

**STATEMENT OF
BRYAN NEWLAND
ASSISTANT SECRETARY – INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS**

June 7, 2023

Good morning, Chair Hageman, Ranking Member Leger Fernández and members of the Subcommittee. Thank you for the opportunity to present testimony regarding H.R. 1240, Winnebago Land Transfer Act of 2023, H.R. 1722, Grand Ronde Reservation Act Amendment of 2023, H.R. 2461, San Juan Southern Paiute Tribal Homelands Act of 2023, H.R. 2839, to amend the Siletz Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians, and for other purposes, and H.R. 3371, Wounded Knee Massacre Memorial and Sacred Site Act.

H.R. 1240, Winnebago Land Transfer Act of 2023

H.R. 1240, Winnebago Land Transfer Act of 2023, would transfer administrative jurisdiction of certain Federal lands from the Army Corps of Engineers to the Bureau of Indian Affairs, to take such lands into trust for the Winnebago Tribe of Nebraska (Tribe). H.R. 1240 would apply to lands on the east side of the Missouri River—specifically, a portion of Tract No. 119, all of Tract 210, and all of Tract 113 located within Woodbury County and Monona County, Iowa.

The Winnebago Reservation was established by the Treaty of March 8, 1865, in exchange for cession of the Tribe's lands in the Dakota Territory. The Treaty of 1865 designated that the Winnebago Reservation would be set apart for the occupation and future home of the Winnebago Indians, forever. However, in the 1970s, the tracts identified in H.R. 1240 were acquired by the U.S. Army Corps of Engineers through an erroneous condemnation action and eminent domain. H.R. 1240 would rightfully restore the Winnebago Reservation boundaries, insofar as the tracts identified are concerned, and would be in keeping with the United States' promise to the Winnebago Tribe in the Treaty of March 8, 1865.

The Department of the Interior supports H.R. 1240. This bill is in line with the Administration's commitment to honor treaty rights, respect Tribal sovereignty, and support the right of Tribal governments to acquire land in trust in furtherance of their self-determination.

H.R. 1722, Grand Ronde Reservation Act Amendment of 2023

In 1954, the Confederated Tribes of the Grand Ronde Community (Tribe) was congressionally terminated, P.L. 83-588. Twenty-nine years later, Congress restored the Tribe's federal recognition, rights, and privileges with the Grand Ronde Restoration Act, P.L. 98-165. In 1988, Congress established a 9,811-acre reservation for the Tribe, P.L. 100-425, and through subsequent

amendments, the Tribe's reservation grew to 9,879 acres. In 1994, the reservation acreage total grew to 10,120 acres, P.L. 103-435 (1994 Act).

After Congress re-established a reservation for the Tribe, the Tribe learned that an 1871 survey used to define the Tribe's original reservation boundaries contained an error, and that an 84-acre parcel known as the "Thompson Strip" was excluded from its reservation. To resolve this exclusion, the Department's Bureau of Land Management (BLM) and the Tribe entered into a land claim settlement wherein the BLM exchanged a 240-acre parcel for the Tribe's Thompson Strip. The 1994 Act made that 240-acre parcel part of the Tribe's reservation and extinguished all of the Tribe's land claims in the State of Oregon.

H.R. 1722, redefines the claims extinguished in the 1994 Act, turning the statewide extinguishment of the Tribe's land claims into a limited extinguishment for the Thompson Strip. H.R. 1722, also makes land obtained by the Tribe as part of a land claim settlement, including any land acquired with funds from any land settlement, approved by the United States ineligible for class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.).

The filing of land claims is not the typical way to correct possible survey errors. Moreover, without compelling justification, the Department is generally not supportive of reviving previously extinguished land claims.

H.R. 2461, San Juan Southern Paiute Tribal Homelands Act of 2023

The San Juan Southern Paiute Tribe is a federally recognized Indian Tribe occupying lands within the Navajo Indian Reservation. Despite there not being a reservation for the exclusive use and occupation of the of the San Juan Southern Paiute Tribe, the Tribe has "existed as a distinct community occupying a specific area from the earliest sustained contact". 54 Fed. Reg. 51,502-51,503 (Dec. 15, 1989). The "specific area" occupied by the San Juan Southern Paiute Tribe is within an area added to the Navajo Indian Reservation by the Act of June 14, 1934, 48 Stat. 960 (1934 Act). The 1934 Act defined the boundaries of the Navajo Indian Reservation and provided that the lands described were thereby "permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo *and such other Indians as may already be located thereon.*" (emphasis added). In the 1980s, the San Juan Southern Paiute Tribe intervened in a federal lawsuit, *Masayesva v. Zah*, which the Hopi Tribe had commenced to determine its rights in the 1934 Act Reservation. The district court identified lands in which the San Juan Southern Paiute Tribe has an exclusive interest and others in which the San Juan Southern Paiute Tribe has a joint interest with the Navajo Nation. But the district court lacked authority to partition land to the San Juan Southern Paiute Tribe. This decision was appealed, and the appeal has been stayed since 1995 to allow for settlement negotiations.

In 2000, the San Juan Southern Paiute Tribe and the Navajo Nation entered into a treaty (Treaty) to set aside lands for the exclusive use of the San Juan Southern Paiute Tribe and to address other governance matters. The Treaty would resolve their dispute from the *Masayesva* case and convey approximately 5,400 acres of land and associated water rights and water rights claims to be held in

trust by the United States for the San Juan Southern Paiute Tribe. The Treaty also preserves certain access rights related to plant gathering and access to burial and sacred sites. Additionally, the Treaty provides for the two Tribes to share certain water sources. The San Juan Southern Paiute Tribe's water rights are not quantified as part of the Treaty and are subject to an on-going adjudication of the Little Colorado River basin. The Treaty requires ratification and approval by Congress.

H.R. 2461 would ratify and approve the Treaty; authorize and direct the Secretary of the Interior (Secretary) to approve and execute the Treaty, including the surveying and marking of the San Juan Southern Paiute Tribe's lands; and delegate to the Secretary the authority to approve amendments to the Treaty without further action by Congress. H.R. 2461 provides that the transfer of lands into trust and proclamation of those lands as a reservation for the San Juan Southern Paiute Tribe is not a major Federal action under the National Environmental Policy Act or an undertaking under the National Historic Preservation Act. In addition to reaffirming and authorizing the Treaty articles on water use and rights, H.R. 2461 provides that the United States will take all necessary steps to quantify the water rights associated with the San Juan Southern Paiute Reservation for the benefit of the San Juan Southern Paiute Tribe. H.R. 2461 requires the Federal government to provide an annual accounting of depletions associated with the use of water on the San Juan Paiute Northern Area, and the depletions associated with those uses shall be accounted for as a depletion by the Navajo Nation for purposes of depletion accounting. The San Juan Southern Paiute Tribe is limited to no more than 300 acre-feet annually from a combination of groundwater and water from springs and washes on the San Juan Paiute Southern Area until water rights are adjudicated.

The Department commends the San Juan Southern Paiute Tribe and Navajo Nation for coming together to craft the Treaty and resolve long-standing issues. We note that the water rights of the San Juan Southern Paiute Tribe as well as those of the Navajo Nation are the current subject of an ongoing, active adjudication. The Department welcomes the opportunity to work with the Committee and sponsor to better understand the implications of this bill and ensure H.R. 2461 accomplishes the intended goals.

H.R. 2839, to amend the Siletz Reservation Act to address the hunting, fishing, trapping, and animal gathering rights of the Confederated Tribes of Siletz Indians, and for other purposes

In 1980, the Siletz Reservation Act (Siletz Act), P.L. 96-340, established a reservation land base for the Confederated Tribes of Siletz Indians of Oregon (Siletz or Tribe). Section 4 of the Siletz Act requires that a May 2, 1980, consent decree entered into between the State of Oregon (State) and Siletz serve as the exclusive and final determination of the Tribe's and its members' hunting, fishing and trapping rights, and that the establishment of the Siletz Reservation does not grant or restore any rights beyond the consent decree to the Tribe or its members.

The consent decree provides that the Tribe has limited locations and take amounts for salmon fishing and deer and elk hunting, no special trapping rights, limited gathering rights, and an option to obtain annual amounts of State-furnished salmon, deer, and elk. The consent decree otherwise prohibits Tribal hunting, fishing, gathering, and trapping activities except as authorized under

Oregon State law.

On April 22, 1980, the State, the Tribe, and the United States entered into an agreement that defined the Tribe's hunting, fishing and trapping rights. H.R. 2839 amends Section 4 of the Siletz Act to allow the April 22, 1980, agreement be amended or replaced upon mutual agreement of the Tribe and the State with certain restrictions. H.R. 2839 limits the contents of any new agreement or amendment to not provide Siletz with an exclusive or primary take outside of the exterior boundaries Siletz Coast Reservation relative to any other Federally recognized Tribe. The bill also restricts any new or expanded take of fishery resources in the Columbia River or in the Willamette River from its mouth to the top of Willamette Falls. Upon the State and the Tribe coming to a new or amended agreement, H.R. 2839 provides that the Tribe and the State may return to Oregon Federal District Court to request the modification or termination of the May 2, 1980, consent decree currently in effect.

H.R. 2839 will provide a process by which Siletz and the State may negotiate to amend or replace the existing agreement defining the Tribe's hunting, fishing, gathering, and trapping rights. The bill will allow for Siletz to negotiate their rights to hunt, fish, and trap throughout their ancestral homelands. H.R. 2839 also provides a vital step forward to allow Siletz to come to a new agreement with the State that may permit the Tribe to exercise their traditional rights more fully as well as manage hunting, fishing, gathering, and trapping on their lands. The Biden Administration and the Department are committed to working with Tribal governments to protect and preserve Tribal traditional hunting, fishing, and gathering rights on Tribal ancestral homelands. To that end, the Department supports H.R. 2839.

H.R. 3371, Wounded Knee Massacre Memorial and Sacred Site Act

In October 2022, the Oglala Sioux Tribe and Cheyenne River Sioux Tribe of the Cheyenne River Reservation (Tribes) acquired approximately 40 acres of land in Wounded Knee, South Dakota. The lands are significant to both Tribes as more than 300 Lakota people were lost at the site in 1890. The Tribes acquired the land from private owners and plan to maintain the site as a memorial and sacred site protected from commercial development.

H.R. 3371 directs the Secretary of the Interior, within one year, to complete and make any corrections to the survey and legal description of the land and any other necessary actions for the land to be held by the Tribes in restricted fee status. H.R. 3371 defines restricted fee status to mean that the two Tribes retain ownership of the land, the lands are part of the Pine Ridge Indian Reservation and subject to civil and criminal jurisdiction of the Oglala Sioux Tribe, cannot be transferred without the consent of Congress and the Tribes, is not subject to State or local taxation, and is not subject to any law requiring the review or approval of the Secretary of the Interior for the Tribes to use the land as allowed by the covenant the Tribes entered into on October 21, 2022. The use of the lands is limited by H.R. 3371 to those outlined in the October 2022 covenant, which states the lands will be held and maintained as a memorial and sacred site without commercial development, and the lands cannot be used for gaming activities under the Indian Gaming Regulatory Act.

The Department supports H.R. 3371 as it aligns with the Administration's commitment to restore Tribal homelands. The Tribes will have more authority to honor and protect the Wounded Knee site.

Conclusion

Chair Hageman, Ranking Member Leger Fernández, and Members of the Subcommittee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions that you may have.