STATEMENT OF

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UNITED STATES DEPARTMENT OF THE INTERIOR BEFORE THE

SENATE COMMITTEE ON INDIAN AFFAIRS

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Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. My name is John Tahsuda and I am the Principal Deputy Assistant Secretary for Indian Affairs at the Department of the Interior.

Thank you for the opportunity to present this statement on behalf of the Department regarding the following bills: S. 279, the Tribal School Federal Insurance Parity Act; S. 790, A bill to clarify certain provisions of Public Law 103-116, the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993; and S. 832, A bill to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Indians of Middle Oregon, concluded on November 15, 1865. Each of these bills is discussed below.

S. 279

S. 279, the Tribal School Federal Insurance Parity Act, would amend the Indian Health Care Improvement Act (25 U.S.C. 1647b) to allow tribal grant schools operating under the Tribally Controlled Grant Schools Act (TCGSA) to participate in the Federal Employees Health Benefits (FEHB) Program. Presently, Public Law 100-297 prohibits the vast majority of tribally controlled grant schools from participating in the FEHB Program, which can create significant financial strains on schools and disadvantage school leaders in recruiting talented educators. The Department supports S. 279.

The mission of the Bureau of Indian Education (BIE) is to provide quality education opportunities from early childhood through life in accordance with a tribe's needs for cultural and economic well-being, in keeping with the wide diversity of Federally recognized Indian tribes and Alaska Native villages as distinct cultural and governmental entities. The BIE manages a school system with 169 elementary and secondary schools and 14 dormitories providing educational services to 47,000 individual students, with an Average Daily Membership of 41,000 students in 23 States. The BIE also operates two post-secondary schools and administers grants for 29 tribally controlled colleges and universities and two tribal technical colleges.

Prior to 2010, tribal employers, in general, lacked access to FEHB benefits for their employees. With the passage of 25 U.S.C. 1647b under the Indian Healthcare Improvement Act (IHCIA), tribes, tribal employers, and urban Indian organizations carrying out programs pursuant to Title V of the IHCIA or under the Indian Self Determination and Education Assistance Act became

eligible to participate in the FEHB Program. Participation in the FEHB Program reduced costs associated with providing employee benefits as well as aided organizations in their recruitment and retention efforts.

Currently, all BIE-operated schools participate in FEHB. Additionally, four BIE-funded tribally operated schools also participate in FEHB Program. These tribally controlled schools operate pursuant to the ISDEAA. Under 25 U.S.C. 1647b, tribal employers operating ISDEAA self-determination contracts and Title V contracts are eligible to purchase FEHB coverage. However, 25 U.S.C. 1647b does not extend eligibility to tribally-controlled schools under the TCGSA. Therefore, 126 of BIE's tribally-controlled schools that operate pursuant to the TCGSA may not purchase FEHB coverage under 25 U.S.C. 1647b.

In April 2012, the U.S. Office of Personnel Management sent a letter to the Department's Office of the Solicitor seeking the Solicitor's opinion regarding OPM's legal conclusion regarding the ineligibility of schools operating under TCGSA for FEHB as the TCGSA schools are not within the scope of eligible tribal employers under 25 U.S.C. 1647b. In June 2012, the Solicitor issued an opinion confirming OPM's conclusion that schools operating under TCGSA are ineligible for FEHB. In October 2017, a tribal grant school representative requested the Solicitor to reconsider their position. However, the Solicitor stated its legal determination would stand.

The Department understands and supports the efforts of its tribal partners in seeking a legislative fix that would allow parity for schools operating under the TCGSA. The continued inability of these schools to access FEHB creates unfair budgetary constraints and exacerbates an already difficult task of recruiting highly-qualified teachers in often geographically-isolated schools. As such, the Department supports S. 279, the Tribal School Federal Insurance Parity Act, and looks forward to increasing parity for tribally controlled grant schools.

S. 832

The Confederated Tribes and Bands of Middle Oregon, today known as the Confederated Tribes of the Warm Springs Reservation, signed a treaty on June 25, 1855 ceding most of their aboriginal territory to the United States. That area makes up most of what we now know as north central Oregon.

On November 15, 1865, the Tribes were forced into signing a "Supplemental" treaty, which is the subject of this legislation and further restricted the rights of tribal members to the extent that, among other things, they could not leave the reservation without written permission from the Agency Superintendent. These restrictions are unreasonable restrictions on the rights of the Warm Springs people. We are aware of no other tribe that is currently subject to such a restrictive treaty.

S. 832, "A bill to nullify the Supplemental Treaty Between the United States of America and the Confederated Tribes and Bands of Middle Oregon, concluded on November 15, 1865," would provide that the Supplemental Treaty shall have no force or effect. As such, the Bureau of Indian Affairs has no objection to S. 832.

S. 790

S. 790, "A bill to clarify certain provisions of Public Law 103-116, The Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, and for other purposes," provides Congressional authorization for the Secretary of the Interior to take certain land into trust on behalf of the Catawba Indian Nation (Tribe) for the purpose of conducting a gaming facility.

Generally, the bill authorizes the Tribe to own and operate a gaming facility on land identified in the bill, and requires the gaming facility to "operate in accordance with the Indian Gaming Regulatory Act" (IGRA). Currently, section 14 of the Catawba Settlement Act states "[t]he Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to the Tribe" (emphasis added) and, with regard to gaming, gives the Tribe the rights and responsibilities set forth in the settlement agreement and State (of South Carolina) law.

The bill is intended to make the IGRA applicable to the Tribe, including the important protections and authorities that it provides for tribes generally, such as the option of entering into a Tribal-State class III gaming compact with a state, enactment of tribal gaming ordinances, and the use and net gaming revenue.

We have several technical concerns with the language. First, the language in Section 1(b) focuses on the IGRA's application to the gaming facility, but does not address application of the IGRA's provisions to the Tribe. As indicated previously, the exclusion provision at section 14 of the underlying Settlement Act specifically applies to the Tribe. To address this, the bill could be amended to clarify that IGRA is applicable to the Tribe, that only land identified in S. 790 would be gaming eligible for the Tribe; and that land acquired under the bill's provisions qualifies as "Indian lands" under the IGRA. Indian lands under IGRA include all lands within the limits of any Indian reservation; and any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

In addition, the Settlement Act, at section 12(m), exempts the Tribe from the provisions of 25 C.F.R. Part 151, the Department's Fee-to-Trust regulations, which the Department relies on for making discretionary trust acquisitions. The language at section 1(c) of S. 790 implies that the acquisition of land for trust purposes by the Secretary would be a discretionary, rather than a mandatory acquisition. The bill could be amended to indicate whether, if this is a discretionary acquisition, the Secretary will apply 25 C.F.R. Part 151, including provisions of the National Environmental Policy Act (NEPA), to this acquisition. Similarly, the Bill could clarify whether the land to be acquired will be designated as an on-reservation application, which would be processed under 25 C.F.R. § 151.10, or as an off-reservation application processed under 25 C.F.R. § 151.11. This change would create more clarity regarding the administrative process for placing the land into trust.

The Department would be happy to work with the bill's sponsors and the Committee on these technical changes.

Thank you for the opportunity to testify today before the committee. I look forward to answering any questions the committee may have.