UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
NOVEMBER 14, 2018

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, my name is Darryl LaCounte and I am the Acting Director for the Bureau of Indian Affairs at the Department of the Interior. I transitioned into this role from acting as the Deputy Director – Trust Services. My permanent role is Regional Director for the Rocky Mountain Region. As a Regional Director, I am responsible for all programs, services, and costs provided to and upholding the trust with Tribes in the region. Thank you for the opportunity to present this statement on behalf of the Department regarding S. 2788, a bill to repeal the Act entitled "An Act to confer jurisdiction on the State of North Dakota over offenses committed by or against Indians on the Devils Lake Indian Reservation".

Criminal Jurisdiction in Indian Country

Improving public safety in Indian Country is a bipartisan priority. In the past, Congress has enacted legislation that allowed states to have criminal jurisdiction within Indian Country. As a result of this legislation, states were allowed to exercise criminal jurisdiction over tribal members on the reservation, removing the exclusive rights of the tribe to not have state law enforced on their tribal citizens on the reservation.

Secretary Zinke is an advocate for tribal sovereignty and self-determination. S. 2788 reflects the modern federal Indian policies of self-determination and self-governance. S. 2788 clarifies a muddled and complex jurisdictional scheme. Accordingly, the Department supports S.2788.

S. 2788

The Spirit Lake Tribe ("the Tribe"), located in North Dakota currently operates its own tribal court, and the BIA Office of Justice Services provides direct law enforcement and detention services. If the legislation were enacted, only the Tribe or the Federal Government would have criminal jurisdiction over offenses by or against Indians on the Devils Lake Indian Reservation.

Enactment of S. 2788 would ensure that the Tribe is treated similarly to others across Indian country where either the BIA or the Tribe provides public safety services.

Conclusion

Thank you for providing the Department the opportunity to testify on S. 2788. I am available to answer any questions the Committee members may have.

STATEMENT OF
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
H.R. 2606
NOVEMBER 14, 2018

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, my name is Darryl LaCounte and I am the Acting Director for the Bureau of Indian Affairs at the Department of the Interior. I transitioned into this role from acting as the Deputy Director – Trust Services. My permanent role is Regional Director for the Rocky Mountain Region. As a Regional Director, I am responsible for all programs, services, and costs provided to and upholding the trust with Tribes in the region.

Thank you for the opportunity to present an update on behalf of the Department regarding HR 2606.

Five Tribes Allotments and Stigler Act Background

The Tribes referred to in the Act of August 4, 1947, 61 Stat. 731 (the "Stigler Act"), as the Five Civilized Tribes (the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Tribes of Oklahoma) were removed from their homelands in the southeastern part of the United States pursuant to treaties wherein the United States agreed to convey lands to these tribes west of the Mississippi River. By 1835, the Five Civilized Tribes occupied nearly all of present-day Oklahoma.

The lands of the Five Civilized Tribes could not be allotted under the General Allotment Act because of the Tribe's fee ownership. However, the tribes were eventually forced to agree to allot their lands in severalty. Allotment of the lands of the Five Tribes was by fee patent signed by the Chiefs or Governor of the Tribes in accordance with the individual allotment agreements.

The allotments varied greatly in size from 40 to 220 acres. Separate deeds were issued for "homestead" and "surplus" allotments, and the restrictions varied by the type of allotment, the allottee's Tribe, and the allottee's degree of Indian blood or lack thereof.

The Allotment Agreements between the United States and the individual tribes provided for varying periods of inalienability for the allotments. However, after allotment, Congress passed laws which restricted the alienation of some allotments and allowed others to be freely alienable. This series of mostly uncodified Acts governs restricted status of the land and funds of the Five Civilized Tribes. The Stigler Act, as amended by the Act of August 11, 1955, 69 Stat. 666, now governs the restricted status of the Five Tribes' allotted lands based on the Five Tribes blood quantum of the Indian landowner.

Section 1 of the Stigler Act provides that all restrictions are removed at the death of the Indian landowner, provided that heirs and devisees of one-half blood or more of the Five Civilized Tribes may not convey lands that were restricted in the hands of the person from whom they were acquired without the approval of the county (now district) court in the county where the land is located.

The effect of this Section of the Act is that, when a person owning restricted land passes away, only his heirs of at least one-half blood of the Five Civilized Tribes inherit their interest in a protected "restricted" status. The Department is aware of no other Tribes in the country where the trust or restricted status of their allotted lands are dependent upon the degree of blood of the owner.

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The Stigler Act is primarily responsible for the massive loss of the Five Civilized Tribes' land base. Survey of tribal lands began in 1897 in preparation for the allotment of the Five Tribes lands. By 1916, approximately 15,794,238 acres had been allotted to members of the Five Tribes. By contrast, the Annual Acreage Report prepared by the Bureau of Indian Affairs indicates approximately 381,474 acres remained restricted to the members of the Five Tribes in 2012. Though no more current Acreage Report is available, the Eastern Oklahoma Region is confident that thousands more acres have passed out of restricted status into fee simple status since 2012. Thus, our best estimate now is that less than 2% of the lands originally allotted to members of the Five Tribes remain in restricted status.

Unlike previous Bills where the objective was to amend the Stigler Act, this Bill has a single objective: to eliminate the blood quantum requirement. This Bill would not increase the amount of restricted land in Oklahoma, nor would it change the unique Five Tribes' system of approving conveyances, determining heirs, probating estates, partitioning lands, or quieting titles through the state district courts. In the view of the Department, this Act would be of great benefit to the Cherokee, Choctaw, Seminole, Chickasaw, and Muscogee (Creek) Nations, and of greater benefit to those few of their tribal citizens who are fortunate enough to still hold lands in restricted status.

H.R. 2606, the Stigler Act Amendments of 2017, would greatly benefit the Cherokee, Choctaw, Seminole, Chickasaw, and Muscogee (Creek) Nations. This will further benefit the Tribes by allowing their citizens to inherit restricted or "Indian Lands" without regard to their "blood quantum". Also by slowing the amount of land falling out of restricted status and allowing them to retain their land base. The Department supports H.R. 2606.

This concludes my statement and I would be happy to answer any questions the committee may have.

STATEMENT OF
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
H.R. 4032
November 14, 2018

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Sub-Committee, thank you for the opportunity to testify on H.R. 4032 "Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act (Act)." My name is Darryl LaCounte and I am the Acting Director for the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department). I transitioned into this role from acting as the Deputy Director – Trust Services. My permanent role is Regional Director for the Rocky Mountain Region. As the acting Bureau Director, I am responsible for all programs, services, and costs provided to and upholding the trust relationship with Tribes in all BIA Regions. The Department supports the enactment of H.R. 4032, and offers some additional background information and other recommendations that we encourage the Sub-committee to consider at this time.

Background

In December 2006, the Gila River Indian Community, hereinafter referred to as "the Community," brought an action in the United States District Court for the District of Columbia, seeking declaratory and injunctive relief through "a full and complete accounting of the Community's trust property and funds." The Community's priority claim in the litigation concerned the United States' alleged obligation to confirm the legal status of all rights-of-way on the Reservation. More specifically, the Community contended that the Department's failure to properly document these rights-of-way with grants of easement constituted a continuing breach of trust. Many of the alleged undocumented rights-of-way within the Gila River Indian Reservation are federal irrigation or power facilities, or Bureau of Indian Affairs roads, giving rise to allegations that the United States itself is now in trespass.

From the onset of the litigation, the parties engaged in a long, yet extremely cooperative, alternative dispute resolution process that resulted in a settlement that resolved all historical mismanagement claims for $12.5 million. The settlement agreement was executed in June 2016 and the breach of trust suit was dismissed in March 2017. In separate but related negotiations, the parties, the Community and the United States, continued to collaborate on addressing the other outstanding issues that the Community identified as being critical to its economic, cultural and sovereign best interests.

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Although the 2016 settlement agreement was not conditioned on any proposed legislation, it is the Department's understanding that the Community considers H.R. 4032 to be essential to the resolution of the rights-of-way issues for the protection of the Community property rights moving forward. The Department's review of the legislation identifies the objectives of the legislation as:

(1) Establish, ratify, confirm and document the legal status of certain federal electrical, irrigation, and road rights-of-way or easements that now exist – undocumented or otherwise - within the exterior boundaries of the Reservation, as of the date of the enactment;

(2) Establish a fixed location for the northern boundary of the Reservation, via resurvey (The resurvey of the fixed northern boundary has been completed and clearly marked in conformance with the public system of surveys by the Dependent Resurvey of Township 1 North, Range 1 East, Gila and Salt River Meridian, Arizona, conducted by Gordon R. Bubel, as shown on the plat and described in the field notes

at Book 6060, approved November 22, 2016, and officially filed on November 23, 2016, on file with the Bureau of Land Management"., (Notice of Plat Filing was published in the Federal Register, Volume 82, No. 11, Page 5599, January 18, 2017).);

(3) Direct the Secretary to transfer certain public lands to the Community, in trust status; and

(4) Substitute the benefits provided to the Community, its members and individual landowners, for any claims that the Community, its members and landowners may have had against the United States, in connection with any alleged failures relating to location of the northern boundary and/or the documentation and management of rights-of-way within the Reservation; and

(5) Authorize funds necessary for the United States to meet the obligations under this Act.

Section 4 of the bill directs the Secretary to take two parcels of land—known collectively as the Lower Sonoran Lands—into trust for the benefit of the Community. The parcels are located on the western and southern margins of the Gila River Indian Reservation in Maricopa and Pinal Counties, Arizona. These federal lands, totaling about 3,380.69 acres, are currently managed by the Bureau of Land Management (BLM) for multiple uses. The Community has historical ties to these lands and the parcels include cultural resources and archaeological sites that are of considerable significance to the Community. The cultural and archaeological resources located within these parcels include plant, animal, and raw material gathering areas; areas of religious significance; trail systems; and transportation routes with cultural and religious significance. Under BLM management there is one grazing permittee and three rights-of-way on the parcels. The BLM supports, with some minor technical corrections, Section 4.

The Lower Sonoran Lands were designated as suitable for disposal in the 2012 BLM Lower Sonoran Record of Decision and Resource Management Plan because they are isolated parcels, surrounded by non-BLM managed lands. No mineral values have been identified on the parcels. They are not suitable for management by another Federal department or agency, and are not needed for any other federal purpose. The BLM has initiated the process of a noncompetitive direct sale of the two parcels, including the subsurface, to the Community by placing a public notice in the Federal Register Volume 83, No. 103, Page 24489, May 29, 2018.

H.R. 4032 would also modify that portion of the Reservation boundary that was described by Executive Order in 1879 as being along the middle of the Salt River, to fix the boundary in accordance with the 1920 Harrington survey. The historic boundary identified in the executive order in 1879 has shifted, along with the course of the Salt River, creating uncertainty as to the precise location of the boundary between the Reservation and adjoining patented lands. The Department, in coordination with the BLM and the Community, completed the resurvey of the fixed northern boundary in conformance with the public system of surveys by the Dependent Resurvey of Township 1 North, Range 1 East, Gila and Salt River Meridian, Arizona, conducted by Gordon R. Bubel, as shown on the plat and published in the Federal Register, Volume 82, No. 11, Page 5599, January 18, 2017. The Record of Dependant Resurvey is on file with BLM. The Department recommends that the H.R. 4032 also expressly quiet the title of the affected parties and delete Section 3, "Disputed Area" definition because the fixed northern boundary has been re-surveyed and there is no discussion of a "Disputed Area" within the Bill.

H.R. 4032 would also establish, ratify and confirm those rights-of-way depicted on the Federal and Tribal Facilities Map referenced in the bill, as of the date of enactment, with the exact location of the confirmed rights-of-way to be defined by subsequent survey. H.R. 4032 would also authorize the appropriations of the funds needed to support the Departmental survey of the "rights-of-way" and all other actions required or authorized in the bill, with those surveys to be completed within a six-year period. With regard to the "other actions required," the bill provides that the "Federal Government shall be considered the applicant or grantee."

We note that the reference in section 8(c) of the bill to the regulation on cancellation is outdated and should be changed to correctly reference 25 CFR 169.404-409.

The Department welcomes the opportunity to work with the Sub-Committee and the sponsor and co-sponsors of H.R. 4032 to achieve the goals of H.R. 4032. Thank you again for the opportunity to provide the Department's views.