

**Statement of Nathan Small, Chairman of the Fort Hall Business Council
for the Shoshone-Bannock Tribes**

Hearing on H.R. 5049, Blackfoot River Land Exchange Act of 2014

House Natural Resources Subcommittee on Indian and Alaska Native Affairs

July 29, 2014

I. Introduction

Good afternoon Chairman Young, Ranking Member Hanabusa, and other Members of the Subcommittee. My name is Nathan Small, and I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes (Tribes) located on the Fort Hall Reservation (Reservation) in southeast Idaho. I am honored to be here today to provide our views on H.R. 5049, the Blackfoot River Land Exchange Act of 2014. We very much appreciate Representative Simpson's efforts on this legislation.

H.R. 5049 is identical to S. 2040 introduced by Senator Crapo and Senator Risch on February 25, 2014. The Senate Indian Affairs Committee favorably reported S. 2040 out of committee on May 21, 2014 without amendment. Subsequently, on June 17, 2014, the Congressional Budget Office issued a cost estimate on S. 2040 indicating this bill would "not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply." Senator Crapo and Senator Risch are working to see if S. 2040 can be placed on the Unanimous Consent calendar in the Senate either this week or shortly after the August recess.

In 1867, President Andrew Johnson designated the Reservation by Executive Order for various bands of Shoshone and Bannock Indians and set forth the Blackfoot River (River), as it existed in its natural state, as the northern boundary of the Reservation. Since 2009, the Tribes, the impacted tribal member allottees, and the impacted North Bank non-Indian landowners have worked hand in hand to see if Congress could enact legislation to resolve long-standing land ownership and land use disputes resulting from channel realignment of the River in 1964 by the U.S. Army Corps of Engineers as part of a local flood protection project sponsored by the Blackfoot River Flood Control District No. 7. The channel realignment severed various parcels of land located on loops along the River, resulting in Indian land being located north of the realigned River and non-Indian land being located south of the realigned River. We have also worked closely with the Bureau of Indian Affairs, the Bingham County Commissioners, and the state of Idaho on this legislation.

It is critical to us and all the other involved parties to resolve the clouded titles to these lands. H.R. 5049 would do this by placing certain parcels of non-Indian lands located south of the River into trust for the Tribes and by converting certain parcels of Indian trust lands located north of the River into fee lands and transferring these parcels to the Blackfoot River Flood Control District No. 7.

Clearing title would enable the Tribes and non-Indian landowners to farm or use the land. The parties have lost valuable income due to the inability to farm these lands. Given that the federal government created these hardships and burdens, it should assist us by enacting H.R. 5049 as soon as possible.

II. Background of the Shoshone-Bannock Tribes and the Fort Hall Reservation

The Tribes are a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California and who have occupied these areas since time immemorial. As mentioned above, President Johnson's 1867 Executive Order designated the Reservation for various Shoshone and Bannock bands. On July 3, 1868, the Shoshone and Bannock Tribes concluded the Second Treaty of Fort Bridger, which was ratified by the United States Senate on February 24, 1869. Article 4 of the Fort Bridger Treaty reserved the Reservation as a "permanent home" to the signatory tribes. Although the Fort Bridger Treaty called for the Reservation to be approximately 1.8 million acres, various "surveying errors" in 1873 reduced its actual size to approximately 1.2 million acres.

One of the United States' purposes in setting aside the Reservation was to protect the Tribes' rights and to preserve for them a home under shelter of authority of the United States. Subsequent cession agreements with the United States reduced the Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 97% of the land is tribal land or held by the United States for the benefit of the Tribes or its individual members. The Tribes' territory is the largest Reservation in Idaho and forms a large cohesive geographic area that supports a population of over 6,000 people and provides an irreplaceable homeland for economic activity and to ensure that our vibrant culture and traditions can continue to flourish. Our current tribal membership is 5,815 members.

The Reservation is blessed with an extensive biodiversity including rangelands, croplands, forests, streams, three major rivers (the Snake, Blackfoot, and Portneuf), reservoirs, springs, and wetland areas, an abundance of medicinal and edible plants, wildlife (elk, deer, moose, bison, big horn sheep, etc.), various species of fish, birds, and other animal life. The Reservation lands are mountainous and semi-desert, and overlay the Snake River aquifer, a large groundwater resource. The culture and continued existence of the Shoshone and Bannock peoples depend on these resources.

The Shoshone and Bannocks have an established long-standing and continuous dependence on riparian resources of the Snake and Blackfoot Rivers. No place illustrates the varied resources and subsistence strategies of the Shoshone-Bannock people than the Fort Hall Bottoms, located at the confluence of the Snake and Blackfoot Rivers. For centuries, Shoshone-Bannock have fished, hunted, processed game, built tools and lived along the Snake and Blackfoot Rivers.

III. The United States' Rechannelization of Blackfoot River

In the 1950's and early 1960's, the River annually flooded and caused damage to local homes and properties. The United States Army Corps of Engineers, in 1964, undertook a local flood protection project on the River authorized under section 204 of the Flood Control Act of 1950. The project consisted of building levees, replacing irrigation diversion structures, replacing bridges, and channel realignment. The channel realignment portion of the project altered the course of the River and caused the land issues between the Tribes/Indian allottees and non-Indians for over 45 years.

Following the channelization, individually Indian owned and Tribally owned trust lands (approximately 37.04 acres) ended upon on the north side of the River, and non-Indian owned lands (approximately 31.01 acres) ended up on the south side of the River within the boundaries of the Reservation. Since the 1960's, the parcels of land have remained idle because the Tribal/Indian landowners and non-Indian landowners could not gain access to the parcels of land without trespassing or seeking rights-of-way across other owner's land. As mentioned previously, the inability to farm these lands has deprived landowners of vital income. Attached are two aerial images showing some of the Indian and non-Indian loops affected by the channelization.

The Department of Interior, Bureau of Land Management, Cadastral Survey Office, conducted surveys of the River in 1999 through 2003 and prepared plats representing the surveys that show the present course of the River and identify the Reservation borders that existed at the time the Reservation was established. *See* 67 Fed. Reg. 46,686 (July 16, 2002); 67 Fed. Reg. 64,656 (October 21, 2002); 68 Fed. Reg. 17,072 (April 8, 2003); 69 Fed. Reg. 2,157 (January 14, 2004); 70 Fed. Reg. 3,382 (January 24, 2005). Since the realignment of the River is considered an "avulsive act," a change resulting from the man-made channelization, survey law deems there is no change to the Reservation boundary. The original River bed remains the northern boundary of the Reservation. This legislation does not change the original boundary of the Reservation as reserved by the Executive Order of 1867 and confirmed by the Fort Bridger Treaty of 1868.

IV. Litigation

In the late 1980's, the Snake River Basin Adjudication began in Idaho to decree water rights on rivers and streams, including the River. Several non-Indian landowners affected by the rechannelization claimed their place of use of water was on the Reservation. In 2006, the Tribes filed objections to these claimed water rights. After extensive meetings and multiple status conferences among the court, Tribes, and non-Indian landowners, it was agreed the best way to resolve these land ownership issues is through federal legislation as the state water court does not have the ability to resolve the land issues. When previous bills to resolve the land title were not enacted into law, the court issued water rights to the respective parties with the proviso that any lands at issue held by the non-Indians would require them to enter into leases with the Tribes during the pendency of any legislative efforts. The Tribes then dismissed their objections to these water claims.

V. The Legislation

This legislation addresses about 10 miles along the River. There are 44 loops created by the rechannelization in question, and land title would be resolved. Under H.R. 5049, 31.01 acres of land currently owned by non-Indian landowners on the south side of the River would be placed into trust for the Tribes. In exchange, the United States would convert 37.04 acres of trust land currently owned by the Tribes and Indian allottees into fee lands and transfer these lands to the Blackfoot River Flood Control District No.7, which represents the North Bank non-Indian landowners.

In the 111th and 112th Congresses, objections were raised in the Senate about the authorization for appropriations provision contained in previous versions of the bill based upon the rationale that the provision would authorize new spending with no available offset. The authorization for appropriations provision would have allowed compensation to landowners losing net lands under the bill and compensation for trespass and loss of use of lands since 1964 given the federal government created these problems by rechanneling the River.

Recognizing the importance of moving forward, the parties last year agreed to remove the authorization for appropriations provision. Accordingly, the bill does **not** contain an authorization for appropriations provision. Instead, as an alternative to try to make the parties as whole as possible, as set forth in Section 6(b)(1)(A) of the bill, the Blackfoot River Flood Control District No. 7 would be responsible for ensuring that non-Indians landowners incurring a net loss of lands on the south side of the River will be compensated at fair market value through the sale of lands located on the north side that would be conveyed under the bill from the Tribes and Indian allottees. Also, separate from the legislation, the Tribes would compensate Indian allottees whose lands would be transferred to the Blackfoot River Flood Control District No. 7 under the bill. The Tribes would not be compensated under the bill for its net loss of lands or for the compensation it will provide to the Indian allottees but is working to see if there are other ways separate from the legislation to assist the Tribes. All of the parties agreed to forgo seeking compensation for trespass damages and loss of use of lands in the bill in order for the bill to advance.

In addition to clearing title, the non-Indians would not face any future challenges in the form of trespass actions by the United States and the Tribes for their use of lands on the north side of the River.

VI. Conclusion

The Shoshone-Bannock Tribes, the Tribal member allottees, and the non-Indian landowners share a common interest of reaching a resolution of these long-festering land issues. We have worked diligently on this legislation to meet the needs of all stakeholders. We respectfully request swift enactment of H.R. 5049. Thank you for the opportunity to testify on this bill.

**Statement of Nathan Small, Chairman of the Fort Hall Business Council
for the Shoshone-Bannock Tribes**

Hearing on H.R. 5050, May 31, 1918 Act Repeal Act

House Natural Resources Subcommittee on Indian and Alaska Native Affairs

July 29, 2014

I. Introduction

Good afternoon Chairman Young, Ranking Member Hanabusa, and Members of the Committee. My name is Nathan Small. I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Reservation (Reservation) located in southeast Idaho. I am honored to be here today to provide our views on H.R. 5050, the May 31, 1918 Act Repeal Act. The Tribes thank Rep. Simpson for his hard work on this issue and for introducing H.R. 5050, which would repeal the antiquated and paternalistic Act of May 31, 1918 (1918 Act), which is an attachment to our testimony, that grants the federal government unilateral authority to take the Tribes' treaty-protected Reservation lands out of trust status to transfer to a local municipality for use as a townsite and for other purposes.

H.R. 5050 is identical to S. 2041, as amended by the Senate Indian Affairs Committee when the Committee favorably approved the bill on June 11, 2014. Senator Mike Crapo and Senator Jim Risch, who introduced S. 2041 on February 25, 2014, are working to see if the bill can be placed on the Unanimous Consent calendar in the Senate after the August recess.

Even assuming honorable intentions when the 1918 Act was passed, the purported need for this law to help the Shoshone-Bannock people market and sell our grain and other crops in a more convenient location during the horse and buggy days has long passed. Based upon the 1918 Act, approximately 120 acres of the Tribes' lands were taken out of trust. The Tribes have sought to restore these lands back into trust status over many decades with little success. Currently approximately 111 acres of the original 120 acres of 1918 Act lands are not held in trust. These lands are not only located within Reservation boundaries but also located in the heart of the Reservation near the hub of tribal governmental and cultural and traditional activities. Restoring these lands taken under the 1918 Act back to trust status is a top priority of the Tribes given the close proximity of these lands to core tribal activities.

II. Background of the Shoshone-Bannock Tribes

The Tribes are a federally recognized tribe. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California. The Tribes ceded control of these vast areas of our homelands through a series of Executive Orders and Treaties with the United States. The Fort Hall Reservation was designated by Executive Order in 1867. On July 3, 1868, the Tribes entered into the Fort Bridger Treaty with the United

States, which promised that the Reservation would be our “permanent home.” The Treaty called for the Reservation to consist of approximately 1.8 million acres in what is now southeast Idaho.

One of the United States’ purposes in setting aside the Reservation was to protect the Tribes’ rights and to preserve for them a home under shelter of authority of the United States. Subsequent cession agreements with the United States reduced the Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 97% of the land is tribal land or held by the United States for the benefit of the Tribes or its individual members. The Tribes’ territory is the largest Reservation in Idaho and forms a large cohesive geographic area that supports a population of over 6,000 people and provides an irreplaceable homeland for economic activity and to ensure that our vibrant culture and traditions can continue to flourish. The Tribes’ current membership is 5,815 citizens.

III. Act of May 31, 1918, Should be Repealed

In the late 1800’s and early 1900’s, due to pressures from settlers and miners, among other things, the federal government sought to turn the Shoshone and Bannock people into farmers and ranchers to acculturate them to reservation life so that we would stay on the Reservation and give up our traditions since time immemorial of seasonal migrations to hunt, fish, and gather over our vast range of homelands. The Shoshones and Bannocks, however, proudly continued to practice our traditional ways and continue to do so to this day.

As part of the federal government’s efforts, on May 31, 1917, Franklin Lane, Secretary of the Interior (Interior), wrote a letter to Congressman Charles Carter, Chairman of the House Committee on Indian Affairs, on the need for Congress to enact legislation to authorize Interior to establish a townsite on the Reservation. His letter quotes a report from the local Indian affairs superintendent: “Plans are now under way for the development of practically all of the irrigable land on the reservation within the next two years. It is important that arrangements be made at the earliest possible date for opening the Fort Hall town site to provide local markets, warehouses, elevators, and other necessary conveniences for the Indians and lessees who are developing the irrigable lands.” The letter is contained in a report of the Senate Committee on Indian Affairs in the 95th Congress dated April 3, 1918, on H.R. 4910, the May 31, 1918 Act, which Congress enacted into law.

Secretary Lane added, “[i]n 1912, while allotments were being made to Indians on the reservation, the allotting agent was instructed to withhold from allotment” a particular area for the establishment of a townsite. The area was desirable due to its proximity to a railroad and a county road. Interior could not execute its plan without legislation to authorize the establishment of a townsite within the Reservation.

Pursuant to Interior’s request, Congress enacted the 1918 Act. This law authorized Interior to take the Tribes’ Reservation lands out of trust and set aside these lands for a townsite to be used for various purposes under the “care and custody” of a “municipality.” Approximately 120 acres of land were taken out of trust status pursuant to the 1918 Act within the boundaries of the Reservation and within Bingham County. However, a municipality was never formally established to govern the townsite. In H.R. 5050, this 120-acre area of lands taken out of trust under the 1918 Act is defined as the “Fort Hall Townsite” based upon a legal description from a

survey completed on May 19, 1921, and depicted on a document entitled “Plat of the Townsite of Fort Hall” on file with Bingham County, Idaho, and the Tribes, which is attached to this testimony. This definition was included in the bill at the Department of the Interior’s request after Assistant Secretary Kevin Washburn testified on S. 2041 before the Senate Indian Affairs Committee on May 7, 2014.

On August 5, 1966, in Public Land Order 4072, Interior’s Assistant Secretary Harry R. Anderson restored to the Tribes’ ownership of approximately 4 acres of undisposed lands taken out of trust under the 1918 Act at the Tribes’ recommendation and that of the Commissioner of Indian Affairs. This Public Land Order is attached to our testimony. The Tribes ultimately seek restoration of the remaining lands in the Fort Hall Townsite, which totals approximately 111 acres, because these lands are centrally located on the Reservation and vital to the Shoshone-Bannock people. In fact, these lands are only a few blocks away from the Tribes’ Business Center, the Festival Arbor, the Rodeo Grounds, the Justice Center, the Fire and EMS Complex, the Not-So-Gah-Neer Health Clinic, and other tribal buildings and areas. Also, the Tribes’ Fisheries Department is located in the Fort Hall Townsite.

The Tribes and Bingham County (County) have cooperated extensively, especially within the past decade, to address matters that have arisen on the Fort Hall Townsite and other matters of mutual interest and concern. The lots in the Fort Hall Townsite are currently owned by the Tribes, Tribal members, and non-Indians and contain the Ft. Hall Elementary School, an array of churches, homes, various small businesses, and a park. At the Department of the Interior’s request from its testimony on S. 2041 in the Senate, the Tribes compiled ownership info of the lots in the Fort Hall Townsite and other background information. For many years, the County has not assessed property taxes on persons residing on non-trust townsite land, acknowledging that the Tribes have provided governmental services to the residents of the site. Today, the governmental services that the Tribes provide these residents include: 1) fire protection; 2) law enforcement; 3) emergency medical services; 4) water and sewer; and 5) road service.

In 2009, the Tribes and the County entered into a Memorandum of Agreement (MOA) to formalize a cooperative arrangement over the Fort Hall Townsite and over all lands where the boundaries of the County overlap the exterior boundaries of the Reservation. In the MOA, “Bingham County and the Tribes memorialize their agreement that the Tribes shall exercise regulatory authority over land use and zoning matters arising on the Reservation.” In addition, under the MOA, the Tribes’ Land Use Department oversees zoning, the issuance of building permits, inspections of properties, and all other uses of property within the Reservation. The purpose of the MOA is to “provide effective zoning and land use regulation” for overlapping lands in order to ensure “cooperation, consistency, and certainty.”

The legal authority still exists under the 1918 Act for Interior to unilaterally take the Tribes’ trust lands within the boundaries of the Reservation out of trust. The Tribes seek repeal of the 1918 Act to protect our lands. The 1918 law stems from a dark chapter in U.S. history in which federal allotment policy paved the way for homesteaders and others to develop treaty-protected Reservation homelands. That destructive policy resulted in the loss of approximately 90 million acres of tribal lands across the country. Although Congress later reversed this policy, the Tribes

and other tribes across the country are still working to address the results of these destructive policies.

IV. Description of the Legislation

First, H.R. 5050 would repeal the 1918 Act that grants Interior with unilateral authority to establish a townsite and other areas within the borders of the Reservation by taking the Tribes' lands out of trust. Second, H.R. 5050 would provide the Tribes with an opportunity to restore a portion of our Reservation lands, acknowledging a right of first refusal to purchase lands in the Fort Hall Townsite taken out of trust under the 1918 Act at fair market value that are offered for sale. Third, H.R. 5050 would direct Interior to place non-trust Fort Hall Townsite lands acquired by the Tribes or Shoshone-Bannock tribal members back into trust for our benefit.

The amount of land in the Fort Hall Townsite that could potentially be placed into trust under H.R. 5050 is approximately 111 acres as some of these lands were previously restored to trust status. Lastly, H.R. 5050 would not impact any valid existing rights to land taken out of trust pursuant to the 1918 Act, which ensures that current uses and land ownership would not be impacted by repeal of the law.

Bingham County supports H.R. 5050. A few years ago, the County approached the Tribes to jointly seek repeal of the 1918 Act to resolve issues relating to Fort Hall Townsite lands, including clouded titles and insurance risks. In a letter dated September 16, 2013, from the Bingham County Commissioners to Senator Crapo, Senator Risch, and Congressman Simpson, the County requested enactment of legislation to repeal the 1918 Act. The County's letter raises concerns with Interior's "authority to unilaterally set aside or apart land for town-site or other purposes within the County and within the boundaries of the Reservation." By seeking a repeal of the 1918 Act, "Bingham County simply seeks to continue our strong partnership with the Tribes without the cloud created by the Act hovering over us." This letter is attached to our testimony.

H.R. 5050 is consistent with federal laws, policies and agency actions already taken to restore and protect tribal homelands. The bill is also consistent with the Tribes' priority to protect and reacquire lands taken from it within Reservation boundaries and the Tribes' aboriginal territory.

V. Conclusion

H.R. 5050 would repeal an anachronistic law that, if left on the books, allows Interior to take the Tribes' lands out of trust and create, in turn, unwanted risks for the County. Further, H.R. 5050 would provide the Tribes and Tribal members with opportunities to restore lands into trust status critical to the economic and cultural core of the Reservation. The Tribes urge swift enactment of H.R. 5050. Thank you for the opportunity to testify on this bill.