TESTIMONY
OF
KEVIN WASHBURN
ASSISTANT SECRETARY FOR 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. 3822, THE "FORT WINGATE LAND DIVISION ACT OF 2014"

MARCH 27, 2014

Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, my name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department on H.R. 3822, the "Fort Wingate Land Division Act of 2014." The Department supports H.R. 3822, with amendments.

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The Fort Wingate property is an inactive U.S. Army installation located in New Mexico on lands withdrawn from the public domain and reserved for military use when the fort was established in 1870.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Agency, the New Mexico Environmental Department, the Navajo Nation, and the Pueblo of Zuni on the cleanup and return of withdrawn public domain lands at Fort Wingate.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 after a 2012 hearing before this subcommittee and began efforts 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. 3822. The Department welcomes H.R. 3822 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. 3822

H.R. 3822, the "Fort Wingate Land Division Act of 2014", in Section 3, would 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 also 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 for the Department 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.

H.R. 3822, in 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. 3822 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 of the legislation, 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.

The Department has two suggestions for improving the bill. First, section 4, subsection (c), refers to I-25 Frontage Road Entrance. The Department believes that this is a typographical error and that the bill's intent is to refer to the I-40 Frontage Road Entrance, and thus recommends amending the legislation to correctly reference Interstate 40.

Second, H.R. 3822 refers to a map evidencing the tribes' agreed upon division of specific parcels in the Fort Wingate property. While the legislation references colors, green/blue, for the division, the Department highly recommends the use of legal descriptions to describe the Fort Wingate property division between the two Tribes. 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 Department, through the BIA and with assistance from BLM, would be happy to work with Subcommittee staff to identify specific parcels per tribe and provide appropriate legal descriptions for shared parcels for insertion into the legislation. The Department is aware both tribes, the Zuni Tribe and the Navajo Nation, have informally agreed to the land division evidenced in the legislation referred map, pursuant to discussions held between the two tribes on July 8, 2013. The Department supports H.R. 3822 with the above stated amendments, and would like to work with the Subcommittee on this and several technical issues.

Related Issue Regarding Criminal Jurisdiction at Fort Wingate Schools

The Department of the Interior operates two Indian schools, a High School and an Elementary School, on property adjacent and related to that covered by this legislation. The Department notes that a Federal District Court and the New Mexico Court of Appeals have reached contradictory conclusions on whether the school properties are Indian Country as defined in 18 U.S.C. §1151. *United States v. M.C. (a juvenile)*, 311 F.Supp. 2d 1281 (D. N.M. 2004); *State of New Mexico v. Steven B.*, 306 P.3d 509 (N.M. Ct.App. 2013). Because of this conflict, uncertainty exists with respect to which authorities can properly exercise criminal jurisdiction over the school properties. This uncertainty results in a jurisdictional vacuum which is detrimental to public order and proper law enforcement and is particularly concerning in a school context. The effect of such a jurisdictional vacuum is significant; if state and federal courts both disclaim criminal jurisdiction, no government is likely to investigate or prosecute felony offenses at these schools. We stand ready to work with the Subcommittee to address this important public safety issue as part of H.R. 3822 or in other appropriate legislation.

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

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BEFORE THE
HOUSE COMMITTEE ON NATURAL RESOURCES
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ON
H.R. 4002

MARCH 27, 2014

Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, my name is Kevin Washburn and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony for the Department of the Interior (Department) on H.R. 4002, a bill to revoke the charter of incorporation of the Miami Tribe of Oklahoma. The Department does not object to H.R. 4002.

Background

The Dawes Act of 1887 (also known as the General Allotment Act or the Dawes Severalty Act of 1887), adopted by Congress in 1887, authorized the President of the United States to survey American Indian tribal land and divide this land into allotments for individual Indians. Those who accepted allotments and lived separately from the Tribe were granted United States citizenship. The Dawes Act was amended in 1891, and again in 1906 by the Burke Act. In addition to these laws, the Curtis Act was passed by Congress in 1898. The Curtis Act called for the abolition of tribal governments by March 6, 1906, and was intended to promote individual land holdings.

All of this history was revisited by Congress several decades later when Congress charted a new direction for federal Indian policy. In 1936, the Oklahoma Indian Welfare Act of 1936 (also known as the Thomas-Rogers Act) was adopted by Congress because Congress had previously dissolved sovereign tribal governments in Oklahoma and Indian Territories to pave the way "for Oklahoma's admission to the union on an 'Equal footing with the original States." Prior to statehood in 1907, the lands of the former reservations in Oklahoma were allotted to individual Indian Tribal members, held in trust by the United States for the benefit of tribal members, or distributed to non-Indians in a series of land runs.

During the Indian New Deal Era, Congress enacted the 1934 Wheeler-Howard Act, also known as the Indian Reorganization Act, to rebuild Indian tribal societies, return land to the tribes, rejuvenate Indian governments, and emphasize Native culture. Although the Indian Reorganization Act did not apply to Oklahoma tribes, Congress enacted similar legislation, known as the Oklahoma Indian Welfare Act of 1936, to extend similar provisions to tribes in Oklahoma. The Miami Tribe re-organized their government under the Oklahoma Indian Welfare Act on June 1, 1940, and adopted a corporate charter at that time.

The Miami Tribe, like other American Indian tribes have come a long way since 1940, and some of the charters drafted and adopted at that time are now dated.

H.R. 4002

H.R. 4002, at the request of the Miami Tribe of Oklahoma (Tribe), would revoke the Tribe's charter of incorporation that was approved by the Secretary for the Department of the Interior in 1940. The Tribe has informed Indian Affairs that the charter of incorporation for the Tribe is cumbersome and ineffective for dealing with Tribal resources, and that the Tribe has not operated under its charter for several decades. The Tribe views its charter as too restrictive, due to requirements for Secretarial approval, and believes that it has provisions no longer useful to the Tribe and unconducive to business activity. For example, the charter purports to require Secretarial approval for any debts in excess of $150. In part because of the limitations contained within the charter, the Tribe has chosen to operate its enterprises entirely through its own authority as a sovereign governmental entity.

In the past, Congress has passed similar revocations of tribal charters of incorporation similar to HR 4002. For example, in 1996 Congress revoked charters of incorporation for the Minnesota Chippewa Tribe and the Prairie Island Indian Community, and in 2000, the Stockbridge Munsee Community of Mohican Indians. The Department believes, consistent with the Administration's support for tribal self-determination and self-governance, that the decision whether to maintain or revoke such a charter ultimately should be the Tribe's. Therefore, the Department does not object to H.R. 4002.

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