

**Testimony of  
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**Senate Committee on Indian Affairs**

**S. 2442, Northern Cheyenne Lands Act**

**July 9, 2014**

Good morning Mr. Chairman and Members of the Committee. Thank you for inviting the Department of the Interior to provide testimony on S. 2442, the Northern Cheyenne Lands Act. The Department of the Interior appreciates the diligent work of the entire Montana congressional delegation to seek an equitable solution to a vexing and complex situation regarding the ownership of the mineral estate underlying the Northern Cheyenne Indian Reservation. The Department supports the goals of the legislation and would like to work with the sponsor and the Committee on modifications to the bill.

S. 2442 includes significant improvements over an earlier version of the proposal on which we testified during the 112<sup>th</sup> Congress. We appreciate the efforts of the delegation to address many of the issues previously highlighted by the Department. The issues in this bill are complex and the Department recognizes the unique role Congress can play in arbitrating difficult issues. The Department recognizes that we have a unique trust responsibility to the Northern Cheyenne Tribe and therefore we are committed to finding an equitable solution consistent with the Federal Land Policy and Management Act (FLPMA) and Department policy.

**Background**

The Northern Cheyenne's relationship to these lands is without dispute. Despite the Tribe's forced relocation from this area to Oklahoma in 1877, the Northern Cheyenne walked back to southeastern Montana to reclaim their ancestral lands, and the reservation was established a few years later in 1884. Today, the tribe has approximately 10,000 enrolled members; about 5,000 of those members live on the reservation. Beyond some agriculture pursuits such as cattle ranching, there are few economic opportunities for Tribal members.

In 1900, approximately 5,000 acres of the mineral estate underlying eight sections of land remained in private ownership when the boundaries of the Northern Cheyenne Indian Reservation were expanded. Great Northern Properties (GNP) is the holder of this mineral estate underlying tribal lands, which was acquired from the Northern Pacific Railway. All other mineral interests underlying the Reservation are held by the Federal Government in trust for the Tribe.

#### **S. 2442**

S. 2442 reflects the dedication of the Montana delegation and the stakeholders to resolve this complex situation. First, S. 2442 directs the Secretary of the Interior to take approximately 1,567 acres of Tribal-owned fee-lands into trust for the Tribe. Second, the bill conveys 5,007 acres of subsurface coal and iron mineral estate currently held by GNP within the Reservation to the Tribe, while transferring Federally-held coal interests underlying 7,952 acres in the "Bull Mountains" tracts and 1,420 acres in the "East Fork" tracts to GNP in compensation. The mineral estates conveyed to the Tribe would be held in trust by the United States for the benefit of the Tribe. The bill also includes provisions for revenue sharing and waiver of legal claims and

precludes mining except by underground techniques on the “Bull Mountains” and “East Fork” tracts until written consent of the surface owner is obtained and except as determined in the BLM’s Billings Resource Area Resource Management Plan. Finally, the bill authorizes transfer of the Northern Cheyenne Trust Fund to the Tribe’s Permanent Fund.

As the Committee is aware, restoring tribal homelands is one of this Administration’s highest priorities. S. 2442, Section 4, directs the Secretary of the Interior to take approximately 1,567 acres of land into trust for the Tribe. A portion of these lands are within the Tribe’s current reservation, but two other locations are outside the Tribe’s current reservation and are located in the state of South Dakota. The Department supports taking these lands into trust. S. 2442 refers to two maps, the “Northern Cheyenne Land Act – Fee-to-Trust Lands,” dated April 22, 2014, and the “Northern Cheyenne Land Act – Fee-to-Trust Lands—Lame Deer Townsite,” dated April 22, 2014, evidencing the lands to be taken into trust for the Tribe by the Secretary of the Interior. While the legislation references the maps by title, the Department highly recommends the use of legal descriptions to describe the property to be taken into trust for the Tribe.

In accordance with FLPMA and Department policy, we require equal value exchanges and completion of an appraisal consistent with Uniform Appraisal Standards when the Department enters into exchanges of land or interests in lands. S. 2442 seeks to address equalization based on estimated coal tonnage without standard appraisal practices or a mechanism for adjusting the acreage to achieve equal value. While the Department understands that S. 2442 seeks to address tribal settlement issues that are beyond the scope of FLPMA and Department of Justice regulations on equal value exchanges, we would like to work with the sponsors to ensure that the

principle of equal value is maintained, and appraisals are consistent with Uniform Appraisal Standards.

The Department notes that the Federal coal interests referred to as the “East Fork” tracts may encompass part of an alluvial valley floor which may complicate the conveyance and the future development of these tracts. Under the Surface Mining Control and Reclamation Act, coal parcels occurring under or near an alluvial valley floor qualify for an exchange of the affected fee coal for unleased Federal coal if certain conditions are met. Alluvial valley floor exchanges would be processed pursuant to FLPMA. Completing such an exchange can be a lengthy and complicated process.

It should also be noted that the 60-day deadline for conveyance of mineral rights is not sufficient to complete the necessary analysis under the National Environmental Policy Act and the Department suggests changing this to a minimum of 120 days. Additionally, the Department suggests rephrasing Sec. 5(a)(1)(A) to avoid directing a private entity to complete a conveyance, and instead ensure that any exchange is optional on the part of the private party.

Finally, Section 7 of the bill directs the Secretary, in consultation with the Tribe, to prepare and submit to the Committee an inventory of fractionated land interests held by the United States in trust for the benefit of the Tribe or individual Indians on the Reservation, and to provide periodic reports regarding obstacles to consolidating trust land ownership on the Reservation.

The Department, through the BIA, currently inventories the fractionated lands held in trust for the Tribe and held in trust for individual Indians of the Tribe. The BIA has provided such inventory to the Department's Land Buy Back Program for Tribal Nations (Buy-Back-Program), the Northern Cheyenne Agency Superintendent and the Northern Cheyenne Tribal Outreach Coordinator. The inventory identifies the lands that are suitable for agriculture on the Northern Cheyenne Reservation. The majority of the trust lands suitable for agriculture, which include allotted and Tribal owned lands, are currently leased and if the lands are not leased then they are being used by their owners primarily for agriculture.

The Buy-Back-Program has been collaborating with the Tribe to address the land fractionation issue on the Northern Cheyenne Indian Reservation (Reservation). The Buy-Back Program purchases fractional interests in trust or restricted land from willing sellers at fair market value for immediate transfer and consolidation of those interests for the tribe with jurisdiction over those interests. The Buy-Back Program, which was created as a result of the *Cobell* Settlement and authorized by the Claims Resolution Act of 2010, has been working closely with the Tribe since the fall of 2013 and has completed extensive mapping of the Reservation, land valuation work, and has entered into a cooperative agreement with the Tribe for the Tribe to perform educational outreach to Northern Cheyenne landowners. The Buy-Back Program intends to begin purchasing fractional interests at the Reservation in the fall of 2014. The work being done, in consultation with the Tribe, already includes preparing some form of an inventory of fractionated land interests, especially for those lands that potentially may be bought by the Tribe through the Buy-Back Program from willing sellers. The Department would like to work with the Sponsor,

the Committee, and the Tribe on ways to achieve the goals of Section 7 of the bill without duplicating efforts already underway.

**Conclusion**

Thank you again for the opportunity to testify on the Northern Cheyenne Lands Act. The Department strongly supports efforts to find a fair and equitable solution to the long-standing issues facing the Northern Cheyenne Tribe and is committed to continuing to work cooperatively towards this end. The Department welcomes the opportunity to resolve these issues for the benefit of the Northern Cheyenne Tribe. I would be glad to answer your questions.