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Swinomish Indian Tribal Community

Legislative Hearing on H.R. 2320, the "Samish Indian Nation Land Conveyance Act of 2017"

U.S. House of Representatives, Committee on Natural Resources
Subcommittee on Indian, Insular and Alaska Native Affairs

November 15, 2017

The Swinomish Indian Tribal Community opposes H.R. 2320, the Samish Indian Nation Land Conveyance Act of 2017.

H.R. 2320 represents the sixth time that this legislation has been introduced over the past decade. No other members of the Washington state delegation have ever cosponsored the legislation and no Senate companion bill has ever been introduced. And for good reason: federally recognized tribes from Washington State with adjudicated rights under the 1855 Treaty of Point Elliott – the Swinomish Indian Tribal Community, the Lummi Nation, the Upper Skagit Indian Tribe, and the Tulalip Tribes – have vigorously objected to the legislation because it would negatively impact their interests.

H.R. 2320 would seriously harm the interests and Treaty rights of the four tribes. It would also unfairly grant the Samish Indian Nation a special exemption from the established administrative process that every other tribe must follow if they want to have the Secretary of the Interior acquire land into trust on their behalf.

We describe some of our objections in greater detail below.

1. **H.R. 2320 Provides an Unnecessary and Unwarranted Exemption from the Administrative Fee-to-Trust Process**

H.R. 2320 would grant the Samish Indian Nation rights not afforded to other tribes by circumventing the administrative fee-to-trust process without providing any rationale or justification for why such special treatment is advisable, let alone necessary.

Doing so is fundamentally unfair. The parcels described in H.R. 2320 are within the ancestral lands of aboriginal tribes and bands to which the Swinomish Indian Tribal Community and/or other tribes are adjudicated successors in interest. The Secretary of the Interior has established regulations governing the acquisition of land into trust that afford an opportunity for tribes and other governments with interests in specific parcels to have their concerns aired and evaluated. H.R. 2320 sidesteps those processes to the detriment of the Swinomish Indian Tribal Community and other interested parties.

Also, H.R. 2320 does not present circumstances where a federal agency lacks the ability to act under its existing authority. This Committee has routinely approved non-controversial transfers and exchanges of Bureau of Land Management, National Park Service, and U.S. Forest Service land to Indian tribes in trust because those agencies usually lack the needed disposal authority to effectuate the transfers absent Congressional action. In contrast, the parcels identified in H.R. 2320 possess no special attributes that would preclude the Department of the Interior from considering the trust acquisition under its existing regulatory authority.

Most significantly, although the Samish Indian Nation claimed erroneously for years that it possessed no trust land, it has had property near Campbell Lake, Washington in trust for years. The Samish Indian Nation currently has at least two fee-to-trust applications for six parcels of land in Skagit County pending before the Bureau of Indian Affairs (BIA) using its usual administrative process. If the Samish Indian Nation has existing trust lands and has demonstrated success in obtaining them using the regular procedures established by the BIA and is currently using the regular procedures to attempt to acquire other land in trust, Congress should not grant them unique rights through legislation that has the potential to harm other tribes.

For much of the past decade, the BIA's Northwest Regional Office evaluated and decided tribal applications for non-gaming, off-reservation fee-to trust acquisitions. For many tribes in the Northwest that provided the required documentation in a timely manner, this process worked efficiently and without undue delay. There is no reason why the Samish Indian Nation cannot do the same.

H.R. 2320 would circumvent this process and again provide the Samish Indian Nation an unfair advantage not available to any other tribe in the country.

2. H.R. 2320 is a Trojan Horse for Protracted Treaty Rights Litigation in *U.S. v. Washington*

The Samish Indian Nation has tried repeatedly over many years to establish that it is a successor in interest to Indian tribes and bands signatory to the 1855 Treaty of Point Elliott and that it is, therefore, entitled to exercise rights guaranteed by the Treaty. The Samish Indian Nation initially litigated and lost this claim 35 years ago in the seminal decision of *United States v. Washington*.[1]

Since that ruling, at least three federal courts have held that the Samish Indian Nation cannot relitigate its claim to treaty successorship and has no rights under the 1855 Treaty of Point Elliott, notwithstanding its subsequent acknowledgment as an entity entitled to receive services from the BIA.[2] The United States has similarly opposed the Samish Indian Nation's efforts to intervene

[1] 476 F.Supp. 1101 (W.D. Wash. 1979), *aff'd* 641 F.2d 1368 (9th Cir. 1981).

[2] *See Greene v. Lujan*, 1992 WL 533059 (W.D. Wash. 1992), *aff'd* 64 F.3d 1266 (9th Cir. 1995); *Samish Indian Nation v. United States*, 58 Fed. Cl. 114, *aff'd in part, rev'd in part on other grounds*, 419 F.3d 1355 (Fed. Cir. 2005); *United States v. Washington*, 593 F.3d 790 (9th Cir. 2009) (en banc).

in the case and reopen adjudicated treaty decisions upon which the other signatory tribes to the 1855 Treaty of Point Elliott have relied for decades.[3]

Nonetheless, the Samish Indian Nation has notified the Swinomish Indian Tribal Community, the Lummi Nation, the Upper Skagit Indian Tribe, and the Tulalip Tribes (among others) that it intends to pursue yet another attempt to establish treaty tribe status. If enacted by Congress, this legislation could, and likely will, clear a pathway to further treaty litigation by providing the Samish Indian Nation a new argument that it should be allowed yet another bite at the apple to intervene in *United States v. Washington* based on changed circumstances—in this case, Congressional action.

We can only assume that this is the reason why the Samish Indian Nation has not proceeded through the established administrative process to take these parcels into trust like every other Indian tribe. This would be yet another waste of the scarce resources of the Federal courts, the United States, and established treaty tribes, who would be forced to consider or defend against yet another meritless treaty rights claim by the Samish Indian Nation.

3. The Significance of the Treaty Rights Implicated Makes Action by this Committee on H.R. 2320 Particularly Inappropriate

Finally, the longstanding inter-tribal dispute that underlies the legislation and the significance of the potential treaty rights impacts to the signatories of the 1855 Treaty of Point Elliott make action on H.R. 2320 particularly inappropriate. It should be resolved through inter-tribal processes, not legislation that ignores the interests and rights of at least four tribes to benefit a single tribe. As our trustee, the United States and this Committee have an obligation to consider the interests of all tribes in utmost good faith without elevating one tribe's aspirations above others.

Thank you very much for your consideration.

[3] *See* 593 F.3d 790.