

**STATEMENT FOR THE RECORD FROM THE  
UNITED STATES DEPARTMENT OF THE INTERIOR  
TO THE  
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS  
HOUSE NATURAL RESOURCES COMMITTEE  
U.S. HOUSE OF REPRESENTATIVES  
ON  
H.R. 146, THE “EASTERN BAND CHEROKEE HISTORIC LANDS REACQUISITION ACT”**

**OCTOBER 4, 2017**

Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee, thank you for the opportunity to present the Department of the Interior’s (Department) views on H.R. 146, the Eastern Band Cherokee Historic Lands Reacquisition Act, which takes certain Federal lands in Tennessee into trust for the benefit of the Eastern Band of Cherokee Indians (Tribe).

Administering trust lands is an important responsibility that the United States undertakes on behalf of Indian tribes. The Congress, through its plenary authority over Indian Affairs, can direct the Department to acquire and administer trust lands as it does in H.R. 146. The Department suggests technical amendments to clarify the Department’s responsibilities under this legislation.

H.R. 146 would place approximately 76.1 acres of Tennessee Valley Authority (TVA) land and 19.9 acres of permanent easements into trust for the Tribe. Any improvements made to structures on the land, including memorials as referenced in the legislation, would remain the property of the Tribe. The Department recommends the addition of language in section 2(a) to clarify the role the TVA currently plays in managing the lands in question.

In regards to the trust transfer language, the Department believes that H.R. 146 make clear that the TVA maintains responsibility for any hazardous substances in existence on the land prior to acquisition in trust. We recommend the insertion of a section in the bill to address both assessment and clean-up as well as the role the TVA will play in the assessment of hazardous substances and whether or not any 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 should 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 the Department recommends conveyance documents include the following language: “...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.” We believe this would not impact TVA’s ability to seek contribution from other potentially responsible parties.

Furthermore, the Department suggests minor technical amendments to section 4(b)(3), which, as written, may unintentionally limit 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. 146 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:..." In addition, the Revised Maps portions of the legislation (Sections 2(d)) should make clear that the TVA will produce the required maps within 1 year.

Lastly, 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.