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BEFORE THE HOUSE SUBCOMMITTEE ON NATIONAL PARKS OF THE COMMITTEE ON RESOURCES, CONCERNING
H.R. 481, THE SAND CREEK MASSACRE NATIONAL HISTORIC SITE TRUST ACT OF 2005.

APRIL 14, 2005

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today to present the Department of the Interior's views on H.R. 481, a bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

The Department supports H.R. 481 if amended as described in this testimony. On May 12, 2004, a hearing was held on S. 2173, a bill which as introduced was identical to H.R. 481. At that hearing the Department testified in support of S. 2173, if amended in accordance with the Department's testimony. S. 2173 was subsequently amended, taking into account the Department's suggestions, as well as the concerns of the Tribes, and was passed by the Senate. The Department supported the amended bill and it has been reintroduced in the 109th Congress as S. 57. We suggest that H.R. 481 be amended to make it identical to S. 57.

H.R. 481 would convey title to a section of land formerly known as the Dawson Ranch, and existing structures on that land, to the United States to be held in trust by the Secretary of the Interior and managed by the National Park Service (NPS) strictly for the purposes for which Sand Creek Massacre National Historic Site (NHS) was authorized by P.L. 106-465. Those purposes are to recognize the national significance of the massacre in American history, its ongoing significance to the Cheyenne and Arapaho people and descendants of the massacre victims, and the opportunity to involve the tribes and the State of Colorado in the development of plans and educational programs for the site. Under the bill, the property could only be used for historic, religious and cultural purposes that are compatible with the use of the land as a national historic site. H. R. 481 also would require the completion of a survey of the Dawson Ranch to accurately establish the boundary of the proposed tribal trust lands. Finally, the bill would declare that the trust property becomes a part of the Indian reservation of the Cheyenne and Arapaho Tribes of Oklahoma.

Sand Creek Massacre NHS is located in Kiowa County on the eastern plains of Colorado. Within the boundary of the site there are approximately 12,500 acres of private and State land that has changed little since 1868. On November 29, 1864, a group of 700 Colorado volunteer cavalry under the command of Colonel John Chivington, a Civil War hero, entered the Sand Creek camp occupied by about 500 people of the Cheyenne and Arapaho tribes. Although the Cheyenne and Arapaho people believed they were under the protection of the U.S. Army, Chivington's troops attacked and killed about 150 people, mainly women, children, and the elderly. The massacre resulted in almost instant controversy, which ultimately led to three federal investigations, all of which condemned Chivington's actions.

As time passed, evidence of the massacre slowly disappeared. Although the event continued to be remembered, the only commemoration of the massacre was a simple granite marker placed near the site by the local community in 1950. Following the provisions of P.L. 105-243, the NPS completed a study of the area that determined the location and extent of the Sand Creek Massacre, and the feasibility of designating the site as a unit of the National Park System. Those findings were presented to Congress, and the national historic site was authorized by P.L. 106-465.

P.L. 106-465 required that "sufficient" land be acquired from willing sellers "to provide for the preservation, memorialization, commemoration, and interpretation of the Sand Creek Massacre" before the area would be established as an NHS. Since February 2001, the Conservation Fund has purchased and conveyed to the NPS a total of 920 acres from three willing sellers. The total cost of these purchases was \$130,700.

With the transfer of the Dawson Ranch, as proposed to be authorized in H.R. 481, the NPS believes it would have sufficient land for establishment of the NHS and would forward a recommendation to the Secretary to formally establish the park. The Dawson Ranch, which includes approximately 1,465 acres and four existing buildings, lies within the core area of the authorized site. Southwest Entertainment, Inc., purchased it in December 2002 for approximately \$1.5 million. Southwest Entertainment, Inc., has conveyed the property and the buildings in fee to the Cheyenne and Arapaho Tribes of Oklahoma. The tribes have expressed an interest in having the NPS manage the site and the authorizing legislation for the NHS provides for substantial tribal input into the management planning process. The Dawson Ranch, combined with the existing 920 acres, would be of sufficient size and interest to provide opportunities for visitors and protect the area of the

site containing some of the most sensitive and critical historic resources.

Until the site is established, the NPS does not have authority to enforce federal laws and regulations on any of the lands within the site boundary, including the 920 acres currently in NPS ownership. The NPS has surveyed the boundary and has posted signs, however no public access is permitted. The NPS has entered into a cooperative agreement with Kiowa County for wildland fire management and other assistance. We also have agreements with all four associated tribes to continue consultation in the development and management of the site and to provide for reasonable access for commemorative purposes and traditional cultural and historical observances.

Research is being conducted so that management plans can be developed as quickly as possible should an NHS be formally established. Sand Creek Massacre NHS has submitted a request to begin a general management plan (GMP). Until funding is available for the GMP, the Intermountain Region and park staff will develop an interim operation plan by the end of this year.

The site received \$349,300 for operations in FY05. If H.R. 481 is enacted, NPS estimates that it would cost an additional \$547,000 to operate the site (\$104,000 for initial law enforcement and an additional \$443,000 for other park operations). Additional costs may result from the structures, including four buildings that would be placed into trust status under H.R. 481. One of the buildings, a ranch house, is not in good condition and is estimated to cost \$426,000 to rehabilitate. Discussions between NPS, the Tribal owners, and the Northern Cheyenne and the Northern Arapaho Tribes indicate a strong interest in removing this structure and an associated underground storage tank, which would cost approximately \$140,000. Two buildings are corrals and an associated barn that would be used for park maintenance purposes, and one building is a large garage and ranch office that NPS and the Tribe could use as a maintenance building, offices and a temporary visitor contact station. NPS would need to make repairs to these buildings as necessary for their use.

One of the hallmarks of the history of the creation of Sand Creek Massacre NHS has been the cooperation and dedication of all interested parties. The tribes, descendants organizations, the local communities in Kiowa and other surrounding counties, the State of Colorado and other Federal agencies have developed excellent relationships and established lines of communication that have allowed us, in less than 10 years, to be on the brink of establishing a site that will tell an important story in this country's history.

The amendments that we suggested last year to S. 2173 clarified the purposes of that bill and the roles and responsibilities of the Secretary. We suggest that H.R. 481 be amended in the same fashion.

We suggest deleting the provision in Section 6(a), which declares the property to be a part of the Indian reservation of the Tribe. Declaration of a reservation is an action that is independent of transfer into trust status and seems unnecessary for the administration of the trust land as part of an NHS.

We are also concerned that H.R. 481 does not specify what duties are required of the Secretary. We believe that Congress, when it mandates land be taken into trust, should specifically define the expectations of the beneficiary and the obligations of the Federal government. Both the Executive and the Judicial Branches, as well as the beneficiary, are faced with the question of Congress' intent when it puts land into trust status.

While H.R. 481 contains a provision indicating that the trust property shall be administered "in accordance with the law generally applicable to property held in trust by the United States for the benefit of Indian tribes", this provision is so potentially broad that it makes the duties of the Secretary with regard to the land and the structures that are to be held in trust even less clear. We suggest amending the bill to eliminate this confusing provision and consolidate existing provisions that require that the Secretary administer the property in accordance with the law establishing the NHS and that the property be used only for historic, religious, or cultural uses and only if those uses are compatible with the NHS. The amended provision would clarify the scope of the trust responsibility.

Even with this amendment, guidance in the bill regarding the duties of the Secretary is limited, particularly with respect to the structures taken into trust status. The President has made a commitment to addressing the deferred maintenance backlog in our national parks. Toward this effort, the NPS has, for the first time ever, developed a comprehensive system to grade the condition of facilities. With this system, the NPS can set targets each year to improve facility grades and achieve an overall acceptable condition for facilities. To ensure that these management decisions can be made in a timely manner, we suggest further amendments which would convey the existing buildings in fee title to the Secretary, while placing the real property into trust status. Given the strong interest expressed by both the Tribe and the NPS to remove the ranch house, we also suggest a provision that would require the Secretary to consult with the Tribe concerning the uses of the buildings.

We appreciate the subcommittee's interest in this legislation. That concludes my remarks and I would be happy to respond to any questions that you may have.