STATEMENT OF GEORGE SKIBINE
ACTING DEPUTY ASSISTANT SECRETARY
POLICY AND ECONOMIC DEVELOPMENT FOR INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE COMMITTEE ON INDIAN AFFAIRS
UNITED STATE SENATE
ON
S.113, A BILL TO MODIFY THE DATE AS OF WHICH CERTAIN TRIBAL LAND OF THE LYTTON RANCHERIA OF CALIFORNIA IS DEEMED TO BE HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE LYTTON BAND OF POMO INDIANS

APRIL 5, 2005

Good morning, Mr. Chairman, Mr. Vice Chairman, and Members of the Committee. My name is George Skibine, and I am the Acting Deputy Assistant Secretary for Policy and Economic Development in the Office of the Assistant Secretary – Indian Affairs at the Department of the Interior (Department). I am pleased to be here this morning to offer the Department's views on S. 113, a bill to modify the date as of which certain tribal land of the Lytton Rancheria of California is deemed to be held in trust by the United States for the benefit of the Lytton Band of Pomo Indians (Lytton Band). For the following reasons, the Department does not have any objections to this bill.

The Bureau of Indian Affairs (BIA) authorized the transfer of several parcels of land in the City of San Pablo, in Contra Costa County, California, on January 18, 2001, pursuant to Section 819 of the Omnibus Indian Advancement Act of 2000, Pub. L. 106-568, which mandated the acquisition of the parcels, also known as the San Pablo Casino site, in trust for the Lytton Band. The Lytton Band's application was originally made under the authority of Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, and was under consideration by the BIA under the authority, procedures, and policies governing the discretionary acquisition of land into trust by the Secretary contained in regulations at 25 CFR Part 151. However, enactment of Section 819 of Pub. L. 106-568 mandated the Secretary to take the San Pablo site into trust without consideration of the factors in the land acquisition regulations. The fact that the Lytton Band wanted to acquire the San Pablo Casino site for gaming purposes was immaterial to what had become the ministerial decision of the Secretary to accept the land into trust.

The last sentence of Section 819 provides that the San Pablo Casino site "shall be deemed" to have been held in trust as part of the reservation of the Rancheria prior to October 17, 1988." This provision permitted the Lytton Band to immediately operate a Class II gaming establishment on the site without having to meet any of the requirements of Section 20 of the Indian Gaming Regulatory Act of 1988 (IGRA) which contains a prohibition on gaming on lands acquired in trust after October 17, 1988, unless one of several statutory exceptions contained in Section 20 of IGRA is satisfied. The Lytton Band cannot operate a Class III gaming establishment under IGRA unless it negotiates a

compact with the State of California, and notice of the Secretary of the Interior's approval of the compact is published in the Federal Register. The Lytton Band and the State have not yet submitted such a compact to the Secretary for approval.

S.113, if enacted, would strike the last sentence of Section 819. The practical effect of removing the so-called "retroactive" clause of Section 819 will be to require the Lytton Band to seek an exception to the gaming prohibition contained in Section 20 of IGRA if the Band wants to engage in either Class II or Class III gaming activities. We believe that the only exception under which the Tribe could qualify is the exception contained in Section 20(b)(1)(A) which requires the Secretary to make a determination that a gaming establishment on the trust land would be in the best interest of the Tribe and its members, and not detrimental to the surrounding community, and is subject to the Governor of the State of California's concurrence. Unless and until the Secretary makes such a determination and the Governor concurs, Class II or class III gaming activities would not be permitted on the San Pablo Casino site, effectively requiring the Lytton Band to shut down its current Class II gaming operation on the property.

The Department does not object to this bill because we believe that it is inappropriate to waive the requirements of Section 20 of IGRA for any particular tribe. Section 20 imposes reasonable restrictions on the right of Indian tribes to engage in gaming activities on off-reservation lands acquired in trust after the enactment of IGRA. The exception in Section 20(b)(1)(A) in particular requires consultation with the local community, consideration of detrimental impacts, and gives the state ultimate veto power over gaming on the off-reservation land. We believe that the standard in Section 20(b)(1)(A) has required Indian tribes to negotiate with the state and affected local governments before a casino is placed on off-reservation land. The Department supports the process of consultation and cooperation between Indian tribes and affected local communities and sees no reason to exempt any tribe from this process.

Thank you for the opportunity to testify on S. 113. I will be happy to answer any questions you may have.