

**S. 2442, S. 2465, S. 2479, S. 2480, AND S.  
2503**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON INDIAN AFFAIRS**  
**UNITED STATES SENATE**  
ONE HUNDRED THIRTEENTH CONGRESS  
SECOND SESSION

—————  
JULY 9, 2014  
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**S. 2442, S. 2465, S. 2479, S. 2480, AND S. 2503**

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**WEDNESDAY, JULY 9, 2014**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. Jon Tester, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

The CHAIRMAN. The Senate Indian Affairs Committee will come to order.

This afternoon the Committee is going to be holding a legislative hearing on five bills affecting land and water resources in Indian Country. We are going to first discuss S. 2442, the Northern Cheyenne Lands Act. The bill would primarily exchange mineral rights between the Tribe and a private company. In the early 1900s, the United States was supposed to provide the Northern Cheyenne Tribe the full subsurface estate within the boundaries of its reservation. However, the United States failed to include approximately 5,000 acres of subsurface rights which are now owned by Great Northern Properties. This bill would address that past mistake. The company is willing to transfer its mineral interests within the reservation to the tribe. In return, the Secretary of Interior will give the company mineral interests off-reservation that are currently managed by the Bureau of Land Management.

This transfer would give the tribe full ownership of the subsurface estate within its reservation boundaries. The tribe would release all claims it has against the United States for failure to provide these interests to the tribe more than a century ago.

S. 2442 was introduced by Senator Walsh and myself. Senator Walsh has joined us here today to talk about the bill as well as Northern Cheyenne Tribal President Llevando Fisher. We will hear from Llevando a little bit later.

We are also going to hear testimony about S. 2479 and S. 2480, which are two bills affecting tribes in Nevada. S. 2479 and S. 2480 would convey lands to eight tribes in Nevada for housing, economic development, conservation and cultural purposes.

We are also going to discuss S. 2503, the Bill Williams River Water Rights Settlement Act of 2014. This bill is a result of the Hualapai Tribe and its neighbors working together in a positive manner to work out their issues. I have seen a good number of

water settlements in Montana and I know how much easier it is that these settlements can be accomplished if everyone is working together to find solutions to reach common goals. Senator Flake will be joining us shortly, I hope, to talk about this bill and the benefits it will provide to all the parties involved.

And finally, we will discuss S. 2465, the Albuquerque Indian School Land Transfer Act. The Albuquerque Indian School provided education to Indian students for nearly a century. After closing down in the 1960s, sections of the property have been transferred to 19 Pueblos which own the land jointly. Together, the Pueblos have used this property for economic development activities including a hotel and an Indian Pueblo cultural center. The cultural center has become a tourist attraction in Albuquerque and provides education and cultural activities related to the Pueblos. S. 2465 would transfer a few more acres of land jointly to the Pueblos.

I want to thank everybody for being here, everybody who is going to be testifying today. And with that, I would ask Senator Barrasso if he has an opening statement.

**STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Thank you very much, Mr. Chairman, for holding today's hearing. I want to welcome my friends to the Committee, Senator Walsh, and I understand Senator Flake will be joining us shortly.

For Indian tribes, natural resources provide significant economic, cultural and social benefits to the communities. As I have stated in prior hearings, on some reservations, oil and gas or coal reserves represent by far the number one best opportunity for prosperity. So we should be asking, what can Congress and the Administration do to help tribes and their members make use of these resources, if in fact that is what they want to do. For that reason, I have introduced S. 2132, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2014. That is a bill, Mr. Chairman, that we can get signed into law this year and kick start tribal energy development.

Reducing excessive and unnecessary regulations, reforming outdated approval processes and working with, not against, tribes that want to develop their resources I believe is a good starting point. We must also be sensitive to the barriers that the energy-producing tribes face getting the resources to viable markets, both domestic and foreign. Access to pipelines, to rails, to refiners and shipping ports is critical. Congress can and will need to play a role to ensure that tribes not only have the ability to make their resources and develop their resources but also have access to the markets.

So I welcome the witnesses and look forward to the testimony. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Barrasso.

We are going to now hear testimony from Senator Walsh and hopefully before you get done, Senator Walsh, Senator Flake will be here to explain the Bill Williams Water Rights Act.

But for now, Senator Walsh, my colleague from Montana, who is the chief sponsor of S. 2442, the Northern Cheyenne Lands Act, the floor is yours to talk about this bill. Senator Walsh.

**STATEMENT OF HON. JOHN E. WALSH,  
U.S. SENATOR FROM MONTANA**

Senator WALSH. Thank you, Mr. Chairman, Chairman Tester, Vice Chairman Barrasso, for the honor of testifying before this illustrious Committee.

I am here today to provide testimony in support of S. 2442, the Northern Cheyenne Lands Act. This is an important bill for the Northern Cheyenne, a tribe in southeast Montana. I appreciate Chairman Tester's co-sponsorship of this legislation.

I also want to thank Northern Cheyenne President Fisher for his leadership on this issue and look forward to his testimony.

In my second week as a United States Senator, I traveled to the Northern Cheyenne Reservation and heard directly from tribal leadership about the importance of fixing a century-old wrong that has significantly reduced the tribe's ability to pursue economic development opportunities on their reservation. I also heard about a variety of land consolidation challenges and trust responsibilities on the reservation that could be improved.

In 1900, when the original boundaries of the Northern Cheyenne Reservation were expanded, the Federal Government failed to acquire the underlying mineral rights for the tribe. Approximately 5,000 acres of coal and other mineral rights were lost to the tribe. Currently, Great Northern Properties holds these mineral rights underlying the tribe's land. This bill provides a long-overdue solution. The Northern Cheyenne Lands Act conveys to the tribe 117 million tons of coal under about 5,000 acres held by Great Northern Properties. Once the conveyance is completed, these mineral rights will be held in trust on behalf of the tribe. In exchange, Great Northern Properties will receive 112 million tons of federally-owned coal on the Bull Mountains and the East Fork area.

Our bill keeps surface owners in the Bull Mountains whole under current law. This bill also clears the way for a revenue sharing agreement where the tribe will receive royalty payments from Great Northern Properties on any revenues the company earns through the development of Federal coal tracts conveyed in this legislation.

Senate Bill 2442 also directs the Secretary of the Interior to take into trust 1,567 acres of land for the tribe. These lands hold significant cultural value for the Northern Cheyenne. This is a simple fix that will allow the tribe to consolidate more of its land for its members, promote tribal self-governance and protect culturally-important sites.

This bill also transfers important trust funds to the tribe and aims to reduce fractionation on the reservation, including through the Interior Department's land buyback program.

In conclusion, I strongly urge the Committee to support the Northern Cheyenne Lands Act in order to consolidate land ownership, correct a century-old wrong, create jobs and revenue and promote tribal self-governance. Thank you again, Mr. Chairman, for this opportunity. I appreciate your support.

[The prepared statement of Senator Walsh follows:]

## PREPARED STATEMENT OF HON. JOHN E. WALSH, U.S. SENATOR FROM MONTANA

Thank you Chairman Tester and Vice Chairman Barrasso for the honor of testifying in front of this illustrious committee. I am here today to provide testimony in support of Senate Bill 2442, the Northern Cheyenne Lands Act. This is an important bill for the Northern Cheyenne Tribe in southeast Montana and I appreciate Chairman Tester's co-sponsorship of this legislation.

I also want to thank Northern Cheyenne President Fisher for his leadership on this issue and look forward to his testimony.

In my second week as a United States Senator, I travelled to the Northern Cheyenne Reservation and heard directly from tribal leadership about the importance of fixing a century old wrong that has significantly reduced the tribe's ability to pursue economic development opportunities on their reservation. I also heard about a variety of land consolidation challenges and trust responsibilities on the reservation that could be improved.

In 1900, when the original boundaries of the Northern Cheyenne Reservation were expanded, the federal government failed to acquire the underlying mineral rights for the tribe. Approximately 5,000 acres of coal and other mineral rights were lost to the tribe. Currently, Great Northern Properties holds these mineral rights underlying the tribe's land.

This bill provides a long overdue solution. The Northern Cheyenne Lands Act conveys to the Tribe 117 million tons of coal under about 5,000 acres held by Great Northern Properties. Once the conveyance is completed, these mineral rights will be held in trust on behalf of the Tribe. In exchange, Great Northern Properties will receive 112 million tons of federally-owned coal in the Bull Mountains and the East Fork area. Our bill keeps surface owners in the Bull Mountains whole under current law.

This bill also clears the way for a revenue sharing agreement, where the Tribe will receive royalty payments from Great Northern Properties on any revenues the company earns through the development of federal coal tracts conveyed in this legislation.

Senate Bill 2442 also directs the Secretary of the Interior to take into trust 1,567 acres of land for the tribe. These lands hold significant cultural value for the Northern Cheyenne. This is a simple fix that will allow the tribe to consolidate more land for its members, promote tribal self-governance, and protect culturally important sites.

The bill also transfers an important trust fund to the Tribe and aims to reduce fractionation on the reservation, including through the Interior Department's Land Buy-Back Program.

In conclusion, I strongly urge the Committee to support the Northern Cheyenne Lands Act in order to consolidate land ownership, correct a century-old wrong, create jobs and revenue, and promote tribal self-governance.

Thank you again for this opportunity to testify.

The CHAIRMAN. Senator Walsh, thank you for your testimony. We appreciate your leadership on this bill. Thank you for taking time out of what I know is a very busy schedule to come introduce this bill to the Indian Affairs Committee.

As they would say in elementary school, you are dismissed and we will bring up the next panel. Thank you very much, Senator Walsh.

Our next panel is going to be Mike Black, and what we are going to do, Mike, we have five bills up here today. We are going to give you ten minutes, if you need all ten, use all ten. If you need a little more, we will give you a little bit of flexibility. Typically we hold people to five minutes for their full testimony but I don't think you can get through these bills in that amount of time. Because we want to hear the Department's opinion.

What we are going to do is, we will let you get started here in a moment. If Senator Flake shows up, we will find out how busy he is, we might kick it over to him and then back to you again.



With that, we have Mike Black, who is the Director of the Bureau of Indian Affairs at the Department of Interior. Your entire written statement will be a part of the record.

With that, I appreciate your coming up. I know you are busy. But I appreciate your coming up to visit with us about these five bills.

With that, the floor is yours.

**STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. BLACK. Good afternoon, Chairman Tester, Vice Chairman Barrasso and members of the Committee. Thank you for the opportunity to provide testimony for the Department of Interior on the five bills that are the subject of this legislative hearing.

Regarding S. 2442, the Northern Cheyenne Lands Act, the Department of Interior appreciates the diligent work of the entire Montana Congressional delegation to seek an equitable solution to a vexing and complex situation regarding ownership of the mineral estate underlying Northern Cheyenne Indian Reservation. The Department supports the goals of the legislation and would like to work with the sponsor and the Committee on modifications to the bill.

The issues in this bill are complex. The Department recognizes the unique role Congress can play in arbitrating difficult situations. The department recognizes that we have a unique trust responsibility to the Northern Cheyenne Tribe and therefore we are committed to finding an equitable solution consistent with the Federal Land Policy Management Act and departmental policy.

S. 2442 reflects the dedication of the Montana delegation and the stakeholders to resolve this complex situation. First, by directing the Secretary of Interior to take approximately 1,567 acres of tribally-owned fee lands into trust for the tribe. Second, the bill conveys 5,007 acres of subsurface coal and iron mineral estate currently held by Great Northern Properties within the reservation to the tribe, while transferring federally-held coal interests to GNP in compensation. The mineral estates conveyed to the tribe would be held in trust by the United States for the benefit of the tribe.

S. 2465, the Albuquerque Indian School Land Transfer Act, directs the Secretary for the Department of Interior to transfer four parcels of land, or approximately 11.11 acres of federally-owned lands located in Albuquerque, New Mexico into trust for the benefit of the 19 Pueblos in New Mexico. S. 2465 also provides that these lands, once transferred into trust, shall be used by the 19 Pueblos for the educational, health, cultural, business and economic development of the Pueblos and any private or municipal encumbrance, right-of-way restriction, easement of record or utility record or utility service agreement in effect on the enactment of this bill shall remain.

The bill also prohibits Class I, Class II and Class III gaming.

The Department supports S. 2465, but has concerns regarding the bill as it is currently drafted. While the bill does provide a definition of the property in Section 3, the Department has a map and legal description of the land referred to in the bill that is more spe-

cific, and we recommend that the language be inserted into the bill to reflect this map and legal description.

Also, the Department is concerned that the limitations and conditions language in Section 3(e) of the bill is not specific enough and we would like to work with the Committee and sponsor and others to ensure that we have access to certain parcels of those lands which are currently used by the Southern Pueblos Agency for a warehouse and equipment storage yard.

S. 2479, the Moapa Band of Paiutes Land Conveyance Act, directs that approximately 26,000 acres of public land in southern Nevada be held in trust for the Moapa Band of Paiutes. The Department supports S. 2479 and would like to work with the sponsor and the Committee on modifications concerning energy transmission corridors, recreational opportunities and protection of sensitive species.

S. 2480, the Nevada Native Nations Lands Act, provides for the Secretary of Interior to hold various lands in trust for the benefit of a number of federally-recognized tribes in Nevada subject to valid and existing rights. These lands, totaling nearly 93,000 acres, are currently primarily managed by the Bureau of Land Management. The bill also includes a conveyance of BLM-managed lands to Elko County, Nevada for public purposes.

Placing land into trust for tribes is a top priority of this Administration. The Department of Interior supports S. 2480 with a few concerns explained in my written testimony. In particular, we would like to work with the sponsor and the Committee on amendments which would address concerns about mineral development as well as a few boundary modifications.

S. 2503, the Bill Williams River Water Rights Settlement Act of 2014, would authorize, ratify and confirm two agreements which together result in a number of issues in the Bill Williams River Basin, including issues relating to a southern transfer of water rights to serve Freeport Minerals Corporation mining operation in the Lower Colorado River Multi-Species Conservation Program, as well as resolving certain water rights issues among Freeport, the United States and the Hualapai Tribe. While the Administration supports the goals of the bill, we have significant concerns about the waiver of sovereign immunity provisions that must be resolved before the Administration can fully support the bill. We look forward to working with the parties, the bill's sponsors and this Committee to address the issue.

This concludes my statement and I will be happy to answer any questions the Committee may have. I assumed I only had five minutes.

[Laughter.]

[The prepared statement of Mr. Black follows:]

PREPARED STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

S. 2442, NORTHERN CHEYENNE LANDS ACT

Good morning Mr. Chairman and Members of the Committee. Thank you for inviting the Department of the Interior to provide testimony on S. 2442, the Northern Cheyenne Lands Act. The Department of the Interior appreciates the diligent work of the entire Montana congressional delegation to seek an equitable solution to a

vexing and complex situation regarding the ownership of the mineral estate underlying the Northern Cheyenne Indian Reservation. The Department supports the goals of the legislation and would like to work with the sponsor and the Committee on modifications to the bill.

S. 2442 includes significant improvements over an earlier version of the proposal on which we testified during the 112th Congress. We appreciate the efforts of the delegation to address many of the issues previously highlighted by the Department. The issues in this bill are complex and the Department recognizes the unique role Congress can play in arbitrating difficult issues. The Department recognizes that we have a unique trust responsibility to the Northern Cheyenne Tribe and therefore we are committed to finding an equitable solution consistent with the Federal Land Policy and Management Act (FLPMA) and Department policy.

### **Background**

The Northern Cheyenne's relationship to these lands is without dispute. Despite the Tribe's forced relocation from this area to Oklahoma in 1877, the Northern Cheyenne walked back to southeastern Montana to reclaim their ancestral lands, and the reservation was established a few years later in 1884. Today, the tribe has approximately 10,000 enrolled members; about 5,000 of those members live on the reservation. Beyond some agriculture pursuits such as cattle ranching, there are few economic opportunities for Tribal members.

In 1900, approximately 5,000 acres of the mineral estate underlying eight sections of land remained in private ownership when the boundaries of the Northern Cheyenne Indian Reservation were expanded. Great Northern Properties (GNP) is the holder of this mineral estate underlying tribal lands, which was acquired from the Northern Pacific Railway. All other mineral interests underlying the Reservation are held by the Federal Government in trust for the Tribe.

### **S. 2442**

S. 2442 reflects the dedication of the Montana delegation and the stakeholders to resolve this complex situation. First, S. 2442 directs the Secretary of the Interior to take approximately 1,567 acres of Tribal-owned fee-lands into trust for the Tribe. Second, the bill conveys 5,007 acres of subsurface coal and iron mineral estate currently held by GNP within the Reservation to the Tribe, while transferring Federally-held coal interests underlying 7,952 acres in the "Bull Mountains" tracts and 1,420 acres in the "East Fork" tracts to GNP in compensation. The mineral estates conveyed to the Tribe would be held in trust by the United States for the benefit of the Tribe. The bill also includes provisions for revenue sharing and waiver of legal claims and precludes mining except by underground techniques on the "Bull Mountains" and "East Fork" tracts until written consent of the surface owner is obtained and except as determined in the BLM's Billings Resource Area Resource Management Plan. Finally, the bill authorizes transfer of the Northern Cheyenne Trust Fund to the Tribe's Permanent Fund.

As the Committee is aware, restoring tribal homelands is one of this Administration's highest priorities. S. 2442, Section 4, directs the Secretary of the Interior to take approximately 1,567 acres of land into trust for the Tribe. A portion of these lands are within the Tribe's current reservation, but two other locations are outside the Tribe's current reservation and are located in the state of South Dakota. The Department supports taking these lands into trust. S. 2442 refers to two maps, the "Northern Cheyenne Land Act—Fee-to-Trust Lands," dated April 22, 2014, and the "Northern Cheyenne Land Act—Fee-to-Trust Lands—Lame Deer Townsite," dated April 22, 2014, evidencing the lands to be taken into trust for the Tribe by the Secretary of the Interior. While the legislation references the maps by title, the Department highly recommends the use of legal descriptions to describe the property to be taken into trust for the Tribe.

In accordance with FLPMA and Department policy, we require equal value exchanges and completion of an appraisal consistent with Uniform Appraisal Standards when the Department enters into exchanges of land or interests in lands. S. 2442 seeks to address equalization based on estimated coal tonnage without standard appraisal practices or a mechanism for adjusting the acreage to achieve equal value. While the Department understands that S. 2442 seeks to address tribal settlement issues that are beyond the scope of FLPMA and Department of Justice regulations on equal value exchanges, we would like to work with the sponsors to ensure that the principle of equal value is maintained, and appraisals are consistent with Uniform Appraisal Standards.

The Department notes that the Federal coal interests referred to as the "East Fork" tracts may encompass part of an alluvial valley floor which may complicate the conveyance and the future development of these tracts. Under the Surface Min-

ing Control and Reclamation Act, coal parcels occurring under or near an alluvial valley floor qualify for an exchange of the affected fee coal for unleased Federal coal if certain conditions are met. Alluvial valley floor exchanges would be processed pursuant to FLPMA. Completing such an exchange can be a lengthy and complicated process.

It should also be noted that the 60-day deadline for conveyance of mineral rights is not sufficient to complete the necessary analysis under the National Environmental Policy Act and the Department suggests changing this to a minimum of 120 days. Additionally, the Department suggests rephrasing Sec. 5(a)(1)(A) to avoid directing a private entity to complete a conveyance, and instead ensure that any exchange is optional on the part of the private party.

Finally, Section 7 of the bill directs the Secretary, in consultation with the Tribe, to prepare and submit to the Committee an inventory of fractionated land interests held by the United States in trust for the benefit of the Tribe or individual Indians on the Reservation, and to provide periodic reports regarding obstacles to consolidating trust land ownership on the Reservation.

The Department, through the BIA, currently inventories the fractionated lands held in trust for the Tribe and held in trust for individual Indians of the Tribe. The BIA has provided such inventory to the Department's Land Buy Back Program for Tribal Nations (Buy-Back-Program), the Northern Cheyenne Agency Superintendent and the Northern Cheyenne Tribal Outreach Coordinator. The inventory identifies the lands that are suitable for agriculture on the Northern Cheyenne Reservation. The majority of the trust lands suitable for agriculture, which include allotted and Tribal owned lands, are currently leased and if the lands are not leased then they are being used by their owners primarily for agriculture.

The Buy-Back-Program has been collaborating with the Tribe to address the land fractionation issue on the Northern Cheyenne Indian Reservation (Reservation). The Buy-Back Program purchases fractional interests in trust or restricted land from willing sellers at fair market value for immediate transfer and consolidation of those interests for the tribe with jurisdiction over those interests. The Buy-Back Program, which was created as a result of the *Cobell* Settlement and authorized by the Claims Resolution Act of 2010, has been working closely with the Tribe since the fall of 2013 and has completed extensive mapping of the Reservation, land valuation work, and has entered into a cooperative agreement with the Tribe for the Tribe to perform educational outreach to Northern Cheyenne landowners. The Buy-Back Program intends to begin purchasing fractional interests at the Reservation in the fall of 2014. The work being done, in consultation with the Tribe, already includes preparing some form of an inventory of fractionated land interests, especially for those lands that potentially may be bought by the Tribe through the Buy-Back Program from willing sellers. The Department would like to work with the Sponsor, the Committee, and the Tribe on ways to achieve the goals of Section 7 of the bill without duplicating efforts already underway.

### **Conclusion**

Thank you again for the opportunity to testify on the Northern Cheyenne Lands Act. The Department strongly supports efforts to find a fair and equitable solution to the long-standing issues facing the Northern Cheyenne Tribe and is committed to continuing to work cooperatively towards this end. The Department welcomes the opportunity to resolve these issues for the benefit of the Northern Cheyenne Tribe.

### S. 2465

Good afternoon Chairman Tester and Vice Chairman Barrasso, and Members of the Committee. Thank you for the opportunity to provide testimony on behalf of the Department on S. 2465, a bill to require the Secretary of the Interior to take into trust four (4) parcels of Federal land for the benefit of certain Indian Pueblos in the State of New Mexico.

S. 2465 deals with the status of certain lands as they directly relate to the Secretary of the Department's authority to receive through a transfer of federal lands and take such lands into trust for federally recognized Indian tribes. President Obama committed to work with the federally recognized Indian tribes on a government-to-government basis on matters that affect such federally recognized Indian tribes. It is in the spirit of this commitment that the Department looks forward to the opportunity to work with this Committee and members of Congress, the nineteen (19) Pueblos in New Mexico, as identified in S. 2465 to achieve the goals of S. 2465.

S. 2465 directs the Secretary for the Department of the Interior to transfer four (4) parcels of land into trust for the benefit of the nineteen (19) Pueblos in New

Mexico, as defined in the bill, comprising approximately 11.11 acres of Federal land located in Albuquerque, New Mexico. S. 2465 also provides that these lands, once transferred into trust, shall be used by the nineteen (19) Pueblos for the educational, health, cultural, business, and economic development of the nineteen (19) Pueblos, and any private or municipal encumbrance, right-of-way, restriction, easement of record, or utility service agreement in effect on the date of enactment of S. 2465, shall remain. The bill also prohibits Class I gaming, Class II gaming, or Class III gaming. The Department supports S. 2465, but has several concerns regarding the bill as it is currently drafted.

The nineteen (19) Pueblos, as defined in the bill, were previously transferred similar parcels of federal land, approximately 8.4 acres, in trust for their benefit in 2008. Public Law 110–453. While S. 2465 does provide a definition of the property in Sec. 3, the Department does have a map and legal description of the land referred to in S. 2465 that is more specific and recommends that language be inserted into S. 2465 to reflect this map and legal description. The Department appreciates the opportunity, provided in the bill, to conduct a survey satisfactory to the Secretary of the Department to determine the exact acreage and legal description of the land.

The Department is concerned that the “limitations and conditions” language in Sec. 3(e) of S. 2465 is not specific enough for the Bureau of Indian Affairs (BIA), to continue utilizing those parcels while the parcels are held in trust for the nine (19) Pueblos. The BIA currently utilizes one parcel to house the fire program for the Southern Pueblos Agency and the other parcel has a warehouse and an equipment storage yard, again for the Southern Pueblos Agency. The warehouse and yard store construction and transportation equipment for the BIA Roads Program and Natural Resources Program in the BIA Southwest Regional Office. The Department recommends inserting language that allows the BIA to continue to utilize these parcels for current BIA purposes.

#### S. 2479, MOAPA BAND OF PAIUTES LAND CONVEYANCE ACT

Thank you for the opportunity to testify on S. 2479, which directs that approximately 26,565 acres of public land in southern Nevada be held in trust for the Moapa Band of Paiutes. The Department supports S. 2479 and would like to work with the Sponsor and the Committee on modifications concerning energy transmission corridors, recreational opportunities, and protection of sensitive species.

#### **Background**

The Moapa Band of Paiute Indians (Tribe) is a federally recognized Indian tribe that resides on the Moapa River Reservation (Reservation). The Reservation was initially set aside in 1874, and is currently comprised of approximately 71,954 acres in southern Nevada.

The lands proposed in S. 2479 to be held in trust for the Tribe are adjacent to the existing Reservation. Most of the lands are currently managed by the Bureau of Land Management (BLM) Las Vegas Field Office under its 1998 Las Vegas Resource Management Plan (RMP). This RMP is under revision to address renewable energy development, energy transmission, sensitive species, cultural resource protection, and recreation issues. The draft RMP is currently expected to be available for public review later this year and a Record of Decision is expected by early 2016.

#### **S. 2479**

Subject to valid existing rights, S. 2479 transfers approximately 26,565 acres of public land currently administered by the BLM and the Bureau of Reclamation to be held by the United States in trust for the Tribe. Under the bill, the Secretary of the Interior would be required within 180 days of enactment to complete a survey to establish the boundaries of the land to be held in trust. S. 2479 provides that this land shall not be used for class II or III gaming, and can be used only for traditional and customary uses, stewardship conservation for the benefit of the Tribe, residential or recreational development, or renewable energy development. Any other use would require the Tribe to pay to the Secretary the fair market value of the lands, as determined by standard appraisal practices. Application of this process to land taken into trust is not a familiar approach, and the Department would need to conduct additional review and analysis before taking a position on this portion of the legislation.

Currently, several important rights-of-way cross the lands proposed to be held in trust in S. 2479, including the West Wide Energy Corridor which crosses the western portion of the proposed lands. The Old Spanish Trail, a national historic trail, crosses the southern portion of the proposed lands, and many of the lands identified are also important recreation areas. The southern portion of the proposed lands is

also habitat for the three-corner milkvetch, a BLM-sensitive plant species, listed by the State of Nevada as “critically endangered.” All of these matters are being addressed in the RMP revision, which will cover 3.1 million acres in southern Nevada, including all of the acreage identified to be held in trust in S. 2479.

The Department supports S. 2479, and recommends it be amended to address the land management concerns identified above regarding energy transmission. To ensure that this area continues to be an important corridor for renewable energy development and transmission in the future, we recommend that energy transmission be an identified use of the lands under the bill.

The Department would also like to have further discussions with the Sponsor and Committee regarding the fair market value provisions in Sec. 3(d)(2)(B). We would be glad to work with the Sponsor and the Committee on proposed amendments to the bill.

### **Conclusion**

Thank you for the opportunity to testify in support of this legislation which will provide important benefits to the Tribe.

### S. 2480, NEVADA NATIVE NATIONS LANDS ACT

Thank you for the opportunity to provide the views of the Department of the Interior (Department) on S. 2480, the Nevada Native Nations Lands Act. S. 2480 is a bill that provides for the Secretary of the Interior to hold in trust for the benefit of a number of Federally-recognized tribes nearly 93,000 acres of Federal lands managed by the Bureau of Land Management (BLM) and the United States Forest Service in Nevada. The bill also provides for the conveyance of about 275 acres of BLM-managed lands to Elko County for public purposes. Placing land into trust for tribes is a top priority for this Administration. The Department of the Interior welcomes opportunities to work with Congress on lands to be held in trust and supports S. 2480, with a few concerns noted below. The Department defers to the U.S. Department of Agriculture regarding National Forest System Lands.

Some of the parcels identified in this legislation contain lands that are Preliminary General or Preliminary Priority Habitat for the Greater Sage-Grouse. The potential listing of the Greater Sage-Grouse under the Endangered Species Act is a serious concern of the Federal Government. That decision by the U.S. Fish and Wildlife Service is expected in 2015. Additionally, most of the lands proposed to be held in trust occur within existing grazing allotments, and transfer of jurisdiction over these lands would likely affect the current permittees.

### **S. 2480**

Following is a discussion of the provisions of the bill by title with an explanation of the Department’s views as they relate to each contemplated transfer.

#### *Elko Motocross Land Conveyance, Title I*

Title I of S. 2480 would convey approximately 275 acres of BLM-managed lands to Elko County, Nevada, for a public motocross park. The conveyance would be subject to valid existing rights. The land is to be used only for purposes consistent with the Recreation and Public Purposes (R&PP) Act and includes a reversionary clause if the lands are used for other purposes. The bill requires the county to pay all administrative costs associated with the transfer. The BLM regularly works with local governments and non-profits to lease or convey public lands for recreational and other public purposes at very low cost. The BLM supports the transfer of this parcel of land to Elko County for a motocross park.

We recommend the addition of a clause allowing the Secretary to add reasonable terms and conditions to the transfer. For example, it might be necessary to include in the conveyance documents a provision for maintenance access by a right-of-way holder to an existing oil and gas pipeline in the lands to be conveyed. A “terms and conditions” clause would allow us to address this and similar situations. Additionally, the Department of Justice recommends that Section 102(a) of the bill be revised to make absolutely clear that the city or county would have to agree to the proposed conveyance, which is what we understand the sponsor intends. Finally, we recommend clarifying that the conveyance is subject to compliance with other federal laws, such as the National Environmental Policy Act.

#### *Conveyance of Land to Indian Tribes, Title II*

Title II of S. 2480 provides that seven areas of public lands are held in trust for specific Native American Tribes in Nevada. The bill includes a provision requiring surveys of the lands within 180 days of enactment. S. 2480 also provides that land shall not be used for Class II or III gaming, and can be used only for traditional

and customary uses, stewardship conservation for the benefit of the Tribe, residential or recreational development, renewable energy development, or mineral development. Any other use would require the Tribe to pay to the Secretary the fair market value of the land, as determined by standard appraisal practices. Application of this process to land taken into trust is not a familiar approach, and the Department would need to conduct additional review and analysis before taking a position on this portion of the legislation.

The Department and the BLM strongly believe that open communication between the BLM and tribes is essential in maintaining effective government-to-government relationships. In this spirit, the BLM has had a cooperative working relationship with the Tribes and the Department is pleased to support the provisions concerning lands to be held in trust for the benefit of these Tribes. In general, the Department would like to discuss further with the sponsor and Committee the fair market value provisions in Sec. 202(b)(2)(B) and (C). We would be glad to work with the sponsor and the Committee on proposed amendments to the bill. Specific comments about each proposed area follow.

(a) Trust Land for Te-Moak Tribe of Western Shoshone Indians of Nevada (Elko Band)

Section 201(a) provides that approximately 373 acres of BLM-managed lands are to be held in trust for the benefit of the Te-Moak Tribe of Western Shoshone Indians, Elko Band, subject to valid existing rights. These lands are adjacent to an existing parcel held in trust for the Elko Band and are identified in the BLM's Elko Resource Management Plan as suitable for disposal. The Department supports holding these lands in trust for the Elko Band.

(b) Trust Land for Fort McDermitt Paiute & Shoshone Tribe

Section 201(b) provides that approximately 19,094 acres of BLM-managed lands are to be held in trust for the benefit of the Fort McDermitt Paiute and Shoshone Tribe of the Fort McDermitt Indian Reservation, subject to valid existing rights. These lands are adjacent to and surrounding the existing Fort McDermitt Indian Reservation. The BLM notes that this area contains Preliminary General Habitat for the Greater Sage-Grouse. The Department supports holding these lands in trust for the benefit of the Tribe, but would like to work with the sponsor on minor technical and boundary amendments.

(c) Trust Land for Shoshone Paiute Tribes

Section 201(c) provides that approximately 82 acres of land are to be held in trust for the benefit of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, subject to valid existing rights. The lands to be held in trust under this section are currently managed by the United States Forest Service, and the Department of the Interior defers to the Forest Service on the current management of those lands.

(d) Trust Land for Summit Lake Paiute Tribe

Section 201(d) provides that, subject to valid existing rights, approximately 941 acres of BLM-managed lands are to be held in trust for the benefit of the Summit Lake Paiute Tribe. These lands would expand the existing Summit Lake Indian Reservation to entirely surround Summit Lake. The Department supports holding these lands in trust for the benefit of the Tribe.

(e) Trust Land for Reno-Sparks Indian Colony

Section 201(e) provides that approximately 13,434 acres of BLM-managed lands are to be held in trust for the benefit of the Reno-Sparks Indian Colony, subject to valid existing rights. The lands are adjacent to the current reservation. The Department supports the proposed land transfer in Section 201(e), but would like to work with the sponsor to address boundary modifications to ensure manageability. In particular, the BLM notes that the proposed configuration would isolate some BLM-managed land. Isolated, irregularly shaped parcels like these are difficult to manage, especially in terms of public safety, recreation, energy development or transmission, grazing, and fire suppression.

(f) Trust Lands for Pyramid Lake Paiute Tribe Land

Section 201(f) provides that three areas comprising approximately 30,669 acres of BLM-managed land are to be held in trust for the benefit of the Pyramid Lake Paiute Tribe, subject to valid existing rights. The three areas to be held in trust are adjacent to the current reservation, which surrounds the southeast portion of Pyramid Lake. Section 201(f) would consolidate land-administration. The Department supports holding these lands in trust for the Pyramid Lake Paiute Tribe.

## (g) Trust Land for Te-Moak Tribe of Western Shoshone (South Fork Band)

Section 201 (g) provides that three areas totaling approximately 28,162 acres of BLM-managed land are held in trust for the benefit of the South Fork Band. The two northern areas identified for transfer are near or adjacent to portions of the existing reservation. The third parcel is primarily composed of the Red Spring Wilderness Study Area, which would be released by the bill.

The Department supports holding these lands in trust, especially the interspersed lands in the northern parcels, where the proposal would consolidate checkerboard lands, improving land management. We note, however, that there is currently great interest in oil and gas development on and near the southern parcel, and the impact of the exception provided in Section 201(g)(2)(B)(ii) on future development is unclear. We would like to further discuss these provisions with the sponsor and Committee.

**Conclusion**

The Department of the Interior welcomes opportunities to work with Congress and tribes on holding lands in trust. We support the intent of the legislation and look forward to working with the Sponsor and the Committee to address the issues we have outlined in this testimony.

## S. 2503, BILL WILLIAMS RIVER WATER RIGHTS SETTLEMENT ACT OF 2014

Good afternoon, Chairman Tester, Vice Chairman Barrasso, and Members of the Committee, I am Michael Black, Director of the Bureau of Indian Affairs at the Department of the Interior. I am pleased to provide the Department of the Interior's views on S. 2503, the Bill Williams River Water Rights Settlement Act of 2014. S. 2503 would authorize, ratify and confirm two agreements which together resolve a number of issues in the Bill Williams River basin, including issues related to a sever and transfer of water rights to serve Freeport Minerals Corporation's mining operation and the Lower Colorado River Multi-Species Conservation Program as well as resolving certain water rights issues among Freeport Minerals Corporation (Freeport), the United States and the Hualapai Tribe. While the Administration supports the goals of the bill, we have significant concerns about the waiver of sovereign immunity provision in S. 2503 that must be resolved before the Administration can support the bill. We look forward to working with the parties, the bill's sponsors, and this Committee to address this issue.

**Background**

The Hualapai Tribe's main Reservation of approximately 1 million acres is located on the south side of the Colorado River and includes Grand Canyon lands. The main Hualapai Reservation is the home of the famous Grand Canyon West Skywalk and other tourist facilities that are a significant source of the Tribe's economic development. In addition to its main Reservation, the Tribe has a smaller Executive Order Reservation of approximately 60 acres along the Big Sandy River, located in the Bill Williams River basin.

The Hualapai Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the water rights claims of the Hualapai Tribe in Arizona have been ongoing since 2011, when the United States established a negotiating team to negotiate a comprehensive settlement of all of the Tribe's water rights within the State of Arizona. One matter addressed in the negotiations has concerned applications filed in 2010 by Freeport to sever and transfer certain water rights in the Bill Williams River basin for the benefit of mining operations at its Bagdad Copper Mine. The Department of the Interior protested those applications to protect federally reserved water rights, including water rights that the Department holds in trust for the Hualapai Tribe and rights associated with lands held by the Department's Fish and Wildlife Service (FWS) and Bureau of Land Management (BLM).

S. 2503 would approve two agreements in which, among other things, Freeport agrees to confirm the Tribe's water rights claims related to the small Executive Order Reservation. Initially, the Tribe's primary objective was to negotiate a comprehensive settlement for both its main Reservation and its smaller Executive Order Reservation. Early in the negotiations, however, serious technical issues were identified with respect to water infrastructure projects proposed for the main Hualapai Reservation that required the investigation of additional alternatives before the Tribe's water rights in the Colorado River basin could be resolved. At the same time, the Hualapai Tribe, Freeport, and the United States decided that negotiations over certain time sensitive issues related to Freeport's sever-and-transfer application should proceed.



As a result, the originally contemplated comprehensive settlement was split into two phases. The first phase, which is the subject of S. 2503, focuses on resolution of certain water rights issues in the Bill Williams River basin involving the Tribe, the Department of the Interior, the Arizona Game and Fish Commission, and Freeport. It is expected that future negotiations, to which all the parties, including Freeport, have committed, will address additional water rights of the non-tribal parties in the Bill Williams River basin, as well as a comprehensive settlement of all the Tribe's water rights claims for its main Reservation.

#### **Legislation and Agreements**

S. 2503 would authorize, ratify, and confirm two agreements, the Big Sandy River-Planet Ranch Water Rights Settlement Agreement and Hualapai Tribe Bill Williams River Water Rights Settlement Agreement and direct the Secretary of the Interior to execute both agreements. These Agreements would waive the objections of the settling parties to Freeport's sever-and-transfer application in return for securing various benefits to the Tribe and the United States. There is no on-going general water rights adjudication in this basin to provide a mechanism by which all of the water rights users in the basin could be bound. Consequently, the Agreements are settlements among only some of the water users in the Bill Williams River basin, including most importantly Freeport, which claims significant, if not the largest, water rights in the basin. I will summarize the key features of each of these two agreements.

First, the Big Sandy River-Planet Ranch Water Rights Settlement Agreement would facilitate the severance and transfer of certain water rights owned by Freeport on property known as "Planet Ranch" along the Bill Williams River. The Agreement would resolve pending objections by Interior Department bureaus and the Arizona Game & Fish Commission, enabling a portion of Freeport's water rights on Planet Ranch to be moved upstream to a well field owned by Freeport along the Big Sandy River, a tributary to the Bill Williams River. Freeport pumps water from the well field and transports it to Freeport's Bagdad Mine located approximately 25 miles from the Big Sandy River. Under the Agreement, Freeport would agree to a "diversion limitation" or cap on its withdrawals from the well field and other specified groundwater wells at its historic maximum pumping level of 10,055 acre-feet per year. This cap would provide an important measure of predictability regarding future flows in the Big Sandy River, where downstream federal interests include wilderness areas managed by the Bureau of Land Management and the Bill Williams National Wildlife Refuge administered by the Fish & Wildlife Service. Importantly, water that is not transferred to the well field would remain at Planet Ranch. The Bureau of Reclamation (Reclamation) would lease some of that water along with Planet Ranch lands for the Lower Colorado River Multi-Species Conservation Program (MSCP). The leased water rights and land would provide important environmental protection in furtherance of the MSCP. Under the Agreement, the lands leased by Reclamation would be permanently donated by Freeport to the Arizona Game and Fish Commission.

Next, the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement would secure a number of benefits and protections for the Tribe, including non-Federal funding of certain measures that could lay groundwork for a later comprehensive settlement of all of the Tribe's water rights in the State of Arizona. This Agreement provides that Freeport will agree to reserved water rights of 694 acre-feet per year for the approximately 60 acres of land that the Department holds in trust for the Tribe and 560 acres it holds in trust for allottees in the Bill Williams River basin. Freeport would also implement certain protections for the Tribe's water uses on culturally significant lands that the Tribe holds in fee. Finally, the Tribe would receive a substantial contribution from Freeport into the Tribe's Economic Development Fund, which would be used to help meet water related needs on the Tribe's main Reservation on the Colorado River. Freeport would contribute an additional \$1 million to enable completion of the ongoing study of water supply alternatives for the main Reservation, which is an important pre-requisite to, and a key step facilitating, the Tribe's goal of reaching a final settlement of its Colorado River claims in the future.

#### **Remaining Concerns and Conclusion**

S. 2503 provides a number of benefits for all of the parties—the Hualapai Tribe, the Interior Department, the Arizona Game & Fish Commission, and Freeport Minerals Corporation—as well as the many parties that are participants in the Lower Colorado River Multi-species Conservation Program. The parties have negotiated intensively within the last year to reach agreement on the two settlement agreements addressed in S. 2503 and have resolved many issues. However, there is still one im-

portant issue and a few smaller matters to be worked out with respect to both these agreements. As a result, the Administration cannot support the legislation as introduced, but we would support an amended bill that adequately addresses our concerns.

Most significantly, we oppose the bill's inclusion of a new, ad hoc waiver of the sovereign immunity of the United States. These Agreements, like other settlements that the United States enters into, can be enforced against the United States through existing avenues, including general waivers of sovereign immunity, such as those provided in the Tucker Act, the Administrative Procedure Act, and the McCarran Amendment.

Piecemeal waivers of sovereign immunity for particular matters do not aid in the uniform resolution of underlying disputes but tend to promote wasteful litigation and may lead to conflicting outcomes. There are few standards to guide the application of such waivers, creating the prospect of resource-intensive litigation over procedural and other matters that are well-established in the context of existing sovereign immunity waivers. Nor is it clear how various state or federal forums will understand such waivers in relation to existing administrative and judicial review processes, creating the possibility of conflicting results.

While several Indian water rights settlement acts include sovereign immunity waivers, those settlements comprehensively quantified and resolved tribal water rights claims with finality. In

contrast, this bill resolves no tribal water rights with finality and will not result in a court-approved water decree determining basin-wide water rights. Moreover, the bill does not reach all trust or other federally reserved claims in the basin and otherwise lacks the hallmarks of a traditional Indian water rights settlement. In addition, the waiver of sovereign immunity in S. 2503 is in some ways broader than any waiver to date in an Indian water rights settlement, for the first time expressly extending to suits filed in state court against the United States relating to particular settlements.

The United States has repeatedly communicated its concerns about the waiver of sovereign immunity to the parties, and proposed alternative ways to address the parties' enforcement concerns. Although the parties and the United States have not reached agreement on an alternative to the proposed waiver of sovereign immunity as of this time, we are committed to continue working with the parties and the Committee to find solutions to this issue.

In addition, the Department has concerns about the language and scope of the proposed waivers of claims. Language in the waivers and in other provisions concerning the "capacity" in which the United States is acting in various instances must be refined. The two agreements include different water rights confirmations, waivers, and reservations of rights, which apply differently to the United States depending on the capacity it is acting in, so it is important that this it be accurately described. We are currently working with the parties to revise language to address our concerns regarding the various capacities in which the United States is participating in the agreements. Finally, the waivers do not expressly specify that the United States is not waiving claims concerning impacts to water quality as opposed to water rights injury, as we believe is necessary. There are also some additional important technical changes in the agreements and bill that must be resolved.

The Department looks forward to working with the parties, the sponsors, and the Committee to fix the one remaining significant issue in the legislation so that the United States can support the bill. Thank you.

The CHAIRMAN. That is pretty efficient. I hope the next panel takes note of how efficient you were. That is good. You got through those five bills pretty well, and I appreciate your testimony.

I have some questions on each one. I understand the reasoning behind the Administration's reluctance to endorse S. 2442, Senator Walsh's bill, without an appraisal of the value of coal located on the parcels that we are talking about. Such an appraisal could be lengthy, it could be cumbersome. And as the Administration notes in the testimony, we have been dealing with this issue for some time. This is not a new issue.

Is the Department taking the efforts to assess the value of the mineral interests since the mineral conveyance was first contemplated about a decade ago?

Mr. BLACK. I don't believe there has been a full evaluation and appraisal at this point. I do understand there has been a contractor that worked with GNP and the tribe to evaluate the actual tonnage that is involved here. There are a lot of other factors, including the value of the actual coal in the different areas as well as the marketability and other things that would require a lot more analysis on our part at this point.

The CHAIRMAN. How long do you think that analysis would take if you were to start?

Mr. BLACK. That I don't have a good feel for right now. I will be happy to get back to you on that.

The CHAIRMAN. Okay. And just curious, it is not like this issue is going to go away, 100 years ago, as Senator Walsh said, promises were made but not fulfilled. Why isn't the Department being a little more proactive on the appraisal?

Mr. BLACK. I think at this point there hasn't been anything necessarily for us to appraise. There were some other parcels that were included in previous bills, it has been changed somewhat over the last year or two. So I think undertaking a fully extensive and expensive process at that point would not necessarily best serve the process.

The CHAIRMAN. In your opinion, does appraisal have to happen for this bill to move forward?

Mr. BLACK. In accordance with departmental policy and the Federal Land Policy Management Act, yes, we would be required to do that. We are required to do a value for value type transaction.

The CHAIRMAN. Is Congress required to do that?

Mr. BLACK. I think if Congress, whatever Congress puts in the bill, that is what we are going to have to do.

The CHAIRMAN. Okay. On S. 2479 and S. 2480, your testimony that you submitted states that the Administration would like to see some small changes in the Nevada transfer bill, mostly making sure that the boundaries are correct and that certain Federal conservation efforts or access rights are maintained. I don't want to put words in your mouth but that is about what we read. Does the Administration have draft language that it has prepared to be able to share with us, the Committee, or do you have a time frame? If you don't have the language, do you have a time frame on when that language might be ready?

Mr. BLACK. I don't have an exact time frame right now. But we can have that to you fairly quickly. I do know our staff has been working with the various Congressional offices to ensure that we are working through some of these. I don't think anything is a major issue. There are some boundary issues and survey issues that we need to address, as well as some of the other things you mentioned, energy corridors, et cetera.

The CHAIRMAN. Okay. Well, what I would just ask, I don't know what a reasonable time is. We are dealing with five bills today, we are going to have a markup on a number of bills at the end of this month if they are ready to be moved. So if you have language that would be pretty easy to get done, if you would get it to us and we could get agreement from the bill sponsors, then we might be able to move this bill out at the end of the month.

On S. 2480, the Nevada Land Transfer Act, transfers 93,000 acres out of your control. Are there other departments or agencies that you would suggest that the tribes look to for assistance in planning and using these lands, the Office of Indian Energy at the Department of Energy, as an example?

Mr. BLACK. I think all of the above would be worthwhile for the tribes to look at for assistance as they move forward with how they are going to manage those lands. The lands wouldn't come out of our control, they basically come from BLM ownership over to Bureau of Indian Affairs ownership, on behalf of the tribe.

The CHAIRMAN. Is the BIA prepared to assist the tribes?

Mr. BLACK. Certainly.

The CHAIRMAN. And S. 2480 would release the Red Spring Wilderness Study Area from further study. Give us some more information on the details of that release and what that means for the land being transferred to the tribe.

Mr. BLACK. Basically that would take the land out of that WSA, or I forget the exact term, but it takes it out of that WSA. The only people that can do that is Congress. So if Congress does that, and we are supportive of that at this point, there is another WSA right there in the area that we would continue to work with.

The CHAIRMAN. Okay, that is good. On the Albuquerque conveyance, your statement on S. 2465 mentions a concern with the restrictions in 3(e) that may prevent the BIA from continuing its operations on the land. Section 3(e) does say that any existing restrictions already in effect shall remain in effect. So I am a little bit confused by the concern.

Mr. BLACK. Our concern there primarily is that it is addressing rights-of-way and other easements and encumbrances. Right now we currently use those two parcels that I mentioned in my testimony for Southern Pueblo Agency. We just want some assurance, or maybe language that will give us a little more comfort. Talking with the Pueblos and others, I don't think that is going to be a problem. It is just something we wanted to make sure we noted.

The CHAIRMAN. Have you talked to Senator Udall about this?

Mr. BLACK. No, not at this point, but we certainly will.

The CHAIRMAN. That would be good.

Mr. BLACK. It is a very simple thing.

The CHAIRMAN. You don't see this as a major blockage?

Mr. BLACK. No.

The CHAIRMAN. It is just a simple fix. Good.

Mr. BLACK. We look forward to being able to transfer the remainder of those lands over to the Pueblos.

The CHAIRMAN. That is perfect. I think this is another one, all five of these, frankly, if we can work out the problems that are there, we might be able to get something done, hopefully in this Congress.

On the sovereign immunity provisions in S. 2503, the Water Rights Settlement, your testimony states concerns with the sovereign immunity and claims waiver provisions in S. 2503. Can you tell us how these issues could be resolved?

Mr. BLACK. Honestly, I can't, sir, I am an engineer, not a lawyer. That is a question I am definitely going to have to defer to our so-

licitors in DOJ to provide a written response to you. And we are happy to do that.

The CHAIRMAN. Are discussions currently going on at this point?

Mr. BLACK. Yes, they are.

The CHAIRMAN. So this is not new to them?

Mr. BLACK. No, not at all.

The CHAIRMAN. Okay. So the same kind of deal as the previous question, if you can get us that information it will enable us to move forward.

Mr. BLACK. Yes.

The CHAIRMAN. And if you want a time lines, I could say have it here in two weeks or three weeks, or one week, or tomorrow. But I won't do that to you because I know you, Mike, and I know you will get them here as quickly as possible.

Mr. BLACK. Yes. I will do everything I can.

The CHAIRMAN. Your testimony also recognizes that this is unique settlement and that the Administration is insisting on specific sovereign immunity language more consistent with past water rights settlements. Your testimony refers to these provisions as ad hoc provisions. But if this is a unique settlement, can we really use the standard boilerplate language that has been used in past settlements?

Mr. BLACK. Again, I am going to have to get back to you on a more specific answer for that, as it relates to the water rights settlement and the sovereign immunity provisions.

The CHAIRMAN. Okay, that sounds good. That is all I have, but since we have two members here, I will defer to them to see if they have any questions. Senator Crapo, do you have questions for Mr. Black?

**STATEMENT OF HON. MIKE CRAPO,  
U.S. SENATOR FROM IDAHO**

Senator CRAPO. No, thank you, Mr. Chairman, I just want to thank you for holding this hearing and I have a statement that I will just put into the record.

[The prepared statement of Senator Crapo follows:]

PREPARED STATEMENT OF HON. MIKE CRAPO, U.S. SENATOR FROM IDAHO

Thank you, Mr. Chairman, for holding this important hearing today.

S. 2503 is a particularly innovative approach to Indian water rights settlements.

Similar to the 2004 Snake River Act that approved Idaho's Nez Perce Agreement in the Snake River Basin Adjudication, this Phase One Indian water rights settlement brought together the Federal Government, an Indian Tribe, the State and non-federal water users to advance interests on all sides.

Both are pioneering examples of collaboration that illustrate how Indian water rights can secure long-term future relationships between the Federal Government, Indian country, the State and non-federal water users.

I am encouraged to see these types of negotiations succeed in Idaho and now Arizona.

Thank you.

The CHAIRMAN. Thank you for being here, Senator Crapo.

Senator Udall, do you have anything? I just got done thoroughly grilling Mike Black on your bill. Do you have any questions you would like to ask him?

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, first of all, Chairman Tester, for thoroughly grilling him and asking him all about it. I understand he has some concerns and we look forward to working with him to resolving those and making the Committee comfortable with the bill.

The CHAIRMAN. So then you know, he looks forward to working with you, too.

Senator UDALL. Good.

The CHAIRMAN. That is good.

Senator UDALL. Thank you very much.

The CHAIRMAN. So with that, Mike, thank you very much for being here. We very much appreciate the time that you spent in front of the Committee. We will be working with you to get the issues on your concerns on your concerns and with all these issues.

Mr. BLACK. Thank you.

The CHAIRMAN. You bet.

Now we are going to ask the third panel to come to the table. We are going to hear from Northern Cheyenne President Llevando Fisher, then we are going to hear from Chairwoman Aletha Tom of the Moapa Band of Paiute Indians, Chairman Arlan Melendez of the Reno-Sparks Indian Colony, both from Nevada. Chairwoman Sherry Counts of the Hualapai Tribe has joined us from Arizona, and finally, Mike Canfield, President of the Indian Pueblos Cultural Center has come to us from New Mexico. Each witness today will discuss the bills that are impacting their tribes. We have five bills, we have five witnesses and we have five minutes per witness.

I would ask that you try to stay as close to that five minutes as you possibly can. The reason is because if you do that, it will give us more time for questions, which are always very beneficial. I want to thank you all for traveling, for the most part, a long distance to get here. We thank you for being willing to testify in front of this Committee.

Before we start with you, President Fisher, I would kick it over to Senator Udall, if he would like to introduce Mr. Canfield.

Senator UDALL. Chairman Tester, thank you very much. I would like to introduce Mr. Canfield and say a few words about the bill, too.

I am pleased to see Mike Canfield here testifying on behalf of S. 2465. He is a member of the Laguna Pueblo. Mike has more than 35 years of experience working in Indian Country and providing leadership and organization development expertise to tribal governments and tribally-owned organizations across the Country. I think he has done a very good job there.

Mike became involved with the Indian Pueblo Cultural Center in Albuquerque almost 20 years ago as a board member. He transitioned into the CEO role in 2011. The corporation currently employs 180 people and is responsible for over \$30 million in annual revenue. The bill Mike is testifying on behalf of is a small, yet important land transfer to the 19 Pueblos of New Mexico. In 1884, a tract of land in New Mexico was set aside for the construction of what became the Albuquerque Indian School. The school provided an education to Pueblo and other Indian students until the

1960s when the United States determined land was no longer needed for Federal Indian school purposes. In 1969, the United States began a long process of transferring the land into the jurisdiction and control of the 19 Pueblos of New Mexico. S. 2465 finalizes that process with the transfer of 11 acres consolidating several small parcels of contiguous land with the 44 acre tract that has been held in trust for the Pueblos since 1993. The Indian Pueblo Cultural Center property itself has been held in trust for the Pueblos since 1978.

The Indian Pueblo Cultural Center is a real jewel and Chairman Tester, I would invite you out to the North Valley in Albuquerque to see that. It is on the development of the former Albuquerque and Indian School Reserve. It is instrumental for the economic development, and Mike knows this very well, the economic development of the 19 Pueblos. Mike has stated that the vision of the Albuquerque Indian School District is to become a self-sustaining district that they can manage as a micro-economy, a district where the Pueblo can conduct government-to-government relations, a central location for celebrating Pueblo arts and culture and a district that will provide significant economic development opportunities for the local community, including the 19 Pueblos of New Mexico. So I am proud to support the legislation and proud to have Mike as a friend and look forward, as we move through this, to asking him some questions.

Thank you very much for letting me introduce him.

The CHAIRMAN. Absolutely. Thank you, Senator Udall.

Before we get to President Fisher, I would like to introduce a couple folks who came with President Fisher from the great State of Montana, Tracey Robinson and William Walks Along, welcome to both of you, to the Senate Indian Affairs Committee.

With that, President Fisher, you are up.

**STATEMENT OF HON. LLEVANDO FISHER, PRESIDENT,  
NORTHERN CHEYENNE TRIBE**

Mr. FISHER. Chairman Tester and Committee members, I am Llevando Fisher, President of the Northern Cheyenne Tribe of Montana. It is my second term as president and I have served many terms on the council.

I would like to thank Senator Walsh for introducing S. 2442 and thank the Committee for holding the hearing. I ask that my written statement be included in the record.

Land is everything to the Northern Cheyenne Tribe. It is vital to us culturally, spiritually and to provide food and shelter. Our reservation is about 450,000 acres. Thanks to the courage and sacrifice that has been made, the tribe controls 95 percent of its surface and all but 5,000 acres of the subsurface on the reservation.

At the same time, the tribe has many economic and social challenges. The Northern Cheyenne Lands Act is designed to address these challenges by giving the tribe more control over the land, mineral and trust fund. This bill is a tribal bill. Over 20 years ago, during my first term as tribal president, I approached Great Northern Properties about the possibility of GNP transferring the rights to the tribe. Since then, many times, our resources have been dedicated to reaching agreement.

Section 4 of the bill transfers the fee land to the United States in trust, north of the land or on our reservation. The reservation is good economic development for truck stop business facilities to support our program. The rest of the land is in South Dakota, adjacent to Bear Butte, a land that is sacred to our tribe, where our prophet Sweet Medicine received the sacred arrows from Bear Butte, along with the cultural ways of our people. Placing that land into trust will protect the land from commercial development and preserve its spiritual uses for our tribe and other Indian tribes who worship there.

Section 5 will correct the error that over 114 years ago a Federal agent followed to follow the direction of Congress to acquire ownership of 5,000 subsurface acres within the reservation to the tribe. To correct the error, the Great Northern Properties will transfer these coal tracts to the tribe, a total of 117 million ton of coal. In return, the United States will transfer tracts containing 112 million tons of Federal coal to GNP. The tribe would waive all claims against the United States for the failure to acquire the 5,000 acres for the tribe before.

The tribe and GNP have agreed that the tribe would get 40 percent of any revenue that GNP receives from the development of coal. This would be the first time the tribe has received any funds from coal mining surrounding our homeland.

Section 6, transfer of \$5 million of trust fund, was created by the tribe in 1992 water settlement to the tribe. The tribe can get a better transfer of the investment than the Office of Special Trust with a government fund that has been successful for many years. The principal of the funds will be invested in revenue and used for tribal programs such as education, heating bills and burial services. In exchange, the tribe will waive claims against the United States for misfunding the trust fund.

Section 7 concerns land consolidation and agriculture. There is very little farm land on the reservation to do our tribal farm. A large area with suitable conditions must be in place. We have not been able to identify the place because our land is too fractionated. Section 7 would require Secretary of Interior to report to the Committee about the nature of the land consolidation on the Northern Cheyenne where agriculture is a possibility there. The tribe has worked with the Montana delegation introducing bills in previous Congresses to accomplish some of the goals in the current bill. This bill is 35 percent different than the other bills incorporated in many other tribal compromises. The bill does not provide the tribe with the \$7 million of funds addressed in the mineral development where our reservation is the primary recipient. The current bill does not include Federal coal that is about to be mined by the previous resident.

The current bill involves Federal tracts near existing mines that are not controversial on more [indiscernible] that are identified in the [indiscernible]. This bill kind of protects the surface rights owner of that Federal tract for the first time. However, the tribe would like to work with the Committee on the language of Section 5 of S. 2442 that prevents surface mining in the tract subject to a 1984 BLM resources management plan. We believe that the cur-



rent language will limit the tribe's income from these tracts if it was developed.

In conclusion, S. 2442 is a tribal bill supported by the National Congress of American Indians, Montana tribal leaders, and the State land board. It will address many of the longstanding unjust suffering from the tribe at the hands of the Federal Government and give the tribe additional tools to enhance self-governance and economic development opportunities.

We look forward to working with the Committee. Thank you.  
[The prepared statement of Mr. Fisher follows:]

PREPARED STATEMENT OF HON. LLEVANDO FISHER, PRESIDENT, NORTHERN  
CHEYENNE TRIBE

Chairman Tester and Committee Members, I am Llevando Fisher, President of the Northern Cheyenne Tribe of Montana. Some people call me "Cowboy." I was elected as President by vote of our Tribal membership and my term expires in November 2016. Prior to that, I was elected by the people to serve as President in 1992 and to multiple terms on our Tribal governing body, the 11-person Northern Cheyenne Tribal Council. I am pleased to be here today to testify on behalf of the Northern Cheyenne Tribe in strong support of S. 2442, the Northern Cheyenne Lands Act. Today, I am accompanied by Tribal Councilmembers Eloise Snow and Tracy Robinson and Tribal Administrator William Walksalong. I want to thank Senator Walsh for introducing S. 2442 and thank the Committee for holding this hearing.

If S. 2442 is enacted, several long-standing paramount issues for the Northern Cheyenne will finally be resolved and the Tribe's ability to control its land, mineral resources, and trust funds will be greatly enhanced. This will improve the Tribe's ability to self-govern and control its own destiny and will provide sorely needed economic development opportunities. I want to stress that the Northern Cheyenne Lands Act is a Tribal bill. The bill has four key elements.

**Summary of S. 2442**

First, S. 2442 directs the Secretary of the Interior to take certain fee lands owned by the Tribe into trust. As authorized by Section 4, certain land that the Tribe has acquired in fee over the years with its very limited resources would be transferred into trust status. Most of the land is on-Reservation, with two of the parcels adjacent to other land near the Reservation already held in Trust for the Tribe. The remaining land is located very close to our most precious sacred site, Bear Butte in South Dakota. By transferring those lands into trust status, the Tribe would strengthen the permanency of its land holdings, eliminate jurisdictional ambiguities, increase economic development opportunities, and protect an important sacred site. On the lands in Montana, the Tribe would attempt to engage in economic development, such as a convenience store and truck stop, and build facilities for important social programs. For the sacred lands in South Dakota, trust status will ensure their protection from commercial development.

Second, Section 5 of the bill directs the Secretary to accept eight subsurface sections owned by Great Northern Properties (GNP) and located within the Reservation into trust for the Tribe. The Secretary is directed to transfer sections of federal coal to GNP as compensation for the on-Reservation tracts. Our Reservation will finally be made whole by rectifying an error made by the United States over a century ago. Congress directed the acquisition of land to expand the Reservation and the federal agent charged with this responsibility failed to acquire 5,000 subsurface acres of prime coal on our Reservation. Those subsurface acres would be transferred to the Tribe by the private company that currently owns them, GNP. This would fulfill commitments made to the Tribe in 2002 by the Montana Congressional delegation, other federal officials, and the State of Montana when the Tribe dismissed a lawsuit against the United States. GNP would receive coal from the United States and the Tribe would be granted a 40 percent interest in any revenue GNP receives from that coal if it is ever developed. This would be a badly needed revenue stream which would help mitigate the many impacts of the mineral development that has encircled our Reservation and our people for many years.

Third, the Secretary is directed to transfer to the Tribe a trust fund that was created for the Tribe and is currently held by the United States Office of Special Trustee (OST). As authorized by Section 6, a fund that originated from the Northern Cheyenne Reserved Water Rights Settlement Act of 1992 would be transferred to

the Tribe's permanent fund and held in perpetuity to fund important basic services such as educational programs, home energy bills, elderly needs and burials, all of which often go unfunded due to lack of resources. The fund is currently held for the Tribe's benefit as the "Northern Cheyenne Trust Fund" by OST and its earnings are credited to the Tribe.

Fourth, Section 7 directs the Secretary to prepare an inventory of fractionated lands within the Northern Cheyenne Reservation that the United States holds in trust for the Tribe or individual Indians and to provide information about the suitability of those fractionated lands for agricultural purposes. The Tribe believes that agriculture could be an important source of income, employment, and pride to Tribal members in the future; however, there is very little farming on the Reservation today. The inventory called for by Section 7 will help the Tribe direct its land consolidation efforts toward creating Tribal-owned tracts suitable for agriculture, which would create another source of income and employment for the Tribe and its members. Section 7 also directs the Secretary to periodically report the Tribe's progress toward land consolidation and economical agricultural use of trust land, including "lessons learned" in the process, to this Committee and the House Committee on Natural Resources no less than once per year for the next five years.

Attached to my written statement is a document that summarizes the Northern Cheyenne Tribe's dramatic struggles over the past 40 years with coal-related development, which provides perspective on why the enactment of the Northern Cheyenne Lands Act is just and appropriate. I also attached copies of a letter signed by each member of the State of Montana's Board of Land Commissioners (consisting of the State's five top elected officials), a resolution of the Montana-Wyoming Tribal Leader's Council, and a resolution of the National Congress of American Indians, each supporting S. 2442 and urging its passage. Finally, I have included two maps—one showing how our Reservation has been encircled by coal-related development projects, and another showing our Reservation, its communities and the network of on-Reservation roads serving those off-Reservation projects. As discussed in greater detail herein, these projects force extensive unmitigated impacts onto our Reservation and people, while the Tribe and its members are excluded from the compensating benefits (impact funding, employment, and commercial opportunity) of such development. I request that all these documents be included in the hearing record.

#### **Preserving and Protecting Tribal Land is of Paramount Importance to the Northern Cheyenne**

We Northern Cheyenne cherish our land. To us, our land is everything. It has provided for our families for centuries. After we were forcibly relocated to the Oklahoma Territory in 1878 as retribution for our resistance to non-Indian domination and our participation in the Battle of the Little Bighorn (the Custer Battle), we (uniquely among all other tribes so relocated) trekked back to our historic homeland in Montana. This journey came at great cost to the Tribe—death, imprisonment and other deprivations—as we were hounded along the way by thousands of hostile U.S. military soldiers and settlers. We eventually made it back to Montana to reclaim our homeland and the Northern Cheyenne Reservation was later formally established by Presidential Executive Order in 1884.

Today, the Northern Cheyenne Reservation is bordered on the west by the much larger Crow Indian Reservation and on the east by the Tongue River. Our Reservation is truly the homeland of the Northern Cheyenne. The Reservation population is approximately 90 percent Northern Cheyenne. Non-Indian presence on the Reservation is minimal. A majority of our approximately 10,000 Tribal members reside on the Reservation. Traditional Cheyenne values and culture still thrive on the Reservation and the Cheyenne language is still spoken. The Reservation remains culturally distinct from the surrounding land and communities.

Of its 447,000 acres, over 95 percent of the Reservation surface is owned, controlled and used by the Tribe and its members. The primary land uses are cattle grazing, some timber harvesting, and ceremonial and subsistence use. Non-Indian use of Reservation lands is minimal. Despite the Tribe's success in controlling much of the Reservation, there are a few areas where the Tribe strongly desires to shore up control and ownership, and those areas are addressed in the Northern Cheyenne Lands Act.

Despite extremely limited resources, the Tribe has continued to prioritize land acquisition within the Reservation and purchased approximately 1600 acres of land it now owns in fee. Section 4 of S. 2442 authorizes the Secretary of the Interior to transfer that fee land into trust status. Much of that land is located in areas that could be commercially developed in our population center of Lame Deer. By transferring the Reservation lands into trust, the Tribe's jurisdiction to regulate those lands would never be questioned and Tribal beneficial ownership of that land would

be essentially permanent for future generations because it is more difficult to convey trust land than fee land.

The legislation also authorizes the Secretary of the Interior to take into trust 635 acres adjacent to the Bear Butte State Park in South Dakota which the Tribe purchased. Bear Butte is on the National Register of Historic Places and a National Historic Landmark. Bear Butte is considered by many Native Americans, including members of the Northern Cheyenne Tribe, as a sacred place. Bear Butte is our Mount Sinai. It is where our prophet Sweet Medicine received the Sacred Arrows along with the ceremonies and cultural ways of our people. The Sacred Arrows remain protected by our traditional leaders to this day. These lands also serve as a base for tribal pilgrimages. By placing the lands in trust, the United States would be furthering the Tribal goal of protecting Bear Butte from commercial development that is inconsistent with its spiritual importance. Placing the lands into trust will preserve their spiritual use by our Tribe and other Indians who worship there.

**The Tribe's Ownership of the Reservation Mineral Estate is Plagued by a Century-Old Federal Error**

The entire Reservation mineral estate—except for the eight sections that are the subject of Section 5 of S. 2442—is owned by the Tribe as a single entity. Because of the paramount importance to us of our land, we have a sacred duty to pursue ownership of the eight sections. Securing ownership of those eight sections has been a priority of the Northern Cheyenne for decades, including when I served as Tribal President 20 years ago, and S. 2442 will finally accomplish that goal.

The eight sections of subsurface are also of great commercial value. The coal is very high quality and relatively easy to mine economically. Several decades ago, those subsurface rights were leased to Peabody Coal Company for valuable consideration by the then-owner, Burlington Northern Railroad. Although those leases are no longer in force, we don't want to repeat that experience again. But, without ownership of that subsurface, we at best have limited power over, and would suffer impacts and gain scant benefits from, the development of the coal.

We have been continuously deprived of ownership of the eight subsurface sections since 1900 because of a federal error. In 1900, because of hostilities and violence between Northern Cheyenne, non-Indian settlers and illegal squatters on or adjacent to the Tribe's 1884 Reservation, Congress directed Indian Inspector James McLaughlin to purchase the legal and illegal non-Indian interests on and near the Reservation so that the Reservation could be enlarged eastward to the middle of Tongue River. Inspector McLaughlin proceeded to do so, paying the legal and illegal settlers between \$1500 and \$2000 per claim. In contrast, Inspector McLaughlin paid only \$25 per family to Northern Cheyennes then living on federal land previously allocated to them east of the Tongue River. The Reservation was then expanded eastward to mid-channel of the Tongue River by Presidential Executive Order in 1900.

In performing his duties, Inspector McLaughlin made a critical error. Although he purchased all lands within the Reservation (as expanded) then owned by Northern Pacific Railway, Inspector McLaughlin missed eight sections of subsurface owned by the Railway. For 114 years, the United States has failed to remedy this error by not acquiring this valuable mineral estate for the Tribe. Approximately 20 years ago, Great Northern Properties purchased the entire inventory of railroad subsurface in Montana, including the eight sections within the Northern Cheyenne Reservation. If the Northern Cheyenne Lands Act is passed, the Tribe would waive all claims related to this error.

**A Tribal Initiative to Rectify the Federal Error Which Could Result in Much-Needed Tribal Income from Off-Reservation Mineral Development**

The Tribe, on its own initiative, approached GNP with a proposal to resolve by agreement the 114-year old federal error which deprived the Tribe of ownership of the eight sections of Reservation subsurface now owned by GNP. The beginning of this process is documented in a 1993 letter from the Tribe's mineral consultant to the Tribe's attorney reflecting a conversation with GNP's President, who was receptive to the idea. A copy of that letter is attached and I request that it be included in the hearing record. The Tribe successfully negotiated and drafted a written agreement with GNP committing GNP to deed its eight sections of Reservation subsurface to the Tribe if GNP receives off-Reservation federal coal reserves in Montana as compensation for the transfer. An updated version of that agreement is near completion. With the willing cooperation of GNP and the Tribe, the United States is now in a position to remedy an ongoing federal mistake that greatly impacts the

Northern Cheyenne Tribe. The Northern Cheyenne have waited many decades for this opportunity.

The Tribe—GNP agreement also provides that the Tribe will receive 40 percent of the net revenue from the off-Reservation coal that is subbituminous and 24 percent of the net revenue from the off-Reservation coal that is lignite. The federal coal tracts, which have been identified for the transfer and are depicted in maps referenced in S. 2442, consist of tracts in the vicinity of the Bull Mountains and East Fork mine areas. Despite their relative proximity to those mine areas, current development plans are such that the coal in these sections would not be mined for at least 10 to 15 years. The Tribe's royalty interest in the Bull Mountains and East Fork tracts would provide desperately-needed revenue to the impoverished Northern Cheyenne Tribe. Those Tribal royalty interests would, if the tracts were ever mined, yield the only source of funding available to the Tribe to deal with the impacts of the mining of those tracts near the Reservation. All of these tracts contain subbituminous coal and the Tribe would therefore hold a 40 percent interest in the royalties derived from the future development.

The royalty revenue would help redress continued economic imbalances and burdens imposed on the Tribe by off-Reservation coal development. The Northern Cheyenne Reservation lies in the heart of Montana's Powder River coal region. As shown in the attached maps, the Reservation is surrounded on all sides by major existing and proposed coal-related projects and includes a network of roads used by these off-Reservation projects to travel through the reservation and the region. This pattern of development produces major influxes of newcomers to the area and leads to undesirable socioeconomic effects on the Tribe, including on-Reservation crime, traffic and accidents. Because our Tribal government lacks adequate legal authority and resources to deal with these non-Indian incursions, there are heightened tensions between Tribal members and non-Indian visitors.

Public services and facilities on the Reservation have long been grossly inadequate, both in absolute terms and in marked contrast to off-Reservation communities. The surrounding development increases pressures on those public services and facilities. Severe deficits have been documented in Reservation housing, water and sewer, solid waste, education, health care, law enforcement, fire protection, and transportation. Those deficits increase as on-and off-Reservation populations increase with development.

With no tax base and minimal on-Reservation economic development, the Tribe thoroughly lacks the financial resources to address these socio-economic impacts and respond to the increased demands caused by the off-reservation coal development. In contrast, the surrounding development produces tremendous public revenues (lease bonuses, rents and royalties, state production taxes, real and personal property taxes, and other exactions) for the United States, the State of Montana and the counties and municipalities that adjoin the Reservation. The Tribe is privy to none of these public revenues. We suffer the impacts of development but receive no revenues that would allow us to minimize the ills inflicted by this development.

Also, while the Northern Cheyenne suffer chronic unemployment rates averaging over 60 percent, very few Northern Cheyenne are employed in these off-Reservation projects. Indeed, Reservation unemployment rates have not improved during the course of the development of coal mines and power plants in the vicinity of the Reservation. Historically, Native American employment in Montana's Powder River Basin mines has averaged approximately 3.5 percent of the total labor force, absent any special hiring-agreement mandates. State law does not authorize the holders of State mining leases to offer any employment preference to local Native Americans. The bottom line is that average per-capita income on the Northern Cheyenne Reservation is a minor fraction of that in surrounding communities, and the Tribal unemployment rate is many multiples of the off-Reservation rate.

In summary, because of the very weak economic ties between the Reservation and surrounding off-Reservation communities, the Northern Cheyenne have not shared in the economic gains from regional coal development. The Reservation does not benefit significantly in terms of jobs, construction contracts, general business activity, or increases in Tribal governmental revenues from the regional increase in economic activity generated by additional off-Reservation coal development. Thus, the Northern Cheyenne suffer an array of major adverse impacts from the off-Reservation (largely federally-sponsored or facilitated) coal-related development and enjoy few, if any, of the compensating benefits enjoyed by the United States, the State and surrounding communities and residents. However, the Tribe may be able to share in those compensating benefits someday via a revenue sharing agreement that will only be possible if the Northern Cheyenne Lands Act becomes law.

**The Tribe Settled its Claims Over the Otter Creek Coal Transfer in Exchange for Promises to Support the Goals Contained in S. 2442**

The Congressionally-directed transfer of the massive federal Otter Creek Coal Tracts to the State of Montana in 2002 perpetuates and exacerbates the existing economic and social inequities between the Reservation and surrounding communities. The Otter Creek Tracts comprise about 8,000 acres of coal lands along both sides of Otter Creek south of Ashland, Montana, and just east of the Northern Cheyenne Reservation. The Tracts are estimated to contain 533 million tons of recoverable coal reserves checkerboarded with more than 700 million tons of private and other State coal. The result is the single largest block of currently available, developable coal reserves in Montana. Those resources have now been entirely leased to a wholly-owned subsidiary of Arch Coal, Inc., the Nation's second largest coal mining company, and Arch is aggressively proceeding toward development. The surface rights to the Otter Creek Tracts are held by private landowners, the State of Montana and the Bureau of Land Management. Otter Creek is a tributary to the Tongue River, which forms the eastern boundary of the Northern Cheyenne Reservation.

The Tribe, in extensive correspondence and meetings with all major interests, strongly and repeatedly expressed opposition to the proposed transfer of the Otter Creek tracts by the Secretary of the Interior to the State without accompanying measures to mitigate the enormous negative economic and social impacts that development of the Otter Creek tracts would have on the Reservation. The Tribe filed a lawsuit in Federal District Court in Washington, D.C. to enjoin the Secretary's transfer of the Otter Creek Tracts to the State.

In an effort to achieve a settlement of its claims, the Tribe met with members of Congress, the Governor, the other top elected officials of the State, the Secretary of the Interior, BLM, BIA, industry and other interested parties. As a result, the Montana State Land Board agreed to support the enactment of Federal legislation providing impact funding to the Tribe, directing the transfer of the GNP-owned subsurface tracts within the Reservation to the United States and compensating GNP with a transfer of federal coal, and providing the Tribe with an economic interest in the development of the coal received by GNP. In return for the foregoing State commitments, the Tribe agreed to, and did, dismiss with prejudice its federal lawsuit. Features of that settlement are in the Northern Cheyenne Lands Act; namely, the provisions related to clearing title to the 5,000 subsurface acres currently held by GNP and the accompanying revenue sharing opportunity for the Tribe in revenue generated from the tracts to be transferred to GNP.

In negotiating its Otter Creek settlement with all parties from beginning to end, the Tribe worked closely and with the encouragement of the Montana Congressional delegation and BLM's Montana State Office. The understanding reached was that federal impact funding of \$10 million per year for seven years would be sought through legislation, structured in a way to assure that that financial resource would be a permanent resource, available to the Tribe to fund on-Reservation public services, facilities and other governmental matters, as new development projects proceeded within 25 miles of the Reservation. In fact, \$70 million of impact funding was included in a 2004 iteration of the bill.

The Tribe, in good faith, relied on all of these commitments in consummating the Otter Creek settlement and dismissing its litigation against the Otter Creek transfer. However, the impact funding has not been included in S. 2442 in light of the current difficulties in securing any direct funding from Congress. Someday, we hope to secure such funding. As things currently stand, therefore, the proceeds of the proposed Tribal 40 percent interest in the GNP royalties stand as the only potential source of impact funding available to the Tribe to cope with the accrued and future impacts of surrounding coal-related development, including the massive development envisioned for the Otter Creek tracts.

In addition to foregoing tens of millions of dollars of impact funding, the Tribe has addressed several concerns raised in prior versions of the bill. First, the location of the federal tracts GNP would receive is in proximity to existing mines. Prior iterations of the bill included tracts in pristine and highly controversial areas, such as the Otter Creek area. Second, in contrast to other tracts in prior bills, the tracts GNP would receive are not within any mine plan or scheduled for development. Currently, the tracts would not be developed for at least 10-15 years. It is entirely possible the tracts are never mined given current coal market conditions. Third, the concerns of the owners of the surface lands over the federal minerals are addressed. The bill includes a provision retaining the federal right of surface owners to control whether mining occurs below their lands even after the federal tracts are transferred to GNP. Prior iterations of the bill did not include this element either.

However, for several reasons, the Tribe would like to work with the Committee to address the inclusion of Section 5(a)(2)(A)(ii) in S. 2442, which prohibits surface mining on federal tracts conveyed to GNP if those tracts were not “determined to be acceptable for further consideration for leasing” in the 1984 BLM Billings Resource Management Plan (RMP). First, as mentioned above, Section 5(a)(2)(A)(i) already protects the rights of surface owners by retaining the federal right of surface owners to control whether mining occurs below their lands even after the federal tracts are transferred to GNP. Second, prohibiting surface mining on tracts based on the 1984 RMP could limit the Tribe’s ability to earn income on these tracts if they are ever developed. As part of the exchange agreement between the Tribe and GNP, the Tribe will receive a significant income derived from the royalties paid from the mining of coal underneath the tracts affected by the 1984 RMP provision. In the future, if it is determined that those tracts could be surface mined, appropriate mining permits are issued and surface owner consent is obtained, the RMP provision would limit the Tribe and GNP from monetizing the resources they own under the affected tracts. As discussed above, the Tribe has already compromised by agreeing to forgo \$70 million in impact aid at this time. Thus, the Tribe’s royalty interest in the Bull Mountains and East Fork tracts is the only funding in the bill available to assist the Tribe in dealing with the impacts of off-Reservation coal development. Therefore, it is important to the Tribe that it receive the maximum return possible on its royalty interest to provide desperately-needed income.

#### **The Tribe is Entitled to Manage its Own Water Rights Trust Fund**

Section 6 of S. 2442 concerns a \$5 million trust fund account, referred to as the “Northern Cheyenne Trust Fund,” which is currently held on behalf of the Tribe by the OST. The earnings are applied for the benefit of the Northern Cheyenne Tribe. The principal amount in the Fund originated from the 1991 Water Rights Compact between the United States, State of Montana, and the Tribe.

These same parties reached a settlement agreement in 1999 which states that the principal of the Fund shall remain in perpetuity, that the earnings of the Fund are to be paid to the Tribe, and that the Tribe may transfer the Fund from federal to private management. OST has paid the earnings from the Fund to the Tribe, including over the last few years. However, in 2008, OST took a position inconsistent with the settlement agreement: because the appropriation could only be used for purposes expressly authorized by Congress, the principal account balance must remain under federal control. The Tribe strongly disagrees and believes that it is entitled to transfer the funds to private management, as originally agreed upon by the parties. This issue would be resolved if Congress directed OST to transfer the funds to the Tribe’s permanent fund for private management.

The Tribe’s Permanent Fund Plan states that the principal must be held in perpetuity and only a certain percentage of the earnings may be used each year, specifically: 5 percent of the average quarterly market value of the Permanent Fund during the immediately preceding four fiscal years. The earnings can be used for a limited number of uses: law enforcement, education, youth or elderly programs, burial, public services, culture, land acquisition, natural resources, economic development, Reservation district allocations, and governmental services. By directing the Secretary to transfer the fund to the Tribe’s Permanent Fund, the funds would be held in perpetuity and the earnings would be used for these vital services.

The Permanent Fund is a very secure vehicle for these funds. The Permanent Fund plan cannot change without a vote of the Tribe’s membership and the membership has repeatedly shown that it is reluctant to make any changes to this fund. The fund has grown by several millions of dollars in its almost two decades of existence.

The United States has failed to manage the Northern Cheyenne Trust Fund in compliance with its fiduciary responsibilities, resulting in a very low rate of return. This gives rise to claims against the United States for trust fund mismanagement. Such claims would be waived by the Tribe under S. 2442.

#### **The Tribe Would Benefit from Consolidating Fractionated Trust Lands That Are Suitable for Agriculture**

The final section of S. 2442, Section 7 directs the Secretary to prepare an inventory of fractionated lands within the Northern Cheyenne Reservation that the United States holds in trust for the Tribe or individual Indians and to provide information about the suitability of those fractionated lands for agricultural purposes. The Secretary is also directed to submit the land inventory to this Committee, as well as the House Committee on Natural Resources, within 180 days of enactment. The Tribe is interested in creating additional income and employment opportunities on the Reservation through agriculture. The Tribe hired a consultant several years

ago to examine the Reservation's potential for agriculture. The consultant determined that the Tribe would need at least 6,000 contiguous acres under Tribal ownership, with the correct conditions to operate a Tribal farm within the Reservation. We have not been able to identify locations on the Reservation that could support a farm because many tracts suitable for agriculture are highly fractionated. Obtaining leases from the individual owners of fractionated lands is hindered by the often extreme number of heirs who must consent to a lease. The inventory called for by Section 7 of the bill would help the Secretary and the Tribe identify the extent of fractionation as it relates to agricultural lands, which will help the Tribe determine how to consolidate fractionated interests into Tribal ownership to create tracts suitable for agriculture.

Section 7 of the bill directs the Secretary to prepare periodic reports regarding obstacles to consolidating trust land ownership on the Reservation, the Tribe's progress toward making agricultural use of trust land economical, and any outcomes or lessons learned by the Secretary and the Tribe as a result of the Tribe's land consolidation efforts. These reports shall be submitted to this Committee and the House Committee on Natural Resources no less than once per year for the next five years. As one of the first tribes to sign a cooperative agreement with the Department of the Interior Land Buy-Back Program for Tribal Nations, the Tribe is excited to share news of its land consolidation obstacles and achievements with Congress.

### **Conclusion**

The Tribe has pursued passage of S. 2442 with integrity and honor. S. 2442, if enacted, would achieve the following constructive results:

- (1) Consolidate the Tribe's land base and the Tribe's ability to self-govern.
- (2) Enhance the Tribe's opportunity for economic development on the Reservation.
- (3) Protect the area around Bear Butte, which is sacred to the Northern Cheyenne and other tribes.
- (4) Remediate the federal government's 114-year error which has deprived the Tribe of ownership of eight sections of Reservation subsurface. As S. 2442 provides, in return for the mineral conveyances provided for in the bill, the Tribe would release any and all claims it may have against the United States for that error.
- (5) Prevent GNP (or anyone else) from developing the eight sections without Tribal consent or benefit, irrespective of the long-standing Tribal concerns about Reservation coal development.
- (6) Provide a potential revenue stream to the Tribe to help the Tribe cope with the accrued and future impacts of adjoining off-Reservation coal-related development.
- (7) Address the long-standing injustices suffered by the Tribe from federally sponsored and facilitated coal-related development in areas near the Reservation, while the Tribe's trustee financially benefits from such development.
- (8) Secure the Northern Cheyenne Trust Fund to be held in perpetuity to fund vital Tribal programs for the youth, elderly and other underprivileged Tribal members. The Tribe would release the United States from liability related to management of the Fund.
- (9) Reward the Tribe for its self-generated, steadfast and honorable effort to resolve these matters by agreement rather than litigation.
- (10) Give the Tribe an inventory of fractionated trust lands that will allow the Tribe to direct its land consolidation efforts toward achieving a Tribal-owned land base suitable for agriculture.
- (11) Provide Congress with helpful information on lessons learned by the Secretary and the Tribe during the trust land consolidation process.

Again, Chairman Tester and Committee Members, I want to thank you for your consideration of S. 2442, the Northern Cheyenne Lands Act. Enactment of this bill will help address many wrongs that have been done to the Northern Cheyenne by the United States over the centuries. The Tribe did not create the situation we now find ourselves in. We implore Congress and the Administration to do the right thing and enable the Northern Cheyenne to control their own lands and trust funds, and therefore control their own destiny.

### **Attachments**

**Struggle for the Reservation.** The Northern Cheyenne cherish their land. To them, their Reservation is everything. It has provided for the Northern Cheyenne for centuries. Northern Cheyenne bands made their way back to the Tribe's original lands in Southeast Montana after the notorious massacres at Sand Creek and Washita. Later, they were forcibly relocated to the Oklahoma Territory in 1878 as retribution for their resistance to White domination and their participation in the Battle of the Little Bighorn (the Custer Battle), and then (uniquely among all other tribes relocated to the Oklahoma Indian Territory) fought their way back to their historic homeland in Montana. The journey came at great cost to the Tribe—death, imprisonment and other deprivations—hounded along the way by thousands of hostile military and settlers. The Northern Cheyenne eventually made it back to Montana to reclaim their homeland.

**1884 Reservation.** In 1884, by Executive Order, President Arthur established a 371,200 acre reservation for the Northern Cheyenne Tribe extending westward from the eastern border of the Crow reservation to 10 miles east of the Tongue River in Montana.<sup>1</sup> The Reservation included non-Indian settlers within its boundaries. A number of Tribal members living east and west of the Tongue River were not encompassed within the Reservation. Violent conflicts arose between Tribal members and early white settlers. Pending resolution of the situation, the Secretary of the Interior withdrew additional lands in 1886, including lands between the Reservation's eastern boundary and the Tongue River, as well as land to the east of the Tongue River.<sup>2</sup> These withdrawals further heightened the hostilities.

**1900 Expansion of Reservation.** In 1898, Congress directed the Secretary to investigate and report on the situation and, specifically, to determine whether it was feasible to relocate the Northern Cheyenne to the adjacent Crow Reservation.<sup>3</sup> In November, 1898, U.S. Indian Inspector James McLaughlin reported to Congress that the Tribe was unwilling to move to the Crow Reservation and the Crows were unwilling to receive them. McLaughlin recommended that "if the reservation were cleared of white settlers, who occupied much of the best land on the reservation, and if a sufficient amount of other desirable land could be added to the reservation, many of the difficulties of the Northern Cheyenne could be eliminated."<sup>4</sup> He also reported on his negotiations with the white settlers (legal and illegal) for the acquisition of their lands within the expanded limits of the Reservation so as to entice those Northern Cheyenne living east of the Tongue River to relocate to the expansion area.<sup>5</sup>

In a second report issued in February 1900, McLaughlin recounted his negotiations with the Northern Pacific Railway Company for the purchase of the railway holdings within the expansion area. The Railway held checkerboard sections of public lands (surface and subsurface) under prior Acts of Congress<sup>6</sup> intended to induce westward Railway expansion. In early 1900, McLaughlin reported that he had reached purchase agreements with the Railway and persons who had purchased surface land from the Railway within the expansion area.<sup>7</sup>

On March 19, 1900, President McKinley by Executive Order expanded the Reservation as McLaughlin had recommended. The boundaries of the Northern Cheyenne Reservation now ran from the Crow Reservation on the West to the middle of the Tongue River on the East.<sup>8</sup> On May 31, 1900, Congress appropriated the funds necessary to pay for lands purchased by McLaughlin, including those of the Railway and its successors. The Secretary then revoked 1886 withdrawal orders covering the public lands east of the Tongue River.<sup>9</sup>

**GNP's 5,000 Acres of Subsurface.** The Railway had previously sold some of its surface lands within the Reservation expansion area to others, while retaining own-

<sup>1</sup> Exec. Order of Nov. 26, 1884.

<sup>2</sup> See Brief for the Northern Cheyenne Tribe as Amicus Curiae Supporting Defendants-Appellees, *Fidelity Exploration & Production Co. v. U.S.*, 506 F.3d 1182 (9th Cir. 2007).

<sup>3</sup> *Id.* at 4. See also Opinions of the Solicitor of the Department of the Interior, M-34758, *Validity of Patents Issued to Northern Cheyenne Indians* (September 5, 1947).

<sup>4</sup> *Id.* at 1469.

<sup>5</sup> *Id.* See also James McLaughlin, *My Friend the Indian* 302 (Houghton Mifflin Co. 1910). In his biographical novel, McLaughlin noted that in implementing the expanded Reservation he "found it necessary not only to buy out ranchers and individual settlers on a small scale, but actually to buy up the town of Hutton, Montana, which had been located on the reservation lands, through the incorrectness of a map of the portion of Custer County."

<sup>6</sup> *Northern Pacific Land Grant Act*, July 2, 1864 (13 Stat. 365); *Joint Resolution 67*, May 31, 1870 (16 Stat. 378).

<sup>7</sup> Opinions of the Solicitor of the Department of the Interior, M-34758 at 1469.

<sup>8</sup> Exec. Order of March 19, 1900.

<sup>9</sup> Opinions of the Solicitor of the Department of the Interior, M-34758 at 1469.



ership of about 5,000 acres of the underlying subsurface. In purchasing from the railway, McLaughlin unfortunately neglected to acquire that underlying Railway subsurface. In 1992 (92 years later), Great Northern Properties (“GNP”) purchased those subsurface lands from a subsidiary of the Railway. This split estate (between Tribal surface ownership and third party subsurface ownership), subsists 112 years after Congressional direction to purchase the private in-holdings within the expanded Reservation in trust for the Tribe. These 5,000 acres are the only subsurface within the Reservation not owned by the Tribe.

**Tribal Homeland.** Today, the Northern Cheyenne Reservation is bordered on the west by the 4–5 times larger Crow Indian Reservation and on the east by the Tongue River. The Northern Cheyenne Reservation is truly the homeland of the Northern Cheyenne. The Reservation population is a 90 percent Northern Cheyenne. Non-Indian presence on the Reservation is minimal. A majority of the Tribe’s almost 10,000 Tribal members reside on the Reservation. Traditional Cheyenne values and culture still thrive on the Reservation and the Cheyenne language is still spoken. The Reservation remains culturally distinct from the surrounding land and communities.

Significantly, the Northern Cheyenne Reservation was the last Reservation to be allotted by Congress. Because of that very late Allotment Act, the Tribe’s reverence for the Reservation, and a long-standing Tribal buy-back program, almost all of the Reservation surface is held in trust for the Tribe as an entity and its members. Furthermore, the Reservation surface is overwhelmingly controlled and used by the Tribe and its members. The primary land uses are cattle grazing, timber harvesting (entirely suspended for years due to adverse market conditions), farming, and ceremonial and subsistence use. The entire Reservation mineral estate—except for the 5,000 acres that are the subject of the Northern Cheyenne Lands Act—is owned by the Tribe as a single entity. Because of the paramount importance to them of the Reservation, the Northern Cheyenne feel a sacred duty to pursue ownership of the 5,000 acres of Reservation subsurface held by GNP.

**GNP Leases 5,000 Acres to Peabody.** In 1965, the coal industry began to express interest in the Northern Cheyenne Reservation. Encouraged by BIA and USGS (and without benefit of any independent expertise), in an effort to alleviate its abject poverty the Tribe authorized BIA and USGS to prepare documents necessary to conduct a public lease sale of its coal reserves.<sup>10</sup> In three successive coal sales (1966, 1968 and 1971), the vast bulk of the Reservation was carved up by a collection of the Nation’s leading energy companies and speculators, all on unconscionable terms. During this episode, the Railway separately and independently leased its 5,000 acres of Reservation subsurface to Peabody Coal Company.

**Cancellation of Reservation Coal Transactions.** Realizing that it had lost control over about 70 percent of the Reservation, in 1973 the Tribe submitted a 600-page petition to the Secretary of the Interior seeking cancellation of the permits and leases encumbering the Reservation. The Tribe argued: (1) the royalty rate of 17.5 cents per ton (reduced to 15 cents if the coal, as most companies intended, was processed on the Reservation) was unconscionable; (2) the 25,000–30,000 lease options granted by the BIA-approved exploration permits grossly exceeded the 2,500 acre limitation specified in federal regulations; (3) the United States performed no prior environmental analyses before approving the coal transactions; (4) the documents contained no significant environmental protection or restoration provisions; and (5) the BIA leasing process was otherwise littered with regulatory and statutory violations.

The Secretary responded to the Tribe’s petition by suspending all further coal development under the transactions, recognizing that the United States had effectively turned over the Reservation to the coal industry and speculators. To restore the balance of power to the Tribe, and in the hope that the transactions would be renegotiated, the Secretary declined to cancel the permits and leases outright, but assured the Tribe that “the terms and conditions upon which mineral development may proceed on the Northern Cheyenne Reservation will require [the Tribe’s] joint agreement and support prior to any further approval by [the Secretary].”<sup>11</sup> In the ensuing years, the Tribe remained so traumatized and deeply offended by what had been

<sup>10</sup> See Hearings before the U.S. Senate Select Committee on Indian Affairs on S. 2126—A Bill Relating to Certain Leases Involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation, 90th Cong. 32–39 [“S. 2126 Hearing”] (testimony of Allen Rowland, President of the Northern Cheyenne Tribal Council).

<sup>11</sup> See Report from the Committee on Interior and Insular Affairs on S. 2126 (September 23, 1980).

done, that it rejected all overtures of the involved coal companies and speculators to renegotiate the transactions.

**Congressional Solution.** In approximately 1978, the Tribe approached the coal companies with a proposal to seek federal legislative action which would facilitate the companies' voluntary relinquishment of their claims on the Reservation. Recognizing that their development prospects on the Reservation were nil, the companies joined with the Tribe in a cooperative effort to seek legislation. At the request of the Tribe and the companies, in 1979, S. 2126 entitled "A Bill Relating to Certain Leases Involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation" was introduced. The final bill incorporated the concepts of noncompetitive leases and "bidding rights" as compensation for expenditures on the Reservation. S. 2126 as enacted authorized the Secretary to negotiate with the Tribe and each affected party for a "cancellation agreement" under which the permit or lease would be cancelled in exchange for either (a) a much smaller noncompetitive lease for federal coal adjacent to an existing mining unit that was unlikely to be mined separately, or (b) a certificate of bidding rights.<sup>12</sup> The final bill also established the value of the bidding rights at a level equal to the amount of the permit holder's or lessee's actual cash investment plus interest.

S. 2126 was enacted on October 9, 1980.<sup>13</sup> Over the next year, separate cancellation agreements among the Department of the Interior, the companies, and the Tribe were entered into, except as to the tracts secured by the speculators, whose claims on the Reservation were therefore cancelled by Congressional fiat as provided in the Act.<sup>14</sup> The speculators then sued the United States for a Fifth Amendment "taking" in the U.S. Court of Claims.<sup>15</sup> That suit was essentially unsuccessful. The Court gave token judgment by ordering reimbursement by the United States of the very minimal bonuses they had paid for the permits.<sup>16</sup>

**Class I Air.** In the late 1970s, utilities owning the Colstrip power plants about 15 miles north of the Reservation sought to greatly expand the size of that project. The Tribe was very concerned about the likely adverse effects on Reservation air quality and the pattern of exclusion of Northern Cheyenne from employment in the power plants, notwithstanding appalling unemployment rates on the Reservation (the area's largest local community). To address these issues, the Tribe took the bold and unprecedented step of reclassifying the air quality standard above its Reservation to Class I—the most pristine standard under federal law.<sup>17</sup> The Tribe was the first governmental entity of any kind in the Country to do so. EPA granted the reclassification and litigation challenging it was unsuccessful.<sup>18</sup> The end result was an agreement between the Northern Cheyenne Tribe and the power plant owners providing for the adoption of enhanced air quality control technology for the plant expansion, employment and other commercial opportunities for the Northern Cheyenne, and funding for Tribal government.

**Powder River Coal Sale.** In 1982, Secretary of the Interior James Watt authorized the largest federal coal lease sale in history. The Powder River Basin Sale included tracts to the north, east and south of the Reservation, as well as tracts in Wyoming. The Montana tracts included so-called tracts for an existing mine in Colstrip 15 miles to the north, tracts for the Decker mines 25 miles to the south, and tracts for new mines to be established to the east in the Tongue River Valley.

The Tribe made extensive efforts to resolve its concerns with this enormous coal lease sale without litigation. Those efforts were spurned by the Secretary and industry and, on the eve of the Powder River Basin lease sale, the Tribe filed suit against the Secretary asking that any leases issued in the forthcoming sale be voided on the ground that the leasing process essentially ignored or minimized the very adverse effects on the Northern Cheyenne. The Tribe's claims were filed under the federal coal leasing statutes and regulations, the federal trust responsibility, and NEPA. The Tribe based its claims on exclusion of the Tribe from impact funding, the physical and socio-economic on-Reservation impacts such development would engender, and the historic pattern of exclusion of Northern Cheyenne from employment opportunities at existing off-Reservation coal-related projects.

<sup>12</sup>A *Bill Relating to Certain Leases Involving the Secretary of the Interior and the Northern Cheyenne Indian Reservation*, Pub. L. No. 96-401, 94 Stat. 1707 (1980).

<sup>13</sup>*Id.* at §4.

<sup>14</sup>The speculators offered to pay the Tribe an initial payment and an overriding royalty on the federal coal (located in the Tongue River Valley) they sought, if the Tribe would sign the necessary cancellation agreement. The Northern Cheyenne Tribal Council rejected that offer.

<sup>15</sup>*NRG Co. v. U.S.*, 24 Cl. Ct. 51 (1991).

<sup>16</sup>*NRG Co. v. U.S. ("NGR II")*, 30 Fed. Cl. 460 (1994).

<sup>17</sup>Redesignation of Northern Cheyenne Indian Reservation for Prevention of Significant Deterioration, 42 Fed.Reg. 40695 (August 11, 1977).

<sup>18</sup>*Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981).

In federal District Court, the Tribe won a sweeping victory on all counts. All leases, including those authorizing new production tracts in the Tongue River Valley, were voided.<sup>19</sup> The United States and the involved companies appealed only the remedial provisions of the District Court decision.<sup>20</sup> Ultimately, the new production tract leases in the Tongue River Valley were terminated and the Tribe negotiated a mitigation agreement with the Colstrip mine (which had initially received tracts in the 1982 sale) that provided, among other items, jobs for Tribal members and some Tribal impact funding.

**Termination of Montco Project.** In the 1980s, federal mining permits were issued for the proposed Montco Mine project in the Tongue River Valley, adjacent to the Reservation. While the Tribe had concerns about the project from its inception, a lack of resources prevented the Tribe from taking legal action to challenge it, although the Northern Plains Resource Council (NPRC) and others tried unsuccessfully to block the project. In the 1990s when the Montco Project was applying for yet another renewal of its mining permit (after several prior renewals), the Tribe finally decided to legally challenge the project.

The Tribe was successful in administrative proceedings. Montco appealed to the District Court, which reversed the administrative decision. The Tribe then appealed to the Montana Supreme Court. Although NPRC was a party to the proceedings, the Tribe took the lead in preparing the pleadings, writing the briefs, and arguing the case. In a case of first impression, the Montana Supreme Court agreed with the Tribe's position and denied further renewal of the Montco permit.<sup>21</sup> Since then, there have been no efforts to resuscitate the Montco Project.

**Otter Creek.** In 1989, Crown Butte Mines proposed a precious metals mine—the New World Mine—on private and U.S. Forest Service lands located approximately 3 miles from the border of Yellowstone National Park. During the federal environmental review process for the New World Mine, several issues arose about the impact of mining on the surrounding area, including the Clark's Fork of the Yellowstone River, and the permitting process for the mine became extremely controversial.

With this controversy and the increasing likelihood that the New World Mine would never receive the necessary federal permits, negotiations began between Crown Butte Mines, local environmental groups and the Council on Environmental Quality as to how to buy-out the valid existing rights held by Crown Butte Mines. In August 1996, President Bill Clinton announced an agreement between the United States and Crown Butte Mines which, among other items, committed the United States to pay \$65 million for patented and unpatented mining claims held by Crown Butte Mines.

In April 1997, the United States proposed to fund this \$65 million payment with either a diversion of federal royalties from currently producing coal, oil, and gas operations in Montana or an exchange of other federal assets. To identify appropriate revenue streams, Montana Governor Marc Racicot commenced the Montana Initiative to identify federal coal and timber lands in Montana.<sup>22</sup> Ultimately, for various reasons, none of the revenue streams or exchange property identified by the State of Montana or the United States was workable as payment to Crown Butte Mines.

However, the Fiscal Year 1998 Balanced Budget Agreement entered into by Congressional leadership and President Clinton included \$300 million for "high priority land acquisitions."<sup>23</sup> This total included \$65 million for the purchase by the United States of Crown Butte Mines' interests in patented and unpatented mining claims.<sup>24</sup> Despite their inclusion in the Balanced Budget Agreement, the Republican Congress did not wholeheartedly endorse the "high priority land acquisitions" identified by President Clinton. The Senate Appropriations Committee included money for "high priority land acquisitions" in the Fiscal Year 1998 Appropriations Bill for the Department of the Interior provided that separate legislation was enacted authorizing the acquisition while the House Appropriations Committee did not include any funding for the acquisitions.

In the fall of 1997, negotiations began in earnest between the White House and Congressional Republicans on the Fiscal Year 1998 Appropriations Bill for the Department of the Interior. Congress eventually decided to fund and authorize the Ad-

<sup>19</sup> *Northern Cheyenne Tribe v. Hodel*, 12 Ind.L.Rep. 3065 (D. Mont. 1985).

<sup>20</sup> *Northern Cheyenne Tribe v. Hodel*, 851 F.2d 1152 (9th Cir. 1988).

<sup>21</sup> *Montco v. Simonich*, 285 Mont. 280, 947 P.2d 1047 (1997).

<sup>22</sup> Hearing before the Subcommittee on Energy and Mineral Resources of the Committee on Resources, U.S. House of Representatives, *New World Mine Proposed Buyout*, H.Rpt. 105-40 (May 20, 1997); CRS Report for Congress, *New World Gold Mine and Yellowstone National Park*, No. 96-669 ENR (August 27, 1996).

<sup>23</sup> *The Balanced Budget Act of 1997*, Pub. L. No. 105-33 (Aug. 5, 1997).

<sup>24</sup> It also included \$250 million for the Headwaters Forest acquisition in northern California.

ministration's "high priority land acquisitions" including \$65 million for the New World Mine property. The authorization for the New World Mine acquisition included a number of terms and conditions insisted upon by the respective authorizing Committees in the House and Senate.<sup>25</sup> It also included two items of particular importance to the State of Montana: (1) \$12 million for the maintenance and rehabilitation of the Beartooth Highway through Wyoming into Montana and (2) \$10 million in federal mineral rights to the State of Montana.

As to the transfer of the federal mineral rights to the State of Montana, the Act authorized that the Secretary of the Interior to convey to the state "without consideration":

- \$10,000,000 in mutually agreeable federal mineral rights in the State; or
- all federal mineral rights in Otter Creek tracts 1, 2, and 3.

Over the next four years, the State and the federal government failed to identify mutually agreeable federal mineral rights to convey to the State.<sup>26</sup> Thus, the Secretary was obliged to convey the Otter Creek tracts 1, 2 and 3 to the State.

**Otter Creek Settlement.** Throughout this time, the Northern Cheyenne Tribe repeatedly expressed concerns to the State of Montana and the Department of the Interior about transferring the Otter Creek tracts to the State of Montana. The Otter Creek tracts are approximately 3–4 miles from the Tongue River, the eastern boundary of the Northern Cheyenne Reservation. The Tribe was worried that transfer of the property from federal to state ownership would adversely impact the Reservation if the tracts were developed, since the Tribe would lose federal trust protections and the environmental protection requirements of the federal coal leasing program would no longer apply. The Tribe met on numerous occasions with the Montana Congressional delegation, representatives of the Department of the Interior, the Governor, other State officials, and Great Northern Properties (GNP), to work out a settlement.

In January 2002, Montana Governor Martz formally requested that the Secretary of the Interior Norton transfer the Otter Creek tracts 1, 2 and 3 to the State. The Tribe met with Secretary Norton, to present its concerns and request time to negotiate a multi-party settlement. Shortly after that meeting, the Tribe was advised that the Secretary would withhold action on the transfer pending such settlement discussions. The Department then "withheld action of the transfer of any federal mineral rights to the State of Montana in order to support the discussions between the State of Montana and the Northern Cheyenne Tribe."<sup>27</sup>

On the eve of a public hearing before the State Land Board to consider and consummate an Otter Creek Settlement Agreement negotiated by the Tribe and the State, the Tribe learned that, notwithstanding the Secretary's stand-still assurance, the Otter Creek transfer would go forward virtually immediately. Within two business days, the Tribe filed suit against the Secretary in federal District Court in Washington, D.C. to enjoin the transfer.<sup>28</sup> The Tribe's settlement discussions with Governor Martz, the Montana State Board of Land Commissioners, the Montana Congressional delegation and Great Northern Properties (the owner of the private coal checkerboard in Otter Creek) to resolve its litigation and objections to the Otter Creek transfer were ultimately successful.

Under the settlement, the Land Board and the Congressional delegation agreed to support the enactment of federal legislation which would provide impact funding to the Tribe and resolve the Tribe's claims against the United States arising from the Otter Creek transfer and the 1900 failure to acquire 5,000 acres of subsurface rights within the Reservation. The State Land Board agreed to require any lessee of the Otter Creek tracts, in close consultation with the Tribe, to fashion Operating Plans which would provide employment and commercial opportunity to the Northern Cheyenne, enhance environmental protection for the Reservation, require project workforce and truckers to meet conduct codes while on the Reservation, and protect Tribal historic, cultural and religious interests and values in the Tongue River Valley. The Land Board also agreed to support efforts to improve off-Reserva-

<sup>25</sup> *An Act Making Appropriations for the Department of the Interior and Related Agencies for the fiscal year ending September 30, 1998 and for other purposes*, Pub. L. No. 105–83 (Nov. 20, 1997).

<sup>26</sup> *The Montana Mineral Exchange: H.R. 2107, Section 503 of the Department of Interior & Related Agencies Appropriations Act, 1998, Briefing & Information Packet* (January 1999).

<sup>27</sup> *Draft Environmental Assessment for Compliance with Section 503 of the Department of the Interior and Related Agencies Appropriation Act of 1998, Public Law 105–83* at pp. 17–19 (Feb. 4, 2002). It is unclear if a final EA was ever issued for the transfer of the Otter Creek Tracts.

<sup>28</sup> *Northern Cheyenne Tribe v. Norton*, Docket # 1:02-cv-00146–TPJ (D.D.C. 2002). The Tribe's complaint was filed on January 25, 2002.

tion roads to lessen resulting traffic loads on the Reservation, new cooperative law enforcement arrangements, and Congressional enactment of federal legislation to facilitate federal impact funding to the Tribe. In exchange, the Tribe agreed to dismiss, with prejudice, its judicial challenge to the Otter Creek transfer.

The Settlement Agreement was signed by the President of the Northern Cheyenne Tribe, Governor Martz, Montana Secretary of State Brown, and Montana Director of Natural Resources and Conservation Clinch in February 2002.<sup>29</sup> The Bureau of Land Management issued the State of Montana a patent for the Otter Creek tracts on April 10, 2002.<sup>30</sup>

**Legislative Follow-Up on Otter Creek Settlement.** Consistent with the terms of the Otter Creek Settlement, in 2004, Senator Burns introduced the Montana Mineral Conveyance Act.<sup>31</sup> The 2004 Montana Mineral Conveyance Act was cosponsored by Senators Baucus and Campbell. As introduced, the bill conveyed to the United States the Northern Cheyenne Reservation tracts owned by Great Northern Properties for other coal reserves owned by the United States in Montana. The Northern Cheyenne Tribe agreed to waive its breach of trust claims against the United States. The legislation also authorized a \$70 million impact assistance fund for the benefit of the Northern Cheyenne Tribe. No hearings were held on the 2004 Montana Mineral Conveyance Act.

H.R. 1158 was introduced in 2011, as was a similar bill in the Senate, S. 647. Another iteration of the bill was introduced in the Senate as S. 2110. In contrast to the predecessor 2004 Bill and the negotiated Otter Creek Settlement, neither H.R. 1158 nor the Senate bills provided the promised \$70 million in federal impact funding to the Tribe. This provision was removed in light of federal budget realities and to increase the likelihood of enactment. H.R. 1158 was reported favorably by unanimous consent out of the House Indian and Alaska Native Affairs with a recommendation that it would pass. No hearing was held in the Senate.

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<sup>29</sup> Settlement Agreement by the Montana State Board of Land Commissioners and Northern Cheyenne Tribe (Feb. 19, 2002).

<sup>30</sup> State of Montana, Office of the Governor, *Executive Order No. 12-02, Executive Order Certifying Transfer of Title to Federal Property Interests* (May 28, 2002).

<sup>31</sup> S. 2225, 108th Cong., 2d Sess. (2004).

BOARD OF LAND COMMISSIONERS



STEVE BULLOCK, GOVERNOR

1625 ELEVENTH AVENUE

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2874  
FAX: (406) 444-2634

MC BOX 201601  
HELENA, MONTANA 59620-1601

April 21, 2014

Honorable Jon Tester, Senator  
United States Senate  
706 Hart Senate Office Building  
Washington, D.C. 20510

Honorable John E. Walsh, Senator  
United States Senate  
2 Russell Courtyard  
Washington, D.C. 20510

Honorable Steve Daines, Representative  
United States House of Representatives  
206 Cannon House Office Building  
Washington, D.C. 20515

Re: Proposed "Northern Cheyenne Lands Act"

Dear Senator Tester, Senator Walsh, and Representative Daines:

At the request of the Northern Cheyenne Tribe, we, as individual members of the Montana Board of Land Commissioners affirm our support for the enactment of legislation to rectify a claimed error which deprived the Tribe of ownership of 8 1/2 sections of Reservation subsurface rights. We hereby request that the Montana Congressional delegation move forward to enact legislation. The passage of this legislation is very important in that it will correct a longstanding error when the Northern Cheyenne Reservation was expanded 114 years ago and will provide important land consolidation and economic opportunities to the Tribe, which are greatly needed. This legislation is long overdue and we request its swift enactment.

Sincerely,


Montana's Board of Land Commissioners:

By   
Steve Bullock, Governor

By   
Tim Fox, Attorney General

By   
Linda McCulloch, Secretary of State

By   
Monica Lindan, Commissioner  
of Securities and Insurance

By   
Denise Juneau, Superintendent  
of Public Instruction



STAGG ENGINEERING SERVICES, INC.

May 6, 1993

RECEIVED  
MAY 10 1993

Steven H. Chestnut, Esq.  
Ziontz, Chestnut, Varnell,  
Berley & Slonim  
Suite 1230  
Fourth and Blanchard Building  
2101 Fourth Avenue  
Seattle, Washington 98121

ZIONTZ, CHESTNUT, VARNELL,  
BERLEY & SLONIM

Re: Proposed Swap of Lands  
Great Northern Properties  
Rosebud County, Montana  
Job No. E396-126-102

Dear Steve:

As you requested I spoke with Nick Carter, president of Great Northern Properties, concerning a possible interest in exchanging property it owns within the perimeter of the Northern Cheyenne's reservation. He indicated a serious interest in this concept and asked me to relay this interest to you.

Nick will be in Montana during the period June 1 - 4 and would be willing to meet with you and/or other representatives of the Tribe to discuss this issue further. Nick can be reached as follows:

Nick Carter  
President  
Great Northern Properties  
P.O. Box 2827  
Huntington, West Virginia 25727-2827  
(304) 522-5755

I am confirming my forwarding of this information to you by sending Nick a copy of this letter.

If I can be of additional assistance in this matter please let me know.

Sincerely yours,

STAGG ENGINEERING SERVICES, INC.

  
\_\_\_\_\_  
Alan K. Stagg  
President



**Montana & Wyoming Tribal Leaders Council**

178 North 27<sup>th</sup> Street, Suite 1003, Billings, MT 59101 Ph: (406) 252-2550 Fax: (406) 254-6355  
Website: <http://www.mtwytlc.org> Email: [CherylB@mtwytlc.com](mailto:CherylB@mtwytlc.com)

Resolution# 13March2014-02

**A RESOLUTION TO SUPPORT LEGISLATION TO REMEDY  
INJUSTICES BY PROVIDING THE NORTHERN CHEYENNE TRIBE  
OWNERSHIP OF SUBSURFACE RIGHTS WITHIN ITS RESERVATION  
AND CONTROL OVER THE NORTHERN CHEYENNE TRUST FUND,  
AND FOR THE TRANSFER OF TRIBALLY-OWNED FEE LANDS TO  
THE UNITED STATES TO BE HELD IN TRUST FOR THE TRIBE.**

**WHEREAS**, the Montana-Wyoming Tribal Leaders Council (Tribal Leaders Council) has been created for the purpose of providing a unified voice for Tribal governments and a collective organization to address issues of concern to member Tribes and their peoples; and

**WHEREAS**, duly elected Tribal Chairs, Presidents and Council Members of the Tribal Governments make up the membership of the Montana-Wyoming Tribal Leaders Council and as such are fully authorized to represent their respective Tribes; and

**WHEREAS**, by acting in unison to direct the formation of national, regional and local policy elected Tribal Leaders succeed in providing leadership on all issues that may affect the Tribes and reservation communities; and

**WHEREAS**, the Tribal Leaders Council strives to advance and to safeguard the sovereign authority and cultural integrity of each member Tribe; and

**WHEREAS**, the Northern Cheyenne Tribe has depended on its lands and land-based resources to support its way of life since time immemorial and has made supreme and historic sacrifices to repossess and maintain its homeland, including its Reservation in Montana; and

**WHEREAS**, the Tribe and its members are currently the beneficial owners of over 90% of the surface lands on the Northern Cheyenne Reservation and all but approximately 5,000 subsurface acres of the Reservation; and



**WHEREAS**, the Tribe currently suffers from tremendous social and economic challenges, including a lack of employment opportunities on the Reservation, which could be improved by Congressional legislation aimed at strengthening its control over its land base, natural resources and trust funds; and

**WHEREAS**, over 100 years ago, to resolve hostilities that had broken out between the Northern Cheyenne and non-Indian interests legally (and illegally) then located on or near the Northern Cheyenne Reservation, Congress directed that a federal agent be sent to the Northern Cheyenne Reservation to investigate and recommend an appropriate solution to those hostilities, and that agent's investigation resulted in a recommendation to Congress that the best solution would be to buy-out all non-Indian interests on or near the Reservation to facilitate extending the eastern boundary of the Northern Cheyenne Reservation to mid-channel of the Tongue River; and

**WHEREAS**, in executing that Congressional directive, the federal agent failed to purchase 8 sections of subsurface (coal and iron ore) under approximately 5,000 acres within the expansion area, which subsurface was then owned by Northern Pacific Railway and is now owned by Great Northern Properties; and

**WHEREAS**, in 2002, the Tribe agreed by settlement to dismiss its lawsuit against the United States, which alleged that the United States failed to protect the Reservation from the impacts of coal development, in return for several promises, including assistance in securing Tribal ownership of the aforementioned subsurface rights (as well as mitigation funding to address the impacts of coal development in areas adjacent to the Reservation); and

**WHEREAS**, to increase Tribal ownership and control of Reservation surface lands, the Tribe has purchased approximately 1000 acres of lands within its Reservation that were taken out of trust ownership status for various reasons; and

**WHEREAS**, the Tribe has purchased approximately 635 acres of land near Bear Butte, South Dakota, which the Tribe considers sacred ground for its members, as well as for members of other Tribes; and

**WHEREAS**, funds from the 1992 Northern Cheyenne Water Rights Settlement Act are currently managed as the "Northern Cheyenne Trust Fund" by the Office of Special Trustee; and

**WHEREAS**, in 1999, the United States, State of Montana, and the Tribe resolved a dispute by settlement agreement that the Tribe is entitled to the earnings

of that Fund and to transfer the Fund to the Northern Cheyenne Permanent Fund, but since then the Office of Special Trustee has refused to transfer the Fund and the Fund has not been prudently invested and managed by the Special Trustee; and

**WHEREAS**, to strengthen the Northern Cheyenne Tribe's land base and economic opportunities and resolve the above-described injustices which have deprived the Tribe of the subsurface rights and adequate returns from the Northern Cheyenne Trust Fund, the Tribe seeks Congressional legislation which would;

Transfer title from Great Northern Properties (GNP) to the Northern Cheyenne Tribe of the 8 sections (approximately 5,000 acres) of Reservation subsurface owned by GNP;

In return, convey to GNP subsurface rights in federal subsurface tracts within the state of Montana containing approximately equal amounts of federal minerals;

Facilitate the Tribe's acquisition from GNP of royalty interest in royalties paid to GNP in the event revenue is someday generated from the leasing of those tracts;

Transfer title to approximately 1600 acres of Tribally-owned fee land to the United States to be held in trust for the benefit of the Tribe;

Clarify, consistent with the Tribe's 1999 settlement with the United States and State of Montana, that the "Northern Cheyenne Trust Fund" managed by the Office of Special Trustee may be transferred to the Northern Cheyenne Tribe Permanent Fund; and


**WHEREAS**, the Tribal Leaders Council has previously strongly and fully supported earlier iterations of the proposed legislation (e.g., S. 647 and H.R. 1158) and urged for it to be passed by Congress as promptly as possible; and

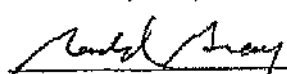
**NOW THEREFORE BE IT RESOLVED**, that the Tribal Leaders Council does hereby urge the United States Congress and the Obama Administration to enact the legislation described above, or similar legislation, as promptly as possible; and;

**NOW BE IT FURTHER RESOLVED**, that this resolution shall be the policy of Tribal Leaders Council until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

We, the undersigned, as the Chair and the Secretary of the Montana Wyoming Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and approved, at a specially convened Board Meeting of the Montana Wyoming Tribal Leaders Council, which was held on the 13<sup>th</sup> of March, 2013 in Billings, Montana with a full quorum present.

  
Ivan Posey, Chairman,  
MT WY Tribal Leaders Council

  
Gerald Gray, Secretary  
MT WY Tribal Leaders Council



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians  
Resolution #TUL-13-014

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Cherokee Tribe

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**SOUTHERN PLAINS**  
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Apsara Tribe

**SOUTHWEST**  
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Ute Mountain Tribe

**WESTERN**  
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**NGAI HEADQUARTERS**  
1515 P Street, N.W.  
Washington, DC 20005  
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**TITLE: Support Legislation to Remedy Injustices by Providing the Northern Cheyenne Tribe Ownership of Subsurface Rights within Its Reservation and Control over the Northern Cheyenne Trust Fund, and for the Transfer of Tribally-Owned Fee Lands to the United States to be Held in Trust for the Tribe**

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the Northern Cheyenne Tribe has depended on its lands and land-based resources to support its way of life since time immemorial and has made supreme and historic sacrifices to repossess and maintain its homeland, including its Reservation in Montana; and

WHEREAS, the Tribe and its members are currently the beneficial owners of over 90% of the surface lands on the Northern Cheyenne Reservation and all but approximately 5,000 subsurface acres of the Reservation; and

WHEREAS, the Tribe currently suffers from tremendous social and economic challenges, including a lack of employment opportunities on the Reservation, which could be improved by Congressional legislation aimed at strengthening its control over its land base, natural resources and trust funds; and

WHEREAS, over 100 years ago, to resolve hostilities that had broken out between the Northern Cheyenne and non-Indian interests legally (and illegally) then located on or near the Northern Cheyenne Reservation, Congress directed that a federal agent be sent to the Northern Cheyenne Reservation to investigate and recommend an appropriate solution to those hostilities, and that agent's investigation resulted in a recommendation to Congress that the best solution would be to buy-out all non-Indian interests on or near the Reservation to facilitate extending the eastern boundary of the Northern Cheyenne Reservation to mid-channel of the Tongue River; and

**WHEREAS**, in executing that Congressional directive, the federal agent failed to purchase 8 sections of subsurface (coal and iron ore) under approximately 5,000 acres within the expansion area, which subsurface was then owned by Northern Pacific Railway and is now owned by Great Northern Properties; and

**WHEREAS**, in 2002, the Tribe agreed by settlement to dismiss its lawsuit against the United States, which alleged that the United States failed to protect the Reservation from the impacts of coal development, in return for several promises, including assistance in securing Tribal ownership of the aforementioned subsurface rights (as well as mitigation funding to address the impacts of coal development in areas adjacent to the Reservation); and

**WHEREAS**, to increase Tribal ownership and control of Reservation surface lands, the Tribe has purchased approximately 1000 acres of lands within its Reservation that were taken out of trust ownership status for various reasons; and

**WHEREAS**, the Tribe has purchased approximately 635 acres of land near Bear Butte, South Dakota, which the Tribe considers sacred ground for its members, as well as for members of other tribes; and

**WHEREAS**, funds from the 1992 Northern Cheyenne Water Rights Settlement Act are currently managed as the "Northern Cheyenne Trust Fund" by the Office of Special Trustee; and

**WHEREAS**, in 1999, the United States, State of Montana, and the Tribe resolved a dispute by settlement agreement that the Tribe is entitled to the earnings of that Fund and to transfer the Fund to the Northern Cheyenne Permanent Fund, but since then the Office of Special Trustee has refused to transfer the Fund and the Fund has not been prudently invested and managed by the Special Trustee; and

**WHEREAS**, to strengthen the Northern Cheyenne Tribe's land base and economic opportunities and resolve the above-described injustices which have deprived the Tribe of the subsurface rights and adequate returns from the Northern Cheyenne Trust Fund, the Tribe seeks Congressional legislation which would:

- transfer title from Great Northern Properties (GNP) to the Northern Cheyenne Tribe of the 8 sections (approximately 5000 acres) of Reservation subsurface owned by GNP;
- in return, convey to GNP subsurface rights in federal subsurface tracts within the state of Montana containing approximately equal amounts of federal minerals;
- facilitate the Tribe's acquisition from GNP of a royalty interest in royalties paid to GNP in the event revenue is someday generated from the leasing of those tracts;
- transfer title to approximately 1600 acres of Tribally-owned fee land to the United States to be held in trust for the benefit of the Tribe;

- clarify, consistent with the Tribe's 1999 settlement with the United States and State of Montana, that the "Northern Cheyenne Trust Fund" managed by the Office of Special Trustee may be transferred to the Northern Cheyenne Tribe Permanent Fund; and

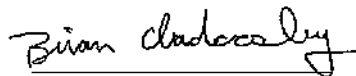
**WHEREAS**, the NCAI has previously strongly and fully supported earlier iterations of the proposed legislation (e.g., S. 647 and H.R. 1158) and urged for it be passed by Congress as promptly as possible.

**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby urge the United States Congress and the Obama Administration to enact the legislation described above, or similar legislation, as promptly as possible; and

**BE IT FURTHER RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

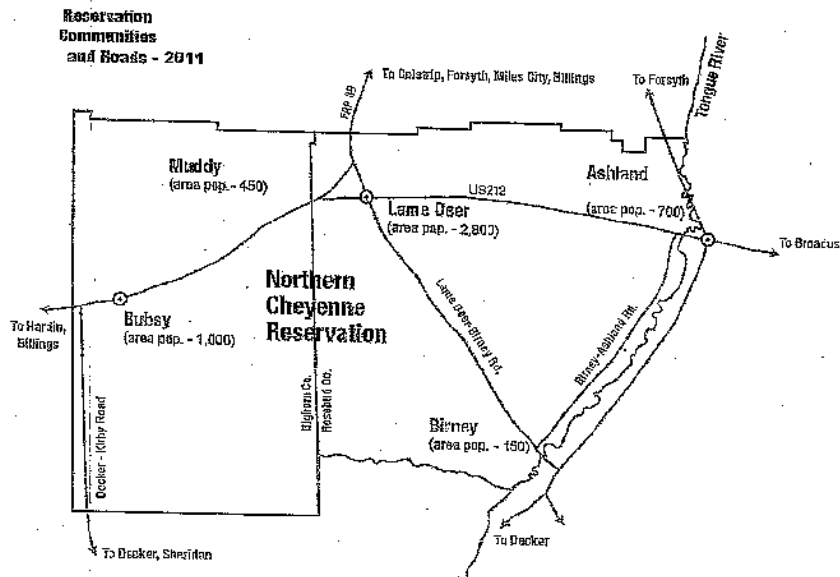
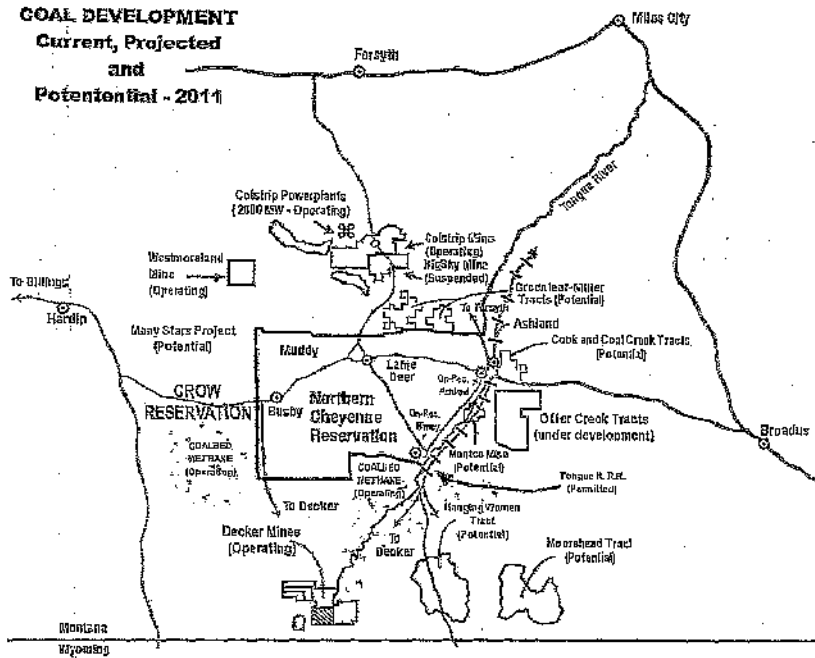
**CERTIFICATION**

The foregoing resolution was adopted by the General Assembly at the 2013 Annual Session of the National Congress of American Indians, held at the Cox Business Center from October 13 - 18, 2013 in Tulsa, Oklahoma with a quorum present.

  
\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_  
Recording Secretary



The CHAIRMAN. Thank you, President Fisher.  
 We had a number of members show up, and Senator Flake is here. I promised when Senator Flake showed up he could introduce

the bill that he is a sponsor of, and Senator McCain. Then you are free to stay or go, whatever you want, Senator Flake. So go ahead.

**STATEMENT OF HON. JEFF FLAKE,  
U.S. SENATOR FROM ARIZONA**

Senator FLAKE. Thank you, Mr. Chairman, members of the Committee. I really appreciate this opportunity to testify in support of S. 2503, the Bill Williams River Water Rights Settlement Act of 2014.

This is an important piece of legislation for Arizona. I would like to recognize the Chairman of the Hualapai Tribe, Ms. Sherry Counts, who will be testifying today. Both her efforts and those of the Hualapai Tribal Council on this measure are appreciated, and I am happy to join her in advancing this legislation.

Also I want to thank my colleague from Arizona, Senator McCain, for his long role in addressing Indian water rights in Arizona, and for his co-sponsorship of this bill. It is rare to find a piece of legislation that can garner bipartisan, bicameral support from the entire State congressional delegation. I am happy to report that Congressman Gosar and the entire Arizona delegation have introduced a companion measure, H.R. 4924. At its core, this legislation seeks to resolve a dispute between the Hualapai Tribe, the mining company Freeport Minerals Corporation, the United States as trustee for the tribe and the allottees, and the Arizona Game and Fish Commission, and the Arizona Department of Water Resources related to competing interests and shared water resources in the Bill Williams Basin.

Basically this legislation would recognize the Hualapai Tribe and the allottees' right to 694-acre feet of water in three parcels. It establishes protections for the tribe's culturally significant interests in the Cofer Hot Springs and it caps Freeport's water use at Wikieup well field at 10,055 acre feet per year. It facilitates the transfer of a portion of land known as Planet Ranch to the Arizona Game and Fish Commission for use as part of a Lower Colorado River Multi-Species Conservation Plan, or MSCP, which provides endangered species related mitigation enabling current and future water management activities along the Colorado River in Arizona, Nevada and California. It secures non-Federal contributions from Freeport to the Hualapai Tribe and toward a future settlement of water disputes in two other river basins. It also ensures enforceability of the settlement only occurs after any objections by the non-settling parties have been resolved in a final non-appealable decision.

Due to the statutory time requirements requiring parties to use or potentially lose water rights within five years, there is a sense of urgency to passing this legislation quickly. But also I would like to note that as a legal settlement of claims where parties are negotiating sensitive deal terms, the settlement negotiations were subject to a confidentiality agreement among the parties. The practice is not unusual. It enables the parties to negotiate with each other in good faith.

However, with the introduction of the legislation at today's hearing, the public vetting process has begun. A lot of people have been

concerned that they haven't been involved in the process. This is the beginning of the process and they will be involved.

To that end, I understand there are some concerns that have been raised by Mojave County and La Paz County in reviewing this settlement. I further understand the Department of Interior and Department of Justice will raise some issues at today's hearing. I look forward to working with all interested stakeholders on improving the bill.

With regard to the Department's testimony on the limited waiver of sovereign immunity, I would note that the parties to the settlement must have the ability to enforce the terms of the agreement. In light of the Supreme Court precedents, I believe the waiver must be express and unequivocal. The waiver included in this legislation is not unprecedented; it is similar to the waiver included in the White Mountain Apache Settlement authorized by Congress in 2010. I believe this settlement will mark an important step for Arizona. I am pleased to join Senator McCain and the entire House delegation and the Hualapai Tribe to advance this bill. I appreciate the Committee's support in that effort.

Finally, with the Committee's indulgence, I would ask that my written statement, the Hualapai Tribe Resolution 40-2014 in support of the settlement, letters in support from the Governor of Arizona, Jan Brewer, the Arizona Chamber of Commerce and Industry, the Nature Conservancy, written testimony in support of S. 2503 from Freeport Minerals Corporation, as well as a letter and statement in opposition from Mojave County, be entered into the legislative record. Thank you, Mr. Chairman.

The CHAIRMAN. Without objection, so ordered. Thank you, Senator Flake.

[The prepared statement of Senator Flake follows:]

PREPARED STATEMENT OF HON. JEFF FLAKE, U.S. SENATOR FROM ARIZONA

Mr. Chairman, Mr. Vice Chairman, and Members of the Committee, I appreciate the opportunity to appear before you today to testify in support of S. 2503, the Bill Williams River Water Rights Settlement Act of 2014. Thank you for scheduling this hearing on what I believe is an important piece of legislation for the state of Arizona. I would also like to recognize the Chairwoman of the Hualapai Tribe, Ms. Sherry Counts, who will be testifying today. Both her efforts and those of the Hualapai tribal council on this measure are appreciated, and I am happy to join her and the Tribe in advancing this legislation. Finally, I would like to thank my colleague from Arizona, Senator McCain, for his long-held role in addressing Indian water rights in Arizona and his cosponsorship of this settlement.

It is rare to find a piece of legislation that can garner the bipartisan and bicameral support of an entire state congressional delegation, but in this instance we appear to have a confluence of seemingly disparate interests flowing in the same direction. With the introduction of S. 2503, as well as Congressman Gosar's companion measure, H.R. 4924, Congress has an opportunity to resolve a water-rights dispute among the Hualapai Tribe; a mining company, Freeport Minerals Corporation; and the United States, as trustee for the Tribe and Allottees. Better yet, we can resolve this dispute without authorizing any new federal spending. In addition, the bill would enhance the Lower Colorado River Multi-Species Conservation Plan or MSCP—a program that provides endangered species related mitigation enabling current and future water-management activities along the Colorado River in Arizona, Nevada, and California.

The dispute this legislation resolves arose over competing interests in shared water resources in western Arizona. There, the Hualapai Tribe and Allottees own parcels of land along the Big Sandy River. The Big Sandy River is a tributary of the Bill Williams River, which flows into the Colorado River at Lake Havasu. Nearby, Freeport owns and operates a large copper and molybdenum mine in Bagdad,



Arizona. Like the Tribe, the company draws its water for that operation from wells located in the Big Sandy River watershed.

In an effort to safeguard its water uses against potential legal challenges that could disrupt mining operations, Freeport purchased land and water rights associated with two properties in the basin known as Planet Ranch and Lincoln Ranch. The company then sought to shift a portion of the water rights associated with those ranches to its wellfield. However, a number of parties, including the United States, as trustee for the Tribe and the Allottees, the Arizona Game and Fish Commission, and Mohave County filed objections. Due to a statutory time clock regarding surface water in Arizona, Freeport has five years before it must either use or potentially lose those water rights they purchased for the express purpose of safeguarding their economic activity in that part of the state. That time clock creates a sense of urgency for passing this legislation, otherwise Freeport would be required to make significant investments in irrigation infrastructure or risk losing water rights.

With prompt passage, this legislation would resolve much of the dispute among the Tribe, Freeport, the United States as trustee for the Tribe and the Allottees, the Arizona Game and Fish Commission, and the Arizona Department of Water Resources. Specifically, the settlement would:

- Recognize the Hualapai Tribe's and the Allottee's right to 694 acre-feet of water on three parcels in the Big Sandy River basin;
- Establish protections for the Tribe's culturally significant interest in Cofer Hot Springs;
- Cap Freeport's water use at the Wikieup Wellfield at 10,055 acre-feet per year;
- Facilitate the transfer of a portion of Planet Ranch to the Arizona Game and Fish Commission for use as part of the MSCP;
- Secure a non-federal contribution from Freeport to the Hualapai Tribe toward a potential future settlement of water disputes in two other river basins; and
- Ensure that enforceability of the settlement only occurs after any objections of non-settling parties have been resolved in a final and non-appealable decision.

As a legal settlement of claims, where parties are negotiating sensitive deal terms, these negotiations were subject to a confidentiality agreement among the parties. This practice is not unusual, particularly in the context of Indian water rights settlements, as it enables the parties to negotiate with each other in good faith. However, with the introduction of legislation, where Congress is ratifying and confirming the agreements negotiated by those parties, the settlement enters a new phase of public review. As such, I see introduction of this bill and today's hearing as the beginning of the public vetting process. To that end, I understand that some concerns have been raised by Mohave and La Paz counties as they begin to review the settlement. I further understand that the Department of the Interior and the Department of Justice will raise some issues in today's testimony. I look forward to working with those and all other interested stakeholders in finding ways that we can improve this legislation.

I would like to take a minute to just briefly discuss one of the issues raised in the Department's testimony that could garner attention: the limited waiver of sovereign immunity. I believe the parties to this settlement must have the ability to enforce the terms of the agreements amongst each other. As this Committee is aware, the Supreme Court's recent decision in *Michigan v. Bay Mills Indian Community*, confirms that Congress must "unequivocally" express its intent to waive tribal immunity in the context of such agreements. Likewise, the Supreme Court in *Orff v. United States*, concluded that waiver of the United States' sovereign immunity must be explicit.

The waiver included in this legislation would expressly allow the parties to enforce the terms of the settlement against each other. It is not unprecedented; in fact, a similar waiver was included in the White Mountain Apache Settlement authorized by Congress in 2010. I am concerned by the Department's suggestion that instead Congress should employ existing waivers in the Tucker Act, Administrative Procedure Act, or the McCarran Amendment. I will continue to work with the Department to find a path forward, but I believe the relevant Supreme Court precedent requires an unequivocal statement by Congress regarding the parties' ability to enforce the settlement.

I would like to conclude by noting that last year the Arizona Department of Water Resources issued a report highlighting that of Arizona's 22 federally recognized Indian tribes, 13 have enacted settlements that either partially or fully resolve water rights disputes. I believe the Bill Williams River Water Rights Settlement Act would mark another important step in that long tradition. As such, I am pleased to join

Senator McCain, the Arizona House delegation, and the Hualapai Tribe in trying to advance this bill, and I appreciate the Committee's support in that effort.  
Thank you.

The CHAIRMAN. Before we go back to the tribal witnesses, Senator McCain, do you have anything you would like to add?

**STATEMENT OF HON. JOHN MCCAIN,  
U.S. SENATOR FROM ARIZONA**

Senator MCCAIN. I am grateful that the Committee is holding this hearing. The Bill Williams River Water Rights Settlement Act, and I am proud of the leadership of my colleague, Senator Flake. He, as you know, Mr. Chairman, has succeeded Senator Kyle, who was a leader on numerous water rights settlements in our State.

I am also glad to hear our Committee testimony from the Chairwoman of the Hualapai Tribe, Ms. Sherry Counts. Welcome. And Mr. Chairman, there are many, many beautiful Indian lands in this Country. But I would argue that if you have the chance to go down to the Hualapai Tribe, it is really incredibly magnificent beauty. I am sure that, Chairwoman Counts, you would invite a Democrat down there, wouldn't you? I think so, yes.

[Laughter.]

Senator UDALL. This Democrat has been down there before.

[Laughter.]

Senator MCCAIN. They didn't want you back, though.

[Laughter.]

Senator MCCAIN. Actually, Senator Udall's father was a key element in so many of not only the water rights settlements, but settlements amongst Native Americans. In his eight-year tenure, his outstanding tenure as Secretary of Interior, an incredible legacy that he has passed on to his son.

Senator Flake described the legislation, I hope to everyone's satisfaction. So I won't repeat it. But it isn't a full settlement of the Hualapai Tribe's water rights claims. But it does offer the tribe a path forward for a future comprehensive settlement using the million dollars provided by Freeport. I would like to thank all the parties involved for working together to reach a speedy agreement.

I understand that the Interior Department has some concerns, and we look forward to working those out. The issue of the 21st century in the Southwest, including my State of Arizona, is water. We have to conclude our Native American water rights settlements if we are going to have a predictable supply of water for Indians and non-Indians alike. We have to give the highest priority to settling these Indian water rights issues rather than see years and years of litigation that go on and benefit only lawyers.

I thank you, Mr. Chairman.

The CHAIRMAN. I couldn't agree with you more, Senator McCain. Thank you for your endorsement of the bill.

With that, we are going to go back to our tribal witnesses. Aletha Tom, you have the floor, and know that as with everyone else, your full written testimony will be a part of the record. Go ahead, Aletha.

**STATEMENT OF HON. ALETHA TOM, CHAIRWOMAN, MOAPA  
BAND OF PAIUTE INDIANS**

Ms. TOM. Mr. Chairman, members of the Committee, good afternoon. I am Aletha Tom, Chairwoman of the Moapa Band of Paiutes.

The tribe strongly supports S. 2479, and we deeply appreciate the efforts of the many people who have helped us move this forward, especially Senator Reid and also Congressman Horsford, who has introduced a companion bill in the House.

The bill would restore about 26,000 acres to our reservation. These are desert lands adjacent to our reservation that are currently managed by BLM and Bureau of Reclamation. The lands were all part of our original Southern Paiute homeland and were part of the original Moapa Reservation, which once comprised over 2 million acres. Unfortunately, pressures from miners and settlers led Congress to shrink our reservation in 1875 from over 2 million down to 1,000 acres. Our reservation remained tiny until 1980, when Congress restored a small portion of our lands, about 70,000 acres, back to our reservation.

The current bill would continue this process by restoring around 26,000 additional acres. The lands addressed in the bill are particularly important to us. One portion, about 7,500 acres, is located near where most of us live on the reservation. These additional lands will be directly useful for housing and community needs for our people. Right now, housing is extremely scarce and many of our young adults must move off the reservation. These lands would give our young people an opportunity to stay home and contribute to our community.

A second portion, about 11,500 acres, is located just south of our main commercial development, a travel plaza with a convenience store and gas station. We see using these lands to enhance outdoor recreation and conservation opportunities. The plaza area is located along the natural path to Las Vegas' growth, on Interstate 15, by an exit which leads to the Valley of Fire, Nevada's oldest and largest State park.

A third portion, around 4,500 acres on the north side of the reservation, has special significance to the tribe and would be preserved for cultural purposes. The remaining lands are purely desert areas that would be very useful for our solar energy development. Our tribe already has three solar projects in different stages of development. Our reservation is uniquely situated to provide solar power in the region. We are located near power lines and substations, as well as major markets which need extra energy exactly when the sun is shining most brightly, for air conditioning.

Again, solar development would benefit both the tribe and the greater community, and would increase the tribe's stake in the prosperity of the region.

The bill specifically endorses these purposes, housing, recreation and renewable energy development, as well as traditional and cultural uses and environmental stewardship. The bill also provides that the land would not be used for gaming. We have no problem with that, although Indian gaming is not really an issue in Nevada.

We again want to thank Senator Reid and the Committee. Not only would this bill help rectify past injustices, but it also gives in very practical ways hope to our future of our tribe.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Tom follows:]

PREPARED STATEMENT OF HON. ALETHA TOM, CHAIRWOMAN, MOAPA BAND OF PAIUTE INDIANS

Mr. Chairman and Members of the Committee:

Good afternoon. I'm Aletha Tom, Chairwoman of the Moapa Band of Paiutes. The Tribe strongly supports Senate Bill 2479, and we deeply appreciate the efforts of the many people who have helped us move this forward, especially Senator Reid, and also Congressman Horsford, who has introduced a companion bill in the House.

The bill would restore about 26,000 acres to our Reservation. These are desert lands adjacent to our Reservation that are currently managed by BLM and the Bureau of Reclamation.

The lands were all part of our original Southern Paiute homeland, and were part of the original Moapa Reservation, which once comprised over 2,000,000 acres. Unfortunately, pressures from miners and settlers led Congress to shrink our Reservation in 1875 from over 2,000,000 down to only 1,000 acres. Our Reservation remained tiny until 1980, when Congress restored a small portion of our lands—about 70,000 acres—back to our Reservation. The current bill would continue this process by restoring around 26,000 additional acres.

The lands addressed in the bill are particularly important to us.

One portion, about 7,500 acres, is located near where most of us live on the Reservation. These additional lands will be directly useful for housing and community needs for our people. Right now, housing is extremely scarce, and many of our young adults must move off the Reservation. These lands would give our young people an opportunity to stay home and contribute to our community.

A second portion, about 11,500 acres, is located just south of our main commercial development, a travel plaza with a convenience store and gas station. We see using these lands to enhance outdoor recreation and conservation opportunities. The plaza area is located along the natural path of Las Vegas's growth, on Interstate 15, by an exit which leads to the Valley of Fire, Nevada's oldest and largest state park.

A third portion, around 4,500 acres on the north side of the Reservation, has special significance to the Tribe and would be preserved for cultural purposes.

The remaining lands are purely desert areas that would be very useful for solar energy development. Our Tribe already has three solar projects in different stages of development. Our Reservation is uniquely situated to provide solar power in the region. We're located near powerlines and substations, as well as major markets which need extra energy exactly when the sun is shining most brightly, for air conditioning. Again, solar development would benefit both the Tribe and the greater community, and would increase the Tribe's stake in the prosperity of the region.

The bill specifically endorses these purposes—housing, recreation, and renewable energy development—as well as traditional and cultural uses and environmental stewardship. The bill also provides that the lands would not be used for gaming. We have no problem with that, although Indian gaming is not really an issue in Nevada.

We again want to thank Senator Reid and the committee. Not only would this bill help rectify past injustices, but it also gives, in a very practical way, hope to our people for the future.

The CHAIRMAN. Thank you, Aletha, for your testimony.  
Chairman Melendez, the floor is yours.

**STATEMENT OF HON. ARLAN MELENDEZ, CHAIRMAN, RENO-SPARKS INDIAN COLONY**

Mr. MELENDEZ. Good afternoon, Chairman Tester, Vice Chairman Barrasso and distinguished members of the Committee. My name is Arlan Melendez, and I have been the Chairman of the Reno-Sparks Indian Colony, Paiute, Washoe and Shoshone People, for the last 23 years.

I am honored to be speaking today for all the tribes in S. 2480, who comprised the Nevada Tribal Lands Coalition. I would also like to express our heartfelt thanks to Senators Reid and Heller for their bipartisan sponsorship of this bill, and to the Committee for scheduling today's hearing.

I also wish to thank Congressmen Mark Amodei and Don Young and Congresswoman Dina Titus for introducing companion legislation in the House. A few weeks ago, the House Committee on Natural Resources unanimously reported the bill to the Floor. The membership numbers of our tribes are growing, and the caring capacity of our current lands is very limited. With limited exceptions, the majority of tribes in Nevada have very small land bases. Some are so small they don't even show up on State maps.

As see in the chart on the easel to my right, the comparison to the large land bases of other tribes in many western States is dramatic. It is unrealistic to expect that we can thrive, manage our natural resources, practice traditional culture, provide housing and encourage economic development on so little land. It is only by being able to expand and consolidate our lands that our tribes and cultural practices can thrive. Each of our tribes has specific reasons for seeking to expand our lands. We are united in our need for better management and more effective use of these lands.

Over 80 percent of the land in our State is Federal land. BLM administers nearly 48 million acres of land in Nevada. Even with these transfers, BLM lands would still comprise 67 percent of the land base in Nevada. The transfers would only reduce BLM's total percentage of land owned statewide by around 2 tenths of a percent. Yet the transfer of this tiny percentage of land to BIA to be held in trust could be one of the most important developments for our tribes in a generation. The positive impact will be experienced by our peoples for generations to come.

The other tribes will be submitting statements for the record, but let me quickly summarize these situations. For the South Fork Band of the Te-Moak Tribe, the bill would transfer BLM land to expand grazing and agriculture, develop housing and cultural and agricultural areas. Currently reservation lands are checkerboarded. Their population has tripled since the 1940s, but their land base is the same size.

For the Elko Band of Te-Moak Tribe, a small parcel of land would be transferred to the Elko Band who have sought to expand their current small land base for 17 years for housing, cultural activities, recreation, economic development and gravesites. The bill would also transfer 275 acres of BLM land to Elko County to establish a motocross track, which is also supported by the tribes. For the Fort McDermitt Paiute and Shoshone Tribe, the bill would transfer BLM land to resolve checkerboard land issues. This would address law enforcement and emergency personnel jurisdictional questions as well as enable housing development.

Planned land use and development of natural resources will also ensure environmental biodiversity and ensure better public health and safety. For the Shoshone Paiute Tribe of the Death Valley Reservation, this bill would transfer a small parcel of Forest Service land, a longstanding goal. When the Forest Service located a district headquarters, housing units were abandoned. The tribes

would like to renovate these units to address chronic housing shortages and to help recruit medical professionals, law enforcement and conservation personnel.

For the Summit Lake Paiute Tribe, the bill would accomplish a long-sought transfer of BLM land for protection and management of Summit Lake's natural resources and fish population and unify the reservation, which surrounds the lake except in one area. Summit Lake is home to the cutthroat trout, which was integral to the tribe's culture and a vital food source. The transfer will allow for improved management and habitat restoration.

For the Pyramid Lake Paiute Tribe, the bill would transfer BLM land to expand the reservation boundary to fully incorporate the watershed of Pyramid Lake. Other sections near the lake would be used for potential economic development and management efficiency.

For my tribe, the Reno-Sparks India Colony, the bill would alleviate the strain caused by the small size of our reservation, because we simply need land for housing, cultural preservation and development. For decades the colony members were residing on just 27 acres in Reno, Nevada. In 1986, due to overcrowding, then-Nevada Congresswoman Barbara Vucanovich assisted us in acquiring a parcel of land in Hungry Valley near Reno. She said if we needed more land in the future, we should come back to Congress and ask for it.

In closing, we have made the best use of the limited parcel. We have constructed housing, a water system with production wells and other facilities, such as a community center. We have purchased mining claims within the area, proposed to be transferred, and the wells in the Hungry Valley community are also within the proposed transfer plot. BLM has told us they don't have enough staff to effectively monitor all the activities and the urban interface adjacent to Hungry Valley. As a result, our people have suffered from many adverse activities such as recreational shooting, including the use of assault weapons near residential areas, creating a dangerous safety situation; illegal dumping; unauthorized creation of a dirt bike race track; disruptive bike events; heavy off-road vehicle activities harming the land. While we are not against off-road vehicles or recreational shooting, we are concerned with the intensity of the activities adjacent to our community and homes and its impact on our quality of life.

The legislation will move it a safe distance away and allow for growth. Our tribes are fully capable of being effective stewards of these lands. Thank you for this opportunity to testify and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Melendez follows:]

PREPARED STATEMENT OF HON. ARLAN MELENDEZ, CHAIRMAN, RENO-SPARKS INDIAN COLONY

Chairman Tester, Vice Chairman Barrasso and distinguished Members of the Committee on Indian Affairs. I am pleased to submit this testimony in support of S. 2480, legislation introduced by Nevada Senators Harry Reid and Dean Heller. We are also pleased that nearly identical legislation (H.R. 2455), introduced in a bipartisan fashion by Congressmen Mark Amodei (R-NV), Dina Titus (D-NV) and Don Young (R-AK) has been introduced and was unanimously reported out of the House Committee on Natural Resources a few weeks ago.

Thank you for accepting this testimony of the Reno-Sparks Indian Colony (the Colony) on S. 2480 and for considering our views. My remarks herein are mostly specific to the Colony's land expansion needs. The other tribes in this bill may be submitting their own written statements for the record, and their statements should be relied upon for more specific details pertinent to their land transfer requests. However, there are common themes among all our tribes which I would like to share. In my oral testimony I will be speaking not just on behalf of the Colony but on behalf of all the tribes in this important bill. I am honored speak on behalf of the Nevada Native Nations Lands Act Tribal Coalition, consisting of the following tribes:

- Elko Band of the Te-Moak Tribe of Western Shoshone Indians
- South Fork Band of the Te-Moak Tribe of Western Shoshone Indians
- Fort McDermitt Paiute and Shoshone Tribe
- Duck Valley Shoshone Paiute Tribe
- Summit Lake Paiute Tribe
- Pyramid Lake Paiute Tribe
- Reno-Sparks Indian Colony

#### **Expansion of Our Reservations Critical to Preserve Our Futures**

Our tribes' membership numbers are growing and the carrying capacity of our current lands is very limited. It is only by being able to expand and consolidate our lands for housing, preservation and other purposes that our tribes and cultural practices can continue to thrive. While each tribe in S. 2480 has specific reasons for seeking to expand the lands of our reservations we are united in our need for better management and more effective use of these lands. We are fully capable of assuming these responsibilities.

We would also ask that you examine almost any map of Indian reservations in this country and you will see that through historic quirks of fate, the majority of land bases of the tribes in Nevada, particularly when compared to the land bases of many other tribes, are so small as to border on being non-workable. There are numerous million plus acre reservations in Montana, North Dakota, South Dakota, Washington, Utah, Wyoming, Arizona and New Mexico and many more reservations that are hundreds of thousands of acres in size yet the majority of Paiute and Shoshone tribes of the Great Basin ended up with almost nothing. In many instances our existing homelands are so small they don't even show up on some state maps. For instance the Elko Band has just 193 acres. The principal so-called "downtown" Reno-Sparks Indian Colony lands constitute a mere 27 acres. These are not viable land bases. We cannot house our people; we cannot attract business or engage in economically viable agriculture.

S. 2480 would put to effective use by tribes lands that are greatly underutilized and not being adequately managed. With the exception of a small parcel owned by the Forest Service, the lands in question are presently controlled by the Bureau of Land Management so transferring title to a different agency within the Department of Interior (Bureau of Indian Affairs) is not going to, for instance, affect the local tax bases. In many instances Indian tribes have been able to undertake economic activities that have benefited both reservation and off-reservation economies and helped create jobs.

#### **Nevada Native Nations Lands Act Preserves BLM Control Over Vast Area of Nevada**

BLM administers nearly 48 million acres of public land in Nevada. We would like to emphasize that even with these lands transfers, BLM lands would still comprise 67 percent of the total land base of the state of Nevada, and that does not include the large percentage of land controlled by other federal agencies. In the aggregate over 80 percent of the land in our state is owned by the federal government. The transfers would only reduce BLM's total percentage of land owned state-wide by 0.20 percent (two tenths of one percent). Yet the transfer of this tiny percentage of land from BLM to BIA to be held in trust for our tribes would be one of the most important developments for our tribes in a generation. And the positive impact will be experienced by our peoples for generations to come.

#### **Background on Reno-Sparks Indian Colony**

In the 1880's, an urban Indian settlement made up of landless Indians from the regional Washoe, Shoshone and Paiute tribes started along the Truckee River next to the City of Reno. A land base of 20 acres was purchased in 1917 by the Federal Government to provide a permanent home for this urban settlement. The Colony population grew along with the City of Reno. In 1934, the Reno-Sparks Indian Colony was established as a federally recognized Tribal government under the Indian

Reorganization Act. By the mid-1980's, the City of Reno had grown and eventually engulfed the undersized lands of the Colony. The land base of the Colony, near downtown Reno, is now just 27 acres of densely packed homes in the residential area as well as additional commercial property. Less than three percent of the land base is designated as park and open space. The residential area is totally built out and could not accommodate another home.

In 1986, pursuant to a bill introduced by former Representative Barbara Vucanovich (R-NV), Congress transferred three sections of land north of Reno from the Bureau of Land Management (BLM) to the Colony to address the need for additional community housing. Currently, this area, known as the Hungry Valley community, houses approximately half the Colony's population. The Hungry Valley community is seven miles west of the Spanish Springs community and 10 miles north of the City of Reno. The Colony has spent millions of dollars in public improvements and community development. For example, we have built homes; a water and sewer system; community buildings; and constructed Eagle Canyon Road from Pyramid Lake Highway to the Hungry Valley community. We also created a tribal utility district to supply water and sanitary sewer service to residents. The water system includes production wells, water tanks and a water treatment facility. The community sewer system provides for the treatment of all wastewater. The Hungry Valley Community Center we built is the primary public facility serving residents, with a volunteer fire department, offices for Housing Department, Utility District, Head Start Program, a gym, and meeting rooms.

When Congresswoman Vucanovich got the bill passed establishing the Hungry Valley Reservation she told us that if at some point in the future we needed to supplement the Hungry Valley land, that we should make such a request of the Congress. We are now doing exactly that after extensive cooperation and coordination with key stakeholders including Washoe County and the BLM. We are very pleased to have the support of the Washoe County government for our proposed transfer.

#### **The Need to Supplement the Land Base of the Hungry Valley Residential Community**

The Hungry Valley community is surrounded by BLM public lands to the west, north, and east. Directly to the south and southeast is an active open aggregate mining pit which conducts blasting on a regular basis. Many adverse activities are routinely occurring (in some cases permitted by the BLM, in other cases in violation of BLM regulations) on the lands adjacent to our residents' homes in Hungry Valley including:

- Unlimited off highway vehicle (OHV) recreation area.
- Loud and disruptive motorcycle events.
- Illegal dumping.
- Unauthorized creation of motorcycle race tracks.
- Military practice operation with simulated explosive devices. (Hopefully an activity that won't be repeated.)

These are not activities anyone would want to see in proximity to a residential area. While we are not against off road vehicles, we are concerned with the intensity of the activities adjacent to our native community and its impact on our quality of life. A buffer is needed and will be established by this legislation.

#### **Proposed Land Transfer from BLM to BIA**

As shown on the attached map, the Colony is proposing to acquire through a Congressional transfer approximately 13,434 acres from the BLM to the Bureau of Indian Affairs (BIA) to be held in trust for the Colony in order to expand and consolidate our land base at the Hungry Valley residential community. These 13,434 acres represent a minute fraction of the almost 48 million acres of BLM lands in Nevada, lands that were once the exclusive domain of Paiute, Washoe and Shoshone tribes of Nevada.

The local BLM staff are overwhelmed and unable to enforce their own regulations and ordinances in the area around Hungry Valley. BLM has told us that they don't have enough staff to effectively monitor all of the activities in the urban interface cover adjacent to Hungry Valley. Transferring this land to the BIA's jurisdiction to be held in trust for the Colony is important for the citizens of our tribe and for the surrounding communities. The current situation is untenable. Our residents should be able to live in peace and quiet and should not have to deal with unregulated off-road race tracks carved out near their homes. We have met with a majority of the Washoe County Commissioners, including all those who represent the immediately surrounding communities and as stated above, the County has endorsed our land transfer request.



In addition to public safety concerns, there are important cultural reasons why Hungry Valley is of great significance to us. We seek to manage this land so as to ensure for future generations that the open natural landscape that provides essential spiritual and traditional cultural support for our people will continue to be accessible and be properly managed. It is the intention of our tribe to preserve and manage these scenic, cultural and natural resources. In the past, the Hungry Valley region was a traditional link between Pyramid Lake and the Truckee Meadows. Many camps and cultural resources have been identified by past archaeological studies. Many elders and residents continue to use Hungry Valley for spiritual and traditional ways. Several prominent landscape features in the Hungry Valley area are used for traditional religious practices and are a source of medicinal plants.

We are very proud of the many cooperative efforts we have entered into with the State of Nevada and with the governments that surround our downtown reservation as well our existing Hungry Valley lands. We assure the Congress that this spirit of good will and cooperation will continue and that all parties in the local and surrounding areas will benefit by this proposal.

Thank you for your consideration of this bill. I am pleased to answer any questions you might have.

The CHAIRMAN. There will be questions. Thank you, Chairman Melendez.

Chairwoman Counts, your presentation, please.

**STATEMENT OF HON. SHERRY J. COUNTS, CHAIRWOMAN,  
HUALAPAI TRIBE**

Ms. COUNTS. I would like to thank Senator Flake and Senator McCain for sponsoring this bill for the Hualapai Tribe, S. 2503.

My name is Sherry J. Counts. I am Chairwoman of the Hualapai Tribe. Thank you for the invitation and opportunity to testify in support of S. 2503, the Bill Williams River Water Rights Settlement Act of 2014.

I would also like to say, all Democrats and Republicans are invited to the Sky Walk.

[Laughter.]

Ms. COUNTS. The Colorado River forms the 108-mile northern boundary of the Hualapai Reservation through a portion of the Grand Canyon. Our reservation has no significant surface streams other than the Colorado River, and it has very limited groundwater resources. While the tribe is presently able to supply its main residential community, Peach Springs, with groundwater, the only feasible water for satisfying the future needs of the reservation is the Colorado River.

Over the past three years we have been negotiating a comprehensive settlement of all the tribe's reserved water rights with the Justice and Interior Departments, the State of Arizona and major private entities in Arizona. The basic principles of the settlement have been agreed upon, but the settlement is not yet ready for submission to Congress, because the tribe needs to complete a feasibility study of the alternatives for constructing the infrastructure needed to deliver Colorado River water to the reservation. In the meantime, the tribe, along with the United States and Freeport Minerals Corporation have reached an agreement settling our water rights claims in the Big Sandy Creek, south of our main reservation. The settlement faces a deadline, which is why we and the other parties are seeking enactment of S. 2503 now, in advance of the comprehensive settlement of our reservation water rights.

This deadline is imposed by the possible application of provisions of Arizona State law and could result in the forfeiture of certain

water rights Freeport holds in the Bill Williams Basin. To meet this deadline, the tribe urges Congress to enact S. 2503 this year, ahead of considering our comprehensive water rights settlement.

Let me now describe the important benefits to the Hualapai Tribe. First, as a result of this legislation, the two major landholders and water users in the Big Sandy Creek, the United States and Freeport Minerals Corporation, will confirm federally-reserved water rights for the tribe totaling 300 acre feet a year relating to a 60-acre parcel of the reservation land along Big Sandy Creek. Freeport and the United States will also confirm federally-reserved water rights totaling 394 acre feet a year to two off-reservation trust allotments issued to Hualapai tribal members in the Big Sandy.

Second, the agreements ratified by S. 2503 also provide vital protections for the tribe's water rights on fee land it owns along Big Sandy Creek called Cholla Canyon Ranch. This ranch contains a spring that is sacred to the tribe, Cofer Hot Spring, the flows of which have diminished in recent years due to the pumping by Freeport. Freeport has already ceased all but the most minimal pumping the aquifer that feeds Cofer Hot Spring. In the agreements ratified and approved by S. 2503, Freeport agrees permanently to cease pumping more than minimal amounts from that aquifer. Freeport also gave the tribe a right of first refusal to purchase nearby lands to protect the flow of Cofer Hot Spring.

In addition to these important benefits at the Big Sandy area, Freeport will also immediately contribute \$1 million to the cost of a central engineering study by the tribe that has been initiated to determine the feasibility and cost of bringing Colorado River water to the Hualapai reservation. This contribution from Freeport, in combination with the funding we have received from the Bureau of Reclamation and the tribe's own funds will allow the tribe to complete this study, then finish its ongoing negotiations for a comprehensive Colorado River water settlement with the Justice and Interior Departments, the State of Arizona and various private entities in Arizona.

Lastly, with the timely enactment of this legislation, Freeport will contribute a substantial additional sum to the tribe's economic development. These Freeport funds are designated for the tribe to purchase Colorado River water rights. These additional water rights to be purchased with the Freeport contribution are critical to the tribe's ability to negotiate a comprehensive settlement of our Colorado River water rights.

For all of these reasons, the tribe strongly supports S. 2503. The tribe is very pleased with the provisions of this legislation that will protect its water rights and those of tribal member allottees along the Big Sandy Creek, and lay the foundation for the tribe to complete its negotiation in the near future for a comprehensive settlement of all the tribe's reserved water rights on the reservation. The tribe hopes the Committee will support S. 2503 and that Congress will speedily enact it. We do have some technical corrections to the legislation that are explained in my testimony. I respectfully the Committee to consider those corrections.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have, and our

tribe will help in any way it can to secure enactment of this legislation. Thank you very much.

[The prepared statement of Ms. Counts follows:]

PREPARED STATEMENT OF HON. SHERRY J. COUNTS, CHAIRWOMAN, HUALAPAI TRIBE

Chairman Tester, Vice Chairman Barrasso and Members of the Committee, I am Sherry Counts, the Chairwoman of the Hualapai Tribe. Our Hualapai Tribal Leaders and Members strongly support S. 2503, the Bill Williams River Water Rights Settlement Act of 2014. Before I describe the several critical benefits the Tribe receives from this legislation, let me briefly inform the Committee of the Tribe's water needs.

The Hualapai Reservation encompasses approximately 1 million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the 108-mile northern boundary of the Reservation through a portion of the Grand Canyon.

Our Reservation has no significant surface streams other than the Colorado River, and has very limited groundwater resources. While the Tribe is presently able to supply its main residential community, Peach Springs, with groundwater, the only feasible water supply for satisfying the future needs of most of the Reservation is the Colorado River.

The Tribe is in dire need of Colorado River water in order to realize the opportunities for economic development we have already undertaken. We have constructed and operate Grand Canyon West, a world class tourist development on the Reservation on the western rim of the Grand Canyon. Grand Canyon West currently employs over 250 tribal members and hosts approximately 700,000 visitors a year. But it is located a two-hour drive away from Peach Springs, where virtually all tribal members who reside on the Reservation live. Thus tribal employees at Grand Canyon West have daily commutes of four hours a day, and longer in inclement weather.

The Tribe also employs approximately 100 other tribal members in a tribally-owned hotel in Peach Springs and a seasonal tribal river rafting enterprise. Without conducting any gaming, our Tribe is moving towards achieving full employment for our members and economic self-sufficiency.

The lack of water is the major obstacle to our reaching these goals. The nearest groundwater to Grand Canyon West is 35 miles away, and that supply is barely adequate for current operations, and completely inadequate for growth. With additional water, the Tribe could take advantage of the potential for further development that would provide additional jobs to tribal members and revenues to the tribal government. Water at Grand Canyon West would also support the development of a residential community there so our tribal members would not have to commute from Peach Springs to get to their jobs.

Over the past three years, we have been negotiating a comprehensive settlement of all the Tribe's reserved water rights with the Justice and Interior Departments, the State of Arizona and major private entities in Arizona. The basic principles of this settlement have been agreed upon, but the settlement is not yet ready for submission to Congress because the Tribe needs first to complete a comprehensive study of the engineering feasibility of the various alternatives for constructing the infrastructure needed to deliver Colorado River water to Grand Canyon West, and a detailed projection of construction and OM&R costs of those alternatives. We expect that this study will be ready to submit to the Bureau of Reclamation and other parties to the negotiations by early next year.

In the meantime, the Tribe—along with the United States and Freeport Minerals Corporation—have reached an agreement settling our water rights claims in the Big Sandy Creek, south of our main Reservation. This settlement faces a deadline, which is why we and the other parties seek enactment of S. 2503 now, in advance of the comprehensive settlement of our Reservation water rights. This deadline is imposed by the possible application of provisions of Arizona state law that could result in the forfeiture of water rights Freeport holds in the Bill Williams Basin. Freeport wishes to sever and transfer some of these water rights upstream to its Wikieup well field, which serves its nearby copper mine, and contribute the rest of these water rights to state and federal agencies as part of the Lower Colorado Multi-Species Conservation Plan.

To meet this deadline, the Tribe urges Congress to enact S. 2503 this year, ahead of considering our comprehensive water rights settlement. Let me now describe the important benefits the Hualapai Tribe receives under S. 2503.

First, as a result of this legislation, the two major landowners and water users in Big Sandy Creek—the United States and Freeport Minerals Corporation—will confirm federally reserved water rights for the Tribe totaling 300 acre feet a year (afy) relating to a 60-acre parcel of land added to our Reservation along Big Sandy Creek by an Executive Order signed by President Taft in 1911. Freeport and the United States will also confirm federally reserved water rights totaling 394 afy to two off-reservation trust allotments issued to Hualapai tribal members in the Big Sandy. Both of these amounts were calculated by the Tribe's expert hydrologist using the methodology set forth in controlling decisions of the United States Supreme Court and the Arizona Supreme Court. The agreements this legislation ratifies also require Freeport to provide supplemental water to the tribal and allotted lands in certain circumstances to ensure the Tribe and allottees can fully utilize these reserved water rights.

Second, the agreements ratified by S. 2503 also provide vital protections for the Tribe's water rights on fee land it owns along Big Sandy Creek called Cholla Canyon Ranch. The Tribe has applied to the Secretary of the Interior to take the Ranch into trust for it, and Freeport has agreed to support that application. This Ranch contains a spring that is sacred to the Tribe, Cofer Hot Spring, the flows of which have diminished in recent years due to pumping by Freeport. Freeport has already ceased all but the most minimal pumping in the aquifer that feeds Cofer Hot Spring, and in the agreements ratified and approved by S. 2503, Freeport agrees permanently to cease pumping more than minimal amounts from that aquifer. Freeport also will give the Tribe a right of first refusal to purchase Freeport's lands at Banegas Ranch and surrounding land Freeport owns to protect the flow of Cofer Hot Spring. Once these agreements become effective, Freeport will record a binding covenant in the county land records that will impose the same pumping limitations on any future purchaser of any portion of Banegas Ranch, should Freeport decide to sell and the Tribe decides not to buy these lands.

Under the agreements, Freeport's pumping at the Wikieup well field is capped at 10,055 afy. The Tribe has requested the Interior Department to drop objections it has filed to Freeport's sever and transfer applications to bring water from Planet and Lincoln Ranches up to the Wikieup well field, and in these agreements Interior agrees to do that.

In addition to the important benefits S. 2503 provides for the Hualapai Tribe in the Big Sandy Creek, Freeport will also immediately contribute \$1 million to the costs of an essential study the Tribe has initiated (thus far with its own funds and a grant from the Interior Department Bureau of Reclamation) to determine the feasibility and costs of bringing Colorado River water to the Hualapai Reservation. This contribution from Freeport will allow the Tribe to complete this study, and then to finish its ongoing negotiations for a comprehensive Colorado River water settlement with the Justice and Interior Departments, the State of Arizona, and various private entities in Arizona.

Lastly, with the timely enactment of this legislation, Freeport will contribute a substantial additional sum to the Tribe's economic development fund that the Tribe will use to purchase rights to use Colorado River water. The legislation provides that these two contributions by Freeport will count as non-federal contributions to the final comprehensive Colorado River water rights settlement the Tribe is negotiating with federal and state parties.

For all of these reasons, the Tribe strongly supports S. 2503. We do, however, request two technical changes that are needed to conform the bill to the Hualapai BWR Agreement. In Section 6(d)(3)(B), page 26, line 20, after "Agreement" and before the semicolon, the words "or the Hualapai Tribe Water Rights Settlement Agreement" should be inserted. This would conform the bill to Paragraph 7.1(iii)(b) of the Hualapai BWR Agreement. And in Section 6(e)(1)(A), page 27, lines 10–11, after "relating to," the words "injury to" should be deleted and the words "claims for" should be inserted. That would conform the bill to Paragraph 7.3(i)(a) of the Hualapai BWR Agreement.

In conclusion, the Tribe is very pleased with the provisions of this legislation that will protect its lands and those of tribal member allottees in the Big Sandy Creek and lay the foundation for the Tribe to complete its negotiations in the near future for a comprehensive settlement of all its reserved water rights on its Reservation. The Tribe hopes that the Committee will support S. 2503 and that Congress will speedily enact it.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Tribe will help in any way it can to secure enactment of this legislation.

The CHAIRMAN. Thank you, Chairwoman Counts. We appreciate your testimony.

Mr. Canfield, you have the floor.

**STATEMENT OF MICHAEL CANFIELD, PRESIDENT/CEO, INDIAN PUEBLOS MARKETING, INDIAN PUEBLO CULTURAL CENTER**

Mr. CANFIELD. Thank you, Mr. Chairman.

Chairman Tester, Vice Chairman Barrasso, distinguished members of this Committee and also of course my home Senator, Senator Udall, thank you very much for allowing me to testify in support of S. 2465, the Albuquerque Indian School Land Transfer Act.

As was mentioned earlier, my name is Mike Canfield. I am the President and CEO of the Indian Pueblo Cultural Center, IPCC, and Indian Pueblo's Marketing, IPMI. Both of these corporations are owned and operated by the 19 Pueblos of New Mexico and located on the old Albuquerque Indian School property.

I am also a very proud member of one of our 19 Pueblos, the Pueblo of Laguna.

The vision for our organizations that are located on the property include creating unique and successful businesses, providing professional and economic advancement opportunities for our workforce, nurturing self-sustainable developments while providing financial returns to our Pueblo communities and promoting Pueblo arts, culture and lifestyles.

In 1969, the United States began the long process of converting the 1884 Albuquerque Indian School Reserve, which was the former site of a Federal Indian Boarding School. The first 11 acres conveyed were used to build the Indian Pueblo Cultural Center, which was completed in 1976. The Cultural Center has a long history of successful self-sufficient operations. In fact, in 2013, we were recognized as the Tribal Destination of the Year by the American Indian and Alaska Native Tourism Association. We are also a major contributor to our State and local economy, as we are one of the top three most visited attractions in New Mexico, hosting approximately 470,000 visitors per year.

In 1993, the United States placed an additional 44 acres of the former Indian School property in trust for the 19 Pueblos. Those 44 acres make up the majority of the former Indian School property. The Pueblos successfully created land development protocols with the City of Albuquerque and this portion of the former Indian School property is now the home to two large office buildings occupied by the Bureau of Indian Affairs and a hotel owned by the 19 Pueblos. The Pueblos are proceeding with additional office and retail development projects that remain on this property.

In 2008, Congress enacted P.L. 110-453, requiring the Secretary of Interior to convey an additional 8.5 acres of the former Albuquerque Indian School Reserve to the 19 Pueblos. These parcels included the last remaining Indian School structure. Building 232, which formerly housed the BIA's Southern Pueblos Agency, was originally built in 1931 and designed by Architect Joseph Padilla, a tribal member from Isleta Pueblo. The building had been slated for demolition, but IPMI was able to save it by financing the renovation project. The renovated building now houses the Native American Community Academy, a public school chartered under

Albuquerque Public Schools, that serves approximately 380 Native students.

S. 2465 directs the Secretary of Interior to place an additional 11.11 acres of land in trust for the 19 Pueblos, consolidating several small parcels contiguous with the 44 acre tract that has been held in trust for the 19 Pueblos since 1993 and with the Indian Pueblo Cultural Center that has been held in trust since 1978.

Mr. Chairman, my written testimony includes a map and a detailed description of the tracts of land this bill seeks to convey. My written testimony also includes a letter of support from the Mayor of Albuquerque, Mayor Richard Berry.

Mr. Chairman, S. 2465 completes the process of transferring the BIA's portion of the former Albuquerque Indian School Reserve to the 19 Pueblos. Most importantly, S. 2465 will allow the 19 Pueblos to continue the achievements of our vision for this property by providing economic development, educational and cultural opportunities for our Pueblos, the City of Albuquerque and the State of New Mexico.

Thank you again to this Committee for inviting me to testify this afternoon, and I would welcome any questions.

[The prepared statement of Mr. Canfield follows:]

PREPARED STATEMENT OF MICHAEL CANFIELD, PRESIDENT/CEO, INDIAN PUEBLOS  
MARKETING, INDIAN PUEBLO CULTURAL CENTER

Chairman Tester, Vice Chairman Barrasso, my home Senator, Mr. Udall, and members of the Committee, thank you for the opportunity to testify here today in support of S. 2465, the Albuquerque Indian School Land Transfer Act.

My name is Mike Canfield: I am president and CEO of the Indian Pueblo Cultural Center (IPCC) and Indian Pueblo's Marketing (IPMI). Both of these corporations are owned and operated by the 19 Pueblos of New Mexico and located on the old Albuquerque Indian School property in Albuquerque, New Mexico.

The vision for our organizations located on this property include creating unique and successful businesses, providing professional and economic advancement opportunities for our workforce, nurturing self-sustainable developments while providing financial returns to our Pueblo communities and promoting Pueblo arts, culture, and lifestyles.

In 1969, the United States began the long process of converting the 1884 Albuquerque Indian School Reserve which was the former site of a Federal Indian Boarding School. The first 11 acres conveyed were used to build the Indian Pueblo Cultural Center which was completed in 1976. The Cultural Center has a long history of successful self-sufficient operations. In 2013 we were recognized as "The Tribal Destination of the Year" by the American Indian Alaska Native Tourism Association. We are also a major contributor to our state and local economy as we are one of the top 3 most visited attractions in New Mexico hosting approximately 470,000 visitors per year.

In 1993, the United States placed an additional 44 acres of the former Albuquerque Indian School Reserve in trust for the 19 Pueblos. Those 44 acres make up the majority of the former school property. The Pueblos successfully created land development protocols with the City of Albuquerque, and this portion of the former school property is now the home to two large office buildings occupied by the Bureau of Indian Affairs, and a hotel owned by the Pueblos. The Pueblos are proceeding with additional office and retail development on the remaining property.

In 2008, Congress enacted Public Law 110-453 requiring the Secretary of the Interior to convey an additional 8.5 acres of the former Albuquerque Indian School Reserve to the United States in trust for the 19 Pueblos. These parcels included the last remaining Indian School structure. Building 232, which formerly housed the BIA's Southern Pueblos Agency, was originally built in 1931 and designed by Architect Joseph Padilla, a tribal member from Isleta Pueblo. The building had been slated for demolition, but IPMI was able to save it by financing a renovation project. The renovated building now houses the Native American Community Academy, a

public school chartered under Albuquerque Public Schools that serves approximately 380 students.

S. 2465 directs the Secretary of the Interior to place 11.11 acres of land in trust for the 19 Pueblos, consolidating several small parcels contiguous with the 44 acre tract that has been held in trust for the 19 Pueblos since 1993 and the Indian Pueblo Cultural Center property that has been held in trust for the Pueblos since 1978.

Mr. Chairman, my written testimony includes a map and a detailed description of the tracts of land this bill seeks to convey. My written testimony also includes a letter of support from Albuquerque Mayor Richard Berry.

Mr. Chairman, S. 2465 completes the process of transferring the BIA's portion of the former Albuquerque Indian School Reserve to the 19 Pueblos. Most importantly, S. 2465 will allow the 19 Pueblos to continue the achievement of our vision for this property by providing economic development, educational and cultural opportunities for our Pueblos, the City of Albuquerque and the State of New Mexico.

I want to thank the Committee for inviting me to testify this afternoon and I am happy to answer any questions.

**Attachments**

# CITY OF ALBUQUERQUE

*Office of the Mayor/ Chief Administrative Officer*



April 24, 2014

United States Senator Tom Udall  
110 Hart Senate Office Building  
Washington, DC 20510

Re: Proposed Legislation to Convey Surplus Federal Land to the 19 Pueblos

Dear Senator Udall:

I write in support of legislation to transfer surplus land currently under the jurisdiction of the Bureau of Indian Affairs to the 19 Pueblos and the property along 12<sup>th</sup> Street in Albuquerque, NM. Because this land, which amounts to 11.11 acres, is currently owned by the United States, there is no impact on local property taxes.

PO Box 1293

Albuquerque

NM 87103

[www.cabq.gov](http://www.cabq.gov)

The land proposed to be conveyed was inadvertently left out of a previous land transfer made in 2008. By transferring these tracts of land, it will further unite the former Albuquerque Indian School (AIS) property that has recently been reformed into the AIS District, a unique governance structure that benefits all of the 19 Pueblos, who and manage the land through Indian Pueblos Marketing, Inc.

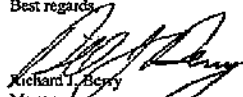
Consolidating these small parcels with the 44-acre tract that has been held in trust for the 19 Pueblos since 1993, and the Indian Pueblo Cultural Center property that has been held in trust since 1978, will complete the transfer of the former AIS property to the 19 Pueblos. The legislation will allow the 19 Pueblos to manage all of the former reserve for economic development, educational, and cultural purposes.

The land transfer will further strengthen the 19 Pueblos ability to help develop the 12<sup>th</sup> Street property into a prosperous economic development for both the city and the 19 Pueblos.

Further, the transfer of the land will allow for firmer protections and flexibility for the Native American Community Academy that recently relocated to the campus in the reserves last remaining building of the former AIS.

Please feel free to contact me directly or my staff person Elias Gallegos at (505) 768-3000 with any questions.

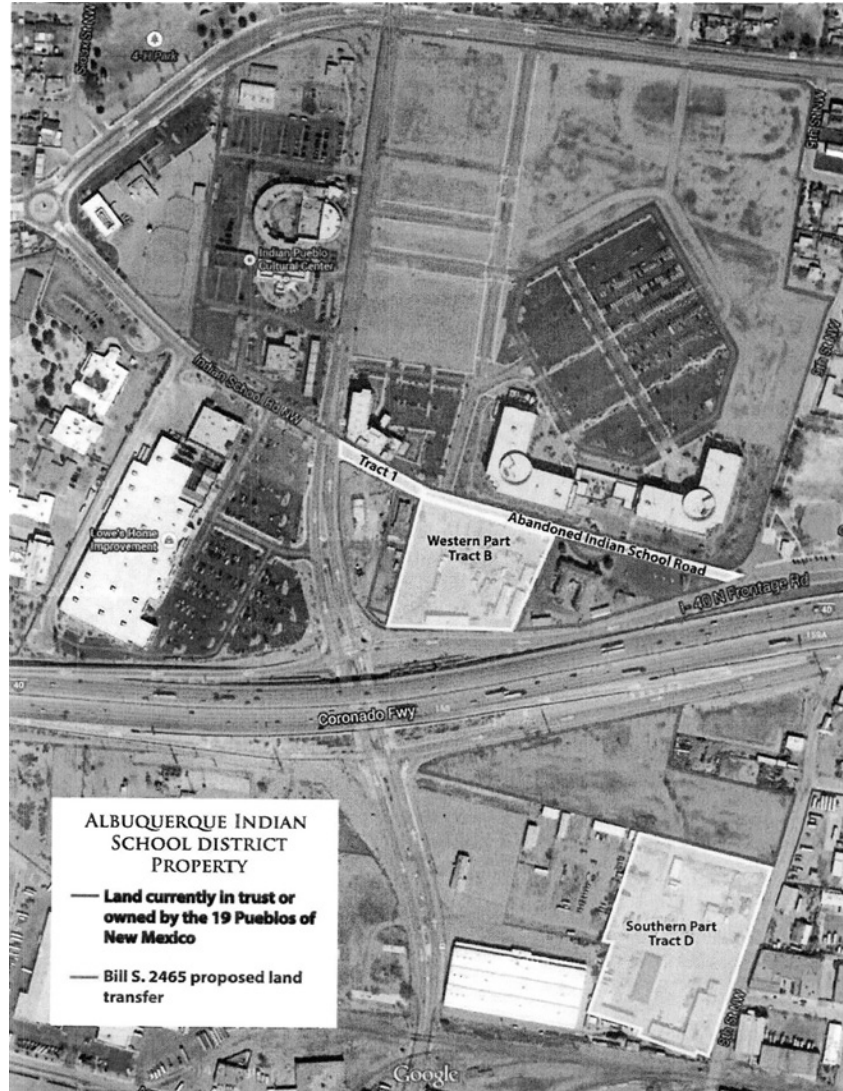
Best regards,

  
Richard J. Berry  
Mayor  
City of Albuquerque

cc: Michael Canfield, President/CEO, IPMI

*Albuquerque - Making History 1706-2006*





The CHAIRMAN. Thank you for your testimony, Mr. Canfield. Thank you all for your testimony.

I am going to start with you, President Fisher, on the Northern Cheyenne's struggle with the subsurface rights on the land. These are subsurface rights that you were supposed to have but never had them. How long has the tribe been pursuing this legislation?

Mr. FISHER. For 20 years. We started out in 1993, when we first approached GNP to transfer those lands to the tribe.

The CHAIRMAN. So tell me, if we are able to make this transfer, what are going to be the impacts on the tribe once it is done? If we get this transfer done, how will it benefit the tribe?

Mr. FISHER. The tribe would then own all the subsurface on the reservation. We own 445,000 acres, and there's only the 5,000 acres in trust. Then it would be beneficial to the tribe, we can plan what we are going to with our royalties in the future.

The CHAIRMAN. Okay. So there is no other subsurface on that, on the reservation you guys don't own? This is the only portion of subsurface rights that the tribe does not have?

Mr. FISHER. Right. The tribe owns all the other subsurface underneath the reservation.

The CHAIRMAN. Okay. Let's talk a little bit about the bill would transfer control of the Northern Cheyenne Trust Account into the Northern Cheyenne Permanent Fund. There are some folks who don't understand how funds are administered by the Office of Special Trustee and how that works. Where did the funds in the Office of Special Trustee Account come from and how will the transfer to the Northern Cheyenne Permanent Fund benefit the tribe? Why would that be positive?

Mr. FISHER. In 1992, the tribe has a water rights settlement. There was \$30 million set aside to renovate the Tongue River Dam in Montana. And there was \$5,000 left over and that was placed in a OST trust fund. Since then, the tribe has been utilizing the interest off that trust fund. When that is placed in our permanent fund, we would get a better investment from our permanent fund being utilized for tribal programs.

The CHAIRMAN. Got you. In your testimony you also discuss land near Bear Butte in South Dakota and how it could protect that land from commercial development. What does the tribe plan to do with the land it owns near Bear Butte in South Dakota if those lands are taken into trust?

Mr. FISHER. When we purchase land, land is everything to the Northern Cheyenne Tribe. We purchased land around Bear Butte, at the base of our sacred mountain. Many tribes, as well as the Northern Cheyenne go to fast there, tribes from Oklahoma, New Mexico, South Dakota all come to fast there and worship from that mountain. We want to preserve that mountain from commercial development.

The CHAIRMAN. Okay, so just to follow up a little bit, and we talked about this a little bit yesterday when you were in my office, but tell us the tribes in South Dakota that you have worked with on Bear Butte?

Mr. FISHER. We sent letters out to all the tribes in the State of South Dakota, asking for their support. The only tribe that gave me support right away over the phone was Rosebud, South Dakota.

The CHAIRMAN. I would like to ask you, President Fisher, as you get written support for the South Dakota effort, if you could pass those along to the Committee, I would appreciate it.

Mr. FISHER. I think we can get written support from the tribes in South Dakota. We just need to have time to get that information back to you.

The CHAIRMAN. Very good, thank you.

With that, Vice Chairman Barrasso.

Senator BARRASSO. Thank you, Mr. Chairman.

President Fisher, just kind of along the lines of what we have been talking about here, the Northern Cheyenne Lands Act would

give your tribe the opportunity to benefit from coal development. And when I kind of look at some of the details in your testimony, you say there are some requirements out there going back to 1984. Your testimony indicates that this requirement could limit the tribe's return on some of the royalty investment that you should be getting.

Could you tell us a little bit more about how that plan from back in 1984 would affect the revenue that you would get, so you wouldn't get as much as you think you should get?

Mr. FISHER. This legislation was passed in 1948. We feel that it is going to affect us from not getting any revenue from this coal development for another 10 years or so. We are not going to receive any revenue from that coal development.

Senator BARRASSO. So it would affect it for the next 10 years?

Mr. FISHER. Right.

Senator BARRASSO. Your written testimony also describes how important coal development will be long term for your tribe and tribal members. There are some potential roadblocks, like limited access to ports and markets that could limit the development of these resources. Could you describe how important foreign markets and domestic markets are for these resources and how that will affect your tribal economy?

Mr. FISHER. Right now we have no intention for developing our coal. It is going to be up to the Northern Cheyenne people to have a referendum vote. I as tribal chair cannot give you an answer as to whether we are going to develop the coal or not. It is going to be up to the people by referendum vote if we go with coal development. So right now, there is no movement for coal development on the reservation.

Senator BARRASSO. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Udall?

Senator UDALL. Thank you, Chairman Tester. In my introduction of Mr. Canfield I forgot to recognize the strong ties he has to the New Mexico community. He serves on a number of boards. He is on the board of directors of the Native American Community Academy, the American Indian Chamber of Commerce, the Albuquerque Chamber of Commerce, Junior Achievement of New Mexico, University of New Mexico Business and Advisory Board, the CNM Foundation Board and the New Mexico State Workforce Board. He stays active, in addition to running the Indian Pueblo Cultural Center.

Mike, every time I visit the Indian Pueblo Cultural Center, I am amazed by the breadth and quality of exhibits and the level of community engagement. Could you talk some about the events that occur there and the purposes that the Cultural Center serves in the community?

Mr. CANFIELD. Thank you, Mr. Chair, Senator Udall. We are very proud of the Cultural Center as it stands now. As I mentioned, it is a self-sufficient organization that our forefathers founded back in the 1970s to create a meeting place for our people, as well as a place where we could share the important factors of our culture with all visitors throughout the world. We think we do a great job in accomplishing that with our visitors. We have several exhibits, we have a permanent exhibits which has a display of all

19 Pueblos and helps visitors understand the importance of our Pueblo communities.

We also offer special services to all of our Pueblo members to come in and meet and use the facility. We are also a very profitable organization. As I mentioned, there are two corporations. One is a for-profit, Section 17, and the other is a non-profit. The for-profit, through economic development, generates all the funds necessary to run the non-profit. So we haven't had to go out to our Pueblos and ask for contributions to maintain the level of service that you mentioned. It is an organization and an area that we are very, very proud of. Hopefully we are fulfilling the mission that our forefathers set before us.

Senator UDALL. Thank you very much. I believe you were here when BIA Director Mike Black testified, and the issues he raised, the one with the fire department and some of the legal description. Do you see any reason we can't work through those issues?

Mr. CANFIELD. Mr. Chairman and Senator Udall, absolutely not. In fact, I talked with him earlier. Our intent was to honor that to allow them to still own that land as long as they needed it. I talked with the area director and he is in support of that. If we do that through an MOU or through language in this bill, we are absolutely open to that, and understand that they should be able to use it as long as they need it.

Senator UDALL. Great. Thank you.

Now, you have noted that the Mayor of Albuquerque is supportive, and I think you said there was a letter that he had submitted. Did you submit that for the record?

Mr. CANFIELD. Mr. Chairman and Senator Udall, yes, I did.

Senator UDALL. Good. Are there other stakeholders, in addition to the Mayor of Albuquerque, the city council, others? Is there any opposition that you see on this?

Mr. CANFIELD. No, actually the only other party that is involved might be the neighborhood association itself, of which I serve on the board there. And they are working very diligently with us in support of everything that we are doing. I can't think of anybody that doesn't think this is a great idea.

Senator UDALL. Great. Thank you for all your hard work on this. We appreciate it. Thank you, Chairman Tester.

The CHAIRMAN. Thank you, Senator Udall.

Aletha, dealing with economic development, you have S. 2479 that is going to restore about 26,000 acres to your reservation, adding to the 75,000 that you currently have that were restored back in 1980. That first reacquisition allowed the Moapa Paiute to establish within their small land base housing and commercial opportunities. In your testimony you state that 11,500 of the 26,000 acres of the proposed transferred land on the south side of the reservation would be used for recreation and conservation development. I think that is great. Tell us more about that.

Ms. TOM. It will provide us a little bit more recreation opportunities. The bill will also help to address the injustice that resulted from diminishment of the Moapa and Paiute tribes in 1875. So it would help develop more opportunities in our area.

The CHAIRMAN. What kind of recreation are we talking about?

Ms. TOM. Similar to tribal tourism area for our tribe. Something we can do, because we are right off I-15, right off the major highway.

The CHAIRMAN. Good. I want to hear a little bit about the solar energy production that I think if developed could provide some necessary energy to surrounding communities, electrical energy. Could you tell us more about the tribe's proposed solar projects and where they are in our overall development?

Ms. TOM. Yes. We have three right now, ResSolar, and we also have ResAmerica and we are working with a smaller development, Stronghold Solar. We would like to pursue that in our extra land.

The CHAIRMAN. So some of the land proposed for transfer would be for solar development?

Ms. TOM. Right, exactly. For energy, yes.

The CHAIRMAN. I want to talk about that proposed housing development on 7,500 acres of the proposed land transfer. You state that housing is hard to come by on your reservation. But it might be helpful if you explain just how difficult it is for families to find homes, what are the housing needs of your tribe, how will this transfer help your tribe meet the housing needs required.

Ms. TOM. We have two types of housing development on the reservation, it's with HUD and also with the HIP program, the Housing Improvement Program. If we did get additional land, we would be able to provide more housing for our tribe, if we had additional land there, we would be able to get more housing for our people.

The CHAIRMAN. Do you know how many units you are short right now?

Ms. TOM. Yes, we are. Our tribal members have to kind of stand in line in order to get a HUD home.

The CHAIRMAN. All right, thank you very much, Aletha.

Chairman Melendez, as you state in your written testimony, the area devoted to Indian uses in Nevada is smaller than any of the other western and plain States. Your colony is basically landlocked by the City of Reno. In 1986, the tribe was able to get legislation for land expansion in Hungry Valley, in order to meet the needs of the tribe's housing and other community development. Could you explain why the tribe needs this expansion?

Mr. MELENDEZ. Yes. Our tribe originally, we are called colonies because we are small land bases. We had 28 acres in downtown Reno. The city has grown up around us. In 1986, Barbara Vucanovich sponsored a bill which was successful in gaining nearly 2,000 acres in Hungry Valley. Hungry Valley is about 30,000 acres of a valley, we are basically 2,000 of the 30,000 acres. It is actually one mile wide by three miles long, that is the additional land from the Vucanovich legislation in 1986.

We are trying to, our wells out in Hungry Valley, our rural reservation, are actually on BLM lands. The water is actually pumped onto the small reservation. So we are trying to basically widen the reservation so the wells would be on reservation land, the watershed.

Then we want to get back to the cultural aspect. On 28 acres, we want to teach our culture. We do sweat lodges right in downtown Reno. We would like to get out to a more rural area to perform those ceremonies. So I think that to teach our children about

the outdoors and the trails and all the different things, petroglyphs and different things out in the area, I think it enhances our culture to really have a larger land base. That is really significant to us.

The CHAIRMAN. In your testimony, you state the BLM is currently unable to manage this land and transferring it to the BIA will benefit the administration of this land. Just explain how the tribe and the BIA will do a better job managing these lands than the BLM.

Mr. MELENDEZ. It would primarily, we work very well with the Bureau of Land Management in the state of Nevada. They have told us that they just don't have the manpower to patrol the land with all of the littering and the things that are happening out there, off-road vehicles. I know that the tribe is probably in a better position in Hungry Valley with our police officers to really help them.

We have assisted them in some areas identifying people who have really desecrated the land there. We have helped out. But I think we could do a better job because we have a little more manpower than BLM.

The CHAIRMAN. Good. Let's talk a little bit about local support for transfers, because I think they are pretty critical. Has your tribe worked with the city or local governments on these transfers, and what has been the reaction?

Mr. MELENDEZ. It has been very good. We worked with the Washoe County Commission, which has jurisdiction up in the Hungry Valley area. It has been real positive, we haven't had any negative feedback from anybody. I think in our economic development endeavors, in the city of Reno, we have worked very well with the Mayor. That is one of the reasons we have been successful, is that we work well with local governments.

The CHAIRMAN. That is good. Just curious, maybe you mentioned it in your testimony, do you have letters of support from them?

Mr. MELENDEZ. Yes, we do. I believe we have letters from the county. We do have those.

The CHAIRMAN. Perfect. S. 2480 prohibits tribes from Class 2 and Class 3 gaming. How do you feel about that?

Mr. MELENDEZ. Since Nevada is a gaming State, we are not really into gaming. I think it is a sovereignty right that tribes believe we should have. It is the same for a lot of things. But since this bill prohibits gaming, I don't think that is an issue here.

The CHAIRMAN. Good. Thank you very much.

Chairwoman Counts, I understand the deadline imposed by the Big Sandy settlement requires that Congressional ratification needs to take place sooner rather than later. How would the enactment of S. 2503, your bill, fit into the comprehensive agreement you are negotiating with the State and other water rights holders?

Ms. COUNTS. It would bring us the ability to gain water rights. We have been on the Colorado from time immemorial and the Hualapai Tribe has no water rights. Our goal is to be able to obtain water rights for the tribe. This bill would fit into that.

It would also help us to do the infrastructure study that would bring water up from the Colorado up to our resort, so that we could expand. Our tribal members travel 57 miles, 100 miles round trip

every day, rough roads, just to get to work. So we want to build a community out there. But in doing that, we need water.

The CHAIRMAN. Got you. Not that this will happen, but if Congress was unable to act before December, how would that impact ratification of the Big Sandy and Hualapai agreements?

Ms. COUNTS. It probably would all go away. All the work that we have done, it would go away, because of the deadlines that are existing.

The CHAIRMAN. Okay. Based on your written testimony, the Freeport Minerals Corporation and the tribe have been working together very closely and effectively to hammer out everyone's water rights. How have the tribe and the corporation cultivated this relationship?

Ms. COUNTS. We have a very good relationship. When I came into office in August of 2012, they were already working together. I just came in and there was a table of 30, 40 people just sitting down working out this agreement. Here we are today, we have a really good relationship there. Really friendly to us. They really want to see us achieve the goals that we have. So our relationship is very good, and we would like to thank them for all their help.

The CHAIRMAN. That is good. I think your ability to be inclusive is critically important. So we thank you for that.

The Hualapai's development of the Grand Canyon West is exactly the kind of tribal economic development that I think we need in Indian Country. I am interested to hear more about the plans that the tribe has for cultivating business and cultivating industry. Could you share with us some of the tribe's business goals and how S. 2503 would help you achieve those goals?

Ms. COUNTS. One of our goals is to become a major economic development for the people to provide resources and also to become a world class resort. We are working toward those goals. This settlement will really help us. We are working on infrastructure out there to Grand Canyon West. We have jumped through a lot of hoops to get where we are today. We are going to open our new Diamond Bar Road, which will give better access to the resort. Those are some of the things we are doing. This comprehensive settlement will help us achieve the water rights that we need for the future.

The CHAIRMAN. Thank you, Chairwoman Counts. We appreciate your leadership as well as the leadership of the other folks from Montana, Nevada and others. So thank you very, very much.

Mr. Canfield, I would be remiss if I didn't at least you one question. Senator Udall isn't here, he got his questions in. The Indian Pueblo Cultural Center is one of the most visited tourist attractions in New Mexico, I am told. It is an example of what can happen when a tribe, or in this case, all Pueblos work jointly together with local and State partnership.

I ask this question because I think it sets a good example for Congress. Maybe we need to pay attention to what you are doing and maybe we will be a little bit more effective. Can you describe how the Pueblos are able to work with local governments so successfully?

Mr. CANFIELD. Thank you, Mr. Chairman, I can. One of the unique things we have done at the property is that we have 19 dif-

ferent owners, sovereign owners. So we have formed a political subdivision of 19 Pueblos, having resolutions from each tribal council empowering their government to act on their behalf. So that streamlined the bureaucratic process of passing ordinances and tax codes and so forth.

We also have a business side and we have a governance side. The business side is run by a five-person board, myself and our staff. And then there is a governance side. We understand the mutual beneficial relationship for both, taxes as well as commerce, and we have the ability on the business side to operate as a business without encumbering ourselves with bureaucratic challenges and government challenges, frankly. So we are free to do what we need to do to make that business work. That has been a key to our success there.

The CHAIRMAN. Okay. The transfer of this land has taken place over a reasonably long period of time. Why didn't it all get transferred?

Mr. CANFIELD. Mr. Chairman, I am not exactly sure of the exact reasons. But my opinion is that we probably didn't have a good plan for everything and a good structure for it. Sometimes things happen or a reason. So I feel like this last transfer, we will be better prepared than we ever have been to take advantage of that. So it kind of completes the BIA transfer and gives us the ability to develop the entire piece of property, and now we have resources, plans, support to accomplish that.

The CHAIRMAN. So to be clear, these final 11.11 acres means that all the former Pueblo Indian School Reserve Land will have been transferred, is that correct?

Mr. CANFIELD. Mr. Chairman, it does, with the exception of one small parcel on the map that right now is currently under GSA ownership. So this does complete the BIA's holdings over to us, but now our sights are going to be to finish off, we are going to be working on that.

The CHAIRMAN. How big is that?

Mr. CANFIELD. I think it is probably about 20 acres or so. I am sorry I don't have the exact coordinates.

The CHAIRMAN. It is contiguous with the other parcels of land?

Mr. CANFIELD. It is, yes, sir.

The CHAIRMAN. Thank you very much. As I said several times today, I appreciate all your testimony. I appreciate your willingness to make the trek to D.C. It is not easy for folk who live in the west. So thank you very, very much.

With that, I will state that the hearing will remain open for another two weeks for any additional information people might want to submit. With that, this hearing is adjourned.

[Whereupon, at 3:59 p.m., the Committee was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. HARRY REID, U.S. SENATOR FROM NEVADA

Thank you Chairman Tester and Vice-Chairman Barrasso for the opportunity to submit testimony on these two bills that would transfer land into trust for a total of eight Indian tribes in Nevada.

Nevada's Great Basin has always been home to the Washoe, Paiute and Western Shoshone Peoples. The first Nevadans have long been a voice for protecting our wild landscapes and enriching our state through their language and cultural heritage. I take the many obligations that the United States has to tribal nations seriously. Land is lifeblood to Native Americans and these bills provide space for housing, economic development, traditional uses and cultural protection. I would like to commend the tribes, whose immense work and collaboration made these bills possible, and I look forward to continuing to work with our First Nevadans on protecting homelands.

### **S. 2479, The Moapa Band of Paiutes Land Conveyance Act**

The Moapa Band of Paiute Indians have been in Nevada and the West since time immemorial and suffered great land losses through federal Indian policy. When the Moapa River Reservation was established in the late 1800s, it consisted of over two million acres. In its lust to settle the West, Congress drastically reduced the reservation to just 1,000 acres in 1875. It wasn't until 1980 that Congress restored 70,500 acres to the reservation. Today the reservation is approximately 71,954 acres.

The Moapa Band of Paiutes Land Conveyance Act, S. 2479, would direct the Secretary of the Interior to take more than 26,000 acres of land currently managed by the Bureau of Land Management (BLM) and the Bureau of Reclamation into trust for the Moapa People who live outside of Las Vegas, Nevada. This legislation would provide much needed land for the tribe's housing, economic development and cultural preservation.

Located on I-15, the tribe runs the Moapa Paiute Travel Plaza. The tribe is the first in Indian Country to develop utility-scale solar projects on tribal lands. Since southern Nevada has critical habitat for the desert tortoise, a species listed as threatened under the Endangered Species Act, the tribe works closely with federal, state, and local partners, members of the conservation community and interested stakeholders to develop their community in an environmentally responsible manner.

### **S. 2480, The Nevada Native Nations Land Act**

The Nevada Native Nations Land Act, S. 2480, would transfer land into trust for seven northern Nevada tribes—the Elko Band of the Te-Moak Tribe of Western Shoshone Indians, the Fort McDermitt Paiute and Shoshone Tribe, the Duck Valley Shoshone Paiute Tribes, the Summit Lake Paiute Tribe, the Reno-Sparks Indian Colony, the Pyramid Lake Paiute Tribe and the South Fork Band of the Te-Moak Tribe of Western Shoshone Indians. Like S. 2479, the Nevada Native Nations Land Act would allow these seven tribes to build housing for their members, preserve their cultural heritage and traditions, and provide opportunities for economic development.

Since time immemorial, the Western Shoshone have been living in what is now known as southern Idaho, central Nevada, northwestern Utah, and the Death Valley region of southern California. The Elko and South Fork Bands are two of four bands that comprise the Te-Moak Tribe of Western Shoshone Indians.

The Elko Band's reservation, or colony, is landlocked by the growing City of Elko, where band members have been coming for mining and railroad jobs for decades. The colony needs additional lands for housing and economic development. My legislation would expand the Elko Band's reservation by transferring 373 acres of BLM-managed land into trust for the tribe.

S. 2480 would also convey 275 acres, just west of the City of Elko, to Elko County to provide space for a BMX, motocross, off-highway vehicle, and stock car racing area.

The South Fork Reservation, home to the South Fork Band, is comprised of 13,050 acres. The Band was one of the groups of Western Shoshone that refused to move to the Duck Valley Reservation and stayed at the headwaters of the Reese River, near the present Battle Mountain Colony. Established by Executive Order in 1941, the colony was originally 9,500 acres of land purchased under the Indian Reorganization Act. In addition to rugged high desert terrain near the foothills of the Ruby Mountains, the reservation has open range which is used for open cattle grazing and agricultural uses. The Nevada Native Nations Land Act would place 28,162 acres of BLM land into trust for the tribes and release the Red Spring Wilderness Study Area (WSA) from further study.

The Northern Paiutes made their homes throughout what is now known as Idaho, California, Utah and Nevada. Due to westward expansion, our government pushed some Western Shoshones and Northern Paiutes into the same tribe and onto the same reservation where their descendants remain.

The Fort McDermitt Paiute and Shoshone Tribe now make their home along the Nevada-Oregon border. Starting as a military fort in 1865, the military reservation was turned into an Indian Agency in 1889 then established as an Indian reservation in 1936. The reservation is currently made up of 16,354 acres in Nevada and 19,000 acres in Oregon. The Nevada Native Nations Land Act would add 19,094 acres now managed by the BLM in Nevada to the lands already held in trust for the tribe.

The Duck Valley Indian Reservation is the home of the Shoshone-Paiute Tribes who live along the state line between Nevada and Idaho. The reservation is 289,819 acres, including 22,231 acres of wetlands. The tribes have limited economic opportunities and tribal members have made their way farming and ranching. This bill would place 82 acres of U.S. Forest Service land into trust for the tribes. The tribes plan to rehabilitate structures that were used by Forest Service employees into much-needed housing on the parcel.

The Summit Lake Reservation is one of the most rural and remote reservations in Nevada along the Oregon and California borders. Established in 1913 for the Summit Lake Paiute Tribe, the reservation today is 12,573 acres. The tribe seeks land to maintain the integrity of its reservation, protect Summit Lake and restore the Lahontan Cutthroat Trout. S. 2480 would transfer 941 acres of BLM-managed land into trust for the tribe.

The Reno-Sparks Indian Colony has a very small 28-acre reservation in Reno, Nevada. The colony has 1,100 Paiute, Shoshone and Washoe members some of whom live on a 1,920 acre reservation in Hungry Valley, which is 19 miles north of Reno. The Hungry Valley Reservation is surrounded by shooting and ATV activities and tribal member have requested a buffer zone to ensure the safety of their community. The legislation would transfer 13,434 acres of BLM land into trust for the tribe.

The Pyramid Lake Paiute Tribe have made their homelands around Pyramid Lake, a unique desert terminal lake. Pyramid Lake is one of the most valuable assets of the tribe and is entirely enclosed within the boundaries of the reservation. S. 2480 would expand the reservation with an additional 30,669 acres of BLM-managed land.

This legislation is so important to me and the Indian tribes in Nevada. Throughout the history of our country, Native Americans have been removed and disenfranchised from their homelands. They have been treated so poorly. One of the first pieces of legislation I worked on when I came to Congress was the historic Pyramid Lake/Truckee-Carson Water Rights Settlement. This involved two states, several cities, a lake, a river, endangered species, and two Indian tribes. These Indian water rights needed to be protected, just as tribal lands need to be restored especially in Nevada where tribal landbases are smaller and more rural and remote than any other parts of Indian Country. During my time in the Senate, I will continue to do what I can to right some of the many wrongs and help tribes restore their homelands.

I greatly appreciate that the Chairman and Vice-Chairman have made time for this hearing and I look forward to working with the Committee to advance these bills.

PREPARED STATEMENT OF THE BOARD OF SUPERVISORS OF MOHAVE COUNTY,  
ARIZONA

**Introduction**

Mohave County is located in northwestern Arizona, with its western boundary being generally the Colorado River and southern boundary being the Bill Williams River. Our County is approximately 13,500 square miles in area, which makes it the fifth largest county by area in the Continental United States. Mohave County is an important gateway to recreational opportunities in the Grand Canyon, the Lake Mead National Recreational Area, the Colorado River, and numerous wildlife refuges and wilderness areas. The Kaibab, Fort Mojave and Hualapai Indian Reservations also lie within our County.

Our County's largest city is Lake Havasu City, which along with Bullhead City, is right on the Colorado River. Kingman is our County seat, and it is a transportation hub that lies at the intersection of two major highways, Interstate I-40 and U.S. Route 93. Interstate I-40 runs across the Southern United States, connecting Wilmington, North Carolina, to Barstow, California. Route 93 connects Phoenix, Arizona, to Las Vegas, Nevada. In the future, proposed Interstate I-11 as designated by the United States Congress in the 2012 Surface Transportation Act will generally follow the alignment of U.S. Route 93. When that happens, Kingman and Mohave County will be then at the intersection of two major interstate highways. Mohave County also is served by the mainline of the Burlington Northern Santa Fe Railroad, and by several regional airports.

Our population growth over the past twenty years has been dramatic. In 1990, our population was 93,000—less than half of what it is today. By 2000, we had grown to 155,000 people, and today, over 200,000 people currently call Mohave County home. This growth has been accommodated through coordinated and careful planning by Mohave County, as well as by the municipalities of Lake Havasu City, Kingman and Bullhead City. Because Mohave County lies within the Mohave Desert where water is scarce to non-existent, we are extremely concerned about the wise use of our water resources—perhaps more than any other crucial factor, water availability will limit and define how we grow in the future.

With this background in mind, we offer to the Committee on Indian Affairs our statement opposing Senate Bill S.2503 as currently drafted.<sup>1</sup>

**Basis for Our Opposition to Senate Bill S. 2503**

We have been largely kept in the dark about the status of this legislation. In 2010, our County filed a protest to an application filed by Freeport Minerals Corporation ("Freeport") to sever and transfer water rights appurtenant to Planet Ranch on the Bill Williams River to Freeport's well field on the Big Sandy River. On Friday, June 6, we were informed by the Arizona Department of Water Resources that our objections had been summarily rejected.<sup>2</sup> Based on that rejection of our protest, we retained counsel who learned that the introduction of this legislation was imminent. Initial efforts to obtain even a draft of the proposed S. 2503 and the two settlement agreements that are referenced therein were met with resistance, although Senator Jeff Flake's office did provide a draft copy of the legislation six days before its introduction on June 19, 2014. Approximately a week after the introduction of S. 2503, our County received drafts of the two settlement agreements.

To date, and despite repeated requests, we have not received any of the numerous exhibits that are referenced in these settlement agreements, nor do we know if the agreements have been revised or finalized. As a consequence, we are providing these comments with the understanding that if and when the exhibits to the settlement agreements are ever made available to us, we may find it necessary to submit additional comments.

**Loss of Property and Sales Tax Revenue if Land is Taken Into Trust for the Hualapai Tribe**

Our current opposition to S. 2503 as introduced is partly based on the fact that under this legislation, Mohave County may suffer a loss of property tax revenues as developable owned land is transferred from private to Federal ownership for the benefit of the Hualapai Tribe. Subsection 5(e) of S. 2503 provides as follows:

As provided in section 10.11 of the Hualapai Tribe Agreement, the parties to the Hualapai Tribe Agreement shall negotiate in good faith with other parties

<sup>1</sup>As noted above, our comments are also applicable to the current draft of H.R. 4924.

<sup>2</sup>Mohave County has challenged ADWR's rejection of our objections by filing an administrative appeal with the Arizona Office of Administrative Hearings.

the terms under which any land within the State of Arizona held or acquired in fee by the Tribe may be taken into trust by the United States for the benefit of the Tribe, with any applicable terms to be incorporated into a future agreement settling the claims of the Tribe for rights to Colorado River water, and the Federal law approving the agreement, subject to approval by Congress.

The Hualapai Tribe Agreement<sup>3</sup> simply restates this provision—it does not restrict or limit the current right of the United States to take additional land into Trust for the benefit of the Hualapai Tribe. Yet, under the Hualapai Tribe Agreement, the Hualapai Tribe could acquire several tracts of land from another party to the settlement, Freeport Minerals Corporation (“Freeport”). These tracts are identified in Paragraphs 4.2(iii) and 4.2(iv) of the Hualapai Tribe Agreement simply as the Benegas Ranch and the ROFR Lands (i.e., “Right of First Refusal Lands”), respectively. No legal description or graphic depiction of the ROFR Lands has been provided to us.

Under the worst case scenario, the Hualapai Tribe could acquire the Banegas Ranch or ROFR Lands (or both) by exercising its rights of first refusal; the Hualapai Tribe could then ask the United States to take these lands into Trust for its benefit. Nothing in S. 2503 or the Hualapai Settlement Agreement precludes this from happening. Under such circumstances, these lands would no longer be subject to taxation by Mohave County, and access across such tracts would be restricted by both the Tribe and United States. Long-term development on lands along the 1–11 corridor might also be restricted, or if these lands are developed by the Hualapai Tribe, such development might conflict with the general plan for Mohave County, and our zoning requirements and our development criteria. All of this would impose on our residents additional property tax burdens.<sup>4</sup>

Because of this concern, S. 2503 should be amended to provide that no additional land within the Big Sandy River watershed will be taken into Trust without the consent of Mohave County. This amendment does not necessarily mean that Mohave County would veto any such effort by the Hualapai Tribe. Indeed, Mohave County supports the Hualapai Tribe in its efforts to protect Cofer Hot Spring on its Cholla Canyon Ranch from excessive groundwater withdrawals. It simply means that prior to any land being taken into Trust, our County and the Hualapai Tribe would work through and resolve anticipated planning, land use, access and water issues arising out of that Federal action.

#### **Planet Ranch Access and Water Issues**

Our Board has similar issues with the donation of the Planet Ranch property to the Arizona Game and Fish Commission. The second Settlement Agreement referenced in S. 2503 is the “Big Sandy River—Planet Ranch Water Rights Settlement Agreement” (“Big Sandy Agreement”).<sup>5</sup> Again, our County has not been provided with any of the exhibits that are referenced in the Big Sandy Agreement, notwithstanding the fact that at least 30 such exhibits are referenced in that Agreement.

Under the somewhat cryptic provisions of Section 5.0 of the Big Sandy Agreement, Freeport intends to donate to the Arizona Game and Fish Commission certain unidentified lands in the Planet Ranch area along the Bill Williams River. As outlined above, any such donation would remove private land from the Mohave County’s tax rolls, thereby increasing the tax burden that must be shouldered by the other residents of Mohave County.

In addition, there is no guarantee of access to the Planet Ranch property once it is conveyed to the Arizona Game and Fish Commission. Subsection 7(c) of S. 2503 states:

Public Access—Nothing in this Act prohibits reasonable public access to Planet Ranch or Lincoln Ranch in a manner that is consistent with all applicable Fed-

<sup>3</sup>The entire caption of this Settlement Agreement is, “Hualapai Tribe Bill Williams River Water Rights Settlement Agreement.” As set forth above, Section 3 of this Agreement lists numerous exhibits, none of which have been made available to Mohave County. Because this Agreement is only available in draft form, references in our comments to sections or paragraphs of this Agreement are to the 6–23–2014 version of the same. The Banegas Ranch and the ROFR Lands are referenced as being graphically depicted on Exhibit 2.8 to the Agreement which again, has not been provided to Mohave County.

<sup>4</sup>Mohave County is very cognizant of the current dispute between the Tohono O’Odam Nation and the City of Glendale over land that the Nation purchased for construction of a casino in the west Salt River valley. This Board of Supervisors does not wish to replicate that dispute in Mohave County.

<sup>5</sup>References are to the 6–23–2014 version of this agreement. We do not know whether this agreement has been amended or substantially revised.

eral and State laws and any applicable conservation management plan implemented under the Conservation Program.

This provision is not an affirmative statement that requires access to be provided to the public, but instead only states that access will be provided if State and Federal agencies feel like it. Instead, S. 2503 should affirmatively provide that such lands will be opened to the public and available for hunting, fishing and other recreational uses.

Finally, there remain substantial questions about the validity of the Planet Ranch water rights that Freeport proposes to transfer to its Big Sandy well field. Each Settlement Agreement and S. 2503 includes numerous representations by the parties about the validity of the Planet Ranch water rights. Yet, in Subparagraph 4.2.1 (vii) of the Big Sandy Agreement, Freeport represents that it is installing irrigation facilities to “re-irrigate” the Planet Ranch property to prevent forfeiture of the water rights by December 13, 2016. That date is five years after the date that Freeport acquired the Planet Ranch property from the City of Scottsdale.<sup>6</sup>

Under Arizona law, non-use of a water right for a five year period may result in a determination that the water right has been lost through forfeiture. See for example, Arizona Revised Statute (A.R.S.) Section 45–141.C. Freeport apparently recognizes that these water rights have not been used recently, and statements by representatives of the City of Scottsdale suggest that irrigation entirely stopped on the Planet Ranch property sometime in 2005.<sup>7</sup> This statement is further supported by a quick review of aerial photographs of the Planet Ranch Property.

The aerial photos and statements by Freeport and others suggest that these water rights have already been forfeited and/or abandoned through non-use for more than a five-year period. During a public hearing before our Board of Supervisors on July 2, 2014, Freeport mentioned that it had entered into an agreement with Scottsdale to acquire the Planet Ranch in 2006. Around 2007 both Scottsdale and Freeport began taking steps to transfer the Planet Ranch water rights to Freeport’s Big Sandy well field for mining purposes. Thus, the Planet Ranch water rights were abandoned seven or eight years ago when Scottsdale gave up on its plans to use waters from Planet Ranch for municipal purposes.

At the same hearing, Freeport also stated that it had about 40,000 acre-feet of water rights that it could use to support its withdrawals of water from its Big Sandy well field.<sup>8</sup> If this is indeed the case, then it is not clear why Freeport even needs to sever and transfer water rights from Planet Ranch. Instead such rights should be left where they already are for the support of the riparian community along the lower reach of the Bill Williams River.

### Conclusion

For the reasons set forth above, we oppose the passage of S. 2503 and its companion House Bill, H.R. 4924. As currently drafted, passage of this legislation may result in the loss of property and sales tax revenues and accessible public land in Mohave County. Instead, those parties to the settlement that are pushing this Congress for quick passage of legislation should provide the numerous exhibits to those of us in Mohave County and others who have a vested interest in this settlement, and then work with us to resolve our concerns. Only after our concerns have been addressed should this legislation become law.

Please include our comments in the Congressional Record in this matter. We appreciate the opportunity to provide you with comments on S. 2503, and we look forward to working with members of your Committee to resolve our concerns.

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PREPARED STATEMENT OF HON. LINDSEY MANNING, CHAIRMAN, SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY INDIAN RESERVATION

On behalf of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation, I write in strong support of S. 2480, the “Nevada Native Nations Land Act,” and section 201(c) of the legislation which conveys 82 acres of land administered by the

<sup>6</sup>The City Scottsdale acquired Planet ranch in 1984 as a water farm with the intention of transporting Planet Ranch waters from the Bill Williams area to the City of Scottsdale for municipal use. Freeport acquired the Planet Ranch from Scottsdale by Special Warranty and Quitclaim Deed, dated December 8, 2011, and recorded in the records of Mohave County, Arizona, as Fee Number 2011062804 on December 14, 2011.

<sup>7</sup>Peter Corbett, “Scottsdale Gets \$10.15 Million, Water Rights Worth \$18 Million,” *Arizona Republic* (December 23, 2011), available at: [http://www.azcentral.com/community/scottsdale/articles/201112/21\\_120111221\\_mining-company-agrees-acquire-scottsdale-planet-ranch.html](http://www.azcentral.com/community/scottsdale/articles/201112/21_120111221_mining-company-agrees-acquire-scottsdale-planet-ranch.html).

<sup>8</sup>Mohave County does not know anything about these water rights and therefore does not concede that such water rights remain valid. Indeed, perhaps they have been abandoned too.

U.S. Forest Service to our Tribes to be held in trust by the United States and made part of the Duck Valley Indian Reservation. The Shoshone-Paiute Tribes are pleased that our Senators, Majority Leader Harry Reid and Senator Dean Heller have introduced the bill this session. S. 2480 is the companion bill to H.R. 2455, introduced by Congressman Mark Amodei in 2013 which the House Natural Resources Committee approved for House consideration just last month.

We thank the Committee for holding a legislative hearing on S. 2480. I join the other Nevada Indian Tribes covered under S. 2480, and Reno-Sparks Indian Colony Chairman Arlan Melendez, who testified before the Committee on behalf of all the Nevada tribes, in supporting this bill. Together with Senators Reid and Heller, I urge the Committee and the full Senate to approve the legislation this session.

The land transfer is supported by both local and national Forest Service officials and is not controversial. The property we seek to have conveyed to us in trust for our benefit, located about 20 miles from Owyhee, Nevada, the site of our tribal government, is currently managed by the United States Forest Service within the Department of Agriculture. The parcel is located approximately ten miles south of our Reservation and near Mountain City, Nevada.

We seek this parcel of land for the 11 outbuildings, including housing units, detached garages, a corral and hay shed, for our use and management. Once renovated, we plan to use the housing units to address the chronic housing shortage on the reservation and to provide construction jobs and job training for our members.

The Forest Service abandoned the site and existing structures located there six years ago when the Service moved its District headquarters to Elko, Nevada, about 80 miles south of the property. The 82 acre Forest Service parcel constitutes a tiny portion of the 82,000 acres of mostly Bureau of Land Management (BLM) lands that would be transferred to tribal and local government control under S. 2480 and represents a small portion of the Forest Service's Mountain City Ranger Station Administrative Site, but the parcel is very important to us.

The modest acquisition we seek will allow us to renovate some nine homes in close proximity to our Reservation and help us provide much needed housing, assist us recruit public safety, health professionals and other personnel to work on the Duck Valley Reservation and provide construction jobs to our members. Owyhee, Nevada is situated 100 miles south of Mountain Home Idaho, a city of about 16,000 and 100 miles north of Elko, Nevada, a city of about 18,000. The ability to provide housing in close proximity to Duck Valley is immeasurable as recruitment and retention is difficult for us in light of our housing shortage and isolation.

The Shoshone-Paiute Tribes' provision is required because the Forest Service has limited statutory and regulatory authority to convey lands it manages to an Indian tribe and have such lands be held in trust by the United States for our benefit. The Service's primary authorities for conveying land to non-federal parties comes from the Forest Service Facility Realignment and Enhancement Act of 2005, Pub. L. 109-54, 119 Stat. 559, as amended (16 U.S.C. § 580d), and legislation authorizing land exchanges. See 43 U.S.C. § 1716 (Federal Land Policy and Management Act of 1976, as amended).

Restrictions in both laws limit the quantity of land the Service may transfer, impose other conditions on the Service's conveyances and do not clearly provide that conveyance of Forest Service lands when made to a federally recognized Indian tribe are held in trust by the United States for the Indian tribe's benefit. Sections 201(c)(2)(A) and (B) resolve this issue by providing that an the Forest Service parcel is held in trust by the United States for the benefit of the Shoshone-Paiute Tribes and shall be part of Duck Valley Indian Reservation. We believe that the provision is entirely consistent with the government-to-government relationship that exists between the Shoshone-Paiute Tribes and the United States.

Section 202(b) of S. 2480 requires all lands transferred to the seven tribes covered under the legislation must use the land for traditional and customary uses, stewardship conservation, residential or recreational development, renewable energy or mineral development. The provisions of this section are consistent with our intended use of the Forest Service parcel.

S. 2480 correctly references the appropriate map, the "Mountain City Administrative Site Proposed Acquisition," dated July 29, 2013, which reflects the corrected boundaries of the Forest Service parcel to be conveyed to us. We had clarified in our 2013 testimony to the House Natural Resources Committee concerning H.R. 2455 that the earlier referenced site map needed to be corrected to reflect that the proposed acquisition site lies entirely to the east of Nevada Highway 225. We are pleased to see that the correct map of July 29, 2013, is included in section 201(c)(1) of S. 2480. Once the bill becomes law, the Secretary of the Interior will complete

a survey of the boundary lines to establish the boundaries of each parcel taken into trust.

We are a remote, rural reservation that straddles the Idaho-Nevada border along the Owyhee River. The Reservation was established in 1877 and expanded in 1886 and 1910. Today, the Reservation encompasses 450 square miles in Elko County, Nevada and Owyhee County, Idaho.

About 85 percent of our 2,000 enrolled members reside on the Reservation. Tribal members make their living as farmers and ranchers, though many are employed by the Tribes. We are quite proud of the fact that for nearly two decades we have assumed the duties of the Secretary of the Interior and the Secretary of the Department of Health and Human Services under Indian Self-Determination Act Self-Governance compacts. We also carry out federal programs of the Department of Housing and Urban Development and the Federal Highway Administration under agreements with those agencies. While we employ many tribal members, we also employ non-members who require affordable housing in close proximity to Duck Valley. Unfortunately, infrastructure on the Duck Valley Indian Reservation is in short supply, especially affordable housing.

With abandoned improvements only 20 miles from Owyhee that we can renovate, the Forest Service property would help us address our housing needs, provide construction and training jobs, strengthen our governmental services and programs by assisting us retain health care professionals, law enforcement and conservation officers and other first responders and personnel and establish a presence on the site that has been absent for the last six years.

Acquisition of the Forest Service parcel, located close to our tribal headquarters, elementary and high schools, health clinic, fire department, tribal court and public safety offices, would provide us with additional housing units close to the Duck Valley Indian Reservation. Recent data from the Department of Housing and Urban Development shows that within our housing formula area, there are 242 Native American households that are overcrowded, 205 Native American households have housing expenses greater than 50 percent of Median Family Income and 877 Native American households that earn less than 80 percent of Median Family Income. Median family income in Owyhee, Nevada is around \$30,000 annually.

If enacted into law this session, S. 2480 will permit us to administer the site, plan and begin renovations to utilize the improvements for our benefit. The improvements we plan to make would provide an opportunity to put our members to work. Unemployment on the Duck Valley Reservation is very high. We plan to utilize the renovation work as a training exercise through our Tribal Employment Rights Ordinance (TERO) and implement a youth employment training program to assist in the renovation of the units and other buildings. The work and training will benefit our members, as will the required routine maintenance of the property and improvements. The close proximity of the property to our Reservation and administrative offices will better ensure that we properly maintain the site.

In conclusion, conveyance of the approximately 82 acre Forest Service parcel to the us in trust will assist the Shoshone-Paiute Tribes address our housing shortage, strengthen our tribal government programs by helping us retain personnel who need affordable housing near the Duck Valley Indian Reservation and create construction work and job training opportunities for our Tribal members. We support S. 2480 and urge its prompt passage.

Thank you for affording the Shoshone-Paiute Tribes the opportunity to submit testimony to the Committee regarding S. 2480.

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PREPARED STATEMENT OF GERALD TEMOKE, CHAIRMAN, ELKO BAND COUNCIL

Thank you for the opportunity to provide this testimony. The Elko Band Council is a constituent band of the Te-Moak Tribe of Western Shoshone Indians of Nevada. For the last 17 years Elko Band Council has pursued additional land for expansion of its current land base which is 192.80 acres. Millions of acres within the State of Nevada are under the authority of the Bureau of Land Management. Elko Band Council is only requesting a small portion of the lands to be held in trust for its enrolled membership for housing, cultural activities, recreation, economic development, and gravesites. Most Tribes throughout the United States have thousands of acres for their land base to provide for the needs of their people. Elko Band does not have the adequate land base to expand and grow with its population which has increased to approximately 1,500 enrolled members. Elko Band has the largest population and our land base is the smallest. Additional land is greatly needed and essential to sustain growth and provide necessary services to our people.

## PREPARED STATEMENT OF STEVE CHARTER, NORTHERN PLAINS RESOURCE COUNCIL

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to submit testimony on S. 2442, Senator Walsh's Northern Cheyenne Lands Act. My name is Steve Charter. My family and I ranch above some of the coal proposed for exchange by this bill. I write on behalf of us and on behalf of Northern Plains Resource Council, whose board of directors I currently chair.

Northern Plains is a grassroots conservation and family agriculture non-profit organization based in Billings, Montana. Northern Plains organizes Montana citizens to protect our water quality, family farms and ranches, and unique quality of life.

Northern Plains formed in 1972 over the issue of coal strip mining and its impacts on private surface owners who own the land over federal and state mineral reserves. Our members care deeply about Montana, its future, and the issues surrounding coal. Many of our members' livelihoods as ranchers and farmers depend entirely on clean air and water, native soils and vegetation, and lands that remain intact. The strip mining of coal affects us directly.

Given that, I'm writing to express some concerns about this bill. I'd like to open, however, with what we support.

What Northern Plains Supports:

1. *Conveying Coal Beneath the Reservation to the Northern Cheyenne:* We think the Tribe ought to have control of all the resources above, on, and below their reservation.
2. *Surface Owner Consent:* This bill seeks to preserve the intent of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) by providing some protections for landowners. That bill preserved the right of surface owners like me to decide whether their land will be strip mined if they live above federal coal. Transferring the coal under me to private ownership would normally take away that right, threatening the ranch my family and I have worked for several generations now. By including a provision in the bill that transfers Surface Owner Consent with the exchanged Bull Mountain minerals, I at least maintain some of the existing protections for my ranch and livelihood.
3. *Maintenance of Resource Management Plan Restrictions on Mining Methods:* In addition to SMCRA's provision for Surface Owner Consent, the Bureau of Land Management's Resource Management Plan for the area includes a provision that the federal coal sought for exchange in this bill be mined exclusively by underground methods. My family and our neighbors worked hard for that, and it's something we don't want to lose. There is currently no strip mining in the Bulls. Adding surface mining to existing longwall mining operations would risk destroying aquifers, making sustained agriculture in the Bulls untenable. It would destroy invaluable cultural artifacts (there are pictographs and other artifacts out here, a product of many generations of Native American use of these lands). And it would be a tremendous insult to the history of the families who live and work here now. My family's ashes are scattered on this ground. I don't want to see it torn up.

As alternatives to the RMP language currently in the bill, we would support an outright ban on surface mining of the conveyed Bull Mountain tracts. We would also be supportive of removing Bull Mountain tracts from the bill, which would perhaps be progress toward address our concern detailed below.

What Needs To Be Changed:

1. *Any Exchange Should Be More Balanced:* This bill proposes a ton-for-ton trade of coal, giving Great Northern Properties roughly the same number of tons of coal being conveyed to the Tribe. Merely operating on a ton-for-ton basis is unreasonable- that's like trading a house in Shepherd, Montana for a house in the Hamptons.

The coal that Great Northern Properties would acquire in this bill is some of the highest-value coal in Montana—adjacent to existing mines with already-established infrastructure. The coal in the Bull Mountains where I live is notably higher BTU than the coal under the Northern Cheyenne reservation. As the Interior Department struggles to address evidence that it is already undervaluing federal coal, taxpayers deserve a hard look at the balance of how much coal is exchanged in this bill. This bill should convey less coal to Great Northern Properties in an attempt to make the exchange more balanced and to avoid unduly transferring public wealth to a private corporation.



In closing, we strongly agree with the bill's intent to return coal to the Northern Cheyenne. I more than many know what it's like to have someone else owning the coal beneath your land. However, as a country, we should be able to fix this problem and strike a more equitable balance on behalf of federal taxpayers at the same time.

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PREPARED STATEMENT OF RANDI DESOTO, CHAIRWOMAN, SUMMIT LAKE PAIUTE COUNCIL

On behalf of the Summit Lake Paiute Tribe, I wish to thank you for the opportunity to offer testimony in support of S. 2480, the Nevada Native Nations Lands Act.

**Background**

The Summit Lake Paiute Tribe is a federally recognized Indian Tribe and has a government-to-government relationship with the Federal Government.

By election on October 24, 1964, the members of the Agai Panina Ticutta (Summit Lake Fish Eaters) Tribe of the Northern Paiute Nation gave up their traditional form of government, to conditionally adopt a form of government suggested by the Indian Reorganization Act of 1934 (see Articles of Association (Constitution) and changed the name of the Tribe to the "Summit Lake Paiute Tribe."

The Tribe's Articles of Association were approved by John A. Carver Jr., Acting Secretary of the U.S. Department of the Interior on January 8, 1965.

The Tribe's Reservation is in a very remote location in northwestern Nevada about 50 miles south of the Oregon state line, and about 50 miles east of the California state line. Additionally, it takes 5 hours to travel to the Reservation from Reno, Nevada, with the final 3 hours on a seasonally impassible dirt road.

Prior to contact with Europeans and Euro-Americans, the Agai Panina Ticutta controlled at least 2,800 square miles of land including land that is now in the states of Oregon and California.

At one time, the Reservation was part of a military reservation, known as Camp McGarry that was established by Executive order in 1867. The military reservation was abandoned in 1871 and transferred from the War Department to the Department of the Interior.

The Reservation was established on January 14, 1913 by a President's Executive Order, number 1681. The Executive Order set aside about 5,026 acres in trust for the Tribe. Successive actions have added additional acreage to the Reservation. Today, the total acreage of the Reservation is about 12,573 acres. The total surface of the lake fluctuates between 900 and over 600 acres between the run off of snow melt in spring and dry summer conditions. Reservation lands surround Summit Lake except in one area on the west side of Summit Lake. S. 2480 would incorporate these public domain lands into the Reservation thereby restoring the integrity of the Reservation and allowing for better, more comprehensive management of the Lake and its fish population.

Summit Lake is home to the federally listed Lahontan cutthroat trout. As suggested by the translation of the Tribe's name—"Agai Panina Ticutta"—the "Summit Lake Fish Eaters", the trout were and remain integral to the Tribe's culture and are a vital food source.

Lahontan cutthroat trout were plentiful in the mid-1880s. But as more people moved to the area and began to use the natural resources, what was once plentiful became depleted. Overfishing of the lake populations, introduction of exotic fish and habitat degradation caused the collapse of the commercial Lahontan cutthroat from nearby lakes such as Lake Tahoe in 1939 and Pyramid Lake five years later in 1944.

Cooperative efforts to improve the status of Lahontan cutthroat trout began as early as the 1940's. Habitat improvement projects and livestock grazing enclosures were initiated as early as 1969.

S. 2480 presents an opportunity to continue efforts to restore Summit Lake and its fishery. Transfer of the 941 acres of public domain lands in Township 42 North, Range 25 East, Sections 35 & 36 to the Summit Lake Paiute Tribe for inclusion in the Summit Lake Reservation—the only lands that surround Summit Lake which are not a part of the Reservation—will allow for significantly improved management and habitat restoration for existing and future Lahontan cutthroat trout populations.

The Summit Lake Paiute Tribe has long sought these lands which should have been a part of the Reservation from inception a century ago.

Transfer of these lands will unify the Reservation, allow the Tribe to better manage its natural resources and protect Summit Lake and its fish population thereby achieving cultural, economic and environmental benefits.

Thank you for your consideration of this bill. On behalf of the Summit Lake Paiute Tribe I respectfully and strongly urge your support.

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PREPARED STATEMENT OF HON. ELWOOD LOWERY, CHAIRMAN, PYRAMID LAKE PAIUTE TRIBE

On behalf of the Pyramid Lake Paiute Tribal Council, the governing body of the Pyramid Lake Tribe and pursuant to the Council's resolution dated May 21, 2014, I respectfully offer the following testimony in support of S. 2480, the Nevada Native Nations Lands Act.

The Pyramid Lake Paiute Tribe is a federally recognized Indian Tribe and has a government-to-government relationship with the United States of America.

The Pyramid Lake Reservation lies approximately 35 miles northeast of Reno, Nevada in northwestern Nevada. It lies almost entirely in Washoe County. The Reservation has 742.2 square miles in land area and includes all of Pyramid Lake, and all of the Truckee River from the Big Bend north. The Reservation is centered on Pyramid Lake, and the lake itself comprises 25 percent of the reservation's area. The Reservation includes most of the Lake Mountain Range, portions of the Virginia Mountains and Pah Rah Range and the southern end of the Smoke Creek Desert. There are three communities on the Reservation. Sutcliffe is located on the western shore of the Lake, Nixon is at the southern end of the Lake, and Wadsworth, the largest, is located near the Big Bend of the Truckee at the southern end of the reservation, just north of the non-reservation town of Fernley.

The reservation land was first set aside for the Northern Paiute at request of the Bureau of Indian Affairs in 1859. The Reservation was not surveyed until 1865. President Ulysses S. Grant subsequently affirmed the Reservation's existence by executive order dated March 23, 1874.

Our Tribe has a long history of repatriating ancestral lands within and contiguous to the reservation to Tribal ownership to protect, conserve, and enhance the cultural and natural resources of the Pyramid Lake Paiute Reservation.

The Tribe has long sought the ancestral lands set forth in S. 2480 (Sec. 201(f)) for inclusion within the legal boundaries of the Reservation. In 1990, President George H. W. Bush signed Public Law 101-618 which included a provision to allow private lands within or contiguous to the Reservation to be acquired by means of a Federal Land Exchange and then be incorporated within the Reservation. Subsequently, a number of land exchanges authorized by PL 101-618 were successfully completed enabling the Tribe to acquire certain lands in the Pah Rah Mountain Range on the southwest border of the reservation. Unfortunately, almost 8,000 acres of private land acquired in the Pah Rah Range under PL 101-618 were conveyed to the United States under the jurisdiction of the Bureau of Land Management (BLM) rather than into Trust status. The Tribe has long held that these properties should have been put into Trust status. The proposed legislation would help right this perceived wrong and transfer these as well as additional lands in the Pah Range that lie in Pyramid Lake's watershed to Trust status.

Additionally, in 2008 the Tribe acquired private lands contiguous to the eastern boundary of the Reservation in the Mud Slough area which lands are intermingled with isolated parcels of BLM land. S. 2480 would unify the land ownership pattern allowing for better, more comprehensive Tribal land management of this area.

Incorporation of the federal land that is contiguous to the Reservation will help protect the Pyramid Lake watershed, and the lake's world renowned fishery. Transfer of these lands would also allow the Tribe to better manage the watershed of Pyramid Lake, the central feature of the Reservation.

Pyramid Lake is home to the cui-ui, *Chasmistes cujus*, a large sucker fish endemic to Pyramid Lake. The cui-ui is not only a critically endangered species, but is also one of the few surviving members of its genus. As suggested by the translation of the Tribe's name "Cui ui Ticutta"—the "Cui ui Eaters"—these fish were and remain integral to the Tribe's culture and were a vital subsistence food source. Following the construction of Derby Dam in 1905 and diversion of much of the Truckee River's flow, the Pyramid Lake fishery declined and by 1930 it was no longer capable of supplying even subsistence food. Pyramid Lake is also home to the federally listed Lahontan cutthroat trout. The trout were and remain integral to the Tribe's culture and are central to the Tribe's economy and remain a vital food source for Tribal members. Lahontan cutthroat trout were plentiful in the mid-1880's. But as more people moved to the area and began to use the natural resources, what was once

plentiful became depleted. Overfishing of the lake's population, introduction of exotic fish and habitat degradation caused the collapse of the commercial Lahontan cutthroat in Pyramid Lake by 1944. Pyramid Lake was restocked with fish captured from Summit Lake (Nevada). However, in the 1970s, fish believed to have been stocked almost a century ago from the Pyramid Lake strain were discovered in a small stream along the Pilot Peak area of western Utah border, and are a genetic match to the original strain. This Pilot Peak strain is now integral to the reintroduction and planting programs maintained by the U.S. Fish and Wildlife Service. The Lahontan cutthroat trout were classified as an endangered species between 1970 and 1975, then the classification was relaxed to threatened species in 1975, and reaffirmed as threatened in 2008.

As stated above, transfer of these lands will allow the Tribe to better manage its natural resources and protect Pyramid Lake and its fish population thereby achieving cultural, economic and environmental benefits.

Finally, the historic range of the Pyramid Lake Paiute people was far greater than the current boundary of the Pyramid Lake Paiute Reservation, and transfer of federal lands that are contiguous to the current boundary of the Reservation would allow the Pyramid Lake Paiute people to expand their present day Reservation to include additional lands that they occupied in the past.

Early on representatives of the Pyramid Lake Tribe reached out to nearby stakeholders in an effort to address concerns they may have. We have in good faith attempted to address all legitimate concerns that have been brought to our attention. And, even though the proposed legislation is clearly subject to honoring any and all valid existing rights, in an effort to accommodate concerns expressed by mining interests and recreationists, the Tribe acquiesced to requests to remove over 10,000 acres from the bill as originally proposed. After doing so, the Tribe agreed to remove an additional approximately 3,500 acres to accommodate concerns that were only brought to the Tribe's attention on July 22, 2014. I believe the Pyramid Lake Tribe has been extremely willing to compromise in order to make this bill a reality and on behalf of the Pyramid Lake Tribal Council and all our members, I wish to thank Senators Reid and Heller for their support of this legislation and respectfully ask that you and your colleagues support Senate Bill 2480.

Thank you for your consideration of the preceding testimony.

## PREPARED STATEMENT OF THE LA PAZ COUNTY BOARD OF SUPERVISORS

Dear Honorable Committee Members:

The La Paz County Board of Supervisors, Arizona, strenuously opposes S.2503, ***The Big Sandy River-Bill Williams River Water Rights Settlement Act of 2014***, introduced by the Arizona congressional delegation, in that this legislation negatively severs and transfers the natural resources; removes taxable property from the County's tax rolls; and, ultimately affects future economic development of our County without any notice to or representation by La Paz County as a coordinating agency or stakeholder at the bargaining table. La Paz County also supports the position of its sister-county to the north, Mohave County, as it concerns similar objections to this same legislation.

Simply put, La Paz County was totally excluded from any discussions on this matter, as required by federal regulations as a coordinating agency, even though the subject matter negatively impacts our residents. Not only does the proposed settlement include portions of lands contained within the boundaries of La Paz County, but also, water rights appurtenant to said lands.

It wasn't until just recently that the Mohave Board of Supervisors contacted us referring to the subject proposed legislation. In reviewing the contents of S.2503 it authorizes the Secretary of the Interior to execute and implement two settlement agreements; however, La Paz County has received only a partial copy of one of these agreements in the documents eventually provided by Freeport-McMoRan.

Additionally, S.2503 is represented as Phase One of a three phase settlement plan, but no information whatsoever has been communicated regarding the settlement plan beyond Phase One. Negotiations regarding this Plan have been ongoing, we assume, since the acquisition of the property in December 2011 by

**Freeport.** The urgent, time sensitive statements regarding S.2503 and belated attempts to persuade local governments that this is a good deal without full disclosure of the details are disingenuous given the lack of communication over the last three and one-half years.

Moreover, the representation by the State of Arizona through its Department of Water Resources and Arizona Game & Fish is adverse to the best interests of La Paz County citizens. Said agencies do not represent La Paz County and act solely in a self-serving manner for the State of Arizona.

In effect, the proposed legislation favors a private company's (Freeport-McMoRan) mining venture in Bagdad, Arizona (located in a completely different Arizona county) to the detriment of two other Arizona counties, La Paz and Mohave.

The proposed legislation indicates there are benefits to the settlement. This is not true. There will be no benefit, financial, perceived or otherwise, to La Paz or Mohave County; we were neither included in the discussions nor was a socio-economic study completed to analyze any potential impacts of this proposed legislation upon the involved counties.

Six of the Planet Ranch applications seek to sever and transfer certain water rights to new places of use within Planet Ranch that Freeport intends to lease to the United States Bureau of Reclamation (BOR) so that the appurtenant water rights may be used for the Lower Colorado River Multi-Species Conservation Program and taking property off the tax rolls.

Already the US Fish & Wildlife Service has unlawfully taken property owned by La Paz County without just compensation. La Paz County owns the right-of-way to Planet Ranch, which has been unlawfully gated by the Fish & Wildlife Service, therefore depriving County residents from lawfully accessing County roadways to this area. This has greatly damaged the County's ability to fully develop its tourism economy by restricting access to a historic birding and outdoor recreation area. La Paz County should be made whole again.

In order to gain a better perspective it is necessary to give you some background on our County. La Paz County is a poor, rural county on the border of Arizona and California with the Colorado River comprising the County's western border. The County covers an area of over 4,500 square miles. Only 5.3% of the County is privately owned, which constitutes a very anemic tax base. The majority of the remaining land within the County is controlled by the Department of Interior.

The County's full-time population is approximately 22,000 people; however, seasonally this population exponentially increases to well over 250,000 to enjoy recreation on the Colorado River, open areas for off-highway vehicle access, The Quartzsite International Gem Show, bird watching, hiking, etc. Tourism and farming comprise the lion's share of the County's economy.

Of course, La Paz County has a duty to protect the health, safety and welfare of its residents, which includes its visitors. Providing these services is very difficult when taxable property is scarce and although the County receives federal PILT associated with providing county services to federally controlled lands within its boundaries; this funding is not assured and subject each year to congressional politics. This funding is not set in stone and is just enough to allow La Paz County to function in a "hand-to-mouth" existence.

Clearly, with only about 5% of its land privately owned, La Paz County has very limited assets to support and/or increase economic development activities. In addition, removing taxable land from an already feeble tax base is inequitable and unfair to our remaining taxpayers who must shoulder the burden of our reduced net assessed valuation.

The proposed legislation affects an area known as Planet Ranch which lies directly adjacent to the Bill Williams River National Wildlife Refuge. The Bill Williams River flows west from the Alamo Lake through the ranch and into Lake Havasu, which feeds the Colorado River. The water in the Colorado River is slowly drying up with allocations already in excess of supply.

In the West, water is gold. The loss of water resources and privately owned land to a rural county is a double sucker punch below the belt from which there is no recovery. Having no notice of or chair at the negotiation table as a party with standing is both unjust and lacks transparency.

La Paz County leadership cannot in good conscious support or ignore S.2503, and based on the limited information obtained would be grossly negligent in their obligation to La Paz County residents not to strenuously oppose its passage.

For the sake of our residents please consider our position and oppose the proposed S.2053, ***The Big Sandy River-Bill Williams River Water Rights Settlement Act of 2014*** in its present form and until such time as both La Paz and Mohave Counties are rightfully included in these discussions.

Thank you for your time and consideration.

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PREPARED STATEMENT OF FRANCIS McALLISTER, VICE PRESIDENT OF LAND & WATER, FREEPORT MINERALS CORPORATION

Chairman Tester, Vice Chairman Barrasso, and members of the Committee:

My name is Francis McAllister and I am the Vice President of Land & Water at Freeport Minerals Corporation. Thank you for the opportunity to provide testimony in support of S. 2503, the Bill Williams River Water Rights Settlement Act of 2014, which authorizes, ratifies, and approves agreements between the Hualapai Tribe (Tribe), the U.S. Department of the Interior, acting on behalf of itself and as trustee for the Tribe, its members and Allottees (U.S. DOI), the Arizona Game & Fish Commission (AGFC), the Arizona Department of Water Resources (ADWR) and Freeport Minerals Corporation (Freeport).

Special thanks to Senator Flake and Senator McCain for co-sponsoring this bill and for their continued support. I would also like to thank both of you for scheduling this hearing to consider this important piece of legislation, and we greatly appreciate the work personal and Committee staff, have devoted to moving this bill through the Committee process.

In brief, this Legislation approves a public/private agreement that will:

- 1.) Recognize and confirm the Tribe's existing water rights in the basin and protect culturally significant water supplies;

- 2.) Provide \$1,000,000 of non-federal money to the Hualapai Tribe from Freeport for additional water studies and will provide an additional non-federal contribution from Freeport to establish an Economic Development Fund for the Tribe;
- 3.) Donate over 3,400 acres of land for the purposes of the Lower Colorado River Multi-Species Conservation Program (LCR MSCP) to assist the Lower Colorado River water users in complying with Endangered Species Act (ESA) requirements; and
- 4.) Effectuate the transfer of 10,055 acre-feet per year of water rights to Freeport's Wikieup Wellfield and limits Freeport's water consumption from Wikieup at this level.

This legislation is a win-win for Indian Country, endangered species, and sustainable and responsible mining. My testimony provides background information and an overview of the terms of the Settlement and its benefits.

### **I. Background**

Freeport is a leading producer of copper and other minerals. The Company is headquartered in Phoenix, Arizona and its workforce in the U.S. at the end of 2013 included 13,300 direct employees and 1,900 contractors. In Arizona, Freeport owns and operates a copper smelter and five mining operations, which includes a large open-pit copper and molybdenum mining complex in Bagdad, Arizona.

A fundamental element of Freeport's U.S. operations includes direct engagement with Native American tribes. Education has been identified as a priority issue for Freeport's partnership with Indian Country, and in 2013 our Native American University scholarship program awarded 58 college scholarships to members of the Hualapai, San Carlos Apache, and White Mountain Apache tribes. We also contributed, including through the Native American Partnerships Fund, approximately \$250,000 toward initiatives such as training on forest management for carbon sequestration on reservations and supported the San Carlos Apache Women's Conference, a forum for tribal women to share experiences on topics including family health.

Our technical training program with the San Carlos Apache Tribe in Arizona, the first of its kind between Freeport and a U.S. tribe, will increase the employability and skills of Apache students who are faced with high unemployment in their community. The program will train and certify students in heavy equipment operations and industrial maintenance, and through the end of 2013, 200 students have entered the program and 42 have graduated—most of whom have been hired or are in the process of being hired.

Freeport's partnership in the Bill Williams River Water Rights Settlement negotiations (S. 2503) with the Hualapai Tribe marks the latest chapter in its proactive effort to work with Native American communities that live in and around the Company's operations. This legislation is a milestone for all the parties involved, and Freeport is honored to join the Hualapai Tribe in advancing this important effort.

We particularly want to acknowledge the tireless effort of Hualapai Chair Sherry Counts, who was both steady and inspiring in her leadership on this settlement. The Company greatly treasures its strong relationship with the Hualapai people that developed through the years of settlement discussions that brings us before the Committee today.

Additionally, I would like to acknowledge the efforts of the Federal Team for their work in helping to bring this Legislation to you today. In particular, the efforts of Letty Belin, Senior Counsel to the Deputy Secretary at the Department of the Interior; Pamela Williams, Director, Secretary's Indian Water Rights Office at the Department of the Interior; and Ruth Thayer, Program Manager at the Department of the Interior, Bureau of Reclamation; all of whom have done a tremendous job and I would like to recognize them for their significant time and efforts on this matter.

### **II. Protection of Freeport Bagdad's Water Rights**

Freeport's Bagdad Arizona mining operation is located approximately 60 miles west of Prescott and 100 miles northwest of Phoenix, in Yavapai County. The open-pit mine has been ongoing since 1945, and prior mining was conducted through underground workings dating back to 1882. The Bagdad operation encompasses approximately 21,750 acres, comprising 21,150 acres of patented mining claims and other fee lands and 600 acres of unpatented mining claims. Production at the Bagdad mine in 2013 totaled 216 million pounds of copper and 8 million pounds of molybdenum. The direct and indirect economic contribution of the Bagdad Mine to Arizona's economy totaled \$339.1 million.

As with all mining operations, the Bagdad operation requires a dedicated water supply. The current water supplies for the Bagdad Mine include access to groundwater and surface water resources in the Big Sandy River Groundwater Basin and the Big Sandy River in the Bill Williams River Watershed. Although the Company believes the Bagdad operation has sufficient water sources to support current operations, Bagdad faces the potential for increases in competing water demands and variability in water supplies due to an on-going drought. We are particularly sensitive to this issue because litigation at our other Arizona facilities may set legal precedents that could adversely affect Freeport's water rights at Bagdad.

The need to protect and ensure a long-term sustainable water supply for the Bagdad operation is the basis for Freeport's involvement in the water rights settlement with the Hualapai Tribe. Beginning with the purchase of Planet Ranch, Freeport sought to shore up its existing water rights along the Big Sandy River. Planet Ranch located along the Bill Williams River in northwestern Arizona has historically been irrigated for agricultural production dating back to 1960s and 1970s. The City of Scottsdale (near the City of Phoenix) purchased Planet Ranch in 1984 as an additional source of water for its future municipal water supplies. After years of failing to move water from Planet Ranch to Scottsdale, Scottsdale decided to liquidate its interest in the ranch, and in 2006 Freeport and Scottsdale entered into an agreement for the purchase of Planet Ranch, which the two parties completed in 2011 (for \$24 million).

Consistent with Arizona State law, in 2010, Freeport filed with ADWR an Application to transfer a portion of the water rights from Planet Ranch to Freeport's Wikieup Wellfield along the Big Sandy River (located approximately 71 river miles upstream of the Planet Ranch property). In response to this filing, the AGFC and U.S. DOI acting in its capacity as trustee for the Hualapai Tribe filed objections with ADWR to the transfer, citing alleged impacts to water rights in the area affecting habitat along the Bill Williams River, specifically the Bill Williams Wildlife Refuge, located immediately downstream of the Planet Ranch property and areas that are culturally important to the Tribe.

In response to these objections, Freeport began discussions with the parties to resolve the water rights dispute. In 2013, the AGFC, ADWR, the Hualapai Tribe and Freeport reached an agreement in principle to move forward on a settlement and resolution of these objections in exchange for, among other things, Freeport's recognition of tribal water rights on parcels owned by the Tribe and Allottees in the Big Sandy River watershed and Freeport's commitment to make financial contributions toward a future settlement of the Tribe's water rights claims in other river basins. The agreement in principle is the basis of the Bill Williams River Water Rights Settlement Act of 2014.

### **III. Overview of the Bill Williams Water Rights Settlement Act**

The Bill Williams River Water Rights Settlement Act of 2014 (Settlement Act) approves, ratifies and confirms the Big Sandy River—Planet Ranch Water Rights Settlement Agreement and the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement (Settlement Agreements). The Settlement Act is an important first step and blueprint for a comprehensive settlement of the Tribe's water rights claims in other river basins, such as the Lower Colorado River.

Under the terms of the Settlement Agreements, Freeport agrees to the confirmation of certain water rights for the Tribe (and the U.S. acting as Trustee for the Tribe, its members and Allottees). More specifically, the Settlement Agreements provide the Hualapai Tribe with waivers and release of claims from Freeport and the U.S. DOI (acting on behalf of its constituent bureaus) for diversion of 694 acre-feet of water in the Bill Williams watershed in Arizona, specifically:

- Claims for injury resulting from the diversion of water by the U.S. DOI, acting as Trustee for the Tribe or the Allottees for use on the Allotments or the Hualapai Reservation;
- Past and present claims of injury for the use of water by the U.S. DOI, acting as Trustee for the Tribe or the Allottees in the amount of 82 acre-feet per year on Trust Land Parcel 1; 312 acre-feet per year on Trust Land Parcel 2; and 300 acre-feet per year on Trust Land Parcel 3; and
- Past, present and future claims arising out of, or relating in any manner to, the negotiation or execution of the Settlement Agreements.

The Settlement Agreements also provide for the protection of the Tribe's water rights at Cofer Hot Spring located on Cholla Canyon, which is an area of cultural significance to the Tribe, including: (1) Freeport's agreement to curtail the drilling of any new production wells (a well with a capacity in excess of 35 gallons per minute) in the volcanic aquifer (including on Freeport's Banegas Ranch and other



Freeport-owned properties) that supplies the Cofer Hot Spring; (2) Freeport's agreement that if Freeport's existing pumping (limited to certain wells not to exceed 35 gallons per minute) is causing an adverse impact to the Cofer Hot Spring, that Freeport will work with the Tribe to address the impact; and (3) Freeport's agreement to grant to the Tribe a First Right of Refusal to match a bona fide offer to purchase Banegas Ranch or other specific Freeport-owned lands.

The Hualapai Tribe also benefits from two significant non-federal financial contributions that will be the cornerstone of a potential future comprehensive settlement of the Tribe's water rights claims on the Lower Colorado River and Verde River in Arizona.

First, Freeport is providing a non-federal contribution of \$1,000,000 that the Tribe can immediately use to develop the necessary professional studies to find the most appropriate alternative for delivery of Colorado River water directly to the Reservation. Completion of this study before comprehensive settlement discussions begin will potentially facilitate a settlement of the outstanding claims of the Tribe and provide earlier benefits to Tribal members.

The second non-federal contribution provided by Freeport to the Tribe comes in the form of an Economic Development Trust that will enable the Tribe to seek the purchase of lands and water rights in Arizona along the Colorado River. Without these substantial non-federal contributions, the settlement of the Tribe's claims could be significantly delayed or reduced and would come at a higher cost to federal taxpayers.

The Agreements related to this Act will also provide for the donation of a portion of the Freeport-owned Planet Ranch land and water rights to the AGFC. These lands will then be leased to the U.S. Bureau of Reclamation for the long-term benefit of the LCR MSCP.

The LCR MSCP is a program developed cooperatively between the federal government and representatives from the States of Arizona, California, and Nevada. The goal of the LCR MSCP is to recover ESA-listed species as well as reduce the likelihood of future listings, and all while also protecting current water diversions and power production. In addition, the LCR MSCP provides opportunities and ESA protection for future water and power development on the Colorado River, which is vital to Arizona's water supplies. This legislation will approve the long-sought addition of Planet Ranch to the LCR MSCP by the United States and it will fulfill important habitat needs of the Southwestern Willow Fly Catcher and Yuma Clapper Rail, among many other listed species.

Freeport is also providing waivers to the AGFC for the donation and transfer of the water rights to the LCR MSCP leased lands. These lands that are currently under private ownership with limited access are, under the legislation, to be converted to public lands with public access provided consistent with federal and state laws.

To protect water rights in the area, Freeport further agrees to limit its withdrawals of water from the Wikieup Wellfield to no more than 10,055 acre-feet per year for the remainder of its mining operations at the Bagdad Mine.

In exchange for these significant concessions, the Settlement Agreements provide to Freeport waivers of the objections filed by the AGFC and the U.S. DOI acting on behalf of itself and as trustee for the Tribe, its members and Allottees which will allow for the partial water rights transfer from Planet Ranch to the Wikieup Wellfield. This will provide to Freeport secure water rights for its continued operations at the Bagdad Mine in northwestern Arizona.

#### **IV. Conclusion**

This Settlement Act is a fair, equitable, and final settlement of certain claims among the Tribe, the U.S. DOI acting on behalf of itself and as trustee for the Tribe, its members and Allottees, the AGFC, the ADWR (in a limited capacity related to the transfer of the water rights) and Freeport to water rights in the Bill Williams River watershed in the State of Arizona. It is beneficial for all the parties involved by providing long-term certainty and promotes a reliable water supply for the Tribe, Freeport and the LCR MSCP.

The Settlement Act is a perfect example of a successful regional collaboration to address the Hualapai Tribe's water rights claims. As a part of this Act, Freeport is making two significant non-federal contributions towards the Tribe's analysis and acquisition of water rights, an important factor in enabling a future comprehensive Indian Water Rights Settlement. This Settlement would further avoid many years of potential litigation at great expense to the parties and the continued uncertainty concerning the availability of our precious water supplies in the region.

Thank you again, Mr. Chairman, Mr. Vice Chairman, and other Members of the Committee for the opportunity to present this important Indian water rights settle-

ment, which will significantly improve the reliability of regional water supplies for Freeport, the U.S. and the Tribe. Freeport strongly supports S. 2503, and looks forward to seeing this provision advance through the legislative process.

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PREPARED STATEMENT OF PATRICK J. GRAHAM, STATE DIRECTOR, THE NATURE  
CONSERVANCY

The Nature Conservancy supports sections of S. 2503 and H.R. 4924, the Big Sandy River-Planet Ranch Water Rights Settlement Agreement, as outlined below. We thank you all for your leadership and support of this important issue. This can serve as a model for how water agreements can benefit both people and nature. It is powerful to have our entire delegation as co-sponsors of this legislation.

The Nature Conservancy (TNC) is an international, nonprofit organization dedicated to the conservation of biological diversity. Our mission is to conserve the lands and waters on which all life depends. Our on-the-ground conservation work is carried out in all 50 states and in more than 30 foreign countries and is supported by approximately one million individual members. We have helped conserve nearly 15 million acres of land in the United States and Canada and more than 102 million acres with local partner organizations globally.

The Conservancy owns and manages approximately 1,400 preserves throughout the United States—the largest private system of nature sanctuaries in the world. We recognize, however, that our mission cannot be achieved by core protected areas alone. Therefore, our projects increasingly seek to accommodate compatible human uses, and especially in the developing world, to address sustained human well-being.

In Arizona, The Nature Conservancy has created a dozen nature preserves and developed new funding sources for conservation throughout the state. In this capacity, TNC has been a long running member of the Bill Williams River Corridor Steering Committee in Arizona. This partnership effort has members with diverse management concerns and responsibilities, all tied to a unique tributary of the lower Colorado River. The committee serves as a venue to address a wide range of matters, from the Army Corps' operation of their Alamo Dam facility to the issues associated with the Planet Ranch property, and strives to produce solutions built on consensus and inclusivity.

It was within the Steering Committee's discussions that TNC developed our position on Planet Ranch in terms of its ownership and water rights uses. It is only these areas of the proposed Congressional legislation that we are expressing support and comments on proposed legislative action. We are very supportive of gaining certainty through this agreement for all involved and are supportive of Freeport McMoRan's (Freeport) efforts to do the same.

The Bill Williams River watershed contains large unfragmented lands and significant biological diversity for the state of Arizona. It sits at the intersection of three arid regions—Sonoran Desert, Mohave Desert, and Colorado Plateau—yet includes more than 150 miles of perennial streams and rivers. These streams support nine native fish species and more than 340 bird species, and the watershed provides habitat for at least ten globally rare species. Extensive riparian forests of cottonwood, willow, and mesquite line the rivers and include the largest and healthiest remnant of the vegetation that once characterized the banks of the lower Colorado River.

The purchase of Planet Ranch by Freeport in late 2011 from the City of Scottsdale provides the opportunity for significant benefits to all parties and the public by providing more certainty with respect to water rights in the watershed and that Planet Ranch will be owned by the State of Arizona and used permanently for habitat purposes in preserving a natural ecosystem.

We support the sections of the proposed legislation that would accomplish the following:

- Portions of Planet Ranch are transferred to the Arizona Game & Fish Department
- One-third of Planet Ranch water rights are transferred to Arizona Game and Fish in an equitable manner
- Freeport commits, in perpetuity, to no increases in water use for the Wikieup Wellfield, and to regular verification of this agreement and suitable repercussions for failure to follow it, in a way acceptable to the United States Fish & Wildlife Service and the Arizona Game & Fish Department
- Federal Government to remove its objections at Arizona Department of Water Resources to the Planet Ranch water transfer

- Credit to the Lower Colorado River Multispecies Conservation Program (MSCP) for the new riparian habitat created by the project

We understand there is a study of the Hualapai Tribe water claims currently underway, and we urge future action to provide for the settlement and legislative confirmation of the Federal reserved water rights for the Bill Williams River National Wildlife Refuge.

Separate and apart from Congressional action, The Conservancy wants to continue a dialogue with Freeport to address issues outside of legislative action including:

- Disposition of the remaining water rights when the Bagdad mine is no longer in operation; and
- Use of the remaining water rights associated with Planet and Lincoln Ranches.

Thank you again for the opportunity for us to discuss and assist in passage of this important action.

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ARIZONA CHAMBER OF COMMERCE AND INDUSTRY  
*July 8, 2014*

Hon. JON TESTER,  
Chairman,

Hon. JOHN BARRASSO,  
Vice Chairman,  
U.S. Senate Committee on Indian Affairs,  
Washington, DC.

Dear Chairman Tester and Vice Chairman Barrasso:

The Arizona Chamber of Commerce and Industry urges your support of S. 2503, The Bill Williams River Water Rights Settlement Act of 2014. The Act will provide long-term certainty to both tribal and other water users in northwest Arizona.

S. 2503 is the result of an agreement between the Hualapai Tribe, the U.S. Department of the Interior, the Arizona Game and Fish Commission and Freeport Minerals Corporation. In addition to the support of each of the stakeholders, the Act also has the support of the entire Arizona congressional delegation.

The Act would ratify the Big Sandy River-Planet Ranch Water Rights Settlement Agreement and the Hualapai Bill Williams River Water Rights Settlement Agreement, and would facilitate a fair and equitable settlement of claims to water rights along the Bill Williams watershed in Arizona. In the agreement, Freeport Minerals Corporation will provide a tribal water supply study necessary to the Hualapai Tribe's claims for Colorado River water and will enable the Tribe to purchase Colorado River water rights to help facilitate a future comprehensive settlement. In exchange, Freeport will secure water rights for its continued operations in northwestern Arizona.

Water is a critical component to the economic vitality of the state of Arizona. The settlement of water rights claims is a priority in our state in order to provide clarity and long-term certainty to all water users across Arizona.

We hope that this legislation can be swiftly approved by the Senate Committee on Indian Affairs. Please do not hesitate to contact us if we can provide any insight into this important issue.

Sincerely,

GLENN HAMER,  
*President / CEO*

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HON. MARK LEWIS, DIRECTOR, CENTRAL ARIZONA PROJECT  
*Phoenix, AZ.*

Hon. JEFF FLAKE,  
2200 East Camelback Road, Suite 120,  
Phoenix, AZ.

SUPPORT OF BILL WILLIAMS RIVER WATER RIGHTS SETTLEMENT ACT OF 2014  
S. 2503

Dear Jeff,

I am the senior elected Director on the Central Arizona Project board representing Maricopa County. I am writing to you in support of the Bill Williams River Water Rights Settlement Act of 2014, S. 2503. While most of the bills subject matter does

not directly affect the Central Arizona Project or my constituents in Maricopa County, I personally support this water settlement bill. This bill is one of many Indian Water Rights settlements passed and funded over the years, and is a great first step in settling the remaining Tribal claims in Arizona.

Maricopa County residents, whom I represent, contribute a small share of the \$626 million dollar partnership between 3 states and the USBOR for Multi Species Conservation Program "MSCP" as our contribution to preservation of wildlife and habitat on the Colorado River, which in turn is part of the conditions for our Environmental Permits to withdraw water from the river. Maricopa County residents struck a grand balance between water withdraws from the river and environmental protection of wildlife, plants and river Biology. This legislation and the donation of the water rights from the Planet Ranch by natural resource companies save tax dollars and promote the MSCP program.

There are 26 species "covered" by the LCR MSCP; 6 threatened and/or endangered species and 20 non-federally listed species. There are an additional five "evaluation" species, which could be added to the covered species list for the LCR MSCP. Among the threatened and endangered species covered are the razorback sucker, the bonytail chub, the humpback chub, the southwestern willow flycatcher, the Yuma clapper rail, and the desert tortoise.<sup>1</sup>

Because of my senior position on the board, and my conservative desire to maintain our water withdraw permits for Maricopa County; I support the Bill Williams River Water Rights Settlement Act of 2014.

And while I do not speak for the Board, and I am providing my own opinion as the most senior elected director representing Maricopa County I am happy to support S. 2503.

Thank you,

MARK LEWIS,

STATE OF ARIZONA  
July 7, 2014

Hon. JEFF FLAKE,  
United States Senate,  
Washington, DC.

Dear Senator Flake:

For over a century, Arizona has taken seriously its obligation to all of its citizens to ensure that there are sufficient and secure water supplies now and into the future. Arizona has been a leader in water conservation and reuse; in securing and delivering water supplies to meet the needs of all Arizonans; and in comprehensive water management of this vital resource. Earlier this year, I released a report entitled, *Arizona's Next Century: A Strategic Vision for Water Supply Sustainability*. In this document we have laid the groundwork for moving Arizona securely forward into the next century.

In light of Arizona's continued commitment to a secure water supply future, I am pleased to express my support for the Bill Williams River Water Rights Settlement Agreement of 2014 (S. 2503/H.R. 4924). This Legislation is consistent with the Strategic Vision for the State of Arizona and represents an agreement that brings together Tribal and private industry in a solution-oriented way that will serve as an example for future water supply development opportunities. The benefits to the Hualapai Tribe in securing future water rights for their Tribal members is especially important and will be important in laying a foundation for continued economic development in this region.

I truly appreciate your efforts, and those of the entire Arizona delegation, in supporting this important legislation.

Sincerely,

JANICE K. BREWER, GOVERNOR.

YAVAPAI COUNTY BOARD OF SUPERVISORS  
Prescott, AZ, July 10, 2014

Hon. JEFF FLAKE,  
United States Senate,  
Washington, DC.

<sup>1</sup> [http://www.azgfd.gov/w\\_c/LowerColoradoRiverMulti-speciesConservationPrograms.shtml](http://www.azgfd.gov/w_c/LowerColoradoRiverMulti-speciesConservationPrograms.shtml)

Dear Senator Flake,

As a longtime resident of Yavapai County, former Mayor of the City of Prescott and current Chairman for the Board of Supervisors, I am expressing my complete support for the Bill Williams River Water Rights Settlement Agreement of 2014 (S. 2503/H.R. 4924).

As history shows, Arizona has been proactively building resilience and implementing innovative water management strategies to secure dependable water supplies for our future. This proposed Legislation is precisely the vehicle needed to bring together our future water supply development opportunities and economic security into the next century. I appreciate the commitment of our current political leaders in supporting this vital legislation.

Sincerely,

ROWLE P. SIMMONS, CHAIRMAN.



**Fort McDermitt Paiute And Shoshone Tribe**

P.O. Box 457  
McDermitt, Nevada 89421

7/22/2014

The Fort McDermitt Paiute Shoshone Tribe would like to thank Senator Harry Reid, Senator Dean Heller, and the Senate Committee on Indian Affairs for hearing and acting on the Nevada Native Nations Land Act, the Fort McDermitt Paiute Shoshone Tribe wishes to continue working with all Stake Holders and the Bureau of Land Management on all the previous and current land issues, the tribe would also like to continue working with the BLM on the greater sage grouse and the greater sage grouse habitat, as for the bird does have a cultural impact on the tribe.

Thank You.

A handwritten signature in black ink, appearing to read "Tildan Smart". The signature is fluid and cursive, written over a horizontal line.

Tildan Smart  
Tribe Chairman

CARLYLE W. BEGAY  
DISTRICT 7

STATE SENATOR  
FIFTY-NINTH LEGISLATOR  
CAPITOL COMPLEX, SENATE BUILDING  
PHOENIX, ARIZONA 85007-3000



COMMITTEES:

GOVERNMENT & ENVIRONMENT  
NATURAL RESOURCES & RURAL AFFAIRS  
EDUCATION

## Arizona State Senate

### To Whom It May Concern:

This is to communicate support for Senate Bill 2503 introduced by Senator Jeff Flake of Arizona. As an Arizona State Senator representing Legislative District 7, the Hualapai Tribal headquarters reside in my district in Peach Springs, and this bill would be of great benefit to my constituents.

The Big Sandy Creek was added to the Hualapai Reservation over 100 years ago and this bill will ensure that the federal government and natural resource extraction firms will recognize the federally reserved water rights of the Tribe. Furthermore, the extraction firms using water rights will cap its water usage that it pumps from the Cofer Hot Spring and the Wikiteup well field.

In addition to securing certain water rights for the Tribe, the Tribe will also benefit from two non-Federal contributions provided by these extraction firms. The goal of these financial contributions would be to support a tribal water supply study necessary for the advancement of a settlement of the Tribe's claims for Colorado River water while also allowing the Tribe to purchase and secure Colorado River water rights to help facilitate a future comprehensive settlement.

Sovereign Tribal water rights are of the utmost importance to both my constituents and myself. I am happy to reach across the aisle and work with Senator Flake on issues that concern all Arizona residents. I am grateful for his introduction of this bill and for the support of Arizona's entire Congressional delegation.

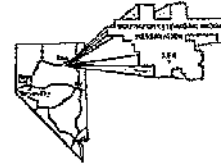
I would ask the state water leadership and the Arizona Legislature to pass resolutions in support of this legislation. This bill is the start of many more Native people's water rights that will be settled over the next few years.

I hope I can count on your support as well. Should you have any questions please do not hesitate to contact me at 602-926-5862 or [CBegay@AZLeg.gov](mailto:CBegay@AZLeg.gov)

Sincerely,

Carlyle W. Begay  
Arizona State Senator  
Legislative District 7

**SOUTH FORK INDIAN RESERVATION**  
**SOUTH FORK BAND COUNCIL**  
 21 LEE, UNIT - 13  
 SPRING CREEK, NEVADA 89815



**From: Alice Tybo, Chairperson**  
**South Fork Band Council**

**Subject: S. 2480 "Nevada Native Nations Lands Act"**

**Dear Committee Members,**

**South Fork Band Council's Land Request:**

This request from the South Fork Band Council is basically to transfer federal land jurisdiction from the Bureau of Land Management (BLM) to the Bureau of Indian Affairs (BIA). Both BLM and BIA are within the Department of Interior (DOI). There are no private lands involved; therefore this is not a fee land into trust status request nor loss of tax base since the lands are in trust status presently.

The uses of these additional lands is for the expansion of the South Fork Reservation for the purpose of Housing, economic Development, Recreation, Grazing enhancement, Wildlife habitat management, Cultural and Archeological resource protection, preserve areas for aesthetic value, and protection of aboriginal gathering areas within the Shoshone Allotments. We plan to consider all environmental impacts to the area, such as the 2013 protection plans of the Sage Grouse.

We are aware of our environmental responsibilities and so the South Fork Band has joined the Elko County Commissioner office of Nevada and Box Elder County Commissioner office of Utah in developing pilot projects to enhance Sage Grouse. The South Fork Band Council recognized the importance of taking steps to protect and increase the number of Sage Grouse. These projects intent is to take careful ground actions that include habitat manipulation, predator control and fuel reduction to control and reduce wild fires. The biologist supervising this project is the Wildlife Manager for Desert Land & Livestock and has been previously successful in increasing Sage Grouse numbers by over 200%.

It is undisputed the lands are known as Shoshone Allotments and this is because the lands were always planned for the use of Native members of the South Fork Band Indian Reservation. South Fork has very limited grazing areas for livestock. The reservation was created for the community to be able to provide for their families by raising livestock and producing hay for their livestock. There is not sufficient grazing land for the number of livestock needed to continue to support our families. Further the South Fork Band has

always wanted to end this checker board situation between BLM and BIA with the Shoshone Allotments. Recently some of our South Fork Band members have been cited for not having the correct permit to graze their cattle on the BLM land, land is right next to the BIA land.

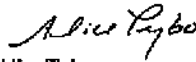
This is high desert area, with few residences in the area. Miles of sage brush with little water, and a few wells have been installed to water cattle. South Fork Band ranchers need additional lands to graze cattle on. We are an isolated community without a developed economy or tax base, so it is needed to end the checker board situation.

Additionally the South Fork Band Council has been dialoging with the oil and gas company that currently hold BLM oil leases in this area and we look forward to continuing our relationship with Noble Energy now and in the future.

The Bureau of Indian Affairs has procedures implemented to deal with Tribal governments in a way that has been approved by many federal administrations, at the Executive, Congressional and the U.S. Supreme Court levels. Through the "test by fire" BIA has set up formal relationships with Tribal governments and the South Fork Band Council wants to continue that relationship in stewardship of this land known as Shoshone Allotments with the Bureau of Indian Affairs, the State of Nevada, Elko and Spring Creek local community concerns.

Thank you for your interest and consideration in our request and we appreciate the time and effort spent on the South Fork Band Council land request.

Sincerely,



Alice Tybo

Chairperson South Fork Band

July 16, 2014




**HUALAPAI TRIBAL COUNCIL  
RESOLUTION NO. 40-2014  
OF THE GOVERNING BODY OF THE  
HUALAPAI TRIBE OF THE HUALAPAI RESERVATION  
PEACH SPRINGS, ARIZONA**

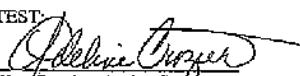
- WHEREAS**, the Hualapai Tribe has negotiated the attached Bill Williams Phase One and Hualapai Tribe Bill Williams settlement agreements with Freeport-McMoRan Corporation, ("Freeport"), certain Arizona "state parties" and the United States Department of the Interior ("Interior") as trustee for the Tribe and its allottees in the Bill Williams watershed; and
- WHEREAS**, the agreements provide that Interior will drop Interior's protests to applications by Freeport in 2010 to sever water rights on its Lincoln and Planet Ranches and transfer those water rights to the Wikieup wellfield; and
- WHEREAS**, in return Freeport will lease and donate a portion of Planet Ranch together with certain water rights to various federal and state agencies to assist in the Multi-Species Conservation Program, and has agreed to a cap on its pumping at the Wikieup wellfield; and
- WHEREAS**, the agreements provide that Freeport will confirm certain water rights of the Hualapai Tribe and its allottees that are reserved under federal law; and
- WHEREAS**, the agreements provide that Freeport will pay \$1 million to the Tribe to complete an ongoing study the Tribe is conducting to determine the most feasible means of delivering Colorado River water to the Tribe's Reservation; and
- WHEREAS**, the agreements also provide that Freeport will make a substantial contribution to the Tribe's Economic Development Fund to enable the Tribe to purchase water rights to Colorado River water to facilitate a comprehensive settlement of the Tribe's federally reserved water rights on its Reservation; and
- WHEREAS**, the agreements include draft legislation for Congress to enact approving, ratifying and implementing these agreements.
- NOW THEREFORE BE IT RESOLVED** that the Hualapai Tribal Council strongly approves and supports the agreements and legislation and urgently requests the Arizona congressional delegation to introduce the legislation and secure its enactment by Congress.
- BE IT FURTHER RESOLVED** that the Chairperson is authorized to execute the agreements on behalf of the Tribe.
- BE IT FURTHER RESOLVED** that the Tribe hereby requests the Bureau of Indian Affairs to withdraw its pending objections to the applications Freeport filed in 2010 with the Arizona Department of Water Resources to sever and transfer certain water rights from Planet and Lincoln Ranches in the manner specified in those applications.

**BE IT FINALLY RESOLVED** that the Tribe further requests the Bureau of Indian Affairs not to file any objections to any amendments or new applications filed in the future by Freeport to accomplish the severance and transfer of not to exceed a total of 10,055 acre feet a year of water rights from Planet Ranch and Lincoln Ranch to the Wikieup Wellfield.

#### CERTIFICATION

I, the undersigned as Chairwoman of the Hualapai Tribal Council hereby certify that the Hualapai Tribal Council of the Hualapai Tribe is comprised of (9) members of whom eight(8), constituting a quorum, were present at a Special Council meeting thereof held on this 28<sup>th</sup> day of May, 2014; that the foregoing resolution was duly adopted by the affirmative vote of seven(7) in favor, 1 abstain, 1 excused, pursuant to the authority of Article V, Section (a) of the Constitution of the Hualapai Tribe approved March 13, 1991

  
Sherry J. Counts, Chairwoman  
Hualapai Tribal Council

ATTEST:  
  
Adeline Crozier, Assist. Secretary  
Hualapai Tribal Council

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#### RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JON TESTER TO HON. ARLAN MELENDEZ

##### 1. Why does the Colony need more land?

The Reno-Sparks Indian Colony has a limited land base which currently does not meet the needs of the community either now or into the future. We need additional lands to meet the housing and other needs of our people and to provide them with future opportunities. We also need to make sure that our people in the Hungry Valley area are able to live in the peace and quiet that any other American living in a rural area would take for granted. While we are supportive of gun ownership and target practice, and while we are supportive of off road vehicles including motorcycles, these are not the activities or the noise we want to endure adjacent to our homes. Guns should be fired in areas where there are not homes nearby into which stray bullets could enter. Furthermore, by having a buffer and a larger land base, the Colony will be able to develop a variety of land uses without adversely impacting each use. Being primarily an urban Tribe with the original Colony lands being in downtown Reno, the Colony needs a land base that can be managed in a way to allow the practice of traditional cultural ways along with more contemporary uses. For example, with a larger land base the opportunity to pursue renewable energy development (solar and wind) without adversely impacting traditional cultural practices can only be achieved with large buffer areas between the uses. The Colony also looks forward to exploring sustainable economic development in the area of agri-business or other low impact ventures. Protection of natural resources is a priority specifically in the area of water conservation. With this expansion of the land base, the Colony will be able to manage the entire watershed not just a portion. This is critical since the Hungry Valley community is exclusively dependent on wells and ground water as the single source for water. The area we propose to expand onto is also land where we have mining claims and is land where we have wells providing the only source of water to the Hungry Valley community. It makes sense for those wells to be on land that we own.

*2. How will the Colony do a better job managing these lands than the BLM does currently?*

The Colony already has an established community in Hungry Valley including a full time police force and a fully staffed volunteer fire department. With BLM being responsible for managing and enforcing over 47 million acres in Nevada on very limited resources, it is just not possible for them to patrol and effectively enforce laws. The mere presence of Colony police patrol in the proposed expanded areas surrounding existing trust land on a daily basis will have a significant impact on illegal shooting and dumping near our residential communities. The Colony's current full time police force can be easily expanded to include ranger type patrols and enforcement on these lands. Our Cultural Resources Program which includes a federally designated Tribal Historic Protection Office (THPO) will provide regular monitoring of cultural sites and general use of the land. The Colony's fully staffed Environmental Program would be utilized and potentially expanded to include natural resources and range land monitoring.

*3. What is the local support the Colony has for the transfer? What does the Colony have in writing in that regard?*

The Colony has a strong relationship with our local communities and enjoyed the support from local governments on our all of the fee-to-trust applications in the Cities of Reno and Sparks and Washoe County. Since the proposed land transfer is located entirely within Washoe County, the Colony only pursued the endorsement of Washoe County. On September 10, 2013, the Washoe County Board of County Commissioners (WCBCC) directed staff to schedule a public workshop to gather citizen input on the transfer of public lands from the Federal government including the land transfer request by Reno-Sparks Indian Colony and the Pyramid Lake Tribe. The County staff held four separate public meetings. On December 17, 2013, the WCBCC approved a list of lands for potential land transfer including the transfer requests of Reno-Sparks Indian Colony and Pyramid Lake Paiute Tribe. Washoe County staff was directed to transmit the list to Congressional staff. Staff for Senators Reid and Heller are well aware of Washoe County's support for the Reno-Sparks land transfer in S. 2480.

*4. How does the Colony feel about the (IGRA) gaming prohibition in S. 2480?*

We have no objection to the IGRA gaming prohibition in S. 2480. It was never the intent of the Colony to use this land for gaming. The remote location of Hungry Valley in comparison to others in the region makes it a very uncompetitive location considering all of the gaming development in the urban areas of Reno and Sparks. It is unlikely that the Colony would ever pursue gaming when the region has significant local and national competition. Gaming in Hungry Valley is not part of the Colony's economic development goals.

Thank you for the opportunity to provide this supplemental statement. I would be happy to answer any further questions that arise.