



Affiliated Tribes of Northwest Indians

Prepared Statement of the Honorable Harvey Moses, Jr.
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Legislative Hearing on H.R. 2523, the “Helping Expedite and Advance
Responsible Tribal Homeownership (HEARTH) Act”

U.S. House of Representatives
Committee on Natural Resources

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Good morning Chairman Rahall, Ranking Member Hastings, and distinguished members of the Committee. My name is Harvey Moses, Jr., and I am the Second Vice-President for the Affiliated Tribes of Northwest Indians (“ATNI”) and a councilmember for Confederated Tribes of the Colville Reservation. Today, I am pleased to provide ATNI’s views on H.R. 2523, the “Helping Expedite and Advance Responsible Tribal Homeownership Act,” or the “HEARTH Act.”

ATNI is gratified that the Committee is considering initiatives such as the HEARTH Act that would provide Indian tribes authority to assume more control over management of their trust resources on a voluntary basis. Because of the potential for this expanded authority to immediately benefit Indian tribes with the requisite capacity and the fact that Indian tribes would be able to decide for themselves whether or not to take advantage of this expanded authority, ATNI supports the legislation.

Background on ATNI

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, Montana, Alaska, California and Nevada. As the Committee may be aware, ATNI and its member tribes in the Pacific Northwest have been outspoken supporters of efforts to reform the manner in which the federal government administers trust resources. ATNI has established a trust reform workgroup of tribal leaders and technical staff to comment and provide recommendations on initiatives that affect the trust relationship, including initiatives to

streamline federal approvals. ATNI's support for these initiatives is grounded in its commitment to maintaining the integrity of the federal trust responsibility that is based upon the historical cession of millions of acres of ancestral lands by the tribes. Against this backdrop, ATNI appreciates the opportunity to provide its views on the HEARTH Act, which is one of the first bills considered by this Committee in this Congress that would provide Indian tribes a more direct role in managing trust resources.

Current Requirement for Secretarial Approval of Leases of Indian Trust Land

The Act of August 9, 1955 ("1955 Act"), codified at 25 U.S.C. § 415, allows the Secretary of the Interior ("Secretary") to approve leases of Indian trust land for up to 25 years, with one additional extension of up to 25 years. Since the enactment of the 1955 Act, a number of Indian tribes have successfully secured amendments to the 1955 Act that authorizes the Secretary to approve leases of up to 99 years for those particular tribes. The 1955 Act and its implementing regulations make clear that leases of Indian trust land that are not approved by the Secretary are invalid.

In the 106th Congress, Congress amended the 1955 Act by enacting the Navajo Nation Trust Land Leasing Act of 2000 ("Navajo Leasing Act"). The Navajo Leasing Act added a new subsection (e) that allows the Navajo Nation to promulgate its own leasing regulations that, once approved by the Secretary, allows the Navajo Nation to enter into leases of tribal trust land without the requirement of Secretarial approval. The Navajo Leasing Act allows the Navajo Nation to enter into business or agricultural leases for terms of up to 25 years with an option to renew for up to two additional terms up to 25 years. The Navajo Leasing Act allows for the Navajo Nation to enter into leases for public, religious, educational, recreational, or residential purposes for a term of up to 75 years. The Navajo Leasing Act does not apply to leases for the exploration, development, or extraction of any mineral resources.

The Navajo Leasing Act limits the liability of the United States for losses sustained by any party to a lease approved pursuant to the Navajo Nation's leasing regulations. It also provides that interested parties may, after exhausting tribal court remedies, petition the Secretary to review the Navajo Nation's compliance with its tribal leasing regulations.

On its face, the Navajo Leasing Act is voluntary and, within the parameters of the act itself, the scope and term of the tribal regulations that implement the act is determined by the Navajo Nation. Presumably, these tribal regulations are not set in stone and can be amended by the Navajo Nation as the need arises.

The HEARTH Act

Section 2 of the HEARTH Act would amend the Navajo Leasing Act to expand its potential application to all other Indian tribes. Section 3 of the HEARTH Act would require the Bureau of Indian Affairs ("BIA") to prepare and submit to the House and Senate committees of jurisdiction a report on the history and experience of Indian tribes that have chosen to assume responsibility for operation of Land Title Record Office ("LTRO") functions.

ATNI Supports Voluntary Mechanisms to Enable Indian Tribes to Assume Greater Control over Trust Assets

The ability of Indian tribes to enter into leases of Indian trust lands in an expeditious manner is a key component of enhancing economic development in Indian country. One of Congress's stated purposes in enacting the Navajo Leasing Act was to "revitalize the distressed Navajo Reservation by promoting political self-determination, and encouraging economic self-sufficiency, including economic development that increases productivity and the standard of living for members of the Navajo Nation." This statement applies with equal force to many, if not most, Indian tribes throughout the United States. Expanding the already existing mechanism in the Navajo Leasing Act to other Indian tribes would provide those tribes that so desire an alternative to the current BIA approval process.

ATNI's support for expanding the Navajo Leasing Act to other Indian tribes is conditioned in the voluntarily nature of tribal participation and on the tribes' own ability, present in the existing law, to shape the contents of the leasing regulations. ATNI recognizes that the limitation of the United States' liability for losses by parties to leases executed under tribal regulations may be an issue for some Indian tribes. Similarly, other tribes may have special circumstances that do not make tribal approval of leases feasible or desirable.

Because the HEARTH Act is voluntary, ATNI supports the bill because we believe that individual Indian tribes are in the best position to determine whether these considerations outweigh the potential benefits of the act. The flexibility of the tribal regulations is another consideration. For example, a tribe that may wish to avail itself of the HEARTH Act's expanded authority only for certain leases or projects could draft its tribal regulations accordingly. Should the tribe at a later date desire to expand the scope to include other leases, it could do so by amending its regulations.

If the Committee were considering an entirely new leasing regime for Indian trust lands, ATNI and likely other tribal organizations might have different ideas on how this might be accomplished. Because the HEARTH Act, however, is simply an extension of already existing law and at least some tribes could benefit immediately by the expanded authority it allows, ATNI supports the Act.

Tribal Assumption of LTRO Functions

ATNI strongly supports the requirement in Section 2 of the HEARTH Act that the BIA prepare and submit to the congressional committees of jurisdiction a report on the history and experience of Indian tribes that have chosen to assume responsibility for operation of LTRO functions.

As the Committee is aware, LTROs are responsible for preparing Title Status Reports ("TSRs"). A TSR is a report that provides a legal description of a parcel of Indian land and current ownership information such as easements, mortgages or other encumbrances. For most lenders, a BIA-certified TSR is a prerequisite to begin processing an application for a home loan.

ATNI understands that, to date, six Indian tribes nationwide have contracted or compacted the LTRO function from the BIA. The Colville Confederated Tribes is one of those tribes. Based on the Colville Tribes' experience, the reporting requirement in Section 3 of the HEARTH Act would provide a valuable record for the Department, the Congress, and for tribes that are considering contracting or compacting LTRO functions.

Before the Colville Tribes contracted LTRO functions, obtaining a TSR took from 60 to 90 days, sometimes longer, and required the BIA Regional Office staff to manually search through piles of recorded documents. Now that the Colville Tribe performs these services locally and has access to its own records, the Tribe's staff can generate, on an expedited basis, a TSR in one business day. When adequately staffed, the Colville Tribes' LTRO can complete most TSRs within five business days.

Although this increased control has, at least in the Colville Tribes' case, led to increased flexibility for generating TSRs by moving control of the process from the Regional Office level to the tribal level, challenges remain. Like many BIA programs, lack of funding hampers the ability of tribal staff to fully utilize this newfound authority.

Similarly, tribes that wish to contract or compact LTRO functions from the BIA may face significant obstacles on the front end if the BIA's administration of the program has not gone smoothly. In the Colville Tribes' case, when our local agency staff visited the BIA Regional LTRO to assess the work that would be required to assume control of the program, they observed piles of recorded documents that had yet to be inputted into the applicable databases. The staff also discovered that the history or chain of title on the majority of the Indian lands within the Colville Reservation had not been updated for nearly eight years. This translated into a significant upfront expenditure of staff time to prepare the LTRO program for assumption by the Tribe. ATNI suspects that at least some of the five other tribes that have assumed control of LTRO functions have had similar experiences.

A comprehensive BIA report to Congress that fully explains the benefits and challenges for tribes in contracting or compacting LTRO would shed additional light on these issues. ATNI hopes that such a report would lead to administrative reform to make this process easier for tribes that wish to do so in the future and may lay the foundation for additional funding for LTRO activities in future fiscal years.

Future Initiatives Related to Expediting Administrative Approvals and Trust Resource Management

ATNI believes that the HEARTH Act will provide a "turn key" approach to allow those Indian tribes that wish to do so the opportunity to expedite the process of entering into leases of tribal trust land utilizing the existing Navajo Leasing Act framework. For those Indian tribes that have the infrastructure, capability, and desire to undertake their own lease approvals, they should be encouraged, not hindered.

Going forward, ATNI hopes that this will not be the last opportunity for the Committee to explore issues related to expediting administrative approvals and the administration of trust

assets. ATNI believes strongly that a comprehensive approach to trust management should be considered. ATNI, NCAI, and other tribal organizations spent significant time and energy in working with both this Committee and the Senate Committee on Indian Affairs to develop Title III of the Indian Trust Reform Act of 2005 (introduced as H.R. 4322 in the 109th Congress). Title III approached these issues from a standpoint of tribes and the federal government working together to develop comprehensive trust management plans to accommodate a range of tribal needs on a resource-by-resource level.

Both ATNI and NCAI recently enacted resolutions at their annual conferences reaffirming their desire for the reintroduction of reform legislation similar to H.R. 4322. Looking ahead to 2010 and beyond, we hope that the Committee will consider these views as it considers other bills and initiatives relating to administration of Indian trust assets.

ATNI greatly appreciates the opportunity to testify at this hearing and looks forward to assisting the Committee in any way it can in exploring and developing these issues. At this time, I would be pleased to answer any questions that the Committee might have.