TESTIMONY OF
TONY DEARMAN
DIRECTOR, BUREAU OF INDIAN EDUCATION
UNITED STATES DEPARTMENT OF THE INTERIOR
TO THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ON
S. 943, THE "JOHNSON-O'MALLEY SUPPLEMENTAL INDIAN EDUCATION PROGRAM MODERNIZATION ACT"

JULY 12, 2017

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. It is good to see you again. As Director of the Bureau of Indian Education (BIE), I am here today to provide the Department of the Interior's (Department) views regarding S. 943, the Johnson-O'Malley (JOM) Supplemental Indian Education Program Modernization Act.

The Department supports the goals of S. 943 and recommends some technical changes.

Background

The supplemental educational JOM Program is authorized by the Johnson-O'Malley Act of 1934 and the implementing regulations are provided in Part 273 of Title 25 of the Code of Federal Regulations. As amended, this Act authorizes contracts for the education of eligible Indian students not enrolled in Bureau- or sectarian-operated schools. A local JOM program operates under a BIE approved individual educational plan. JOM education plans include objectives designed to address the educational needs of eligible American Indian and Alaska Native students, offering students various opportunities, which may include cultural enrichment, tribal language support, academic assistance, and dropout prevention programs.

We understand that Indian students have unique educational and cultural needs, which include learning their languages, cultures, and histories. The supplemental JOM program has historically worked to address this need by assisting Indian students who often enter public school with an academic skills deficit. In short, JOM functions to help Indian students thrive in an environment suited to their strengths.

Tribal organizations, Indian corporations, school districts, or states may be eligible to receive such funds once they establish an Indian Education Committee. The role of such committees is to approve supplementary support programs. American Indian and Alaska Native students are eligible if they are members of a federally-recognized Indian tribe or one-fourth or more degree of Indian blood and recognized by the Secretary as being eligible for services from the Bureau. In addition, students must be age three through grade 12.

Student Counts

Most recently, BIE performed a student count as required by Congress in Fiscal Years (FYs) 2012 and 2014. After formal consultation with representatives from tribes, public schools, tribal organizations, and parents, a total of 448 entities submitted student count data. The FY 2012 JOM count identified 321,273 eligible Indian students as compared to the last official count from 1995, which identified 271,884 eligible Indian students. The FY 2014 count resulted in a final student count of 341,495 for the 399 JOM contractors that submitted data. Allowable under law, not all current JOM contractors submitted student count data to the BIE, which affected our ability to officially verify and update the student count. As such, the current official count of JOM-eligible students continues to be based on the number from 1995.

S. 943

An accurate illustration of need for students served by the JOM program is essential. To that end, the Department supports S. 943. For too long, the count has been considered inaccurate and therefore difficult to confirm true local needs of students served by the supplemental education program. As the BIE focuses on its core institutional mission – providing for the direct operation of schools and supporting classroom instruction for Indian students – we must ensure taxpayer dollars are being used efficiently and effectively. As such, it is critical that the Department utilizes funding in a way that minimizes waste and supports programs that can accurately portray need. This legislation works to accomplish this while ensuring accountability for contractors in reporting their number of students served under the program.

The Department has the following recommendations regarding S. 943, the JOM Supplemental Indian Education Program Modernization Act:

- **New Applicants**. Section 7(a)(4) defines "New Applicants" as an entity that applies to participate in a contract "not later than 240 days…" in coordination with S. 943's reporting requirements for the Bureau. The Department believes this provision could potentially limit prospective applicants due to the period mentioned and suggests language that clarifies that new applicants will not be limited to a particular timeframe.
- **Hold Harmless.** Section 7(f) assumes sufficient funding will be available to meet the hold harmless requirement. The Department is concerned that the provision does not carve out an exception for potential appropriation reductions and recommends adding language that the hold harmless provision is contingent upon available funding.
- **Student Count Data.** Section 7(c)(1)(B)(i) directs the Department, through the BIE Director, to cross-check student count data with data from the U.S. Bureau of Census, the National Center for Education Statistics (NCES) in the U.S. Department of Education's Institute for Education Sciences, and the U.S. Department of Education's Office of Indian Education (OIE). The Department assumes that the bill is referring to the student count used for OIE formula grant payments under Title VI of the ESEA (formerly Title VII).

  If that is the case, it should be noted that Title VI formula grants are based on student eligibility that is broader than the JOM eligibility, as OIE's count includes members of state-recognized tribes, and children and grandchildren of members of federally recognized tribes without regard to blood quantum. The Department is also concerned

that U.S. Census Bureau data will include self-identified individuals who may not be eligible for services because BIE jurisdiction extends only to members of federally-recognized tribes or students who are identified as eligible under the Act. We look forward to working with the committee to ensure that the bill adequately protects the privacy rights of Indian students and their families.

Conclusion

Thank you for the opportunity to present testimony today on such important legislation. The Department and BIE look forward to continuing our work with this Committee, Indian tribes, and our important stakeholders. We also look forward to working with the sponsors of the legislation to address the aforementioned recommendations. Thank you for your time, and I would be honored to answer any questions you may have.

Testimony
of
Tony Dearman
Director
Bureau of Indian Education
United States Department of the Interior
Before the
Senate Committee on Indian Affairs
On
S. 1223 the "Klamath Tribe Judgement Fund Repeal Act"

July 12, 2017

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, my name is Tony Dearman and I am currently serving as the Director of the Bureau of Indian Education at the Department of the Interior (Department). Thank you for the opportunity to present testimony on behalf of the Department regarding S. 1223, the Klamath Tribe Judgement Fund Repeal Act, which would repeal Public Law 89-224, commonly known as the Klamath Tribe Judgement Fund Act. The Department is still reviewing the legislation and cannot take a position at this time.

The Klamath Tribe Judgement Fund Act, enacted on October 1, 1965, authorizes the Secretary of the Interior to establish and apply appropriated dollars to a judgement fund for the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, better known as the Klamath Tribe.

Background

The Klamath Indian Reservation, located in southern Oregon, was established by the Treaty of October 14, 1864. The reservation was managed under the supervision of the Federal Government and headquartered at the Klamath Agency. In 1954, the federal trust responsibility for the reservation was terminated by the passage of the Western Oregon Indian Termination Act. Upon formal termination, the Klamaths were provided an opportunity to remain tribal members or withdraw from their tribal membership. Those opting to withdraw their memberships forfeited their share of some tribal assets, and those who remained retained ownership of tribal assets. Both groups were able to keep any interests in future awards claims.

Docket 100.

The Aboriginal Title Claim case was settled when the Indian Claims Commission issued an order on January 31, 1964, which granted a judgement fund award of $2,500,000. This settled amount was to serve as fair payment for lands in Oregon ceded under the Treaty of 1864. Legislation

authorizing distribution was not enacted by Congress until October 1, 1965. Payment began in 1966 and each of the 2,133 members on the membership roll received $1,124.00 resulting in a total of $2,351,250.14 paid out, and the remaining balance supported attorney fees and expenses.

Docket l00A.

In September of 1969, the Klamath Tribe successfully claimed additional compensation for lands ceded by Treaty of October 14, 1864. The claim, better known known as 'the boundary claim' involved 621,824 acres that were excluded from inclusion in the reservation boundaries. Docket 100A was completed on September 2, 1969, with the sum of $4,162,992.82 being granted in favor of the Klamaths. Payment began in 1970 with each member receiving $1,841.45. Historically, the Bureau of Indian Affairs consulted with the Klamath Tribe to prepare proposed distribution of judgment funds remaining in the various Klamath accounts, pursuant to Klamath Tribal Resolution 96-15, dated March 6, 1996.

It is important to make clear that the Klamath Tribe Judgement Fund Act is the appropriate vehicle for distributing this funding. We have concluded that the Judgement Fund Distribution Act, which was signed into law in 1973, does not apply to the Klamath Tribe Judgement Fund, as its ability to apply dollars that were appropriated and authorized for use and distribution precedes 1973.

In 1983 and 1996, funds were disbursed for each tribal member on the 1954 Klamath roll. The Klamath Tribe currently has 188 Individual Indian Money (IIM) accounts for tribal members. An estate account was set up for deceased tribal members. These accounts are still open due to lack of information, no death certificates, no birth certificates, and Whereabouts Unknown. These funds will remain as IIM accounts with the Office of the Special Trustee (OST).

Conclusion

At this time, the Department needs to better understand the impact the repeal of this fund will have on our actions moving forward and the trust responsibility we have to the Tribe, and therefore takes no position on the legislation. Again, thank you for the opportunity to testify on the S. 1223, the Klamath Tribe Judgement Fund Repeal Act. I would be glad to answer any questions the Committee may have.

TESTIMONY OF
TONY DEARMAN,
DIRECTOR OF THE BUREAU OF INDIAN EDUCATION
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON S. 1285, THE "OREGON TRIBAL ECONOMIC DEVELOPMENT ACT"

JULY 12, 2017

Good afternoon Chairman Hoeven, Vice Chairman Udall, and members of the Committee. Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on S. 1285. This legislation would allow the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of Warm Springs, and the Cow Creek Band of Umpqua Tribe of Indians to lease or transfer certain lands. The Department supports S. 1285.

The Department is aware that the Tribes listed in this legislation wish to lease, sell, convey, warrant, or otherwise transfer all or any part of their interests in any real property that is *not* held in trust by the United States for the benefit of the Tribes without further approval, ratification, or authorization by the United States. As the language in the bill indicates, such lands do not include any lands held in trust by the United States for the benefit of the Tribes.

The Tribes have expressed their opinion that they cannot lease, sell, convey, warrant, or otherwise transfer all or any part of its interests in any real property *not* held in trust by the United States unless authorized by Congress. The Tribes presumably are referring to federal law, 25 U.S.C. §177, which prohibits any "purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians."

S. 1285 would expressly allow each of the Tribes to lease, sell, convey, warrant, or transfer all or any portion of its interest in *any real property not held in trust status* by the United States for the benefit of the Tribe. Under S.1285, further approval, ratification, or authorization by the United States is not required in order to validate the land transaction. The legislation also clearly states that S. 1285 does not authorize the Tribe to lease, sell, convey, warrant, or otherwise transfer all or any portion of any interest in *any real property that is held in trust by the United States for the benefit of the Tribe*. Given these clear lines, the Department supports S. 1285 and believes this authority should be extended to all Tribes for fee simple lands.

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.