

**STATEMENT OF
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UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE
UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

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Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on S. 2908, *“Indian Buffalo Management Act,”* S. 3263, *“Poarch Band of Creek Indians Parity Act,”* S. 4000, *“To reaffirm the applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes,”* and S. 4442, *“To amend the Crow Tribe Water Rights Settlement Act of 2010 to make improvements to that Act, and for other purposes.”*

S. 2908, Indian Buffalo Management Act

The North American Bison, commonly called buffalo, is the official mammal of the United States and plays an important role in the history and ecology of this continent. For many Tribes, buffalo play a significant role in their identity, subsistence, economic development, and conservation and land management practices. The historical, cultural, and spiritual connection between buffalo and Tribes cannot be overstated. Buffalo sustained many Indian Tribes in North America for many centuries before they were nearly exterminated by non-Indian hunters in the mid-1800s.

Indian Tribes have long desired the reestablishment of buffalo throughout Indian Country. The successful restoration of buffalo allows an Indian Tribe to benefit from the reintroduction of buffalo into the diets of the members of the Indian Tribe. Working to restore buffalo and increase Tribal access to buffalo is a priority for the Biden administration and for Secretary Haaland. The BIA’s Branch of Fish, Wildlife, and Recreation funds buffalo restoration and management activities through annual appropriations. S. 2908, the Indian Buffalo Management Act, would establish a permanent program within the Department to develop and promote Tribal ownership, conservation, and management of buffalo and buffalo habitat on Indian lands.

Under S. 2908, two entities are eligible for program participation: Indian Tribes, as defined by the Indian Self-Determination and Education Assistance Act (ISDEAA), and Tribal organizations organized under Section 17 of the Indian Reorganization Act (IRA). The Department recommends amending the definition of “Tribal organization” to avoid the exclusion of Tribal corporations Federally chartered under Section 3 of the Oklahoma Indian Welfare Act, P.L. 74-816, or Tribal organizations contracting for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members. The Department looks forward to working with the sponsors on these issues.

S. 2908 authorizes \$14 million in annual appropriations. The Department previously testified on H.R. 6368, the House companion to S. 2908, in which we raised concerns about the lack of dedicated funding for the activities authorized under H.R. 6368. For both bills, activities will be

eligible for contracting or compacting by Tribes under ISDEAA. In the event of a Tribe utilizing ISDEAA, as amended, to contract or compact that permanent program, the Secretary may be required to utilize funds from other programs to meet the Department's statutory obligations under ISDEAA. The Department appreciates the opportunity to work with Congress to ensure that we have the resources to implement the provisions of S. 2908 if enacted and strongly supports the provision authorizing dedicated funding.

Buffalo once roamed this continent in the tens of millions and the Department appreciate efforts to improve management of this vital species. The Department recognizes our shared interest in modernizing buffalo management in Indian Country and appreciates Congress's attention to this effort. The Department supports S. 2908. The Department welcomes the opportunity to work with the sponsors and the Committee to provide technical assistance to clarify eligible entities and to ensure that other offices at the Department can enter into co-stewardship and co-management agreements with Indian Tribes.

S. 3263 and S. 4000 and the Impacts of the *Carcieri v. Salazar* Decision

In *Carcieri v. Salazar*, the United States Supreme Court was faced with the question of whether the Department could acquire land in trust under section 5 of the Indian Reorganization Act (IRA) on behalf of the Narragansett Tribe of Rhode Island for a housing project. The Court's majority noted that section 5 permits the Secretary to acquire land in trust for Federally recognized Tribes that were "under Federal jurisdiction" in 1934. It then determined that the Secretary was precluded from taking land into trust for the Narragansett Tribe, who had stipulated that it was not "under Federal jurisdiction" in 1934.

The *Carcieri* decision upset the settled expectations of both the Department and Indian Country and led to confusion about the scope of the Secretary's authority to acquire land in trust for all Federally recognized Tribes—including those Tribes that were Federally recognized or restored after the enactment of the Indian Reorganization Act. As many Tribal leaders have noted, the *Carcieri* decision is contrary to existing congressional policy, and has the potential to subject Federally recognized Tribes to unequal treatment under Federal law.

Since the *Carcieri* decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act was "under Federal jurisdiction" in 1934. This analysis is done on a Tribe-by-Tribe basis, even for those Tribes whose jurisdictional status is unquestioned. This analysis may be time-consuming and costly for Tribes and for the Department. Overall, it has made the Department's consideration of fee-to-trust applications more complex and created an additional administrative burden for the Federal government and Tribes related to decisions taking land into trust. The Tribes at issue in S. 3263 and S. 4000 are just two of the many Tribes who have experienced undue burdens to reclaim and develop their lands.

S. 3263 would address the impact that the *Carcieri* decision has had on the Poarch Band of Creek Indians by deeming that the Band shall be considered as having been under Federal jurisdiction as of June 18, 1934, for the purposes of the IRA. The bill would also congressionally reaffirm previous decisions by the Secretary to take land into trust for the Poarch Band of Creek Indians under IRA authorities.

S. 4000 would clarify that the IRA applies to the Lytton Rancheria and that the Secretary has the authority to take land into trust for the Lytton Tribe under Section 5 of the IRA. The bill would also deem lands taken into trust under Section 5 of the IRA for the Lytton Rancheria as part of the Tribe’s reservation and would be administered accordingly.

The Department supports S. 3263 and S. 4000. Tribal homelands are at the heart of Tribal sovereignty, self-determination, and self-governance. The power to acquire lands in trust is an important tool for the United States to effectuate its longstanding policy of fostering Tribal self-determination. Congress has worked to foster self-determination for all Tribes and did not intend to limit this essential tool to only one class of Tribes. In addition to S. 3263 and S. 4000, the Department has consistently expressed strong support for a universal legislative solution to the *Carcieri* decision for all Tribes. Further, the President’s budgets for fiscal years 2024 and 2025 proposed a simple and clean fix to the IRA to ensure the Secretary has the authority to take land into trust for all Tribes without the need for the complex review of whether a Tribe was “under Federal jurisdiction” in 1934. The Department urges Congress to consider a legislative fix to *Carcieri* decision for all Tribes to eliminate the need for each Tribe to seek separate legislation.

S. 4442, Crow Tribe Water Rights Settlement Amendments Act of 2024

S. 4442 would amend the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111-291; 124 Stat. 3097) (“Settlement Act”). The Department supports S. 4442 and recommends an amendment to the bill, which we have discussed with the Crow Tribe, that would ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions.

Introduction

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help to ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help advance the United States’ trust relationship with Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Congress plays an important role in approving Indian water rights settlements and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements and ensure their successful implementation.

Indian water rights settlements play a pivotal role in this Administration’s commitment to putting equity at the center of everything we do to improve the lives of everyday people—including Tribal Nations. We have a clear charge from President Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities—especially Tribal communities.

Background

The Settlement Act authorized \$460 million, indexed to inflation, for the Bureau of Reclamation to plan, design and construct two major projects on the Crow Reservation: (1) the rehabilitation and improvement of the Crow Irrigation Project (CIP), and (2) the design and construction of a Municipal, Rural, and Industrial (MR&I) water system. Both projects were to be designed and constructed as generally described in detailed engineering reports prepared by consultants to the Tribe and cited in the Settlement Act. In addition, the Settlement Act gave the Tribe a 15-year exclusive right to construct hydropower facilities at the Yellowtail Afterbay Dam, a Bureau of Reclamation facility. That exclusive right expires in 2025.

Proposed Amendment

S. 4442 would amend the Settlement Act by establishing a non-trust fund account to allow the Bureau of Reclamation to continue work on rehabilitation of the CIP and a new MR&I projects trust fund to be used by the Tribe for (i) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use or wastewater infrastructure; (ii) purchasing on-Reservation land with water rights; and (iii) complying with applicable environmental laws. The amendments do not increase the funding for the Settlement Act but merely change the way some funds are held and expended. If enacted as written, it is our interpretation that while the Amendment would repeal Section 406 in its entirety, funding for the MR&I projects trust fund would not exceed \$246,381,000, as indexed, as provided in section 414(b) of the Settlement Act (which would be redesignated as 415(b) pursuant to S. 4442).

When the Settlement Act was enacted, it did not provide for the creation of a non-trust interest-bearing account for funds appropriated for project construction. Subsequent Indian water rights settlements have provided for such accounts to allow funds to accrue interest while projects are being planned, designed, and constructed. Because the Settlement Act did not provide this authorization, the Department and the Tribe instead opened a joint-signature account with a private bank for the investment of settlement funds. While this has allowed the funding to earn interest, it has come with costs associated with maintaining a private bank account. The Tribe now seeks to establish a non-trust interest-bearing account in Treasury so it can enjoy the benefits of earning interest without having to pay management fees to a private banking institution. S. 4442 would authorize the establishment of a non-trust interest-bearing account in Treasury to receive the funds already appropriated and yet to be appropriated for CIP rehabilitation. Reclamation would continue to be the lead agency responsible for the planning, design, and construction of CIP rehabilitation features.

With respect to the MR&I system, S. 4442 would convert this portion of the Settlement Act from an infrastructure-based settlement to a trust fund-based settlement. S. 4442 would direct the Secretary to establish in the existing Crow Tribe Water Rights Settlement Trust Fund a new “MR&I Projects” account. The Tribe could then use funds from this account for several authorized purposes: plan, design, and construct MR&I systems; plan, design, and construct wastewater treatment facilities; and purchase on-Reservation land with water rights. S. 4442 would provide the Tribe with flexibility and discretion to plan, design, and construct the MR&I and wastewater systems that it believes will best serve communities on its Reservation.

Finally, S. 4442 would extend by five years the period during which the Tribe has the exclusive right to develop hydropower at the Yellowtail Afterbay Dam, to 2030.

The Department supports S. 4442. Allowing the Tribe to use the funding authorized for a large, centralized MR&I system to instead build smaller MR&I projects will allow it to make decisions regarding how, when, and where to develop water infrastructure on the Reservation. This approach is consistent with Tribal sovereignty and self-determination. We would like to work with the Tribe and the Committee, however, to include language in S. 4442 to ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions. The expansion of the authorized uses from a single use (MR&I) to multiple uses, including wastewater projects and purchases of land with water rights, will necessarily reduce the amount of funding available for badly needed drinking water systems on the Reservation. Provisions prioritizing funding for MR&I would ensure safe, reliable drinking water for the Tribe.

Conclusion

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, thank you for the opportunity to provide the Department's views.