TESTIMONY OF
LAWRENCE S. ROBERTS
PRINCIPAL DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES HOUSE
COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
ON
H.R. 3680,
THE GRAND PORTAGE PAND PER CAPITA ADJUSTMENT ACT

JULY 29, 2014

Good Afternoon Chairman Young, Ranking Member Hanabusa and members of the Subcommittee. My name is Lawrence Roberts. I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to testify on H. R. 3608, the "Grand Portage Band Per Capita Adjustment Act." The Department supports H.R. 3608.

Background

In 1854, the Chippewa of Lake Superior entered into a treaty with the United States whereby the Chippewa ceded to the United States ownership of their lands in northeastern Minnesota. These lands are the so-called "1854 cede territory." Article 11 of the 1854 Treaty provides: ".. .And such of them as reside in the territory hereby ceded, shall have the right to hunt and fish therein, until otherwise ordered by the President." The Chippewa of Lake Superior who reside in the ceded territory are the Fond du Lac, Grand Portage and Bois Forte Bands.

In 1985, the Grand Portage Band of Lake Superior Chippewa Indians (Band) sued the State of Minnesota in federal court claiming the 1854 Treaty gave the Band the right to hunt and fish in the ceded territory free of State regulation. Up until that time, the State had applied its hunting and fishing laws in the ceded territory to Indians and non-Indians alike. The Band entered into an agreement with the State in 1988 whereby the State makes an annual payment of $1.6 million to the Band.

The funds in question are not judgment funds awarded by the Court of Claims, but rather are funds paid by the State of Minnesota pursuant to its agreement with the Grand Portage Band of Chippewa in 1988. Because the funds received under the Agreement are directly related to the Band's forbearance of its treaty rights, they were addressed in the 2000 Amendment to 25 U.S.C. 1407(4) proposed by the late Senator Paul Wellstone of Minnesota. Wellstone introduced a bill in 1999 (S.1838) to exempt certain per-capita income derived from an agreement between the Bois Forte Band of Chippewa Indians, the Grand Portage Band of Chippewa Indians, and the State of Minnesota. The 1999 bill was referred to the Senate Indian Affairs Committee, but did not proceed as a standalone bill.

Though the funds at issue are not judgment funds, 25 U.S.C. 1407 (4) treats the agreement funds as judgment funds and relieves those funds from being considered as income or resources. The statute prohibits the funds from the State of Minnesota to the Band paid under the agreement for being used as a basis of denying or reducing financial assistance or other benefits to which a household or member would otherwise be entitled to under any federal or federally-assisted program. It is unclear why the Grand Portage Band was not included in Subsection 4 in the 2000 Amendment passed by Congress since the Band has the identical agreement with the State that the Bois Forte Band of Chippewa has. The Department can only presume the omission was inadvertent and remedying this omission is appropriate.

H.R. 3608

H.R. 3608 would amend the Act of October 9, 1973 (P.L. 93-134) concerning taxable income to members of the Grand Portage Band of Lake Superior Chippewa Indians. H.R. 3608 would expressly extend the tax exempt status of payments made by the State of Minnesota to the Band under the agreement of 1988 between the Band and the State of Minnesota resulting from the settlement agreement from the 1985 lawsuit against the State of Minnesota over the Treaty of September 30, 1854 (10 Stat. 1109). H.R. 3608 does not appear to diminish or remove any status enjoyed by Bois Forte Band of Chippewa Indians and provides tax exempt status to payments made under the 1988 Agreement between the Band and the State of Minnesota to the members of the Grand Portage Band of Lake Superior Chippewa Indians.

Conclusion

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

TESTIMONY OF
LAWRENCE ROBERTS
PRINCIPAL DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 4534,
THE NATIVE AMERICAN CHILDREN'S SAFETY ACT

JULY 29, 2014

Introduction

Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, my name is Lawrence Roberts and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to testify on H.R. 4534, the "Native American Children's Safety Act," a bill that amends the Indian Child Protection and Family Violence Prevention Act to require background checks before foster care placements are ordered in tribal court proceedings, and for other purposes. The Department supports the principles of H.R. 4534.

H.R. 4534, the "Native American Children's Safety Act"

The safety of Native children is a Department priority. The Native American Children's Safety Act recognizes the importance of the safety of Native children through establishing standards in background checks. The Department notes that all placements made with Bureau of Indian Affairs funds require a background check. This bill would expand the requirement to all placements made through the tribal courts. As this Subcommittee may be aware, the Title IV-E background-check requirements are slightly inconsistent with those proposed in H.R. 4534. The Department looks forward to working with the Department of Health and Human Services (DHHS), which is the department that oversees the Title IV-E program, the bill's Sponsor and this Subcommittee to create consistency in the requirements of background checks to avoid creating multiple standards. We also note that the National Indian Child Welfare Association (NICWA) and the National Congress of American Indians (NCAI) provided thoughtful and detailed written comments and analysis on this proposed legislation. We agree with many of their suggestions and would like to suggest that the committee include them in further discussions.

Conclusion

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

TESTIMONY OF
LAWRENCE S. ROBERTS
PRINCIPAL DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES HOUSE
COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
ON
H.R. 5020, INDIAN TRIBAL SELF-DETERMINATION IN LAND CONSOLIDATION ACT OF 2014

JULY 29, 2014

Good afternoon, Chairman Young, Ranking Member Hanabusa, and Members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) statement at this legislative hearing on H.R. 5020, Indian Tribal Self-Determination in Land Consolidation Act of 2014.

As we have addressed at previous hearings, the magnitude of fractionation in Indian Country is enormous. There are more than 2.9 million trust or restricted fractional interests spread across more than 150 reservations that are owned by more than 243,000 individuals. The Land Buy-Back Program for Tribal Nations (Buy-Back Program), created as part of the historic *Cobell* Settlement Agreement (Settlement), aims to offer individual Indian landowners fair market value payments for restoring fractionated land interests to tribal trust ownership.

The Department strongly supports tribes' right to self-determination and self-governance. President Obama recognizes that federally recognized Indian tribes are sovereign, self-governing political entities that have a government-to-government relationship with the United States, as expressly recognized in the United States Constitution. Secretary Jewell, too, is a strong supporter of the principle of tribal self-determination, the principles of the ISDEAA, and is committed to working to further tribal self-governance.

The Success of Tribal Agreements

Although the Settlement and the Claims Resolution Act do not allow the use of Indian Self-Determination and Education Assistance Act (ISDEAA) agreements to operate Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program) activities, they allow the Buy-Back Program to enter into agreements with tribes for undertaking land consolidation tasks. Accordingly we are actively entering into cooperative agreements or more informal arrangements with tribes. Each agreement is the product of information sharing and thoughtful discussions, resulting in a tailored implementation approach for each reservation in partnership with the Department to meet the needs of its community. We actively consult with tribes to focus on achieving their acquisition priorities as much as possible. Tribes are exercising their rights of self-determination and self-governance even though formal land consolidation self-determination and self-governance programs do not exist.

Using the current authority, the Buy-Back Program has reached cooperative agreements or other arrangements with 12 tribes located in the Great Plains, Rocky Mountain, Northwest, and Western regions. The Department will continue to work with tribes in a flexible manner to ensure that tribal input and experience guide Program implementation.

The results of these cooperative efforts are significant. In the last 7 months, payments to landowners so far total more than $84 million, and we have restored approximately 236,000 equivalent acres among four tribal nations. The Program expects to mail offers to owners with interests at no less than five additional locations later this summer and fall.

Tribes are involved in nearly all phases of the Program. All 12 tribes with cooperative agreements or other understandings are conducting outreach activities such as updating landowner contact information, notifying landowners of upcoming purchase offers, identifying willing sellers, and conducting pre-offer and post-offer outreach. Five tribes are conducting land research to prepare the necessary information about the fractionated land including mapping activities, provision of information about land use, collection of comparable sales information, or assistance with minerals evaluation. Three tribes are also conducting appraisals of tracts prioritized by the tribes for acquisition and actively working with the Department to finalize their products, which will serve as the basis for purchase offers to landowners.

Tribes also are involved in the acquisition phase by having local staff available to answer questions and notarize documents. Each agreement is the product of a tailored approach for the specific needs of the tribal community.

Deputy Secretary Michael Connor's testimony before the Senate Committee on Indian Affairs two weeks ago highlighted the Administration's record of cooperation with tribes, including the active information sharing and negotiations with eighty tribes to settle their trust-related claims reaching back many decades. He affirmed that the Program seeks to continue this strong path of partnership with tribes and highlighted the Department's early, consistent support for tribal involvement in carrying out the Program.

H.R. 5020

To reiterate, the Department and the Administration are strong supporters of the ISDEAA. However, any proposed changes to the Buy-Back Program must take into account the progress we have made in that Program. We are concerned that the authorization of a new process will cause delays as the Program addresses implementation of the provisions, and such changes would necessitate additional funding for implementation. In comparison to other federal programs, the Land Buy-Back Program's limited, ten-year time frame and its 15 percent cap on implementation costs (for outreach, land research, valuation, and acquisition activities) are unique.

The parameters in the Settlement necessitate relatively intense, short-term activity at each location to maximize the number of the 150 locations and the some 245,000 individual land owners that may participate in the Program. If enacted, the ten-year deadline established by the

Settlement would likely need to be extended to provide the Program, and tribes, the additional time necessary:

- to consult with tribes to determine an appropriate method for allocating implementation costs under ISDEAA agreements;

- to provide training and conduct security clearances for tribal staff at each location that seeks to accept responsibility for the Program's acquisition phase through an ISDEAA agreement;

- for tribes that choose to use a site-specific appraisal approach rather than a mass appraisal approach; and

- for the Buy-Back Program to transition to the new law to ensure that it has proper staff and intra-agency agreements in place to implement the law. Even if every tribe chose to utilize ISDEAA agreements, the Program would need to maintain staff to provide final approval of appraisals and land transfers.

Moreover, acquisition and payment processing time may vary from tribe to tribe under ISDEAA agreements. Currently, the Department is able to mail and print 2,000 offers per day and pay owners promptly that sell their fractional interests (since December 2013, the Program has paid owners an average total of more than $500,000 per day). The process integrates land title and trust fund systems of record, which enables landowners to receive their offer packets shortly after appraisal completion. Payments for accepted offers are deposited directly into their Individual Indian Money accounts typically within an average of five days of receiving a complete, accepted offer package.

In addition, and as indicated above, additional funding could be necessary, should the bill be enacted, for:

- tribal and Interior administrative costs associated with any extension of the current 10 year implementation deadline.

- tribes to prepare proposals and negotiate with Program representatives, including resources to provide technical assistance to tribes for the development of agreements;

- implementation of changes to processes that have already been established;

- appraisal work, which may increase (the Buy-Back Program uses primarily mass appraisal methods whereas most tribes in ISDEAA programs use site-specific appraisals); and

- full contract support costs, which would need to be provided under ISDEAA agreements (the Buy-Back Program currently provides up to 15 percent in indirect costs through cooperative agreements to minimize implementation expenses consistent with the

Settlement).

Existing Buy-Back Program costs and functions, for tribes not interested in utilizing ISDEAA agreements, would remain the same; consequently, the Buy-Back Program would continue to need funds to maintain capacity for the Department to implement the program.

If the bill were enacted without additional funding, it is likely that the $285 million administrative cost cap would be reached well before the fund available to purchase land is exhausted.

The Department strives to achieve full tribal participation using cooperative agreements to facilitate tribes' exercise of their self-determination and self-governance rights, and recognizes the continued ability under H.R. 5020 to utilize cooperative agreements. They are a cost and time effective tool that provide a flexible mechanism for tribal involvement in the Buy-Back Program and define each tribe's role in implementing the Program on its reservation:

- The Department is awarding cooperative agreements more quickly. The Buy-Back Program recently entered into a cooperative agreement within 18 days and another within two days after receiving a tribe's application.

- Cooperative agreements allow for substantial tribal involvement in land consolidation activities. All tribes with cooperative agreements are performing landowner outreach, and several are also conducting land research and land valuation on reservations.

- Cooperative agreements allow the Buy-Back Program to work closely with tribes in determining how to best implement the program on a particular reservation (e.g., outreach, land research, and valuation) and tailor agreements accordingly. They ensure that the Buy-Back Program and the tribe work together as a team to utilize their strengths to ensure that land consolidation efforts on a tribe's reservation are as successful and effective as possible.

It is important to note that cooperative agreements are not mandatory for tribes to participate in the Program. Some tribes do not require financial assistance to support, promote, or help implement the Program, making a cooperative agreement unnecessary in those situations. The implementation of the Buy-Back Program will best succeed with the active involvement and commitment of tribal communities either through cooperative agreements or other arrangements. Additional agreements are being developed and will be announced in the near future.

Additionally, section 2 would amend the Indian Land Consolidation Act to require the Secretary to: "authorize the tribal government to use any interest earned on such payments [to tribes to carry out agreements] to acquire any fraction interest in, or permanent improvements located on, any tract of land which already has one or more trust or restricted fractional interests." The Department does not have the authority under the Settlement or the Claims Resolution Act to invest the Fund. Also, it is not clear from the legislation whether the intent is to allow for the investment of the implementation cost portion of the Fund, or the entirety of the Fund.

The Department is also concerned about the proposal in Section 2 regarding the acquisition of permanent improvements. Generally, the Department does not currently hold permanent improvements in trust for individual Indians. If improvements acquired were to be held in trust, this increased responsibility on the BIA could be great, as the BIA would likely have duties to perform with regard to renting, selling, permitting, and maintaining the improvements.

Finally, we note that the Department already provides to Congress the information required under the section 5 reporting requirements. The Administration and the Department also recognize the need for consultation, as required by section 6, but again note that additional funding and time may be required, if enacted.

Conclusion

The level of interest expressed by Indian Country over the past year demonstrates the importance of the Buy-Back Program and our collective desire for it to be successful. We remain committed to active participation and direct involvement of our tribal partners in fulfilling the obligations of the Settlement with individuals and achieving our common goal of maximizing this exceptional opportunity to address the very serious problem of land fractionation across Indian country in the most cost efficient and expeditious manner possible for the benefit of generations ahead.

This concludes my statement and I am happy to answer any questions you may have.

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LAWRENCE S. ROBERTS
PRINCIPAL DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 5049,
THE BLACKFOOT RIVER LAND EXCHANGE ACT OF 2014

JULY 29, 2014

Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, my name is Lawrence Roberts and I am the Principal Deputy Assistant Secretary - Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to testify on H.R. 5049, the Blackfoot River Land Exchange Act of 2014, a bill to exchange trust and fee land to resolve land disputes created by the realignment of the Blackfoot River along the boundary of the Fort Hall Indian Reservation. The Department supports H.R. 5049.

Background

In 1867, the Fort Hall Indian Reservation was created by Executive Order for various Bands of the Shoshone and Bannock Indians. Pursuant to the Executive Order, the Blackfoot River, as it existed in its natural state, formed the northern boundary of the Reservation. In the 1960's, the United States Army Corps of Engineers (Army Corps) completed a flood control project along the Blackfoot River. The project consisted of constructing levees, replacing irrigation diversion structures, replacing bridges and channel realignment.

While the flood control project did not change the original boundaries of the Reservation, it realigned portions of the Blackfoot River. Thus, after the Anny Corps completed the project, individually-Indian owned and Indian lands (approximately 37.04 acres) ended up on the north side of the realigned River, and non-Indian owned lands (approximately 31.01 acres) ended up on the south side of the realigned River. Over the years, these parcels of land have remained idle because the landowners could not gain access to the parcels of land without trespassing or seeking rights-of-way across the lands of other owners.

In the late 1980's, the Snake River Basin Adjudication (SRBA) began to decree water rights on all streams and rivers within the Snake River basin in Idaho, which includes the Blackfoot River basin. During SRBA, several non-Indian landowners, whose lands were affected by the realignment of Blackfoot River, claimed as their water rights' place of use lands on the Fort Hall Indian Reservation.

The Shoshone-Bannock Tribes (Tribes) filed objections to these water right claims. The United States did not file objections on behalf of the Tribes, but has been closely working with the Tribes and monitoring these and related water right claims in the SRBA. Thus, resolution of the land ownership issues along the realigned portions of the Blackfoot River could resolve related water rights claim in the SRBA.

H.R. 5049

The primary features of H.R. 5049 are to:

- authorize the United States to take certain non-Indian lands into trust on behalf of the Shoshone-Bannock Tribes in Idaho;

- authorize the United States to convey certain Indian lands into fee lands;

- extinguish certain claims that potentially could be asserted by the Shoshone-Bannock Tribes against the United States;

The Department supports the exchange of these lands because this exchange will enable the general stream adjudication of the Snake River to be concluded without interfering with the water rights claims of either party. The Department reviewed similar legislation in 2010 and that legislation had several provisions that the Administration could not support. The Department congratulates the Shoshone-Bannock Tribes and the parties on improving this legislation, and thanks Representative Simpson for working to remove those provisions that the Administration could not support.

Thank you for the opportunity to present the Department's views on H.R. 5049. I will be happy to answer any questions you may have.

TESTIMONY OF
LAWRENCE ROBERTS
PRINCIPAL DEPUTY ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON H.R. 5050,
THE MAY 31, 1918 ACT REPEAL ACT

JULY 29, 2014

Chairman Young, Ranking Member Hanabusa, and Members of the Subcommittee, my name is Lawrence Roberts and I am the Principal Deputy Assistant Secretary - Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to testify on H.R. 5050, the May 31, 1918 Act Repeal Act, a bill to repeal the Act of May 31, 1918. The Department supports H.R. 5050.

Background

In 1867, the Fort Hall Indian Reservation was created by Executive Order for various Bands of the Shoshone and Bannock Indians (Tribe). On May 31, 1918, Congress passed a bill to authorize the establishment of a town site on the Fort Hall Indian Reservation in Idaho. The Act of 1918 authorized the Secretary of the Interior to set aside and reserve for town-site purposes a tract of land within the Fort Hall Indian Reservation. The Act of 1918 also authorized the Secretary of the Interior to set apart and reserve for school, park, and other public purposes not more than ten acres in such town site on the condition that Indian children shall be permitted to attend the public schools of such town under the same conditions as white children.

The Act of 1918 further authorized the Secretary of the Interior to appraise and dispose of the lots within such town site and provided that any expenses in connection with the survey, appraisement, and should be reimbursed from the sales of town lots, and the net proceeds should be placed in the Treasury of the United States to the credit of the Tribe and would be subject to appropriation by Congress for the Tribe's benefit. Finally, the Act of 1918 provided that any lands disposed of under the Act of 1918 would be subject to all the laws of the United States and prohibited the introduction of intoxicants into the Indian country until otherwise provided by Congress.

The Bureau of Indian Affairs' Northwest Regional office is working with the Tribe to get an accurate determination of the number of acres that are included in the townsite area and to determine the actual ownership of the lots in the townsite. Currently the BIA's Northwest Regional office is in receipt of fee-to-trust applications from the Tribe and one fee-to-trust application from a member of the Tribe for lands located within the township.

The Department is aware that the Tribe acquired ownership of the Fort Hall Water and Sewer District in 2000 and the Tribe has extended and improved this system several times over the past 14 years. The Fort Hall Water and Sewer District was operated by a group of citizens that resided within the townsite, but were unable to continue to operate this system financially. The waterlines, pump stations, and lifts, along with their main water structure are part of the structures that are owned by the Tribe. There are a few lots that were originally part of the school reserve and remain reserved for that purpose.

H.R. 5050

The primary features of H.R. 5050 are to:

- repeal the Act of May 31, 1918 (which authorized the Secretary of the Interior to set aside and reserve a tract of land within the Fort Hall Indian Reservation, Idaho, for town-site purposes),

- gives the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation the exclusive right of first refusal to purchase at fair market value any land set aside or apart under the Act of 1918 and such lands are offered for sale,

- directs the Secretary of the Interior to place lands in trust for the Tribe or a member of the Tribe where the lands subject to the Act of 1918, were (1) acquired before enactment of H.R. 5050, and (2) are acquired on or after the enactment of H.R. 5050 that is set aside or apart under the Act of 1918.

The Department supports H.R. 5050. The Department would like to work with the Tribe and the sponsors of this legislation to align H.R. 5050 with the clarifying legislative language reached with the U.S. Senate version passed out of the Committee on Indian Affairs in the United States Senate. The Department and the Tribe and the Senate bill sponsors provided more background information on the status of the lands covered by the Act of May 31, 1918, and we obtained current ownership information of the subject lands by the Tribe and members of the Tribe, along with legal descriptions of the affected land. The Department, for clarity, prefers that such legislation include the legal descriptions of the affected land. This insures that the Department understands the will of Congress and can execute the law effectively.

Thank you for the opportunity to testify on H.R. 5050. I am happy to answer any questions the Subcommittee may have.