

**TESTIMONY OF
MICHAEL D. OLSEN
COUNSELOR TO THE ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON RESOURCES
H.R. 2941, TO CORRECT THE SOUTH BOUNDARY OF THE
COLORADO RIVER INDIAN RESERVATION AND FOR OTHER PURPOSES
APRIL 21, 2004**

Good morning, Mr. Chairman, and Members of the Committee. My name is Michael Olsen, and I am the Counselor to the Assistant Secretary – Indian Affairs. I am pleased to be here today to provide the Administration’s position on H.R. 2941, a bill to correct the southern boundary of the Colorado River Indian Reservation in Arizona.

H.R. 2941 proposes to transfer to the reservation of the Colorado River Indian Tribes (CRIT), in trust, approximately 16,000 acres of land currently managed by the Bureau of Land Management (BLM). The reservation is located in western Arizona and California along the Colorado River. No provisions in this bill affect any tribal lands in California. The lands proposed for transfer border Interstate 10, west of the town of Quartzsite in Arizona.

Background

The CRIT reservation was established in 1865. Subsequent to its creation, and pursuant to Executive Order, the Reservation’s southern boundary was extended to prevent non-Indian encroachment and conflicts with the Indians on the reservation. The expansion, which was subsequently formalized with a survey conducted in 1875, added 16,000 acres (the so-called “La Paz Lands”) to the Reservation. A subsequent Executive Order established the Reservation’s boundaries as those delineated by the 1875 survey. In 1914, the United States General Land Office approved a resurvey of the Reservation, which confirmed the boundaries defined in the 1875 survey. In 1915, the Secretary of the Interior reversed the General Land Office’s approval, after which President Wilson issued Executive Order No. 2273 “to correct the error in location” of the southern boundary line, thereby removing the La Paz Lands from the reservation.

H.R. 2941 would adjust the boundaries of the CRIT Reservation to encompass the 16,000-acre La Paz Lands that were included in the Reservation pursuant to the above-mentioned surveys. The La Paz Lands, which hold cultural, historical, and economic significance, have been the subject of various attempts for restoration to the CRIT reservation.

Discussion

The Administration supports the objectives of the bill but believes that the Committee should seriously consider several issues as it deliberates on this legislation.

The Trust Relationship

H.R. 2941 proposes to transfer certain lands currently managed by the BLM into trust status. The lands proposed for transfer contain sites of cultural, historic, and economic significance to the Tribes. The intent of the transfer is to increase the Tribes' ability to protect the resources in the area, but raises questions about the nature and extent of the Secretary's trust responsibilities.

Both the Executive and the Judicial Branches are faced with the question of Congress' intent when it puts land into trust status. What specific duties are required of the Secretary, administering the trust on behalf of the United States, with respect to trust lands? Tribes and individual Indians frequently assert that the duty is the same as that required of a private trustee. Yet, under a private trust, the trustee and the beneficiary have a legal relationship that is defined by private trust default principles and a trust instrument that defines the scope of the trust responsibility. Congress, when it establishes a trust relationship, should provide the guideposts for defining what that relationship means.

Much of the current trust controversy stems from the absence of clear guidance as to the parameters, roles, and responsibilities of the trustee and the beneficiary. As Trustee, the Secretary may face a variety of issues, including land use and zoning. Accordingly, the Secretary's trust responsibility to manage the land should be addressed with clarity and precision. Congress should decide these issues, not the courts.

When we are required to transfer federal lands into the hands of the tribe and then take the land into trust, Congress potentially is subjecting the United States to new responsibilities and it should clearly state what those responsibilities are. Further, the Department of Justice advises that legislation should clearly foreclose the Tribe from asserting any claims against the United States with respect to matters relating to the La Paz lands that pre-date passage of the legislation.

Rights-of-Way and Leases

The BLM has issued a significant number of rights-of-way within the 16,000-acre La Paz Lands, particularly along the I-10 corridor. While the interstate highway itself has a perpetual right of way, as do three of the oil and gas pipelines in the area, a number of other rights-of-way are established for specific terms. These include a 500 kV power line that transports electricity from the Palo Verde nuclear plant to southern California, five fiber optic lines, and two 30-inch oil and gas pipelines. The pipeline rights-of-way expire in 2005 and 2015. The right-of-way for the 500 kV power line is scheduled to expire in 2030.

The BLM has also issued seven mineral materials contracts (primarily sand and gravel) for construction and road use within the 16,000-acre area. Moreover, portions of an

ephemeral grazing lease lie within the proposed transfer area. These lands have not, however, been permitted in a number of years due to drought.

Under section 6 of the bill, when the terms of these rights expire, the Tribes have the discretion to renew or cancel any lease or right-of-way. These rights-of-way may be subject to regulation under other laws governing renewals or abandonment. To avoid creating unintended conflicts with such statutes, the Department recommends that the Committee consider modifying proposed legislation to ensure reasonable continuation of these rights-of-way and leases, by adding an express provision excluding the rights-of-way from the land interests that are being transferred into trust for the benefit of the Tribe. In the alternative, the Department will work with the Committee to identify specific rights-of-way that should be excluded from the transfer of interests to the Tribe.

Other Miscellaneous Issues

Nearby Quartzsite, Arizona attracts thousands of winter visitors who enjoy camping, birding, rock hounding, hunting, and off-highway vehicle touring. Section 5 of the bill attempts to protect public access to the lands identified for transfer through reasonable rules and regulations promulgated by Tribes. The Department recommends that the Committee examine options that would ensure recreationists with continued reasonable use of this land.

The Department believes that H.R. 2941 may cause confusion over the status of state lands within the proposed transfer area. Specifically, section 2(d) states that lands under the jurisdiction of the Arizona State Lands Department are excluded from restoration to trust status. The legislation references one 320-acre parcel. However, there are two parcels of state land within the external boundaries of the lands proposed for transfer: the 320-acre parcel, and an approximately 500-acre parcel. This provision should be amended to exempt both state land parcels.

In addition, the BLM has withdrawn a parcel for the benefit of the Bureau of Reclamation. North of the boundary for this parcel lies the Ehrenberg Quarry, which BOR uses primarily as a source of mineral pits for maintenance of the Colorado River. We request that the bill clearly reserve the United States' right to access and remove these mineral materials and transport them along existing routes. The area also contains 80 active mining claims. Our geologists believe there is a medium potential for gold; however, the economics of removal may depend on world market prices. These mining claims would be protected under the bill's provision recognizing valid existing rights in section 2(b). The Department is continuing to review uses on this land to determine if there are any other reservations that should continue to be reserved to the United States after the conveyance.

Finally, because the legislation references the Robbins and Harrington surveys, we don't believe that the description in section 2(c) is necessary nor is it accurate. In addition, as is the case with lengthy descriptions, the description in the legislation is subject to

transcribing errors. If a description is necessary for additional certainty, we recommend using a map rather than a legal or metes and bounds description.

Conclusion

The Department would welcome the opportunity to work with the Committee to address the aforementioned issues. I want to thank you for the opportunity to appear before the Committee today, and look forward to answering any questions you may have.