

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. 1225, THE SAMISH INDIAN NATION
HOMELANDS ACT OF 2013

JULY 23, 2013

Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, my name is Michael Black and I am the Director for the Bureau of Indian Affairs. Thank you for the opportunity to present the Department of the Interior's (Department) views on H.R. 1225, a bill to direct the Secretary of the Interior to place certain lands in Skagit and San Juan Counties, Washington, into trust for the Samish Indian Nation (Tribe), and for other purposes.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety, and welfare of the tribal communities. Thus, this Administration has made the restoration of tribal homelands a priority. This Administration is committed to the restoration of tribal homelands, through the Department's acquisition of lands in trust for tribes, where appropriate. While the Department acknowledges that a tribe near the Samish Indian Nation opposes H.R. 1225, the Department supports H.R. 1225, with some amendments.

H.R. 1225 directs the Secretary for the Department to place approximately 95 acres of land into trust for the Samish Indian Nation, with certain conditions prior to taking the 95 acres into trust. First, the Tribe must convey to the Secretary all right, title, and interest in and to the parcels of land; and, submit to the Secretary a request to take the parcels of land into trust for the Tribe; and the Secretary's action shall be in accordance with the regulations of the Department of the Interior for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 18 4321 et seq.) that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation. H.R. 1225 also includes a restriction that the Tribe may not conduct any gaming activities on any land taken into trust pursuant to this Act.

The Department recommends Section 3 plainly state the direction to take the 95 acres into trust for the benefit of the Tribe under current applicable Department regulations for mandatory acquisitions. The Department finds no need for the Conditions provision under Section 3(a)(2) in H.R. 1225. The Tribe does not need to convey the land to the Department in order to take these lands into trust for the Tribe. Also, the Department recommends identifying a time for when the Tribe shall conduct the survey. Finally, the Department, after the survey and land descriptions are determined, does not need a formal request from the Tribe to take these lands into trust for the Tribe. The legislation is the direction to the Secretary to take such action.

Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions you may have.

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ON
H.R. 1103, ALEXANDER CREEK VILLAGE RECOGNITION ACT

July 23, 2013

Mr. Chairman and Members of the Committee, thank you for inviting me to express the views of the Department of the Interior (Department) on H.R. 1103, the Alexander Creek Village Recognition Act.

The Department of the Interior understands the continuing desire of Alexander Creek to be recognized as a Native village. However, this legislation would, in amending the Alaska Native Claims Settlement Act (ANCSA) to identify the Alexander Creek Native Group Corporation as a Native Village Corporation, effectively overturn the long-standing settlement, codified in statute, which resolved the status of Alexander Creek, and would undermine the finalization of entitlement claims in southcentral Alaska. For these reasons, the Department opposes H.R. 1103.

Background

The Alaska Native Claims Settlement Act (ANCSA) established the framework to resolve aboriginal land claims in Alaska. Through Section 4 of the ANCSA, Native claims in Alaska were extinguished in exchange for 44 million acres of land and \$962.5 million in compensation. ANCSA established specific entitlements for allocating this settlement among Native-owned regional corporations, Native villages, and Native groups. Native villages (required to have a Native population of 25 individuals or more, as determined by a 1970 census) received greater entitlements than Native groups. Native villages were entitled to a minimum of 69,120 acres

from the public domain. In contrast, communities determined to have fewer than 25 Natives could be certified as Native groups and were entitled to a maximum of 7,680 acres.

ANCSA listed nearly 200 Native villages and directed the Secretary of the Interior to determine if additional Native communities qualified as villages. Alexander Creek was not listed as a village in ANCSA. It applied for eligibility as an unlisted village, but its application was contested by the State of Alaska, the Matanuska-Susitna Borough, and other parties. Thus began a long period of litigation.

Alexander Creek's eligibility as a Native village was ultimately resolved in a Stipulated Agreement in 1979 and codified in Section 1432 of the Alaska National Interest Lands Conservation Act (ANILCA). The 1979 Agreement, among Alexander Creek, the ANCSA regional corporation, Cook Inlet Region, Inc. (CIRI), and the Department, settled three issues: Alexander Creek's eligibility; its entitlement to surface estate; and, CIRI's entitlement to associated subsurface estate. In signing this Stipulated Agreement, Alexander Creek withdrew its application to be recognized as a village, accepted certification as a Native group, and agreed that the lands conveyed under the 1979 Agreement "*constitute a full and final settlement*" of its land entitlement under ANCSA. The Department has fulfilled nearly all its responsibilities to Alexander Creek under the Agreement.

H.R. 1103

H.R. 1103 would amend the Alaska Native Claims Settlement Act (ANCSA) to legislatively designate the Alexander Creek Native group as a Native village. The bill does not assign an acreage entitlement, include selection deadlines, or provide withdrawal authority.

Declaration of Alexander Creek as an eligible village could have serious repercussions in the overall framework of land conveyances established by ANCSA. The resolution of Alexander Creek's status as a Native group and subsequent codification in ANILCA allowed the land entitlement process throughout southcentral Alaska's Cook Inlet region to proceed. The BLM's Alaska Land Conveyance program is now in a late stage of implementation. Changing the status of Alexander Creek at this stage in the process could undercut the basis on which village and regional entitlements were addressed. H.R. 1103 has the potential to require recalculation and reapportionment of the ANCSA figures, which would fundamentally disrupt this lengthy and complex land entitlement and conveyance process. Finally, if enacted, H.R. 1103 would establish a troubling precedent by which other dissatisfied corporations might seek redress.

Conclusion

Thank you for the opportunity to testify on H.R. 1103. I will be pleased to answer any questions.

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ON
H.R. 2388, LAND INTO TRUST FOR THE SHINGLE SPRINGS BAND OF MIWOK INDIANS**

July 23, 2013

Thank you for the opportunity to testify on H.R. 2388 which would take into trust approximately 40 acres of Bureau of Land Management (BLM)-managed lands for the Shingle Springs Band of Miwok Indians. The Department supports H.R. 2388.

Background

On December 16, 1916, the Secretary of the Interior purchased the 160-acre Shingle Springs Rancheria east of Sacramento in El Dorado County, California at the request of the Sacramento-Verona Band of Miwok Indians. Today's members of the Shingle Springs Rancheria are descendants of the Miwok and Maidu Indians who once lived in this region. Currently, there are approximately 500 enrolled members of the Tribe, with about 140 living on the Rancheria. The tribe has expressed an interest in expanding the Rancheria by adding adjacent BLM-managed lands for improved access and additional residential housing for the tribe.

H.R. 2388

H.R. 2388 directs the Secretary of the Interior to take into trust approximately 40 acres of BLM-managed lands adjacent to the Shingle Springs Rancheria. This 40-acre parcel is isolated from other BLM-managed lands. This action would be subject to valid existing rights and management agreements related to easements and rights-of-way. Under the bill, class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) is prohibited on these lands.

The Department supports conveying these lands into trust for the Shingle Springs Band of Miwok Indians.

Conclusion

Thank you for the opportunity to testify in support of this legislation which will provide important benefits to the Shingle Springs Bank of Miwok Indians.

**TESTIMONY OF
MICHAEL S. BLACK,
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON AMERICAN INDIAN AND ALASKA NATIVE AFFAIRS
ON H.R. 2650, THE FOND DU LAC BAND
OF LAKE SUPERIOR CHIPPEWA NON-INTERCOURSE ACT OF 2013**

JULY 23, 2013

Good afternoon, Chairwoman Young, Ranking Member Hanabusa, and members of the Subcommittee. Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on H.R. 2650, the Fond du Lac Band of Lake Superior Chippewa Non-Intercourse Act of 2013. The Department supports H.R. 2650.

The Department is aware that the Fond du Lac Band of Lake Superior Chippewa (Band) and Carlton County (County) in Minnesota propose to implement an agreement that they have for an exchange of land. The land exchange involves 1,451 acres of land located outside the Fond du Lac Reservation, which are owned in fee simple by the Band. These lands would be exchanged for tax- forfeited lands of equivalent value (approximately 3,200 acres) that are administered by Carlton County, the title to which is held by the State of Minnesota, and which are located within the Fond du Lac Reservation. This proposed land exchange does not involve any lands held in trust by the United States for the benefit of the Band.

However, both the Band and the County are of the opinion that this land exchange is prohibited unless authorized by Congress. The Band and County cite federal law, 25 U.S.C. §177, which prohibits any "purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians" unless authorized by Congress, and therefore the State of Minnesota is of the opinion that they cannot give final approval to the land exchange without an Act of Congress authorizing the Band to convey its title to this land.

H.R. 2650 is not limited to this specific land exchange, but instead is more broad and would allow the Fond du Lac Band of Lake Superior Chippewa in the State of Minnesota (Band) to lease, sell, convey, warrant, or transfer all or any portion of the interest in *any real property not held in trust status* by the United States for the benefit of the Band. The legislation also clearly states that H.R. 2650 does not authorize the Band to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in *any real property that is held in trust by the United States for the benefit of the Band*. Thus, H.R. 2650 would allow the Band to do with those lands not held in trust status, likely all lands held in fee simple by the Band, as the Band deems fit. Therefore the Department supports H.R. 2650.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.

**STATEMENT FOR THE RECORD
DEPARTMENT OF THE INTERIOR
HOUSE NATURAL RESOURCES COMMITTEE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
H.R. 2455, NEVADA NATIVE NATIONS LANDS ACT**

JULY 23, 2013

Thank you for the opportunity to testify on H.R. 2455, the Nevada Native Nations Lands Act. H.R. 2455 is an expansive bill that provides for the Secretary of the Interior to hold in trust nearly 82,000 acres of Federal lands managed by the Bureau of Land Management (BLM) and the United States Forest Service in Nevada for a number of Federally recognized tribes. The bill also provides for the conveyance of about 275 acres of BLM-managed lands to Elko County for public purposes. The Department of the Interior welcomes opportunities to work with Congress on the transfer of lands into trust status and could support H.R. 2455 with a number of modifications. The Department defers to the U.S. Department of Agriculture regarding National Forest System Lands.

Many of the parcels identified in this legislation contain lands that are Preliminary General or Preliminary Priority Habitat for the Greater Sage-Grouse. The potential listing of the Greater Sage-Grouse under the Endangered Species Act is a serious concern of the Federal government. A listing decision by the U.S. Fish and Wildlife Service is expected in 2015, and transfer of important habitat for the Greater Sage-Grouse may affect measures to conserve the species. Additionally, most of the lands proposed for transfer occur within existing grazing allotments, and transfer of jurisdiction over these lands would likely affect the current permittees. The BLM also recommends that the transfers respect all valid existing rights.

H.R. 2455

The following is a discussion of the provisions of the bill by title.

Elko Motocross & Tribal Land Transfer, Title I

Title I includes both tribal trust and land conveyance provisions that represent years of cooperative efforts and discussions between the Te-Moak Tribe of Western Shoshone Indians of Nevada, the City of Elko, the County of Elko, and the BLM. The BLM generally supports the goal of taking lands into trust for the benefit of the tribe as well as the transfer of a parcel of land to Elko County for a motocross park. The BLM would like to work with the sponsor and Committee on technical amendments to this title.

The bill provides that approximately 373 acres of BLM-managed lands be held in trust for the benefit of the Te-Moak Tribe of Western Shoshone Indians. These lands are adjacent to an existing parcel of the Elko Colony. The Elko Colony, approximately 190 non-contiguous acres near the city of Elko, is one of four separate colonies inhabited by the Te-Moak Tribe of Western Shoshone Indians. The population of the Elko Band of the Te-Moak Tribe has grown steadily, but because their land base has remained unchanged for many years, additional land is needed for housing and community development. The legislation provides that if the Tribe uses the land for purposes other than those identified in the bill, the Tribe would pay the Secretary fair market

value for the land. The BLM strongly believes that open communication between the BLM and tribes is essential in maintaining effective government-to-government relationships. In this spirit, the BLM has had a cooperative working relationship with the Te-Moak Tribe of Western Shoshone Indians of Nevada on this requested action. The Department recommends including technical language to ensure appropriate appraisal standards are applied if a fair market sale of the lands becomes necessary.

Title I of H.R. 2455 also proposes to convey approximately 275 acres of BLM-managed lands to Elko County, Nevada, for a public motocross park. The conveyance would be subject to valid existing rights. The bill requires that the land be used only for purposes consistent with the Recreation and Public Purposes (R&PP) Act and includes a reversionary clause to enforce that requirement. Finally, the bill requires the county to pay all administrative costs associated with the transfer. The BLM regularly works with local governments and non-profits to lease or convey public lands for recreational and other public purposes at very low cost.

While the language in the bill is largely consistent with conveyances under the R&PP Act, it also requires the county to pay fair market value. If the sponsor intends for the lands to be conveyed at fair market value, the BLM recommends the bill be amended to provide for the determination of fair market value according to uniform appraisal standards, and in that case it could be treated as a sale rather than a R&PP conveyance, which has a reversionary provision. We also recommend the addition of a clause allowing the Secretary to add reasonable terms and conditions to the transfer. For example, it might be necessary to include in the conveyance documents a provision for maintenance access by the right-of-way holder to the existing oil and gas pipeline. A “terms and conditions” clause would allow us to address this and similar situations. To avoid constitutional concerns, the Department of Justice recommends that section 112 of the bill pertaining to the Elko County conveyance be revised to make absolutely clear that the city or county would have to agree to the proposed conveyance, which is what we understand the sponsor intends. Finally, we would like the opportunity to work with the sponsor on corrections to the map referenced in the bill.

Trust Land for Fort McDermitt Paiute and Shoshone Tribe, Title II

Title II would transfer approximately 19,094 acres of BLM-managed lands into trust for the benefit of the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation. These lands are adjacent to and surrounding the existing Fort McDermitt Indian Reservation. The BLM notes that this area contains Preliminary General Habitat for the Greater Sage-Grouse. The Department recommends technical amendments to ensure appropriate jurisdiction for the offset of claims as provided in this title (Section 202). The Department could support this title of the bill, but would like to work with the sponsor on minor technical and boundary amendments.

Shoshone Paiute Tribes Land Into Trust, Title III

Title III provides that approximately 82 acres of land would be declared to be held in trust by the United States 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 Land Into Trust, Title IV

Title IV provides that, subject to valid existing easements and rights-of-way, approximately 880 acres of lands currently administered by the BLM are to be held in trust for the benefit of the Summit Lake Paiute Tribe. These lands would expand the existing Summit Lake Indian Reservation to surround Summit Lake entirely. This area contains Preliminary Priority Habitat for the Greater Sage-Grouse, and Summit Lake includes habitat for the threatened Lahontan Cutthroat Trout. The BLM has several concerns related to legal access by the public, the BLM, and an adjacent private landowner, as well as for wild horses within the Warm Springs Canyon Herd Management Area. The Department does not oppose this provision, but would like to work with the sponsor to address these access concerns.

South Fork Band Council Land Into Trust, Title V

Title V transfers approximately two parcels containing 26,278 acres of BLM-managed land into trust for the benefit of the South Fork Band Council. The northern parcel contains lands near or adjacent to a portion of the existing reservation, and the southern parcel contains other lands southwest of the reservation.

The Department would like to work with the sponsor and the South Fork Band Council to identify parcels that would meet the needs of the Tribe and the Council, but due to a number of serious resource conflicts, the Department cannot support taking into trust the specific parcels identified in this title. The lands proposed to be taken into trust include current oil and gas leases, including current oil and gas exploration in the southern parcel, as well as Preliminary Priority and Preliminary General Habitat for the Greater Sage-Grouse. Parts of the northern parcel are frequently used by horseback riders, cyclists, runners, and off-highway vehicle riders. There are also twelve miles of fire breaks within or adjacent to the northern parcel; maintaining these fire breaks is important for safety in the community of Spring Creek. The southern parcel also includes the majority of the Red Spring Wilderness Study Area and a small portion of the Cedar Ridge Wilderness Study Area. Pursuant to the Federal Land Policy and Management Act, the BLM administers Wilderness Study Areas so as not to impair their suitability for future potential designation as Wilderness by Congress. There is no statutory authority under which the BIA can manage a Wilderness Study Area, and transfer would preclude public use of the Red Spring WSA and affect manageability of the Cedar Ridge WSA.

In addition, we note that the lands requested by the South Fork Band Council are Ruby Valley Treaty lands. Any relationship between the 2004 Western Shoshone Claims Distribution Act (P.L. 108-270) and this legislation would require further examination.

Reno-Sparks Indian Colony Land Into Trust, Title VI

Title VI transfers into trust status approximately 11,180 acres of lands currently administered by the BLM for the benefit of the Reno-Sparks Indian Colony. The addition of this area would expand the current colony to include these adjacent public lands. This area includes a large portion of the Hungry Valley area, a popular location for off-highway vehicle recreation, target shooting, and other recreational uses. The BLM notes that resource conflicts may result from closure of these areas to their current recreational uses. The Department does not oppose this

title, but would like to work with the sponsor to address the recreational access issue and on minor boundary modifications to ensure manageability and provide for efficient transfer.

Pyramid Lake Paiute Tribe Land Into Trust, Title VII

Title VII transfers into trust status approximately 24,054 acres of lands currently administered by the BLM for the benefit of the Pyramid Lake Paiute Tribe. Each of the three areas to be taken into trust is adjacent to the current reservation, which surrounds the southeast portion of Pyramid Lake. There are mining claims in the area, and the lands to be taken into trust contain Preliminary General and Preliminary Priority Habitat for the Greater Sage-Grouse. The BLM is also currently evaluating a wind energy project proposed for this area, which would be precluded as proposed if the transfer to trust status went forward. The Department does not oppose this title, but would like to work with the sponsor on map and boundary modifications to ensure manageability.

Conclusion

The Department of the Interior welcomes opportunities to work with Congress and tribes on the transfer of lands into trust status. We look forward to working with the sponsor and the Committee to address the various issues we have outlined in this testimony, as well as other minor technical issues.