TESTIMONY OF
GEORGE T. SKIBINE
ACTING PRINCIPAL DEPUTY ASSISTANT SECRETARY-INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ON H.R. 673, H.R. 1575, AND H.R. 2120

June 13, 2007

Good morning, Mr. Chairman and Members of the Committee. My name is George Skibine. I am the Acting Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). With me today is Lee Fleming, the Director of the Office of Federal Acknowledgment (OFA). We are here today to provide the Administration's testimony on three separate pieces of legislation: H.R. 673, the "Cocopah Lands Act," H.R. 1575, the "Burt Lake Band of Ottawa and Chippewa Indians Reaffirmation Act," and H.R. 2120, a bill to direct the Secretary of the Interior to proclaim as reservation for the benefit of the Sault Ste. Marie Tribe of Chippewa Indians a parcel of land now held in trust by the United States for that Indian tribe.

We will address the two trust related bills first and then provide our comments and position on the recognition related legislation, separately.

TRUST ACQUISITIONS

The Department manages approximately 45 million acres of land held in trust for Indian tribes. The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to a tribe, or by Section 5 of the Indian Reorganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary determines whether to acquire land in trust based on the criteria for trust acquisition set forth in our "151" regulations (25 CFR Part 151), unless the acquisition is legislatively mandated.

The regulations, first published in 1980, provide that upon receipt of an application to acquire land in trust, the Bureau of Indian Affairs (BIA) will notify state and local governments having regulatory jurisdiction over the land of the application and request their comments concerning potential impacts on regulatory jurisdiction, real property taxes, and special assessments. In reviewing a tribe's application to acquire land in trust, the Secretary considers the: need; purposes; statutory authority; jurisdictional and land use concerns; the impact of removing the land from the tax rolls; the BIA's ability to manage the land; and compliance with all necessary environmental laws.

The regulations impose additional requirements for approval of tribal off-reservation acquisitions. The Secretary is required to consider the: location of the land relative to state boundaries; distance of the land from the tribe's reservation; business plan; and state and local government impact comments. In doing so, the Secretary "shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition . . . [and] greater weight to the concerns raised" by the local community the farther the proposed acquisition is from the tribe's reservation.

When the acquisition is intended for gaming, consideration of the requirements of the Indian Gaming Regulatory Act of 1988 (IGRA) are simultaneously applied to the decision whether to take the land into trust. Section 20 of IGRA does not provide authority to take land into trust for Indian tribes. Rather, it is a separate and independent requirement to be considered before gaming activities can be conducted on land taken into trust after October 17, 1988, the date IGRA was enacted into law.

H.R. 673

H.R. 673 directs the Secretary of the Interior to take land in Yuma County, Arizona, into trust as part of the reservation of the Cocopah Indian Tribe. We support the legislation which will promote land consolidation, agricultural and economic development, Indian housing, and the other purposes of the 1985 Act by which more than 600 contiguous acres (out of a total of more than 4,000 acres) were transferred to the Tribe in trust, from the Bureau of Land Management. However, we strongly urge the Congress to amend the legislation to provide language to ensure there are no environmental contamination problems existing on the land at the time of the transfer.

The Cocopah Indian Tribe Reservation is located in Yuma County along the Colorado River. The reservation borders the United States, Mexico, Arizona and California.

In 1917, President Woodrow Wilson signed Executive Order No. 2711 that established the Cocopah Indian Reservation. As indicated, above, in 1985, President Ronald Reagan signed the Cocopah Land Acquisition Act, Public Law 99-23, which provided the Cocopah Reservation an increase to their land base of nearly 6,000 acres, including the creation of the North Cocopah Reservation now comprising just over 600 acres.

Comments on H.R. 673

The Federal Register Notice of March 22, 2007, provides the Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs lists the Tribe as the "Cocopah Tribe of Arizona." The bill should be amended to reflect the same reference.

Sec. 2. FINDINGS (3) and (4), "That reservation is made up of 3 noncontiguous tracts of land." We suggest the following amended language: The Tribe's land holdings are located within 3 noncontiguous reservations comprising a total of 6,226.3 acres, more or less, of trust land. We recommend deleting (4) as it is duplicative of (3).

Sec. 2. FINDINGS, (7)
The seven parcels referenced in H.R. 673 should be classified as "Tribal Fee Lands" instead of "Indian Lands" under Federal Law.

Sec. 4. LANDS TO BE TAKEN INTO TRUST
A provision providing for environmental review should be included. In addition, the land descriptions should be amended. We recommend the following changes:

- (a) add "recognized environmental conditions or contamination related concerns and no" after "there are no" and before "no adverse legal claims".
- (b) (1) PARCEL 1 (SIBLEY PURCHASE 1986). At page 3, line 18, and line 21, remove comma following SW1/4
- (b) (2) PARCEL 2 (SIBLEY PURCHASE 1986). At page 3, line 25, remove comma following SE1/4
- (b) (3) PARCEL 3 (MCDANIEL PURCHASE 1993). At page 4, line 4, remove comma following E1/2
- (b) (4) PARCEL 4 (HOLLAND PURCHASE 1997). At page 4, line 10, remove comma following NW1/4
- (b) (5) PARCEL 5 (HOLLAND PURCHASE 1997). At page 4, line 16, remove comma following NW1/4
- And, (b) (6) PARCEL 6 (POWERS PURCHASE 1997). At page 4, line 23, replace "NW1/3 and following SW1/4" with "N1/2 of the SW1/4 of the SE1/4".

Sec. 5. REGULATIONS.
We suggest that this section be deleted. The language within the bill provides enough instruction for a legislative or mandatory transfer. Further regulatory instructions will be redundant. If the final legislation provides for a discretionary authority, regulations are provided for in Title 25 of the Code of Federal Regulations, Part 151, Land Acquisitions.

H.R. 2120

We support the purpose of H.R. 2120, a bill to proclaim as reservation for the benefit of the Sault Ste. Marie Tribe of Chippewa Indians a parcel of land now held in trust by the United States for that Indian tribe. Currently, the matter is before the court as Sault Ste. Marie Tribe v. United States, Civ. No. 2:06-CV-276, and if Congress passes the legislation, it would put an end to the litigation.

The Sault Ste. Marie Tribe is located in the far northern section of Michigan and has two reservations. The Sault Ste. Marie Tribe also has property the Department holds in trust for them that is not considered reservation land for purposes of IGRA. One such parcel is the subject of H.R. 2120, on which there is Indian housing, some other tribal facilities, a now-closed casino, and a casino housed in a temporary structure. In 1988, the Sault Ste. Marie Tribe approached the Department to have the land proclaimed a reservation, along with six other parcels, but its paperwork was not completed prior to the enactment of IGRA.

The Tribe seeks to game on adjoining property taken in trust in the year 2000. The Sault Ste. Marie Tribe built a new casino on this parcel. The Sault Ste. Marie Tribe was advised by the Department and the National Indian Gaming Commission that they would need to apply under IGRA for a two-part determination in order to game on the parcel. If Congress deems the first parcel to be reservation as of April 1988 for purposes of IGRA, then the tribe can game in its new casino under an exception in IGRA.

Comments on H.R. 2120

We suggest amending the legislative language to reflect that "the property shall be deemed a reservation as of April 19, 1988, for purposes of the Indian Gaming Regulatory Act." We will be happy to work with the Committee staff on amending the legislation to reflect the necessary changes.

FEDERAL ACKNOWLEDGMENT OF AN INDIAN TRIBE

The recognition of another sovereign is one of the most solemn and important responsibilities delegated to the Secretary of the Interior. The Department believes that the Federal acknowledgment process allows for the uniform and rigorous review necessary to make an informed decision establishing this important government-to-government relationship.

In 1978, the Department promulgated regulations for the Federal process for groups seeking acknowledgment as Indian tribes. Both Congress and the courts generally have deferred tribal status determinations to the Department. The Courts have specifically ruled that determinations should be made in the first instance by the Department since Congress has specifically authorized the Executive Branch to prescribe regulations concerning Indian affairs and relations.

The Department's acknowledgment process provides the thorough and deliberate evaluation which must occur before the Department acknowledges a group's tribal status. These decisions must be fact-based, equitable, and thus defensible. The Department respectfully understands that Congress has the authority to recognize a group as an Indian tribe. Because of its support for the deliberative regulatory acknowledgment process, however, the Department has generally opposed legislative recognition.

While Congress may grant recognition to Indian tribes, the Department's position is that legislative action should be used sparingly in cases where there is an overriding reason or reasons to bypass or ignore the Department's regulatory process.

H.R. 1575

On September 21, 2006, the Department issued a Final Determination that found the group known as the Burt Lake Band of Ottawa and Chippewa Indians did not meet three of the seven mandatory criteria for acknowledgment as an Indian tribe set forth in Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), *Procedures for Establishing that an*

American Indian Group Exists as an Indian Tribe: 83.7(b) show that a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present; 83.7(c) demonstrate that it has maintained political influence or authority over its members as an autonomous entity from historical times until the present; and 83.7(e) demonstrate that its membership consists of individuals who descend from the historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity and provide a current membership list.. The Department's decision to deny Federal acknowledgment to the Burt Lake Band became final and effective for the Department on January 3, 2007. Therefore, the Administration opposes H.R. 1575.

H.R. 1575 would negate the Department's final determination decision on the Burt Lake Band petitioner, by establishing a government-to-government relationship with a group that the Department has concluded could demonstrate neither continued social and political existence nor descent from the historical Indian tribe.

A problem for recognition of the Burt Lake Band today is that a significant portion of the earlier Burt Lake Band are currently members of a federally recognized Indian tribe, the Little Traverse Bay Bands of Odawa Indians (LTBB). The bill, as written, would recognize a group who does not meet the membership requirements of the LTBB, and who have the least ties to the pre-burnout village. The group has already been denied recognition through the regulatory process and has now turned to Congress to recognize it since there is no other avenue to obtain tribal status.

If the Congress chooses to move forward with H.R. 1575, we would like to work with the Committee on amending the language, to clarify some issues that are inconsistent with the findings within the final determination issued by the Department.

This concludes our prepared statement. We would be happy to answer any questions the Committee may have.