

**Testimony of
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House Natural Resources Subcommittee on National Parks, Forests, and Public Lands

H.R. 4222, Tucson, Arizona, Area Land Conveyance Act

April 17, 2012

Thank you for the opportunity to present the views of the Department of the Interior (Department) on H.R. 4222, which provides for the conveyance of 73 acres of lands in the Tucson, Arizona, area, to the Federally-recognized Pascua Yaqui Tribe (Tribe) and the Tucson Unified School District (TUSD). The Department supports the goals of H.R. 4222, but would like to work with the bill's sponsor on various improvements, including ensuring that the conveyances are subject to full public review and participation.

Background

The Tribe's lands are located in Pima County, near Tucson, Arizona, and are a combination of lands held in trust by the Department and lands purchased and held in fee by the Tribe. Some of these fee lands are the subject of pending "fee-land-to-trust-land" applications with the Department. The TUSD operates the Hohokam School on private lands that are adjacent to the tribal lands.

The Tribe is interested in acquiring three parcels of land totaling approximately 60 acres. The first parcel, described in Sec. 3 of H.R. 4222, is an undeveloped, isolated 10-acre tract of Bureau of Land Management (BLM) managed land. The second and third parcels, described in Sec. 4(a) and Sec. 4(b) of H.R. 4222, respectively, are approximately 50 acres that were patented under the Recreation and Public Purposes Act (R&PP) to TUSD in 1981 and in 1963 for school construction purposes. The TUSD has never developed this land.

A fourth tract of land, described in Sec. 2 of H.R. 4222, is a 13¼-acre undeveloped and "L"-shaped BLM-managed parcel that would be conveyed from the BLM to the TUSD.

H.R. 4222

H.R. 4222 would direct the Secretary of the Interior to convey four tracts totaling 73 acres of BLM-managed public lands and lands patented to the TUSC under the R&PP in the Tucson area to the Tribe and to the TUSD. The BLM supports the goal of conveying these four isolated tracts of land to the Tribe and the TUSD, but would like to work with the bill's sponsor on necessary amendments described below.

H.R. 4222 requires the BLM to convey the first 10-acre parcel of public land to the Tribe, and the 13¼-acre "L"-shaped parcel to the TUSD, without cost to the Tribe or to TUSD, subject to any existing encumbrances or rights-of-ways. The bill requires that, when the TUSD relinquishes its possessory interest in the second and third parcels that were patented to the TUSD under R&PP, the BLM shall immediately convey these parcels to the Tribe without cost to the Tribe, subject to any existing encumbrances or rights-of-way. Under the bill, the BLM would retain two unconnected public land inholdings – a 75-foot wide strip of land on the western edge, and a 50-foot wide strip of

land. These narrow strips of land would be difficult and inefficient for the BLM to manage. The BLM recommends that the legislation address the disposition of these two parcels.

By requiring immediate conveyance of the parcels identified in H.R. 4222 there is insufficient time to complete, review, and verify environmental analyses, reports, appraisals, and surveys, or to prepare title documents. The BLM is concerned that an immediate conveyance of these parcels will not ensure the public interest through a National Environmental Policy Act (NEPA) review and will fail to comply with the National Historic Preservation Act. The BLM would like to work with the bill's sponsor to ensure full public participation and review of the bill's conveyances.

The Department is interested in working with the bill's sponsor on a number of amendments to the legislation. On many occasions, Congress has directed the Secretary of the Interior to acquire certain lands in trust for tribes. H.R. 4222 directs the Secretary to accept title to the lands identified in the bill that are encumbered by R&PP patents and then convey these parcels as well as a third parcel from BLM to the Pascua Yaqui Tribe in fee simple. Rather than conveying the land through BLM to the Tribe, and, potentially, back to the Department in trust status, the Department recommends that H.R. 4222 be amended to provide that, subject to valid existing rights, and once TUSD relinquishes its interest in the lands subject to the R&PP patent, all right, title, and interest of the United States in and to the identified lands is declared to be held in trust by the United States for the benefit of the Pascua Yaqui Tribe. This would simplify the process for both the Tribe and the United States, address some of the BLM's concerns related to the conveyances discussed above, as well as finalize and clarify the status of those lands. If the bill's provisions conveying the parcels to the Tribe in fee remain unchanged, the Department recommends that the legislation be amended to direct the Tribe to pay fair market value for the parcels. With respect to the conveyances to the Tribe, the Department of Justice recommends that the bill be revised to make clear that the Tribe would have to agree to the proposed conveyances. This change might be accomplished by adding “, subject to the Tribe's agreement” after “to the Tribe” in sections 3(b), 4(a)(2), and 4(b)(2) of the bill.

For the conveyance to the TUSD, the BLM recommends that legislation provide for an equitable distribution of the costs of the conveyances, and include a reversionary clause consistent with the R&PP that would protect, at the discretion of the Secretary of the Interior, an interest in the lands conveyed to the TUSD if it ceases to be used for the public purposes intended under H.R. 4222. Furthermore, the Department of Justice recommends that the bill be revised to make absolutely clear that TUSD would have to agree to the proposed conveyance, as requiring the TUSD to accept the land without consent might raise constitutional concerns. This change might be accomplished by adding “, subject to the District's agreement” after “to the District” in section 2(b) of the bill.

Finally, the BLM would like to work with the bill's sponsor to ensure the legislation protects any valid existing rights and interests; resolve the remaining public land inholdings under the bill; and develop a map depicting the various parcels referenced to enhance the clarity of the bill.

Conclusion

H.R. 4222 represents an opportunity to resolve land use issues on four isolated tracts of public land. We would like to work with the sponsors of the bill, the Tribe, and the community partners to ensure that public involvement and participation under NEPA is fulfilled and to ensure that all costs for conveyance of the lands are equitably distributed. Thank you for the opportunity to testify. I will be glad to answer any questions.