

TESTIMONY
OF
ANN MARIE BLEDSOE DOWNES
DEPUTY ASSISTANT SECRETARY FOR
POLICY AND ECONOMIC DEVELOPMENT – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS
HOUSE NATURAL RESOURCES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES
ON
H.R. 3599, THE “EASTERN BAND CHEROKEE HISTORIC LANDS REACQUISITION ACT”

FEBRUARY 24, 2016

Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee, my name is Ann Marie Bledsoe Downes and I am the Deputy Assistant Secretary for Policy and Economic Development in Indian Affairs. Thank you for the opportunity to present the Department of the Interior’s (Department) views on H.R. 3599, a bill to take certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians (Tribe), and for other purposes.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety, and welfare of tribal communities. Thus, this Administration has made the restoration of tribal homelands a priority. This Administration is committed to the restoration of tribal homelands, through the Department’s acquisition of lands in trust for tribes, where appropriate. The Department supports H.R. 3599, and suggests technical amendments.

H.R. 3599 will place approximately 76.1 acres of Tennessee Valley Authority (TVA) land and approximately 19.9 acres of permanent easement to be held in trust for the Tribe. The land identified in the bill is located along the Tellico Reservoir in Monroe County, Tennessee. The improvements would not be held in trust and remain the property of the Tribe. The legislation also provides for the identification and conveyance of additional TVA lands to protect cultural resources.

H.R. 3599 references “Federal lands” in section 2(a) of the legislation. Based on information from the Tribe and section 2(c), the Department understands the referenced lands are those managed by the TVA, a government-owned corporation. The Department recommends inserting “managed by the Tennessee Valley Authority” in section 2(a) to clarify the lands at issue in this legislation.

In regard to the trust transfer there is one technical issue that should be addressed.

The legislation should make clear that, as between BIA and TVA, TVA remains responsible for any hazardous substances on the land that occurred prior to acquisition in trust. The Department recommends inserting a section in the bill to address the assessment and clean-up of Hazardous Substances and setting forth that the TVA shall determine if any hazardous substances were

stored for 1 year or more, known to have been released, or disposed of on the property. Should the investigation determine that hazardous substances were stored, released or disposed of on the property, the TVA shall provide the Department of the Interior and the Tribe notice including the following information:

- Type and quantity of such hazardous substance.
- Notice of the time at which such storage, release, or disposal took place.
- Description of the remedial action taken, if any.

Additionally, if remedial actions were taken by TVA on the properties, then conveyance documents shall include the following covenants: "all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of such transfer, and any additional remedial action found to be necessary after the date of such transfer shall be conducted by the TVA." This would not impact TVA's ability to seek contribution from other potentially responsible parties.

Further, the Department suggests minor technical amendments to section 4(b)(3). Under section 4(b)(3) of H.R. 3599, there may be two unintentional limitations placed on the items that may be reinterred. First, the phrase "remains of the Eastern Band of Cherokee Indians and other Cherokee tribes" could limit the human remains eligible for reinternment to only those human remains that are found to be culturally affiliated with the tribes. Second, the phrase "repatriated by the Tennessee Valley Authority" could be construed as limiting the human remains to only those that are culturally affiliated with the tribes based on the statutory use of "repatriation" in the Native American Graves Protection and Repatriation Act (NAGPRA). NAGPRA provides for the "transfer of control" of human remains that are culturally unidentifiable, and the current language of this Act might exclude those human remains. The Department recommends that H.R. 3599 be revised to state "remains of the Eastern Band of Cherokee Indians and other Cherokee Tribes, including those transferred to the Eastern Band of Cherokee Indians and other Cherokee tribes" and "including those human remains and cultural items transferred by the Tennessee Valley Authority to those Cherokee tribes under the Native American Graves Protection and Repatriation Act;" In section 4(b)(3) of the legislation, the words "National Graves Protection and Repatriation Act" should be replaced with "Native American Graves Protection and Repatriation Act," which is the appropriate reference.

The Department also recommends, in section 2, inserting language clarifying the conveyance of property. For example "the following Federal lands on or above the 820-foot (MSL) contour elevation in Monroe Tennessee, on the shores of Tellico Reservoir, are *declared to be held in trust* by the United States for the use and benefit of the Eastern Band of Cherokee Indians:....": Also, the Revised Maps portions of the legislation (Sections 2(d) and 3(c)) should make clear that TVA will produce the required maps within 1 year.

The Department recommends adding "United States" to section 5(i), since the purpose of the legislation is for the Federal Government to hold the lands in trust for the benefit of the Tribe.

Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions the Subcommittee may have.