

TESTIMONY OF THE HONORABLE MICHAEL GARCIA
VICE-CHAIRMAN, EWIIAAPAAYP (CUYAPAIPE) BAND OF KUMEYAAY INDIANS
ALTERNATE DIRECTOR, SOUTHERN INDIAN HEALTH COUNCIL, INC.

Before the House Committee on Resources

Hearing on H.R. 1239

October 17, 2001

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

Summary Statement. I am here to explain why my Tribe believes H.R. 1239 is misguided and should be abandoned. Our reasons can be summarized as follows: First, the bill would over-ride fundamental principles of Tribal Sovereignty by voiding legal agreements my Tribe has reached with SIHC, Inc., our tenant. The bill would dictate that certain tribes cannot set our own rules for how we make decisions in organizations we govern. The bill plainly tells my Tribe we cannot carry out internal matters of self-government without Federal interference.

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

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

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

What are the Local Decisions Which H.R. 1239 Seeks to Over-ride? My Tribe, the landlord, signed an agreement with our tenant, SIHC, Inc., [\(1\)](#)

1 to amend their lease so as to reduce the amount of Cuyapaipe trust land which SIHC, Inc. now uses in Alpine

from from 8.6 acres to about 2.5 acres. [\(2\)](#)

2 In simple terms, my Tribe's Agreements with SIHC, Inc. involve an exchange. We get some of our land back from our tenant earlier than scheduled, and in exchange, SIHC, Inc. gets two or three new, state-of-the-art health clinic facilities to replace their aging and scattered buildings. My Tribe's contractual obligation is to provide approximately \$11.5 million to build the new replacement clinic facilities for SIHC, Inc. as well as an additional 15-year stream of Cuyapaipe contributions estimated to total \$100 million for further facility and operational support of SIHC, Inc. plus additional revenue sharing over a total of 36 years.

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

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

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

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

H.R. 1239 Seeks to Overturn *Bona Fide* Local Votes of the SIHC, Inc. Board. The Cuyapaipe Band has not rescinded or revoked its lease with SIHC, Inc. The Board of the SIHC, Inc. took a series of votes during 2000 as the lease amendment Agreements took shape. The last and definitive vote was taken on December 18, 2000, when its seven-member Board of Directors approved the final lease amendment Agreements by a vote of four in favor, one opposed, one present but abstaining, and one absent. The Chairman of the SIHC, Inc. Board of Directors, Mr.

Ralph Goff, Chairman of the Campo Band of Mission Indians, was present but did not vote, abstaining in his capacity as Chairman. Chairman Goff today will testify in opposition to HR 1239 and in support of the lease amendment Agreements.

The only Director absent was the representative of the Viejas Band of Mission Indians who, although the meeting was lawfully and adequately noticed, chose not to attend or to send an alternate Director to this important meeting of the SIHC, Inc. At an earlier July 10, 2000 meeting of the Board of Directors, six directors were present for the vote on Resolution 00-07-10-01 approving the transactions between the Cuyapaipe Band and SIHC, Inc. Three directors voted in favor, two voted against, and one abstained. The Director appointed by the Cuyapaipe Band, by agreement of the Board, purposefully absented himself for this vote.

The SIHC, Inc. Board of Directors has intended, understood, and treated abstentions as neutral; such abstentions have not been counted in determining whether there is a majority vote. As of July 10, 2000, however, the SIHC, Inc. by-laws did not specifically address this understanding. Thus, after proper notice the Board voted 5-2 on November 27, 2000 to amend the bylaws to clarify this original Board intention. **No HUD Funds Were Used to Purchase our Trust Land in 1985.** Some Members of Congress have been erroneously told that we used Indian community development block (CDB) grant funds received from HUD when in 1985 we purchased the land we now hold in trust, and that facilities funded with HUD grants are being inappropriately disposed. In fact, last year Congressman Hunter introduced legislation (as H.R. 5477) that would have prohibited the Cuyapaipe Agreements if Federal funds were used for land acquisition. After the Cuyapaipe Band documented the fact that no Federal funds were used, Congressman Hunter amended his legislation to its present focus of dictating unanimous consent rules upon SIHC, Inc.

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

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

The Viejas Band's Opposition Is Transparent. Who, one might reasonably ask, would benefit if they could block the dramatic improvements in SIHC, Inc. health facilities and programs that will come from the Cuyapaipe-SIHC, Inc. Agreements? It can only be those with interests and agendas other than health care. Perhaps those interests include those of the present Viejas tribal leadership who operate a casino one mile east of Cuyapaipe's trust land in Alpine where we intend to develop our gaming. Since the key SIHC, Inc. vote at which they were absent, the present Viejas leadership have not availed themselves of any of the numerous opportunities they have had to resolve whatever issues they may have with our lease amendment Agreements. Until seven days ago, the Cuyapaipe Band has not been able to obtain an answer from Viejas as to why Viejas opposes our Agreements. The Cuyapaipe Band wrote letters to Viejas dated November 6, 2000, December 11, 2000, June 14, 2001, and June 29, 2001, without ever receiving a substantive response. Cuyapaipe Tribal officials made repeated telephone calls to Viejas Tribal officials without a response until Viejas Tribal Chairman Steve TeSam returned Cuyapaipe Tribal

Chairman Harlan Pinto's telephone calls on October 10, 2001, and offered, as an explanation for his opposition, only that the Viejas membership had voted more than one and one-half years ago that the SIHC, Inc. should remain "status quo." But that "vote" occurred many months before the terms of our lease amendment Agreements with SIHC, Inc. were negotiated.

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

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

Our Pending Lease Amendment Agreements Do Not Involve Gaming Approvals. Our request to approve our lease amendment agreement is the only decision now pending before the Department of the Interior before we can proceed to implement the Agreements. All gaming-related compacts and authorities are already in place and approved. In 1986, two years before the Indian Gaming Regulatory Act of 1988 (IGRA) was enacted, the land at issue was accepted into trust for the Cuyapaipe Tribe. In 1998, the people of the State of California voted overwhelmingly to permit Indian tribes to conduct gaming on tribal trust lands pursuant to IGRA. In September, 1999, the Governor entered into a Tribal-State compact with my Tribe. In March, 2000, the people of the State of California again overwhelmingly voted to permit Indian gaming on tribal trust lands pursuant to IGRA. In May, 2000, the U.S. Department of the Interior approved the Cuyapaipe-California Tribal-State Compact. Unlike Viejas, my Tribe waited until tribal government gaming was unquestionably lawful and permitted before we began to develop plans to conduct gaming on our trust land.

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

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

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

right to exist into the future.

The Cuyapaipe Band thought, and I would submit that 71% of the voters in San Diego County thought, that Proposition 1A was about the future existence of all federally-recognized tribes in California, including both the Cuyapaipe Band and the Viejas Band.

The Viejas Chairman went on to say: *"Tonight's victory is a vindication of the voters' will over the power of a few to change the course of the future through legal technicalities and political obstruction."*

Now, the Viejas Band is asking the U.S. Congress to use legal technicalities to politically obstruct the outcome of a majority vote by the Board of SIHC, Inc. so as to prevent my Cuyapaipe Band from building a casino on our own land and dramatically improving health care for Indians and non-Indians alike in East San Diego County. I ask, on behalf of my Tribe, that this Committee not permit the Congress to interfere in our local affairs. I ask this Committee to stand up for what is right and stop this bill from moving forward.

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

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

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

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

If the Congress abandons H.R. 1239 and the Department approves our lease amendment agreements, our next step

will be to build a \$1.5 million replacement clinic on the Campo Reservation for SIHC, Inc., a \$5 million replacement clinic on 2.5-acres of the present 8.6-acre leased parcel, and in just the first 15 years of our gaming operation, provide an estimated \$100 million to SIHC, Inc. as a percentage share of our gaming revenues. We have also engaged in discussions with the local Alpine community regarding our plan to provide an estimated \$11 million in charitable contributions to the community over the first seven years, after we begin operating our tribal government gaming enterprise, to be used for education (construction of a new Alpine high school), open space, recreation, a new Alpine library, an Alpine community center, Alpine Fire Protection District, San Diego County Sheriff's Department, and land for a San Diego County Sheriff Department Alpine substation. In addition, if, before we begin construction of the \$5 million replacement clinic on the 2.5 acres (discussed above), the Interior Department can approve our pending application to accept into trust status the 17 acre Alpine Boulevard property we recently purchased across the interstate from our present trust parcel, we will divert that \$5 million to combine it with another \$5 million we will contribute to construct a larger \$10 million clinic with the potential for urgent health care services at the Alpine Boulevard property.

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

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

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

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

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

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

The Viejas letter then concludes that: *"The BIA cannot, therefore, take any action which would facilitate Ewiiapaayp off-reservation gaming at the direct expense of the Viejas Band..."* First, let me be clear, the Viejas reference to "off-reservation" is mis-placed. Our eight acre parcel is tribal trust land, and the Indian Gaming

Regulatory Act of 1988 specifically authorizes Class III gaming under our September 10, 1999 Tribal-State Compact on that land. Second, with this statement the Viejas Band is saying the Interior Department has a trust responsibility to Viejas to over-ride the Department's trust responsibility to Cuyapaipe. If this policy were adopted, it would violate fundamental Federal-Indian principles of the government-to-government relationship the United States has with each Tribe. Viejas is voicing opposition to decisions that were made a long time ago. Congress enacted IGRA in 1988. The Governor signed and the Department approved our Compact in 1999 and 2000, respectively (when Viejas likewise first received its lawful gaming compact). H.R. 1239 would require any alterations to leases entered into by SIHC, Inc. to have the approval of the tribes of all seven SIHC, Inc. Directors by tribal resolution in order to be given effect. This would vest unilateral power in any single one of the seven member tribes of SIHC, Inc. to veto the Agreement, which is the apparent intention of the Viejas Band in supporting H.R. 1239. We believe it is an inappropriate use of Congressional power to dictate changes to the by-laws of but one specific non-profit corporation in the entire country. Such a vote requirement is inconsistent with the requirements of California corporations law and imposes an almost insurmountable barrier to the conduct of business. It is not a proper role for the federal government to "fix" the outcome of corporate Board actions by giving one member the power to thwart the will of the majority, particularly when the outcome serves the self-serving interests of the one at the expense of the interests of the majority, and especially when the financing and political influence of the one to promote such a change in law were primarily derived from unlawful activities.

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

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

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

The Cuyapaipe Band offered to do more than just hope SIHC, Inc. would be successful. The Cuyapaipe Band found available land suitable for the clinic in Alpine, acquired the land with non-federal funds, conveyed this fee land to the United States in trust, and leased the land to SIHC, Inc. for 25-years plus 25-year option for a rent of \$1 per term. [\(3\)](#)

3 The Cuyapaipe Band went to these great lengths despite the fact that the rest of our trust land base could not support economic development, located as it is in the remote Laguna Mountains 35 miles northeast of Alpine, and comprised of 4,102 acres of sharp mountain ridges and steep slopes at elevations between 5,600 ft and 6,600 feet with but 2% of the land base suitable for buildings. [\(4\)](#)

4 The Cuyapaipe Agreements Offer a Unique Opportunity to Expand and Improve Health Care Provided by SIHC, Inc. As a result of the Agreements with the Cuyapaipe Band, SIHC, Inc. will receive either a \$5 million clinic in

Alpine on Willows Road and later another \$5 million clinic on Alpine Boulevard, or a \$10 million clinic on Alpine Boulevard should the BIA expedite the trust approval of the 17-acre Alpine Boulevard property and its lease to SIHC, Inc. In addition, ⁽⁵⁾

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

The \$100 million contribution will permit SIHC, Inc. to develop a world class clinic to serve the people of our community - **Indians and non-Indians alike**. Among many other benefits, we expect this to permit SIHC, Inc. to respond to our community's desperate need for urgent care/emergency services.

The Band will build SIHC, Inc. a new clinic building on the northern-most 2.5 acres of our current Alpine trust parcel. This 33,500 sq. ft. facility (the "CCB" or consolidated clinic building) will consolidate all existing scattered facilities and operations under one roof, providing more modern and spacious amenities as well as the possibility of adding additional services. It has been designed by one of the foremost clinic design firms in the Country.

The Band will also build SIHC, Inc. a new clinic building on the Campo Reservation (the "Campo Clinic"), to serve residents of the outer reaches of what we call East County. This 8,000 sq. ft. facility will replace an existing 2,500 sq. ft. modular building.

The Band recently acquired a 17-acre parcel of land on Alpine Boulevard just across the interstate from our Alpine trust site. We have applied to the BIA to accept this land in trust for the Tribe, following which it will be dedicated to the exclusive use of SIHC, Inc. The Band is committed to funding a \$5 million clinic (the "Alpine Boulevard Clinic" or "ABC") on this site, to form the centerpiece of the major clinic to be developed over the coming years (utilizing some of the \$100 million noted above). Under our Agreement with SIHC, Inc., this 17-acre parcel must be accepted in trust by the Department before we can build a clinic on it for SIHC, Inc. for a number of reasons. The chief reason is that locating SIHC Inc.'s operations on trust land insulates SIHC, Inc. from being subjected to costly union organizing and collective bargaining and other requirements of the National Labor Relations Act (NLRA) that infringes on Tribal Sovereignty and that would divert funds from the provision of critically needed health care. The NLRA does not contain language expressly applying the NLRA to tribal governments nor expressly exempting such governments. In a 1988 case involving SIHC, Inc., and in several other cases, the National Labor Relations Board (NLRB) has consistently held that a tribally owned and operated enterprise located on Indian trust lands is exempt from the NLRA. ⁽⁶⁾

6 At the time its case was before the NLRB, the SIHC, Inc. clinic was located on Barona trust lands. Its location on trust lands was cited as a key factor in the NLRB's decision precluding attempts at union organizing on tribal trust lands. In addition, locating on trust land allows SIHC, Inc., to operate as a federally qualified health center subject to review by the IHS.

The Band has supplied financing to construct the clinics, secured by an irrevocable letter of credit. Construction of the CCB will proceed soon after the BIA approves the Tribe's lease amendment Agreements with SIHC, Inc. Development of the Alpine Boulevard Clinic site will proceed once that land is taken into trust by the BIA. If both these BIA actions occur virtually simultaneously, this would then permit the \$5 million earmarked for the CCB to be combined with the \$5 million intended for the Alpine Boulevard Clinic and result in a larger \$10 million Alpine Boulevard Clinic. The Alpine Boulevard Clinic fee-to-trust application is not essential to the success of our lease amendment Agreements, but common sense would dictate that its acceptance into trust be expedited in order to get greater health benefits sooner to the entire Alpine community . **The Cuyapaipe Agreements Offer a Unique Opportunity to Bypass the IHS Facility Replacement Backlog.** In its most recent facilities needs review (1994), the IHS determined that deteriorating conditions require that it replace, renovate or modernize 41 hospitals, 153

health clinics and 289 part-time health centers. In addition, it found that 12 completely new health clinics and 21 new health stations were in need of construction. Now, years later, these unmet federally-supported facility needs are even greater. The backlog is even bigger. The SIHC, Inc. clinic facilities are among those needing to be replaced or modernized.

The President's recent Budget Request stated that the total unfunded amount identified on the five-year IHS Health Facilities Planned Construction Budget for FY 2002 was approximately \$938 million. That's just the 5-year plan. The IHS's assessment of its overall facilities backlog need is \$7 billion for health facilities infrastructure, maintenance and equipment needs. [\(7\)](#)

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

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

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

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

Over the past year we have consulted with numerous Alpine residents in an attempt to better understand the needs facing our community. We commissioned a nationally-recognized polling organization to provide us unbiased and statistically accurate feedback on those issues, surveying over 400 households to determine the interests and concerns of the Alpine community. We also delivered direct mail to over 3,500 households in Alpine, and received express support from 96% of those who responded to our request for feedback on our project. We formed a Community Advisory Council and have regularly consulted with them, seeking input and guidance about our plans. We have attended meetings of many community organizations both to share our plans and to learn about their goals and objectives. Those organizations include the Alpine Citizens High School Committee, Alpine Friends of the Library Committee, Alpine Planning, the Alpine Chamber of Commerce, San Diego County General Plan Amendment Goals 2020, Sage and Songbirds, the Back Country Land Trust, the Sheriff's Department, the Alpine Fire Department, PTAs, Lions Club, East County Chamber of Commerce, and others. In addition, our intended contributions to improved health care in our community have already been mentioned.

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

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

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

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

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

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

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

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

4. **4** This trust land has a single-lane access road that is 12 miles of steeply graded, narrow, unmaintained dirt road crossing private, U.S. Forest Service, Bureau of Land Management, and San Diego County properties with two locked gates. This land lacks all basic utility services, and it would be cost prohibitive to do so. Congress enacted the California Indian Land Transfer Act of 2000 that returned Bureau of Land Management surplus land to six tribes, including 1,360 acres to our land in the Laguna Mountains. However, of this acreage, 928 acres was previously part of a trust land there, but was removed on paper by errant BLM surveys, with no relief provided by the BIA despite repeated complaints by the Band. As a result, the Cuyapaipe trust land will only increase by 432 acres, all of which is on ridge tops or steep slopes. I doubt that in my lifetime my Tribe will ever be able to make any significant economic

development use of our 4,102-acre trust land in the remote Laguna Mountains. The best and highest use of our Alpine trust land, both for the Band and SIHC, Inc., is to return its right of use to the Band in order to significantly improve SIHC, Inc.'s ability to provide health care to all residents of East San Diego County.

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

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

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

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

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