

**TESTIMONY OF
MIKE S. BLACK
DIRECTOR OF THE BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 908, A BILL TO PROVIDE FOR THE ADDITION OF CERTAIN REAL PROPERTY TO THE
RESERVATION OF THE SILETZ TRIBE IN THE STATE OF OREGON.**

FEBRUARY 2, 2012

Chairman Akaka, Vice-Chairman Barrasso, and Members of the Committee, my name is Mike Black, and I am the Director of the Bureau of Indian Affairs. Thank you for the opportunity to present the Department of the Interior's (Department) views on S. 908, a bill to provide for the addition of certain real property to the reservation of the Siletz Tribe.

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 the tribal governments. 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. While the Department is working hard to live up to this commitment, we cannot support S.908 as currently drafted.

S. 908 would amend the Siletz Tribe Indian Restoration Act, 25 U.S.C. § 711e, to authorize the Secretary of the Interior to place land into trust for the Siletz Tribe. The lands lie within the original 1855 Siletz Coast Reservation and are located in the counties of Benton, Douglas, Lane, Lincoln, Tillamook, and Yamhill, which are all located within the State of Oregon. S. 908 would require that such land would be considered and evaluated as an on-reservation acquisition under 25 C.F.R. § 151.10 and become part of the Tribe's reservation if the county in which the land is located submits a written approval to the Secretary of the Interior. If a county does not approve of land being considered an on-reservation acquisition under 25 C.F.R. § 151.10, the bill provides that any real property taken into trust "shall be considered and evaluated under the appropriate provisions of part 151 of title 25, Code of Federal Regulations (or successor regulations), as determined by the Secretary."

The Department believes its regulations, at 25 C.F.R. §§ 151.10 and 151.11, already provide sufficient opportunities for state and local units of government to provide views on applications for land to be acquired in trust.

Under those regulations, State and local governments are given a 30 day period to submit written comments concerning jurisdictional problems and potential regulatory conflicts as well as tax impacts that may result from the land acquisition. In addition, state and local governments, as well as the general public, may submit comments related to environmental impacts in the review process under the National Environmental Policy Act (NEPA). These comments may encompass a variety of issues such as social and economic impacts, law enforcement concerns,

social services, and environmental concerns. Under NEPA, many local governments serve as "cooperating agencies," and thus participate very closely in the Department's NEPA review process.

Finally, if the Department decides to acquire land in trust, it must publish at least 30-days notice of this decision pursuant to 25 C.F.R. § 151.12(b) prior to acquiring trust title to the land. The 30-day notice period provides an opportunity for interested parties, including state and local units of government, to initiate a legal challenge to the proposed trust acquisition.

The Department does not believe it is necessary to legislatively insert county approval of a particular tribe's fee-to-trust applications into our regulations governing this process. While the Department gives serious consideration to the views of local units of government in processing applications for the acquisition of land into trust, we must also be mindful of the unique and important role the Department plays in managing the relationship between the United States and tribal nations. The decision to acquire land in trust for a tribal nation must ultimately rest with the Secretary in managing that relationship.

In April of this year, the United States Government Accountability Office (GAO) stated that the uncertainty in acquiring land in trust for tribes, as a result of the *Carciari* decision, is a barrier to economic development in Indian Country.¹ The GAO predicted that, until the uncertainty created by the *Carciari* decision is resolved, Indian tribes would be asking Congress for tribe-specific legislation to take land in trust, rather than submitting fee-to-trust applications to the Department.

As evidenced by S. 908, this prediction is coming to fruition, and Indian tribes are asking their Members of Congress for tribe-specific legislation to take land in trust. This will lead to a patchwork of laws governing the land into trust process, rather than the uniform process that Congress envisioned in enacting the Indian Reorganization Act in 1934. Such a patchwork would be difficult for the Department to administer.

The Department opposes S. 908 as introduced, but could support the bill if the provisions regarding county approval are removed from the bill. Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions you may have.

¹ See, Testimony of Anu K. Mittal, Director, Natural Resources and Environment, *Observations on Some Unique Factors that May Affect Economic Activity on Tribal Lands*, Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform, Committee on Oversight and Government Reform, U.S. House of Representatives (April 7, 2011) at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=112_house_hearings&docid=f:68049.pdf, 70-71.