

TRUST LANDS AND RESOURCES OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

HEARING

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE**

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

S. 266

REGARDING THE USE OF THE TRUST LAND AND RESOURCES OF THE
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF
OREGON

JULY 24, 2001
WASHINGTON, DC



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TRUST LAND AND RESOURCES OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION IN OREGON

TUESDAY, JULY 24, 2001

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senators Inouye, Akaka, and Campbell.

STATEMENT OF HON. DANIEL K. INOUE, U.S. SENATOR FROM HAWAII, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee meets this morning to receive testimony on a bill which provides for the ratification by the Congress of an agreement between the Confederated Tribes of the Warm Springs Reservation, the Department of the Interior, and the Portland General Electric Co.. This agreement would provide the Warm Springs Tribes with the means to secure an ownership interest in the Pelton Project and become a co-applicant with the Portland General Electric Co. in the licensing process of the Federal Energy Regulatory Commission.

[Text of S. 266 follows:]

107TH CONGRESS
1ST SESSION

S. 266

Regarding the use of the trust land and resources of the Confederated
Tribes of the Warm Springs Reservation of Oregon.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2001

Mr. SMITH of Oregon (for himself and Mr. WYDEN) introduced the following
bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

Regarding the use of the trust land and resources of the
Confederated Tribes of the Warm Springs Reservation
of Oregon.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. AUTHORIZATION FOR 99-YEAR LEASES.**

4 The first section of the Act entitled “An Act to au-
5 thorize the leasing of restricted Indian lands for public,
6 religious, educational, residential, business, and other pur-
7 poses requiring the grant of long-term leases”, approved
8 August 9, 1955 (25 U.S.C. 415(a)), is amended—

1 (1) by inserting “, the reservation of the Con-
2 federated Tribes of the Warm Springs Reservation
3 of Oregon,” after “Spanish Grant”); and

4 (2) by inserting “lands held in trust for the
5 Confederated Tribes of the Warm Springs Reserva-
6 tion of Oregon” before “, lands held in trust for the
7 Cherokee Nation of Oklahoma”.

8 **SEC. 2. USE OF CERTAIN TRUST LANDS AND RESOURCES**
9 **FOR ECONOMIC DEVELOPMENT.**

10 (a) APPROVAL OF AGREEMENT.—The use of tribal
11 lands, resources, and other assets described in the Long-
12 Term Global Settlement and Compensation Agreement
13 and its Included Agreements (in this section referred to
14 collectively as the “Agreement”) dated April 12, 2000, be-
15 tween the Department of the Interior, the Confederated
16 Tribes of the Warm Springs Reservation of Oregon (in
17 this section referred to as the “Tribes”), and the Portland
18 General Electric Company is approved, and the authoriza-
19 tion, execution, and delivery of the Agreement by the par-
20 ties thereto is ratified and confirmed. The Secretary of
21 the Interior shall be deemed authorized to take all actions
22 necessary to approve and implement the Agreement. No
23 Federal law regarding tribal lands, resources, or other as-
24 sets shall be deemed—

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

3 (2) to prevent, prohibit, supersede, impair, re-
4 strict, or otherwise hinder any pledge or encum-
5 brance by the Tribes of the sums that may be paid
6 to or received by or on the account of the Tribes in
7 connection with the Agreement.

8 (b) RULES OF CONSTRUCTION.—Nothing in sub-
9 section (a) shall be construed as—

10 (1) addressing—

11 (A) any provisions of the Agreement other
12 than those regarding use of tribal lands, re-
13 sources, or other assets; or

14 (B) the approvals under Federal and State
15 law that the parties may be required to obtain
16 for provisions of the Agreement other than
17 those regarding use of tribal lands, resources,
18 or other assets; or

19 (2) implying that Federal law, as in effect as of
20 the date of enactment of this section, does not pro-
21 vide authority for Federal approval of the use of
22 tribal lands, resources, or other assets described in
23 the Agreement, or the implementation thereof.

The CHAIRMAN. Is Senator Wyden or Senator Smith here?
[No response.]

The CHAIRMAN. If not, may I call upon the Deputy Commissioner for Indian Affairs, Department of the Interior, Sharon Blackwell.

STATEMENT OF SHARON BLACKWELL, DEPUTY COMMISSIONER OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Ms. BLACKWELL. Good morning, Mr. Chairman, Mr. Vice Chairman and members of the committee.

Thank you for the opportunity to present the views of the Department of the Interior on S. 266 entitled, "The Use of 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 the statement suggested language that covers the Department's concerns regarding the authorities addressed in the legislation.

As those testifying later can speak more directly about the project and its financing arrangements, I will briefly summarize the agreement that is the subject of this legislation. On April 12, 2000, the Confederated Tribes of the Warm Springs Reservation 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 before the FERC licensing proceedings. 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 in order to provide an unqualified level of assurance that the agreement is proper, binding and will not be altered.

The Department maintains that the Secretary of the Interior had all the necessary authority to approve the terms and the intent of the agreement under the provisions of the Federal Power Act. Under that act, the Secretary is given broad authority to ensure adequate protection and utilization of Federal reservations and FERC licenses. For example, under 16 U.S.C. section 797(e), referred to generally as section 4(e), the Secretary provides FERC with license conditions to ensure that hydropower projects are consistent with the purposes of affected Indian reservations. In this regard, the Secretary of the Interior 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 opportunity. 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.

The Department is also concerned that the legislation would amend 25 U.S.C. section 415(a) to provide the tribes with 99-year leasing authority to account for the life of this agreement. Similar to our position regarding the Secretary's authority, the Department

maintains that the Federal Power Act provides all the authority necessary for FERC license projects to occupy tribal lands for the term of the license. Thus, no leases of any term are required and the amendment of 25 U.S.C. section 415(a) is not necessary. Nevertheless, while the Federal Power Act 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 before this time and in the future pursuant to that authority of the Secretary under the Federal Power Act. We believe that this language will allow the Warm Springs Tribe 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 concern follows this statement and has been provided to the committee.

I would be pleased to respond to any questions.

[Prepared statement of Ms. Blackwell appears in appendix.]

The CHAIRMAN. The Department of the Interior's position is that although legislation may not be necessary, this bill will not be objected to because it may cover whatever questions the court may?

Ms. BLACKWELL. I believe that the intent of the legislation is to provide the tribes bonding counsel with what, in the opinion of the bonding counsel, will result in an unqualified bonding opinion. The Department has no objection to seeing the tribes achieve that. Our concern is related entirely to past agreements of a similar nature, that have been approved pursuant to the Federal Power Act and those that may be approved in the future.

The CHAIRMAN. So with the suggested amendment, the Department would have no objection whatsoever?

Ms. BLACKWELL. That's correct, Senator Inouye.

The CHAIRMAN. Thank you.

Mr. Vice Chairman.

Senator CAMPBELL. Thank you, Mr. Chairman.

And the Confederated Tribes have no objection to your suggested language?

Ms. BLACKWELL. I visited this morning with Chairman Patt and it may be that he will have a statement to make with regard to our suggestions.

Senator CAMPBELL. Do you have any input at all from the State?

Ms. BLACKWELL. No; we have not.

Senator CAMPBELL. I'm not familiar with this project. Can you tell me in a nutshell the scope of it? I guess like all water projects, it provides irrigation of water and power to someone, is that right?

Ms. BLACKWELL. The Portland General Electric Co. [PGE] owns three dams at the Pelton-Round Butte Hydroelectric Project. It is on the Deschutes River and it is approximately 100 miles from where the river flows into the Columbia.

The Round Butte Dam is a big project, 440 feet tall. The Pelton Dam is 204 feet tall and then the deregulating dam, operated by the Warm Springs Tribe, is a smaller operation and about 40 feet tall. The project has about 427 megawatt capacity. PGE owns and operates the generators in the two larger, upstream dams. The tribe owns, operates and sells electricity from a 19 megawatt generator and a smaller, deregulating dam.

Senator CAMPBELL. I see. Thank you.

Thank you, Mr. Chairman. I have no further questions.

The CHAIRMAN. Thank you, Ms. Blackwell.

The committee is most pleased to recognize the presence of the very distinguished Senator from Oregon, the Honorable Gordon Smith. Senator Smith, we would be most pleased to receive your testimony, sir.

STATEMENT OF HON. GORDON SMITH, U.S. SENATOR FROM OREGON

Senator SMITH. Thank you, Mr. Chairman.

I appreciate your willingness, and Senator Campbell, to hold this hearing to consider S. 266, a bill I introduced along with my colleague, Senator Wyden, regarding the use of the trust land and resources of the Confederated Tribes of the Warm Springs Reservation in Oregon.

I would also like to extend a warm welcome to those witnesses who have traveled here today to testify on this bill—Olney Patt, Jr, the chairman of the Warm Springs Tribal Council; Robin Tompkins, general counsel, Portland General Electric; and Doug Goe, chairman of the Public Finance Group at Ater Wynne.

This legislation is vital to ensuring that all the provisions of the April 12, 2000 agreement between the Confederated Tribes of the Warm Springs Reservation and PGE are valid and have Federal approval. Under this agreement, the tribes and PGE will seek a joint Federal Power license for the Pelton-Round Butte Hydroelectric Project on the Deschutes River in Oregon.

This agreement and this legislation were both negotiated with great care. The tribes are seeking this legislation to ensure that the agreement in its entirety is valid and can serve as the basis for financing to purchase its interest in the project on January 1, 2002. This historic agreement is good for all the parties involved and will benefit the ratepayers of Oregon in years to come. It is an innovative approach to the often contentious issue surrounding the relicensing of hydroelectric facilities on or adjacent to Indian lands.

I also want to congratulate the tribes for responding to and resolving the concerns of county officials in Jefferson County, OR who are concerned about the loss of property tax revenue to the county under this new agreement. That issue has been resolved. It is my understanding local officials are strongly supportive of this agreement and this legislation.

There is, however, a need to move this legislation in an expeditious manner. The legislation must be enacted before the end of this session so the tribes can put together the financing to purchase their share of the project by January 1, 2002. I realize that the legislation has been substantially rewritten on the House side and there are a few issues still to be resolved with that redraft. In

fact, staff are meeting with stakeholders after this hearing to try and reach a consensus on the bill on that side of the Hill. As the principal sponsor of the Senate bill, I am happy to have the new language, once agreed upon by the parties, substituted for the bill that I have introduced.

Mr. Chairman, again, I thank you for your leadership on this issue and Senator Campbell as well. I am hopeful that this consensus legislation can move in the near future. Thank you in advance for your consideration of it.

I would be happy to answer any questions.

The CHAIRMAN. Thank you very much, Senator Smith.

This is a historic moment because it should serve as a model for Indian nations and interested parties in getting together and I congratulate you on coming forth with this bill.

I have been advised that the parties you represent will be meeting this afternoon to work out the language and if an agreement is reached, the vice chairman and I would be very glad to set up a markup for this measure next Tuesday, July 31.

Senator SMITH. Wonderful. I thank you for that. I would just add parenthetically that I am very gratified by this agreement in that it brings together the interest of the general community and ties them to the interest of the tribal community and gives the tribe a financial stake in these contentious issues around hydroelectric power, around fish, and all these competing values that are all valuable and it puts everyone at the table with a stake in the outcome to make sure our obligation to people to provide electric power and our obligation to fish and wildlife will be well served by the tribes having a place in this very important deal.

The CHAIRMAN. Senator Campbell.

Senator CAMPBELL. I just want to commend both Senators for this bill. In the history of the American West, the discussion of the use of water and power has not always been a friendly discussion between tribes and non-Indians or tribes and States. The money, the millions if not hundreds of millions of dollars that have gone into litigation fighting out those problems through courts to my way of thinking is something we have to get away from. I think this kind of legislation in which the parties agree and in which all can share the benefits of the project is definitely the way to go. I just wanted to tell you that for the record.

Senator SMITH. Thank you, Senator Campbell. I agree with you. I think in our history in interior matters, we take water and power projects at the tribes rather than with the tribes. This is breaking new ground and it's a credit to the parties and this committee that such legislation could come forward.

The CHAIRMAN. Thank you very much, sir.

Now may I call upon the chairman of the Confederated Tribes of the Warm Springs Reservation, Warm Springs, OR, Olney Patt, Jr.; the assistant general counsel, Portland General Electric Co., Portland, OR, Robin Tompkins; and Douglas Goe, Esq., Portland.

Mr. Chairman, welcome, sir.

STATEMENT OF HON. OLNEY PATT, JR., CHAIRMAN, THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION, ACCOMPANIED BY JIM NOTEBOOM, ESQUIRE, TRIBAL ATTORNEY

Mr. PATT. I am Olney Patt, Jr., tribal council chairman of the Confederated Tribes of the Warm Springs Reservation of Oregon. To my left is tribal attorney, Jim Noteboom.

I am pleased to appear before the committee today to express our strong support for S. 266, a bill essential to our purchase of one-third or more of the Pelton Hydroelectric Project. Section 1 of the bill provides the Secretary of the Interior with authority to approve leases of up to 99 years for trust land on our reservation and land held in trust for our tribe. This authority will help give our tribe greater flexibility in managing our land for economic and other development. Section 2 provides the Secretary of the Interior with clear authority to approve the use of Warm Springs Trust Land resources and other assets in our purchase of an interest in Pelton Project. As Mr. Goe, our bond counsel, will discuss a little later, this express authority is necessary for the bonds that will finance our purchase.

The 440 megawatt Pelton Hydroelectric Project is a series of three dams across the Deschutes River that forms the eastern boundary of the Warm Springs Reservation in central Oregon. Portland General Electric Co. represented here today by their general counsel, Robin Tompkins, owns the project with the exception of a 19 megawatt generator and the reregulating dam owned by the tribe.

About one-third of the project is on the Warm Springs Trust land for which the tribe has been receiving about \$11-million a year in rent. Clearly the project is a key economic resource to Warm Springs and one in which we would prefer to be owners rather than recipients of rent.

The FERC license for the project expires this December 31 and both the tribe and PGE submitted competing applications for the new license. Rather than compete, the parties realize it would be far better to join forces and after lengthy negotiations, we arrived at a global settlement agreement whereby the tribe will purchase a one-third interest in the project this December 31 with options through the year 2037 to buy a majority interest.

Because this agreement involves the use of Warm Springs Trust Land, resources and other assets for the project, the Department of the Interior was a full party to the negotiations. One of the issues we examined was the adequacy of Interior's authority to approve the use of those trust assets for the agreement. Interior believes its existing authority is sufficient and on April 12, 2000, all three parties, Interior, the tribes and PGE signed the agreement.

There is a high likelihood that there is legal authority under existing Federal law for this agreement but there is not absolute certainty and the lenders who will finance our Pelton purchase will require legal certainty, particularly for the revenue bonds we expect to use. So S. 266 seeks to establish that certainty and is essential for our going to the bond market to secure the \$30 million we need by December 31 for the project.

Accordingly, section 2 of S. 266 seeks to do four things. First, it provides the needed clear and specific Federal approval of the use of Warm Springs trust land, resources and other assets in the project. Second, it limits the scope of that authority to just that needed for the use of our land, resources and other assets as described in the agreement. Third, it seeks to make certain that the funds the tribes receive from the sale of power from the project can be securely pledged to repay the bondholders. Fourth, it seeks to assure this particular bill is not to create inference regarding Interior's current authorities so they remain fully in tact and effective.

Mr. Chairman, counterpart legislation has been introduced in the House and the Resources Committee has suggested some refinements to further clarify the legislation. We have been working with the House committee staff and the Oregon delegation on those refinements and hope to reach resolution in the next few days. We look forward to discussing those revisions with this committee so that if they are acceptable, S. 266 may be taken to mark up before Congress adjourns for its August recess.

Thank you. That concludes my statement and I would be happy to respond to any questions.

[Prepared statement of Mr. Patt appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Chairman.

May I call upon the assistant general counsel, Ms. Tompkins.

**STATEMENT OF ROBIN TOMPKINS, ASSISTANT GENERAL
COUNSEL, PORTLAND GENERAL ELECTRIC**

Ms. TOMPKINS. Thank you, Mr. Chairman.

I am Robin Tompkins, assistant general counsel of Portland General Electric Co. in Portland, OR.

I am genuinely pleased to have this opportunity to testify to the U.S. Senate Committee on Indian Affairs regarding S. 266 and share with you the views of our company on this important legislation.

This bill, and the companion legislation in the U.S. House of Representatives, address the use of trust land on the Warm Springs Reservation of Oregon. I want to begin by commending Senators Ron Wyden and Gordon Smith for proposing this legislation and for their support of this historic agreement between the Confederated Tribes of the Warm Springs Reservation of Oregon and Portland General Electric regarding the ownership and operation of the Pelton-Round Butte Hydroelectric Project in central Oregon.

The passage of this bill will help bring closure to almost 5 years of negotiations between the parties and the resulting review by various Federal agencies which include the Department of the Interior and the Federal Energy Regulatory Commission. The negotiated settlement between PGE and the tribes has the full support of the Oregon congressional delegation and the bipartisan leadership of Senators Wyden and Smith have been essential.

The Pelton-Round Butte Project is located on the Deschutes River in central Oregon. It is one of the most important sources of electricity in the State of Oregon, supplying electric power to over 300,000 Oregon families. The project consists of three dams—the Pelton Dam, the Round Butte Dam and the reregulating dam. The

project commenced operation in 1957 with construction of the first of the three dams and became fully operational in 1964.

The Federal Power Commission in the State of Oregon issued PGE a license for the construction and operation of the project based on an agreement between PGE and the tribes which included the ability of the tribes to install generating facilities at the reregulating dam. The dam and the reservoirs are located partly on tribal lands as you previously heard.

During the first term of the 50-year license, PGE was the sole owner and operator of the project. In the mid-1980's, the tribes became a co-licensee. Pursuant to the Federal Power Act, PGE has made annual rent payments to the tribes for the use of their tribal land. During the relicensing process, PGE and the tribes both applied to compete for ownership for the project. This arduous and competitive relationship existed until the parties negotiated the settlement of their differences and joined together to own and operate this valuable and important resource. The settlement that was reached called for PGE and the tribes to become joint licensees of the project.

As the chairman of the Confederated Tribes just reported, for the first 20 years of the project, beginning at the end of 2001, the tribes will own a one-third share of the project and then will have the opportunity to buy an additional share of the project and eventually become the majority owner.

This agreement accomplishes several important goals of PGE and the tribes. For the tribes, the settlement will grant the tribes a strong ownership position in the project and ensure many economic benefits far into the future. It will also enable them to exert more influence over environmental, cultural and recreational resources of the Deschutes River Basin. Most importantly for PGE, the agreement will preserve the value of the project for PGE customers.

The settlement negotiations have been lengthy and arduous but the hard work has been productive. The results of these consultations is a victory for PGE and the tribes but most importantly for the people of Oregon.

This legislation is necessary to ensure beyond all certainty that there is legal authority for the settlement agreement. As members of the committee know, the United States must consent to the lease, sale or other conveyance of tribal trust lands, resources and other assets. This legislation and the companion bill introduced in the House of Representatives ensures legal certainty to this historic agreement.

The lender who will finance the purchase of the tribe's interest in the project will require absolute authority in order to carryout the terms of the settlement agreement.

S. 266 addresses these concerns. First, the legislation confers authority on the Secretary of the Interior to approve leases of up to 99 years for trust lands on the Warm Springs Reservation and lands held in trust for the tribes. Second, the bill provides for specific approval of the lands and other resources owned by the tribes. The legislation also grants express authority to the Secretary of the Interior to execute and carry out these terms of the agreement. The bill further ensures that no Federal law would render the agreement unenforceable or impede the ability of the tribes to pledge the

revenues it receives from the sale of its power. Third, the bill specifies that the legislation does not apply to any provision other than those that deal with tribal lands and does not affect any other Federal or State agency's authority to approve this agreement. Fourth, the bill states this legislation does not require the Department of the Interior to seek legislative approval for similar agreements with other tribes.

This legislation is a critical and necessary component of this relicensing process. Its enactment will be a final step in a historic and significant agreement between Portland General Electric and the tribes and on behalf of PGE, I urge its speedy passage.

Thank you.

[Prepared statement of Ms. Tompkins appears in appendix.]

The CHAIRMAN. Thank you very much, Ms. Tompkins.

Mr. Goe.

STATEMENT OF DOUGLAS GOE, ESQ., ATER WYNNE LLP

Mr. GOE. Mr. Chairman, my name is Doug Goe. I am bond counsel and chair the Public Finance Group of Ater Wynne in Portland, OR. We serve as bond counsel to the Warm Springs Tribe and to the States of Oregon and Washington and local governments throughout the western United States.

In addition to serving as bond counsel to the Warm Springs Tribe on a national basis, we serve as bond counsel to many other Indian nations including the Yakima Nation in Washington, the Nez Perce Tribe in Idaho, the Seminole Tribe in Florida and the Navajo Nation in Arizona, New Mexico, and Utah.

Nationally recognized bond counsel are lawyers who work with State, local, and tribal governments in financing the whole range of public projects. As a necessary component of our role, we must analyze the Federal tax, the securities and administrative law and the substantive underlying legal principles governing the type of project being financed.

I appreciate this opportunity to testify today on why S. 266 is necessary for the Warm Springs Tribe to issue revenue bonds to finance its acquisitions of its interests in the Pelton and Round Butte Projects.

A key point in understanding why the legislation is necessary is that the bonds being issued are revenue bonds. That is, they will be secured solely by the revenues the tribe derives from selling its power generated by the dams. In the event those revenues are not available for whatever reason, bond investors will lose their investment.

Revenue bond investors are extremely conservative. They are conservative because bonds, as you know, are a form of debt instrument in which the only return to investors is the interest rate. In contrast to the NASDAQ and other stock markets where investors can realize a huge up side return—we hope the markets will return to those kind of days—bond investors have no up side.

Since the 1800's, the bond market has required an unqualified opinion of bond counsel before they will purchase the bonds. The bond counsel opinion must say that the bonds were legal, valid and binding obligations of the government issuing the bonds. In the case of revenue bonds, which are not backed by the taxing power

or other resources of the government issuing the bonds, investors require an additional opinion that the pledge of revenues securing the revenue bonds is valid and superior to all other liens or encumbrances.

After an extensive review of the applicable Federal statutes and case law, we have concluded that we cannot render an unqualified opinion without S. 266 because we do not find any express authority in Federal law for the Secretary of the Interior to have executed the long term global settlement and compensation agreement.

We also think there is an issue under section 10(e) of the Federal Power Act whether compensation for use of the tribes' lands should be payable to the United States in trust for the benefit of the tribes instead of being paid directly to the tribes as provided in the global settlement agreement.

A related concern is that a Federal court would consider the proceeds of the sale of the electricity from the Pelton Project to be trust funds payable for the benefit of the tribes and therefore, the revenues pledged to bondholders cannot be used to pay principal and interest on the bonds.

While at the same time we concede there are good arguments for why these issues raised could be resolved in favor of the Department of the Interior, Portland General Electric Co. and the tribes and bondholders, these issues are not free from doubt. Therefore, the unqualified opinion standard of absolute certainty cannot be met.

We have discussed these matters extensively with the tribes' underwriter, the firm of Salomon Smith Barney and its counsel, Orrick Herrington and Sutcliffe, the leading bond counsel firm in the United States and Orrick has advised us as well that they would not be in a position to render an unqualified opinion given the state of the law.

They, with us, have advised the tribes that S. 266 is absolutely necessary for the tribes to obtain bond financing for this project. The essential elements that we think are required in the legislation are: congressional approval to the global settlement agreement, ensuring the Secretary has the authority to sign and implement the agreement; and that it is a legal, valid and binding agreement with respect to all parties.

S. 266 also must make clear the authority of the tribe to pledge revenues from the project and that such pledge will not violate section 10(e) of the Federal Power Act or any other provision of Federal law.

We support S. 266 and urge its prompt consideration and approval by the committee and its prompt passage on the Senate floor.

I very much appreciate the committee's time and attention and would be pleased to address any questions you might have.

[Prepared statement of Mr. Goe appears in appendix.]

The CHAIRMAN. Thank you.

Before proceeding, I would like to apologize for not announcing that Senator Ron Wyden has been at another committee hearing and he just walked in. I was just extending your apologies but I am glad you are here.

First, I just announced that all the parties are having a conference this afternoon. If the conference is successful in coming forth with an agreement, this committee is prepared to bring this matter up for a markup 1 week from now. If that is the case, we may be able to consider this measure before the recess begins.

Are there any contentious provisions in this measure that might delay this agreement?

Mr. GOE. If I might, I don't really think so. I think we are down to the lawyers talking about some very important words in the legislation and there have been some issues raised on the House side that we are working diligently with the House to resolve. I would say the House staff came back with a few changes in their markup of the bill. We had only very few word changes, very important word changes in terms of restoring what was in the Senate version but I think we are down to a very few words.

I certainly would hope that later this morning and this afternoon, we would be able to resolve those issues.

The CHAIRMAN. Are there any substantive or important material differences between the Senate bill and the House bill, Mr. Chairman?

Mr. NOTEBOOM. I don't believe there are important substantive differences. Each try and accomplish the same thing, obtain Federal approval and not adversely impact any other situation with an Indian tribe outside of this legislation. Both accomplish the same fundamental purpose, just in slightly different ways.

The CHAIRMAN. I gather this bill is necessary in the eyes of the bond counsel because without this you may not be able to go through with this agreement?

Mr. GOE. That is correct, Mr. Chairman.

The CHAIRMAN. Is that the understanding of the tribes?

Mr. NOTEBOOM. Yes; in addition, I think it is important to stress that this is not only important to bond counsel but to the tribes and the PGE because the agreement is potentially 50-plus years long and we have had a history of differences in the past. We've worked very hard to ensure this agreement will endure for the entire time and we will not have those differences arise again.

The CHAIRMAN. So this bill is necessary to clarify that term limitation issue?

Mr. NOTEBOOM. Yes; it is.

The CHAIRMAN. Ms. Tompkins, I note in your testimony that the tribal nation will have one-third interest for the first 20 years?

Ms. TOMPKINS. That is correct.

The CHAIRMAN. During that period, while PGE has the majority interest, will you continue to confer and consult with the tribes on matters of culture and environment?

Ms. TOMPKINS. Yes; not only is there an operations agreement where both parties work through operational issues related to the project, but the tribal representatives have a unique standing in that they also have a big say in both natural resources and cultural issues. As we move through the relicensing process, the tribes wear two hats. They will not only be project owners but they are sort of an agency that oversees, gives recommendations and input into significant cultural and fishery related issues.

We have worked successfully over the past few years as we have transitioned from say a landlord/tenant relationship to more of a partnership relationship. Now that we have this codified in this agreement, I think all parties can represent that we are working strong as partners and will always try to address each others' issues in a very productive manner so that we come out with the best solutions for the people of the State of Oregon.

The CHAIRMAN. On behalf of the committee, may I congratulate all of you for coming forth with this agreement. It is a historic moment. It is a model agreement which should give guidance to other Indian tribes and utility companies that hope to come forth with similar agreements on tribal lands. I think many tribes are watching this process. Congratulations and thank you very much.

The CHAIRMAN. May I now call upon the author of the measure that will make all this possible, the very distinguished Senator from Oregon, Senator Wyden.

STATEMENT OF HON. RON WYDEN, U.S. SENATOR OREGON

Senator WYDEN. Thank you, Mr. Chairman, and I will be very brief.

I want to express my thanks to you for your thoughtfulness. You have one of the busiest schedules of any member of the U.S. Senate and yet you have continually made time for this Senator and for important issues for our State. I just want to express my gratitude to you for all the thoughtfulness you have shown me.

I think you are absolutely right. This is precedent-setting work, what the tribes have done in our home State with PGE and with the Department of the Interior. I think they have outlined they have a number of technical issues yet to go but it is something that could serve as a model for this country. You better than anyone else in the U.S. Senate knows how contentious these issues can be in local communities. There are few issues that seem to polarize communities more than these sorts of questions. Yet, what we have been able to do in Oregon is what you have done in the U.S. Senate again and again and that's to bring folks together and say, let's get beyond this polarizing business, beyond the bickering and find the common ground.

I have a prepared statement and with your indulgence if that could be a part of the record, I would appreciate it. Just know of my profound gratitude to you for this and for all the help you have given me as a relatively new member of the Senate.

[Prepared statement of Senator Wyden appears in appendix.]

The CHAIRMAN. I thank you for your kind words but we are here because of this measure which we feel will set the tone for Indian country, especially those tribes with energy resources on their lands. They are looking for guidance and I think this is the type of guidance that should help everyone concerned. So once again, congratulations, sir.

Senator WYDEN. Thank you.

The CHAIRMAN. We will try our best to have this matter marked up 1 week from today. It should be on the floor for consideration before we begin our August recess.

Senator WYDEN. That would be very welcome news to the people of my State and we are very appreciative.

The CHAIRMAN. We do not want any brownouts there. [Laughter.]

Thank you very much.

With that, the hearing is in recess.

[Whereupon, at 10:55 a.m., the committee was recessed, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF M. SHARON BLACKWELL, DEPUTY COMMISSIONER OF
INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Good morning, Mr. Chairman and Members of the Committee. Thank you for the opportunity to present the views of the Department of the 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—

No. 1, to render the Agreement unenforceable or void against the parties; or

No. 2, to prevent, prohibit, supersede, impair, restrict, or otherwise hinder any pledge 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.

PREPARED STATEMENT OF DOUGLAS E. GOE, CHAIR, PUBLIC FINANCE GROUP ATER WYNNE LLP AND BOND COUNSEL TO CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION, OREGON

Mr. Chairman, members of the committee, my name is Doug Goe.

I am a bond counsel and the chair of the Public Finance Group of Ater Wynne LLP. We serve as bond counsel to the Warm Springs Tribe, to the States of Oregon and Washington and local governments throughout the western United States. We also serve as bond counsel to tribal governments on a national basis. For example, in addition to serving as bond counsel to the Warm Springs Tribe, we have served as bond counsel to the Yakima Nation in Washington, the Nez Perce Tribe in Idaho, the Navajo Nation in Arizona, New Mexico and Utah, and the Seminole Tribe in Florida. Nationally recognized bond counsel are lawyers who work with state, local and tribal governments in financing all types of public projects. As a necessary component of our role, we must analyze the applicable provisions of Federal, State and tribal tax, securities and administrative law and the substantive law governing the type of project being financed.

I appreciate the opportunity to testify today on why S. 266 is necessary for the Warm Springs Tribe to issue revenue bonds to finance its acquisition of certain interests in the Pelton and Round Butte hydroelectric project. A key point in understanding why the legislation is necessary is that the bonds being issued are revenue bonds that will be secured solely by the revenues the Tribe derives from selling its share of power generated by the dams. In the event those revenues are not available for whatever reason, bond investors will lose their investment.

No. 1. *Revenue Bond Investors are Very Conservative.* Bond investors are very conservative because bonds are a form of debt instrument under which the only return to investors is an interest rate. In contrast to the Nasdaq and other stock markets where investors can realize a huge upside and downside return, bond investors have no upside.

Since the 1800's, the bond market has demanded an unqualified opinion of nationally recognized bond counsel to the effect that the bonds they are purchasing are legal, valid and binding obligations. In the case of revenue bonds which are not backed by the taxing power or other resources of the entity issuing the bonds, investors require an additional opinion that the pledge of "revenues" securing the revenue bonds is valid and superior to all other liens or encumbrances.

No. 2. *Unqualified Opinion Standard Cannot Be Met Without S. 266.* After extensive research of applicable Federal statutes and case law, we have concluded that we cannot render an unqualified opinion without S. 266 because we do not find any express authority in Federal law for the Secretary of the Interior to have executed

the Long-Term Global Settlement and Compensation Agreement dated as of April 12, 2000 among the Tribes, the Department of the Interior and Portland General Electric Company [the "Global Settlement Agreement"].

We also think that there is an issue under section 10(e) of the Federal Power Act whether compensation for use of the Tribes' lands should be payable to the United States in trust for the benefit of the Tribe instead of being paid directly to the Tribe as provided in the Global Settlement Agreement. A related concern is that a Federal court would consider the proceeds of the sale of electricity from the Pelton Project as trust funds payable to the United States for the benefit of the Tribe and that, therefore, the revenues pledged to bondholders cannot be used to pay principal and interest on the bonds.

Time does not permit me to get into detail regarding other Federal law issues. We think that there are good arguments for why these issues we raised could be resolved in favor of the Department of the Interior, the Tribe, PGE and bondholders. However, the issues are not free from doubt. Therefore, the unqualified opinion standard of absolute certainty cannot be met.

No. 3. *Bond Underwriters Refuse to Purchase Bonds Without Opinion.* We have discussed these matters extensively with the Senior Managing Underwriter of the Tribes' bonds, Salomon Smith Barney and their counsel, Orrick Herrington and Sutcliffe. Orrick Herrington is the leading bond counsel firm in the United States. Orrick has told us that they, too, would not give an unqualified opinion because of the Federal law issues. Salomon has refused to take anything but an "unqualified opinion" on these issues. They have advised the Tribe, as have we, that S. 266 is absolutely necessary for the Tribe to obtain bond financing for the project.

No. 4. *Essential Elements of S. 266.* The essential elements that we think are required in the legislation is congressional approval of the Global Settlement Agreement insuring that the Secretary has the authority to sign and implement the agreement and that it is a legal, valid and binding agreement with respect to all parties. S. 266 also must make clear that the authority of the Tribe to legally pledge revenues from the Project and that such pledge will not violate section 10(e) of the Federal Power Act or any other provision of Federal law.

We support S. 266, and urge it's prompt consideration and approval by the Committee, and its prompt passage on the Senate floor.

Thank you for the committee's time and attention. I would be pleased to answer any questions.

PREPARED STATEMENT OF OLNEY PATT, JR., CHAIRMAN, CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION, OREGON

Mr. Chairman, members of the committee, I am Olney Patt, Jr., Chairman of the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon. The Tribe appreciates your having scheduled this hearing on S. 266, and it is my pleasure to present today the views of the Warm Springs Tribe on this legislation regarding the use of trust land and resources on our Reservation.

In summary, the Warm Springs Tribe strongly supports S. 266, and urge that, with the adoption of clarifying revisions soon to be finalized among the Oregon Delegation sponsors of the legislation, the committee approve, and the Senate pass, this essential legislation as soon as possible.

S. 266 provides for Federal approval of an historic Agreement reached on April 12, 2000, between the Confederated Tribes of the Warm Springs Reservation of Oregon, Portland General Electric Company [PGE], and the U.S. Department of the Interior. This Agreement is important not only to the parties, but to all the citizens of Oregon, because of the responsible way in which it deals with the ownership of one of the State's most important resources, the Pelton-Round Butte Hydroelectric Project. It also provides a model for the rest of the country to demonstrate how the United States, Indian tribes and electric utilities can work together to solve the often contentious issues surrounding hydroelectric projects and the use of Indian lands.

The Pelton-Round Butte Hydroelectric Project is a 440-megawatt project consisting of three dams and generation units on the Deschutes River in Central Oregon. About one third of the Project lands are located on the Warm Springs Indian Reservation. Currently, PGE owns and operates the two larger dams and their generating facilities while the Tribe owns and operates the 19 megawatt generating facility located in the Re-regulating Dam. Today, PGE pays approximately \$11 million in annual rental charges to the Tribe for the use of our land.

Beginning in the summer of 1998, representatives of the Tribes and PGE commenced negotiations to attempt to reach a settlement on all issues between us relat-

ing to ownership and operation of the Pelton Project. Because of the trust responsibility of the Department of the Interior to the Tribe, Department representatives participated in the negotiations. On April 12, 2000, Interior, Tribal, and PGE representatives signed the Long-term Global Settlement and Compensation Agreement and its Included Agreements that is the subject of S. 266.

The key elements of the Agreement are:

No. 1. On January 1, 2002 the Tribe will purchase from PGE at its net book value a 33.33-percent interest in the Project. The Tribe has the option to purchase an additional 16.66 percent interest on January 1, 2022, as well as a further option to purchase a controlling .02 percent interest in the Project no later than 2037. The length of the Agreement is approximately 50 years, with flexibility to run a little longer or shorter depending upon when the new FERC license for the Project is actually issued, and the length of the license itself, which can be from 35 years to 50 years. To provide for our purchase of our share of the Project and to cover the costs of Project modifications anticipated under the new license, Warm Springs must secure approximately \$30 million from the bond market by January 1, 2002.

No. 2. PGE will operate the Project and be guided by an Operating Committee composed of representatives of the Tribe and PGE as owners.

No. 3. The Tribe has the option to sell its share of the power to PGE or on the open market.

No. 4. The Agreement settles all disputes between the parties and establishes the compensation to be paid to the Tribe for the use of its lands and resources throughout the period of the entire license.

One of the central issues that the parties have been concerned about since the inception of the negotiations is the legal authority for the Agreement. As a general principle of Federal Indian law, the United States must consent to the lease, sale, or other conveyance of tribal trust lands, resources, or other assets. Although there is a high likelihood that there is legal authority under existing Federal law for this Agreement, there is not absolute certainty. And, because the economic consequences to the parties would be so serious if it were ever to be held that there is no legal authority for the Agreement, and because the lenders who will finance the Tribe's purchase of Project interests will require legal certainty, it is essential to the Tribe and PGE that all questions regarding authority for the Agreement be resolved definitively.

Briefly, these are the issues that gave the Tribes and PGE pause regarding legal authority:

No. 1. Under 25 U.S.C. § 415(a), the Warm Springs Tribe only has leasing authority for trust lands of 25 years with an option for a 25-year renewal. The Agreement at hand committing Tribal resources and land extends beyond those periods and beyond just the lease of land. The 99 year lease authority, as provided in section 1 of S. 266, could provide sufficient time for a lease of land, but is not broad enough in scope to cover the full range of Warm Springs resources and assets involved in the Project.

No. 2. Section 17 of the Indian Reorganization Act of 1934 [25 U.S.C. § 477] under which the Warm Springs Tribe is organized limits leases of Indian lands to 25 years.

No. 3. The general right of way statute dealing with Indian lands (25 U.S.C. § 323) is made inapplicable by the provisions of 25 CFR § 169.2(c), which provides that the right of way regulations do not apply to hydroelectric projects licensed under the Federal Power Act on Indian reservations.

No. 4. The Indian Non-intercourse Act (25 U.S.C. 177) generally requires that all leases and other conveyances of tribal lands have specific Federal authority, of which the foregoing are examples.

No. 5. The revenues the Tribe will receive from the sale of power from its portion of the Project are the proceeds of Tribal trust assets and Federal consent may be required to make a pledge of those revenues legally binding on the Tribe.

No. 6. Although 16 U.S.C. 803(e) provides for the payment of annual charges for the use of Indian lands in connection with hydroelectric projects, there is no express authority in that section for the actual lease of those lands. Similarly, 16 U.S.C. 797(e) regarding the Secretary's conditioning authority does not contain the express authority required.

The parties believe that if a court were faced with the question of whether or not there was Federal authority for this Agreement, it would answer in the affirmative. However, because of the length, complexity and magnitude of the Agreement, its uniqueness, and some ambiguities on the face of existing statutes granting authority, it is important that such doubt be removed and this can best be done by specific Federal legislation tailored to this Agreement.

S. 266 does the following:

No. 1. Section 1(a) confers authority on the Interior Secretary to approve leases of up to 99 years for trust land on the Warm Springs Reservation and land held in trust for the Warm Springs Tribes, similar to authority that has been conferred for many other tribes.

No. 2. Section 2(a) provides specific Federal approval for the use of our Tribal lands, resources, or other Tribal assets described in the Agreement. It ratifies and confirms the authority of the parties, which include the Interior Secretary, to sign the Agreement, the actual signing of the Agreement, and its distribution among the parties. It also deems the Secretary as authorized to approve and carry out the agreement. This particular sentence would confer upon the Secretary sufficient authority to approve and implement the Agreement in the event the Secretary's current authority, despite ratification and confirmation, is determined to be lacking. Finally, Section 2(a) provides that no Federal law, such as those discussed earlier in this testimony, would render the Agreement unenforceable or impede the ability of the Tribe to pledge the revenues that it receives from the sale of power to pay bondholders.

No. 3. Section 2(b)(1) makes it clear that the legislation does not apply to any provisions of the Agreement other than those dealing with Tribal lands, resources, or other assets. It also makes it clear that it does not affect the normal Federal and State regulatory approvals that would be required for an agreement of this type.

No. 4. Section 2(b)(2) is included to address a concern of the Department of the Interior that the legislation not, by implication, cast any doubt on current authorities relied upon by Interior to approve the Agreement. Interior Department personnel were regularly consulted while S. 266 was being drafted, and this language to safeguard Interior's authorities was included in the bill at their direct request. By fully preserving Interior's authorities, this provision also eliminates any concern about similar agreements needing legislative approval.

S. 266 will not only give the parties to the Agreement the necessary assurances that they need about the authority for this Agreement, it will provide the lenders that finance the Tribes' purchase of Project interests from Portland General Electric assurance that there are no legal impediments to the pledge of revenues the Tribe receives from the sale of power from the Project to the lenders.

S. 266 is the result of extensive discussion and collaboration between ourselves, PGE, the Interior Department, and Congressional personnel in the Oregon Delegation and on this Committee. At the time S. 266 was introduced, a House companion bill, H.R. 483, was also introduced by all five members of the Oregon House Delegation. The only difference between S. 266 and H.R. 483 is the addition of an April 12, 2000 effective date at the end of the House bill. Otherwise in the House, Resources Committee personnel have carefully evaluated H.R. 483, and have suggested several revisions to clarify the legislation. These revisions are under discussion with the Oregon Delegation, and we expect to have them settled in the next few days. They do not change the substance of the legislation, and basically fine tune its language. We hope that the Senate Indian Affairs Committee will be able to adopt these revisions, and incorporate them in approving S. 266.

We expect the revisions will make the legislation more explicit that nothing in this legislation is to create any inference whether the Secretary of the Interior did or did not have authority to sign and implement the Global Settlement Agreement. The effect of this revision is to essentially neutralize this legislation from having any effect on the Department's authorities regarding the use of tribal resources for hydro projects.

By very clearly safeguarding Interior's authorities, the revision will further quell any question about whether this legislation will prompt other legislation for similar projects involving tribal resources. By basically removing this particular legislation from having any impact on the Interior Department's authorities, those authorities remain intact and unaltered for any future projects. In addition, there are several factors that make this Agreement truly unique and make it unlikely that a similar situation requiring Federal legislative approval will arise in the future. They include:

No. 1. The Agreement involves a tribe's purchase of a part of a hydroelectric project located on its reservation from an existing licensee. The only other hydroelectric project of similar magnitude on an Indian reservation is the Kerr Project in Montana, and in that case the Tribe and the Montana Power Company reached a joint ownership agreement approximately 15 years ago.

No. 2. The purchase involves bond financing by the Tribe which requires an unqualified opinion from bond counsel regarding the enforceability of the underlying agreement, thereby increasing the level of certainty needed regarding enforceability.

No. 3. The agreement has some highly unique aspects that are unlikely to be present in other agreements, such as settling license ownership beyond the term of

the next license, settling compensation to the Tribe in the form of a share of the power output from the project rather than a dollar amount that can be adjusted over time, and defining PGE's liability for Treaty rights claims by the Tribe.

In summary, the uniqueness, length, breadth and complexity of the Agreement are the reasons that legislation is required to approve it. We are aware of no similar situations that would require legislative approval.

We anticipate that Senators Smith and Wyden will convey the revisions to the Committee in the next few days, and ask the Committee to adopt them when S. 266 is marked-up.

We urge the committee's prompt consideration and approval of S. 266, and its prompt passage on the Senate floor.

Thank you for the committee's time and attention. I would be pleased to answer any questions.

PREPARED STATEMENT OF ROBIN TOMPKINS, ASSISTANT GENERAL COUNSEL,
PORTLAND GENERAL ELECTRIC CO., PORTLAND, OR

Mr. Chairman, members of the Committee on Indian Affairs, I am Robin Tompkins, Assistant General Counsel of Portland General Electric Company of Portland, Oregon [PGE]. I am pleased to have this opportunity to testify to the U.S. Senate Committee on Indian Affairs regarding S. 266 and share with you the views of our company on this important legislation. This bill and the companion legislation in the U.S. House of Representatives address the use of trust land on the Warm Springs Reservation of Oregon.

I want to begin my testimony by commending Senators Ron Wyden and Gordon Smith for proposing this legislation and for their support of this historic agreement between the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribes") and Portland General Electric regarding the ownership and operation of the Pelton Round Butte Hydroelectric Project ("Project") in central Oregon. The passage of this bill will help bring closure to almost 5 years of negotiations between the parties and the resulting review by various Federal agencies, which included the Department of the Interior and the Federal Energy Regulatory Commission. The negotiated settlement between PGE and the Tribes has the full support of the Oregon congressional delegation, and the bipartisan leadership of Senators Wyden and Smith has been essential.

The Pelton Round Butte project is located on the Deschutes River in central Oregon. It is one of the most important sources of electricity in the State of Oregon, supplying electric power to over 300,000 Oregon families. The Project consists of three dams, the Pelton Dam, the Round Butte Dam and the Re-regulating Dam. The Project commenced operation in 1957 with the construction of the first of the three dams and became fully operational in 1964. The Federal Power Commission and the State of Oregon issued PGE a license for the construction and operation of the Project based on an agreement between PGE and the Tribes, which included the ability of the Tribes to install generating facilities at the Re-regulating Dam. The dams and their reservoirs are located partly on tribal lands.

During the first term of the 50-year license, PGE was the sole owner and operator of the Project. In the mid-1980's the Tribes became a co-licensee. Pursuant to the Federal Power Act, PGE has made annual payments to the Tribes for the use of their tribal lands.

During the relicensing process, PGE and the Tribes both applied for complete ownership of the Project. This arduous and competitive relationship existed until the parties negotiated a settlement of their differences and joined together to own and operate this valuable and important resource. The settlement that was reached called for PGE and the Tribes to become joint licensees of the Project. For the first 20 years of the Project, beginning at the end of 2001, the Tribes will own one-third of the Project. Then the Tribes will have the opportunity to buy an additional share of the Project, eventually becoming the majority owner.

This agreement accomplishes several important goals of PGE and the Tribes. For the Tribes, the settlement will grant the Tribes a strong ownership position in the Project and insure many economic benefits far into the future. It will also enable them to exert more influence over the environmental, cultural and recreational resources of the Deschutes River basin. Most importantly for PGE, the agreement will preserve the value of the Project for PGE customers. The settlement negotiations have been lengthy and arduous, but the hard work has been productive. The result of these consultations is a victory for PGE, for the Tribes and most importantly for the people of Oregon.

This legislation is necessary to insure beyond all certainty that there is legal authority for the settlement agreement. As members of the committee know, the United States must consent to the lease, sale or other conveyance of tribal trust lands, resources, or other assets. This legislation and the companion bill introduced in the House of Representatives ensures legal certainty to this historic agreement. The lender who will finance the purchase of PGE's interests in the Project will require absolute authority in order to carry out the terms of the settlement agreement. Mr. Chairman, S. 266 addresses these concerns.

First, the legislation confers authority on the Secretary of the Interior to approve leases of up to 99 years for trust lands on the Warm Springs Reservation and land held in trust for the Tribes.

Second, the bill provides for specific approval for the use of land and other resources owned by the Tribes. The legislation also grants express authority to the Secretary of the Interior to execute and carry out the terms of the agreement. The bill further ensures that no Federal law would render the agreement unenforceable or impede the ability of the Tribes to pledge the revenues it receives from the sale of its power.

Third, the bill specifies that the legislation does not apply to any provisions other than those that deal with tribal lands and does not affect any other Federal or State agencies' authority to approve this agreement.

Fourth, the bill states that this legislation does not require the Department of the Interior to seek Federal legislative approval for similar agreements with other tribes.

Mr. Chairman, this legislation is a critical and necessary component of the releasing process. Its enactment will be a final step in a historic and significant agreement between PGE and the Tribes, and on behalf of PGE, I urge its speedy passage.

Thank you.

PREPARED STATEMENT OF HON. RON WYDEN, U.S. SENATOR FROM OREGON

Mr. Chairman, thank you for the opportunity to speak in support of S. 266, the Pelton Dam Agreement legislation, that I have cosponsored with my friend and colleague, Senator Smith of Oregon. I appreciate the time that you and your staff have invested in this important bill.

This legislation sanctions an historic agreement between the Confederated Tribes of the Warm Springs, Portland General Electric Company and the U.S. Department of the Interior: The use of tribal lands, resources, and other assets for economic development as described in the Long-Term Global Settlement and Compensation Agreement (Pelton Dam Agreement). The bill ratifies authorization, execution, and delivery of the Agreement and authorizes the Secretary of the Interior to take necessary actions to approve and implement it. The bill also extends the Warm Springs Tribes a 99-year lease authority for any restricted lands on their reservation held in trust for them by the BIA.

S. 266 is supported by all the local parties to the Agreement, as well as the local county commissioners. I worked with Senator Smith to carefully craft this legislation because it is a good example of how contentious issues can be solved when the parties are willing to work together.

The Agreement sets the joint ownership and operation of the Pelton-Round Butte Hydroelectric Project located in Jefferson County, Oregon, on the Deschutes River. But, this process has also recognized, in a side agreement, the needs of the county and other local folks for potential lost tax revenue resulting from the Agreement joint ownership.

I applaud the efforts, begun in 1998, of the folks here today to testify on this legislation, and urge the committee to move this bill as soon as possible.