TESTIMONY OF
JODI GILLETTE
DEPUTY ASSISTANT SECRETARY
INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 1560

JUNE 22, 2011

Good morning Mr. Chairman and Members of the Subcommittee. My name is Jodi Gillette. I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirements for membership in their Tribe. The Department supports H.R. 1560.

BACKGROUND

In 1987 Congress passed the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Restoration Act), which restored the federal trust relationship between the federal government and the Ysleta del Sur Pueblo (Tribe).

The Restoration Act, (25 U.S.C. §1300G-7(a)(2)(i)), prescribes membership for the Tribe to only those individuals on the Tribe's 1984 Membership Roll, and to their descendants with at least 1/8 or more Tigua-Ysleta del Sur Pueblo Indian blood and who are enrolled by the Tribe. This codified criterion has been adopted into Article 3, Section 3.01, of the Ysleta del Sur Pueblo Code of Laws. Currently the tribal enrollment for the Ysleta Del Sur Pueblo is 1,691 members. Indian Affairs cannot find any other instances where a Tribe's membership is bound by a blood quantum requirement under Federal statute.

H.R. 1560

H.R. 1560 would amend the Restoration Act to enable the Tribe to determine for themselves the blood-quantum requirements, if any, for membership into the Tribe. The proposed amendment would delete the 1/8 blood quantum requirement and replace the current requirement with "any person of Tigua-Ysleta del Sur Pueblo Indian blood enrolled by the tribe." This amendment would allow the Tribe to determine their own enrollment criteria, as any other federally-recognized tribe has the right to do.

While the legislation would allow the Tribe to determine the size of its own membership, the Department does not expect an additional Tribal Priority Allocation base funding amount to be awarded to the Tribe.

Indian tribes have the inherent authority to determine their membership. The Supreme Court has noted, "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). The Department is in receipt of copies of tribal resolutions from the Ysleta del Sur Pueblo Tribal Council in support of the change to the blood quantum requirements stated within the legislation. The Department supports the Tribe's request to determine its criteria for membership, which is consistent with the Administration's support for the policies of Self-Governance and Self-Determination for all federally recognized tribes.

CONCLUSION

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

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ON
H.R. 1158, MONTANA MINERALS CONVEYANCE ACT

JUNE 22, 2011

Good morning Mr. Chairman and Members of the Subcommittee. My name is Jodi Gillette. I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on H.R. 1158, the Montana Mineral Conveyance Act. It is an honor to appear today before this new and important Subcommittee.

H.R. 1158 seeks to accomplish the conveyance to the Northern Cheyenne Tribe (Tribe) in Montana of about 5,000 acres in subsurface mineral rights that the Tribe did not receive in 1900, when it acquired the rights to the surface. The subsurface rights are held by a third party, Great Northern Properties, which, under the bill, would receive in exchange approximately 5,000 acres of unleased Federal coal rights in Montana.

The Department of the Interior supports the goals of H.R. 1158, but has some concerns and would like to work with the Committee to make some refinements to ensure that the exchange is equal value and to make its implementation practical. We would like to work with the Sponsor and the Subcommittee to ensure that the exchanges of mineral interests are of equal value and that the appraisals are done consistent with Department of Justice appraisal standards.

BACKGROUND

H.R. 1158 states that the Northern Cheyenne Tribe has been wronged in two ways by the Federal Government. In 1900, when the reservation was expanded, the United States Indian Inspector made efforts to purchase private lands within reservation boundaries, but was unable to secure subsurface rights in eight sections, about 5,000 acres, from the Northern Pacific Railway. The mineral rights to the Cheyenne tracts, as they are known, are now held by a successor of the railroad, Great Northern Properties.

Great Northern Properties has other mineral holdings in the area, including some near the lands containing the mineral rights they would receive in exchange for relinquishing the Cheyenne tracts. These holdings are in an area called Otter Creek, east of the Reservation. It is the

potential mineral development of the Otter Creek area that leads to the second claim the Northern Cheyenne Tribe asserts it has against the Federal government.

The Department of the Interior Appropriations Act of 1998 authorized the conveyance to the State of Montana of all the Federal mineral rights on three Otter Creek tracts, parts of which are located within 3 to 4 miles of the Northern Cheyenne Reservation.

The Northern Cheyenne filed suit in the U.S. District Court in the District of Columbia in January 2002 against the Secretary of the Interior, to stop the transfer and to assert that extensive coal mining so close to its reservation would violate several Federal laws and the Federal trust responsibility to the Tribe.

The Tribe's suit was withdrawn with prejudice when the Tribe entered into an agreement with the Montana State Board of Land Commissioners guaranteeing tribal consultation on the approval of mining plans. The agreement also requires the State Board's support of the legislation before you today.

H.R. 1158

H.R. 1158 requires the Secretary of the Interior to convey to Great Northern Properties all interest of the United States in specified unleased Federal coal tracts in Montana outside of the Tribe's reservation, if Great Northern Properties conveys to the Northern Cheyenne Indian Tribe all its mineral interests underlying specified tracts of land within the Tribe's reservation.

The bill also requires the Northern Cheyenne Tribe to waive legal claims related to the failure of the United States to acquire in trust for the Tribe the private mineral interests underlying the Cheyenne tracts as part of the Tribe's reservation. These waivers should be drafted and included in the bill. The bill instructs the Tribe and Great Northern Properties to notify the Secretary in writing when they have agreed to a formula for the sharing of revenue from the coal produced from the Federal tracts. Finally, we recommend that Great Northern Properties also waive its potential claims against the United States.

H.R. 1158 would bring closure to the Tribe's claim against the United States dating back to 1900, but at a cost to the United States and State of Montana, in royalty payments and other revenue associated with Federal coal leasing of these lands. Furthermore, the Bureau of Land Management (BLM) estimates the off-reservation Federal coal rights being conveyed to Great Northern Properties contain nearly twice as much coal as the Cheyenne tracts contain.

In addition, a portion of the Federal tracts that the bill defines as subject to transfer to Great Northern Properties is included in an ongoing Lease by Application process initiated in 2008 by Signal Peak Energy, which operates an underground coal mine in the area. An Environmental Assessment has been completed for this lease sale, and BLM signed a Finding of No Significant Impact and Decision Record in April 2011. The decision was made to offer the Bull Mountain No. 1 Mine Coal Lease by Application for sale.

If the lease sale is completed before this legislation becomes law, 20 percent of the bidder's bonus payment would be due when the bid is submitted with the balance of the bonus due when the lease is awarded. If a successful bonus bid is received at the sale and all of the other requirements are met, then the payment is sent to the U.S. Treasury with 48 percent obligated to the State of Montana. If the conveyance under this legislation is consummated before the actual issuance of the coal lease, then the Federal government would not receive the balance of the bonus payment.

In addition, we have concerns with language in section 4(a) and 5(c) requiring the conveyance be carried out "notwithstanding any other Federal law" as well as the language in Section 5(c) that requires the conveyance be carried out within 90 days of receiving the revenue-sharing agreement and would like to work with the subcommittee to address these concerns. Lastly, section 3(2)(D) should be amended to reference the appropriate date of March 18, 2011.

CONCLUSION

Thank you again for the opportunity to testify on the Montana Mineral Conveyance Act. BLM would be glad to work with the Committee on any technical issues associated with the land conveyance. I would be glad to answer your questions.