

**TESTIMONY OF  
LAWRENCE S. ROBERTS  
PRINCIPAL DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
ON  
S. 3216, TO REPEAL THE ACT ENTITLED “AN ACT TO CONFER JURISDICTION ON THE STATE  
OF IOWA OVER OFFENSES COMMITTED BY OR AGAINST INDIANS ON THE SAC AND FOX  
INDIAN RESERVATION.”**

**SEPTEMBER 14, 2016**

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Larry 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 before the Committee on S. 3216, a bill to repeal the Act entitled “An Act to Confer Jurisdiction on the State of Iowa Over Offenses Committed By Or Against Indians On The Sac And Fox Indian Reservation” referenced as 62 Stat. 1161, Chap. 759. The Department supports S. 3216.

**Criminal Jurisdiction in Indian Country**

Improving public safety in Indian Country is a bi-partisan priority. We know that Tribes are best positioned to provide for the safety and well-being of their communities and that law enforcement is a federal trust and treaty responsibility. Under the repudiated policy of termination, Congress enacted legislation that displaced federal criminal jurisdiction and transferred that jurisdiction to certain States. As a result of these laws, criminal justice systems in Indian Country were understaffed and underfunded when compared to reservations of similar size and population that were not subject to such laws. Like other more recent enactments by Congress, S. 3216 reflects the modern federal Indian policies of self-determination and self-governance. S. 3216 clarifies a muddled and complex jurisdictional scheme. We support S. 3216 and similar legislation which clarifies jurisdiction and moves forward from the termination policy of the past.

The recent passage of the Tribal Law and Order Act (TLOA) in 2010, reflects the strong federal policy to promote collaboration among tribes and the federal government and to promote tribal self-determination and self-governance for criminal justice in Indian Country. This legislation for the Sac and Fox Indian Reservation reflects those policies.

**S. 3216**

S. 3216 is a bill to repeal the Act entitled “An Act to Confer Jurisdiction on the State of Iowa Over Offenses Committed By Or Against Indians On The Sac And Fox Indian Reservation.” By repealing 62 Stat. 1161, Chap. 759, criminal jurisdiction over offenses by or against Indians on

the Sac and Fox Indian Reservation would be exclusive to either the Tribe or the Federal Government under the Major Crimes Act.

The Sac and Fox Nation (“Tribe”) located in Iowa currently operates their own tribal court, law enforcement and detention facility. However, the Bureau of Indian Affairs, Office of Justice Services does not currently fund any of these activities. The only related funding the BIA provides to the Tribe is Consolidated Tribal Government Program (CTGP) funding, which the Tribe uses to support their tribal court operations through a P.L. 93-638 contract. Enactment of S. 3216 would ensure that the Tribe is treated similar to other Tribes across Indian country where either BIA or the Tribe provides those federal law enforcement services.

If enacted into law, the bill could have funding implications as current funding streams to existing tribes cannot be reduced in order to make funds available for the Tribe. The Department is aware that both the Tribe and the State of Iowa seek to repeal of 62 Stat 1161 Chap. 759 and support S. 3216.

### **Conclusion**

Thank you for providing the Department the opportunity to testify on S. 3216. The Department supports S. 3216. I am available 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  
SENATE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
ON  
S. 2636, THE “RESERVATION LAND CONSOLIDATION ACT OF 2016”.**

**SEPTEMBER 14, 2016**

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Larry 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 before the Committee on S. 2636, the “Reservation Land Consolidation Act of 2016,” a bill to amend section 5 of the Indian Reorganization Act (IRA), to require the Secretary to place land into trust that is wholly within or contiguous to a reservation if a Tribe acquires such lands and applies to have it placed into trust.

The continuing importance of restoring tribal homelands cannot be overstated. The United States’ tragic history with Tribal Nations has shown that the health and well-being of Native people is directly tied to the land. This Administration acknowledged early on that the restoration of tribal homelands is the keystone to tribal self-determination and self-governance. During this Administration, more than 428,000 acres of land have been placed into trust for tribes. S. 2636 is a common sense approach for consolidating and restoring tribal homelands for on-reservation and contiguous trust acquisitions. The Department strongly supports S. 2636.

**Current Federal Indian Policy Is to Restore Tribal Homelands**

In light of the devastating effects on Indian tribes of prior federal policies, notably the General Allotment Act of 1887, Congress enacted the IRA in 1934. Among Congress’s purposes in enacting the IRA were: to halt the federal policy of allotment and assimilation; to reverse the negative impact of allotment policies; and to secure for all Indian tribes a land base on which to engage in economic development and self-determination. While the ghosts of the allotment policy continue to impact Indian country, the long-standing Federal policy of restoring tribal homelands is working to ameliorate those harms.

Restoring tribal lands is an essential federal responsibility to ensure a meaningful course correction from the tragic policies of the past. The restoration of tribal homelands provides permanent housing to those that haven none. Tribal homelands ensure that current and future generations are able to develop energy resources in a manner that best meets the needs of that community. Most importantly, Tribal homelands ensure that tribes are able to provide for and protect the health and welfare of tribal citizens.

## **S. 2636**

When the Department acquires land in trust for tribes under section 5 of the IRA, it considers a number of rigorous criteria outlined in 25 C.F.R. Part 151 (151 Regulations) as well as internal guidance and the BIA's Fee-to-Trust Handbook. The Department's criteria are tailored to whether the subject parcel is on-reservation or off, and whether Congress has mandated the Department to take the land into trust.

S. 2636 would mandate the Department to accept land into trust for Indian tribes when the subject lands are wholly within or contiguous to the applicant tribe's reservation. This bill would not change the processing of off-reservation trust acquisitions or acquisitions for individual Indians.

Under S. 2636, the Department will determine whether the subject parcel is within, or contiguous to a tribe's reservation and whether the tribe is on the list of Federally recognized tribes. If so, and Departmental title evidence requirements for mandatory acquisitions are met, the Secretary is required to accept the land into trust. The Department will continue to provide notice to the applicant and the public of the acquisition decision if S. 2636 is enacted.

The effect of S. 2636 would be to restore lands within a tribe's reservation into trust if acquired by the tribe. It would facilitate housing, infrastructure, and economic development as well as reduce over time the "checkerboard" nature of many reservations. It would also aid tribes which still lack meaningful homelands in trust who wish to acquire lands contiguous to their base.

We want to work with the author on technical fixes to address extenuating circumstances such as instances of ownership disputes or contaminated properties.

## **Conclusion**

The Department strongly supports S. 2636. This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

**STATEMENT OF THE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
SENATE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
ON  
S. 3300, HUALAPAI TRIBE WATER RIGHTS SETTLEMENT ACT OF 2016**

**SEPTEMBER 14, 2016**

Thank you for the opportunity to provide the Department of the Interior's position on S. 3300, the Hualapai Tribe Water Rights Settlement Act of 2016, which would approve and provide authorizations to carry out a settlement of the water right claims of the Hualapai Tribe in Arizona (Tribe). The Department has significant concerns about the Federal costs of the settlement, which totals approximately \$173.5 million in 2016 dollars, and may also underestimate its true cost. In addition, the Department is unable to conclude at this time that a pipeline bringing water from the Colorado River to remote locations on the Hualapai Reservation is the best and least costly alternative to supply water to the Hualapai Reservation (Reservation) communities and economic development projects. Therefore, the Department cannot support S. 3300 as introduced.

**I. Introduction**

First, we would like to begin by acknowledging that disputes over Indian water rights are expensive and divisive. In many instances, Indian water rights disputes, which may last decades, are tangible barriers to social and economic progress for tribes, and significantly hinder the rational and beneficial management of water resources. Settlements of Indian water rights disputes break down these barriers and help create conditions that improve water resources management by providing certainty as to the rights of all water users who are parties to the dispute. That certainty provides opportunities for economic development, improves relationships, and encourages collaboration among neighboring communities. This has been proven time and again throughout the West as the United States has pursued a policy of settling Indian water rights disputes whenever possible. Indian water rights settlements are also consistent with the federal trust responsibility to American Indians and with federal policy promoting Indian self-determination and economic self-sufficiency.

For these reasons and more, for nearly 30 years, federally recognized Indian tribes, states, local parties, and the federal government have acknowledged that negotiated Indian water rights settlements are preferable to the protracted litigation over Indian water rights claims. This Administration supports the resolution of Indian water rights claims through negotiated settlement where possible, consistent with the *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Right Claims* ("Criteria and Procedures"). These principles include that the United States participates in water

settlements consistent with its role as trustee to Indians; that Indian tribes receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; that Indian tribes should realize value from confirmed water rights included in a settlement; and that settlements should include appropriate cost-sharing by all parties proportionate to the benefits received by each from the settlement.

## **II. Historical Context**

### **A. The Hualapai Reservation and the Hualapai Tribe**

The aboriginal homeland of the Hualapai Tribe is the Grand Canyon and plateau region to the south of the Grand Canyon. The main Reservation was established by Executive Order on January 4, 1883, and encompasses approximately 992,462 acres of tribal trust lands located in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The entire northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. In addition to the main Reservation, there is also a 60-acre Executive Order Reservation located approximately 40 miles south of the main Reservation.

According to the 2007 population estimates, the population of the Reservation was 1,776. The total tribal membership in 2010, including members living off the Reservation, was 2,300. The majority of on-Reservation residents reside in or near Peach Springs.

Employment on the Reservation primarily consists of recreation, tourism, and tribal and federal government services. Tourism is driven primarily by activities related to the Grand Canyon: the Tribe's tourism center, Grand Canyon West; and river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

Opened in 2007, Grand Canyon West includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Annual visitation at Grand Canyon West has steadily increased since its opening, and exceeded one million visitors for the first time in 2015, making it the primary economic driver on the Reservation.

### **B. Water Resources of the Hualapai Reservation**

The main Reservation is located primarily in the Colorado River basin with a small portion in the Upper Verde River basin. The majority of streams on the Reservation are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide baseflow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these perennial streams are Diamond Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and about 4,600 afy, respectively. The springs that feed these streams are remotely located in deep canyons and are not practically accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater resources on the Reservation occur in varying degrees of magnitude, depending on the type and location of water-bearing zones. The Department is conducting groundwater studies and is preparing to perform two additional groundwater studies in an effort to accurately characterize the groundwater resources on and near the Reservation.

The major water use on the Reservation occurs in two locations: The town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. The current level of water use in Peach Springs is approximately 250 afy. All three supply wells produce water from the Truxton aquifer, an aquifer in the alluvial sand and gravel and lake deposits of Truxton Valley that extends off the Reservation. Water for Grand Canyon West is supplied via a pipeline from a well approximately 30 miles away. Current water use at Grand Canyon West is 40 afy. Current cumulative water use for the Reservation is around 300 afy.

### **III. Proposed Hualapai Tribe Settlement Legislation**

#### **A. Negotiation**

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a negotiating team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases, the first phase addressed certain water rights in the Bill Williams River basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113-223. The second phase, addressed in S. 3300, covers additional water rights in the Bill Williams River basin, as well as the remainder of the Tribe's water rights in the Colorado River basin and the Verde River basin.

S. 3300 would resolve the Tribe's water rights claims in Arizona; ratify, and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona.

S. 3300 authorizes the appropriation of a total of \$173,500,000 for the following purposes:

- \$134,500,000 to design and construct the Hualapai Water Project (Project), consisting of approximately 70 miles of pipeline from the Colorado River to Peach Springs and Grand Canyon West, two water treatment plants, several pumping plants, and other appurtenant features with an overall capacity designed to deliver 3,414 afy;

- \$32,000,000 for the Hualapai OM&R Trust Account, to be used by the Tribe for operation, maintenance, and replacement of the Project;
- \$5,000,000 for the Secretary of the Interior for operation, maintenance, and replacement of the Project until such time that title of the Project is transferred to the Tribe by the Secretary; and
- \$2,000,000 for the Secretary to provide technical assistance to the Tribe, including operation and management training for the Project.

#### **IV. Department of the Interior Positions on S. 3300**

While the Department has a record of strong support for Indian water rights settlements, the Department has significant concerns about S. 3300 and does not support the legislation for the reasons stated below.

The Department is concerned by the disparity between the level of funding called for in S.3300 and the relatively small amount of water to be delivered to the Tribe through the Project. The Department is also concerned about the scope and size of the Project given current and projected water uses on the Reservation. In addition, we believe the cost to construct a 70-mile pipeline from the Colorado River lifting water over 4,000 feet in elevation will be significantly higher than the amount authorized in S. 3300. Moreover, we believe that the proposed infrastructure project is likely to generate substantial litigation on multiple fronts.

The *Criteria and Procedures* require us to analyze whether the settlement “include[s] non-Federal cost sharing proportionate to the benefits received by the non-Federal parties.” In this instance, the State parties have failed to make earnest efforts to provide for adequate cost-sharing relative to the benefits they will receive in this Indian water rights settlement.

The Department is concerned that S.3300 would set a precedent requiring tribes to pay CAP costs that are unrelated to settlement benefits. This settlement would be the first in Arizona that includes CAP water but does not use any portion of the CAP operating system for water deliveries to the Reservation. Despite lack of use of the system, S. 3300 would obligate the Tribe to pay the CAP fixed OM&R charges for all water deliveries. Under such an arrangement, water delivered to the Reservation would incur two OM&R costs – the fixed CAP OM&R charge and the Tribe’s own Project OM&R costs. The Department does not support this “double charge” for water deliveries.

S. 3300 also includes two provisions that the Department continues to have concerns about: a broad waiver of sovereign immunity and a restriction limiting all future land into trust acquisitions to be accomplished only through acts of Congress. While other Arizona Indian water rights settlements contain somewhat similar provisions, the Department has opposed such provisions in the past and continues to do so. The sovereign immunity waiver is even broader than prior provisions and is far broader than it needs to be for any reasonable purpose.



As a final matter, the Department is deeply concerned about provisions of S.3300 and the settlement agreement that prohibit the Tribe and the United States from objecting to any use of groundwater outside the boundaries of the Reservation even if those uses interfere with acknowledged Federal reserved groundwater rights. This provision represents significant risks to both the Tribe and the United States and implicates Federal trust responsibilities.

## **V. Conclusion**

S. 3300 reflects a significant effort by the Tribe and the state parties to settle the Hualapai Tribe's water rights through negotiation. The Department shares this goal and is committed to working with the Tribe and the parties to reach a final and fair settlement of the Tribe's water rights claims that we can fully support.

**TESTIMONY OF  
LARRY ROBERTS  
PRINCIPAL DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
SENATE COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE  
ON  
S. 3222, THE COLUMBIA RIVER IN LIEU AND  
TREATY FISHING ACCESS SITES IMPROVEMENT ACT**

**SEPTEMBER 14, 2016**

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Larry 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 before the Committee on S. 3222, the “Columbia River In Lieu and Treaty Fishing Access Sites Improvement Act,” a bill to authorize the Secretary of the Interior to assess sanitation and safety conditions at Bureau of Indian Affairs (BIA) facilities that were constructed to provide treaty tribes access to traditional fishing grounds and expend funds on construction of facilities and structures to improve those conditions. The Department supports S. 3222, with amendments.

**Background**

United States entered into treaties with tribes along the Columbia River in the 1850s guaranteeing the tribes the rights to their fisheries in exchange for the peaceful cession of most of their territory. However, by the late 1880s, non-Natives had encroached on many of the tribes’ treaty fisheries. The United States filed lawsuits to protect the tribes’ fishing rights, and resulting court determinations re-affirmed their treaty-protected right of access to usual and accustomed fishing grounds.

Currently, the Columbia River Inter-Tribal Fisheries Commission (CRITFC) provides the operations and maintenance of 28 fishing sites along the Columbia River through a BIA Indian Self-Determination and Education Assistance Act Title I, P.L. 93-638 contract, for the exclusive use of Indian fishers from the four CRITFC member tribes.<sup>1</sup> The sites, which are held by the United States for the benefit of the tribes, offer a wide range of amenities for the fishers including access roads and parking areas, boat ramps and docks, fish cleaning tables, net racks, drying sheds, restrooms, mechanical buildings, and shelters.

**S. 3222**

S. 3222, if enacted, would authorize the Secretary of the Interior to assess sanitation and safety conditions at BIA facilities that were constructed to mitigate 400 acres of traditional fishing

---

<sup>1</sup> Yakima Nation, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

villages inundated by federal hydro development. Today many of these facilities receive high use in excess of what they were originally designed. Any funds appropriated would be expended on facilities and structures to improve those conditions, and for other purposes set forth in Section 2(c).

The Department agrees that S. 3222 would help ensure that the lands necessary for Indians to conduct treaty protected fishing remain wholesome and open for Indian fishers actively engaged in the continued use of these fisheries.

The Department notes that Section 2(a) of the bill applies to sites “owned” by BIA. We think it would be more accurate to describe the sites as “lands held by the United States for the benefit of the Treaty Tribes.”

In addition, the Department recommends extending the Secretary of the Interior’s exclusive authorization-delegation authority in Sec. 2 (b) of S. 3222, to include other agencies, (in addition to tribes or tribal organizations already in the bill), that have expertise in the issues facing some sites.

Section 2(c)(2) of S. 3222 would authorize the improvement of “...access to electricity, sewer and water infrastructure, where feasible, to reflect needs for sanitary and safe use of facilities.” When such structures exist it is important to note, that water sources and washrooms are community structures, and where it is feasible, such community structures could be improved or expanded. The Department would not interpret this provision to include improvements for individual electricity and/or sewer water hookups associated with recreational vehicles.

## **Conclusion**

Thank you for providing the Department the opportunity to provide input into S. 3222. The Department supports S. 3222, with amendments. I am available to answer any questions the Committee may have.