribal or state jurisdiction under the circumstances. This can only result in government by litigation, not government by rules of law knowable by all parties in advance. Few tribes can afford to protect their sovereignty and jurisdiction under these circumstances because whether or not tribal or state jurisdiction exists in any given situation can only be determined by lengthy and costly litigation.

Although the County argued in its motion before the Ninth Circuit for rehearing on banc in Bishop Paiute Tribe that the Hicks decision (which was handed down after the County's brief-in-chief was filed in the Ninth Circuit) is controlling and that tribal sovereign immunity is no bar to execution of the County's search warrant, the Ninth Circuit denied the County's motion. We believe that the Ninth Circuit's holding that we retain unimpaired tribal sovereign immunity is absolutely correct. We are concerned, however, about the potential outcome if the United States Supreme Court grants a County petition for a writ of certiorari. The Supreme Court could use an analysis similar to that in Hicks to subject our tribal government itself to state and local law enforcement jurisdiction. That would virtually destroy our sovereignty by making us subservient to state and local government for the first time in the history of the United States.

As Chairman Inouye noted in his opening statement at this Committee's February 28, 2002 hearing on Rulings of the U.S. Supreme Court as They Affect the Powers and Authorities of Indian Tribal Governments, the Court seems to be on a steady march to divest native governments of their sovereign governmental powers and authority. The fundamental principle that tribal governments have authority to exercise jurisdiction over their territory, just as other governments do, is being steadily eroded by the Court's rulings.

We have law enforcement problems in addition to those addressed in the Bishop Paiute Tribe case. The Supreme Court's 1978 decision in Oliphant v. Suquamish Tribe, 435 U.S. 191 deprived us of criminal jurisdiction over non-Indians who commit crimes on our Reservation. We have problems with non-Indian drunk driving and drug violations on the Reservation over which we have no control. California is a Public Law 280 state. State and local law enforcement agencies are empowered to enforce state law on our reservation. The situation might be tolerable if state and local law enforcement agencies simply provided us with badly needed law enforcement services. That is not the case, however.

Unfortunately, there is long-standing friction and hostility between our tribe and

the Inyo County government, including the Inyo County Sheriff's office. The Bishop Paiute Tribe case itself is dramatic testimony to that fact. Our reservation has suffered for decades from unsatisfactory County law enforcement services. As a general matter, we feel that lack of respect from County law enforcement officers and the County Attorney is a serious problem. Law enforcement services provided by the County on our reservation are inadequate and the response time is very slow. State and federal drug enforcement on our Reservation is virtually nonexistent. Our single biggest law enforcement problem is unsolved homicides and other unresolved fatalities, numbering at least half a dozen over the last 10 or 15 years.

We feel that both County and state law enforcement agencies provide us with a level of services that is inequitable and unfair compared to the level of services provided to non-Indians and off-Reservation areas. For instance, Tyler Weaver, a young tribal member, was found dead alongside an off-Reservation County road about two years ago. The California Highway Patrol has been investigating, but has never completed their investigation. Tribal members and the family are extremely upset and frustrated that this matter is not been pushed toward a timely resolution.

My statements here today are not intended to be a blanket condemnation of all of the off-reservation law enforcement personnel that we deal with, however. We do have good relationships with many individual state, County and Bishop City law enforcement officers.

Moreover, a number of serious incidents of police misconduct by County law enforcement officers have occurred in the last few years. We filed a detailed written complaint with the County Sheriff's Department and the Attorney General of California over a year ago documenting a pattern and practice of repeated harassment of one of our tribal members by County law enforcement personnel, both on and off the Reservation. That complaint also documented two separate incidents of sexual harassment of young women tribal members by County law enforcement officers. Although the Sheriff's Department should have at least initiated an internal investigation of these serious incidents, we have heard nothing whatever back from the County.

IV. CONCLUSION.

The Bishop Paiute Tribe faces many difficult social and economic problems, including inadequate and unfair law enforcement. Our law enforcement problems are growing larger, not smaller, because of the steady erosion of our tribal sovereignty and jurisdiction. This is the direct result of a series of adverse United States Supreme Court decisions over the last 25 years, more or less beginning with the 1978 decision in Oliphant v. Suquamish Tribe and continuing through the Court's recent decision in Nevada v. Hicks. Now we are faced with the possible outright destruction of our tribal sovereignty if the Supreme Court reviews and decides our own case, Bishop Paiute Tribe v. County of Inyo, in such a way as to diminish tribal sovereign immunity. We are hoping that this Committee will consider and report out legislation designed to restore

exclusive tribal sovereignty and jurisdiction in relation to state and local governments over both Indians and non-Indians on tribal and allotted trust lands.