

TESTIMONY
OF
M. SHARON BLACKWELL
DEPUTY COMMISSIONER OF INDIAN AFFAIRS
ON
S. 266
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE

July 24, 2001

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Department of Interior (Department) on S. 266, a bill, "Regarding the use of the trust land and resources of the Confederated Tribes of the Warm Springs Reservation of Oregon." We have no objection to the enactment of S. 266, and include at the end of this statement suggested language that covers the Department's concerns regarding the authorities addressed in the legislation.

On April 12, 2000, the Confederated Tribes of the Warm Springs Reservation (Tribes) signed an agreement that created a process whereby the Tribes would gain part ownership in the three dam Pelton Project partially situated on Reservation land and would become a co-applicant with Portland General Electric in the Federal Energy Regulatory Commission (FERC) licensing process. The Agreement was approved by the Secretary of the Interior. We understand that the Tribes plan to finance their participation in the Project through the issuance of bonds. The Tribes bonding counsel has asked the Tribes to seek legislative "approval" of the Agreement to provide an "unqualified" level of assurance that the Agreement is proper, binding, and will not be altered.

The Department maintains that the Secretary had all the necessary authority to approve the terms and intent of the Agreement under the Federal Power Act (FPA). The Secretary is given broad authority under the FPA to ensure adequate protection and utilization of federal reservations in FERC licenses. For example, under 16 U.S.C. Section 797(e), also known as Section 4(e), the Secretary provides FERC with license conditions to ensure that hydropower power projects are consistent with the purposes of affected Indian reservations. In this regard, the Secretary has approved agreements of a similar nature in the past without Congressional approval, and has the authority to do so in the future.

The Department is also concerned that this legislation, as proposed, may effectually require other tribes to seek similar legislative approval of other settlement agreements needed to realize economic development opportunities. As a consequence tribes with fewer political resources or less economic clout may be unable to meet the increased standard of contractual security sought by this legislation.

Finally, we note that this legislation would amend 25 U.S.C. Section 415(a) to provide the Tribes 99-year leasing authority to account for the life of the Agreement. Similar to our position regarding the Secretary's authority, the Department maintains that the FPA provides all the authority necessary for FERC licensed projects to occupy tribal lands for the term of the license. Thus, no leases of any term are required, and amendment of 25 U.S.C. Section 415(a) is not necessary. Nevertheless, while FPA does not require it, the Department has no objection to extending the Tribes leasing authority.

In sum, the Department does not want to stand in the way of the Tribes securing their necessary financing, and, potentially, a more favorable financing arrangement. As such, we have no objection to S. 266. We do request, however, that the bill be amended to clarify that the Secretary is deemed authorized to take all actions necessary to approve and implement not only this Agreement, but all other such agreements entered into previously, and in the future, pursuant to the Secretary's authority under the FPA. We believe that this language will allow the Warm Springs Tribes the benefit of their Agreement, while preserving the Department's authority needed to ensure this opportunity for all other Indian Tribes. This concludes my prepared statement. Specific language to address the Department's concerns follows this statement. I would be pleased to respond to any questions the Committee may have.

Specifically, the Administration requests that section 2(a) be amended to read as follows:

(a) APPROVAL OF AGREEMENT - The use of tribal lands, resources and other assets described in the Long-Term Global Settlement and Compensation Agreement (in this section referred to as the 'Agreement') dated April 12, 2000, between the Department of the Interior, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Portland General Electric Company, is approved, and the Secretary of the Interior, pursuant to the authority provided to the Secretary in the Federal Power Act, shall be deemed authorized to take all actions necessary to approve and implement the Agreement, and any other similar agreement involving an Indian Tribe heretofore or hereafter approved or implemented by the Secretary pursuant to the Secretary's authority under the Federal Power Act. No Federal law regarding tribal lands, resources, or other assets shall be deemed –

(1) to render the Agreement unenforceable or void against the parties; or

(2) to prevent, prohibit, supersede, impair, restrict, or otherwise hinder any pledge or encumbrance by the Tribes of the sums that may be paid to or received by or on the account of the Tribes in connection with the Agreement.