

**TESTIMONY OF
MIKE BLACK
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
HOUSE NATURAL RESOURCES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 205, HELPING EXPEDITE AND ADVANCE RESPONSIBLE TRIBAL HOME OWNERSHIP ACT**

NOVEMBER 3, 2011

Good afternoon Mr. Chairman and members of the Subcommittee. My name is Mike Black and I am the Director of the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department). I am pleased to be here today to present the Department's views regarding H.R. 205, the Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act).

This Administration continues to support tribal self-determination, and we recognize that tribal control over tribal resources is intrinsic to this policy.

We understand that tribal homelands are essential to the health, safety, and welfare of the First Americans, and that it is important for Indian tribes to have the ability to determine how their homelands will be utilized. This is why the Department is in the process of revising our own regulations governing leasing on Indian lands. Our revisions will streamline the process by which leases of Indian lands are approved, thereby promoting homeownership, economic development, and renewable energy development on tribal lands.

The HEARTH Act is consistent with this effort, and we are pleased to strongly support this legislation. H.R. 205 would amend certain sections of 25 U.S.C. § 415 (the Indian Long-Term Leasing Act) which would restore tribal authority to govern leasing on tribal lands, for those tribes that wish to exercise that authority. Under this legislation, willing tribes would initially submit their own leasing regulations to the Secretary of the Interior for approval. Following Secretarial approval of such leasing regulations, tribal governments would process leases for tribal trust land at the tribal level, pursuant to their own laws, without a requirement for further approval of the Secretary. This has the potential to significantly reduce the time it takes to approve leases for homes and small businesses.

Pursuant to the HEARTH Act, leases would be limited to an initial term of 25 years, but could be renewed for up to two additional terms of up to 25 years each. Tribes could also approve leases for public, religious, educational, recreational, or residential purposes for a term of up to 75 years where permitted by tribal regulations. Tribal leasing regulations would not apply to mineral leases or leases of individual Indian allotments.

As noted above, under H.R. 205, tribes that desire to develop and implement their own regulations governing leasing would be able to submit tribal regulations for approval by the Secretary of the Interior. The Secretary would be required to approve tribal regulations that are consistent with the Department's own regulations governing leasing on Indian lands. The HEARTH Act requires the Department to review tribal leasing regulations within 120 days, but does provide us with the flexibility to extend this time period in consultation with the affected tribe.

The HEARTH Act ensures that the Department will retain the authority to fulfill its trust obligation to protect tribal trust lands through the enforcement or cancellation of leases approved under tribal regulations, or the rescission of Secretarial approval of tribal leasing regulations, where appropriate. At the same time, the HEARTH Act ensures that the United States will not be liable for losses incurred as a result of leases approved under tribal leasing regulations.

We anticipate that the HEARTH Act will ultimately reduce the costs of implementing tribal leasing programs for the federal government by allowing willing Tribes to assume control of leasing on tribal lands. By increasing efficiency in the implementation of tribal leasing programs, the HEARTH Act will go a great distance in promoting homeownership, economic development, and renewable energy development by restoring tribal authority over tribal lands. The Department strongly supports H.R. 205, and I look forward to working with this Subcommittee in continued support of Indian tribes.

Thank you for the opportunity to present testimony on H.R. 205. I will be happy to answer any questions you may have.

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ON
H. R. 2362, INDIAN TRIBAL TRADE AND INVESTMENT DEMONSTRATION PROJECT ACT**

NOVEMBER 3, 2011

Good afternoon, Mr. Chairman, Ranking Member, and members of the Subcommittee. My name is Mike Black and I am the Director of the Bureau of Indian Affairs (BIA) in the Department of the Interior (Department). I am pleased to be here today to provide the Department's views on H. R. 2362, the Indian Tribal Trade and Investment Demonstration Project Act of 2011.

The BIA provides services directly or through contracts, grants, or compacts to a service population of about 1.7 million American Indians and Alaska Natives who are enrolled members of 565 federally recognized tribes living on or near Indian reservations in the 48 contiguous United States and Alaska. In addition, the BIA is responsible for the administration and management of approximately 56 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. Building strong, prosperous, Native American economies is a priority for this Administration. This Administration continues to strongly support tribal self-determination and self governance and we recognize that tribal control over tribal resources is intrinsic to this policy.

H.R. 2362 would "facilitate economic development by Indian tribes and encourage investment by Turkish enterprises." The Department supports the principles embodied by H.R. 2362, which would authorize a pilot collaboration between Secretary of the Interior selected Indian tribes and tribal consortia and Turkish business enterprises. The bill would also authorize the tribal approval of leases entered into under the demonstration project in the bill without the Secretary of the Interior's approval of such leases, when certain requirements are met for such leases. While the Department views the bill as a potential job creator that would likely spur economic activity in Indian Country, the Department has several concerns with H.R. 2362, and would be pleased to work with the Subcommittee's staff to improve language in the legislation.

The Department is aware that over the past eighteen months the National Center for American Indian Enterprise Development (NCAIED) and other tribal interests have participated in a Native American trade mission to the Republic of Turkey and otherwise encouraged trade relations between Turkish firms and Indian nations. H.R. 2362 has identified that the requirement that certain Indian trust land leases be approved by the Secretary of the Interior is a barrier to the growth of these nascent commercial relations. H.R. 2362 therefore seeks to exempt certain commercial leases from the Secretary's purview as part of a demonstration trade project

involving tribes/tribal consortia and private companies incorporated or emanating from the Republic of Turkey, including leases for business and economic development, and public, educational, or residential purposes, grazing and agricultural development involving specialized crops, so long as such leases are executed pursuant to tribal regulations approved by the Secretary.

While we support the concept of H.R. 2362, the Department would like to inform the Subcommittee that the Bureau of Indian Affairs already has several examples of leases between tribes and foreign entities. These leases cover such economic activities as rights of way, and oil and gas development. A number of tribes have existing commercial partnerships with companies/entities that are located in several foreign countries, and nothing in existing law prohibits this type of leasing activity. More specifically, there are instances where companies/entities that are located in a foreign country but have incorporated in a U.S. state, have executed leases with tribes. There are also instances where companies/entities located in a foreign country, such as Canada have a lease with a tribe. In those instances where a Master Business Lease is the main agreement, there could be sub-leases with foreign entities; however, such sub-lease information is not available to the BIA.

The BIA has completed a review of its existing leasing regulations, and will soon propose new regulations geared toward addressing residential leasing, business leasing, and wind and solar energy leasing. The Department is now on record before this Subcommittee in support of the H.R. 205, the Helping Expedite and Advance Responsible Tribal Homeownership Act (HEARTH Act), which has many provisions in common with H.R. 2362. The Department is not opposed to this proposed demonstration project, but believes that the passage of the HEARTH Act would foster the same goals identified in H.R. 2362 on a broader scale.

The Department has concerns with several provisions in H.R. 2362. The Department is concerned that the term “consortium” is not defined in the bill. The Department would find it useful to provide a definition, along with more information on how these types of “consortium” leases would work. Since the bill provides for the development of tribal regulations as one requirement for non-Secretarial approval for certain leases under H.R. 2362, there does not appear to be a provision that would allow for “consortium” regulations that would provide the same exemption to non-Secretarial approval of such “consortium” leases.

The Department is also concerned with Section 3 of H.R. 2362. This section provides only one year for the tribal approval of tribal leases, which includes submission of the tribal leasing regulations for Secretarial approval, drafting, consulting on, and approving Department leasing regulations for the purposes in H.R. 2362, the execution of the leases, and review of the lease’s environmental consequences. In view of these multiple steps, the one year timeframe would likely be unworkable.

The Department looks forward to working with the bill sponsor and this Subcommittee to identify a more workable timeframe to develop and approve tribal leasing regulations, and a definition of “consortium” that meets the goals of the legislation.

Further, the Department is concerned with Section 4 of H.R. 2362, specifically the subsection that establishes the eligibility criteria for a tribe or consortium, to participate under the Act, requires applicants to “demonstrate[, for the 3 fiscal years immediately preceding the fiscal year for which participation is requested, financial stability and financial management capability as demonstrated by a showing by the Indian tribe or consortium that there were no material audit exceptions in the required annual audit of the self-determination contracts of the Indian tribe or consortium.” According to this standard, it is possible a number of Indian tribes or Tribal consortia may be ineligible, because such tribes or consortia do not have a P.L. 93-638 Self Determination contract or meet the federal funding threshold that would trigger an audit review. This language would also result in Self Governance Tribes being ineligible for the demonstration project, since the bill leaves out all self governance compacting Tribes that have only Self Governance agreements. Therefore, the language in Section 4 would result in some Indian Tribes, Tribal Consortia and Self Governance Tribes being ineligible to participate in the demonstration project under H.R. 2362.

Unemployment in Indian Country is more severe than it is in the rest of the United States. Expanded trade relations with the Republic of Turkey offers the potential of creating new income streams and employment for Indian communities. The bill requires the Secretary to submit a report one year after its enactment describing the economic benefits this pilot achieves. We hope the results of the project will encourage broader commercial relations between Indian Country and other interested foreign partners, and encourage those partners to invest in tribal communities here in the United States.

This concludes my prepared statement. I will respond to any questions the Subcommittee may have.