TESTIMONY
OF
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U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
OVERSIGHT HEARING ON
H.R. 2120, S. 2494, S. 1080, H.R. 2963
AND S. 531

May 15, 2008

Good morning, Chairman Dorgan, Vice Chairwoman Murkowski, and Members of the Committee. I am pleased to be here today to provide the Department of the Interior's (Department) position on H.R. 2120, a bill to direct the Secretary of the Interior to proclaim as reservation for the benefit of the Sault Ste. Marie Tribe of Chippewa Indians a parcel of land now held in trust by the United States for that Indian tribe; S. 2494, the "Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act"; H.R. 2963, the "Pechanga Band of Luiseno Mission Indians Land Transfer Act of 2007"; S. 1080, the "Crow Tribe Land Restoration Act"; and S. 531, a bill to repeal section 10(f) of Public Law 93-531, commonly known as the `Bennett Freeze'.

H.R. 2120

We support the purpose of H.R. 2120, a bill to proclaim as reservation for the benefit of the Sault Ste. Marie Tribe of Chippewa Indians a parcel of land now held in trust by the United States for that Indian tribe. Currently, the matter is before the court as Sault Ste. Marie Tribe v. United States, Civ. No. 2:06-CV-276, and if Congress passes the legislation, it would put an end to the litigation.

The Sault Ste. Marie Tribe (Tribe) is located in the far northern section of Michigan and has two reservations. The Tribe also has property the Department holds in trust for them that is not considered reservation land for purposes of the Indian Gaming Regulatory Act (IGRA). One such parcel is the subject of H.R. 2120, on which there is Indian housing, some other tribal facilities, a now-closed casino, and a casino housed in a temporary structure that has since been moved to another location. In 1988, the Tribe approached the Department to have the land proclaimed a reservation, along with five other parcels, but its paperwork was not completed prior to the enactment of IGRA.

The Tribe seeks to game on adjoining property taken in trust in the year 2000. It built a new casino on this parcel. The Tribe was advised by the Department and the National

Indian Gaming Commission that they would need to apply under IGRA for a two-part determination in order to game on the parcel. If Congress deems the first parcel to be reservation as of April 1988 for purposes of IGRA, then the tribe can game in its new casino under an exception in IGRA.

We suggest amending the legislative language to reflect that "the property shall be deemed a reservation as of April 19, 1988, for purposes of the Indian Gaming Regulatory Act." We will be happy to work with the Committee staff on amending the legislation to reflect the necessary changes.

S. 2494

The Department opposes S. 2494, the "Spokane Tribe of Indians of the Spokane Reservation Grand Coulee Dam Equitable Compensation Settlement Act". The Administration has worked with the Spokane Tribe over the last several years on this issue. We believe negotiations to correct several serious issues should continue.

S. 2494 would provide compensation to the Spokane Tribe for the use of its land for the generation of hydropower by the Grand Coulee Dam. Specifically, S. 2494 would require the Secretary of the Interior, subject to the availability of appropriations, to deposit $99.5 million over five years, $23,900,000 for fiscal year 2008 and $18,900,000 for the following four fiscal years, into a trust fund held in the U.S. Treasury and maintained and invested by the Secretary of the Interior for the Spokane Tribe to be known as the "Spokane Tribe of Indians Settlement Fund". S. 2494 would also transfer certain land and administrative jurisdiction from the Bureau of Reclamation (BOR) to Bureau of Indian Affairs (BIA) for the Spokane Tribe. The land transferred would be held in trust for the Spokane Tribe and would become part of the reservation.

The Spokane Tribe has not brought forward a legal claim that would warrant this type of settlement. The Administration questions whether the Tribe has or could bring any legal claim that would entitle it to compensation as contemplated under the bill. In light of the lack of any pending legal claim, the Administration does not believe this legislation is currently justified as a settlement of claims.

The Department is also concerned with transferring land and jurisdiction from the Bureau of Reclamation to the Bureau of Indian Affairs for the Tribe absent a prior written agreement to fully address Reclamation's and National Park Service's future ability to manage Grand Coulee Dam, Lake Roosevelt, and the Columbia Basin Project. Such a written agreement should clearly address a number of issues associated with transferring land into trust status, such as future liability for damages from shoreline erosion and heavy metal contamination in sediments from upstream mining, as well as issues related to land and recreation management, including consideration of the existing five-party Lake Roosevelt Cooperative Management Agreement. While under the present draft Reclamation would be granted a perpetual easement to operate the Columbia Basin Project, it is imperative that the parties specifically reach agreement on the details of the lands and easement rights involved and how the transferred areas will be managed prior

to the passage of this legislation. At a minimum, such an agreement should be required prior to the actual transfer taking place.

H.R. 2963

This legislation directs the Secretary of the Interior to transfer three parcels of public land totaling approximately 1,178 acres in Riverside County, California, currently managed by the Bureau of Land Management (BLM), into trust status for the benefit of the Pechanga Band of Luiseno Mission Indians (Tribe).

The Department supports the bill, and recommends certain technical and clarifying amendments pertaining to an accurate legal description, surveys, valid existing rights, and improvements. We look forward to working with the Committee to resolve these concerns.

The BLM has worked with the Tribe over the past several years concerning their interest in acquiring land to add to their reservation. These lands are covered by BLM's 1994 South Coast Resource Management Plan (RMP), which does not identify the parcels for disposal. The Department understands that the Tribe has enacted a resolution committing the Tribe to conserving the parcels' cultural and wildlife values. In addition, in 2005, the Tribe entered into a Memorandum of Understanding (MOU) with the U.S. Fish and Wildlife Service and the BLM, which states that the Tribe will manage the lands for conservation purposes, which this bill reflects. Recognizing the Tribe's interest in obtaining the land for cultural and conservation purposes, the BLM would be supportive of amending its land use plan to enable the transfer to proceed. The transfer process could take several years to complete, and the Tribe has sought this legislation to obtain the parcels more quickly through the legislative process.

The first parcel is nearly 20 acres and contains significant cultural properties, including burials, of high importance to the Tribe. It is an isolated public land parcel characterized by rolling coastal sage scrub and surrounded by private, generally residential, lands. In response to potential threats to the cultural resources of the parcel, the BLM instituted a Public Land Order (No. 7343) in 1998 that withdrew the entire parcel from surface entry, mining, mineral leasing, and mineral material sales. There are no other encumbrances, including mining claims, which are known to exist on the lands. A Memorandum of Understanding between BLM and the Tribe was initiated in 2001, which outlines cooperative management of the parcel, including preservation of its cultural resource values. The Tribe owns and maintains an adjacent parcel of land containing another portion of the Pechanga Historical Site.

The second, and much larger parcel, is slightly more than 958 acres and is adjacent to the Tribe's reservation. These lands are included in the Western Riverside County Multi-Species Habitat Conservation Plan and the Fish and Wildlife Service (FWS) has found them to be significant for their connectivity with rivers and as wildlife corridor. The Tribe and others were consulted on the Plan, and these wildlife values are encompassed in the Tribal resolution referenced above. This rugged parcel is characterized by a dense

mix of oak woodlands, chaparral and coastal sage scrub, and slopes throughout the parcel are steep and eroded. The parcel also includes a service road right-of-way, as well as a 10-inch waterline and water tank that was granted for 30 years to the Rainbow Municipal Water District in 1983. No other encumbrances, including mining claims, are known to exist within this parcel. To resolve a trespass issue, 12.82 acres will be sold to San Diego Gas & Electric for fair market value in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions and the Uniform Standards of Professional Appraisal Practice.

The third parcel is 200 acres, which is included in the Multi-Species Habitat Conservation Plans of Western Riverside County. The resources in this parcel are similar to those in the second parcel.

The Department does have some concerns with the bill. The bill requires the BLM to complete a new survey within 180 days of enactment. We recommend that the lands to be transferred be surveyed "as soon as practicable," rather than within 180 days, as currently required by the bill. Additionally, we recommend language be added to the bill that specifies that any improvements, appurtenances, and personal property will be transferred to the Tribe in fee at no cost and the Department of the Interior is not responsible for any improvements, appurtenances, and personal property that may be transferred along with the lands. The Department feels this change is necessary since the federal government does not have a fiduciary obligation to repair and maintain any acquired improvements. Finally, the bill references the MOU between the Tribe and the U.S. Fish and Wildlife Service. The BLM was also a signatory of the MOU and we recommend the measure reflect that.

The Department has had a very cooperative working relationship with the Tribe on the proposed land transfer and supports the bill's enactment with these modifications.

S. 1080

S. 1080 would require the Secretary to develop a program to acquire interests in land from eligible individuals within the Crow Reservation in the State of Montana and to hold those acquired interests in trust for the Crow Tribe (Tribe). The Department is very supportive of the goals to reunify the Tribe's reservation land and encourage the Tribe to manage its own assets; however, the bill raises considerable concerns as drafted. Therefore, the Department cannot support the bill at this time.

We are concerned with the bill regarding its definitions, timing, size, and mechanisms. We look forward to working with the Committee to address our concerns with the bill and on ways to create a viable program.

S. 531

We support S. 531, a bill to repeal section 10(f) of Public Law 93-531, commonly known as the "Bennett Freeze."

On November 3, 2006, Secretary Kempthorne, Navajo Nation President Joe Shirley Jr. and Hopi Vice Chairman Todd Honyaoma signed an historic Navajo-Hopi Intergovernmental Compact, resolving a 40-year-old dispute over tribal land in northeastern Arizona.

The compact put an end to the ban on construction in the disputed area that was imposed by U.S. Commissioner of Indian Affairs Robert Bennett in 1966. Commonly known as the "Bennett Freeze," this ban has greatly affected the use of this land and has been a severe hindrance to the people who live there.

The agreement also provides that the United States Fish and Wildlife Service will study eagle populations in the disputed area and regulate the use of eagles depending on the size of the population. The Hopi Tribe and the Navajo Nation, which were in litigation since 1958 concerning ownership of nearly 10 million acres on their reservations in northeast Arizona, also have agreed to dismiss litigation, to release each other from claims, and to share funds collected for the use of parts of the disputed property that are held by the Department of the Interior.

While the agreement put an end to the ban on construction in the disputed area, the agreement did require the approval of the judge adjudicating the litigation between the Hopi Tribe and the Navajo Nation. The final requirement is to repeal that section of Public Law 93-531(25 U.S.C. 640(d)-9(f)), from current law in order to fully lift the "Bennett Freeze."

Mr. Chairman, this concludes my statement and I will be happy to answer any questions you may have.