Testimony of
Michael S. Black
Director
Bureau of Indian Affairs
Department of the Interior

Senate Committee on Indian Affairs

S. 2442, Northern Cheyenne Lands Act

July 9, 2014

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 Mining 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. I would be glad to answer your questions.

TESTIMONY OF
MICHAEL S. BLACK
DIRECTOR
BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATE SENATE
ON S. 2465

July 9, 2014

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 (Attachment A). 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.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

Testimony of
Michael S. Black
Director
Bureau of Indian Affairs
Department of the Interior

Senate Committee on Indian Affairs

S. 2479, Moapa Band of Paiutes Land Conveyance Act

July 9, 2014

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.

Testimony of
Michael S. Black
Director
Bureau of Indian Affairs
Department of the Interior

Senate Committee on Indian Affairs

S. 2480, Nevada Native Nations Lands Act
July 9, 2014

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.

TESTIMONY OF
MICHAEL BLACK
DIRECTOR, BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 2503, BILL WILLIAMS RIVER WATER RIGHTS SETTLEMENT ACT OF 2014

JULY 9, 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 & 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 important 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.