

TESTIMONY
OF
MICHAEL R. SMITH
DEPUTY DIRECTOR FOR THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
ON
H.R. 1028, THE “RETURN OF CERTAIN LANDS AT FORT WINGATE TO THE ORIGINAL
INHABITANTS ACT”

JULY 15, 2015

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, my name is Michael Smith and I am the Deputy Director for the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department on H.R. 1028, the “Return of Certain Lands At Fort Wingate to The Original Inhabitants Act.” The Department supports H.R. 1028, with an amendment.

Fort Wingate Property

The Fort Wingate property is an inactive U.S. Army installation located in New Mexico on lands withdrawn from the public domain and reserved for military use when the fort was established in 1870. The property is located east of Gallup, New Mexico, and near both the Pueblo of Zuni and Navajo Nation lands in New Mexico. The installation’s primary mission had been to store and dispose of explosives and military munitions. Fort Wingate closed in 1993, as a result of the Base Realignment and Closure (BRAC) Act. Following the closure, a survey determined that the installation contained approximately 20,700 acres of public domain lands, which are divided into 22 parcels. These lands have cultural and historical significance to the Navajo Nation and the Pueblo of Zuni.

The Department indicated that many of the parcels could be returned to its jurisdiction, upon satisfactory completion of environmental restoration and clearance of unexploded ordnance, with the intent of eventually transferring the lands into trust for the Navajo Nation and Pueblo of Zuni, upon agreement by the two tribes. Since 1990, the Army has been working with the Department, the U.S. Environmental Protection Agency, the New Mexico Environmental Department, the Navajo Nation, and the Pueblo of Zuni on the cleanup and return of withdrawn public domain lands at Fort Wingate.

Once the Army satisfactorily finishes environmental restoration activities on Fort Wingate parcels and an Environmental Site Assessment (ESA) is prepared, the Department of the Interior determines if the lands are suitable for return to the public domain. If suitable, the Department will revoke the military reservation. The Bureau of Land Management (BLM) has responsibility for processing withdrawal and transfer actions, including preparing the public land orders officially transferring jurisdiction over restored Fort Wingate lands to the BIA. To date, the

BLM has prepared public land orders, signed by the Assistant Secretary and Deputy Secretary, officially transferring over 5000 acres (Parcels 1, 15, and 17) of Fort Wingate lands. Those parcels are currently administered by the BIA. Recently, the BIA's Southwest Region completed the Environmental Site Assessment (ESA) for parcels, 4B, 5B, 8, 10A, and 25, and the BLM is considering a public land order to bring these parcels back to public domain.

The Department understands that the Zuni Tribe and the Navajo Nation met to negotiate a division of lands for the former Fort Wingate Depot Activity. This agreement is evidenced in this legislation and identified on the Map referenced in H.R. 1028. The Department welcomes H.R. 1028 as a means to fairly divide the former Fort Wingate Depot Activity between two tribes that have claimed the areas near and around the property as their respective historical lands.

H.R. 1028

H.R. 1028, the "Return of Certain Lands At Fort Wingate to The Original Inhabitants Act", in Section 3(a) and (b), would immediately declare lands to be held in trust for the Zuni Tribe and to the Navajo Nation. We note that in Section 3(a) and (b), the color reference is the same, "blue", for both the Zuni Tribe and the Navajo Nation lands. It would appear, in reference to the "Map" in the legislation, that Section 3(b) should refer to "depicted in green on the Map." This should be corrected if this is the intent.

The remaining subsections also declare that all lands of the former Fort Wingate Depot Activity (Depot) in McKinley County, New Mexico, that have been transferred to the Secretary of the Interior and depicted in blue on the Map referenced in the legislation, are to be held in trust for the Zuni Tribe as part of the Zuni Reservation, unless the Tribe elects to have specified parcels of those lands conveyed to it in restricted fee status. The legislation declares that lands of the former Fort Wingate Depot Activity that have been transferred to the Secretary and depicted in green on the Map referenced in the legislation, are to be held in trust for the Navajo Nation as part of the Navajo Reservation, unless the Navajo Nation elects to have specified parcels of those lands conveyed to it in restricted fee status. Currently, the legislation would place parcels 1, 15 and 17 in trust for the respective tribe according to the color of the parcel on the Map referenced in the legislation, and would require the Secretary to survey not only these parcels but also future lands taken into trust under the legislation, and to also establish boundaries based on the Map, as parcels are taken into trust pursuant to the legislation.

Section 4 retains necessary easements and access by subjecting the lands of the former Depot that are and will be held in trust or conveyed in restricted fee status to the respective tribe's reservation by the United States to such easements as the Secretary of the Army determines are reasonably required to permit access to lands of the former Depot for administrative, environmental cleanup, and environmental remediation purposes. H.R. 1028 also requires the lands of the former Depot, identified as parcel 1, to be held in trust subject to a shared easement for both tribes for cultural and religious purposes only. Additionally, the legislation identifies that the entire access road for the former Depot shall be held in common by both the Zuni Tribe and the Navajo Nation to provide for equal access to the former Depot. Finally, the legislation provides the Department of Defense (DOD) access to the Missile Defense Agency facility at the former Depot.

Under Section 5, after a parcel of land has been transferred or conveyed under section 3, the Zuni Tribe or the Navajo Nation shall notify the Secretary of the Army of the existence or discovery of any contamination or hazardous material on the land. Section 5 also retains the responsibility of the United States for cleanup and remediation of the former Depot according to a prior agreement between the Secretary of the Army and the New Mexico Environment Department and provides that neither tribe shall be liable for any damages resulting from the Department of the Army on the former Depot.

H.R. 1028 refers to a map evidencing the tribes' agreed upon division of specific parcels in the Fort Wingate property. The Department is aware both tribes, the Zuni Tribe and the Navajo Nation, have informally agreed to the land division evidenced in the referenced map, pursuant to discussions held between the two tribes on July 8, 2013. There are some parcels that are shared but not equally, 1, 2, 19, 22, 11 and 10A. The remaining parcels are divided as whole parcels between the two tribes.

The legislation references colors, blue and green, for the division on land between the tribes. We welcome the opportunity, in cooperation with the bill's sponsor, to create a legislative map for the purposes of this bill, and the BLM will develop a legal description for the purpose of transferring administrative jurisdiction.

The Department supports H.R. 1028 and would like to work with the Subcommittee on several technical issues.

This concludes my prepared statement. I will be happy to answer any questions the Subcommittee may have.

**TESTIMONY OF
MICHAEL R. SMITH
DEPUTY DIRECTOR, BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 2684,
“ALABAMA-COUSHATTA TRIBE OF TEXAS EQUAL AND FAIR OPPORTUNITY
SETTLEMENT ACT”**

JULY 15, 2015

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, my name is Michael Smith, Deputy Director, Bureau of Indian Affairs, at the Department of the Interior (Department). Thank you for the opportunity to testify on H.R. 2684, the Alabama-Coushatta Tribe of Texas Equal and Fair Opportunity Settlement Act, a bill that would repeal 25 U.S.C. Section 737 of the Alabama-Coushatta Restoration Act, for the purpose of restoring economic development opportunities on terms that are equal and fair.

The Department supports H.R. 2684.

Historical Background

The Alabama-Coushatta Tribe of Texas (Tribe) is a federally-recognized Indian Tribe. Approximately 500 of the Tribe’s 1,000 members reside on the Tribe’s 4,200-acre Federal Reservation in Polk County, about 60 miles northeast of Houston, Texas. The Tribe’s membership is comprised of descendants of two closely-related Southeastern Woodland Indian Tribes (Alabama and Coushatta) who continue to speak Algonquin dialects closely related to the Creek language. Both Tribes originally came from portions of Mississippi and Alabama and were members of the Creek Confederacy. At the end of the French and Indian War in 1763, they, like the Creeks, fled their homes in Mississippi and Alabama. The Alabamas and Coushattas migrated through Louisiana, settling in East Texas about the time of the American Revolution.

In the 1840s, white settlement still was very minimal in the area of East Texas, but because non-timbered areas with a good water supply were scarce in the area where the Tribe migrated, also known as the Big Thicket, the region’s few white settlers forced the Tribe to vacate several prime village sites and hunting camps. By 1854, tribal complaints about non-Indian encroachment on their village sites had resulted in the Texas Legislature creating a small reservation of about 1100 acres in Polk County, which remains a part of the Tribe’s Reservation to this day. In the 1860s and 70s, many families from both Tribes settled on this tract. Nonetheless, the Tribe continued to hunt and trade throughout its territory until, by the first decade of the 20th Century, the rapid expansion of white settlement and the loss of forest land had made their traditional lifestyle impossible to pursue.

In the 1870s, the 1880s, and the 1890s, numerous appeals were made to Congress and the Department of the Interior detailing the Tribe's deteriorating condition and advocating the Government's purchase of additional land for the Tribe, but the Government took no action. In 1910 and again in 1917, Bureau of Indian Affairs Agents investigated the Tribe's circumstances and, in reports submitted to Congress, recommended additional land be acquired for the Tribe.

In the late 19th Century, animal game became more and more scarce as increasing amounts of Reservation-area forests were clearcut. To survive, many Alabama-Coushattas turned to work in the timber industry. But by the 1920s, the forests in the region had largely vanished, and tribal members could no longer work in the woods without moving far away from the Reservation. By this time, the Tribe was destitute and starving. The steady stream of appeals for federal assistance and additional lands continued to be ignored by Congress and the Interior Department. Finally, in 1928, Congress authorized limited agricultural, industrial, educational, and health assistance to the Tribe, as well as the purchase of additional land for the Tribe, and in 1929 the United States purchased an additional 3,071 acres adjacent to the 1854 Reservation for \$29,000. These two tracts comprise the Tribe's present-day Reservation.

However, in 1931, the Commissioner of Indian Affairs acknowledged that the Tribe was "severely lacking in the basic living requirements," but nonetheless recommended that any assistance to the Tribe should come from the State of Texas rather than the Federal Government. In 1944, the BIA recommended that all responsibility for the Tribe be transferred to Texas. In 1954, Congress terminated the federal trust relationship with the Tribe by transferring it to the State of Texas. In 1987, Congress restored the trust relationship between the Tribe and the United States.

The Alabama-Coushatta Tribe's 1987 Restoration Act restored the Federal trust relationship with both the Alabama-Coushatta Tribe and the Ysleta del Sur Pueblo. The Restoration Act, which was enacted approximately 14-months before the Indian Gaming Regulatory Act, includes language that addresses gaming on the restored tribes' lands. Specifically, gaming on the Alabama-Coushatta Tribe's lands is addressed at Title 25 of the U.S. Code, Section 737. Section 737 *does not* give the State of Texas any criminal or civil regulatory jurisdiction over gaming on the Alabama-Coushatta Tribe's lands. Instead, it authorizes the State to seek injunctive relief in Federal court to enjoin any gaming activities on the Tribe's lands that is prohibited under State law.

H.R. 2684

The primary features of H.R. 2684 are to:

- repeal 25 U.S.C. Section 737;

- mandate the United States Government and the Tribe to execute and file in each applicable court a motion for dismissal of any pending claim arising out of, or relating to, the aboriginal lands, or an interest in the aboriginal lands, of the Tribe;
- extinguish any claims based on any interest in, or right involving, any land or natural resources by the Tribe against the United States, the State of Texas, or any landowner;

H.R. 2684 would repeal section 207 of the Restoration Act, and would clarify that gaming on the Alabama-Coushatta Tribe's lands is governed by the Indian Gaming Regulatory Act.

The Department supports this clarification, which merely ensures that the Alabama-Coushatta Tribe is treated in the same manner as almost every other Indian tribe in the United States. Congress enacted the IGRA to, among other things, facilitate economic development in Indian country. By clarifying that the Alabama-Coushatta Tribe has authority to game in accordance with the IGRA, this Congress would be furthering that goal. Therefore the Department supports H.R. 2684.

Thank you for the opportunity to present the Department's views on H.R. 2684. I will be happy to answer any questions the subcommittee may have.

Statement for the Record
Department of the Interior
House Natural Resources Subcommittee on Indian,
Insular, and Alaska Native Affairs
H.R. 2733, Nevada Native Nations Lands Act
July 15, 2015

Thank you for the opportunity to provide the views of the Department of the Interior (Department) on H.R. 2733, the Nevada Native Nations Land Act. H.R. 2733 provides for the Secretary of the Interior to hold in trust for the benefit of a number of Federally-recognized tribes over 71,000 acres of Federal lands in Nevada managed by the Bureau of Land Management (BLM) and the United States Forest Service. Placing land into trust for tribes is a top priority for this Administration. The Department of the Interior welcomes opportunities to work with Congress on lands to be held in trust and supports H.R. 2733, with a few concerns noted below. We appreciate efforts to address some of the BLM's concerns with previous versions of the bill. The Department defers to the U.S. Department of Agriculture regarding National Forest System Lands.

Some of the parcels identified in this legislation contain lands that are General or Priority Habitat Management Areas for the Greater Sage-Grouse, which are identified for retention in the proposed Greater Sage-Grouse Plan for Nevada and Northeastern California. The potential listing of the Greater Sage-Grouse under the Endangered Species Act is a serious concern of the Federal Government. That determination by the U.S. Fish and Wildlife Service is due by court order on or before September 30, 2015.

H.R. 2733

H.R. 2733 provides that six areas of public lands in Nevada are held in trust for specific Native American Tribes. The bill includes a provision requiring surveys of the lands within 180 days of enactment. H.R. 2733 also provides that land shall not be used for Class II or III gaming.

The Department and the BLM strongly believe that open communication between BLM and the tribes is essential in maintaining effective government-to-government relationships. In this spirit, the BLM has had a cooperative working relationship with the Tribes and the Department is pleased to support the provisions concerning lands to be held in trust for these Tribes. We would be glad to work with the sponsor and the Committee on proposed amendments to the bill. Specific comments about each proposed area follow.

Fort McDermitt Paiute & Shoshone Tribe

Sec. 3(a) provides that, subject to valid existing rights, approximately 19,094 acres of BLM-managed lands are held in trust for the benefit of the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation, and shall be part of the reservation. The lands are depicted on a map entitled "Fort McDermitt Indian Reservation Expansion Act," dated Feb. 21, 2013. These lands are adjacent to and surrounding the existing Fort McDermitt Indian Reservation. The BLM notes that this area contains General Habitat for the Greater Sage-Grouse. The Department supports holding these lands in trust for the benefit of the Tribe, but would like to work with the sponsor on minor technical and boundary amendments.

Shoshone Paiute Tribes

Sec. 3(b) provides that, subject to valid existing rights, approximately 82 acres of land are held in trust for the benefit of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. The lands

to be held in trust under this section are currently managed by the United States Forest Service, and the Department of the Interior defers to the Forest Service on the current management of those lands.

Summit Lake Paiute Tribe

Sec. 3(c) provides that, subject to valid existing rights, approximately 941 acres of BLM-managed lands are held in trust for the benefit of the Summit Lake Paiute Tribe, and shall be part of the reservation. The lands are depicted on a map entitled, “Summit Lake Indian Reservation Conveyance,” dated Feb. 28, 2013. These lands would expand the existing Summit Lake Indian Reservation to entirely surround Summit Lake. The Department supports holding these lands in trust for the benefit of the Tribe.

Reno-Sparks Indian Colony

Sec. 3(d) provides that, subject to valid existing rights, approximately 13,434 acres of BLM-managed lands are held in trust for the benefit of the Reno-Sparks Indian Colony, and shall be part of the reservation. The lands are depicted on the map entitled “Reno-Sparks Indian Colony Expansion,” dated June 11, 2014. These lands are adjacent to the current reservation. The Department supports the proposed land transfer in Sec. 3(d), but would like to work with the sponsor to address boundary modifications to ensure manageability. In particular, the BLM notes that the proposed configuration would isolate some BLM-managed land. Isolated, irregularly-shaped parcels like these are difficult to manage, especially in terms of public safety, recreation, energy development or transmission, grazing, and fire suppression.

Pyramid Lake Paiute Tribe

Sec. 3(e) provides that, subject to valid existing rights, approximately 6,357 acres of BLM-managed land are held in trust for the benefit of the Pyramid Lake Paiute Tribe, and shall be part of the reservation. The lands are depicted on the map entitled, “Pyramid Lake Indian Reservation Expansion,” dated April 13, 2015. The areas to be held in trust are adjacent to the current reservation, which surrounds the southeast portion of Pyramid Lake. The Department supports holding these lands in trust for the Pyramid Lake Paiute Tribe but would like to work with the sponsor to address boundary modifications to ensure manageability.

Duckwater Shoshone Tribe

Sec. 3(f) provides that, subject to valid existing rights, approximately 31,269 acres of BLM-managed land are held in trust for the benefit of the Duckwater Shoshone Tribe, and shall be part of the reservation. The lands are depicted on a map entitled, “Duckwater Reservation Expansion,” dated January 12, 2015. The Department supports holding these lands in trust for the benefit of the Tribe, but would like to work with the sponsor on minor technical and boundary amendments.

Conclusion

The Department of the Interior welcomes opportunities to work with Congress and tribes on holding lands in trust. We support the intent of the legislation and look forward to working with the Sponsor and the Committee to address the issues we have outlined in this testimony.