

TESTIMONY
OF
JOHN TAHSUDA III
ACTING ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS
HOUSE NATURAL RESOURCES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 212, THE EXPEDITING FUNDING FOR EFFICIENT CONTRACTING TRIBES ACT

NOVEMBER 15, 2017

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, my name is John Tahsuda and I am the Acting Assistant Secretary for Indian Affairs at the Department of the Interior (Department or Interior). Thank you for the opportunity to present the Department's views on H.R. 212, the Expediting Funding For Efficient Contracting Tribes (EFFECT) Act, which would amend the Indian Self-Determination and Education Assistance Act to provide a process for expediting Congressional review of an Indian tribe's funding agreement at the Indian tribe's request.

The Department appreciates the sponsor's commitment to promoting greater efficiencies for the benefit of Indian country. We agree that we need a more efficient, transparent, and holistic approach to approving and implementing these agreements across the Department and its bureaus.

However, the Department has concerns with H.R. 212. We believe Congress has the plenary authority over Indian Affairs and the capacity to modernize and enhance processes currently codified in law. The Department is open to working with the Committee and the sponsor to ensure the efficient implementation of these funding agreements, recognizing our broader interest in more effectively serving Indian Country.

H.R. 212 amends the Indian Self-Determination and Education Assistance Act to permit an Indian tribe to submit a request for expedited review of the tribe's proposed annual funding agreement to the Committee on Indian Affairs of the Senate and the Committee on Natural Resources of the House of Representatives. If the Committees choose to assent to the request, the Secretary for the Department must waive part or all of the review period for the agreement and set or amend the effective date of the agreement, as specified by the requesting tribe and assented by the committees.

The original intent of Section 403 (f) of the Indian Self-Determination and Education Assistance Act was to create a timeline for the Department's review of completed funding agreements. As a result, the payment of funds could begin on the start date of the funding agreement and unnecessary delay would be avoided. Typically, funding agreements begin either in October or January depending on whether the funding agreement followed the fiscal year or calendar year.

The Department is committed to the timely distribution of funds under these agreements. However, given the importance of meeting federal trust responsibilities to tribes and ensuring the continued support of core Indian Affairs programs, the Department is concerned that H.R. 212 could impact the annual budgetary process. The Department works with Tribes on their annual funding agreements within the context of our budget cycles. If the funding agreement authority was delegated to Congress, we would lose the ability to make important decisions related to that process. We welcome the opportunity to work with the sponsor and this Subcommittee on H.R. 212 to achieve the timely execution of funding agreements and timely distribution of funds.

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

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JOHN TAHSUDA III
ACTING ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
ON
H.R. 2320, THE SAMISH INDIAN NATION
LAND CONVEYANCE ACT OF 2017**

NOVEMBER 15, 2017

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, my name is John Tashuda and I am the Acting Assistant Secretary - Indian Affairs. Thank you for the opportunity to present the Department of the Interior's (Department) views on H.R. 2320, the Samish Indian Nation Land Conveyance Act, which directs the Secretary of the Interior to place certain lands in Skagit and San Juan Counties, Washington, into trust for the Samish Indian Nation (Tribe).

Administering trust lands is an important responsibility that the United States undertakes on behalf of Indian tribes. The Congress, through its plenary authority over Indian Affairs, can direct the Department to acquire and administer trust lands as it does in H.R. 2320. The Department thus does not take issue with Congress's decision to pursue legislative proposals, such as H.R.2320, for this purpose.

H.R. 2320 directs the Secretary for the Department to place approximately 97 acres of land into trust for the Samish Indian Nation, only upon certain conditions being met. Under H.R. 2320, the Secretary's land into trust action shall be in accordance with the regulations of the Department of the Interior for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 18 4321 et seq.) that are applicable to trust land acquisitions for Indian tribes that are mandated by Federal legislation. H.R. 2320 also includes a restriction that the Tribe may not conduct any gaming activities on any land taken into trust pursuant to H.R. 2320.

Moreover, H.R. 2320 dictates that not later than 90 days after the date of enactment the Tribe shall conduct a survey and submit it to the Bureau of Indian Affairs (BIA). Not later than 90 days after the survey is submitted to BIA, the Director of BIA shall review the survey and provide the Tribe with a notice of concurrence.. Then, no later than 120 days after BIA concurrence is provided to the Tribe, H.R. 2320 directs the Secretary to submit a copy of the survey to the appropriate committees of jurisdiction in Congress and make the survey publicly available. After the survey and land descriptions are determined and the timeframes have been met, the Secretary shall take the lands identified in H.R. 2320 into trust for the Tribe.

The Department notes that H.R. 2320, which faces opposition from the Swinomish Indian Tribal Community, the Lummi Nation, the Tulalip Tribes, and the Upper Skagit Indian Tribe, would circumvent ongoing investigations regarding whether or not the Samish Indian Nation is entitled to have land taken into trust under *Carciere v. Salazar* [555 U.S. 379]. The Nation has applications currently under consideration by the Bureau of Indian Affairs. Moreover, the

Department has historically indicated the Samish Indian Nation is not a successor and does not have treaty rights under the 1855 Treaty of Point Elliot. H.R. 2320 would significantly alter the extensive legal position of the United States on this matter.

Thank you for the opportunity to present the Department's views on this legislation. I am happy to answer any questions you may have.

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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
ON H.R. 3225, THE “OREGON TRIBAL ECONOMIC DEVELOPMENT ACT”**

NOVEMBER 15, 2017

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, my name is John Tashuda and I am the Acting Assistant Secretary-Indian Affairs. Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on H.R. 3225, the Oregon Tribal Economic Development Act. This legislation would allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands. The Department supports H.R. 3225.

The Department understands that the Tribes listed in this legislation wish to lease, sell, convey, warrant, or otherwise transfer all or any part of their interests in any real property that is *not* held in trust by the United States for the benefit of the Tribes without further approval, ratification, or authorization by the United States. As the language in the bill indicates, such lands do not include any lands currently held in trust by the United States for the benefit of the Tribes.

The Tribes believe they cannot lease, sell, convey, warrant, or otherwise transfer all or any part of its interests in any real property *not* held in trust by the United States unless authorized by Congress. The Tribes presumably are referring to federal law, 25 U.S.C. §177, which prohibits any "purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians."

H.R. 3225 would expressly allow each of the Tribes to lease, sell, convey, warrant, or transfer all or any portion of its interest in *any real property not held in trust status* by the United States for the benefit of the Tribe. Under H.R. 3225, further approval, ratification, or authorization by the United States is not required in order to validate the land transaction. The legislation also clearly states that H.R. 3225 does not authorize the Tribe to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in *any real property that is held in trust by the United States for the benefit of the Tribe*. Given these clear lines, the Department supports H.R. 3225 and believes this authority should be extended to all Tribes for fee simple lands.

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.