

TESTIMONY IN SUPPORT OF S 375

A Bill to Waive Application of the Indian Self-determination Act

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Presented to the House Committee on Natural Resources by

Delores Pigsley, Chairman of the Confederated Tribes of Siletz

Indians of Oregon

Mr. Chairman, Members of the Committee:

I am Delores Pigsley, Chairman of the Siletz Tribe. Thank you for this opportunity to ask you to recommend that S. 375 be passed without amendment so it can proceed into law. Your action will enhance the economic welfare of two Indian Tribes, contribute to the economy of an entire region and will not cause a single voice to be heard in protest. We are pleased to note that Rep. Hooley, with cosponsors, introduced a House version of this legislation, H.R. 679. Here is why this legislation deserves your support.

Approximately 20 acres of the old Chemawa Indian School campus were transferred to the Siletz and Grand Ronde Tribes by the Secretary of the Interior in 2002. This is federal property, not tribal trust land, and the transfer was in fee. The land is located in the Willamette Valley of western Oregon, where both our Tribes have historical ties. It is within in the city of Keizer. The property was separated from the main Chemawa campus by the construction of Interstate 5. The land is isolated by major transportation routes. Until recently, it was of little value to anyone. In fact, the federal government first gave the land to the state and, because it had little value, the state gave it back.

Under authority of the Indian Self-Determination Act, in 2002 the Secretary transferred the land to our two Tribes by quitclaim deed so that we could use it for economic development. Under the Indian

Self-determination Act, the Secretary is authorized to donate to Indian tribes property "found to be excess to the needs of the Bureau of Indian Affairs" This statute is the only authority under which the Secretary could transfer the lands.

Although the land had little value initially, its potential was enhanced when a large, private development was planned for the adjacent lands to the north. Through planning and cooperation among tribal, state and local governments and private interests, a large commercial shopping mall and satellite businesses were planned and, except for the tribal portion, have been constructed and are doing business. Planning included use of the Tribes' property for needed infrastructure for the development, including fire control and the overall traffic plan. The routing of a major access road through the Tribes' property particularly enhanced its economic potential.

All was going well until the Tribes tried to finance construction of their portion of the development. Unfortunately, the statutory authority of the Secretary to transfer the land reserves the right to take it back if the Tribes fail to use the land for economic development. The quitclaim deed and other transfer documents, therefore, include reversionary clauses.

The reversionary interest makes use of the land as collateral for construction financing impossible. The Tribes tried unsuccessfully for months with many lenders to finance construction using the land as security. Although banks understand that it is most unlikely that the Tribes would change the uses of the land or that the Secretary would exercise the reversionary authority, they will not lend.

Apparently, the Secretary has no authority to subordinate the government's position to a bank or to waive the reversionary right. The Secretary cannot be forced to waive the government's rights by legal action. The only way that will allow the Tribes to finance their portion of the development using the land as collateral is the legislation before this Committee – legislation that eliminates the reversionary clause and directs the Secretary to issue a new deed.

Putting aside the need for the Tribes to be able to proceed with the existing planned development to enjoy the economic potential that now exists, the passage of this bill is important to the future. As long as the reversionary clause remains a cloud on the title, it will prevent any type of meaningful development for the Tribes' land.

Furthermore, the cooperative effort represented by this development marks a new and important chapter in the developing relations among the Tribes, state and local governments and private commercial interests – relations that should be encouraged. As of now, while cars drive on the access road past our vacant property, the Tribes are unable to fulfill our obligations to the development and do not appear to the public to be cooperating.

Furthermore, without this legislation, the Tribes stand to lose a considerable amount that already has been invested. The Tribes have conducted the necessary environmental reviews, completed traffic and architectural designs and a required cultural resources assessment. They have employed business consultants, engineers, surveyors and every other professional resource necessary to plan for and to participate in this commercial enterprise.

The Tribes also have granted easements to the City of Keizer for utilities, use of a water tank that is necessary for fire protection and for public use of the loop access road through the property. They also entered into a formal agreement with the City governing infrastructure usage. The Tribes have invested over 3 million dollars to date, including the payment of a \$1.2 million fee for off-site transportation improvements. The Tribes established Chemawa Station LLC, an Oregon limited liability company, to develop the property. In fact, the LLC is the intended borrower of the financing for construction. The LLC is a tax paying entity under state law.

Despite all the foregoing, construction of tribal commercial enterprises cannot proceed because the land cannot be used as security for the loans necessary to fund it.

Please consider several points about this legislation:

1. No opposition exists to the bill and it is endorsed by the BIA and has the support of the Oregon delegation;
2. No alternative to legislation will get rid of the reversionary clause;
3. The clause prevents funding for a project that represents the joint efforts of two tribes working cooperatively with local and state governments and private interests to create jobs and business opportunities for an entire region;
4. The Tribes already have invested over 3 million dollars in the project, while potentially valuable land remains vacant and unproductive.
5. Completion of the project is important to the Tribes' efforts to diversify their economies; and
6. No gaming can or will take place on the land, which is also stipulated in S. 375.

For all these reasons, I ask you to recommend passage of S. 375.

Thank you.