S. HRG. 118–418

S. 2908, S. 3263, S. 4000, AND S. 4442

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

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WEDNESDAY, JUNE 12, 2024

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

The Committee met, pursuant to notice, at 2:32 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

The CHAIRMAN. Good afternoon. During today's legislative hearing, we will consider the following bills: S. 2908, The Indian Buffalo Management Act; S. 3263, the Poarch Band of Creek Indians Parity Act; S. 4000, A Bill to Reaffirm the Applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes; and S. 4442, the Crow Water Rights Settlement Amendment Act of 2024.

Before we begin, I want to say a few words about the Supreme Court's misguided decision in Carcieri v. Salazar. The Carcieri decision put rebuilding tribal homelands into a tailspin, and for 15 years, it has slowed Interior's land-into-trust process and frustrated Indian Country, increased administrative costs and spurred often needless litigation. So I think we are all clear that we support legislation to fix Carcieri for all tribes.

I share Indian Country's frustration with Congress' failure to pass a universal fix. But we have to recognize that Congress has acted on tribal specific legislation before, and Senator Britt's and Senator Padilla's bills are in line with those past successful efforts.

With that, I will briefly describe today's bill with a more fulsome description entered into the record.

S. 2908 was introduced by Senators Heinrich and Mullin. The bill would establish a buffalo management program at BIA to help tribes and tribal organizations manage buffalo herds and habitat for cultural, subsistence and economic development purposes.

S. 3263 was introduced by Senator Britt and Senator Tuberville. This bill would reaffirm the Indian Reorganization Act's applicability to the Poarch Band of Creek Indians and ratify the trust status of lands the tribe previously acquired administratively.

S. 4000 was introduced by Senator Padilla. The bill would reaffirm the Indian Reorganization Act's applicability to the Lytton Rancheria of California and clarify that the tribe is eligible to have

its lands taken into trust through the Department of Interior's land-into-trust process.

Our final bill on the agenda is S. 4442, introduced by Senator Tester and Senator Daines. This bill would amend the Crow Tribe Water Rights Settlement Act of 2010 to change the scope of the water infrastructure system authorized under that Act to provide the Crow tribe more flexibility in developing regional irrigation and municipal and industrial water projects, and to allow the tribe additional time to develop hydropower projects to deliver clean energy and water to the reservation.

Before I turn to the Vice Chair for her opening statement, I would like to extend our welcome and thanks to the witnesses for joining us today. I look forward to your testimony and our discussion.

Vice Chair Murkowski?

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman. I appreciate today's hearing. You have covered much of the details of the bills that will be before us.

I want to discuss quickly S. 2908, the Indian Buffalo Management Act, this has impacts on my State. It would make permanent the small but important program operated by the BIA that is rebuilding buffalo populations on tribal lands.

The Indian Buffalo Management Act was first introduced in the House during the 116th Congress by my friend and Alaska's Congressman, Don Young. We know the history, the story of the Plains bison and how they were a vital source of food and nutrition for Native people. Tens of millions of buffalo once roamed the west until they were decimated in the 1800s by misguided and inhumane policies of the forced removal area.

Today, the Federal Government is partnering with tribes and tribal organizations like the Intertribal Buffalo Council to reestablish bison herds. I never know whether to say "bison" or "bizon" [phonetically], I think it depends on the part of the Country you are in. Take it whichever way it makes you happiest.

What we are trying to do is, again, reestablish these herds for economic development as a traditional food source and provide food security for Native communities. We have two communities in Alaska, Old Harbor and Stevens Village, that are part of this. Both communities manage herds that total around 500 buffalo, so now it is buffalo, not bison.

This is a new subsistence species for them. Some of the bison in Alaska today were rounded up and relocated from the lower 48, with assistance from the buffalo program. In recent years, Interior has assisted with the transfer of surplus bulls from Yellowstone National Park to Alaska. So if you ask the question, how do they get from Yellowstone to Alaska, they put these one-ton animals on a FedEx plane, then they transport them by barge and truck and occasionally helicopter to their new homes. Once they make it to places like Kodiak Island, they roam free and have a pretty good life there.

But as the original sponsor of the Indian Buffalo Management Act, Don Young understood that the BIA program could be utilized to improve the health and genetic diversity of the herds in our State. But in order to build this food source, resources are needed to cover the cost of transporting more cows, calves, and mobile slaughter facilities to the interior villages. Because as you can imagine, it is not cheap. But we are looking forward to additional resources to help not only develop the program, but to expand training and educational opportunities for the tribal herd managers.

So it is a good bill. I am pleased that Assistant Secretary Newland is here. We will have some questions for him on that.

I appreciate the testimony of the witnesses that are before the Committee here today.

The CHAIRMAN. Thank you, Vice Chair.

First, Senator Tester, and then I am going to go a little bit out of order and have Senator Heinrich make some opening remarks, because he has to chair a different hearing.

Senator Tester?

STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA

Senator TESTER. Thank you very much, Mr. Chairman and Vice Chair Murkowski.

This is really a good hearing. I commend you both for having it. These are important bills that need to get advanced, and today is the start of that.

I also want to thank Chairman Whiteclay for being here today. Chairman Whiteclay is the leader of the Crow Tribe. I am grateful for his strong leadership on important issues like law enforcement, fiscal management, infrastructure.

This Crow Water bill in front of the Committee today is an excellent example of the good work that the Chairman is doing serving his tribe. This bill would not be in the shape it is today without his strong leadership, and we thank you for that.

I also want to recognize my friend, Erv Carlson. Erv, it is great to have you here. He is a member of the Blackfeet Tribe, and a long-time champion for Indian buffalo management. I am glad to see the Buffalo Management Act getting here, and I think it is a very important piece of legislation.

But I want to talk a minute about water and the Crow Water bill that is on today's agenda. Many years ago, my Native friends told me that water is life, and it is, for all lives. It powers Montana's economies, it is critical to the health of our communities, it connects us together. That is why it is critical that the Crow Tribe has the tools and infrastructure they need to deliver clean water to its communities.

This bipartisan Crow Water Settlement Amendment Act will do exactly that. It will provide the tribe vital flexibility in developing water infrastructure, using the most up-to-date technology to create water systems that are more cost-effective and work for the Crow Tribe and the region. It will also bolster energy development by extending the timeline for the tribe to develop hydropower on

the Yellowtail Afterbay Dam until 2030, providing clean energy that will provide an economic boost to the Crow community.

Chairman Schatz, Vice Chair Murkowski, I am pleased to share that we can accomplish all this with no additional cost, without changing any existing water rights, and without reopening the water settlement. The Crow Water Settlement Amendments Act is a simple, made-in-Montana solution that is going to help the Crow Tribe develop the infrastructure needed to deliver clean water to the folks for years to come.

Lastly, I want to quickly add that I am glad to see the Poarch bill, and Katie Britt, thank you very, very much for your leadership on this. It is a long time coming.

And the Lytton bill, if Senator Padilla was here, I would say the same thing to him. Those bills are important. These bills would restore the Secretary of Interior's authority to take land into trust for the tribes. I am a long-time supporter of this effort, following the enforcement of the 2009 Supreme Court decision that wrongly oppressed some tribes for having land taken into trust.

With that, once again, Mr. Chairman, Vice Chair, thank you for having this hearing.

The CHAIRMAN. Thank you very much, Senator Tester, and thank you for your leadership on all these issues.

Senator Heinrich?

STATEMENT OF HON. MARTIN HEINRICH,
U.S. SENATOR FROM NEW MEXICO

Senator HEINRICH. Thank you, Chairman Schatz, and I want to thank Vice Chair Murkowski for your words as well.

Several years ago, I was proud to lead, along with Senator Hoeven, the effort to designate the bison as our national mammal. This species has been a critical part of our culture in New Mexico, across the west, most especially in Indian Country.

The growth of tribal buffalo herds over the last few decades is both a symbol of the enduring resilience of this iconic species and a major economic development opportunity for many tribes. Dozen of tribes and several in New Mexico, including the Pueblos of Taos and Picuris, Pojoaque and Sandia, have done important work to establish tribal buffalo herds on their lands.

I have been privileged to see this first-hand. Two years ago, I visited Picuris Pueblo and went out with the herd manager, Danny Sam, to see their operation up close. I learned about how the community is reincorporating bison meat back into their diets. The tribal herd at Picuris has allowed the Pueblo to distribute much of that healthy, locally grown, culturally important protein to the community for free.

Our bipartisan, bicameral bill, the Indian Buffalo Management Act, would strengthen Federal support for tribal bison programs like the one I saw at Picuris. It would authorize a permanent program at Interior and provide dedicated funding to promote and develop capacity for tribes to manage those buffalo herds.

As you will hear from Erv Carlson from the InterTribal Buffalo Council, establishing and managing a new bison herd is a resource-intensive process for tribes. There is a very real need for technical and resource support.

I want to thank you, Erv, and ITBC for all of your guidance, all of your feedback, that helped us as we drafted this legislation, and for your organization's support for tribal bison herds all across Indian Country.

I would also like to thank my Republican partner on this bill, Senator Markwayne Mullin, and our bipartisan colleagues in the House, Representatives Doug LaMalfa and Mary Peltola. Finally, I would be remiss if I did not also recognize the late Representative Don Young, who was one of the original leaders in this effort in Congress.

Thank you, Chairman Schatz and Vice Chair Murkowski, for giving me time to speak on this bill. I hope that in my lifetime, thanks in large part to these tribal buffalo herds, we will see bison return to the prominent place that it once occupied as a keystone species on America's short grass prairies.

The CHAIRMAN. Thank you very much, Senator Heinrich.

I will now turn to our witnesses. We are happy to see the most frequent of frequent fliers in this Committee, the Honorable Bryan Newland, Assistant Secretary for Indian Affairs at the Department of Interior. Welcome.

The Honorable Andy Mejia, Chairperson of the Lytton Rancheria of California, in Winsor, California; Mr. Erv Carlson, Sr., President of the InterTribal Buffalo Council in Rapid City, South Dakota.

Senator Tester, would you do the honors of introducing our next witness?

Senator TESTER. It would be an honor to do the honors.

Chairman Whiteclay, who I addressed in my opening statement, is the leader of the Crow Tribe. I would just tell you, when Chairman Whiteclay took over the Crow Tribe, it was not under the best of leadership, and that is being generous.

Frank stepped forward, he put financial responsibility as a key part of his administration, and he is working hard to make sure it remains that way. He put law enforcement as a keystone of his administration, and he is working hard to keep Crow Country safe. This bill deals with infrastructure, and that is another area that Chairman Whiteclay has done great work on.

It is great to have you here. I know this is not an easy trip to make, but we certainly appreciate your making the trip.

The CHAIRMAN. Thank you very much, Senator Tester.

We are pleased to have Senator Britt to both introduce her guest and talk a little bit about the legislation pending before the Committee. Senator Britt?

STATEMENT OF HON. KATIE BRITT,
U.S. SENATOR FROM ALABAMA

Senator BRITT. Thank you so much. I appreciate the opportunity, Chair Schatz, and Vice Chair Murkowski, for the ability to be here today and introduce Stephanie Bryan, the Poarch Creek Indians Tribal Chair and Chief Executive officer to this Committee today. Stephanie, it is an honor to introduce you.

Chairwoman Bryan is here testifying to S. 3262, the Poarch Band of Creek Indians Parity Act. This bill is intended to clarify that the Poarch Band of Creek Indians should be considered as now under Federal jurisdiction for the purposes of the Indian Reor-

ganization Act. The Poarch Band of Creek Indians is a critical part of Alabama's culture and heritage.

As a leader of the Poarch Nation, Chairwoman Bryan represents the tribe's interests at both the State and national level. She is nationally recognized as an advocate on issues critically important to Indian Country, and serves in several significant national roles.

In Alabama, Chairwoman Bryan works directly with the governor, State agencies, and local leaders. Her service in her community and in State leadership positions is truly incredible. She serves on the business council of Alabama's Executive Committee, Leadership Alabama, Montgomery Area Chamber of Commerce, Mobile Area Chamber of Commerce, just to name a few. Through these roles, she contributes directly to the growth of our great State.

She has also been instrumental in growing the Poarch Creek Tribe's business portfolio. Last year, Business Alabama recognized her as the publication's first ever CEO of the Year.

The Poarch Creek Indians have a growing business supporting the Department of Defense, NASA, and the tribe continues to reinvest over a billion dollars just in the last decade alone into over 40 businesses across a range of industries. Chairwoman Bryan, thank you for testifying today. We are grateful for your service to the community, the State, our Nation and the tribe. We are excited to have you here.

The CHAIRMAN. Thank you very much, Senator Britt.

Are there any other members wishing to make an opening statement? If not, I want to remind our witnesses that your full written testimony will be made part of the official hearing record, and so if you could please keep your remarks to five minutes or fewer, the Committee would appreciate that.

We will start with Assistant Secretary Newland. Please proceed with your testimony.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Boozhoo, [phrase in Native tongue.] Good afternoon, Chairman Schatz, Vice Chair Murkowski, members of the Committee.

My name is Bryan Newland, I have the privilege of serving as the Assistant Secretary for Indian Affairs. I am glad to be back again in front of the Committee to testify on these four bills. I want to say right from the get-go that the department supports passage of each of these bills.

S. 2908, the Indian Buffalo Management Act, would establish a permanent program within the department to develop, promote and support tribal management of buffalo and buffalo habitat on Indian lands. This bill would also authorize $14 million in annual appropriations to support this work.

This legislation will advance food sovereignty and support the protection and revitalization of cultural practices for tribes all across the United States. It will also support the department's efforts to work with tribes in co-stewardship of ecosystems and wildlife.

S. 3263 and S. 4000 would ensure that the Poarch Band of Creek Indians and the Lytton Band of Pomo Indians have the ability to restore and protect their tribal homelands under the Indian Reorganization Act. Since the Carcieri decision, the department must examine whether each tribe seeking to have land placed into trust under the Indian Reorganization Act was "under Federal jurisdiction in 1934." This analysis is done on a tribe-by-tribe basis and is both time consuming and costly for tribes as well as the department.

The ability to restore and protect tribal homelands is an important part of our trust responsibility, and it has been the policy of the United States for nearly a full century.

In addition to S. 3263 and S. 4000, the department has consistently expressed strong support for a universal legislative solution to the Carcieri decision for all tribes. The department urges Congress to consider a legislative fix to the Carcieri decision for all tribes to eliminate the need for each tribe to seek its own separate legislation.

S. 4442 would amend the Crow Tribe Water Rights Settlement Act of 2010 by establishing a non-trust fund account to allow the Bureau of Reclamation to continue work on rehabbing the Crow Irrigation Project in a new municipal, rural, and industrial projects trust fund to be used by the Crow Tribe for specified purposes.

This Administration recognizes that water is a sacred and valuable resource for tribes, and that longstanding water crises continue to undermine public health and economic development all across Indian Country. Access to water is fundamental to human existence and economic opportunity, and that is no less true for people in tribal communities.

This bill would not increase funding for the Settlement Act. Instead, it simply changes the way some of the funds are held and expended.

When the Crow Water Rights Settlement Act, that is hard to say all at once, when that law was passed it did not provide for the creation of a non-trust interest-bearing account for funds appropriated for project construction. More recent Indian water rights settlements have provided for such accounts to allow funds to accrue interest while projects are being planned, designed, and constructed.

This bill would authorize the establishment of a non-trust, interest-bearing account in Treasury to receive the funds already appropriated as well as future appropriations for the Crow Irrigation Project rehabilitation.

S. 4442 would convert the MR&I portion of that settlement act from an infrastructure based settlement act from an infrastructure based settlement to a trust fund based settlement. It would direct the Secretary to establish in the existing Crow Tribe water rights settlement trust fund a new MR&I projects account. The tribe would use funds from this account for several purposes: planning, designing and constructing MR&I systems; planning, designing and constructing wastewater treatment facilities; and purchasing on-reservation land with water rights.

Finally, this bill would extend the period during which the tribe has the exclusive right to develop hydropower at the Yellowtail Afterbay Dam until 2030.

Again, the department is pleased to support each of these bills and is willing to provide further technical assistance to sponsors and members of the Committee upon request.

Chairman Schatz and members of the Committee, I want to thank you again for the opportunity to testify today. I look forward to answering any questions you may have.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on S. 2908, "Indian Buffalo Management Act," S. 3263, "Poarch Band of Creek Indians Parity Act," S. 4000, "To reaffirm the applicability of the Indian Reorganization Act to the Lytton Rancheria of California, and for other purposes," and S. 4442, "To amend the Crow Tribe Water Rights Settlement Act of 2010 to make improvements to that Act, and for other purposes."

S. 2908, Indian Buffalo Management Act

The North American Bison, commonly called buffalo, is the official mammal of the United States and plays an important role in the history and ecology of this continent. For many Tribes, buffalo play a significant role in their identity, subsistence, economic development, and conservation and land management practices. The historical, cultural, and spiritual connection between buffalo and Tribes cannot be overstated. Buffalo sustained many Indian Tribes in North America for many centuries before they were nearly exterminated by non-Indian hunters in the mid-1800s.

Indian Tribes have long desired the reestablishment of buffalo throughout Indian Country. The successful restoration of buffalo allows an Indian Tribe to benefit from the reintroduction of buffalo into the diets of the members of the Indian Tribe. Working to restore buffalo and increase Tribal access to buffalo is a priority for the Biden administration and for Secretary Haaland. The BIA's Branch of Fish, Wildlife, and Recreation funds buffalo restoration and management activities through annual appropriations. S. 2908, the Indian Buffalo Management Act, would establish a permanent program within the Department to develop and promote Tribal ownership, conservation, and management of buffalo and buffalo habitat on Indian lands.

Under S. 2908, two entities are eligible for program participation: Indian Tribes, as defined by the Indian Self-Determination and Education Assistance Act (ISDEAA), and Tribal organizations organized under Section 17 of the Indian Reorganization Act (IRA). The Department recommends amending the definition of "Tribal organization" to avoid the exclusion of Tribal corporations Federally chartered under Section 3 of the Oklahoma Indian Welfare Act, P.L. 74- 816, or Tribal organizations contracting for the administration and operation of certain Federal programs which provide services to Indian Tribes and their members. The Department looks forward to working with the sponsors on these issues.

S. 2908 authorizes $14 million in annual appropriations. The Department previously testified on H.R. 6368, the House companion to S. 2908, in which we raised concerns about the lack of dedicated funding for the activities authorized under H.R. 6368. For both bills, activities will be eligible for contracting or compacting by Tribes under ISDEAA. In the event of a Tribe utilizing ISDEAA, as amended, to contract or compact that permanent program, the Secretary may be required to utilize funds from other programs to meet the Department's statutory obligations under ISDEAA. The Department appreciates the opportunity to work with Congress to ensure that we have the resources to implement the provisions of S. 2908 if enacted and strongly supports the provision authorizing dedicated funding.

Buffalo once roamed this continent in the tens of millions and the Department appreciate efforts to improve management of this vital species. The Department recognizes our shared interest in modernizing buffalo management in Indian Country and appreciates Congress's attention to this effort. The Department supports S. 2908. The Department welcomes the opportunity to work with the sponsors and the Committee to provide technical assistance to clarify eligible entities and to ensure that other offices at the Department can enter into co-stewardship and comanagement agreements with Indian Tribes.

S. 3263 and S. 4000 and the Impacts of the *Carcieri v. Salazar* Decision

In *Carcieri v. Salazar*, the United States Supreme Court was faced with the question of whether the Department could acquire land in trust under section 5 of the Indian Reorganization Act (IRA) on behalf of the Narragansett Tribe of Rhode Island for a housing project. The Court's majority noted that section 5 permits the Secretary to acquire land in trust for Federally recognized Tribes that were "under Federal jurisdiction" in 1934. It then determined that the Secretary was precluded from taking land into trust for the Narragansett Tribe, who had stipulated that it was not "under Federal jurisdiction" in 1934.

The *Carcieri* decision upset the settled expectations of both the Department and Indian Country and led to confusion about the scope of the Secretary's authority to acquire land in trust for all Federally recognized Tribes-including those Tribes that were Federally recognized or restored after the enactment of the Indian Reorganization Act. As many Tribal leaders have noted, the *Carcieri* decision is contrary to existing congressional policy, and has the potential to subject Federally recognized Tribes to unequal treatment under Federal law.

Since the *Carcieri* decision, the Department must examine whether each Tribe seeking to have land acquired in trust under the Indian Reorganization Act was "under Federal jurisdiction" in 1934. This analysis is done on a Tribe-by-Tribe basis, even for those Tribes whose jurisdictional status is unquestioned. This analysis may be time-consuming and costly for Tribes and for the Department. Overall, it has made the Department's consideration of fee-to-trust applications more complex and created an additional administrative burden for the Federal government and Tribes related to decisions taking land into trust. The Tribes at issue in S. 3263 and S. 4000 are just two of the many Tribes who have experienced undue burdens to reclaim and develop their lands.

S. 3263 would address the impact that the *Carcieri* decision has had on the Poarch Band of Creek Indians by deeming that the Band shall be considered as having been under Federal jurisdiction as of June 18, 1934, for the purposes of the IRA. The bill would also congressionally reaffirm previous decisions by the Secretary to take land into trust for the Poarch Band of Creek Indians under IRA authorities.

S. 4000 would clarify that the IRA applies to the Lytton Rancheria and that the Secretary has the authority to take land into trust for the Lytton Tribe under Section 5 of the IRA. The bill would also deem lands taken into trust under Section 5 of the IRA for the Lytton Rancheria as part of the Tribe's reservation and would be administered accordingly.

The Department supports S. 3263 and S. 4000. Tribal homelands are at the heart of Tribal sovereignty, self-determination, and self-governance. The power to acquire lands in trust is an important tool for the United States to effectuate its long-standing policy of fostering Tribal selfdetermination. Congress has worked to foster self-determination for all Tribes and did not intend to limit this essential tool to only one class of Tribes. In addition to S. 3263 and S. 4000, the Department has consistently expressed strong support for a universal legislative solution to the *Carcieri* decision for all Tribes. Further, the President's budgets for fiscal years 2024 and 2025 proposed a simple and clean fix to the IRA to ensure the Secretary has the authority to take land into trust for all Tribes without the need for the complex review of whether a Tribe was "under Federal jurisdiction" in 1934. The Department urges Congress to consider a legislative fix to *Carcieri* decision for all Tribes to eliminate the need for each Tribe to seek separate legislation.

S. 4442, Crow Tribe Water Rights Settlement Amendments Act of 2024

S. 4442 would amend the Crow Tribe Water Rights Settlement Act of 2010 (Pub. L. 111–291; 124 Stat. 3097) ("Settlement Act"). The Department supports S. 4442 and recommends an amendment to the bill, which we have discussed with the Crow Tribe, that would ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions.

Introduction

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help to ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help advance the United States' trust relationship with Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention

among Tribal Nations and neighboring communities and promote cooperation in the management of water resources.

Congress plays an important role in approving Indian water rights settlements and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements and ensure their successful implementation.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people—including Tribal Nations. We have a clear charge from President Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities—especially Tribal communities.

Background

The Settlement Act authorized $460 million, indexed to inflation, for the Bureau of Reclamation to plan, design and construct two major projects on the Crow Reservation: (1) the rehabilitation and improvement of the Crow Irrigation Project (CIP), and (2) the design and construction of a Municipal, Rural, and Industrial (MR&I) water system. Both projects were to be designed and constructed as generally described in detailed engineering reports prepared by consultants to the Tribe and cited in the Settlement Act. In addition, the Settlement Act gave the Tribe a 15-year exclusive right to construct hydropower facilities at the Yellowtail Afterbay Dam, a Bureau of Reclamation facility. That exclusive right expires in 2025.

Proposed Amendment

S. 4442 would amend the Settlement Act by establishing a non-trust fund account to allow the Bureau of Reclamation to continue work on rehabilitation of the CIP and a new MR&I projects trust fund to be used by the Tribe for (i) planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal use or wastewater infrastructure; (ii) purchasing on-Reservation land with water rights; and (iii) complying with applicable environmental laws. The amendments do not increase the funding for the Settlement Act but merely change the way some funds are held and expended. If enacted as written, it is our interpretation that while the Amendment would repeal Section 406 in its entirety, funding for the MR&I projects trust fund would not exceed $246,381,000, as indexed, as provided in section 414(b) of the Settlement Act (which would be redesignated as 415(b) pursuant to S. 4442).

When the Settlement Act was enacted, it did not provide for the creation of a non-trust interestbearing account for funds appropriated for project construction. Subsequent Indian water rights settlements have provided for such accounts to allow funds to accrue interest while projects are being planned, designed, and constructed. Because the Settlement Act did not provide this authorization, the Department and the Tribe instead opened a joint-signature account with a private bank for the investment of settlement funds. While this has allowed the funding to earn interest, it has come with costs associated with maintaining a private bank account. The Tribe now seeks to establish a non-trust interest-bearing account in Treasury so it can enjoy the benefits of earning interest without having to pay management fees to a private banking institution. S. 4442 would authorize the establishment of a non-trust interest-bearing account in Treasury to receive the funds already appropriated and yet to be appropriated for CIP rehabilitation. Reclamation would continue to be the lead agency responsible for the planning, design, and construction of CIP rehabilitation features.

With respect to the MR&I system, S. 4442 would convert this portion of the Settlement Act from an infrastructure-based settlement to a trust fund-based settlement. S. 4442 would direct the Secretary to establish in the existing Crow Tribe Water Rights Settlement Trust Fund a new "MR&I Projects" account. The Tribe could then use funds from this account for several authorized purposes: plan, design, and construct MR&I systems; plan, design, and construct wastewater treatment facilities; and purchase on-Reservation land with water rights. S. 4442 would provide the Tribe with flexibility and discretion to plan, design, and construct the MR&I and wastewater systems that it believes will best serve communities on its Reservation.

Finally, S. 4442 would extend by five years the period during which the Tribe has the exclusive right to develop hydropower at the Yellowtail Afterbay Dam, to 2030.

The Department supports S. 4442. Allowing the Tribe to use the funding authorized for a large, centralized MR&I system to instead build smaller MR&I projects will allow it to make decisions regarding how, when, and where to develop water infrastructure on the Reservation. This approach is consistent with Tribal sov-

ereignty and self-determination. We would like to work with the Tribe and the Committee, however, to include language in S. 4442 to ensure that trust fund expenditures prioritize providing clean drinking water over land acquisitions. The expansion of the authorized uses from a single use (MR&I) to multiple uses, including wastewater projects and purchases of land with water rights, will necessarily reduce the amount of funding available for badly needed drinking water systems on the Reservation. Provisions prioritizing funding for MR&I would ensure safe, reliable drinking water for the Tribe.

Conclusion

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, thank you for the opportunity to provide the Department's views.

The CHAIRMAN. Thank you very much, Secretary Newland.

We are pleased to welcome Chair Bryan. Please proceed with your testimony.

STATEMENT OF HON. STEPHANIE BRYAN, CHAIR/CEO, POARCH BAND OF CREEK INDIANS

Ms. BRYAN. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Stephanie Bryan, and I am honored to be the Chair and CEO of The Poarch Band of Creek Indians.

I greatly appreciate this opportunity to testify today about the Poarch Band of Creek Indians Parity Act. I want to thank Senator Britt and Coach Tuberville for introducing this bill.

The Poarch Band of Creek Indians has been a leading advocate for a national Carcieri fix to clarify that the Indian Reorganization Act applies to all federally recognized tribes. We offer our full support to the Tester-Moran bill, Senate Bill 563, which would accomplish that goal.

We will continue to work to pass a national fix, but our tribe, like many others, has been forced to take a parallel approach by working with our Congressional delegation to clarify that the IRA applies to our tribe. For decades, Poarch Creek leaders have balanced the desire to preserve our tribe's history and culture with the need to rebuild our community and provide basic services to our citizens. Today, we are blessed to be able to provide our tribal citizens and neighbors with essential services that include police and fire protection, health care, elder care, education and infrastructure.

We have made careful decisions about how best to use our resources and our property. But we have a limited land base, and we can't meet the growing needs for housing and other essential services for our citizens.

In 2018, it became clear that we needed to expand our Boys and Girls Club, but we didn't have the trust land. So that cost us $1 million to do an area where our ponds are located.

But we are not alone. Tribal governments nationwide have a shortage of usable trust land and seek to acquire trust lands to meet basic needs of our people.

The Supreme Court's 2009 Carcieri decision upended the Interior Department's land-into-trust process. That decision placed a cloud of uncertainty over tribal trust lands, impeding investment and economic development in Indian Country. It has led to frivolous lawsuits challenging the status of these trust lands.

The tribe has spent almost $10 million to defend ourselves against attacks on our sovereignty. Thankfully, every court reviewing these frivolous cases has upheld the status of our lands, which the Interior placed into trust decades ago.

However, these lawsuits have taken a toll, and that is why our tribe is seeking a legislative solution that will provide us with much-needed clarity. Our bill affirms that the IRA applies to our tribe and it allows us to be treated fairly, like other federally recognized tribes.

These frivolous lawsuits have not just hurt us; they have cost taxpayer dollars, because the Interior Department and DOJ have had to use their budgets to defend our trust lands. This bill has strong support from the Alabama Congressional delegation, also, the cities and counties that surround us.

I respectfully ask the Committee to mark up Senate Bill 3263 and pass the bill before the end of the year. On behalf of our tribe, I am honored to testify today and will answer any questions that you may have.

[Phrase in Native tongue].

[The prepared statement of Ms. Bryan follows:]

PREPARED STATEMENT OF HON. STEPHANIE BRYAN, CHAIR/CEO, POARCH BAND OF CREEK INDIANS

Good afternoon, Chair Schatz, Vice Chair Murkowski, and Members of the Committee. My name is Stephanie Bryan, and I am honored to serve as the Chair and CEO of the Poarch Band of Creek Indians. Thank you for this opportunity to testify today about S. 3263, the Poarch Band of Creek Indians Parity Act. On behalf of the Tribal Council, I extend our great thanks to Senators Britt and Tuberville for introducing this bill.

History of the Poarch Band of Creek Indians

I want to begin by sharing some history about the Poarch Band of Creek Indians. "The Poarch Band of Creeks of today originated in the aboriginal and historical Creek Nation." [1] At the time of our Nation's founding, the Creek Confederacy governed an expansive territory. Creek lands—guaranteed in the Treaty of New York in 1790—covered most of modern-day Georgia and Alabama, as well as parts of Florida. That territory was reduced twice via treaty over the ensuing two decades, and then again as a result of the War of 1812, when the Creek Confederacy was divided between those who joined with the British and those who remained friendly to the United States. After the war, however, the United States continued to recognize land rights of Creeks who had allied with it. In 1814, the United States granted those Creeks the right to occupy individual reservations in Southern Alabama under the Treaty of Fort Jackson. [2]

Little time passed before the United States' policy toward the Creeks began to change. In 1817, Congress provided that fee simple patents to Creek reservation lands should be issued upon the death of the original reservation grantees. Moreover, in what came to be known as the Trail of Tears, the United States decided to pursue a policy of forced removal of the Creeks and other tribal nations in the South and Eastern United States. Thousands of Native children, women, and men died on these forced marches to the Indian Territory—which is now the state of Oklahoma. Our Tribe avoided this fate. Like other Indian nations located in the South and East today, we were able to do so only by fleeing into remote homelands.

Specifically, our tribe found refuge and settled on the McGhee reserve, located now in the Community of Poarch, Alabama. A Creek leader, Lynn McGhee, had been granted a reserve pursuant to the 1814 Treaty. Under the terms of the Treaty, McGhee and his descendants retained the right to the reserve as long as they occu-

[1] Memorandum from Deputy Assistant Secretary—Indian Affairs (Operations), U.S. Dep't of Interior, to Assistant Secretary—Indian Affairs, on Recommendation and Summary of Evidence for Proposed Finding for Federal Acknowledgement of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. § 83, at 3 (Dec. 29, 1983).

[2] 7 Stat. 120 (Aug. 9, 1814).

pied it and were to be "protected by and subject to the laws of the United States." [3] This land was "technically individually owned." [4] "[I]n practice," however,"[the McGhee lands] were usable by the entire community" that "settled there" during the removal era. [5]

Unlike other Creek reservations established in the wake of the War of 1812, the McGhee reserve was held in trust and never fee patented. As noted, in 1817 Congress passed a statute that generally removed Creek reservations from trust status. McGhee, however, had been unable to enter his claim for a reservation before the deadline set by the 1814 Treaty of Fort Jackson because of a war injury. For this reason, Congress subsequently acted specifically on behalf of McGhee, granting him the right to select a reservation under the terms of the 1814 Treaty after the deadline. In so doing, Congress opted not to subject the McGhee reserve to the 1817 Act.

In the early 1900s, the Department of Justice confirmed the McGhee reserve's trust status. Specifically, in 1912, the federal government, acting in its role as trustee, sued a timber company for trespass on the McGhee reserve. This action was accompanied by a series of internal memoranda within the Department of Justice, which analyzed whether the land remained in trust and concluded that it did. [6]

Despite this confirmation of trust status, the Government Land Office improperly issued a fee patent to the McGhee heirs in 1924. However, because these fee grants were unlawful, they did not erode the protections owed to our Tribe. Later analysis by the Commissioner of Indian Affairs concluded that the descendants of McGhee "who to this day occupy his reserve continue to be 'protected by and subject to the laws of the United States.'" [7]

In 1984, after years of living in obscurity and abject poverty, the Reagan Administration reaffirmed the status of the Poarch Band of Creek Indians as a federally recognized Tribe. The United States acknowledged that Poarch has been an autonomous, distinct tribal community for centuries, that we have maintained governing authority over our tribal citizens, and that our citizens descend from an historical Indian Tribe. We remain based on the McGhee reserve, which was never disestablished. [8]

Our Tribe is also a successor to the pre-Removal Creek treaties and as such we have at all times since then enjoyed a treaty relationship with the United States. Our ancestors were part of the Creek Nation before the removal era. We were recognized by the United States as autonomous, and our ancestors signed the pre-removal Creek treaties as a subset of the Creek Confederacy. [9] The Department of the Interior has accordingly recognized that we are a "successor of the Creek Nation of Alabama prior to its removal." [10]

Acknowledgement as a federally recognized Indian Tribe was a turning point for our government. In 1984, we began working with the Interior Department to establish a small land base for our community. Using authority provided in the Indian Reorganization Act of 1934, the Tribe worked with Interior to place approximately 389 acres of fee lands into trust from 1985 to 1995. The majority of these trust lands (229.5 acres) were approved by Interior on April 18, 1985. [11]

Over the past four decades, Poarch Creek leaders have balanced the preservation of our Tribe's history and culture with the need to rebuild our community. Today, we are blessed to be able to provide our tribal citizens and neighbors with essential services, including functioning infrastructure, police and fire protection, healthcare, and eldercare.

The Tribe has developed positive working relationships with our neighboring counties of Elmore, Escambia, and Montgomery. We have engaged in dozens of MOUs and intergovernmental agreements with these and other local governments that have helped upgrade fire and rescue stations, conduct miles of road repairs and

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[3] *Id.*

[4] U.S. Dep't of Interior, Office of Federal Acknowledgment, Technical Reports regarding the Poarch Band of Creeks of Atmore, Alabama, at 28–29 (1983).

[5] *Id.*

[6] Letter from Attorney General McReynolds to Senator Joseph Johnson, at 6–7 (Apr. 23, 1913).

[7] Memorandum from Morris Thompson, Commissioner of Indian Affairs, to Mr. Keep, Associate Solicitor, Indian Affairs on the Eligibility of the Poarch Creek Band Under the Indian Reorganization Act (Mar. 23, 1976).

[8] History, Poarch Band of Creek Indians, *https://pci-nsn.gov/our-story/history/*(last visited June 7, 2024).

[9] *Id.*

[10] Final Determination for Federal Acknowledgment of the Poarch Band of Creeks, 49 Fed. Reg. 24083, 24083 (June 11, 1984).

[11] See Establishment of Poarch Band of Creek Indians Reservation (50 Fed. Reg. 15502 (April 18, 1985)), and Poarch Band of Creeks-Establishment of Reservation: Correction (50 Fed. Reg. 19813 (May 10, 1985)).

upgrades—including lighting installations, provide resources to improve health care and education, and much more. We are also the first responders for 15 miles north and south of the Reservation on Interstate 65. These agreements and services far exceed revenue from any potential tax receipts these neighboring governments would receive if our lands remained in fee. As Alabama Natives and Alabama Neighbors, we are driven to give back to these communities by our belief that working together and giving back makes us all stronger, together. We are proud that our neighboring Counties, mayors, and state representatives have pledged their support for S. 3263, the Poarch Band of Creek Indians Parity Act. Attached to my written testimony is a letter of support from our neighboring local governments.

We have been able to improve the economic condition of not only Poarch, Alabama, where we are headquartered, but also in other parts of the State. Our Tribe operates more than 40 companies that do work worldwide and generate 9,000 jobs. I am proud to say that we generate more than 4,000 jobs for families in Alabama. Beyond these enterprises, we also welcome people to visit our lands, especially the Magnolia Branch Wildlife Reserve, which welcomes 30,000 visitors annually. It is one of the prettiest places you can imagine to go fishing, tubing, horseback riding, and camping.

We honor our blessings by giving back to local non-profits and community organizations. We donate nearly $8 million annually to local governments, educational institutions, health care systems, and other philanthropic causes. During the COVID–19 pandemic, we were able to give back to the State of Alabama with a $500,000 donation to the Alabama Department of Health for COVID–19 vaccine storage and administration. In fact, knowing how important protecting rural Alabama is to us, the State asked us to run clinics to vaccinate rural Alabamians.

We have made careful decisions about how to best use our resources and property. However, we have a limited land base, and at this point, we are no longer able to meet the growing housing and many other needs of our nearly 2,900 citizens.

For example, when it became clear we needed to expand our Boys and Girls club, we were forced to fill in the ponds around the community center because there was no more buildable land. The lack of trust land forced our Tribe to invest more than $1 million to fill in these ponds to expand the size of our Boys and Girls Club in 2018.

As our population ages, the Tribal Council has prioritized providing the best healthcare and eldercare available. We have an Assisted Living Facility (ALF) but will soon need a nursing home. We do not have the current land available to provide this service, and the passage of S. 3263 will allow us to make this dream of a nursing home a reality. As our community grows, enhancing our governing land base is a not only a need, it is a must.

We are not alone. Tribal governments nationwide have a shortage of usable land, and many—like us—have made land restoration a priority.

The Indian Reorganization Act: Restoration of the Tribal Government Land Base

This Committee has repeatedly examined the history of tribal government land tenure, documenting impacts of the federal policies of Removal, Allotment and forced Assimilation, and Termination, all of which displaced many tribal governments, leaving some completely landless. Former Senate Committee on Indian Affairs Chairman Byron Dorgan acknowledged that "Tribes ceded close to 200 million acres of land during the treaty-making and removal periods prior to 1881. Tribes lost an additional 90 million acres through the Allotment period between 1881 and 1934." [12]

The late Professor William Rice testified that:

> By 1934, Indian land ownership had been reduced . to 48,000,000 acres. But this did not tell the whole story. Even these shocking figures were misleading. Of the 48,000,000 remaining acres, some 20,000,000 acres were in unallotted reservations, another 20,000,000 acres were desert or semi-desert lands, and some 7,000,000 were in fractionated heirship status awaiting sale to non-Indians. [13]

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[12] Examining Executive Branch Authority to Acquire Trust Lands for Indian Tribes, S. Hrg. 111–136 at 2 (May 21, 2009) (opening statement of Chairman Byron Dorgan) (online at *https://www.indian.senate.gov/wpcontent/uploads/documents/CHRG-111shrg52879.pdf*).

[13] See The IRA–75 Years Later: Renewing our Commitment to Restore Tribal Homelands and Promote Self-Determination, S. Hrg. 112–113 at 14 and fn.12 (June 23, 2011) (statement of Prof. William Rice, citing Indian Affairs Committee hearings on the "Wheeler-Howard Indian Reorganization Act") (online at *https://www.govinfo.gov/content/pkg/CHRG-112shrg68389/pdf/CHRG-112shrg68389.pdf*).

The policy of forced Allotment and Assimilation (1881–1934) sought to destroy tribal governments by mandating the division of communally held tribal government homelands to individual tribal members. After allotments were made, remaining Indian lands were deemed "surplus" and opened to settlement. As noted above, the Allotment policy resulted in the taking of more than 90 million acres of Indian lands, and led to the checkerboard land ownership of many tribal communities and the land fractionation problems that continue to this day. Allotment and Assimilation also devastated tribal government economies, tribal culture, and indigenous social systems. [14]

Since the Supreme Court's 2009 decision in *Carcieri v. Salazar*, this Committee and your House counterpart have also frequently examined the history, purposes, and impacts of the Indian Reorganization Act of 1934 (IRA). The primary purposes of the IRA were to put a stop to the unilateral allotment of Indian lands and to authorize the Interior Department to rebuild the tribal government land base. [15] Section 5 of the IRA provides:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians. [16]

The IRA also sought to place a check on the often-unchecked authority of the Interior Department over local tribal government decisionmaking. To reverse the Allotment policy's efforts to undermine Tribal governments, Section 16 of the IRA sought to empower Tribes to organize their own governing structures by establishing Tribal constitutions and bylaws that fostered the enactment and enforcement of Tribal laws to govern their lands. [17]

For 75 years, from 1934 to 2009, the Department of the Interior restored approximately 8 million acres of tribal government fee lands into trust status. Interior Departments of presidents of both political parties used the IRA to place land into trust for all federally recognized Indian tribes regardless of whether they were formally acknowledged as a tribe before or after 1934. Tribes have used their trust lands to build schools, health centers and housing to serve their communities. These lands are also used for tribal enterprises to promote economic development in mostly rural communities that are underserved and overlooked. [18]

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[14] Allotment and its authorized takings of "surplus" Indian lands stripped tribal governments of untold natural resources. In addition, the policy of Assimilation authorized the government to take Indian children from their homes, forcing them into federal boarding schools where they were forbidden from speaking their language or practicing their religion. We commend the Committee for advancing S. 1723, which would establish a Truth and Healing Commission on Indian Boarding School Policies, and strongly support its final passage.

[15] 25 U.S.C. § § 5101 et seq.

[16] 25 U.S.C. § 5108.

[17] *See* The IRA—75 Years Later: Renewing our Commitment to Restore Tribal Homelands and Promote Self-Determination, S. Hrg. 112–113 at 15–16 (June 23, 2011) (statement of Prof. William Rice, quoting Indian Affairs Commissioner and architect of the IRA, John Collier, in his testimony before the Senate Committee on Indian Affairs in the run-up to passage of the IRA: "Paralleling this basic purpose [of reversing the allotment system] is another purpose just as basic. The bill stands on two legs. At present the Indian Bureau is a czar. It is an autocrat. It is an autocrat checked here and there by enactments of Congress; but, in the main, Congress has delegated to the Indian Office plenary control over Indian matters. It is a highly centralized autocratic absolutism. Furthermore, it is a bureaucratic absolutism.") (online at *https://www.govinfo.gov/content/pkg/CHRG-112shrg68389/pdf/CHRG-112shrg68389.pdf*).

[18] There is a common misperception that the Interior Department's fee to trust process serves to expand Indian gaming. The IRA authorizes Interior to place tribal government-owned fee land into trust and nothing more. State and local governments are notified and have an opportunity to comment and work with the Tribe to negotiate agreements to address any concerns with pending trust land applications. Nothing in the IRA authorizes or regulates Indian gaming, which is comprehensively regulated under the Indian Gaming Regulatory Act, NIGC regulations, the Interior Department's Part 292 regulations, and the compact review process. The question of whether Indian trust lands are eligible to be used for gaming is governed solely by IGRA and the NIGC and Interior Department regulations developed to implement that separate law. Admittedly, some Tribes do submit land into trust applications for gaming purposes. However, those relatively few applications must not only meet the requirements of the IRA's Part 151 regulations, but they must also separately meet the requirements of the Interior Department's Part 292 IGRA regulations. As former Assistant Secretary Kevin Washburn noted, of the 1,300 trust acquisitions submitted to Interior from 2008–2013, fewer than 15 were for gaming purposes. See testimony of Kevin Washburn before the House Resources Committee's Subcommittee on Indian and Alaska Native Affairs, at 2 (Sept. 19, 2013) (online at *https://naturalresources.house.gov/uploadedfiles/washburntestimony09-19-13.pdf*).

The 2009 *Carcieri v. Salazar* Decision and its Impacts

The Supreme Court, in *Carcieri v. Salazar*, reversed these 75 years of practice and precedent. The Court tied the Interior Secretary's IRA Section 5 authority to place land into trust for Indian tribes to the Act's definition of "Indian", which provides that:

> The term 'Indian' as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe *now under Federal jurisdiction*, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. [19]

The Court held "that the term 'now under Federal jurisdiction' in [the IRA] unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." However, Court's decision provided no guidance to determine the meaning of the phrase "under federal jurisdiction", and nothing in the text of the IRA or its legislative history defines that phrase.

In this Committee's first *Carcieri*-related hearing, former Chairman Dorgan acknowledged ., "I just want to say that I am concerned about the court's decision in *Carcieri* and the impact it may have on those tribes that were recognized after 1934. I believe that Congress will likely need to act to clarify this issue for tribes and to ensure that the land in trust process is available to all tribes regardless of when they were recognized." [20] He predicted that the decision could impact hundreds of tribes by: slowing the land-into-trust process; leading to costly litigation over the status of Indian lands; complicating criminal jurisdiction in Indian country; hindering economic development; and creating two classes of Indian tribes. [21] Sadly, each of these predictions have come true.

Costly and Time-Consuming Litigation

We know the effects of the *Carcieri* decision all too well. Our Tribe has been forced to defend the status of our trust lands in several federal court cases. In 2013, the State of Alabama relied on a *Carcieri*-based argument in seeking to enjoin federally approved gaming on Poarch Creek trust lands. The United States, while not named as a defendant in the proceedings, filed amicus curiae briefs in support of the Tribe's successful motion to dismiss the case and again when the State unsuccessfully appealed dismissal of its claims to the Eleventh Circuit Court of Appeals. [22] While both the trial and appellate courts rejected the State of Alabama's *Carcieri* challenge, the Tribe was forced to spend hundreds of thousands of dollars and the federal government was forced to devote limited attorney resources to secure that result.

Similarly, the Tribe was forced to file its own federal lawsuit in 2015 in response to the Escambia County, Alabama, tax assessor's attempt to assess state taxes on Poarch Creek trust lands in erroneous reliance on the *Carcieri* decision. The Tribe again prevailed before the federal district court and the Eleventh Circuit Court of Appeals, with the United States filing an appellate amicus curiae brief in support of the Tribe's position. [23] And once again, Poarch Creek and the United States were forced to devote limited, valuable time and other resources to litigating spurious claims that resulted directly from the uncertainty generated by the *Carcieri* decision.

These are but two examples. We have seen specious *Carcieri* arguments raised in numerous other cases filed in state and federal courts, many of which have nothing whatsoever to do with the trust status of Poarch Creek lands, but where the *Carcieri* argument is nonetheless raised either out of lack of understanding or in an attempt to extort an unwarranted settlement from the Tribe.

The impacts of *Carcieri* of course go far beyond our Tribe. Many dozens of cases making *Carcieri*-based arguments have been filed in federal and state courts by state and local governments and individuals throughout the United States. In addition, the Interior Board of Indian Appeals has been bogged down for more than 15

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[19] 25 U.S.C. § 5129 (emphasis added).

[20] Examining Executive Branch Authority to Acquire Trust Lands, S. Hrg. 111–136 at 1 (May 21, 2009) (opening statement of Chairman Byron Dorgan) (online at *https://www.indian.senate.gov/wpcontent/uploads/documents/CHRG-111shrg52879.pdf*).

[21] *Id.* at 2–3.

[22] *Alabama v. PCI Gaming Auth.*, 801 F.3d 1278 (11th Cir. 2015).

[23] Poarch Band of *Creek Indians v. Hildreth*, 656 F. App'x 934 (11th Cir. 2016).

years now with *Carcieri*-related challenges to the BIA's IRA fee to trust decisions.[24] It is difficult to fathom the hours and legal fees related to these cases, not only to the tribal governments forced to defend the attacks on their land, but also to the teams of attorneys at the U.S. Department of the Interior's Solicitor's Office and the U.S. Department of Justice's Environment and Natural Resources Division.

Thankfully, every court reviewing the issue has upheld the Interior Department's decisions to place our land in trust. However, these lawsuits have taken a toll, and that is why our Tribe is seeking a legislative solution that will provide us with long needed legal certainty.

Two Classes of Tribes

In addition, as Senator Dorgan anticipated, the *Carcieri* decision has created two classes of tribes: those able to prove that they were "under federal jurisdiction" in 1934, and those that cannot. This result directly conflicts with Congress' 1994 amendments to the IRA, which mandated that all federally recognized Indian tribes be treated the same for all purposes under the Act.

The 1994 amendments were passed in direct reaction to efforts at the Bureau of Indian Affairs to use Section 16 of the IRA to classify Indian tribes as being either "created" or "historic". Senator John McCain, then Vice Chairman of the Indian Affairs Committee, offered the amendment, in part, in response to the BIA's treatment of the Pascua Yaqui Tribe of Arizona. In his floor statement that led to passage of the amendment, Senator McCain shared the following:

> According to the Department, created tribes are only authorized to exercise such powers of self-governance as the Secretary may confer on them. . . I can find no basis in law or policy for the manner in which section 16 has been interpreted by the Department of the Interior. . .
>
> The recognition of an Indian tribe by the Federal Government is just that-the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations. Over the years, the Federal Government has extended recognition to Indian tribes through treaties, executive orders, a course of dealing, decisions of the Federal courts, acts of Congress and administrative action. Regardless of the method by which recognition was extended, all Indian tribes enjoy the same relationship with the United States and exercise the same inherent authority. All that section 16 was intended to do was to provide a mechanism for the tribes to interact with other governments in our Federal system in a form familiar to those governments through tribal adoption and Secretarial approval of tribal constitutions for those Indian tribes that choose to employ its provisions.
>
> Clearly the interpretation of section 16 which has been developed by the Department is inconsistent with the [principal] policies underlying the IRA, which were to stabilize Indian [tribal] governments and to encourage self-government. These policies have taken on additional vitality in the last 20 years as the Congress has repudiated and repealed the policy of termination and enacted the Indian Self-Determination and Education Assistance Act and the Tribal Self-Governance Demonstration Project. The effect of the Department's interpretation of section 16 has been to destabilize Indian tribal governments and to hinder self-governance of the Department's unilateral and often arbitrary decisions about which powers of self-governance a tribal government can exercise.[25]

Senator Inouye, then-Chair of the Committee, who also co-sponsored the amendment, made the following statement to clarify its purpose:

> [O]ur amendment will correct any instance where any federally recognized Indian tribe has been classified as 'created' and that it will prohibit such classifications from being imposed or used in the future. Our amendment makes it clear that it is and has always been Federal law and policy that Indian tribes recognized by the Federal Government stand on an equal footing to each other and to the Federal Government. . .. Each federally recognized Indian tribe is entitled to the same privileges and immunities as other federally recognized tribes and has the right to exercise the same inherent and delegated authorities. This is true without regard to the manner in which the Indian tribe be-

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[24] *See e.g.*, Legislative Hearing on H.R. 312, Mashpee Reaffirmation Act; H.R. 375, National *Carcieri* Fix; and Discussion Draft of the RESPECT Act, at 28–29 (April 3, 2019) (Testimony of Professor Colette Routel) (online at *https://www.congress.gov/116/chrg/CHRG-116hhrg35971/CHRG-116hhrg35971.pdf*).

[25] 140 Cong. Rec. 11234 (May 19, 1994).

> came recognized by the United States or whether it has chosen to organize under the IRA. By enacting this amendment to section 16 of the IRA, we will provide the stability for Indian tribal governments that the Congress thought it was providing 60 years ago when the IRA was enacted. [26]

The amendment, enacted on May 31, 1994, added subsections (f) and (g) to the Section 16 of the IRA. Subsection (f), titled "Privileges and Immunities of Indian Tribes" prohibited all federal agencies from promulgating regulations or making decisions "that classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes." Subsection (g) accomplished this same goal, but retroactively, by proclaiming that any regulation or administrative decision that treated tribal governments in a disparate manner "shall have no force or effect." [27]

One of many tragic results of the *Carcieri* decision is that it has breathed life back into this misguided argument that Tribal governments are either "historic" or "created". Former Assistant Secretary for Indian Affairs, Kevin Washburn, testifying in his capacity as a Professor of the University of Iowa College of Law, attempted to refute this line of thinking:

Since the 1990s, there has been a requirement that each year the Federal Government publish the list of tribes that are recognized. It would have been nice if we had had that in 1934. That would have saved a lot of this work for tribes. But the fact is there is no tribe that exists today that did not exist in 1934. We don't create tribes out of whole cloth in this country. We spend a lot of time working on the reformation of that tribal recognition process, and those tribes have always existed and so they deserve to have land if they have existed. So, I would respectfully urge the Committee to try to move H.R. 375 through the House. [28]

Administrative Attempts to Address the *Carcieri* Decision

In the wake of the *Carcieri* decision, the Interior Department was forced to make determinations of whether a Tribe that filed an IRA application to place land into trust was under federal jurisdiction on a case-by-case basis. Tribal governments were given little guidance about what factors would be considered in this determination.

To provide Tribes and the public with some guidance, the Interior Department's Office of the Solicitor issued an official M-Opinion on March 12, 2014 that provided a framework of how the agency would determine whether an Indian tribe was "under federal jurisdiction" in 1934 for purposes of the administrative fee to trust process. The M-Opinion set forth a two-part test. The first factor requires a sufficient showing that "the United States had, in 1934 or at some point in the tribe's history prior to 1934, an action or series of actions—through a course of dealings or other relevant acts for or on behalf of the tribe or in some instance tribal members—that are sufficient to establish, or that generally reflect federal obligations, duties, responsibility for or authority over the tribe by the Federal government." The second question is to "ascertain whether the tribe's jurisdictional status remained intact in 1934." [29]

While the M-Opinion provided some needed transparency to the land into trust process post-*Carcieri*, it required attorneys and historians from both the applicant Tribe and the Interior Department. Some "under federal jurisdiction" determinations took years to achieve. Often, when a land into trust decision was finalized pursuant to the M-Opinion, the Tribe had to wait additional years for the land to be placed into trust by wading through the federal court process. However, federal courts have generally upheld Interior's determinations pursuant to the 2014 M-Opinion.

On March 9, 2020, then-Solicitor Daniel Jorjani issued a new M-Opinion withdrawing the 2014 M-Opinion, replacing it with two memoranda. The first examines the recognition and jurisdiction elements of the phrase "any recognized tribe now under federal jurisdiction". The second established a four-part test that replaced the test established in the 2014 M-Opinion. Step 1 acknowledged that if Congress en-

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[26] 140 Cong. Rec. 11235 (May 19, 1994).

[27] P.L. 103–263 (May 31, 1994), codified at 25 U.S.C. § 5123(f), (g). Given the background of Section 16 of the IRA detailed by Professor Rice, it is beyond comprehension why or how the Interior Department undertook this effort.

[28] Legislative Hearing on H.R. 312, Mashpee Reaffirmation Act; H.R. 375, National *Carcieri* Fix; and Discussion Draft of the RESPECT Act, at 17 (April 3, 2019) (Testimony of Professor Kevin Washburn) (online at *https://www.congress.gov/116/chrg/CHRG-116hhrg35971/CHRG-116hhrg35971.pdf*).

[29] *The Meaning of Under Federal Jurisdiction for Purposes of the Indian Reorganization Act*, M–37029 at 19 (Mar. 12, 2014)

acted a law after 1934 making Section 5 of the IRA applicable to the Tribe, then no "under federal jurisdiction" determination would be necessary.[30] In the absence of post-IRA legislation, Step 2 required a Tribe to show evidence that it was subject to "the federal government's administration of its Indian affairs authority with respect to that particular group of Indians." If there is sufficient evidence "presumptively demonstrat[ing]" federal jurisdiction, the trust acquisition may proceed. Step 3 required a Tribe to show that it was recognized prior to 1934 and remained under federal jurisdiction in 1934. Examples meeting Step 3 include "ratified treaties still in effect in 1934; tribe-specific Executive Orders; tribe-specific legislation, including termination legislation enacted after 1934, which acknowledges the existence of a government-to-government relationship with a tribe at the time it is enacted."[31] If a Tribe did not meet Steps 1–3, Step Four asks whether the "totality of an applicant tribe's nondispositive evidence. . .is sufficient to show that the tribe was 'recognized' in or before 1934 and remained 'under federal jurisdiction' through 1934 [notwithstanding gaps in the historical record]." Step 4 also stated that applicant tribes recognized after 1934 or acknowledged after 1978 under the administrative procedures at Part 83 could also show evidence of "political-legal 'recognition' in or before 1934."[32]

Regulatory Improvements to the Land into Trust Process

Recognizing the limited shelf life of Interior M-Opinions, in October of 2021, the Interior Department initiated an effort to amend its Part 151 regulations that implement the IRA's Section 5 land into trust provision. On December 12, 2023, the Interior Department published a final rule to amend these regulations governing the discretionary acquisition of tribal fee to trust applications at 25 C.F.R. Part 151.[33]

This is the first substantive update of the administrative Tribal fee into trust process since 1995. The regulatory changes streamline the land into trust process by establishing a 120-day deadline for the Department to make a final determination on trust land applications. Importantly, the new regulation establishes criteria for a Tribal Government's eligibility to use the regulation by clarifying the Department's process to determine whether a Tribe was "under federal jurisdiction" in 1934, as required by the Supreme Court's *Carcieri* decision.[34]

Our Tribe truly appreciates the Interior Department's efforts to improve the administrative land into trust process, and we fully support these changes. While the updated regulations make the process for a Tribe to prove that it was "under federal jurisdiction" much clearer, the updated process still requires teams of attorneys and historians from both the Tribe and the Interior Department to navigate through the regulatory process. If the prior M-Opinions are any indication, even the streamlined process could take years to come to resolution.

In addition, we remain concerned that the regulations will be the subject of future litigation. Just as the Department's recent land into trust decisions made pursuant to the various M-Opinions have been challenged in court, decisions made pursuant to the updated regulations will likewise be challenged. The ensuing legal process will also take many years to achieve a final ruling. The legal challenges will most likely start at the Interior Board of Indian Appeals, which is already backlogged with dozens of tribal trust land acquisition appeals and faces a number of administrative judicial vacancies. Claims will then have to wind their way through the federal district and appellate courts, again consuming countless hours and resources.

As a result, our Tribe is taking what for us is a new approach to addressing our government's need for additional trust lands by working with our congressional delegation and nearby local governments to gain support and passage of the Poarch Band of Creek Indians Parity Act, which would clarify that our Tribe was under federal jurisdiction in 1934 for purposes of the IRA. Our approach is consistent with the Interior Department's updated land to trust regulations and both past and recent precedent in Congress.

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[30] Memorandum from Interior Solicitor Jorjani to Regional and Field Solicitors, *Procedure for Determining Eligibility for Land-Into-Trust under the First Definition of "Indian" in Section 19 of the IRA*, at 2 and fn. 4–6 (Mar. 10, 2020).

[31] *Id.* at 6–8.

[32] *Id.* at 8–10.

[33] Land Acquisitions, 88 Fed. Reg. 86,222 (Dec. 12, 2023) (to be codified at 25 C.F.R. pt. 151).

[34] In October 2021, Interior held Tribal Leader consultation sessions that discussed the need to improve the administrative process to restore tribal homelands. On March 28, 2022, the Department released draft revisions to Part 151, and held four Tribal Leader consultations, which led to a proposed rule that was published on December 6, 2022. The Interior Department held several consultations on the proposed rule, and accepted verbal and written comments through March 1, 2023.

Section 151.4(b) of Interior's updated regulation clarifies that if Congress enacted legislation after 1934 making the IRA's land into trust provisions applicable to a specific Tribe, no "*under federal jurisdiction*" analysis is needed. Section 151.4(b) of the final rule provides,

> (b) For some Tribes, Congress enacted legislation after 1934 making the IRA applicable to the Tribe. The existence of such legislation making the IRA and its trust acquisition provisions applicable to a Tribe eliminates the need to determine whether a Tribe was under Federal jurisdiction in 1934. [35]

While this approach may seem novel or new, it simply follows the approach that Congress has taken since the 1970s for a number of Tribes that were restored to federal recognition through an act of Congress. [36]

Legislative Efforts to Address the *Carcieri* Decision

February 24, 2024, marked the 15-year anniversary of the *Carcieri* decision. This Committee has considered national *Carcieri* fix bills every year for the past 15 years. [37] With some minor differences, each of these bills sought to amend the IRA to eliminate the phrase "under federal jurisdiction" and clarify that the IRA's land to trust provision applies to all federally recognized Indian tribes. The House of Representatives passed a national *Carcieri* fix in the 116th and 117th Congresses with broad bipartisan support each time under suspension of the rules. [38] However, those bills did not reach final passage.

The Poarch Band of Creek Indians has been one of the leading advocates for a national "*Carcieri* fix." Today, I again offer our full support of Senator Tester's bipartisan bill, S. 563, which would accomplish this goal.

In the 118th Congress, however, we are seeking a parallel track that is similar to the strategy taken by dozens of Tribes who have worked with their congressional delegation to enact bills to mandate fee-to-trust actions, reaffirm trust lands, or clarify that the IRA applies to their individual tribe. [39] We are grateful to Senator Britt for introducing the Poarch Band of Creek Indians Parity Act, S. 3263, which would clarify that the IRA's land-into-trust process applies to our Tribe. S. 3263 will enable us to work with the Interior Department and local governments restore and protect our lands to meet the acute needs of our growing community. This bill is targeted and tailored, and it has the strong support of the Alabama congressional delegation and the cities and counties surrounding our trust land.

I respectfully ask the Committee to bring S. 3263 to a markup and advance the bill to final passage in the 118th Congress. On behalf of the Poarch Band of Creek Indians, I am honored to speak to you today, and I am happy to answer any of your questions. Thank you.

Attachment

On behalf of the undersigned, we write in strong support of the Poarch Band of Creek Indians Parity Act, legislation to clarify the Land Into Trust Process for the Poarch Band of Creek Indians (Tribe.)

The Tribe is a major economic driver in our counties and cities and throughout Alabama, and employs over 3500 Alabamians, 90 percent of whom are not Tribal members. Additionally, with over 2,700 enrolled Poarch Creek tribal members who are citizens of our state, we feel a duty to do our small part to ensure the Tribe can exercise its inherent sovereignty to provide for future generations.

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[35] 88 Federal Register 86251 (Dec. 12, 2023).

[36] Legislative Hearing on H.R. 312, Mashpee Reaffirmation Act; H.R. 375, National *Carcieri* Fix; and Discussion Draft of the RESPECT Act, at 32 and fn. 5 (April 3, 2019) (Testimony of Professor Colette Routel) (online at *https://www.congress.gov/116/chrg/CHRG-116hhrg35971/CHRG-116hhrg35971.pdf*).

[37] 117th Congress—H.R. 4352 (McCollum), S. 1901 (Tester); 116th Congress—H.R. 375 (Cole), S. 2808 (Tester); 115th Congress—H.R. 130 (Cole), H.R. 131 (Cole)(reaffirmation); 114th Congress—H.R. 407 (McCollum), H.R. 249 (Cole), S. 732 (Tester), H.R. 3137 (Cole)(reaffirmation); 113th Congress—H.R. 666 (Markey), H.R. 279 (Cole), S. 2188 (Tester); 112th Congress—H.R. 1234 (Kildee), H.R. 1291 (Cole), S. 767 (Akaka); 111th Congress—H.R. 3742 (Kildee), H.R. 3697 (Cole), S. 1703 (Dorgan).

[38] Roll call vote on H.R. 4352, passed 302–127 (Dec. 1, 2021) (online at *https://clerk.house.gov/Votes/2021393*); Roll call vote on H.R. 375, passed 323–96 (May 15, 2019) (online at *https://clerk.house.gov/Votes/2019208*).

[39] *See e.g.*, NDAA for FY'2020, P.L. 116–92 (Dec. 20, 2019) (as enacted included the Santa Ynez Band of Chumash Indians Land Affirmation Act (§ 2868), the Lytton Rancheria Homelands Act (§ 2869), the Little Shell Tribe of Chippewa Indians Restoration Act (§ 2870)); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, P.L. 115–121 (Jan. 29, 2018); Gun Lake Trust Land Reaffirmation Act, P.L. 113–590 (July 30, 2013).

This legislation is necessary because the Supreme Court ruled in 2009 that the Department of Interior's (DOI's) tribal fee-to-trust authority is limited to only those tribal governments that were "under federal jurisdiction" as of June 18, 1934, the date of enactment of the Indian Reorganization Act (IRA). DOI has struggled to consistently define the term "under federal jurisdiction." The term "under federal jurisdiction" is not defined in the IRA and there is no legislative history to discern congressional intent of the term. Since 2009, DOI has relied on multiple Solicitor M-opinions to determine whether a tribe is under federal jurisdiction. This ambiguity has made the process subject to litigation based on unfounded legal claims and has resulted in heavy legal/administrative burdens for tribes. As such, the Tribe has been subjected to unnecessary litigation over the status of its lands since 2009. Further, the U.S. must commit significant resources from the Departments of Justice and Interior to do archival analysis, legal research, and litigation support for these decisions at great taxpayer expense.

Fortunately, the Tribe has prevailed in these cases, but these constant attacks have taken an unnecessary toll on the Tribe—stalling development for improved housing, health care, and other essential services to the community. The Tribe is a great community partner, and it is important that we support their efforts to correct this legal ambiguity. This legislation would allow the Tribe to strengthen its capacity to better provide for its nation and the surrounding communities. We offer our full support of the Poarch Band of Creek Indians Parity Act.

Sincerely,

Doug Singleton, Chairman, Montgomery County Commission
Bart Mercer, Chairman, Elmore County Commission
Henry Hines, Elmore County Commission
Charles W. Jinright, President, Montgomery City Council
Alan Baker, Alabama House of Representatives District 66
Greg Albritton, Alabama Senate District 22
Jim Staff, Mayor, City of Atmore
Steven Reed, Mayor, City of Montgomery
Jerry Willis, Mayor, City of Wetumpka
Raymond Wiggins, Chairman, Escambia County Commission
Larry White, Escambia County Commission
Steven Dickey, Escambia County Commission
Karean L. Reynolds, Escambia County Commission
Brandon Smith, Escambia County Commission
Mack Daugherty, Elmore County Commission
Dennis Hill,Elmore County Commission
Desirae Lewis Jackson, Elmore County Commission

The CHAIRMAN. Thank you very much.

Chair Mejia, please proceed with your testimony.

STATEMENT OF HON. ANDY MEJIA, CHAIRPERSON, LYTTON RANCHERIA OF CALIFORNIA

Mr. MEJIA. Good afternoon, Chairman Schatz, Vice Chair Murkowski and members of the Committee on Indian Affairs. My name is Andy Mejia, Chairperson of the Lytton Rancheria of California, a tribe based in Sonoma County.

Thank you for allowing me to be here today to speak in support of S. 4000, a technical amendment to reaffirm that the Indian Reorganization Act applies to the tribe. I would like to thank Senator Padilla for introducing this bill and for his work on behalf of Indian Country.

If enacted, S. 4000 would only clarify the intent of previous legislation and confirm that the Lytton Rancheria is able to take land into trust for the administrative process as other tribes nationwide and in Sonoma County are able to do. The bill itself does not take any lands into trust, but only makes explicit that the tribe is able to go through the Department of Interior's approval process.

On behalf of the members of the Lytton Rancheria of California, I ask that you support S. 4000.

In 1995, Madam Chairwoman Marge Mejia was elected Chairperson of the Rancheria of California Tribe. She was my mother. At that point in time, we were a landless and penniless tribe. Madam Chairwoman had three promises during her tenure, that was self-sufficiency, land, and housing. The promise of self-sufficiency was accomplished by establishing San Pablo Lytton Casino in the City of San Pablo, California, which is one of the most successful Class II gaming facilities in the Nation.

Due to the success of the San Pablo Lytton Casino, and under Madam Chairwoman's leadership, the tribe has been able to purchase almost 3,000 acres of land in Sonoma County, of that 3,000 acres, 800 acres being high-end vineyard.

Madam Chairwoman fought tirelessly for 12 years to take 511 acres into trust to build a 146-home housing development and fulfill her last promise to the tribe. In 2019, that 511 acres was taken into trust through the legislative process, and construction began in January of 2020.

On October 19th, 2022, Madam Chairwoman, my mom, passed away unexpectedly at the age of 66. It truly breaks my heart that my mom is not here to enjoy the fruits of her hard work, dedication, sacrifice, and the legacy she leaves behind after her 27-year tenure. No tribe should have to spend 12 years taking land into trust.

Construction of the Lytton Homeland was completed this January. It is a very pinnacle moment for our tribe as we navigate through the process of bringing tribal member families back to their aboriginal land.

The Lytton Rancheria has become a prime example of all that the IRA can do for Indian Country. We presently only ask to be placed on the same footing as other federally recognized tribes. This bill makes explicit that the IRA applies to the tribe and does not itself take any land into trust but only allows the tribe to apply through Interior's land-into-trust process as neighboring tribes were able to do.

Thank you for your time. I would be happy to answer any questions.

[The prepared statement of Mr. Mejia follows:]

PREPARED STATEMENT OF HON. ANDY MEJIA, CHAIRPERSON, LYTTON RANCHERIA OF CALIFORNIA

I am thankful for the opportunity to present testimony to the Committee on a bill that would have a significant impact on the citizens of the Lytton Rancheria of California, a federally recognized Pomo Tribe from the San Francisco Bay area. My name is Andy Mejia, and I am the Tribe's Chairperson.

The Pomo people historically resided in lands across northern California. Our ancestors were subsequently devastated by the Gold Rush, and hostile government policies in the 19th Century. By the early 1900's the surviving Pomo peoples were poverty stricken, landless and homeless. As a result of the harrowing condition of California's Indians, Congress enacted legislation to help purchase reservation lands for many of them. The Lytton Rancheria was one such tribe, which then received reservation lands in Sonoma County.

Unfortunately, the Tribe was subjected to additional hardships when the Federal Government wrongfully terminated the rancheria on April 4, 1961. The Tribe subsequently lost all of its rancheria lands and once again became destitute and landless, with no means of supporting itself.

In 1991, our Tribe, after decades of fighting to regain our recognition, received a welcome development when a federal court concluded the termination was unlawful

and ordered the government to reverse its decision to terminate the Tribe and to restore our Tribal status. The Stipulated Judgment which did so contained a provision which reads, ". . .that the distributees of the Lytton Rancheria are eligible for all rights and benefits extended to Indians under the Constitution and laws of the United States; and that the Lytton Indian Community and its members shall be eligible for all rights and benefits extended to other federally recognized Indian tribes and their members,. . ."

While the Tribe's status was restored, its land base, now owned by non-Indians, was not returned to us and the Tribe remained landless and impoverished. Subsequently, after due consideration and with strong local support, Congress in 2000, passed legislation directing the Secretary of the Interior to take certain land into trust for gaming purposes for the Tribe in San Pablo, California. The bill declared that the land was part of the reservation of the Tribe under Sections 5 and 7 of the IRA. The Tribe then established a small, successful Class II gaming operation. Since its establishment, the Tribe's casino in San Pablo has been the cornerstone of a fruitful and mutually beneficial relationship between the City of San Pablo and the Lytton Rancheria. As a result, our Tribal members have realized significant benefits including improved housing and educational opportunities for our children, and medical care for our elders.

With the revenues from the casino, the Tribe also began purchasing property near and within our original rancheria. We did so in order to diversify our economic development and to potentially provide a future homeland for our members, as the 9.5-acre San Pablo trust parcel is only large enough for the gaming facility and could not meet our housing needs. The Tribe's current economic development includes various viniculture projects where the Tribe has invested in previously deteriorating vineyards, with a focus on environmental responsibility and stabi lity. Many of the Tribe's vineyards and grapes are now being used to produce high-quality wines.

Throughout this time period, the Lytton Rancheria has continued to be good neighbors to our local non-Indian communities. In San Pablo, the Tribe provides approximately 60 percent of the City's operating budget and donates to many local charities. This includes a golf tournament the Tribe sponsors providing nearly $100,000 annually. The Tribe has also donated millions of dollars to children's charities and arts programs in Sonoma County as well as to the Sonoma Indian Health Clinic, which offers healthcare to all Native Americans residing in Sonoma County, regardless of tribal affiliation.

In the time since our restoration, the Tribe has persisted in efforts to re-establish a homeland for our members. This culminated in the passage of the Lytton Homelands Act in 2019. This legislation directed the federal government to take some of the land purchased by the Tribe into trust, primarily for tribal housing. In order to pass this legislation, we worked hard to develop agreements and understandings with local non-Indian communities. These agreements with Sonoma County, the Windsor Fire Protection District, and the Windsor Unified School District reflect our commitment to work with local governments in a mutually respectful manner and we appreciate the support that they and the State of California provided to the 2019 legislation.

Since the passage of the legislation, we have completed the development of the initial phases of our tribal housing project and moved 146 tribal households onto the Lytton Rancheria. For the first time since our termination, we are able to live together on our tribal homeland.

However, it was never intended that the land taken into trust by the 2019 legislation would be the final trust acquisition for the Tribe, as the Tribe will need additional trust lands as it continues to grow. In fact, the 2019 legislation contemplates that the Tribe would have future lands taken into trust and includes an agreed-to ban on gaming on such lands in Sonoma County. The Tribe has subsequently sought to take additional lands into trust via the administrative process to support the needs of our growing community. These lands, which we own, are contiguous to and surrounding the current homeland. Unfortunately, despite the ability of neighboring Tribes with similar histories, to do so, and the 2000 and 2019 pieces of legislation, which already explicitly and implicitly extend the IRA to the Tribe, we have been unable to get an opinion from the Interior Department on our ability to do so, and thus have been unable to proceed with our application. With S. 4000, the Tribe only seeks to make explicit our ability to go through the administrative process. This would not give us any special treatment and would merely place us on equal standing with other tribes throughout the country and in Sonoma County.

The Tribe has previously agreed not to conduct gaming within the county of Sonoma, pursuant to the terms contained in our Memorandum of Agreement with the county and further, the Tribe is also prohibited from doing so by the 2019 legis-

lation. That being said, land is essential for tribes to function as governments. Tribal trust lands are especially important to this advancement. Tribes need trust lands so that they can provide governmental services for their members, whether it be for housing, health care, education, or economic development. Having such lands in trust provides us with the necessary infrastructure and planning to provide for future generations and allows us to protect our historic, cultural and religious ties to our homeland.

This Committee has been supportive of the Tribe in the past and the Lytton Rancheria continues to be grateful for that. Additionally, we are tremendously proud of our homeland and the community we have been able to re-build on it. All members of the Committee are welcome to visit and receive a tour.

With S. 4000 we only ask to be placed on the same footing as other federally recognized tribes. This bill does not itself take any land into trust, but makes clear that the IRA extends to the Tribe and that we are therefore able to apply through the Department of the Interior's land into trust process, just as neighboring tribes are able to do. We are willing and able to answer any and all questions.

The CHAIRMAN. Thank you, Chairman. I am sorry for the loss of your mother, and may her memory be a blessing.

Chairman Whiteclay, thank you for being here. Please proceed.

STATEMENT OF HON. FRANK WHITECLAY, CHAIRMAN, CROW NATION OF MONTANA

Mr. WHITECLAY. Thank you. Good afternoon, Chairman Schatz, Vice Chair Murkowski, honorable members of the Senate Committee on Indian Affairs. Thank you, Senator Tester.

I am Frank Whiteclay. I am Chairman of the Crow Nation, home to approximately 7,500 of the total 14,350-plus members of the Crow Tribe.

The Crow Tribe negotiated a water compact with the State of Montana that was adopted by the Montana legislature in 1999 that provides water from surface flow, groundwater, and storage for the Crow Tribe and protects all State and tribal current water users in the State, and future water users in the compact.

The compact was ratified by the Crow Water Rights Settlement Act of 2010, and the Act also provides for the rehabilitation and improvement of the Crow Irrigation Project, a project owned and operated by the Bureau of Indian Affairs, construction of municipal, rural and industrial water systems for the delivery of clean drinking water, provides tribal water rights for tribes, the tribe and allottees, identifies storage of water in the Big Horn Lake of 300,000 acre-feet per year in addition to the 500,000 acre-feet in the Big Horn and all groundwater on the Crow reservation. It provides an exclusive right of the tribe to develop and market power generation on the Yellowtail Afterbay Dam.

I am here to support the amendments on S. 4442, the amendments to the Act to revise it from a project-based settlement to a fund-based settlement that will allow flexibility on delivery of clean water. The Amendments Act will extend the upcoming deadline on the exclusive right to develop the power generation project.

The tribe completed engineering for the water intake facility on the Big Horn in 2022, and advertised bids for construction. We received no bidders. This led the tribe to reconsider the viability of the MR&I system pipeline. We identified the following concerns.

The pipeline construction was approximately 20 years, at a cost of $400 billion plus, with an expectation that estimated construction costs will rise, which they did with the supply chain rise in

materials, likely resulting in a shortfall to complete construction. Pipeline construction will be daunting with the size of the reservation, 2.4 million acres across varying geographical features.

The pipeline construction timeframe would result in a lengthy delay of water delivery for reservation communities, and some communities would wait many years for clear drinking water, and others would not receive it at all. The water settlement included a finite amount for operation, maintenance and replacement costs, which other water settlements have in perpetuity, operation and maintenance costs.

The Water Settlement Act did not include a mandatory hookup for households along the pipeline, leaving the number of actual customers unknown. However, if a tribal household was hooked up to a pipeline, monthly consumer costs to cover operational costs would be approximately $120 per month in today's dollars, which would burden an already impoverished reservation household.

Private landowners were unwilling to grant temporary permits to cross lands for water sampling and testing for placement of the water intake unit closer to reservation communities, which resulted in moving the intake to tribal lands at the Yellowtail Afterbay location, much farther from the reservation's larger communities.

The Environmental Protection Agency expressed concerns to the BOR in a letter dated October 31st, 2022, with the location of the intake unit resulting in a water age concern for most customers, and the proposed use of complex chemicals for treatment that would necessitate operators with advanced certification requirements. The tribe is proposing to move the funds into a trust account for Federal management which would draw upon approval to develop clean water.

On behalf of the Crow tribal membership, I am hopeful that the Crow Water Settlement Amendment Act will be adopted in this Congressional session.

Thank you.

[The prepared statement of Mr. Whiteclay follows:]

PREPARED STATEMENT OF HON. FRANK WHITECLAY, CHAIRMAN, CROW NATION OF MONTANA

Good Afternoon, Honorable Members of the Senate Committee on Indian Affairs. I am Frank Whiteclay, Chairman of the Crow Nation of Montana, and I am honored to present this testimony in support of the Crow Water Settlement Amendments Act, Senate Bill 4442. I would like to thank Senator Tester and Senator Daines for their co-sponsorship of this important legislation for the Crow Nation.

The Crow Tribe proposed these amendments to the Crow Water Rights Settlement Act of 2010 to amend the Act from a project specific Act to a fund based settlement Act that is consistent with more recent Indian water rights settlements and provides flexibility for clean water delivery systems.

Background

The Crow Reservation, formally established pursuant to the Fort Laramie Treaty of 1868, is located in southeast Montana, and currently encompasses 2.3 million acres with three mountain ranges, significant range lands, dry farm and irrigated lands with numerous water sources originating on and off the reservation. Approximately 7500 Crow Tribal members reside on the Reservation and approximately 1500 non-Indian residents possess state-adjudicated water rights throughout the reservation with the majority along the Big Horn River.

The Bureau of Indian Affairs constructed the Crow Irrigation System in the early 1900's to enhance agricultural efforts on the Crow Reservation through irrigation of farmlands along the Big Horn River, Little Bighorn River, Pryor Creek and Lodge

Grass Creek. A significant portion of lands along the irrigation systems are in non-Indian fee ownership.

The Crow Tribe negotiated a Water Compact with the State of Montana Reserved Water Rights Compact Commission that was ratified by the Montana Legislature in a special session in June 1999. The Compact:

- provides water from surface flow, groundwater and storage for the Crow Tribe for existing and future Tribal water needs.
- Provides protection for all state and Tribal current water uses in the affected water basins from the Tribe's future exercise of its water rights; also protects the local conservation districts' right to future water use.
- Creates an administrative process for resolution of any future disputes between Tribal and non-Tribal water users.

Crow Tribe Water Rights Settlement Act of 2010

The Crow Tribe Water Rights Settlement Act of 2010 ratifies, authorizes, and confirms the water rights 1999 Compact between the Crow Tribe and the state of Montana and provides for: (1) the Tribe to rehabilitate and improve the Crow Irrigation Project; and (2) the Tribe and Reclamation to construct the municipal, rural, and industrial water system; (3) provides tribal water rights for the tribe and allottees; (4) provides for leasing and selling of water with federal approval; (5) identifies 300,000 acre-feet per year of water stored in Bighorn Lake, Yellowtail Unit, Lower Bighorn Division, Pick Sloan Missouri Basin Program, for the Tribe in addition to the allocation of 500,000 acre-feet per year in the Big Horn and all groundwater on the Crow Reservation; and (6) provides the exclusive right of the Tribe to develop and market power generation on the Yellowtail Afterbay Dam.

The Crow Tribe proposed Amendments to the Crow Tribe Water Rights Settlement Act of 2010 to create a fund for water delivery purposes and related uses, to revise the management of the funds allocated for the Crow Irrigation Improvement Projects, and to extend the deadline for right to develop and market power generation at the Yellowtail Afterbay Dam.

Municipal, Rural, and Industrial Water System

The Crow Tribe Water Rights Settlement Act of 2010 (Act) ratified and confirmed the 1999 Crow Tribe/State of Montana Water Rights Compact and directed the Secretary, through the Bureau of Reclamation, to design and construct a Municipal, Rural, and Industrial (MRI) water system through an agreement with the Tribe. Section 403 of the Act specifically described the MRI system as "raw water intake, water treatment plant, pipelines, storage tanks, pumping stations, pressure reducing valves, electrical transmission facility and other items." The Tribe has spent the last 10 years designing the pipeline project as specifically described in the Act.

In 2022, 10 years after the enforcement date of the Water Settlement, engineering work for the MRI system water intake unit at the Yellowtail afterbay was completed and the project was advertised for bids. However, no bids were received due to the complexity of the project and the requirement for specialized divers for underwater construction. Following this setback, the Tribe reviewed the overall MRI project plan and identified the following concerns with the MRI project as specifically described in the Water Settlement Act of 2010.

- The pipeline construction timeframe was approximately 20 years at a cost of $400 million plus with an expectation that estimated construction costs will rise, likely resulting in a shortfall to complete construction. Pipeline construction would be daunting with the size of the reservation and the varying geographic features.
- The pipeline construction timeframe would result in a lengthy delay of water delivery for reservation communities and some communities would wait many years for clear drinking water.
- The water settlement included a finite amount of $47 million for Operation, Maintenance and Replacement costs which was projected to cover approximately eight years of costs, without unforeseen breaks or interruptions, following project completion.
- The Water Settlement Act did not include mandatory hook-up for households along the pipeline leaving the number of actual customers unknown. However, if every Tribal household was hooked up to the pipeline, monthly consumer costs to cover operational costs would be approximately $120 per month in today's dollars which will be a burden to impoverished reservation households.

- Private landowners were unwilling to grant temporary permits to cross lands for water sampling and testing for placement of the water intake unit closer to reservation communities which resulted in moving the intake to Tribal lands at the Yellowtail afterbay, a location much further from the reservation's larger communities.
- The Environmental Protection Agency expressed concerns to the Bureau of Reclamation, in a letter dated October 31, 2022, with the location of the intake unit resulting in a water age concern for most customers and the proposed use of complex chemicals for treatment that would necessitate operators with advanced certification requirements.
- Despite years of attempting to secure rights of way for the pipeline from the Yellowtail afterbay intake to the first reservation community, across approximately 50 fee and trust tracts, and expending $4 million, no rights of way were perfected.

Upon re-assessment of the feasibility of the pipeline MRI system, the Tribe reviewed an alternative water delivery system that would utilize regional water plants in each reservation community that would be more cost-effective and deliver clean water within 2 to 4 years. Additionally, the Tribe proposed improvement of existing water wells for rural households as the majority of wells are shallow with compromised water quality.

The Bureau of Indian Affairs provided funds for a water study to support the proposed regional water plants and rural well concept. The water study indicated a vast supply of available water in two major aquifers below the Crow Reservation, the Judith River and Parkman formations which are currently largely untapped. Thus, use of water in the existing aquifers would not interfere with or compromise existing water rights in the Big Horn river or Little Big Horn river.

The water study further revealed that over 50 percent of Crow Reservations households have contaminated water due to inefficient water treatment and shallow wells. This fact created greater incentive to pursue a water delivery system that could be operational in a short number of years to best serve the population.

The amendments would move the MRI funds from a private bank into a trust fund for clean water deliver and related projects that would be managed pursuant to the 1994 Trust Reform Act that requires submission of an annual expenditure plan and a budget to DOI for review and approval before release for funds to the Tribe. The Tribe agrees with this management process.

Crow Irrigation Improvement

The Crow Water Settlement Act of 2010 directs the Secretary, through the Bureau of Reclamation, to improve the Crow Irrigation Project (CIP) in accordance with an agreement with the Crow Tribe. Implementation of projects was preceded by in-depth studies to modernize the dilapidated 100-year-old system and allocate funds for the various components of the system. The proposed amendments do not revise the current project implementation plans and co-management of the irrigation improvement projects by the Tribe and the Bureau of Reclamation. However, the Amendment Act would move the CIP funds from a private bank to federal treasury in a non-trust interest bearing account that would maintain the joint Tribe and BOR management. This move reduces the costs of managing funds but still complies with the original Settlement Act mandate for indexing of funds.

Energy Development Project

The Crow Water Settlement Act of 2010 provided an exclusive right for the Crow Tribe to develop hydro power in the Yellowtail Afterbay that would expire in 2025 and provided a lump sum to cover a portion of the costs. The Crow Tribe delayed pursuit of the project due to the initial engineering design plan prospectively interfering with Yellowtail Dam operations and, later, the on-set of the COVID pandemic. The Tribe has now engaged a hydro plant developer, revised the site and engineering concerns, and intends to start construction prior to the December 2025 deadline. The Tribe has proposed a five-year extension of the deadline to complete the project to accommodate any unexpected or unforeseen complications that may arise.

Conclusion

On behalf of the Crow Tribal membership, I am hopeful that the Crow Water Settlement Amendments Act will be adopted this Congressional session. At present, without the Amendments, the Tribe is unable to proceed with clean water delivery projects as the specifically mandated pipeline construction is not feasible. Clean water has become critical for the Crow Reservation as many studies indicate that

the high cancer rates of the Crow people is likely attributable to contaminated water.

The Amendments the Tribe seeks are at no new costs to the United States and do not impact the other provisions of the Crow Tribe/State of Montana Water Compact that protects all existing water users on Crow Reservation. Further, the Amendments do not revise the on-going Crow Irrigation Project improvements or the specific allocation of funds for those projects. Finally, the return of funds to federal oversight will avoid costs for the Crow Tribe and ensure protection of water settlement funds for future generations of the Crow Tribe.

Thank you for your consideration of this important legislation.

The CHAIRMAN. Thank you very much.

President Carlson, please proceed with your testimony.

STATEMENT OF ERVIN CARLSON, SR., PRESIDENT, INTERTRIBAL BUFFALO COUNCIL

Mr. CARLSON. Thank you. Good afternoon, Chairman Schatz, Vice Chair Murkowski and honorable Committee members. My name is Ervin Carlson, and I am a member of the Blackfeet Nation and President of the InterTribal Buffalo Council.

I have submitted a detailed statement that I will now summarize. All Natives in this Country depended on the Plains buffalo for survival prior to the arrival of the non-Indian to this continent. Buffalo were essential to the Native lifestyle and provided food, shelter, clothing, essential tools for our way of life. They symbolized survival and became central to our spirituality and religious practices.

Our people referred to the buffalo as "my relative," to signify how spiritually we were connected to them. Our oral history includes details of the vast number of buffalo, between 30 million and 60 million, inhabiting North America. Due to wanton and unbridled over-hunting by non-Indian buffalo hunters, millions and millions of our buffalo were slaughtered. The destruction was so complete that by the late 1800s only a few hundred buffalo remained.

Many great leaders mourned the loss of the buffalo and the Native way of life. With the destruction of the buffalo in the Indian Wars, the population of the Indian people, once numbering in the millions, dropped to approximately 250,000 by the early 1900s. Without the buffalo, surviving Indians were forced to live on reservations, losing their independence.

Historical records show that the U.S. military participated in near-extinction of the buffalo as it provided a way to deal with their Indian problem. Tribal leaders longed to restore buffalo, but had minimal land bases and resources. However, early conservationists, including Teddy Roosevelt, had the means to prevent the near extinction of buffalo.

For the Indian people, recovery from this devastation to restoration of buffalo herds on our lands began in earnest in 1991, when a handful of Indian tribes organized the InterTribal Bison Cooperative, now known as the InterTribal Buffalo Council.

We were granted a Federal charter in 2009, pursuant to the Indian Reorganization Act. Our organization has grown significantly, and today I am proud to tell you that we have 83 tribes in 22 States, all dedicated to restoring herds on our lands. The Indian population of our member tribes exceeds 1 million people.

We really appreciate that Senators Heinrich, Mullin, Sullivan and Tester have introduced S. 2908, the Indian Buffalo Management Act. This is the successor to legislation initially introduced by the late Don Young, I guess I should say, in my way, the great Don Young, which he got through the House before he left us. Congressman LaMalfa, Congressman Peltola, and others have reintroduced it in this Congress.

In March, it was unanimously reported out of the House Committee on Natural Resources. It is pretty basic legislation that will create a program at the Interior Department to assist tribes and organizations like ours in restoring buffalo herds to tribal lands. It requires strict compliance with State and Federal laws governing the translocation of buffalo. We had extensive discussions with the cattle industry and agreed to a series of changes they requested to ensure buffalo did not detract from off-reservation cattle operations.

By enacting this legislation, Congress will commit to assisting tribes to restore buffalo herds. We believe that this legislation will help Interior to justify decent budgets for the buffalo program as opposed to the minimal and stagnant funds that we have seen for decades, despite the huge growth in our membership.

When you try and divide up $1.4 million among many tribes, it doesn't go very far. Tribes need fencing, watering systems, genetic diversity in their herds, supplemental feed, and testing that all requires meaningful funds. Some tribes tell us they wish to reestablish herds for cultural purposes, and that a small herd would be sufficient as a means of teaching children the history of our people and this great animal, and having all the parts of this animal for our spiritual ceremonies. Others wish to create jobs, use the meat in the school lunch program, and for community events. Still others hope to grow their herds large enough to get into small scale commercial production.

Our members in Alaska have referenced the need for protein and basic food security, especially when successful subsistence hunts cannot be ensured. Whatever the reason, this legislation is very important to advance food sovereignty for Native populations. We sincerely hope that you will help to see it enacted into law this year.

Thank you.

[The prepared statement of Mr. Carlson follows:]

PREPARED STATEMENT OF ERVIN CARLSON, SR., PRESIDENT, INTERTRIBAL BUFFALO COUNCIL

Introduction and Background

My name is Ervin Carlson and I am a member of the Blackfeet Nation in Montana and serve as the President of the InterTribal Buffalo Council (ITBC). Please accept my sincere appreciation for this opportunity to present this testimony to the honorable members of the Senate Committee on Indian Affairs.

I am here today to present testimony on S. 2908, the Indian Buffalo Management Act (IBMA), and encourage passage of this legislation to create a permanent Tribal buffalo restoration and management program within the Department of Interior. I want to express our deep appreciation to Senators Heinrich, Mullin, Sullivan and Tester who have sponsored this legislation. I would be remiss if I also did not thank the late Congressman Don Young of Alaska who first introduced this legislation and was able to get it through the House before he left us. We were also pleased that then Congresswoman Deb Haaland joined Don Young as the lead co-sponsor in the House.

Historical records indicate that in the 1840s the buffalo population in North America was estimated at 30 million and, at its peak, approximately 60 million. At the time of Christopher Columbus' arrival in the New World, approximately 7 million American Indians populated North America. For thousands of years, Indians were sustained by buffalo and, a sacred, spiritual relationship developed between them. Indians depended on buffalo for food, shelter, essential tools and clothing, and the buffalo became an integral component of Indian religion. To this day, the Pueblos in New Mexico still practice sacred buffalo dances on an annual basis.

Simultaneous to the establishment and relocation of Indians onto reservations, buffalo were slaughtered by the tens of thousands. Non-Indian buffalo hunters skinned the animals and, more often than not, sent their pelts back east for use in factories. The U.S. military also believed that if the buffalo could be eliminated, the "Indian problem" in America could be solved. A US military leader who was deeply involved in the so called Indian Wars of the Great Plains brutally stated, "If I could learn that every buffalo in the northern herd were killed, I would be glad.The destruction of the herd would do more to keep Indians quiet than anything else that could happen." This strategy was successful and, in the last three to four decades of the 1800's tens of millions of buffalo were slaughtered resulting in less than 500 buffalo remaining at the turn of the century. Concurrently, the population of American Indians was also significantly reduced to approximately 250,000 at the turn of the century. With the demise of the buffalo and the confinement of Indian Tribes to reservation lands, Indians lost their primary food source, lifestyle and independence. Sitting Bull, the great and eloquent Sioux Chief said, "A cold wind blew on the prairie on the day the last buffalo fell. A death wind for my people."

Indians mourned the loss of buffalo and never ceased to dream of buffalo restoration for the health of Tribal members and the restoration of the land but without resources and the challenges of the new reservation lifestyle, they were unable to undertake those efforts. In contrast, President Teddy Roosevelt, William Hornaday and the American Bison Society, among others played a significant role in buffalo conservation efforts in the early 1900s followed by wider scale conservation efforts in the mid-1900's. By 1990, approximately 25,000 buffalo were held in public herds and approximately 250,000 buffalo were in private herds. Numerous Indian Tribes had also established small herds on Tribal lands. In 1991, approximately 10 Indian Tribes, committed to buffalo restoration with approximately 1,500 buffalo among them, organized the InterTribal Bison Cooperative and approached Congress for federal funding. In 1992, ITBC began receiving federal funding through Congressional earmarks on a bi-partisan basis with Senator Burns of Montana and Senator Daschle of South Dakota as early supporters. ITBC has been included in the President's budget and at other times supported administratively but only as a small component in the Natural Resource or Rights Protection line item that funds a variety of other tribal initiatives. Funding occurred at the discretion of senior officials at the Bureau of Indian Affairs.

Despite very small appropriations, with no assurance of recurrence, ITBC has nonetheless assisted many Tribes to restore buffalo, enhance existing herds and provide necessary technical assistance across the twenty-two states where member Tribes are located. ITBC has grown from its origins in the Great Plains to now include Tribes from Maine to Florida, through the mid-west, Southern Plains, Southwest states, and California to Alaska. In Vice Chair Murkowski's home state of Alaska, we are very proud of the work we have done with the Alutiq Tribe at Old Harbor and our member tribe at Stevens Village in helping both establish herds. Some of the most compelling arguments for this program we have heard have actually come from our members in Alaska who point out that when Native Villages are reliant on subsistence hunting and successful hunts cannot be assured, that it is critical that those Villages have access to an alternative source of protein. This is a food security argument in its most basic form. Our most recent deliveries of buffalo were to the Peoria Tribe in Oklahoma and the Taos Pueblo in New Mexico. Every single tribe in Montana, North and South Dakota are members of the ITBC, and we have assisted each of them with live buffalo, or funding for fencing, supplemental feed, water systems or technical support. Of course we have undertaken similar efforts in many other states.

In an effort to formalize as a national Indian organization, ITBC petitioned for and was granted a federal charter in 2009 pursuant to Section 17 of the Indian Reorganization Act. Today, ITBC is now comprised of 83 federally recognized Indian Tribes in 22 states with over 60 buffalo herds. In recent years, ITBC membership has grown by about 5 Tribes per year expanding the total number of Tribal members served to over one million.

Tribal buffalo restoration to Tribal homelands signifies much more than simply conservation of the National Mammal. Tribes enter buffalo restoration efforts to

counteract the near extinction of buffalo that was analogous to the tragic history of American Indians in this country. Today's successful reintroduction of buffalo to Tribal lands, largely through the efforts of ITBC, signifies the resurgence of the revered Tribal buffalo culture and exemplifies the resilience of the American Indians and their culture.

Authorization Versus Funding

We have been asked why an authorization would best serve ITBC rather than -only relying on continued annual appropriations. First, when Congress endorses a program that authorization both sends a message and likely enhances recurring appropriations specifically for the program. Some conservatives even argue that programs must have an authorization in place before appropriations should be allowed. Congress has authorized numerous statutes over the years to address and guide particular Indian Affairs issues. Just a few examples would include the Tribal Law and Order Act, the Indian Child Welfare Act, the Native American Graves and Repatriation Act, the Indian Dam Safety Act, the Indian Employment and Training Act, the National Indian Forest Resources Management Act, the Treaty Fishing Site Access Act, ANILCA, legislation dealing with Hoopa fisheries and Metlakatla fisheries, etc. etc. The list is literally pages long. While the Administration could have used the broad Snyder Act to create programs to address these various Indian affairs issues and did not, Congress properly adopted statutory authorizations. Since the federal government played a key role in the near extinction of the buffalo, Congressional action to re-establish herds and fund management activities is reasonable and appropriate.

As indicated above, ITBC has received appropriated funding since 1992 in varying amounts, but actual annual allocations have remained stagnant for many years However, the annual Congressional appropriation to ITBC does illustrate Congressional support for buffalo restoration and management from a limited or one-time project to a recurring program despite no equivalent BIA program. Presently, ITBC enters into annual Indian Self Determination and Education Assistance Act contracts with the Bureau of Indian Affairs for restoration and management activities. However, this contractual relationship remains tenuous without an actual permanent buffalo program within the BIA and various BIA officials have recommended that a Congressional authorization for this the buffalo program would justify appropriations. Assistant Secretary Tara Swaney was one of key DOI leaders who discussed with us the benefits of a permanent authorization.

Federal Commitment to Traditional Food Sources

Article XI of the 1868 Treaty of Fort Laramie guarantees Tribes access to buffalo "so long as buffalo may range." The Tribes considered this language as a perpetual guarantee. Unfortunately, like many other treaty provisions, the Federal Government failed to live up to this promise. Congressional adoption of the IBMA now provides an opportunity for the Federal government to honor a commitment to American Indians to access buffalo, similar to the commitment to Tribal fish commissions. Recently, the United States Supreme Court examined the 1868 Fort Laramie Treaty and upheld Tribal off-reservation hunting rights in the *Herrera* decision. This right to hunt supports a right of access to traditional food sources.

The Federal government has had a long-standing and justifiable commitment to Tribal fish commissions and treaty fishing rights following the well-known *Boldt* decision. That federal district court case gave the fishing Tribes co-management authority over salmon with the States and declared the security of Indian fishing rights was a trust obligation of the United States. This case stands for the proposition that all American Indians have a right to their traditional foods, and therefore, this ruling supports a Federal government trust responsibility to return buffalo to Tribes, in the same manner the Federal government has protected the security of Tribes to access fish.

Currently, seven fish commissions cover 52 tribes, in 12 states, that represent a population of approximately 525,000 enrolled tribal members. ITBC represents significantly more Tribes, with a larger member base, over a much larger geographic area. Ten Tribes have memberships in both ITBC and a fish commission.

ITBC and fish commissions both seek to provide access to a traditional food source to member Tribes. However, fish commissions receive approximately 100 times ($140,000,000) the funding from the Federal government. The Tribal Management/ Development Program (that also funds ITBC), the Rights Protection Implementation Program, and the Fish, Wildlife, and Parks and Natural Resources Tribal Priority Allocation Programs within the BIA all fund the fish commissions. Additionally, the fish commissions receive funding from USFWS, the Department of Commerce, and the Environmental Protection Agency. This allows a single fish commission to em-

ploy 10 times the staff and operate two additional offices compared to ITBC. We do not remotely disparage the funds that the fishing tribes receive. It is entirely consistent with the trust responsibility owed those tribes. However, ITBC seeks some parity as it has the challenge to restore buffalo in contract with the right to co-manage an existing resource.

Indian Buffalo Management Act

Adoption of the Indian Buffalo Management Act will create a permanent program within the Bureau of Indian Affairs and specifically authorize an annual appropriation. While funding will depend on annual appropriations, the IBMA should create some degree of parity with other Tribal wildlife programs. Additionally, the IBMA will solidify the contractual relationship between the BIA and ITBC, or individual Tribes should they choose to seek an ISDEAA contract. Hopefully this will eliminate our present situation where funding is so uncertain. With meaningful, funding, we will be able to help our members who are still working toward the reestablishment of buffalo herds on their lands and move toward the goal of establishing self-sustaining herds and a role in the tribal buffalo industry that will create jobs, feed tribal populations and provide economic opportunities to Tribes.

The IBMA, with an increase in current funding, will allow ITBC to provide more meaningful Tribal Herd Development Grants to create the necessary infrastructure to provide buffalo to a larger segment of the Indian community. This in turn will lead to greater self-determination and food-sovereignty opportunities for Tribes through production of their own traditional foods and creation of economic opportunities. An expansion of the Herd Development Grants will increase on-reservation buffalo related jobs, infrastructure development, range management, fence construction and repair, construction of corrals, handling equipment, and will help pay for supplemental feed. Increased Herd Development Grants will further allow Tribes to market buffalo for economic development through branding, advertising and developing enough product to meet consumer demands. Tribes, unlike off-reservation agriculture producers, have limited access to traditional financing due to limitations of utilizing Tribal trust land for collateral. Thus, without enhanced Herd Development Grants, Tribes remain at a disadvantage in herd expansion and marketing.

The Indian Buffalo Management Act will enhance ITBC's ability to serve as a meaningful partner to Federal agencies involved in buffalo management. ITBC collaborates with the National Park Service, the U.S. Forest Service, and the USDA Animal and Plant Health Inspection Service on buffalo management issues. However, this involvement is limited by a scarcity in resources. The IBMA will enhance population management through roundups and distribution of surplus buffalo to Tribes from the Badlands, Theodore Roosevelt, Grand Canyon, Yellowstone and Wind Cave National Parks. Translocation of surplus buffalo from those parks to Tribes prevents or at least reduces needless slaughter when the parks reach their carrying capacity and fulfills restoration objectives. However, ITBC and Tribal participation is often limited due to a lack of resources for transport.

The IBMA will enhance the objective to reintroduce buffalo into the diets of Indian populations to prevent and treat diet related diseases. An increase in funding will allow Tribes to have sufficient product for cultural purposes, product to sell at reasonable costs for Tribal members and product to market on a larger scale. Further, enhanced funding will allow ITBC to develop concrete evidence of health benefits that will facilitate ITBC partnerships with health programs to prevent and treat diet related diseases in Native populations.

The IBMA will reinforce on-going technical services from ITBC to Tribes, which are currently provided by a very limited staff of three people, for wildlife management, ecological management, range management, buffalo health, cultural practices, and economic development. Adoption of the IBMA will allow ITBC to enhance current training sessions (national and regional) designed to enhance Tribal buffalo handling and management.

Additionally, the IBMA will support ITBC staff educational presentations to school-age youth, tribal buffalo managers, and others. The topics of these presentations range from buffalo restoration, conservation efforts, and the historical, cultural relationship between buffalo and American Indians. Current funding limits outreach, educational efforts, and staff training.

Indian buffalo herds are grass-fed and, hormone and antibiotic free. This creates a lean final product that would fulfill a niche in meat production markets. ITBC strives to develop these markets for buffalo meat and products for interested member-Tribes at the local and national level. The IBMA would facilitate creation a centralized herd-made from the member-Tribes' buffalo-in a centralized location to create a steady source of buffalo for markets. This herd could also be used to exchange buffalo among the member-Tribes to enhance each herd's genetic diversity.

Conclusion

S. 2908, the Indian Buffalo Management Act, will further efforts to restore buffalo to Tribes on a broader scale and to establish a Tribal buffalo industry for job creation and new revenue for Tribal economies. ITBC ultimately hopes to restore Tribal herds large enough to support local Tribal health needs and achieve economically self-sufficient herds.

ITBC and its member Tribes are appreciative of past and current support from Congress and the Administration. However, we urge the Committee to adopt the IBMA to permanently create a buffalo restoration program and demonstrate Congressional commitment to Tribes to access this critical, traditional food source.

I would like to again thank this Committee for the opportunity to present testimony and I invite you to visit ITBC Tribal buffalo projects and experience firsthand their successes.

The CHAIRMAN. Thank you very much, President Carlson.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman. I appreciate the flexibility.

This goes to you, Chairman Whiteclay. You talked about, in your statement you talked about why the settlement doesn't work after the fact, no bidders, construction time too long, delay in water delivery, the list is long. I know this is what the bill says, but I want you to flesh this out a little more.

You said this would set up a trust account to develop clean water. Tell me what you are going to do to replace that pipeline to deliver clean water to the people in Crow Country, because, if we get this bill passed, what will it allow you to do? Because you are not going to build a big old pipeline, you are not going to build an intake that is too far away. Tell me what you are going to do.

Mr. WHITECLAY. Thank you, Senator Tester. Yes, the Crow Tribe is planning on putting regional water plants throughout , to each individual community. The regional water plants will not be from surface water, it will be to the aquifer, which we requested an aquifer study to be done. We are thankful to the BIA for paying for that study. We have more than adequate drinking water, it is safe, it is clean throughout. So each, like we said, our reservation is very large. So what is in all those communities that we will put regional water plants to all communities and we will have well systems for the rural folks. We have a lot of folks that live in the country. I myself haul water to my own residence through a cistern.

So giving us the ability to have wells to all the community members, which is roughly about 1,680 households.

Senator TESTER. In the end, do you think you can deliver this at or less of a cost the pipeline would have run you, assuming you would have gotten bidders for the pipeline?

Mr. WHITECLAY. Yes, we are very confident that we would be able to build the whole system out and include the wastewater systems and all of the above under the amount.

Senator TESTER. I want to talk about the hydro project that you have, and this bill also addresses it. I believe it moves up the deadline to 2030. What is the deadline right now?

Mr. WHITECLAY. Yes, the previous settlement, the settlement has a sunset date through 2025. And it doesn't give a clear statement of substantial completion. So this moves that forward.

Senator TESTER. So that substantial completion statement is further fleshed out and clarified?

Mr. WHITECLAY. Yes.

Senator TESTER. Okay. Then, have you started on the hydro project yet?

Mr. WHITECLAY. Yes, we have designs already, we have contractors, we are moving very quickly on the hydro project because of that sunset date, keeping in mind I have only recently been in our term for the last three years. So we are making leaps and bounds.

Senator TESTER. As you project forward, do you think the 2030 date will be adequate? You will have it done by then, substantial completion?

Mr. WHITECLAY. Yes, we believe so.

Senator TESTER. Okay. Thank you for being here, Chairman.

Erv, you have been doing this basically your whole life. You have been doing it with no resources whatsoever. You talked about fencing and water and feed and testing. Would this be done by grants to the people who apply for it, or how do you visualize this happening?

Mr. CARLSON. What we do is the minimal dollars, the funding that we do get, we have a herd development grant process that goes out to the tribes. They put in each year for all of their needs, which far exceeds the dollars, the amount that we do get.

So they put in that and put it in their grants of what they would need for that year, whether it be fencing, waterways, and sometimes supplemental feed for the tough winters that we have, or the ones with minimal land base.

Senator TESTER. And the testing you are talking about, I hate to bring up this word but I am going to say it, is that brucellosis testing, or what kind of testing?

Mr. CARLSON. Well, not necessarily brucellosis. I think the only place we do have that is in Yellowstone. But we do test the other animals that do come out of there, Wortham and Fort Peck. But on certain times, the tribes, within the animals that they do have, they like to go ahead and test just to make sure that their animals are all still disease-free.

Senator TESTER. Okay, thank you.

Just one last thing. I have 36 seconds left. I do appreciate the fact that both Poarch and Lytton got the delegation on board. It is so really, really important that you guys have the home Senators on board for this stuff.

This has been a problem for you guys for a long, long time. Now I think it is going to get fixed. So I appreciate your hard work. And for you, Secretary Newland, it is always good to have you in front of the Committee.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman, thank you to those who have testified today. President Carlson, you mentioned our good friend, the great Congressman Don Young.

As it turns out, the 9th of June, just on Sunday, was Congressman Young's birthday, and it is also the day that has been designed in Alaska as Don Young Day. So I think it is only appropriate that we are hearing this bill just so close in time to the Congressman's special acknowledgement. Thank you for recognizing him in that way.

This is a question for you, Assistant Secretary Newland. This relates to the Indian Buffalo Management Act. As I mentioned, this

is a program that we are looking to grow in Alaska to provide for subsistence needs for several Alaska Native communities. I mentioned transportation costs. You have spent enough time up there to know that this is real.

Is it the department's interpretation of S. 2908 that the bill will cover the cost of transporting the bulls, the cows and the calves to the villages that are working to establish these bison herds?

Mr. NEWLAND. Thank you, Vice Chairman. Yes, we believe that would be an allowable cost.

Senator MURKOWSKI. Good. And is it also your understanding that the bill would cover the cost of transporting the bison within Alaska from village to village to promote sustainable grazing practices and herd health?

Mr. NEWLAND. Again, I believe the answer is yes. Yes.

Senator MURKOWSKI. Good. Thank you for that. That is important. As I mentioned, these are expenses that are very real.

Another challenge, though, is the need for mobile processing trailers when you have communities that are not connected by road, you have to move them in other ways. Sometimes you can only do it by air, or by barge. Is it the department's interpretation of the bill that it would cover the cost of transporting mobile meat processing facilities by air or barge to places like Old Harbor or Stevens Village or other rural and remote areas?

Mr. NEWLAND. Thank you, Vice Chair. Yes, I would say that within this program, as I understand the bill, there is a lot of flexibility for tribes and organizations, our partners at ITBC, to do all manner of activity to both manage herds and ecosystems as well as on the back end with processing.

Senator MURKOWSKI. Great. Your testimony states that the bill would allow the tribes and tribal organizations to enter into 638 self-governance contracts to assume BIA bison herd management functions. Does this mean that buffalo restoration and economic development activities would be managed like 638 compacts that we see with tribal education or law enforcement? How do you envision that?

Mr. NEWLAND. For tribes that want to use that route, yes. It would work like any other 638 program.

Senator MURKOWSKI. Okay. So do you know if there are any BIA livestock or wildlife programs that are somewhat analogous to the buffalo program that the BIA contracts with the tribes on now?

Mr. NEWLAND. I would have to get back to you on that, Vice Chair. This is also a program that we have been running on an year-by-year basis with much less funding. So we have good practice at it, and a $14 million authorization would allow us to really grow it really support tribes that want to participate in it.

Senator MURKOWSKI. Good. Pivoting just a little bit in my last question to you, it is in regard to tribal applications for land into trust. You had mentioned in your written testimony that the department must review each individual tribal application when requesting to place land into trust on a tribe's behalf. On average, how long does this review take BIA to review an application? What are you looking at?

Mr. NEWLAND. On the whole, we know that it takes us now around three years, before the new regulations went into effect, it

takes the BIA around three years to process a single application, on average.

Senator MURKOWSKI. So, three years. I am looking then to Chair Bryan, and to Chairperson Mejia. What does this mean when you have a three-year review plan, and you are trying to put into place some plans for your people? Tell me the implications of a three-year review process.

Ms. BRYAN. We do appreciate the process and the administration and the revisions to 151. These are lands that have been in trust for over a decade with the Department of Interior. But that doesn't actually clarify these lands that we have had into trust.

So we have not submitted any applications to place any land into trust, just because we have spent millions of dollars on frivolous lawsuits, and we have won all those lawsuits, the people questioning the jurisdiction of our land.

Senator MURKOWSKI. Thank you. Thank you, Mr. Chair.

The CHAIRMAN. Thank you very much.

Assistant Secretary Newland, the Crow Settlement Act of 2010 requires that the settlement be fully appropriated by June 30th of 2030. This bill does not extend that deadline. Does DOI expect to fully fund the Crow settlement by or before that date?

Mr. NEWLAND. Yes, Chairman, if I could just add very briefly, that settlement was $460 million. We are almost at 90 percent of the funding appropriated. So we have an additional $48 million in discretionary funds to go.

The CHAIRMAN. Okay, thank you.

On S. 4000, the Lytton Rancheria Homelands Act prohibits the tribe from conducting gaming activities on the lands taken into trust under the legislation as well as on any future trust lands in Sonoma County. Would the gaming restrictions in current law apply to future lands taken into trust pursuant to S. 4000?

Mr. NEWLAND. Yes.

The CHAIRMAN. That is all I need.

President Carlson, can you share more about how the InterTribal Buffalo Council's growing membership impacts the services it is able to provide? I think you talked a little bit about this. But I guess there are two ways to look at it. One is, how thin do you have to spread this $1.3 million? And the other question is, what are you going to do with $14 million if we can pull it off?

Mr. CARLSON. We have grown to 83 tribes now, and $1.2 million, $1.4 million predominantly, that has been our funding. So to get that out to the tribes, of course, I talked about the grants that we go through, the process. It is a process every year that really, we try to make it equal to all of our tribes, all in need. Consequently, it is never enough to really significantly help their programs.

Some of the years we have, not all of the tribes will put in. They will hold out; kind of alternate so other tribes can get a little more money to get their programs going. So it is very minimal, but the tribes are very resilient. We have survived on that very little dollars, just as our buffalo are resilient and survive on that.

So with $14 million, there are a lot of tribes, all of the tribes would be able to participate each year and significantly help their programs. One of the things that we had a meeting with our herd managers, and they wanted dollars, funding just to stay sustain-

able with what they are doing, and not even able to grow their herds or to grow their land base for them, or for all the materials that they might need. So the $14 million would significantly increase the help for them.

I must say also that we do ask the tribes to tell us their full needs for the year. Each year, it far exceeds $14 million for what they really need. So we are still below on that.

The CHAIRMAN. Thank you very much.

Chair Bryan, if enacted, how will S. 3263 improve the Band's ability to provide essential government services to your membership?

Ms. BRYAN. First, by saving dollars from frivolous lawsuits that we could use to provide housing, education, rural health care to communities, better infrastructure for our roads. We currently serve over 500 children at our Boys and Girls Club, and it seems to grow every year.

So we would use those dollars that we are using on these frivolous lawsuits to continue to grow the community, be a part of the community. When it comes to rural health care, there is a lot of issues there, people struggling with mental health. So that is how we would use those dollars.

The CHAIRMAN. Thank you very much.

Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chair. I have another question regarding the Lytton Rancheria Homelands Act. This was included in the 2019 NDAA law. And there was a gaming prohibition on trust land acquisitions for the Lytton Rancheria in that language.

As I understand it, S. 4000 is meant to be a clarifying bill. Does the 2019 prohibition on gaming in that law restrict gaming on any lands to be taken into trust for Lytton Rancheria going forward?

Mr. MEJIA. Yes, it does, in Sonoma County, and we also have a standing MOA with Sonoma County that we would not prohibit gaming.

Senator MURKOWSKI. Very good. Thank you for the clarification.

The CHAIRMAN. Senator Daines?

STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA

Senator DAINES. Chairman Schatz, thank you, as well as to Vice Chair Murkowski.

First, I want to thank you for holding a hearing on our Crow Tribe Water Settlement Amendments Act. I want to thank Chairman Whiteclay for coming all the way from Montana here to D.C. to support the Crow people, as well as Mr. Carlson from the Blackfeet Tribe. It is an honor to have you here as well. Thank you for coming from our neighboring State, South Dakota. I know Montana, your heart is there, and a number of the Blackfeet Tribe.

In 2010, Congress passed the Crow Tribe Water Rights Settlement Act. It codified the 1999 compact between the Crow Tribe and State of Montana, that our State legislature passed with bipartisan support. Since 2010, the Crow Tribe has worked with the Bureau of Reclamation to implement this settlement and to bring water to their people.

Unfortunately, the original water project envisioned in the 2010 bill was found to be infeasible, the project that they defined in the compact, which is why we must make this really technical correction, a minor amendment to the bill.

Let me be clear what this bill does and does not do. It does not alter any existing water rights. It does not add any additional funds to the settlement. It does not open up the compact agreed to by the State, the Crow Tribe, and the Federal Government.

What it does do is very surgically amends the 2010 bill to allow a little more flexibility for the Crow Tribe to actually build a water system for their people in a way that is more cost-effective, lower impact, and brings drinking water to the greatest amount of people.

I want to commend Chairman Whiteclay for his work on this bill, and look forward to asking some questions on the impact of this legislation.

Before turning to a couple of questions, I want to make one comment regarding the Crow Revenue Act. It is a separate issue. I will say I am disappointed that my Crow Revenue Act was not included in today's hearing. This bill was made public and introduced the same day as the Crow Tribe Water Settlement Amendments Act. Both bills significantly help the Crow Tribe.

Both bills are supported by the tribe, by the State of Montana, and by the communities. I truly hope we can have a hearing on my Crow Revenue Act as soon as possible, let's say July 10th might be a good date.

[Laughter.]

Senator DAINES. Assistant Secretary Newland, for the record, will you please verify that our bill does not affect existing water rights, does not add additional funds to settlements, and does not alter the compact between the State of Montana and the Crow Tribe?

Mr. NEWLAND. Thank you, Senator. It is great to see you again. Yes, those are all correct.

Senator DAINES. Thank you.

Chairman Whiteclay, the Crow Tribe Water Settlement Amendments Act and the Crow Revenue Act both bolster tribal sovereignty, increase energy security, and we both know, fund much-needed resources on the reservation. Could you explain to the Committee why both of these bills need to be enacted this year and how they will affect access to services on the reservation?

Mr. WHITECLAY. Thank you, Senator. Yes, both bills are detrimental for the tribe, excuse me, not detrimental, but I believe it is detrimental that we don't have those bills in place. For the Crow Tribe, this is a 10-year riddle for clean water. It is a basic human right. To have all this funding and to not figure out how we can get water to every community and have to make that decision on which community doesn't get water, that is a decision no leader should make.

So this bill would support all the communities getting clean water and the folks in the country, that live in the country, would have clean drinking water. The Crow Revenue Act is a bill that basically keeps the tribe afloat for the next 10 years. With the closure of our single source of revenue, one of our single sources of rev-

enue, which is the Soligan Mine, which now has no, our main customer shut down, we have no revenue coming in from the coal which would completely replace it, it would not replace it wholly, but it will make it viable for the tribe to find other sources of revenue and diversify our portfolio. Because a lot of the funds, the Crow Tribe, we didn't get to participate in all the government funding that came down because of a problem that we had with a do not pay list that the tribe was unjustly put on.

So all the good government money that was coming down and all the grants and all that, we weren't available to participate in that. So all the services that we provide, that is on ourselves for social services. MMIW, search and rescue, Crow Tribe is ground zero for the MMIW right now. You see all the documentaries, all the missing and murdered. That is all done on the general fund, on the back of the Crow Tribe, with no input from the Federal grants.

We are on a reimbursement basis, meaning that to get Federal funds, we have to expend our own funds to start with. So the Crow Revenue Act would actually give us some room to breathe on that, keep our head almost above water.

Senator DAINES. Thank you.

I have one more sentence to add as I close it out, Mr. Chairman. But I do wish, those who have not been out to Crow Country, I would love to see members of this Committee come out and spend a day with you to see the serious issues you face as chairman, the poverty, the Mexican cartels, we talked about that today, the flood of fentanyl coming in. This is an existential threat truly to the economic viability of your people.

My last statement is, I ask for unanimous consent to add letters of support to the record including one from Governor Gianforte of Montana.

Thank you.

The CHAIRMAN. If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for two weeks. I want to thank all of our witnesses for their time and their testimony today.

This hearing is adjourned.

[Whereupon, at 3:37 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. DAVID HILL, PRINCIPAL CHIEF, MUSCOGEE (CREEK) NATION

Dear Chair Schatz, Vice Chair Murkowski, Chair Westerman, and Ranking Member Grijalva:

As the Principal Chief of the Muscogee (Creek) Nation, I write to formally submit my Nation's Written Testimony for the record in opposition to S. 3263 and H.R. 6180. The Muscogee (Creek) Nation opposes this legislation for three reasons: (1) the legislation will selectively help one Tribe to the detriment of others; (2) the legislation rewards one Tribe for conduct that is morally reprehensible and violative of the cultural code all other sister tribes collectively abide; and (3) the legislation encourages other Tribes to engage in similar immoral conduct, creating a significant threat that more sacred sites will be destroyed in the homelands of forcibly removed Tribal Nations. For these reasons, we oppose S. 3263 and H.R. 6180. The Muscogee (Creek) Nation advocates for a clean *Carcieri* fix for all Tribal Nations that empowers removed or displaced Tribal Nations to protect their sacred sites in their homelands.

First, there can be no question that the Supreme Court's decision in *Carcieri v. Salazar* has prevented many Tribal Nations from taking land into trust. While trust lands can be used for economic development, the primary purpose of the United States holding lands in trust on behalf of tribes is to protect, preserve and restore tribal homelands, including those of cultural and historical significance. The Muscogee (Creek) Nation supports a clean fix to address *Carcieri*, but opposes S. 3263 and H.R. 6180 which single out one Tribe at the expense of others. We have spoken to many Tribes who fear that if legislation passed is for one specific Tribe—instead of all Tribal Nations throughout Indian Country—it will set a harmful precedent that will require Tribes to get similar legislation in order to protect or restore tribal homelands. [1] This would not only be burdensome to Congress, it would create two classes of Tribes—those with the resources to advocate for legislation to address the negative impacts of *Carcieri* and those without. Should this proposed legislation become law, the multitude of other Tribes excluded from this legislation—whose need for a *Carcieri* fix is much greater—will be left at a significant disadvantage. A congressional policy should not be established where the wealthiest Tribes get to cut the line with a one-off piece of legislation, while the Tribes who need the most help are left stranded. Indian Country and Congress should be working together towards a solution that will help all Tribes affected by the Court's decision in *Carcieri*.

Second, even if helping one Tribe to the detriment of others could somehow be justified. Congress should never condone, legitimize, or excuse taking land into trust to desecrate the sacred site and burial ground of a separate Tribal Nation. It contradicts the primary purpose established in the Indian Reorganization Act for taking lands into trust. It would also undermine efforts by the rightful successors to those sacred lands and burial grounds from taking action to protect and preserve these critical sites.

The Poarch Band purchased Hickory Ground, a sacred site and ceremonial ground from the Muscogee (Creek) Nation in present-day Wetumpka, Alabama. Poarch could only purchase this sacred site within our treaty territory and homeland because Poarch received a taxpayer-funded historic preservation grant. Poarch received this federal grant because they promised to protect and preserve the Hickory Ground cultural and ceremonial site on behalf of the Muscogee (Creek) Nation. In its application for federal funds to buy Hickory Ground, Poarch stated that its

[1] Resolutions opposing the Poarch legislation and supporting a clean *Carcieri* fix have been retained in the Committee files.

"[a]cquisition of the property is principally a protection measure."[2] Poarch further stated that its " [a]cquisition would prevent development on the property." indeed, Poarch told the federal government that if the government gave Poarch money to purchase Hickory Ground. then:

> The property will serve as a valuable resource for the cultural enrichment of the Creek people . . . . The Creek people in Oklahoma['s] pride in heritage and ties to their original homeland can only be enhanced. There is still an existing Hicko1y Ground tribal town in Oklahoma. They will be pleased to know their home in Alabama is being preserved . . . . The Hickory Ground site will continue to enhance their understanding of their history, without excavation.

Poarch proclaimed that "[d]estruction of archaeological resources in Alabama . . . destroy[s] the cultural history of Creek people." Ultimately, Poarch told the federal government that its acquisition of Hickory Ground was "necessary to prevent destruction of the site." Consequently, Poarch successfully bid to receive federal funding to purchase Hickory Ground.

But just as soon as the federal government placed our sacred site in trust for the Poarch, Poarch proceeded to illegally disinter our ancestors' remains and cultural artifacts. After breaking their promise to preserve the grounds to create space for a bingo hall, they eventually ruined Hickory Ground by bulldozing the site for a 26-story multi-million dollar luxury casino hotel and resort. All in all, Poarch removed 57 of our relatives. Poarch placed their remains in garbage bags and sent them off to be stored at a university. Our ancestors have never been returned and many remain stored in a garden shed and in boxes at a university because Poarch refuses to allow them to be repatriated. All of this was done over the strenuous objections of the Muscogee (Creek) Nation, in violation of numerous laws, and contrary to universal principles of human decency. Poarch has yet to be held accountable for its heinous, reprehensible conduct, and now brazenly seeks to be rewarded for their behavior through a Congressional act. Although gaming is a critical component of tribal self-determination, allowing one Tribal Nation to engage in gaming on another Tribal Nation's burial ground flies in the face of the protections afforded when lands are placed into trust.

Indeed, enacting this legislation would condone Poarch's behavior and encourage others to follow in Poarch's footsteps.

Furthermore, S. 3263 and H.R. 6180 go beyond simply stating that the Poarch Band shall be considered as under Federal jurisdiction in 1934 (they were not). The bill also ratifies and confirms all lands taken into trust prior to enactment, including those outside of Poarch's geographic area and within the homelands of the Muscogee (Creek) Nation. Should Poarch ever receive legislation allowing lands to be taken into trust, the legislation should limit that authority to the geographic area their federal recognition was predicated on. When the individuals who called themselves "Poarch Creek" submitted an application to become a Tribe in 1980, they were very explicit in telling the federal government that their ancestral ties to the Southeast are limited to the areas surrounding Tensaw and Atmore in present-day southwestern Alabama. Poarch's federal acknowledgment recommendation and evaluation states that the individuals who identify as Poarch have "lived in the same general vicinity in southwestern Alabama within an eighteen-mile radius for a time period beginning in the late 1700s to the present." U.S. Dep't of the Interior, Bureau of Indian Affairs, Memorandum on recommendation and summary evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. 83 (Dec. 29, 1983) at 2, *https://www.bia.gov/sites/bia.gov/files/assets/asia/ofa/petition/O13__prchcr__AL/013__pf.pdf.*

S. 3263 and H.R. 6180, however, attempt to put land into trust for the Poarch Band outside of their historical territory and within the historic treaty territory of the Muscogee (Creek) Nation. Given Poarch's horrific track record and atrocious treatment of the Muscogee (Creek) Nation's sacred sites, there is no reason to give Poarch carte blanche ability to take more land into trust within our Nation's historic boundaries. Indeed, doing so would violate the treaties our Nation signed with the United States.[3] The United States has treaty trust duties and responsibilities to the

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[2] Poarch's application for the federal funds used to purchase Hickory Ground has been retained in the Committee files.

[3] Poarch is not a successor in interest to any of the treaties the Muscogee (Creek) Nation signed with the United States since, at the time of signing, Poarch did not exist as a tribe, entity, or even an organized group. The fact that a group of people claiming Creek ancestry organized themselves and asked to become a tribe in 1980 does not automatically qualify them to be a successor in interest to the treaties the Muscogee (Creek) Nation has signed. In fact, historically, the people who today call themselves "Poarch" chose to politically divorce themselves

Muscogee (Creek) Nation. One of those duties is the duty to uphold, protect, and preserve the sacred sites our Nation was forced to leave behind when we were forcibly removed from our homeland on the Trail of Tears. That treaty and the trust duty the United States owes to the Muscogee (Creek) Nation supersedes the Poarch Band's desire to expand gaming operations within our Nation's homelands and to the detriment of our cultural history.

Ultimately, Poarch's destruction of Hickory Ground in Wetumpka, Alabama, demonstrates why removed or displaced Tribal Nations must be empowered to protect the sacred places and ancestral burials they were forced to leave behind. The destruction at Hickory Ground is heartbreaking and demoralizing. When the law allows for a self-identified group of people to take control of the sacred sites and burial grounds that were never theirs, and empowers that group to subsequently excavate graves and desecrate those sites, it fails every removed or displaced Tribal Nation in America. Comprehensive legislation is essential to ensure all Tribes can restore their land base without concern for the destruction of their most sacred sites. We cannot afford to let the destruction of another Native, historic, sacred site to take place. Thus, any proposed legislation seeking to address *Carcieri* must provide removed Tribes with the ability and authority to protect their sacred sites and the burials of their relatives within their homelands.

The Muscogee (Creek) Nation stands ready to work with all of Indian Country and Congress to achieve a clean, comprehensive *Carcieri* fix that applies to all Tribal Nations and empowers Tribal Nations to both restore their land base and protect sacred sites within the homelands from which they were forcibly removed.

ROBB&ROSS
June 17, 2024

Hon. Brian Schatz;
Hon. Lisa Murkowski,
U.S. Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, DC.

RE: S.4000—TO REAFFIRM APPLICABILITY OF IRA TO LYTTON RANCHERIA

Dear Chairman Schatz and Vice Chairman Murkowski:

I write on behalf of Artichoke Joe's to provide further comment on S. 4000, a bill concerning the Lytton Rancheria of California, and on testimony received during the hearing on the bill.

During the hearing, Chairman Schatz asked Assistant Secretary Newland if the prohibition on gaming in the Lytton Rancheria Homelands Act (included in the 2019 NOAA (S. 1790), hereafter the "2019 Lytton Act") would apply to future lands taken into trust pursuant to S. 4000, and Assistant Secretary Newland answered "Yes."

A few minutes later, Vice Chairman Murkowski, in addressing Tribal Chair Mejia, repeated that the 2019 Lytton Act included a prohibition on gaming on any lands taken into trust for the Tribe under its provision and she then questioned since S. 4000 is meant to be a clarifying bill, whether the 2019 prohibition restricts games on any land lands to be taken into trust for Lytton going forward. The tribal chairman answered in the affirmative.

These questions misconceive the nature of S. 4000 and are very misleading. The 2019 Lytton Act granted the Lytton rights to have certain lands taken into trust without any regard to the Indian Reorganization Act (the "IRA") or its requirement that the tribe existed when the IRA was enacted in 1934. The 2019 Lytton Act did

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from the Muscogee (Creek) Nation. When Andrew Jackson sought to exterminate the "Upper Creeks" (citizens of the Muscogee (Creek) Nation who had not intermarried with whites and who opposed removal and slavery), Poarch's ancestors teamed up with General Jackson and assisted in his attempts to wipe out the full-blood Muscogee (Creek) Nation citizens. In exchange for supporting Andrew Jackson, they were given land grants in and near Tensaw. Indeed, the Department of the Interior's acknowledgment recommendation and evaluation states that Poarch's ancestors fought on the side of Andrew Jackson during the "Creek War." See U.S. Dep't of the Interior, Bureau of Indian Affairs, Memorandum on recommendation and summary evidence for proposed finding for Federal acknowledgment of the Poarch Band of Creeks of Alabama pursuant to 25 C.F.R. 83 (Dec. 29, 1983) at 13, *https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/O13_prchcr_AL/013_pf.pdf ("many of the present group's ancestors, including Lynn McGhee, received grants for their land in the Tensaw area from the United States for their support in the Creek War."); see id.* at 16 ("the lands they chose were . . . close to the Tensaw/Little River area"). By agreeing to stay, and by accepting these land grants, they gave up all political rights they had previously held as Muscogee (Creek) Nation citizens. Having betrayed and divorced themselves from our Nation, they have no right to claim any interest in the treaties we signed with the United States.

not enable land to be taken into trust under the IRA. Rather, in it Congress declared that certain land "is hereby taken into trust for the benefit of the [Lytton]." There was no reason to address whether the tribe existed in 1934 or whether it was eligible to have lands taken into trust under the IRA, and Congress did not address those issues. Further, the reason the tribe asked Congress to pass the 2019 Lytton Act ordering the land taken into trust was undoubtedly the same reason Congress inserted a provision into the 2000 Omnibus Indian Advancement Act (H.R. 5528, Sec. 819) to take casino land into trust for the tribe—because the tribe did not satisfy the criteria for administrative approvals under the IRA and IGRA.

In contrast to the 2019 Homelands Act, S. 4000 does not direct that specific land be taken into trust, but rather addresses the IRA issues stemming from *Carcieri v. Salazar* (2009) 555 U.S. 379, which held that the IRA allows land to be taken into trust only for tribes which existed and were recognized in 1934. Even though no Lytton tribe existed in 1934, S. 4000 backdates the tribe's formation so that the tribe can have lands taken into trust pursuant to the IRA.

S. 4000 would allow the Lytton to qualify to have lands taken into trust under the IRA and thus would render obsolete the 2019 Lytton Act. Therefore, the gaming restrictions under the 2019 Lytton Act would not apply. Thus the answer to the questions asked by the Chairman and Vice Chairman should have been in the negative. If and when lands are taken into trust, it will be under the IRA, not under the 2019 Lytton Act, and the 2019 Lytton Act's prohibition on gaming will not apply.

Further, the prohibition in the Lytton Rancheria Homelands Act applies only to land taken into trust in Sonoma County. S. 4000 does not limit the Lytton to putting land in Sonoma County into trust and could allow land to be taken into trust in other nearby counties. In that regard, years ago, the Lytton obtained an option to buy land in American Canyon, barely 10 miles outside Sonoma County.

So if the Senate is concerned about gaming on the land, which it should be and which both the Chairman and Vice Chairman voiced, a provision should be inserted into this bill prohibiting gaming on the lands to be purchased, pursuant to this backdating provision.

We further note that the stated purpose of S. 4000, that it is clarifying the 2019 Lytton Act, misrepresents the situation and the nature of the bill. The Act cannot "reaffirm the applicability of the IRA" because the applicability of the IRA has never been affirmed. The whole reason why Rep. George Miller inserted an amendment for the Lytton into the 2000 Omnibus Act and that Rep. Jared Huffman obtained the 2019 Lytton Act is because the Lytton were not in existence in 1934 and did not qualify under the IRA.

S. 4000 would preclude the fact finding process which is applicable in these situations and falsely find facts that are not true. Based on these falsehoods, it would then grant the Lytton a privilege not granted to any other tribes. This is not fair to other tribes or to the general population. Congress should let the administrative and judicial processes in place take their course and refrain from granting special exemptions, especially a special exemption that attempts to conceal its true nature as this one does.

We appreciate your consideration of these comments.

Sincerely,

ALAN TITUS

ARTICHOKE JOE'S CASINO
June 11, 2024

Hon. Brian Schatz;
Hon. Lisa Murkowski,
U.S. Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington, DC.

RE: S.4000

Dear Chairman Schatz and Vice Chairman Murkowski:

Artichoke Joe's writes in opposition to S. 4OOO, a bill which would declare that the Lytton tribe is subject to the lndian Reorganization Act of 1934 even though in 1934, no Lytton tribe existed and no lndian people lived on the Lytton Rancheria.

ln March 1927, the Office of lndian Affairs (precursor to the Bureau) purchased a 50 acre tract of land in Healdsburg, a farming area about 70 miles north of San Francisco. No lndians lived on the land then or for the next 10 years. Then in 1937 , an lndian man named Bert Steele wrote to the local lndian Affairs office and asked for land at Lytton. Mr. Steele's father was a half-blooded Nomelacki lndian and his

mother a half-blooded Pit River lndian (from 160 and 200 miles north, respectively) and Mr. Steele had previously been allocated land in Round Valley (120 miles north). The local agency granted Mr. Steele 16 acres on the Lytton Rancheria and then a year later assigned 1O acres to another lndian family. No other lndians ever lived on this ranchieria, and the government gifted the rancheria lands to the residents around 1960.

These two families had left their tribal lands. They never formed or constituted a tribe. Tribes lived on reservations and reservations restricted individuals. They were looking to break free of tribal life. This was not tribal land as people conceive of the term, lands occupied by a tribe since before the state was formed, and left largely to govern themselves.

The IRA allows the federal government to take land into trust for lndian tribes that existed in 1934 when the Act was passed. That does not apply to Lytton. S. 40OO constitutes an attempt to rewrite history and create a history that never occurred. lt is a cynical attempt to create a Lytton tribe that never existed before 1980 and to backdate the creation to before 1934. ln short, it is a lie.

Second, even if the Lytton had existed as a tribe in 1934, but had not yet been recognized, there is a further problem with S. 4000 in that it would constitute a "Carcieri fix" for a single tribe. ln 2009, in *Carcieri v. Salazar*, the Supreme Court ruled that the IRA applied only to tribes in existence and recognized in 1934. Since then Congress has considered legislation that would allow tribes not recognized until after 1934 to have land taken into trust, but has not been able to agree on the details of such new legislation. This bill, instead of creating a law that would apply equally to all tribes, would confer benefits a single tribe, without any findings of why this group alone qualifies for such an exception. To date, Congress has wisely resisted passing exceptions for single tribes, and the Lytton, a tribe that would never satisfy any reasonable criteria applicable to all tribes, does not merit an exception.

Third, the IRA itself only allows for taking land into trust. lt does not and cannot create lndian sovereignty on land over which the state has sovereignty. With the advent of "reservation shopping," this issue has come to the fore, and it has never been adequately addressed. lf Congress makes any changes to, or affirms application of the IRA to a tribe formed after 1934, it should address this vitally important issue.

We appreciate your consideration of these comments.

Very Truly Yours,

CODY SAMMUT, PRESIDENT

MEKKO GEORGE THOMPSON
June 20, 2024

I am shocked and outraged to learn that Congress is considering passing legislation that will help the Poarch Creek Band of Indians destroy more sacred sites within our Mvskoke homelands.

When the Poarch asked the federal government for taxpayer funds to purchase the original Hickory Grounds site, they promised to preserve it. They made a big deal out of telling the government that they were protecting it for the "Creeks in Oklahoma," That would have been the right thing to do. We are the only tribe to lay our ancestors to rest at this place, and it is our ancestors who were left behind when our people were herded onto the long walk to Oklahoma.

But Poarch broke that promise. They dug up my ancestors, put them in boxes, and built a casino directly on top of my family's burial ground. Many of those people remain in boxes, never returned to us or reburied. You can dress it up however you like, but those are the simple facts that can never be justified.

For years, Poarch has misled, obfuscated, and made excuses to escape accountability and do the right thing. That's why I filed a lawsuit, and we look forward to our day in court sometime this fall.

I believe the legislation the Poarch is asking Congress to pass is just one more attempt to evade accountability for what they did at Hickory Ground. One of our claims is that the federal government violated federal law when it placed our sacred site and burial ground in trust for the Poarch. The Poarch know what they did is wrong, and now they want Congress to bail them out.

What's worse is if this bill is passed, not only will the Poarch be rewarded for destroying my family's burial grounds, but there will be no protections against them doing it again elsewhere.

We couldn't believe they would do such a thing when all this began, so we went to Alabama to see for ourselves. Our group broke down in tears at the site of bull-

dozers and dirt piles where our ancestors once lay in peace. We felt despair and hopelessness. We felt like we had failed at our sacred duty to keep our ancestors at peace, as we are commanded in our culture.

But you don't have to be Native to understand how bad this is. I suspect most anyone would be outraged if it were their family ripped out of the ground and stored in a cardboard box on a shelf somewhere to make way for a casino. For years, Poarch kept my relatives stored in buckets, trash bags, and news bags, before sending them off to a university. To unearth one remain, it's not right. But to unearth 57 remains, it's beyond comprehension. It's wrong in any culture.

That is why we will never stop fighting for justice for Hickory Ground.

That's also why any member of Congress with a conscience should reject the legislation that the Poarch are asking them to pass.

COALITION OF LARGE TRIBES (COLT)
June 21, 2024

RE: COALITION OF LARGE TRIBES OPPOSITION TO H.R. 6180/S. 3263

Dear Chair Schatz, Vice Chair Murkowski, Chair Westerman, and Ranking Member Grijalva:

The Coalition of Large Tribes (COLT) is an intertribal organization representing the interests of the more than 50 tribes with reservations of 100,000 acres or more, constituting more than 95 percent of Indian lands in the United States and encompassing approximately one half of the Native American population. We write now to voice our opposition to H.R. 6180/S.3263. As an organization representing multiple tribes, we are concerned that this legislation wrongfully seeks to benefit one tribe and will set a precedent that harms hundreds of others. For this reason, we oppose this proposed legislation.

To be sure, how to address the Supreme Court's 2008 decision in *Carcieri v. Salazar* has generated a good deal of debate and controversy over the last sixteen years. While many may disagree on how to effectuate a proper *Carcieri* fix, we believe strongly that the solution is not singling out one tribe for favorable treatment to the detriment of others. The Court's *Carcieri* decision affects a multitude of tribes, and yet this proposed legislation seeks only to help the tribe that already has the most resources. No doubt, should this proposed legislation become law, the multitude of other tribes excluded from this legislation-whose need for a *Carcieri* fix is much greater-will be left at a significant disadvantage. The passage of single-tribe legislation will inevitably diminish the political will to achieve additional *Carcieri* fixes, and it sets a precedent that will require every affected tribe to seek to address *Carcieri* through individual legislation. There is no justification for passing a one-off piece of legislation to help the wealthiest of tribes when Indian Country and Congress should be working together towards a solution that will help all tribes affected by the Court's decision in *Carcieri*.

Second, the passage of this legislation would also set a dangerous precedent for sacred sites by rewarding the tribe that has used gaming as a weapon to destroy and desecrate the burial grounds of other tribes and, in doing so, incentivize more such acts in the future. There are many tribes negatively impacted by *Carcieri* that have not engaged in violations of federal law and have not defiled sacred sites listed on the National Register of Historic Places. Thus, if any tribe is to be rewarded in such an exclusive manner, it should not be the tribe whose course of conduct violates some of the most fundamentally basic moral codes understood by sister tribes throughout Indian Country.

Finally, while we can all agree that a *Carcieri* fix is essential, the desecration of Hickory Ground in Wetumpka, Alabama, serves to demonstrate why any proposed *Carcieri* fix legislation must include protections for sacred sites located within the historical homelands of removed tribes. The heresy of Hickory Ground was shocking and demoralizing. It would be beyond shameful to create a law that invites the destruction of a Native sacred site protected on the National Register of Historic Places to happen again. Thus, any proposed legislation seeking to address *Carcieri* must provide removed tribes with the ability and authority to protect their sacred sites and the burials of their relatives within their homelands. We all agree that gaming is a critical form of economic development that supports tribal sovereignty and tribal self-governance. No one wants to stand in the way of a tribe's ability to engage in gaming. But there is no need for any tribe to engage in gaming on another tribe's burial ground. Thus, protections to prevent repeating what happened at Hickory Ground are critical to any proposed *Carcieri* fix legislation.

Thank you for considering the position and perspective of COLT. We hope you will move away from H.R. 6180 and S. 3263 and instead focus on legislation that will

benefit all tribes in Indian Country, not one, and that you will include protection for sacred sites in any land legislation. This is the unanimous policy of COLT and we hope you afford our views of our broad consensus the weight they deserve.

Sincerely,

HON. MARVIN WEATHERWAX, JR., CHAIRMAN

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. LISA MURKOWSKI TO HON. BRYAN NEWLAND

Question 1. Please provide a summary of funding levels and funding sources appropriated to DOI and the Inter Tribal Buffalo Council for the buffalo program for fiscal year 2019 through fiscal year 2024.

Answer. The Department of the Interior, through the Bureau of Indian Affairs Tribal Management/Development Program (TMDP) has provided funds to the Inter-Tribal Buffalo Council (ITBC). The below chart details the amount provided, in thousands, for fiscal years 2019 through 2024. The first row, "ITBC," reflects base funding that the ITBC receives for herd development grant projects, salaries, and operational costs. The second row below reports additional funds that the ITBC has received from the TMDP to assist Tribes in the acquisition of surplus bison from Yellowstone National Park.

	2019	2020	2021	2022	2023	2024
ITBC	$1,393	$1,393	$1,393	$1,393	$1,523	$1,523
Yellowstone/Bison Herd	$240	$740	$740	$740	$809	$809

The Inter-Tribal Buffalo Council (ITBC) was established in 1992 to return bison to Indian Country to preserve the historical, cultural, traditional, and spiritual relationship between bison and Native Americans for future generations. Since its inception over 30 years ago, ITBC's membership has grown to 82 Tribes in 20 States, which collectively comprise nearly one million enrolled Tribal members on 32 million acres of Tribal land. The organization provides member Tribes with technical assistance in wildlife management and ecological and cultural enhancement services. ITBC offers assessments of current and potential Tribal bison programs and recommendations on fencing, corral and facility design, equipment, research, range management, herd health, and community awareness. ITBC provides education and training to American Indian bison managers and technicians. ITBC staff provides educational presentations and resources on bison status, restoration, and conservation efforts, as well as the history and culture of bison to the American Indian population. ITBC annually operates a bison herd development grant program that provides Tribes with funding for program startup and other bison restoration activities.

ITBC employees work with the National Park Service and U.S. Fish and Wildlife Service to obtain surplus bison for redistribution to Tribal bison projects. Tribes receive bison for their programs at no cost, however, ITBC and other recipients do cover the transportation costs for bison from federal herds to their destination. ITBC also facilitates some transfers of surplus bison from Tribe to Tribe. When Tribes have excess animals, ITBC may assist bison partners with finding other Tribes that want the bison and determines the best location for the bison. As an economic development initiative for Tribes, ITBC employees work to develop markets for bison meat and products that will utilize bison from Tribes interested in participating in the program. ITBC procures bison from Tribes and sells the meat under the ITBC label. ITBC currently markets bison meat from the Tribes to the National Museum of the American Indian in Washington, DC and is expanding to more customers. ITBC also works to support the efforts of United States Department of Agriculture to continue to offer Tribal bison meat in the Food Distribution Program on Indian Reservations.

The ITBC provides supports to the Yellowstone Bison Conservation Transfer (i.e., brucellosis quarantine) Program, is an active partner of the Yellowstone Interagency Bison Management Plan, and participates as a cooperator in the Department of the Interior (DOI) Bison Work Group. The ITBC also provides technical assistance and services to member Tribes, including those participating in the Yellowstone Bison Quarantine program, by facilitating the transfer of bison from the Federal herds to Tribes.

Question 2. Is it the Department's interpretation of S. 2908 that the bill will cover the costs of transporting mobile meat processing facilities by air or barge to places like Old Harbor, Stevens Village, or other rural and remote interior villages that manage bison herds? Would such authority need to be clarified in the bill?

Answer. S. 2908 as drafted is flexible and broad so that Tribal considerations can be given to elect to use funds for bison and equipment transport costs.

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