

S. 4370 AND S. 4505

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED EIGHTEENTH CONGRESS

SECOND SESSION

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JULY 25, 2024
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S. 4370 AND S. 4505

THURSDAY, JULY 25, 2024

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

The Committee met, pursuant to notice, at 2:12 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. Today we will receive testimony on two bills: S. 4370, Tribal Forest Protection Act Amendments of 2024; and S. 4505, Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

S. 4370, Vice Chair Murkowski's bill, would amend the Tribal Forest Protection Act of 2004 by expanding eligibility for tribes to take on certain forest protection and restoration activities on Federal public lands from the Forest Service and the BLM. It would allow tribes to use TFPA funding to conduct these activities on their own tribal land and authorize Alaska Native corporations to manage Federal public lands and lands they own pursuant to the same authorities.

S. 4505, Senator Heinrich's bill, would resolve the claims of the Ohkay Owingeh Pueblo water rights in the Rio Chama Stream System in New Mexico. The bill establishes an interest-bearing trust fund to implement the negotiated settlement between the Pueblo and the United States and other interested parties.

S. 4505 is one of several Indian water rights settlement bills introduced and referred to the Committee over the last two weeks. Recognizing that our Committee plays a key role in enacting such settlements, each deserves our keen consideration and due diligence.

Before I turn to the Vice Chair for her opening statement, I would like to extend my welcome and thanks to our 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 want to focus my comments this afternoon on S. 4370, this is the Tribal Forest Protection Act Amendments of 2024. This would modify and improve the Tribal Forest Protection Act of 2004 to promote greater indigenous stewardship of Federal and Indian forest lands and range lands.

I have introduced this because tribal lands and resources have become increasingly vulnerable to wildfire, to insect infestation, other natural hazards that originate on Federal lands. So our legislation is intended to put tribes in the lead by strengthening the role of Native communities in Federal land management so they can reduce threats to their own resources.

I believe this measure is timely, it is well warranted. Thanks to the 2018 Farm Bill, projects proposed under the TFFPA may be carried out through ISDEA funding agreements. We are seeing more interest in this underutilized tool.

TFFPA empowers tribes to harness indigenous knowledge and western science when conducting forest management projects, which of course are proven to reduce wildfire severity and restore forest ecosystems.

But in the 20 years since TFFPA was first enacted, wildfires are burning faster, hotter, and longer. And it is compounded by chronic mismanagement of forest lands by the Federal Government.

According to the Intertribal Timber Council, nearly half a million acres of tribal lands are now consumed by fire each year. Too often these fires ignite on remote Federal lands and spread to tribal lands, endangering Native people, property, infrastructure, and cultural resources.

TFFPA does not currently allow tribes to conduct forest management activities on Federal land unless those lands are immediately adjacent to Indian lands. That limitation effectively blocks tribes from managing larger forest landscapes that they have cared for, and been physically and spiritually connected to for generations.

Obviously, fire doesn't follow borders drawn on a map or any other strictures of law. So my bill would give tribes the flexibility to plan and implement forest health and management projects on Federal lands beyond those lands immediately adjacent to the reservation boundary.

The legislation also includes a critical fix to TFFPA which currently omits lands owned by Alaska Native villages and regional corporations. Without this fix, Alaska's ANCs, which own more than 44 million acres of land, are practically excluded from participation under the TFFPA statute. This is not acceptable. The forested lands owned by ANCs are in every aspect Indian forest land. We have a unique legal framework in Alaska that governs Alaska Native communities, the Alaska Native Claims Settlement Act. But we should not be disadvantaged by it.

So if we enact this, S. 4370 would allow Native communities in Alaska to apply their indigenous knowledge and skills to Federal forest land and to the 44 million acres of ANCSA lands that are currently off limits to tribal management under TFFPA.

So I am looking forward to the testimony from our witnesses, including the Department of Interior, which has offered very positive words and outright support for it. I am also looking forward to welcoming my friend, Ben Mallott, who has traveled to be here from Alaska.

The CHAIRMAN. Thank you, Vice Chair Murkowski.

We will now turn to the witnesses. We are happy to have Tracy Canard Goodluck, the Senior Advisor to the Assistant Secretary for Indian Affairs at the Department of Interior; Mr. John Crockett, Associate Deputy Chief for State, Private, and Tribal Forestry at the Department of Agriculture. Senator Heinrich, if you would like to introduce one of our witnesses and make any opening statement, you would be welcome to do so.

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

Senator HEINRICH. Thank you, Chairman Schatz, and Vice Chair Murkowski, for holding this hearing on the Ohkay Owingeh Rio Chama Water Rights Settlement Act. I also want to express my enthusiasm for the Vice Chair's Veterinary Services bill, and look forward to working with you on that.

I am pleased today to introduce Larry Phillips, Jr., the Governor of Ohkay Owingeh Pueblo who is here to provide testimony today. Governor Phillips was born and raised in Ohkay Owingeh and has served his pueblo in a variety of roles over the last three decades. He has led the pueblo's effort in advancing their water settlement since 2012 when he became the director of Ohkay Owingeh's natural resource division. He has made this settlement a top priority since his term as governor began in 2022, and I look forward to continuing our partnership to get this water settlement over the finish line.

I also want to say hello to Thora Padilla from Mescalero Apache, who is going to be joining you virtually today on the Forestry Bill. She knows her stuff, and she is all too familiar with recent wildfires like the Salt Fire.

The Ohkay Owingeh Rio Chama Water Rights Settlement Act would settle the water rights of Ohkay Owingeh in the Rio Chama stream system and provide the resources necessary to restore the bosque or riparian forest on the pueblo's land.

This legislation would implement the settlement agreement that has been carefully negotiated between Ohkay Owingeh, the State of New Mexico, neighboring water users and the United States. I want to thank all of the parties for their tireless work in reaching a settlement for this basin.

For more than a century, the United States has failed to protect the water rights of Ohkay Owingeh and other tribes. As a result, the pueblo suffered from a lack of water for families, for farms, for businesses, and for their bosque. It is hard to bring jobs and economic development to any community if you can't have reliable, guaranteed water.

Pueblo members' traditional ways of life have suffered as the bosque has dried and native plants, fish, and wildlife have declined. The failure of the United States to ensure that Ohkay Owingeh could use the water that they have always owned has re-

verberated through generations. It has a direct impact on the wellbeing of pueblo members today and it is time we make this right.

This legislation would fully settle the Ohkay Owingeh's claim to the Rio Chama Basin. It would provide resources for the pueblo to restore the Rio Chama Bosque, a critical ecosystem that not only protects the Rio Chama but also provides traditional food and medicinal resources.

The settlement will provide critically needed funding for water infrastructure to develop and distribute new water to pueblo homes and businesses. It will make it possible for Ohkay Owingeh to finally use the water that they have owned for more than a century.

In recent decades Congress, working through this very Committee, has made real progress on making tribes whole for the water that has always been theirs. We have an opportunity to take yet another step forward on that by approving this settlement.

Thank you to the Committee and all your members for your consideration today and I would yield back the remainder of my time, Chairman.

The CHAIRMAN. Thank you very much, Senator Heinrich.

Senator Luján, would you like to introduce another New Mexico witness?

**STATEMENT OF HON. BEN RAY LUJÁN,
U.S. SENATOR FROM NEW MEXICO**

Senator LUJÁN. Thank you very much, Mr. Chairman, Vice Chair Murkowski as well, for holding this important legislative hearing today.

Before I introduce President Padilla, I also want to recognize an incredible leader from New Mexico, Governor Larry Phillips, to you, to your team for being here today. As you share with us, Governor, on behalf of all of the people from Ohkay Owingeh and from the communities as well, our elders and ancestors, it is an honor to have you before us today. It is good to see you, sir.

Today, Mr. Chairman, I have the honor of introducing President Thora Padilla of the Mescalero Apache as a witness for today's hearing. She has served as president since January 12th, 2024. Now, President Padilla previously worked for the tribe as director for the Division of Resource Management and Protection, a program she helped establish and develop. She also previously worked at the Bureau of Indian Affairs Mescalero Agency as a timber sale forester for eight years.

President Padilla graduated from New Mexico State University in 1985 with a Bachelor of Science in agriculture and a major in horticulture and minors in botany and fine art.

In her short time as president, President Padilla has already demonstrated her leadership and dedication to the Mescalero Apache and the State of New Mexico. Last month, fires devastated areas of southeastern New Mexico, only to be followed by flood. These wildfires upended the lives of far too many New Mexicans, destroying thousands of homes and businesses and disrupting livelihoods.

During these turbulent times in our communities, President Padilla was a leader in the Mescalero Apache, Riudoso, and

Roswell communities. I am proud to work with her back home, and I am proud to have her here in Washington to make things better for our tribal communities, for our State and for our Country. I look forward to her testimony.

I yield back.

The CHAIRMAN. Vice Chair Murkowski, would you like to introduce your Alaska witness?

Senator MURKOWSKI. I would be honored to do so. It is a pleasure to be able to welcome back to the Committee my friend, Mr. Ben Mallott. Ben is the newly announced president-elect for the Alaska Federation of Natives, AFN. This Committee knows the good workings of AFN over the years, the oldest and largest statewide Native membership organization in our State.

Ben has dedicated his life, really dedicated his life to the interests of Alaska, and to Alaska Natives. He is very familiar with these issues that are in front of us. He has worked in this building before, and I have had the opportunity to work side by side with him before he returned back to the State.

It is always good to see you, and I am truly honored today that you are here to provide input to the Committee, your expertise, but really delighted that you are going to be assuming this very significant role at AFN.

Welcome back.

The CHAIRMAN. Well, it is time for your testimony. I want to remind the witnesses that your full written testimony will be made part of the official hearing record. Please keep your statements to no more than five minutes, so that we have time for questions.

Ms. Goodluck, please proceed.

**STATEMENT OF TRACY CANARD GOODLUCK, SENIOR ADVISOR
TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S.
DEPARTMENT OF THE INTERIOR**

Ms. GOODLUCK. Thank you. Shekoli, good afternoon, Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Tracy Canard Goodluck. I am a member of the Oneida Nation of Wisconsin, and I am also Mvskoke Creek of Thlopthlocco Tribal Town.

I serve as Senior Advisor to the Assistant Secretary for Indian Affairs at the Department of the Interior. Thank you for the opportunity to present the department's views on S. 4505 and S. 4370. These bills highlight the United States' trust obligation to protect the continued existence of Indian tribes. This means ensuring that each tribe has a protected homeland where its citizens can maintain their tribal existence and way of life.

The Department is also committed to improving the stewardship of our Nation's Federal forest lands and water by strengthening the role of tribal communities in Federal land management, honoring tribal sovereignty and supporting the priorities of tribal nations.

With respect to tribal forestry, Congress declared in the National Indian Forest Resource Management Act that the United States has a trust responsibility toward Indian forest lands. The Tribal Forest Protection Act allows for tribes to manage Federal forest and range lands, to mitigate risks to tribal forest land resources.

The TFPA and proposed amendments here are also in line with the joint Secretaries' order on co-management.

The Department supports S. 4370 as it aligns with important Administration priorities. S. 4370 would amend the TFPA to include ANCSA lands in the definition of tribal forests and range lands.

S. 4370 would also remove the requirements that TFPA activities occur on land bordering or adjacent to tribal lands, and extend application of TFPA to activities occurring on Indian forests or range land. These changes would provide parity to Alaska Natives and allow for cross-jurisdictional work to protect the health of both Federal and tribal lands.

We would like to work with the sponsor and Committee to clarify the role of the BIA with the proposed expansion of TFPA projects on tribal lands.

The Department is also pleased to support S. 4505. S. 4505 would approve and provide authorizations to carry out the settlement of all water rights claims of the Ohkay Owingeh in the Rio Chama River Basin. Since time immemorial, Ohkay Owingeh has made use of the water in the Rio Chama Basin.

However, Rio Chama water supply available to Ohkay Owingeh has been reduced over time by diversions by neighboring non-Indian water users. A portion of Ohkay Owingeh's lands like within the bosque, or forested habitat, along the Rio Chama and Rio Grande, which is of great historical and cultural significance to Ohkay Owingeh people.

The bosque areas within Ohkay Owingeh's lands were altered as a result of the flood control and irrigation projects constructed by the United States in the mid-1900s. Recent effects of climate change are exacerbating these effects and surface water supplies are dwindling. Ohkay Owingeh seeks funding as part of the proposed settlement to remedy the damages to its lands within these bosque areas.

They also plan to develop Ohkay Owingeh's water resources for various uses, including domestic and municipal purposes for current and future populations. S. 4505 is designed to meet Ohkay Owingeh's needs for water by providing a trust fund that will allow Ohkay Owingeh to make decisions regarding how, when, and where to develop those projects. And S. 4505 would also allow Ohkay Owingeh to restore and protect its culturally important bosque lands.

This approach is consistent with tribal sovereignty and self-determination. It is also consistent with our trust responsibilities and will help to ensure that Ohkay Owingeh can maintain its way of life.

Thank you for the opportunity to provide the department's views on these bills, and I look forward to answering any questions you may have.

[The prepared statement of Ms. Goodluck follows:]

PREPARED STATEMENT OF TRACY CANARD GOODLUCK, SENIOR ADVISOR TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to present testimony on S. 4370, Tribal Forest Protection Act Amendments Act, and S. 4505, the Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

S. 4370, Tribal Forest Protection Act Amendments Act

The Tribal Forest Protection Act (TFPA) allows federally recognized Tribes to propose forest or rangeland projects to be conducted on lands managed by the Bureau of Land Management (BLM) and U.S. Department of Agriculture (USDA) Forest Service to reduce threats to adjacent Tribal lands, trust resources, and values. S. 4370 would amend the TFPA to provide for participation of Alaska Native Corporations (ANC), remove the requirement that projects to achieve land management goals occur on lands bordering or adjacent to Tribal lands, and extend application of TFPA to projects occurring on Indian forest land or rangeland.

On November 15, 2021, Secretary of the Interior Haaland and Secretary of Agriculture Vilsack issued Secretary's Order 3403, *Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters* (S.O. 3403, Order). At the Tribal Nations Summit on November 22, 2022, Secretary of Commerce Raimondo joined S.O. 3403.

S.O. 3403 affirms the trust relationship between the United States and Tribes and acknowledges that the United States would benefit from the land management expertise and practices Tribal Nations have developed over centuries. The Order is also a commitment “to ensure that Tribal governments play an integral role in decisionmaking related to the management of [F]ederal lands and waters through consultation, capacity building, and other means consistent with applicable authority.”

The Department of the Interior (Department) recognizes that forest and ecosystem health does not stop at the border of Tribal lands. The Department is committed to improving the stewardship of our Nation's Federal forest lands by strengthening the role of Tribal communities in Federal land management, honoring Tribal sovereignty, and supporting the priorities of Tribal Nations. S. 4370 aligns with these important Administration priorities, and the Department supports the bill.

The Department defers to the USDA regarding impacts to lands managed by the USDA Forest Service.

Background

The TFPA authorizes the Department to enter into a contract or agreement with Tribes to carry out projects to protect Indian forest land or rangeland, including proposals to restore Federal land that borders on or is adjacent to Indian forest land or rangeland. The statute defines “Indian forest land or rangeland” as “land that . . . is held in trust by, or with a restriction against alienation by, the United States for an Indian tribe or a member of an Indian tribe,” and is “forest land . . . ; or . . . has a cover of grasses, brush, or any similar vegetation; or . . . formerly had a forest cover or vegetative cover that is capable of restoration.” Covered projects must meet certain criteria, including that the BLM-managed lands involved must be adjacent to the Tribe's trust or restricted fee lands; those lands must be under the jurisdiction of the Tribe; pose a fire, disease, or other threat to those trust lands or be in need of land restoration activities; and present or involve a feature or circumstance unique to that Tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances). The TFPA requires that the Department respond to such projects within 120 days of receiving a proposal. If the Department denies a Tribe's request to enter into an agreement, the TFPA requires the agency to provide the Tribe with an explanation for its decision, and to propose consultation with the Tribe. Under the TFPA, Tribes and the Department have engaged in mutually beneficial work to improve forest and grassland conditions and protect Tribal lands and communities from risks.

Projects proposed by a Tribe under the TFPA may be carried out through an Indian Self-Determination and Education Assistance Act (ISDEAA) funding agreement. Like the ISDEAA, the TFPA may extend to ANCs as well as federally recognized Tribes-although the reference to trust or restricted lands, and the requirement that the lands be under the jurisdiction of the Tribe, means that ANCs are practically excluded from participation under the statute.

Analysis

S. 4370 would expand the definition of “Indian forest land or rangeland” to include land in the state of Alaska that is held by an ANC under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.) or has “a special geographic, historical, or cultural significance to the Indian tribe.” The bill also removes the requirement that projects occur on Federal lands managed by the BLM or the USDA Forest Service that are adjacent to Tribal lands. Rather, S. 4370 requires Federal lands present or involve a special geographic, historic, or cultural significance to the Tribe. Expanding the definition of “Indian forest land or rangeland” provides clarity for the use of TFPA by ANCs. Further, removing the requirement that projects occur on Federal lands bordering or adjacent to Tribal lands removes ambiguity pertaining

to proximity. The BLM supports these amendments to reduce the threats to Tribal forest lands and rangeland, trust resources, and values.

S. 4370 also expands the lands on which Tribes may carry out land management activities to include Indian forest land or rangeland; requires the Department to submit to Congress a report describing the Tribal requests received and agreements or contracts that have been entered into; and authorizes the appropriation of \$15 million per year from 2025 through 2030 to carry out the Act. The TFPA has been successfully used to address management of lands administered by the BLM and USDA Forest Service that are a priority to Tribes due to their associated risks to Tribal forest land resources. The Department notes that without more specificity in the proposed bill's definition, there is a risk that expanding the TFPA to include Tribal lands could potentially result in duplicate efforts and the comingling of trustee obligations by the Bureau of Indian Affairs (BIA), USDA Forest Service, and the BLM, as the BIA administers programs including forest management and wildfire fuels reduction on lands held in trust for Tribes. However, in any format, this proposal would further Tribal ability to protect and restore forest lands across boundaries as threats to and the overall health of these lands do not stop at the boundaries of Tribal and Federal lands.

S. 4370 could allow for a TFPA project to occur in part or in whole on trust lands managed under the authority of the Bureau of Indian Affairs (BIA). We would welcome the opportunity to work with the Sponsor and the Committee on revisions to clearly define the role of the BIA for such projects. Finally, the Department would welcome the opportunity to work with the Sponsor on revisions that clarify agency financial responsibility for cross-jurisdictional projects.

The Department would welcome the opportunity to work with the Sponsor and the Committee to ensure that the expansion of the TFPA to apply to Tribal lands results in complementary, rather than duplicative, efforts.

S. 4505, A bill to approve the settlement of water rights claims of Ohkay Owingeh in the Rio Chama Stream System, to restore the Bosque on Pueblo Land in the State of New Mexico, and for other purposes

I. Introduction

At the core of the United States' trust and treaty obligations is our responsibility to ensure that Indian Tribes have the right to continue to exist in their homelands. Everyone should understand that water is essential to meet this obligation. Without access to water in their homelands, Tribes cannot remain in their homelands, and we cannot fulfill our most solemn obligation to American Indian and Alaska Native people.

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.

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.

To that end, the Biden Administration's policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights, which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

Congressional enactment of these settlements should be considered within the context of all Tribal priorities and the availability of all resources. That is why the Administration encourages Congress to consider mandatory funding for this and other pending Indian water rights settlements, which was also requested in the

2025 President's Budget, included in the enacted Bipartisan Infrastructure Law, and already proposed in the bill we are discussing today.

S. 4505 would approve and provide authorizations to carry out the settlement of all water rights claims of the Ohkay Owingeh in the Rio Chama basin in New Mexico.

II. Background

A. Historical Context

Like other Pueblos in New Mexico, Ohkay Owingeh were agricultural people living in established villages when the Spanish explorers first came to New Mexico. Before Ohkay Owingeh's lands became part of the United States, they fell under the jurisdiction first of Spain, and later of Mexico, both of which recognized and protected the rights of the Pueblos to use water. When the United States asserted its sovereignty over Pueblo lands and what is now the State of New Mexico, it did so under the terms of the Treaty of Guadalupe Hidalgo, which protected rights recognized by prior sovereigns, including Ohkay Owingeh's rights.

B. Ohkay Owingeh and the Rio Chama

The Rio Chama, located in north-central New Mexico and to the northwest of Albuquerque, is a major tributary of the Rio Grande. The river originates in Colorado, just above the New Mexico border, and runs about 130 miles to its confluence with the Rio Grande. Ohkay Owingeh, located 28 miles north of Santa Fe, has approximately 13,244 acres in the Rio Chama, Rio Grande, and Rio Santa Cruz basins. Ohkay Owingeh has approximately 2,880 enrolled members, of which about 2,205 reside on Ohkay Owingeh lands.

Ohkay Owingeh is located in an arid region of New Mexico, and drought is a common occurrence that has impacted, and continues to impact, Ohkay Owingeh lands. Since time immemorial, Ohkay Owingeh has made use of the water in the Rio Chama basin. However, the supply of water in the Rio Chama available to Ohkay Owingeh has been reduced over time by diversions by neighboring non-Indian water users. Consequently, Ohkay Owingeh is facing water shortages that impact its ability to provide sustainable water for its current and future water needs. Additionally, a portion of Ohkay Owingeh's lands lie within the "bosque," or forested habitat, along the Rio Chama and Rio Grande, which is of great historical and cultural significance to Ohkay Owingeh. The bosque areas within Ohkay Owingeh's lands were altered as a result of flood control and irrigation projects constructed by the United States on both the Rio Chama and Rio Grande in the mid-1900s. Recent effects of global warming and climate change are exacerbating these effects and surface water supplies are dwindling. Ohkay Owingeh seeks funding as part of the proposed settlement to remedy the damage to its lands that lie within these bosque areas and to also develop Ohkay Owingeh's water resources for various uses, including domestic and municipal purposes for current and future population.

In the late 1940s, a general stream adjudication of the Rio Chama was initiated in New Mexico state court and was eventually removed to Federal District Court in 1969. Negotiations regarding potential settlement of Ohkay Owingeh's water rights claims have been ongoing since 2015, when the United States established a negotiation team.

III. Proposed Ohkay Owingeh Settlement Legislation

S. 4505 would resolve all of Ohkay Owingeh's water rights claims in the Rio Chama basin in New Mexico; ratify and confirm the water rights settlement agreement signed in 2023 by Ohkay Owingeh, the State of New Mexico, and non-Indian water users; authorize the Secretary of the Interior to sign the settlement agreement; and provide funding to implement the settlement.

S. 4505 would ratify and confirm Ohkay Owingeh's water rights to approximately 1,756 acrefeet per (AFY) from surface water and groundwater sources. These amounts include 771 AFY of future groundwater use for economic development and an important right to 250 AFY of water to provide for bosque health and restoration on Ohkay Owingeh lands, as well as water to continue irrigated farming in the Rio Chama basin.

S. 4505 would also protect non-Indian water users, as Ohkay Owingeh would not make priority calls for its senior rights against other settlement parties, owners of domestic wells and livestock rights, and any non-signatory water users who cooperate in shortage sharing. In addition, Ohkay Owingeh would promulgate a water code, which would govern permitting of uses of its water; provide processes for protests by parties affected by Ohkay Owingeh permitting decisions; and ensure that water use under an Ohkay Owingeh permit would not impair existing surface and groundwater rights.

Finally, S. 4505 would establish a trust fund totaling \$745 million, to be indexed, that Ohkay Owingeh could use to develop water infrastructure as it determines necessary and on its own timeframe. Monies in the fund could be used for:

- 1) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, including for domestic and municipal supply or waste-water infrastructure;
- 2) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, or repairing water production, treatment, or delivery infrastructure, acquisition of water, or on-farm improvements for irrigation, livestock, and support of agriculture;
- 3) Planning, permitting, designing, engineering, constructing, reconstructing, replacing, rehabilitating, operating, monitoring, or other measures for watershed and endangered species habitat protection, bosque restoration or improvement (including any required cost shares for and allowable contributions to a Federal project or program), land and water rights acquisition, water-related Ohkay Owingeh community welfare and economic development, and costs relating to implementation of the settlement agreement;
- 4) The management and administration of water rights; and
- 5) Ensuring environmental compliance for projects developed with settlement funds. The State of New Mexico would contribute \$131 million to provide for benefits to non-Indian water users, including \$500,000 for a fund to mitigate impairment to non-Indian domestic and livestock well users resulting from new or changed water uses by Ohkay Owingeh.

IV. Department of the Interior Position on S. 4505

The Department is pleased to support S. 4505. This bill is the result of multiple decades of litigation and nearly a decade of good-faith negotiations to reach consensus on key issues. S. 4505 is designed to meet Ohkay Owingeh's current and long-term needs for water by providing a trust fund to be used by Ohkay Owingeh according to its needs and its own decisions. Rather than committing Ohkay Owingeh or the United States to construct specific water infrastructure projects, the bill would allow Ohkay Owingeh to make decisions regarding how, when, and where to develop water infrastructure. S. 4505 would also allow Ohkay Owingeh to restore and protect its culturally important bosque lands. This approach to settlement is consistent with Tribal sovereignty and self-determination, and with our trust responsibilities, and will help to ensure that Ohkay Owingeh can maintain its way of life.

The CHAIRMAN. Thank you very much.
Mr. Crockett, please proceed.

STATEMENT OF JOHN CROCKETT, ASSOCIATE DEPUTY CHIEF FOR STATE, PRIVATE, AND TRIBAL FORESTRY, U.S. DEPARTMENT OF AGRICULTURE

Mr. CROCKETT. Good afternoon, Chair Schatz, Vice Chair Murkowski, and members of the Committee. Thank you for the opportunity to share the Forest Service's perspective on S. 4370, the Tribal Forest Protection Act Amendments of 2024.

My name is John Crockett, and I have been a career Forest Service employee for more than 26 years, and I currently serve as the Deputy Chief for State, Private, and Tribal Forestry. In this role, I oversee the agency's work to reach across boundaries of the Nation's forests by providing financial and technical assistance to States, tribes, communities, and private landowners.

The Forest Service works to strengthen the nation-to-nation relationship with tribes, fulfill our trust responsibility, honor treaty rights and enhance tribal co-stewardship of our Nation's forests and grasslands that is fundamental to our mission. Recent accomplishments demonstrate our growth in tribal collaboration.

Last February, we released a tribal action plan detailing actions that the Forest Service would take to meet our general trust responsibilities, honor treaty rights, and support tribal self-determination. One of our first actions was to add the word “tribal” to the name of our deputy area that I lead. It is now State, Private, and Tribal Forestry, to recognize the ongoing commitment of our work with tribes.

In Fiscal Year 2023, we executed more than 120 co-stewardship agreements with tribes, investing more than \$68 million. With the funding from the Bipartisan Infrastructure Law, the Inflation Reduction Act and our regular appropriation, our efforts have increased ongoing projects with tribes.

Since Fiscal Year 2023, we have provided more than \$130 million to benefit tribes through programs like our Urban and Community Forestry Program, Wood Innovations, Community Wildfire Defense Grant, and our Landscape Scale Restoration Program.

The Tribal Forest Protection Act of 2004 provides the Forest Service with the authority to enter into agreements or contracts with tribes to carry out projects on the national forest system that protecting bordering or adjacent tribal lands. This authority has been key in enabling our collaboration with tribes.

The bill under discussion today, S. 4370, shares the goals similar to those laid out in Joint Secretarial Order 3403, Fulfilling the Trust Responsibility to Indian Tribes for the Stewardship of the Federal Lands and Water. S. 4370 would amend the Tribal Forest Protection Act to expand the definition of Indian forests and range lands to include lands held by Alaska Native Corporations, enabling four ANCs with lands proximate to the Tongass and Chugach National Forests to conduct work through TFPA.

The Forest Service Supports the intent of this addition, which would amplify the agency’s ongoing collaboration with tribes, such as our agreement between the Tongass National forest and the Tlingit and Haida Tribes that formalize our co-stewardship agreement with the Mendenhall Glacier National Recreation Area.

Second, S. 4370 would strike the requirement that Indian lands border or be adjacent to Forest Service or Bureau of Land Management lands, instead requiring lands that have a special geographical, historical or cultural significance tribes. We agree that the removal of the bordering adjacency requirement is necessary to expand tribal participation and would like to work with the Committee and the bill’s sponsors to discuss criteria for making this happen.

Third, S. 4370 would expand the program eligibility to allow for work on Indian Forest range lands. The Forest Service would like to work with the Committee to discuss the legal and administrative impacts of changing TFPA scope in this way, including how much changes may benefit from clarifying the role of the Bureau of Indian Affairs, Forest Service, and the Bureau of Land Management regarding the work on tribal lands other than those that are the Alaska Native Corporation lands.

In closing, we support the Committee’s goal to expand TFPA and broaden the Forest Service’s authorities to work with tribes. We look forward to continuing to work with the Committee on adapta-

tions to TFFPA as well as other opportunities to advance co-stewardship and foster stronger tribal relations.

Chair Schatz, Vice Chair Murkowski and members of the Committee, this concludes my statement. I look forward to answering any questions.

[The prepared statement of Mr. Crockett follows:]

PREPARED STATEMENT OF JOHN CROCKETT, ASSOCIATE DEPUTY CHIEF FOR STATE,
PRIVATE, AND TRIBAL FORESTRY, U.S. DEPARTMENT OF AGRICULTURE

Chairman Schatz, Vice Chairman Murkowski, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the views of the U.S. Department of Agriculture (USDA).

Federally recognized Indian Tribes are sovereign nations with long-standing government-to-government relationships with the Federal Government. We acknowledge that many of the Federal lands and waters managed by the USDA and the Department of the Interior are the traditional territories of American Indians and Alaska Natives. These lands are home to sacred sites and burial sites, wildlife, and other sources of indigenous foods and medicines. Many of these lands are in areas where Tribes have reserved rights to hunt, fish, gather, and practice their traditional ceremonies pursuant to statutes and ratified treaties and agreements with the Federal Government.

Forest Service policy honors the Federal trust relationship with Tribes, promotes protection of these ancestral lands and waters, and enhances co-stewardship opportunities with Tribes based on a suite of treaties, Federal laws and regulations, court decisions, executive orders and memorandums, interagency agreements, and agency-specific direction. These include but are not limited to the Tribal Forest Protection Act, Good Neighbor Authority, Stewardship Contracting Authority, Wyden Amendment, Service First, Executive Order 14096 on Revitalizing Our Nation's Commitment to Environmental Justice for All, and the Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships.

The Forest Service's recent expansion of work is consistent with our general trust responsibility and honors Tribal sovereignty. It has taken many forms:

- Tribal co-stewardship agreements developed in response to Joint Secretarial Order 3403 promote an approach to managing national forests and grasslands that seeks to protect the treaty, religious, subsistence and cultural interests of federally recognized Indian Tribes. In Fiscal Year (FY) 2023, the Forest Service and Tribes executed more than 120 agreements, representing a total investment of approximately \$68 million, more than triple the \$19.8 million invested in FY 2022. These agreements implement vegetation management projects to protect Tribal land and communities and reduce hazardous fuels in critical and cultural landscapes while strengthening our government-to-government relationships with Tribal nations.
- The 2018 Farm Bill also expanded the Good Neighbor Authority (GNA) to Tribes. GNA allows the Forest Service to enter into cooperative agreements and contracts with Indian Tribes, States, and counties to perform forest, rangeland, and watershed restoration services on the National Forest System. Since FY 2018, Tribes have entered 30 GNA agreements, totaling \$7.3 million, to accomplish a variety of restoration work, including addressing wildfires, pest control, climate change vulnerability assessments, and cultural resource protection.
- In FY 2021, the Infrastructure Investment and Jobs Act (IIJA) made additional funds available for Indian Tribes and states to implement forest management and wildfire mitigation projects on Federal lands pursuant to the GNA or the Tribal Forest Protection Act (TFPA). The IIJA provided the Forest Service with \$5.5 billion to reduce wildfire risk and create healthy and resilient ecosystems across Tribal, Federal, State, and private lands. This included the first-ever Tribal program appropriations for the Forest Service, increased eligibility for Tribes, and opportunity for priority allocations for Tribes.

Several statutes and implementing regulations authorize the Forest Service to enter into agreements and contracts with and/or provide grants to Indian Tribes to protect Tribal land, communities, and resources. The Tribal Forest Protection Act of 2004 (TFPA) provides authority for the Forest Service to enter into agreements or contracts to carry out projects on the National Forest System that protect bordering or adjacent Indian forest land and rangeland from threats such as fire, insects, and disease while being informed by Tribal knowledge. Tribes may submit re-

quests to the Secretary of Agriculture to enter into agreements or contracts. The 2018 Farm Bill provided additional opportunity, with a new Tribal forestry self-determination demonstration authority, for increased Tribal participation in the co-stewardship of the National Forest System.

TFPA has been a key authority available to the Forest Service to collaborate with Tribes to protect Tribal forest lands, rangelands, and communities from threats that originate from the National Forest System and to restore National Forest System lands that encompass treaty rights, traditional use, and other areas of Tribal significance. Notwithstanding the import of the TFPA in bringing Indigenous Knowledge and Tribal voices to Federal management of the National Forest System, some have observed that there are aspects of the authority that limit its application.

Some have argued that TFPA's structure has limited the program's utilization and ability to meet Congress' intent of protecting and restoring Tribal lands. S. 4370, the *Tribal Forest Protection Act Amendments Act of 2024*, would amend existing law to:

1. *Expand the definition of "Indian forest land or rangeland" to include lands held by Alaska Native Corporations.* Under the Alaska Native Claims Settlement Act (ANCSA), Congress did not place Native land in Alaska into trust or restricted status. Instead, land was conveyed to Alaska Native Corporations (ANCs) to manage for their shareholders. TFPA's current definition of "Indian forest land and rangeland" prevents nearly 44 million acres of ANCSA land and resources from being protected from threats from Federal lands under the jurisdiction of the Forest Service and Bureau of Land Management. In addition, the TFPA requires that the land be "under the jurisdiction" of a Tribe, which further prevents ANCSA lands from qualifying.

There are four ANCs that hold lands pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) that border or are adjacent to the Chugach and Tongass National Forests and/or may be proximate to potential threats from those National Forests. Expansion of TFPA to those lands under ANC oversight would create opportunity for Sealaska and Chugach Alaska Corporations, and potentially Ahtna, Inc. and Cook Inlet Region, Inc. The Forest Service does not have a presence outside of southeast Alaska.

2. *Strike the requirement that Indian lands "border on or be adjacent to Forest Service or Bureau of Land Management lands."* The bill instead requires the Forest Service or Bureau of Land Management land to have a special geographic, historical, or cultural significance to an Indian Tribe. Tribes have sacred sites, cultural landscapes, and other resources on federal lands that they want to protect or restore, but the lands on which those resources exist are not always bordering on or adjacent to Indian lands.

Some have observed that a limitation of TFPA is the requirement that the Indian forest land or rangeland border or be adjacent to lands in the National Forest System. This reduces participation for Tribes without an existing, or no, land base that meets these criteria.

The TFPA currently includes the following Tribally-related factors in evaluating the proposal of the Indian Tribe:

- the status of the Indian Tribe as an Indian Tribe;
- the trust status of the Indian forest land or rangeland of the Indian Tribe;
- the cultural, traditional, and historical affiliation of the Indian Tribe with the land subject to the proposal;
- the treaty rights or other reserved rights of the Indian Tribe relating to the land subject to the proposal;
- the Indigenous Knowledge and skills of members of the Indian Tribe;
- the features of the landscape subject to the proposal, including watersheds and vegetation types;
- the working relationships between the Indian Tribe and Federal agencies in coordinating activities affecting the land subject to the proposal; and the access by members of the Indian tribe to the land subject to the proposal.

Amending the bordering or adjacency criteria to include Indian forest land or rangeland and Tribal communities that are reasonably proximate to a threat from the National Forest System may be a more effective framework to expand eligibility and to implement, as it can include factors such as the type and extent of the risk to Tribal lands, resources, and communities. For example, wildland fire travels over many acres; disease can flow downstream over many miles; insects can pervade over great distances. Therefore, the scope of reasonable proximity to the threat will ex-

pand the range of eligible Indian forest land or rangelands so that more Tribes will be able to submit TFPA proposals for work on National Forest System land.

Amending the bordering or adjacency requirement to instead allow for proximity, amending the definition of Indian forest land and rangeland to include ANCSA lands, and clarifying when Tribes must exercise jurisdiction over the lands, may achieve the desired goals of establishing Tribal relationships to the landscapes of interest and allow ANCs to participate. If the Committee would like to discuss additional/different criteria to establish “special geographic, historical, and cultural relationships” or other approaches to define the Tribal relationship to the lands within the National Forest System, the Forest Service would welcome that conversation.

3. *Expand program eligibility to allow for work on Indian forest land or rangelands.* The current program only applies to work conducted on Federal lands under the jurisdiction of the Forest Service or Bureau of Land Management. The TFPA came into being after the fire season of 2003 when 18 reservations were affected by wildfire from federal lands. To help reduce the threat of future tragedies, the Tribal Forest Protection Act of 2004 established a process to allow Tribes to perform hazardous fuels reduction operations and other forest health projects on U.S. Forest Service and Bureau of Land Management lands bordering or adjacent to their own.

The Bureau of Indian Affairs has authority and responsibilities as trustee to manage Tribal forest lands pursuant to the National Indian Forest Resources Management Act (25 U.S.C. Chapter 33). Given this, the Forest Service would like to work with the Committee to discuss the legal and administrative impacts of changing the scope of the TFPA, including how such changes may benefit by clarifying the role for each of the Bureau of Indian Affairs, Forest Service, and Bureau of Land Management as agencies with the different missions, obligations, and equities regarding work on the same Tribal landscapes.

4. *Add/update reporting on the program.* Although the TFPA is a process authority and not a program, the Forest Service takes no issue with instituting a reporting regime to monitor and assess the performance outcomes of work performed under the TFPA.

5. *Add a five-year authorization of appropriations of \$15 million per year.* The Forest Service received its first-ever TFPA appropriations in the Infrastructure Investment and Jobs Act, of up to \$8 million per year for TFPA (Division J) and \$32 million per year (40804(b)(2)) for both States and Tribes to implement TFPA and Good Neighbor Authority. In FY 2024, more than \$185 million was requested by Forest Service field units to execute these authorities with Tribes on the National Forest System.

The CHAIRMAN. Thank you, Mr. Crockett.
Governor Phillips, welcome.

**STATEMENT OF HON. LARRY M. PHILLIPS, JR., GOVERNOR,
PUEBLO OF OHKAY OWINGEH**

Mr. PHILLIPS. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and honorable members of the Committee. I am Larry Phillips, Jr., Governor of Ohkay Owingeh. With me today is Councilman Anthony Moquino to show the support of the entire council for this settlement.

I would like also to acknowledge the incredible support of our two Senators, Senator Luján and Senator Heinrich. I would not be here today to discuss our settlement without their hard work and efforts on behalf of the Pueblo.

Thank you for inviting us to this hearing. I have submitted written testimony for the record on behalf of Ohkay Owingeh.

I ask for Congress to authorize S. 4505. My statements today will highlight several points of that testimony. I would like to talk about our bosque, and the water and the importance to Ohkay Owingeh.

Two things are the bosque and the waters that protect and preserve our bosque, and our lands are the very essence of what it is to be Ohkay Owingeh. In our Tewa language, or [phrase in Native

tongue], which means a river of prosperous lands, is a living forest among flood plains of our river. In our ceremonies, we color ourselves and immerse ourselves with the lands and the waters of the bosque to celebrate and give thanks for our emergence from Mother Earth. Our people have been deprived of this ceremony for 75 years because of actions of the United States.

The bosque was taken from us by two separate actions of the United States. In 1955, the Bureau of Reclamation and Army Corps of Engineers channelized the Rio Grande in an effort to move water away from our section of the river to benefit junior water users farther downstream. Authorization in 1956 of the construction of Abiquiu Dam changed the flow of the Rio Chama. Both of these actions have resulted in a devastating effect to our bosque and our waters necessary for a proper functioning river.

We entered into a settlement negotiations to preserve and restore our water resources in the bosque. This is the first tribal water settlement that I am aware of that settles a claim by an Indian tribe that the United States confiscated tribal lands and water in a river channelization project, as I have mentioned. The United States bulldozed those rivers, they largely destroyed our rivers and bosque. This needs to be fixed. This settlement gives us the tools for that.

We seek Congressional approval and funding for a comprehensive water rights settlement, a settlement that will last for all time. This settlement encompasses more than Ohkay Owingeh's water rights. It is a regional agreement with regional benefits. Ohkay Owingeh, the State of New Mexico, City of Espanola and many small farmers in the Rio Chama Basin together crafted this agreement. The settlement improves water reliability to all water users in the Rio Chama Basin. In exchange for these benefits, we will give up time immemorial priority to facilitate any equitable sharing of our waters during dry years. This settlement will increase supplies. We will work with our neighbors for additional water sources to store in available existing reservoirs.

The settlement will provide us use of efficiency by authorizing and funding the delivery of infrastructure that will provide economic benefits in the form of new jobs. We seek \$740 million in Federal funds to implement this agreement. New Mexico has committed to a local cost share of \$131 million.

Ohkay Owingeh will use the Federal funds for many purposes related to this settlement. These could include, for example, new groundwater wells, water treatment facilities, irrigation ditch improvements to conserve water, water delivery facilities for both farms and as a backup to serve the river and its adjacent vegetation.

We understand that this settlement is fund-based and the Ohkay Owingeh will not be able to return for additional funding. If we underestimate the cost of this project we build, we accept that risk.

This concludes my oral testimony. Thank you. I am ready for questions.

[The prepared statement of Mr. Phillips follows:]

PREPARED STATEMENT OF HON. LARRY M. PHILLIPS, JR., GOVERNOR, PUEBLO OF
OHKAY OWINGEH

Introduction

I am Larry Phillips, Jr., Governor of Ohkay Owingeh, a federally recognized Tribe in Northern New Mexico. I thank you for convening this hearing and inviting me to testify. The welfare of the people of Ohkay Owingeh is one of my primary responsibilities as Governor. I submit this testimony on their behalf. We respectfully ask that Congress enact S. 4505, the Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024.

At the outset, I wish to acknowledge and respect a Pueblo ancestor, Po'pay, who has been given the great honor of being recognized by the State of New Mexico with a statue in the United States Capitol. Born at Ohkay Owingeh in 1630, Po'pay lived with a desire to protect the lives and health of his people, along with other Native people, and to preserve culture and traditions so that my children and their children know and understand not just their heritage, but who they are.

In 1680, Po'pay led a coordinated revolt by all Pueblos against Spanish invaders. The invaders had enslaved us, taken our homes for themselves, and suppressed with violence and executions our efforts to practice our culture and honor our history. Po'pay was whipped for having engaged in traditional Pueblo practices; the statue in the Capitol shows the scars on his back. Together with his neighbors, Po'pay drove the Spanish out of New Mexico and restored Pueblo authority. For a period of 12 years, the Pueblos enjoyed again the ability to govern themselves consistent with their traditions.

Po'pay gave us the opportunity to restore and maintain our traditions in the face of outside challenges and enabled my ancestors to address the return of the Spanish with a renewed strength. Po'pay taught us how to both respect ourselves and our own culture and accept the new reality of a different culture living in our lands. In many respects, the water settlement you are considering is an extension of Po'pay and his teachings, as we have accepted and embraced the needs of our neighbors as part of this settlement, both politically and culturally. This water settlement reflects our sacred promise to our future generations to protect our lands and waters for their benefit.

Background of the Water Rights Settlement and Damage to the Bosque

This bill implements an agreement that settles a water rights lawsuit filed by New Mexico to establish rights to the waters of the Rio Chama Stream System. The State sought to quantify the Pueblo's water rights. After many years of litigation, we negotiated the quantifications that are established in the settlement agreement, which will provide adequate water for our needs now and into the future from the Rio Chama source on our lands. Because of the cultural importance we place on water, however, this settlement is much broader in scope, and more important than just those numbers, more important than simply assigning limits to our water uses.

This same agreement also settles a second lawsuit, one that we filed in the U.S. Court of Federal Claims seeking to restore the damage to our cultural resources caused by the United States and the damage to our people from being deprived the right to fully exercise their religious beliefs and practices. By destroying the bosque on our lands, the United States violated the constitutional principle that property shall not be taken without due process and adequate compensation. Our bosque is at the center of our cultural and religious practices. It is a sacred place. By taking our bosque and preventing our tribal members from being able to fully exercise their religious practices, the United States violated its duty to protect the resources of the Pueblo.

In the 1950s and 1960s, the Bureau of Reclamation and Army Corps of Engineers channelized that portion of the Rio Grande that flows through Ohkay Owingeh's homeland. With bulldozers and other heavy machinery, the U.S. agencies destroyed the ancient meandering ribbons of the Rio Grande and transformed the river into something very different than what the Creator gave us. The river became narrow and bounded on both sides by levees. The U.S. intended to speed the flow and increase the amount of water to be delivered through our lands to benefit the junior water users in southern New Mexico. The U.S. succeeded in achieving its goals. Not surprisingly, the side channels, wetlands, robust plant- and tree-life, and the animals of the bosque, all gradually began to disappear. The groundwater table dropped. Over the last 70 years, this bosque has withered and begun its path to complete destruction.

To compound the problem, in the 1960s the Army Corps constructed a dam on the Rio Chama. The dam succeeded in its purposes of regulating Rio Chama flows and storing water for release to farmers south of us. The loss of flood flows in the

Chama, which farmers had demanded, and the decrease of water in the river led to the same disaster as occurred on the Rio Grande: the slow death of the bosque.

The intentional destruction of the bosque is consequential not just because the U.S. destroyed a large swath of two healthy and vibrant rivers. This bosque is fundamental to Ohkay Owingeh traditional and cultural practices. The Ohkay Owingeh national symbol contains images of materials from the bosque. Our ceremonies are built upon, and our regalia is made up of materials from the bosque. Our world revolves around the bosque. The harm to our people from the loss of our land, our plants and animals, and our ability to fully practice and exercise our religion is nearly immeasurable.

Ohkay Owingeh people cannot sit by while our critical resources wither and die. We must hold the U.S. to its responsibility to address the damages it has caused. Although the full extent of the harm suffered by Ohkay Owingeh people is incalculable, this settlement will provide funding to allow us to mitigate those damages.

The bosque restoration project is supported by the State of New Mexico, City of Espanola, and the many *parciantes* on the acequias (the small farmers) in the Rio Chama. They support the bosque restoration project because they understand its importance to Ohkay Owingeh. But they also support bosque restoration because they know that a healthy, restored, and fully functioning bosque has benefits for all of New Mexico, including improved water quality, groundwater recharge, habitat for birds, fish, and plants, including species listed on the Endangered Species Act. Bosque restoration and the benefits that brings to the entire region is just one more way through this settlement that we take care of our needs and at the same time, ensure benefits to our neighbors and our State.

Separate and apart from our settlement, the Corps of Engineers, through the Espanola Project authorized in Water Resources Development Act of 2018, Public Law 115–270, 132 Stat. 3830, Section 1401(4), has undertaken a bosque restoration project that includes a small part of our lands. This initial authorization will restore a small portion of our bosque. The authorization contained in this bill, S. 4505, will provide the means to finish the job.

This settlement is created by the people who live in that region. We will share our water resources. We will protect and conserve our water. We will respond together to the crises that will inevitably come. We will celebrate together our successes as small farmers. Ohkay Owingeh's neighbors, the signatories to this agreement, have agreed to work with the Pueblo to enable us to restore the health of the bosque, most precious of our cultural resources. This agreement is a product of all of us: our thinking, our work, our preparation for an increasingly uncertain future. Now we ask Congress to partner with these citizens of the United States and support us in managing our water resources fairly, for the benefit of all in the region.

Specific Provisions of S. 4505

As authorized by S. 4505, the Pueblo agrees to limitations on its current and future water uses; we waive our rights to a senior priority to permit sharing our water resource with our neighbors during dry periods; the Pueblo retains its ability to acquire water rights and lands in the future from willing sellers. We are asking Congress to approve the agreement and to appropriate \$745 million for Pueblo development of water infrastructure and restoration of the bosque. The Legislation reflects an agreement by the State of New Mexico for its cost share: \$98.5 million for irrigation improvements, \$32 million for the City of Espanola water infrastructure, and \$500,000 for mitigation of well impairments. The legislation in Section 5 confirms and establishes as Ohkay Owingeh's federal water rights. The provisions of the agreement are summarized here:

- Irrigation—the Pueblo will have sufficient surface water to irrigate our farmlands of 310.45 acres. The agreement authorizes irrigation of an additional 1,562 acres formerly owned and irrigated by the Pueblo; these lands and water rights must be reacquired by the Pueblo from willing sellers.
- The Pueblo will have sufficient water for livestock.
- The Pueblo will have a right to the use of 981-acre feet per year (afy) from groundwater wells for current and future domestic, commercial, and municipal purposes; most of that water use is subject to offsets (the Pueblo must replace the water it depletes from the system) to protect downstream users and to ensure state compliance with the Rio Grande Compact.
- The Pueblo will have the right to restore the Rio Chama bosque by diverting water from the river during high-flow events under specified water conditions. The Pueblo in addition may apply 250 afy to the bosque at any time by diversions from the Rio Chama, or the use of groundwater or irrigation return flows.

The Pueblo expects high flow events to allow significant improvements to the bosque, and the yearly use of 250 af to be sufficient to maintain the health of the bosque in between flood events.

- As mentioned previously, the Pueblo will waive its senior priority right to water and the parties will fairly allocate among themselves water available during times of shortage. The shortage sharing schedule will be in the form of an annual agreement, binding on all parties, and enforceable by the New Mexico State Engineer.
- The parties have agreed to pursue water storage in existing reservoirs as a joint effort.
- Ohkay Owingeh and the City of Espanola have agreed to avoid interference with each other's groundwater wells.
- The State and Pueblo will exercise their respective sovereign authorities over management of water resources. The Pueblo, pursuant to its laws, will administer water within the Pueblo Grant. The State, pursuant to its laws, will administer water outside the Grant. The administration of water rights will be conducted by both governments in a public manner with full timely disclosure to the public. The State has agreed to provide a fund to mitigate impairment to domestic and livestock wells that might arise from Pueblo water use.
- Proposed federal funding for the Pueblo may be used to acquire water rights, plan for, and develop water-related infrastructure, administration of water rights, and bosque restoration.

The second part of the agreement provides funding for restoration of the Rio Chama and Rio Grande bosque within the Pueblo Grant. The damage to the rivers' riparian areas caused by the Bureau of Reclamation and Army Corps of Engineers is significant, continuing, and increasingly devastating to our cultural practices. The U.S. was focused on getting water to farmers through the dam at Abiquiu and the channelization of the Rio Grande and acted with disregard to the vast damage to people of Ohkay Owingeh.

Ohkay Owingeh fully understands that S. 4505 authorizes a fund-based settlement, which means that we are prepared to bear the risk of underestimating the cost of constructing the water infrastructure and restoring the bosque.

Ohkay Owingeh people were farmers and hunters a thousand years ago. We still are. We were people who learned from our ancestors, followed our traditional ways; we still do. We speak Tewa, our language. We hold our ceremonies. We also build industrial parks, establish businesses with operations throughout the country, build houses, run a government, educate our children in our schools, and provide our community with health care, public services, and jobs. Ours is a complex world. Our ancestors are part of our daily lives. Yet we live in the 21st century.

On behalf of my people, our ancestors who were stewards of the natural resources of northern New Mexico, and our children and grandchildren, we urge this Committee to endorse our carefully crafted plan to restore and maintain our primary cultural resource, the bosque. River restoration is in the broad public interest. Restoration will return to the people of New Mexico an environmental paradise. And restoration will assure Ohkay Owingeh that its traditional practices will continue.

Thank you.

The CHAIRMAN. Thank you very much, Governor.

Now we will welcome virtually President Padilla for her testimony.

**STATEMENT OF HON. THORA PADILLA, PRESIDENT,
MESCALERO APACHE TRIBE**

Ms. PADILLA. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. And a special hello to Senator Luján and Senator Heinrich.

My name is Thora Padilla, and I am honored to serve as President of the Mescalero Apache Tribe. Thank you for this opportunity to testify about S. 4370, proposed amendments to the the Tribal Forest Protection Act.

For Mescalero Apache people, forestry is a part of our way of life. The forest protects our watershed and provides food and shelter to

our people. We played a role in setting national tribal forestry policies for decades. Mescalero was among the first tribes to extend support for the Tribal Forest Protection Act of 2004, and one of the first to engage in a stewardship contract under the TFPA.

Treatments conducted under the Six Springs Stewardship Contract, as well as fuel treatments conducted on tribal lands at Eagle Creek, were key to limiting damage to our reservation and the village of Riudoso from the Little Bear fire of 2012. The TFPA has proven itself for 20 years now, and it is time to expand the reach of projects and tribal participation in this program.

For this reason, the Mescalero Apache Tribe extends our full support for S. 4370. The bill eliminates the requirement that Federal land must border or be adjacent to Indian land. Forest fires, disease and insect infestation do not respect boundaries. Removing this barrier will permit tribes to conduct landscape scale management projects throughout Federal lands where the tribe has historical or cultural connections to the land.

The Lincoln National Forest and other nearby Federal lands are part of the Mescalero Apache Tribe's ancestral homelands. S. 4370 holds potential to give the Mescalero Apache a greater voice in the development of forest management strategies that will protect our reservation, our investments in the forest, and our nearby communities.

S. 4370 also expands TFPA projects to include treatments on Indian lands which will help offset the significant and longstanding funding shortfalls for tribal forest management. As the latest FMAT report shows, tribal forestry programs receive one-third to one-tenth of the Federal funding delivered to our State and Federal counterparts.

Finally, the bill adds a funding provision to the TFPA which will further improve implementation and help the Act reach its true potential.

In addition to the improvements proposed in S. 4370, we ask the Committee to expand on the 2018 Farm Bill's TFPA 638 Forestry Program. Mescalero testified before this Committee in 2018 in support of this program. However, last summer, when I reached out to work with the Lincoln National Forest on a 638 forestry contract, I was told that the project did not meet the TFPA requirements and even if it did, there was no funding to support the proposed 638 contract.

To address these barriers, we urge the Committee to support existing proposals included in both the House and Senate Farm Bills to remove the demonstration designation from this program and make it permanent. We also ask the Committee to address other needed improvements to the TFPA 638 Forestry program. We ask that you add a funding mechanism to the program that will also cover contract support costs.

These additional improvements to the TFPA will enable tribes to consistently enter into contracts and compacts with the Forest Service and BLM. Once this takes place, tribes and tribal priorities will become part of the agency decision-making process, and will have positive impacts on the exercise of tribal treaty rights, protection of Native sacred places and protection of tribal investments on Federal lands.

In closing, I want to again thank you for this opportunity to testify today in support of S. 4370 and its proposed changes to the Tribal Forest Protection Act that will help the law reach its full potential. I am now prepared to answer any questions that the Committee may have.

Thank you.

[The prepared statement of Ms. Padilla follows:]

PREPARED STATEMENT OF HON. THORA PADILLA, PRESIDENT, MESCALERO APACHE
TRIBE

Good afternoon Chairman Schatz, Vice Chair Murkowski, and Members of the Committee. My name is Thora Padilla and I am honored to serve as President of the Mescalero Apache Tribe (“Mescalero” or “Tribe”). Thank you for this opportunity to testify about S.4370, the Tribal Forest Protection Act Amendments Act of 2024.

The Tribal Forest Protection Act of 2004 (TFPA) has proven itself for two decades now. We fully support the proposed changes to the TFPA included in S. 4370. In addition, we urge the Committee to support proposals to make the TFPA 638 Forestry program permanent and to extend a funding mechanism to that program. We also support proposals to expand TFPA to authorize Tribal Governments to conduct prescribed burn and other projects. And finally, we urge the Committee to examine and support passage of proposals to bring parity to the Small Tracts Act.

Background: the Mescalero Apache Tribe

The Mescalero, Lipan and Chiricahua Apache, make up the Mescalero Apache Tribe. Long before the first European settlers came to this land, our Apache ancestors roamed the Southwestern region, from Texas to central Arizona and from as far south as Mexico to the peaks of Colorado. We were protected by our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/ Three Sisters Mountains, and Oscura Peak. We traveled the rough Apacheria through mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our lands, the Apaches entered into a treaty with the United States on July 1, 1852. The Treaty with the Apaches promised the Tribe a permanent homeland in our aboriginal territory. The Mescalero Apache Reservation (“Reservation”), located in the White and Sacramento Mountains of rural south-central New Mexico, was established through a succession of Executive Orders in the 1870’s and 1880’s. The Reservation spans approximately 720 square miles (460,405 acres). Our Reservation is home to 5,500 tribal citizens and approximately 200 non-Indian residents.

The original Reservation boundaries and our ancestral homelands encompass lands that are currently held in federal ownership, including the Lincoln National Forest (LNF) and Bureau of Land Management (BLM) lands surrounding the Fort Stanton State Monument. These federal lands were carved out of our ancestral homelands. Evidence of our connections to LNF is found throughout the Forest, from rock art to mescal pits to the Apache Trail, which was a prime route for water in the Sacramento Mountains. These Mountains are home to the Mountain Spirit Dancers—holy beings that ensure our well-being. The Mescalero Apache people have maintained strong cultural ties to these lands. To this day, we continue to gather plants important to our traditions and conduct ceremonies on these federal lands. To strengthen our ties to these lands and to have input into their management, the Tribe has entered into Memoranda of Understanding (MOUs) with the U.S. military and LNF. In addition, the Tribe has invested significant resources in Ski Apache, a resort owned and operated by the Tribe pursuant to a special use permit. Ski Apache is located on LNF lands bordering our Reservation.

Mescalero Apache Forest Management

We are the people of the Mountain Forests. The Mescalero Apache have managed our forests holistically for centuries. Sustainable forest management is part of our way of life. In addition to promoting the health of our forests, our forest management practices promote the growth of food and medicinal plants, healthy wildlife, and historically served to protect our lands from invaders.

This tradition of forestry was put into formal practice when the Bureau of Indian Affairs (BIA) Mescalero Agency opened its Branch of Forestry in 1910. Mescalero’s first major commercial timber sale was in 1919. With the opening of the tribally owned Mescalero Forest Products’ (MFP) sawmill in 1987, the Tribe entered a new

era of forest management. Today, the Mescalero forest remains one of the best-managed, healthiest forests in the Southwest.

For more than a century, the BIA Mescalero Agency and the Tribe worked to develop a premier forestry program on the Reservation. During the 1990's and early 2000's, the BIA Branch of Forestry employed three professional foresters and two forestry technicians in the Timber Sale section. This small staff was responsible for preparing and offering for sale lumber at 16.8 million board feet annually and completing all sale planning, environmental compliance work, timber sale layout and administration. Due to the amount of timber harvested, the BIA identifies the Reservation as a Category 1-Major Forested Reservation. Additionally, the Fire Management and Fuels Management Programs are each rated as High Complexity. These ratings describe not only the intricacy of addressing fire concerns across a large landscape but also the need for coordinated efforts among programs and agencies.

Operating on a shoestring budget, the Tribe's Division of Resource Management and Protection has been able to provide high quality forestry services on the Reservation, assisting the BIA in timber sales and performing fuels management projects. The strong working relationship with BIA Forestry and the implementation of contracts under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) helped the Tribe build a strong forest management system.

Before the Tribal sawmill, Mescalero Forest Products (MFP), closed in 2012, the Tribe treated one full rotation of the commercial forest, totaling 183,876 out of a total Reservation land base of 460,405 acres. All 183,876 acres were considered for logging. Areas that were not treated contained arch sites, threatened and endangered species, or homesites.

Despite the importance of this mission, the Mescalero BIA Branch of Forestry experienced a 43 percent reduction in staffing levels since 2016. As a result, in FY 2022 the Tribal Council passed a Resolution to contract for and take over the BIA Branch of Forestry and Branch of Natural Resources activities through Public Law 93-638 Self-Determination contracts. This has allowed us to focus on Tribal priorities and objectives to manage our forest. Through 638 contracts, the Tribe has taken on silvicultural evaluations and prescriptions; timber sale planning and harvest; forest development thinning and planting; woodland management; forest protection from insect, disease, and trespass; and fuels management. However, the Mescalero Apache Tribe views the federal government's most fundamental treaty and trust obligations to provide for public and fire safety on Indian lands as non-negotiable. For that reason, our community relies on the BIA's Mescalero Agency (the "Agency") to provide direct services for the critical public safety functions of law enforcement and firefighting services on our Reservation.

When the Tribe first began commercially harvesting timber, many opposed the concept. This resistance to proactive forest management began to dissipate in 1996 when the Tribe experienced its first large fire in recent history, the Chino Well Fire. This fire began on a windy spring day in April. Within one day, the fire threatened 42 homes, forcing evacuations, and burning a seven-mile strip of forest of more than 8,000 acres. Due to the rapid-fire response of Tribal fire crews, no homes were damaged. Soon after the fire, homeowners wanted to learn how they could protect their homes from future wildfires.

With the advent of the National Fire Plan in the late 1990's, the BIA Branch of Forestry worked with the Tribe to develop strategic ridgetop fuel breaks and implemented wildland urban interface treatments around residential and recreational areas across the Reservation. Through this program, the Tribe has treated an additional 63,968 acres through hazardous fuels reduction projects. These projects were coordinated with harvest operations, recognizing that understory thinning alone would not reduce the potential for destructive crown fires. As a result of implementing wildfire mitigation measures to reduce fire danger, the Tribe earned Firewise Communities/USA recognition in 2003—the first tribe in New Mexico to earn such recognition.

Hazardous fuel reduction projects are vital to our forest management practices. Forests are living organisms. With reductions in density, trees and ground cover are better able to thrive. Southwestern forests grow with very little precipitation. On the Reservation and in LNF, 26 inches of annual precipitation is considered a "wet" year. By reducing tree densities to ensure the crowns are not touching, we greatly enhance the available water, light and nutrients each individual tree receives. With open forest conditions, pine seedlings have a better environment to germinate, resulting in increased forest regeneration.

In addition to our hazardous fuels management program, the Tribe used to operate the MFP sawmill. However, the decline in the lumber market, combined with process inefficiencies and a lack of by-product markets, resulted in the closure of

MFP twice, once in December 2008 and again in July 2012. The closure of the sawmill resulted in the loss of 55 jobs for mill workers and 150 supporting staff (including marking, harvesting, hauling, and administrative staff). The Tribe was also forced to close a second mill that it owned in Alamogordo, which employed 82 workers.

The MFP sawmill was a vital first-line forest management tool that enabled the Tribe to treat the larger trees of the forest overstory through selective harvests that were followed up with hazardous fuels reduction projects in the smaller size classes. Closure of these sawmills has significantly limited our ability to manage our forest and assist in the management of LNF.

In addition, congressional funding cuts, implemented over the past two decades, have further strained our forestry practices. Prior to these cuts, the Tribe was able to manage our forest better than the LNF on a fraction of the federal agency's budget. Failure to restore this modest funding threatens the future success of our program.

Need to Expand the Tribal Forest Protection Act

Congress enacted the Tribal Forest Protection Act of 2004 in response to devastating wildfires that crossed onto tribal land from federal lands in the summer of 2003. TFPA has provided a tool for Tribes to propose work and enter into stewardship contracts and other agreements with the Forest Service or Bureau of Land Management (BLM) to reduce threats on federal lands adjacent to Indian lands. The Forest Service alone shares approximately 2,100 miles of contiguous boundaries with Indian tribes. The TFPA authorizes the Secretaries of Agriculture and Interior to give special consideration to tribally-proposed projects on federal land bordering Indian trust land.

The Act was largely underutilized for years. From 2004–2008, only 10 TFPA contracts and agreements were awarded. These contracts and agreements covered 23,230 acres and 51.5 miles of boundary. USFS-tribal TFPA stewardship contracts have been limited in scope, focusing on hazardous fuels reduction and invasive species treatment. This disappointingly slow implementation of the TFPA continues to thwart the Act's potential, leaving tribal forests more vulnerable to catastrophic wildfire, disease and infestation from adjacent federal public lands. TFPA partnerships should be aggressively expanded.

A case in point of the positive but limited impact of the TFPA is the stewardship contract that the Mescalero Apache Tribe entered into with the LNF. Through the "Sixteen Springs Stewardship Contract" in 2006 with LNF, the Tribe conducted fuels reduction, urban interface, and ecosystem restoration projects that covered more than 6,300 acres and 3.4 miles of roads along the shared boundary between our Reservation and LNF.

These treatments greatly improved the health of adjacent LNF lands. Added benefits of the stewardship contract included strengthening connections with our ancestral homelands, the resulting improved relationship between Mescalero forest personnel and LNF staff and gaining a better understanding of the management constraints placed on the LNF.

However, the stewardship contract ended far too early. Many thousands of additional acres of dense forest within LNF remain untreated and continue to threaten the lives and property of Tribal members and the public.

Lessons Learned from the Little Bear Fire

Mescalero leadership had longstanding concerns about the dense forest conditions in LNF. We have seen the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and have watched as large swaths of USFS lands die around us.

Nature provided a preview of what will happen if the Mescalero forestry program is allowed to fail. The Little Bear Fire started modestly on Monday, June 4, 2012. The initial small fire was caused by lightning in the White Mountain wilderness in LNF. Over the first five days, LNF deployed relatively few assets to contain what it thought was a non-threatening forest fire. Firefighters worked only on day shifts, air tanker resources were not utilized, and helicopter water drops were minimal. On the fifth day, the fire jumped the fire line and high winds turned the fire into a devastating inferno. By that night, the fire had blazed through the Tribal ski area, Ski Apache Resort ("Ski Apache"), and crossed onto Tribal lands. Within two weeks, the Little Bear Fire burned 35,339 acres in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire also destroyed more than 255 buildings and homes in the region and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages,

exceeded \$100 million. This number includes more than \$1.5 million to tribal assets at Ski Apache.¹

The Little Bear Fire crossed the Reservation line at a key topographic area. There are two major canyons, Upper Canyon and the Eagle Creek area, that start on the Reservation and then lead off the Reservation. Both areas are heavily populated off-Reservation. Because of the volume of trees that were burnt, there was a real danger that resulting flooding would have destroyed buildings, access roads, and existing ski runs. However, due to additional investments and hazardous fuels projects conducted by the Tribe, major flooding was avoided. In 2008, the Tribe completed an important, cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Little Bear Fire away from the steep, densely forested terrain of the North Fork of the Rio Ruidoso and prevented complete devastation of the Village of Ruidoso and its source waters.

The Little Bear Fire is proof positive that hazardous fuels reduction projects and the TFPA work. The fire's impacts provided a clear contrast between the healthy Mescalero forest and dense LNF and a clear justification to increase funding for TFPA projects and for the Tribal Forestry Management program.

S. 4370, TFPA Amendments Act of 2024

As noted above, the Mescalero Apache fully supports S. 4370, the Tribal Forest Protection Act Amendments Act of 2024. The bill expands the definition of Indian lands to include lands held by Alaska Native Corporations. Importantly, S. 4370 eliminates the requirement that federal land is "bordering or adjacent to" Indian land. Removing this barrier will permit Tribal Governments to conduct landscape-scale management projects throughout federal lands where the Tribe has historic or cultural connections to the land.

The LNF and other nearby federal lands are part of our ancestral homelands. S. 4370 will enable our Tribe to offer meaningful input into the management of these lands that goes before and beyond NEPA. It holds potential to give the Mescalero Apache Tribe a greater voice in the development of forest management strategies on our former homelands that will serve to protect our Reservation and nearby communities.

S. 4370 also expands TFPA projects to include treatments on Indian lands, which will help offset the significant and longstanding funding shortfalls for tribal forest management. And finally, the bill adds a funding provision to the TFPA, which will provide a steady funding stream for TFPA implementation will help the Act reach its true potential.

In addition to the improvements to the TFPA proposed in S. 4370, we ask the Committee to expand on the 2018 Farm Bill's establishment of the 638 Forestry program. Mescalero testified before this Committee in support of the 638 Forestry program. However, last summer, when I reached out to work with the Lincoln on a 638 Forestry contract, I was told that the project didn't meet the TFPA requirements, and even if it did there was no funding to support the proposed 638 contract. The Committee should address these and other barriers to full implementation of the TFPA 638 Forestry program.

First, we urge the Committee to support existing proposals to remove the "demonstration" designation from this program and make it permanent. To ensure implementation of the program, we ask that you add a funding mechanism to the 638 Forestry program that also covers contract support costs. We ask that you amend the program to limit an agency's ability to reject valid tribal requests to engage in 638 forestry contracts or compacts. And finally, we ask that you extend Federal Tort Claims Act protection to the tribe and tribal employees engaged in TFPA 638 Forestry contracts.

¹Since 1960, the Tribe has leased approximately 860 acres of LNF lands under two special use permits to establish, manage, and operate Ski Apache. Ski Apache is located on the northern border of the Reservation. The land is part of the Tribe's aboriginal homelands and is located within the Sierra Blanca Mountain Range, which is sacred to the Mescalero Apache people. Over the past 64 years, the Tribe has made significant improvements to the Resort. In 2012, the Tribe invested \$15 million to triple the ski lift capacity at Ski Apache. In addition, the Tribe invested \$2.6 million for non-ski/year-round recreation at Ski Apache. Ski Apache employs 350 people during the ski season and contributes millions of dollars to the local economy. Under the current arrangement, the USFS administers these lands, and LNF has the legal responsibility to respond to emergencies, such as the June 2012 Little Bear Fire. However, it has been the Tribe that has acted as the primary first responder in emergency situations. If the Tribe had not taken the initiative, our assets at Ski Apache would have been lost in the Little Bear Fire.

These additional improvements to the TFFPA will enable Tribes to consistently enter into contracts and compacts with the Forest Service and BLM. Once this takes place, Tribes and Tribal priorities will become part of the agency decisionmaking process, making positive impacts on the exercise of tribal treaty rights, protection of Native sacred places, and protection of tribal investments on federal lands.

Finally, federal land management laws, like the Small Tracts Act, 16 U.S.C. §§ 521c-521i, authorize USDA to transfer federal lands to state and local governments, but fail to permit similar administrative transfers to Tribal governments. To achieve parity and respect for the governmental status of Indian Tribes, we urge the Committee to examine and advance proposals to amend the Small Tracts Act to provide the Forest Service with legal authority to administratively transfer federally managed forest lands back to Tribal governments in situations where such lands are former reservations or encompass ancestral lands.

Conclusion

The Tribal Forest Protection Act holds great potential to protect Indian lands, improve the health of federal lands, and limit the impacts of wildfires. S.4370, the Tribal Forest Protection Act Amendments Act, proposes significant improvements to the TFFPA. We urge the Committee to advance this bill and consider advancing other needed improvements to the TFFPA that will help reach the Act's full potential.

The CHAIRMAN. Thank you very much.
President Mallott, please proceed with your testimony.

STATEMENT OF BENJAMIN MALLOTT, PRESIDENT-ELECT, ALASKA FEDERATION OF NATIVES

Mr. MALLOTT. Thank you, and good afternoon, Chairman Schatz, Vice Chair Murkowski and members of the Committee.

My name is Ben Mallott. I have the honor of serving as the Vice President of External Affairs and also as the President of AFN. AFN today is the largest statewide Native organization in Alaska. Our membership includes 177 Alaska Native tribes, 154 village Native corporations and 9 of our 12 regional tribal consortiums.

I am here to talk in support of Sennate Bill 4370, the Tribal Forest Protection Act. I want to thank Senator Murkowski for her leadership on this bill.

The importance of forest management for Alaska Native communities cannot be overstated. Our forests play a critical role in the lives of our Native communities, provide a source of subsistence and cultural practices and provide economic opportunities in our communities that are challenged by their remoteness and high cost of living. Effective forest management is essential to preserve Native forest lands for future generations.

The Tribal Forest Protection Act, or TFFPA, is an important tool that allows Native communities to participate in the stewardship of Federal forest lands and also adjacent to Native lands. But it has faced several challenges that have limited its work in our communities. The original TFFPA, while well-intended, did not fully account for the ownership of our Alaska Native communities.

As Senator Murkowski mentioned, ANCSA transferred more than 44 million areas into Alaska Native corporations and their communities. The crucial language was left out of the original TFFPA. This exclusion really limits Alaska Native communities and our landowners to fully engage in stewardship of our management, especially across management boundaries.

As you all know, wildfires and other natural disturbances don't care about boundaries. That is why we need to remove the obstacles to allow us and our communities to work across these bound-

aries to preserve our forests. Unfortunately, the definition the TFFPA limits this ability.

As mentioned, the TFFPA as enacted undermines our ability, even in the Nation's largest forest, the Tongass, to protect and manage the forest for wildfire threats, pests, and other forest issues; it has been a challenge. Over 2 million acres of forest land in Alaska has been affected by spruce beetle outbreak. The U.S. Forest Service recommends range management to help reduce this damage from forest fires.

Currently, the TFFPA does not allow ANCs to engage with the Forest Service on these issues, or with the BLM. AFN supports Senate Bill 4370 because of this growing risk of wildfires and other invasive pests in our forests.

As I mentioned, the Tongass National Forest is type of rainforest. I grew up in Juneau. We are getting more dry weather and more unusual weather. The ability for ANCs and our tribes to manage our lands is critical especially going forward.

Alaska Native Corporations, such as SeaAlaska Corporation, maintain silviculture programs. The crews are well equipped to assist in this process and also nearby Federal lands. As mentioned, this bill would enable our ANCs like SeaAlaska to hire more forest partnership crews in our communities to manage our own forests alongside our Federal partners.

There is also a close working relationship with the Forest Service and BLM. As such, AFN supports S. 4370's forest definition of ANCs in forest range land and forest lands. The bill also allows for non-adjacent land use as well. As you know, ANCSA is kind of, we have patches of land throughout. As I mentioned, wildfires don't always start next to our lands. Our work with the Forest Service to protect our lands, even though they may be far away, is crucial for the management of our forests.

I also want to mention, if we have time, Senate Bill 4370 also aligns with Joint Secretarial Order 3403 on fulfilling the trust responsibilities on Indian tribes as outlined by USDA and DOI.

In closing, S. 4370 is a much-needed update to the TFFPA. It addresses unique challenges of Native communities to partner with the Federal Government. It provides tools and resources necessary for effective management to benefit our Native communities.

On behalf of AFN, I urge this Committee to advance this legislation to protect our Native forests.

Gunalchéesh, Haw'aa, Baasee. Thank you.

[The prepared statement of Mr. Mallott follows:]

PREPARED STATEMENT OF BENJAMIN MALLOTT, PRESIDENT-ELECT, ALASKA
FEDERATION OF NATIVES

Good afternoon, Chair Schatz, Vice Chair Murkowski, and distinguished members of the Senate Committee on Indian Affairs. My name is Benjamin Mallott. I have the honor of being the President-Elect of the Alaska Federation of Natives (AFN). I am writing to express our strong support for S. 4370, the Tribal Forest Protection Act Amendments Act of 2024, introduced by Senator Lisa Murkowski.

AFN was formed to achieve a fair and just settlement of Alaska Native aboriginal land claims, and today, AFN is the oldest and largest statewide Native membership organization in Alaska. Our membership includes 177 Alaska Native tribes, 154 village Native corporations and nine regional Native corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA), and nine regional nonprofit tribal consortia that contract and compact to administer federal programs under the

Indian Self-Determination and Education Assistance Act. The mission of AFN, among other things, is to advance and enhance the political voice of Alaska Natives on issues of mutual concern.

The importance of forest management for Alaska Native communities cannot be overstated. Our forests play a critical role in the lives of Alaska Native communities, providing a source of subsistence and cultural practices and providing economic opportunities in communities challenged by their remoteness and high cost of living. Effective forest management is essential to preserve these Native-owned forestlands for future generations.

The Tribal Forest Protection Act (TFPA) is an important tool that allows Native communities to participate in the stewardship of federal forest lands adjacent to Native lands, but it has faced several challenges that have limited its effectiveness, particularly for Alaska Native communities.

The original TFPA, while well-intentioned, did not fully account for the unique conditions and needs of Alaska Native communities. As you know, ANCSA transferred more than 44 million acres into Alaska Native ownership, with the land to be held by Alaska Native Corporations for their communities. The forestland owned by Alaska Native Corporations is in every respect “Indian forestland,” but Congress neglected to include these Alaska Native lands within the scope of the TFPA’s definition of this term.

In 2023, in testimony before the Senate Committee on Agriculture, Nutrition and Forestry, Angela Coleman, Associate Chief of the U.S. Forest Service, stated that “[c]limate change, wildfire, and other natural disturbances do not respect land management boundaries; therefore, we need policies and management approaches . . . that remove barriers and allow for shared stewardship and cross-boundary management.” Unfortunately, in Alaska, the lack of clear definitions that incorporate Alaska’s model of self-determination and land ownership has hindered our Native communities’ ability to engage in shared-stewardship activities to support “shared stewardship and cross-boundary management” of our forests.

Our inability to work with the Federal Government to support shared stewardship of our forests does not stem from a lack of interest on the part of Alaska Native landowners or the U.S. Forest Service. In fact, the U.S. Department of Agriculture’s Natural Resources Conservation Service acknowledges that, “[a]s the largest private landowners in the state, Alaska Natives play a critical role in implementing USDA conservation programs on the ground. . . . This share success is built on a foundation of locally-led partnerships.”

The TFPA as originally enacted undermines the ability of Alaska Native landowners to partner with the Federal Government—even in the Nation’s largest National Forest, the Tongass—to protect and manage forestland from wildfire threats, pest infestations, and other forest health issues. I would call to your attention the fact that well over 2 million acres of forestland in Alaska has been affected by a spruce beetle outbreak that was initially detected in 2016. While the U.S. Forest Service recommends a range of management measures to reduce beetle damage—such as removing windthrown trees or thinning or pruning trees—our Alaska Native landowners are powerless to work within the framework of the TFPA to address this outbreak.

Forests in Alaska are increasingly at risk from wildfires. Even the Tongass National Forest, a temperate rainforest, is experiencing more dry weather. Alaska Native Corporations, such as Sealaska Corporation, maintain silviculture programs, and their crews are well-equipped to assist with fuel treatment projects on nearby federal lands. S. 4370 could enable Alaska Native Corporations, like Sealaska, to hire more forest partnership crews, thereby increasing internal capacity. This would facilitate closer collaboration with USFS silviculturists to rethink cedar stand prescriptions for the growth of future cultural use wood. Moreover, having a larger pool of work would help promote the development of local crews, which has historically been a challenge.

S. 4370 addresses these critical issues and represents a significant step toward ensuring that all Native communities, including those in Alaska, can fully utilize the TFPA to protect and manage their forest resources. Specifically, S. 4370 includes the following key provisions:

1. S. 4370 expands the definition of “Indian forest land or rangeland” to include lands held by Alaska Native Corporations. This change is crucial, ensuring that ANCSA lands will be better protected from threats originating from federal lands.
2. S. 4370 strikes the requirement that Indian lands must border or be adjacent to U.S. Forest Service or Bureau of Land Management lands, allowing for greater flexibility in protecting and managing tribal resources.

3. S. 4370 authorizes projects not just on federal lands, but also on Indian forest land or rangeland. Among other benefits, this change supports management efforts that both protect tribal resources from threats that may originate on federal lands while also protecting federal land from threats that may originate on Native lands.

4. Additionally, S. 4370 authorizes the funding necessary for the implementation of these projects.

I would also like to highlight that S. 4370 aligns with President Biden's Executive Order on Reforming Federal Funding and Support for Tribal Nations to Better Embrace Our Trust Responsibilities and Promote the Next Era of Tribal Self-Determination, issued on December 6, 2023. This Executive Order underscores the Federal Government's commitment to improving the funding mechanisms and support structures for Tribal Nations, recognizing the importance of self-determination and effective stewardship of natural resources.

By providing clear funding for forest management, S. 4370 directly supports the goals of the Executive Order. This alignment demonstrates a comprehensive approach to fulfilling the federal trust responsibility and promoting Native self-determination.

S. 4370 also aligns with the Joint Secretarial Order No. 3403 on Fulfilling the Trust Responsibility to Indian Tribes. Secretarial Order No. 3403, issued by the Secretaries of Agriculture and the Interior, emphasizes the federal commitment to co-stewardship of federal lands and waters with tribes. This Secretarial Order directs federal agencies to incorporate tribal expertise and Indigenous knowledge into federal land and resource management decisions, ensuring that tribal interests are safeguarded and their contributions are valued in stewardship activities.

The co-stewardship principles outlined in the Secretarial Order are enhanced through S. 4370 by promoting collaborative management of federal lands and by ensuring that Native communities have a role in land and resource management.

In conclusion, S. 4370 is a much-needed update to the TFPA and addresses unique challenges faced by Native communities through partnerships with the Federal Government. S. 4370 also provides the tools and resources necessary for effective forest management, which will benefit our tribal communities and ultimately benefit all Americans. On behalf of the Alaska Federation of Natives, I urge this Committee to support and advance this legislation. Thank you for the opportunity to testify today, and I am happy to answer any questions you may have.

Quyana, Gunalchéesh, Haw'aa, Baasee, Taikuu, Thank you.

The CHAIRMAN. Thank you very much for all of your testimony.

I will start with Ms. Goodluck. How does DOI currently manage Indian forests or range lands under TFPA?

Ms. GOODLUCK. As currently enacted, BLM does not have the authority to manage Indian forest lands or range lands. That would change with the amendments. The S. 4370 amendments would then open up tribal trust lands for BLM to be able to either manage co-jointly with their lands and tribal lands or sometimes there might be a situation where it would just be tribal lands.

The CHAIRMAN. Thank you very much.

Mr. Crockett, what impacts would expanding TFPA lands to include any Federal lands with special geographic, historical, or cultural significance to a tribe have on existing BLM practices?

Mr. CROCKETT. Thank you for the question, Chair Schatz.

The removal of the adjacency requirement would enable more tribes to have access to TFPA projects. We think that is a benefit for sure.

Tribes that don't have access to lands would be able to have more tribal input. We support the intent to enable tribes to do more work with the new language around special cultural and geographic responsibilities.

We would like to discuss the criteria on what it would take to get to success when it comes to the authority that the BLM or the

BIA has for the jurisdiction over tribal authorities, and then clarify those roles.

The CHAIRMAN. What do you mean by that?

Mr. CROCKETT. So as it stands now, the BIA has jurisdiction authority over tribal trust lands. We want to work with BIA and not overstep our bounds over jurisdictional authorities.

The CHAIRMAN. Is this something that you guys need to work out? Let's assume we enact this. Do we have to clarify this in statutory language, or is this something that you think agency to agency can be worked out?

Mr. CROCKETT. Probably agency to agency on the special geographic, historical and cultural significance.

The CHAIRMAN. But let's be in touch as this piece of legislation moves. Because if you have a framework, it is probably smart for us to at least clarify legislative intent, if not in the plain language of the text, then through our report or any other way to indicate what we have in mind. I would sure hate for us to pass this and then you are kind of stuck in a negotiation or a kind of wrangling situation.

So the more of this we can clarify in statute, the better.

Mr. CROCKETT. Yes.

Let me add one piece. I think the important role, as we engage with tribes, consultation would be an important piece. Because what we don't want to have is have the Forest Service be the arbiter between tribes, multiple tribes that have a claim to the geographic authorities. So we would like to work that out through consultation with tribes.

The CHAIRMAN. Yes, you don't want to purchase that problem for your own agency. I understand.

Vice Chair Murkowski?

Senator MURKOWSKI. Mr. Chairman, thank you for that.

I want to do a follow-up here with Mr. Crockett. I think, as I listened to our witness from the Department of Interior, I hear pretty strong support for S. 4370. You clearly stated, Ms. Goodluck, that DOI supports the bill.

But it is not very clear what the USDA Forest Service position is on it. Quite honestly, I am really disappointed. Being here today we have had so many years of discussion, I have, my staff, tribal ANC leaders across the State. We have talked about co-management of Federal forest lands.

So I too want to make sure that we are not setting something up here where we have divergent views or opinions as to how this is all going to work.

I want to ask you a couple of questions and point out what I think is first of all just plain old factual error in your testimony. You go on to say that Forest Service only has a presence in southeast Alaska, and therefore the TFFPA issues are confined to the Tongass. But you and I both know that that is not accurate. We have two national forests in the State of Alaska. The Chugach is located in south central, spans 5.4 million acres, neighbors the Chugach and the Cook Inlet Regional Corporation.

So I am pretty certain you agree with that, and that was just an oversight. So it is not that the Forest Service only has a presence in southeast Alaska.

Mr. CROCKETT. That is accurate. I am not sure how that got misconstrued, but yes.

Senator MURKOWSKI. Correcting the geography here.

To more important things, and I want to talk about the change to the definition of Indian forest or range land again to include land held by an ANC. This is important because it does provide that clarity that the TFPA can be used by ANCs which we have all acknowledged controls over 44 million acres of land in Alaska.

So I just want to make clear that these forest lands owned by ANCs are in every respect Indian forest lands and I want to know whether USDA agrees with that.

Mr. CROCKETT. Yes, let me help clear up any uncertainty between either my written testimony or my oral statement. The Forest Service supports ANCs having access to the Tribal Forest Protection Act. Clear statement.

We also support removing the adjacency requirement.

Senator MURKOWSKI. I am going to get to adjacency in just one second here. Let me ask one more question on ANCs. Does the USDA Forest Service support including ANCs and ANCSA lands specifically in the definition of ANCSA lands, so that the ANCs can use TFPA to do the forest management work both on Federal lands and on their own ANCSA lands?

Mr. CROCKETT. Yes.

Senator MURKOWSKI. Great. So let me then ask about, because this is where, to the Chairman's point here, I want to make sure that we don't have any ambiguity. Our bill removes the requirement that projects occur on Federal lands bordering or adjacent to tribal lands. What your testimony suggests to me, and this is where I would like your clarification, it suggests to me that you want to replace adjacency or bordering with what you are calling reasonable proximity.

So I want to ask if that is a correct assumption, because where I am trying to go with this is to remove ambiguity pertaining to proximity and recognize that you have resources and values on Federal land that the tribes want to manage.

So I think Interior gets it on this. The question, Mr. Crockett, is whether or not USDA Forest Service supports removing the border and adjacency requirement for TFPA projects on Federal lands?

Mr. CROCKETT. We support removing it and replacing it with special geographic, cultural, and historic significance. Then we would want to work with the Committee on the criteria to get to success with that.

Senator MURKOWSKI. Again, criteria to get to success, I don't want Forest Service to have different criteria than Interior. Because it sounds to me, and maybe I shouldn't assume this, but Ms. Canard Goodluck, are you guys okay with where the language is now in the bill? Does that give you the process or the necessary information that you need to operate? Or do you need additional criteria?

Ms. GOODLUCK. I don't know if criteria is the right word. I think we are comfortable with where the amendment lies right now. I think what I said in my testimony about clarifying the BIA's role is that BIA currently manages trust lands. This would allow BLM and USDA.

So I think that as Chairman Schatz mentioned, this is a conversation that can be interagency that we can have, and if we wanted to clarify intent, I think I am happy to have our team help arrange a conversation with your staff and other Committee members to clarify the intent. But I think we are comfortable with the language as it is now.

Senator MURKOWSKI. Well, what I did hear you say, Mr. Crockett, is that Forest Service does support removing the bordering or adjacency requirement for the TFFPA projects on Federal lands. You said yes to that.

Mr. CROCKETT. Yes. That is correct.

Senator MURKOWSKI. So I think that is important to get on the record.

So Mr. Chairman, I am out of time. I am going to want to come back and ask Mr. Mallott a question after our colleagues have gone.

The CHAIRMAN. Senator Luján?

Senator LUJÁN. Thank you, Mr. Chairman. I know everyone listening today who is paying attention to this important hearing, there should be no question of the broad support that Vice Chair Murkowski has on this legislation. I very much appreciate her questioning to get these details correct, and the Chairman. We want to get there. So I certainly hope that everyone involved works to do that, and works to do that in a timely fashion, so that this legislation can be ready to be sent, passed to the House and get to the President for signature as well because of all the challenges that exist in our communities.

So I want to thank the Vice Chair again for this.

Governor Phillips, thank you again for being here. I very much appreciate in your testimony your acknowledgement of those who came before us. The decades that you have spent on this important issue, but the wisdom that we have all benefited from as well, from those who came before us. I have been very proud to work with you, with the council, with Senator Heinrich to support and advance this legislation. I want to thank my colleagues as well and the Chairman and the Vice Chair for noticing this today as well.

Governor, would you share with us what a bosque is, and why restoration of the bosque is vital to the pueblo?

Mr. PHILLIPS. Thank you, Senator. Mr. Chairman, Vice Chair, and Committee members. Bosque is a term that is used for a riparian area. For Ohkay Owingeh, it is [phrase in Native tongue], which is the prosperous life, it is the connection with which the pueblos I united with the river, and its overbanking. There are a lot of activities, cultural activities that are connected.

What is happening with our bosque is that the river's bed, as it was bulldozed and managed now by a dam, has driven a lot of those species and those deities that are in there that we celebrate and that we often carry into our ceremonies, that is what it is. It is a connection to our actual lives. This water is what we are made of, and our relationship to Mother Earth.

That connectivity that often go to to celebrate and live individual lives and become people of our culture, that is what bosque means to us.

Senator LUJÁN. I appreciate that very much, Governor. What is clear to me is that there are provisions included in this legislation that support the restoration of the Rio Chama and the bosque, which I appreciate and I applaud.

Ms. Goodluck, thank you for coming today as well. In your testimony, you state that “The bosque areas within Ohkay Owingeh’s lands were altered as a result of flood control and irrigation projects constructed by the United States.” Ms. Goodluck, as you heard in the testimony from Governor Phillips today, the bosques on the Rio Chama and Rio Grande are essential to the pueblo’s way of life.

Would this legislation allow Ohkay Owingeh to, as part of its water rights, begin the restoration of the Rio Chama bosque in addition to expanding irrigation and drinking water access?

Ms. GOODLUCK. Yes, it would.

Senator LUJÁN. I appreciate that very much.

After this legislation become law, which I hope will happen during this Congress, I look forward to working with you in the years to come to restore the health of the river and the bosque for the pueblo and all others in that community as well.

Mr. Crockett, I want to thank you as well for highlighting the importance of tribal co-stewardship in your testimony, and some of the challenges that we are seeing today. Fires don’t care what lines exist or what fences is there. We have seen the devastation from them. If you have traveled to these communities, you have seen it.

The hardship that you see in families’ eyes when you are talking to them, what you feel from them when they have lost everything, think about that one precious photo that you may have of a grand-ma or grandpa that you don’t have it digitally maybe, it is the only thing you have, but it tells a story, something that was passed on to us, it is gone.

Investments in the health and resilience of our forests not only reduces the risk of severe wildfires, it promotes the important bonds that many tribes have to the land and to cultural resources.

President Padilla, why is it important to expand the TFPA authority to allow tribes to protect and restore their own forests and range lands, and not just those on Federal lands to protect against wildfires.

Ms. PADILLA. I think it is important to cross the boundary as we are doing it. Yes, it is important; we do want to do work on the Forest Service lands that are near our reservation. But is helpful to do these as landscape scale treatments, so work on our side that is complementary to our work as we are going across the border, I think that is really important. That is the whole point, is to create defensible space.

Sometimes it crosses the boundaries, just as everybody has mentioned here. It is important to do treatments on both sides to really armor up those boundaries.

Senator LUJÁN. I appreciate that.

In addition to that, Madam President and Vice Chair Murkowski, I am very appreciate of the kinds of local, small businesses that might launch and may get to go and manage more. Certainty for a small business, for someone that maybe owns a chainsaw and an old pickup right now, maybe they are going to be able to buy two

or three, hire a few people, modernize that truck and get a trailer, be able to clear a little bit more and share and expand. I just see the immense upside of this as well.

I thank all the panelists for their time. I thank the Chair and Vice Chair again for today's hearing. Thank you.

The CHAIRMAN. Vice Chair Murkowski.

Senator MURKOWSKI. Thank you, Mr. Chairman. And I thank the Senator for that comment.

I want to direct this to you, Mr. Mallott. You are intimately familiar with the TFPA and forest management, you have been working on it for many, many years at AFN to ensure that the Native communities in Alaska and elsewhere can utilize the TFPA.

I think what Senator Luján has said is worth noting, the economic opportunities that can be made available, the social and economic benefits if ANCSA lands are made eligible under TFPA. Can you just speak a little bit more to that, what you might anticipate as well perhaps some of the environmental benefits to Federal forest lands in Alaska? You mentioned what we are seeing with invasive species, the spruce bark beetle, some of that, and how that is impacting maybe not so much in the Tongass but certainly up in the Chugach.

So if you can just speak to not only the socioeconomic benefits, but the environmental benefits of being able to do what we are proposing under this legislation?

Mr. MALLOT. Gunalcheesh, Senator Murkowski, for that question. I also want to echo Senator Luján's statement that this bill does have opportunities for economic and also for expansion of our own capacity within our communities.

As I mentioned, SeaAlaska has a really large silviculture program. For them and for us as Tlingit people, cedar is a valuable tree for us. So if we could help co-manage or enter into agreements with the Forest Service to help manage our cedar groves and expand that resource for us for both our cultural and also economic, in our communities. Because you know, if you look a Junea, with all the new totem poles going up, that is a cultural benefit for us. And of course, we protect the cedar trees.

I also want to recognize that as we look at our communities, the economic ability and jobs in our communities are tough. So if our ANCs or landowners could enter into an agreement with the Forest Service, even BLM, they could build on those, they don't have a lot of BLM lands up there. Our communities want to manage their lands, and if we could enter into agreements with our ANCs and our tribes to manage adjacent Federal lands, it would give them an opportunity for communities to help to engage in that.

So you could have local participation from a community that is engaged with a fire boundary through adjacent BLM or Forest Service, Chugach lands. As you know, Senator Murkowski, you could drive through hundreds of acres of lands and see spruce bark beetle kill everywhere. That is something that I think we need to address.

A couple of years ago, my mom's home town, Rampart, was very close to being evacuated for a forest fire. And that is very, very stressful to watch that, and hear family go through that. So the

ability for our communities to engage in mitigation for that, hire local help for that, goes a long way.

Senator MURKOWSKI. Thank you.

Mr. Chairman, I think you can hear, whether it is from Alaska and our lands up north to the lands as far south as New Mexico and Arizona, this is an issue that I think there is clearly common ground. We would like to work with our agencies to make sure that this partnership really is meaningful to achieve not only the environmental benefits that we are seeking, but also the social and economic benefits.

The CHAIRMAN. Thank you very much.

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

Senator MURKOWSKI. Mr. Chairman, just before we close, I want to acknowledge my Committee intern, Nyché Andrew. She is going to be completing her internship with us. She is Inupiaq, she is Yup'ik, she is from Anchorage. She is attending college at Yale. She has been a great addition to us here on the Committee. We want to thank her for her work and for her participation.

The CHAIRMAN. Thank you very much. We appreciate her work as well.

I want to thank everybody for being here. This hearing is adjourned.

[Whereupon, at 3:09 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF THE CLIMATE AND WILDFIRE INSTITUTE AND THE STEWARDSHIP PROJECT

The Climate and Wildfire Institute (CWI) and The Stewardship Project, a project supported by CWI, wish to express strong support for S. 4370, the *Tribal Forest Protection Act Amendments Act of 2024*. Through its amendment of the Tribal Forest Protection Act (TFPA), this legislation would promote greater Indigenous stewardship of Federal and Tribal forest and rangelands.

The TFPA is a critical tool for fostering collaboration between Tribes and federal agencies to protect and enhance forested lands. By allowing Tribes to take the lead in proposing and implementing forest management projects, the TFPA not only helps safeguard Tribal lands but also contributes to the overall health and sustainability of the nation's forests. However, several aspects of the statute could be amended to improve how projects are implemented and to further promote Tribal sovereignty.

The TFPA's adjacency requirement states that in order for a project to be eligible, the lands where the project will take place must border, or be adjacent to, federal lands managed by the U.S. Forest Service or the Bureau of Land Management (BLM). However, many Tribes have an interest in protecting and restoring sacred sites and cultural landscapes that are located on federal lands that do not border Tribal lands, in part because of the dispossession of Tribal people from their ancestral territories. By removing the adjacency requirement, this legislation would provide Tribes with more autonomy to protect their culturally significant resources.

The bill would also expand program eligibility to allow work on Indigenous forest lands or rangelands. Currently, the TFPA only allows projects on federal lands. This limitation not only hinders the effectiveness of the Tribal projects, but indirectly disincentivizes the stewardship of Tribal lands. We strongly support the expansion of TFPA to include Indigenous forests and rangelands.

Finally, this legislation expands the definition of "Indian forest land or rangeland" land to include lands held by Alaska Native Corporations (ANCs). Under the Alaska Native Claims Settlement Act (ANCSA), Native land in Alaska was conveyed to Alaska Native Corporations to manage for their shareholders rather than being placed into trust or restricted status. The TFPA's current definition of "Indian forest land or rangeland" prevents approximately 44 million acres of land in Alaska from protection. Like federally recognized tribes, ANCs have deep historical and cultural connections to their lands. The forests and natural resources on these lands are integral to the cultural, spiritual, and economic well-being of Alaska Native communities.

The *Tribal Forest Protection Act Amendments Act of 2024* makes commonsense reforms to the TFPA that improve Tribal sovereignty and enhance stewardship of federal and tribal lands. We thank Senator Murkowski for introducing this critical legislation and urge its passage.

PREPARED STATEMENT OF TANYA TRUJILLO, NEW MEXICO DEPUTY STATE ENGINEER

Mr. Chairman Bentz, Vice Chair Kiggans, Congressman Lujan, and members of the Committee, I am Tanya Trujillo, New Mexico Deputy State Engineer. My agency, the Office of the State Engineer, is responsible for the administration of water rights in New Mexico. The State Engineer has authority over the supervision, measurement, appropriation, and distribution of all surface and groundwater in New Mexico, including all interstate streams and rivers. I appreciate the opportunity to submit this testimony to you today and provide comments on behalf of the State of New Mexico in support of Senate Bill 4505, the *Ohkay Owingeh Rio Chama Water Rights Settlement Act of 2024*.

S. 4505 will resolve Ohkay Owingeh's water rights claims in the Rio Chama Stream System by authorizing, ratifying, and confirming a comprehensive agree-

ment among the State, Ohkay Owingeh, the City of Espanola, the Asociación de Acéquiás Norteñas de Río Arriba, the Río de Chama Acéquiás Association, La Asociación de las Acéquiás del Río Vallecitos, Tusas, y Ojo Caliente, El Rito Ditch Association, representing 80 acequiás and community ditches. This legislation offers a historic opportunity to authorize funding for Ohkay Owingeh to secure and develop water sufficient to support the Pueblo's needs, while also protecting scarce water supplies, existing water uses, and acequia culture in the heart of northern New Mexico.

For centuries, Ohkay Owingeh irrigated along the banks and fertile lands along the river near the confluence of the Río Chama and Río Grande. Over the last century, the construction of large reservoirs, the channelization of the river, increased upstream uses, and climate change have greatly reduced the Río Chama water supply.

There are more than 80 acéquiás in the Río Chama Stream System. The three oldest acéquiás in New Mexico divert from the Río Chama just outside Ohkay Owingeh's grant boundary, but Ohkay Owingeh has time immemorial water rights, making it the most senior water user in the basin. The Acéquiás and the Pueblo are all suffering from diminished surface water supply and Ohkay Owingeh often struggles to receive enough water to farm their land at the bottom of the Stream System.

Litigation over the Río Chama water rights of Ohkay Owingeh has been ongoing for nearly thirty years. The federal court adjudication was filed in 1969 (*State of New Mexico, ex rel. State Engineer v. Aragon*, 69-cv-07941 (D.N.M.)). Recognizing the need for cooperation among the water users in the Stream System and the limited water resources available, the parties structured this settlement to protect existing uses and scarce resources.

The Pueblo, the State, and the Acequiás developed an administrative agreement to share and curtail water in times of shortage in order to increase wet water supply and extend the irrigation season. The Pueblo has agreed to give up its right to make a priority call on junior non-Pueblo water users, providing security to all water rights holders in the region. Additionally, the legislation will provide Ohkay Owingeh with crucial funding for projects that will restore the culturally significant Río Chama Bosque, which will support the health of the river and the ecosystem as a whole.

As a fund based settlement, Ohkay Owingeh is seeking federal funding in the amount of \$818.3 million for purposes related to restoring and maintaining the Río Chama and Río Grande bosques, developing water supply and wastewater infrastructure, acquiring water rights or water supplies, and managing and administering Pueblo Water Rights. Importantly, authorizing this fund-based settlement provides the Pueblo flexibility to determine the scope and design of future projects and infrastructure.

The State of New Mexico has committed to seek State funding in the amount of \$98.5 million to the Acéquiás for projects and infrastructure needs, and \$32 million to the City of Espanola for the development of safe drinking water production wells.

Mr. Chairman Schatz, Vice Chair Murkowski, and members of the Committee, the State of New Mexico asks you to support S. 4505. If approved, this legislation will create a mechanism for cooperation and coordination among Ohkay Owingeh and the State regarding water rights administration, thereby avoiding jurisdictional conflicts and allowing for comprehensive administration across the stream system. The funding authorized by the Settlement Act will contribute to Ohkay Owingeh's water security and provide significant economic benefits and employment opportunities to the Pueblo and surrounding communities. There will also be broader statewide economic benefits because the scope of these projects will create demand for additional labor, construction, and technical expertise from New Mexico contractors. The State of New Mexico enthusiastically supports this legislation and believes S. 4505 is a key tool in addressing critical water needs of Ohkay Owingeh and protecting the way of life in northern Mexico for generations to come.

I thank you for your consideration of this issue and stand ready to provide any support necessary to encourage the passage of this critical legislation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
JOHN CROCKETT

Question. S. 4370 would amend the Tribal Forest Protection Act strike the "adjacency" requirement for National Forest System lands, replacing it with "special geographic, historical, or cultural significance" to an Indian tribe. While your written testimony acknowledges that the existing adjacency requirement limits participation

for Tribes, it did not endorse the proposed framework and instead proposed a “proximity” requirement. Please elaborate on how proximity, and not “special geographic, historical and cultural relationships,” could achieve the bill’s goals, and include specific examples of how this alternative framework could work in practice.

Answer. The Tribal Forest Protection Act (TFPA) currently limits a Tribe’s ability to perform risk reduction and restoration work on Bureau of Land Management (BLM) and Forest Service land to those Indian forestlands or rangelands under the jurisdiction of the Tribe that border on or are adjacent to the public land. Although there are legal and operational reasons for this requirement, the Forest Service recognizes that it limits the number of eligible Indian forest lands and rangelands. The bill proposes to replace the “borders on or adjacent to” requirement with the criteria that the BLM or Forest Service land have a “special geographic, historical, or cultural significance” to an Indian Tribe. Although we understand and recognize that this language is contained in Title IV of the Indian Self-Determination and Education Assistance Act, that authority differs in important ways from the Tribal Forest Protection Act. To clarify what was said orally, there are legal and implementation considerations with this language in the TFPA because the conjunction “or” means there is no temporal Tribal sovereign nexus requirement between the Indian forest land or rangeland and the public land. Additionally, there are likely competing Tribal interests and equities over the same landscape, particularly when there are no clear criteria for defining what point in history or what type of evidence suffices for meeting the cultural significance requirement. The bill also expands eligibility to include Alaska Native Corporations (ANCs) lands, which the Forest Service supports. There are likely similar competing interests and equities between ANCs, Native Village Corporations, and Alaska Native Villages over the same landscape under the proposed bill language. As an alternative, the Forest Service respectfully offered two alternatives for consideration: (1) replace the conjunction “or” with “and”; or (2) change the language to “reasonable proximity.” Both alternatives graft a temporal Tribal sovereign nexus requirement to the BLM or Forest Service land, thus decreasing the legal vulnerability and limiting the competing Tribal interests over the same landscapes. The Forest Service welcomes the opportunity to work with the Committee on this or other language to help achieve the bill’s goals.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
TRACY CANARD GOODLUCK

Question 1. Please describe how DOI interprets the proposed criteria of “special geographic, historical, or cultural significance to the Indian tribe” in Section 2(3)(B)(1) of S. 4370 to apply to Alaska Native Corporations.

Answer. The Bureau of Land Management (BLM) could interpret the criteria based on Alaska Native Claims Settlement Act (ANCSA) regional boundaries when interpreting that section of the bill and on ANCSA Section 11 withdrawal areas for villages, combined with Tribal consultation.

Question 2. We are aware that USDA has concerns about application of the above-cited criteria, specifically that it may lead to conflict among Tribes with competing claims over lands with such significance. At the hearing, you indicated that DOI has an administrative process that could potentially be used by USDA to address potential conflict. Please elaborate.

Answer. If S. 4370 is enacted, the BLM would adapt the current administrative process as needed to address potential Tribal conflict over the same landscape. Currently, the BLM’s administrative process for evaluating a Tribal Forest Protection Act (TFPA) project is officially initiated when an Indian Tribe requests in writing for the BLM to enter into an agreement or contract to carry out a project on BLM-managed lands to protect Indian forest land or rangeland. Under this process, the BLM evaluates whether TFPA project proposals meet the following criteria: (1) the Indian forest land or rangeland is held in trust or is in restricted status by the United States for the Tribe submitting the proposal; (2) the Indian forest land or rangeland borders on or is adjacent to the BLM-managed land; (3) the BLM-managed land poses a risk of fire, disease, or other threat to the Indian forest land, rangeland, or community, or is in need of land restoration activities; and (4) the BLM-managed lands that will be treated involve a feature or circumstance unique to that Indian Tribe (including treaty rights or biological, archaeological, historical, or cultural circumstances).

The BLM must respond to the Indian Tribe’s request within 120 days and indicate the steps that will be taken, including initiation of any necessary review under the National Environmental Policy Act (NEPA) or of the potential of entering into an agreement or contract to implement the project. If the BLM denies a request, the

Bureau must issue a notice of denial to the Indian Tribe that: (1) identifies the specific facts that caused the denial and the reasons that support the denial; (2) identifies potential courses of action to address specific issues that led to the denial; and (3) includes an invitation for consultation to develop a strategy for protecting the Indian forest land or rangeland. If a project proposal does not meet the specific TFPA criteria, BLM policy directs the applicable field manager to work with the Tribal liaison to explore other opportunities to address fire, disease, or other threats.

Question 3. Please describe how S. 4370 would impact the Bureau of Land Management's existing practices under the Tribal Forest Protection Act.

Answer. S. 4370 creates the potential for the BLM to receive proposals from ANCSA corporations in Alaska, whose lands are not eligible under the current statute. The BLM has not denied any TFPA proposals due to failure to satisfy the bordering or adjacency requirement, but the removal of that requirement should broaden eligibility in evaluating whether proposals qualify under TFPA. S. 4370's expansion of TFPA authority to include BLM awarding contracts or agreements for treatments on Indian forest and rangelands would be a new responsibility for the BLM that is currently conducted and managed by the BIA as trustee.

Question 4. Please describe whether and how the Bureau of Indian Affairs' administration of Tribal forest lands under the National Indian Forest Resources Management Act would be impacted if S. 4370 were enacted, and if so, how administration of the same Tribal landscapes by multiple federal agencies could be addressed in practice. For example, what responsibilities or practices would S. 4370 create for the BIA, and how would they align with the current responsibilities/practices of Forest Service and BLM?

Answer. The TFPA has a 120-day deadline in which the BLM must respond to a Tribe's proposal to treat a forest or rangeland condition on BLM-managed land that poses a risk to the Tribe's forestland or rangeland or Tribal community. The TFPA provides for the Tribe to conduct the treatment on BLM-managed land through a contract or agreement. The TFPA does not provide for unique or additional forest management authority for Indian lands administered under the National Indian Forest Resources Management Act; however, for BLM funded projects on Tribal forest lands, the BIA would be consulted to ensure the project is aligned with the Tribe's forest management plan under the National Indian Forest Resources Management Act (NIFRMA). It is unclear whether S. 4370 would create any additional responsibilities or practices for the BIA because it manages Indian forest land as trustee under NIFRMA and because the TFPA activities will affect trust forest or rangelands assets.

Question 5. How does the water sharing schedule described in S. 4505 ensure equitable water security in times of shortage? In addition, please describe how enacting S. 4505 could protect against priority calls and help users in the basin.

Answer. S. 4505 would ratify and confirm the Ohkay Owingeh Rio Chama Water Rights Settlement Agreement. Article 8.1 of the Agreement spells out the standards and procedures for sharing water during times of shortage between Ohkay Owingeh and 89 non-Indian acequias (irrigation ditches), and among the acequias themselves.

Shortage sharing consists of four principal components: (1) Ohkay Owingeh agrees not to assert its acknowledged senior water rights in the Rio Chama Basin; (2) acequias agree not to assert priorities of use among themselves; (3) water rights will not be administered according to priorities of use, but rather according to an annual, enforceable negotiated water sharing schedule, so called Alternative Administration; and (4) the water sharing schedule will be based on equitable considerations, taking into account the fact that Ohkay Owingeh and three acequias on the Ohkay Owingeh Grant lands have senior water rights. Alternative Administration means there will be no priority calls by any party to the settlement agreement and there are enforcement mechanisms in place to ensure violations cannot occur with impunity. The goal is to ensure the available water supply in the Rio Chama Basin benefits the greatest number of users during the key months of irrigation and is based on practices that have been in place and have worked well for several years already.

Water users who do not sign the settlement agreement may nonetheless benefit from shortage sharing by participating in the process as cooperating diverters. Also, acequias that sign the agreement but whose curtailment of diversion would be futile because their source of supply does not contribute beneficially to the flows of the Rio Chama at the time the shortage sharing schedule goes into effect, as determined by the Water Master, in consultation with Ohkay Owingeh, the Rio Chama Acequias Association, Acequias Norteñas, are excluded from the schedule and curtailment of water use.

The shortage sharing provisions were negotiated under the guiding principle embraced by Ohkay Owingeh that working with neighbors to find equitable ways to share, manage and enhance water supplies now and for the future will benefit not only the Pueblo but and all water users in the Rio Chama Basin. As water supplies shrink, it is critically important to have good working relationships in place now to avoid disagreements in the future about how to allocate water.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
BENJAMIN MALLOTT

Question 1. Please describe how including Alaska Native Corporation lands in the definition of “Indian forest land or rangeland” in S. 4370 is a necessary modification of existing law under the Tribal Forest Protection Act. Specifically, please include in your response how such a change will benefit federally-recognized Tribes in Alaska, and describe the types of forest management activities ANCs would potentially undertake for their benefit.

Answer. Including Alaska Native Corporation lands in the definition of “Indian forest land or rangeland” in S. 4370 will enable both Alaska Native Corporations and the Federal Government to pursue shared-stewardship of forest resources throughout the State of Alaska, as well as collaborative approaches to land management issues and emergencies that may arise. We have been seeking inclusion in the Act since prior to enactment of the original law, so this amendment is long overdue. S. 4370 ensures that Alaska Native owned lands in Alaska are not excluded from opportunities provided today to Tribally-owned lands in the Lower-48 states and only minimally in Alaska.

As you know, the Alaska Native Claims Settlement Act of 1971 (ANCSA) transferred more than 44 million acres of federal land to Alaska Native Corporations to support the economic, social, and cultural well-being of the Alaska Native people. Unfortunately, the Tribal Forest Protection Act (TFPA), as originally enacted, excludes ANCSA lands, hindering the ability of Alaska Native Corporations to engage in shared-stewardship activities with their primary neighbor, the Federal Government. This does a disservice to Alaska’s Native communities, to our federal neighbors, and to other forest stakeholders who rely on our Alaska Native Corporations as land managers within a unique and important forest environment.

During the hearing on S. 4370, I noted that Angela Coleman, Associate Chief of the U.S. Forest Service, testified last year (in a hearing held by the Senate Committee on Agriculture, Nutrition and Forestry) that “[c]limate change, wildfire, and other natural disturbances do not respect land management boundaries; therefore, we need policies and management approaches . . . that remove barriers and allow for shared stewardship and cross-boundary management.” In my testimony, I called attention to the fact that well over 2 million acres of forestland in Alaska has been affected by a spruce beetle outbreak alone. Forestland throughout the state is increasingly impacted by wildfires. If S. 4370 is enacted, an Alaska Native Corporation would be able to enter into an agreement with its federal neighbor—the U.S. Forest Service (USFS) or the Bureau of Land Management (BLM)—to help manage spruce beetle outbreaks or to reduce fuel loads on the federal lands bordering ANCSA lands.

Additionally, land management in Alaska—as in other Western states—is complicated by land ownership patterns that are “checkerboarded”—with federal and Native-owned lands in some cases quite literally alternating in a checkerboard pattern across the map. Occasionally, federal land is isolated within Native-owned lands. Although the Federal Government can access that land, from an operational perspective, and for the sake of efficiency, it may make sense for an Alaska Native Corporation to address pest or fuel load issues on federal lands that are surrounded by Native-owned land, particularly if the Alaska Native Corporation is planning to engage in such activities already on their own lands. BLM and USFS should have the ability to utilize the TFPA to achieve these goals with Alaska Native Corporations.

You also ask specifically “how including Alaska Native Corporation lands in the definition of ‘Indian forest land or rangeland’ . . . will benefit federally-recognized Tribes in Alaska” and to provide examples of the types of projects Alaska Native Corporations might “undertake for the[] benefit” of the Tribes.

First and foremost, I want to emphasize that S. 4370 will serve to protect the lives of Tribal citizens. When the Tribal Forest Protection Act was enacted in 2004, Congress recognized that fires in the summer of 2003 had burned from federal lands onto several Indian reservations, resulting in property damage and killing 10 people. The House Committee on Resources observed at the time that “this was not a

first-time occurrence.” Congress therefore sought to enact legislation that would “help reduce the threat of future tragedies” by setting up a process that allowed Indian Tribes to perform hazardous fuels reduction operations and other forest health projects on neighboring USFS and BLM lands. H. Rept. 108–509 (May 20, 2004).

Under ANCSA, Congress directed Alaska Native Corporations to select land around each of more than 200 Alaska Native villages in Alaska. As a result, with few exceptions, Alaska Native Corporations today quite literally own the land surrounding Alaska Native villages throughout the state. Most, if not all, of these Native Villages are home to federally-recognized Tribes and Tribal citizens. Congress enacted the TFPA to empower Indian Tribes to protect Tribal communities on Tribal lands. The Alaska Native community at the time implored Congress to include ANCSA lands in that legislation. Congress elected not to do so, and in making that decision, Congress chose to deny access to a program intended to save lives to the more than 200 Native communities in Alaska.

An Alaska Native Corporation might undertake a project for the specific benefit of a Tribal Government for a variety of reasons. For example, an Alaska Native Corporation could agree to undertake a project to achieve priorities shared by the Alaska Native Corporation and the local Tribe or Tribes. At the request of a Tribe, an Alaska Native Corporation could undertake a project that would help to achieve priorities identified by the Tribe in consultation with the BLM or USFS and other forest stakeholders, particularly if the Native Corporation has the capacity to undertake the project but the Tribe does not.

However, I would expect that most projects will be undertaken for the benefit not of the Tribe, per se, but for the benefit of the Alaska Native village, or to protect the forest itself. This protection will benefit the Tribe and Tribal members who are residents of the village or who otherwise depend on the protection of the forest. For example, in ANCSA, Congress sought to convey land to Alaska Native Corporations to protect the continuation of Alaska Native subsistence uses on the land conveyed. A TFPA project that protects Alaska Native forestland from disease or fire will ensure that Tribal members can continue to rely on that land to support their families. Congress also directed Alaska Native Regional Corporations to identify cemeteries and historical sites (many of which are “sacred” sites) to protect that land for the Alaska Native community. Regional Corporations applied for roughly 2,300 of these sites under ANCSA. These sites are typically remote and, in most cases, are surrounded by or adjacent to BLM or USFS land. A TFPA project that protects such a site from the threat of wildfire might avoid a loss of incalculable cultural and historical value to Tribal members.

Ultimately, S. 4370 will benefit a wide range of forest stakeholders, including the federal government, the non-Native residents of our villages, Alaska Native shareholders and Tribal citizens, recreational users who share our resources, and the fish and wildlife that depend on sound forest management.

Question 2. What is AFN’s understanding of how the proposed criteria of “special geographic, historical, or cultural significance to the Indian tribe” in S. 4370 will be applied to Alaska Native Corporations?

Answer. The TFPA includes Alaska Native Corporations as “Indian Tribes” within its original definitions. S. 4370 merely expands the definition of “Indian forest land or rangeland” to include ANCSA lands. Accordingly, the proposed extension of the TFPA’s scope to lands of “special geographic, historical, or cultural significance to the Indian tribe” will apply both to federally-recognized Indian Tribes and to Alaska Native Corporations.

Your question asks specifically how the proposal to expand the TFPA to “special geographic, historical, or cultural significance to the Indian tribe” will apply to Alaska Native Corporations. I think the answer to this question largely depends on the circumstances of individual Alaska Native Corporations and their responsibilities as land managers. I can imagine, for example, that an Alaska Native Corporation might be actively engaged in mitigating wildfire threats to isolated “cemetery and historical sites” within its ownership. In doing so, it may find itself well-positioned to partner with the BLM or USFS to address threats to related, federally-managed sites within the same geographic area. Taking this shared-stewardship approach to the preservation of sites of “special geographical, historical, or cultural significance” might be compared, broadly, to the approach utilized in the Tribal Heritage Grant program, which assists Indian Tribes, Alaskan Native Corporations, and Native Hawaiian Organizations with efforts to protect and promote their cultural heritage and traditions, “whether on or off the reservation.” Arbitrary land management boundaries should not stand in the way of federal programs that might otherwise support a holistic approach to the preservation of our cultural heritage.

Thank you for holding a hearing on S. 4370, and thank you for the opportunity to address your questions and to provide additional information to the Committee.

I hope this response is helpful to you, and I welcome any other questions you may have about this important legislation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. THORA PADILLA

Question. The 2018 Farm Bill authorized the U.S. Forest Service to enter into 638 agreements with Tribes for Tribal Forest Protection Act activities. Should Congress consider expanding this authority, and if so, how would 638 expansion complement S. 4370 in practice?

Answer. Yes, the Mescalero Apache Tribe fully supports expansion of the 2018 Farm Bill's 638 Tribal Forestry program by removing the "Demonstration" program designation to make the program permanent and by adding a funding mechanism. Mescalero was one of the first Tribal Governments to testify in support of the 638 Tribal Forestry provision during the 115th Congress. We supported moving the Tribal Forest Protection Act (TFPA) from stewardship contracting authority, which treats Tribes as vendors—to the 638 model, which acknowledges the distinct governmental status of Indian Tribes and respects tribal sovereignty.

The current 638 Tribal Forestry program authorizes the Forest Service and BLM to enter into self-determination contracts with Tribes for forestry-related projects on federal lands that are adjacent to Indian lands. The proposals included in S. 4370 would be a natural complement to these existing authorities by permitting Tribes to work on projects with these same land management agencies—on Indian lands (which would help offset the significant and longstanding funding shortfalls for tribal forest management) and throughout federal lands, which would enable Tribes to impact landscape scale management of federal lands to which a Tribe has a close connection.

The 638 Tribal Forestry program holds this great potential but needs added improvements. As noted in my written testimony, in the summer of 2023, when I reached out to work with the Lincoln National Forest on a 638 Forestry contract, I was told that the project didn't meet the TFPA requirements, and even if it did there was no funding to support the proposed 638 contract.

To improve both the existing 638 Tribal Forestry program and the proposed provisions in S.4370, we ask the Committee to remove the "demonstration" designation from the 638 Tribal Forestry program and make it permanent. To ensure implementation of the program, we ask that you add a funding mechanism to the 638 Forestry program that also covers contract support costs. We ask that you amend the program to limit an agency's ability to reject valid tribal requests to engage in 638 forestry contracts or compacts. And finally, we ask that you extend Federal Tort Claims Act protection to the tribe and tribal employees engaged in TFPA 638 Forestry contracts.

These additional improvements to the 638 Tribal Forestry program will enable Tribes to consistently enter into contracts and compacts with the Forest Service and BLM. Once this takes place, Tribes and Tribal priorities will become part of the agency decisionmaking process, making positive impacts on the exercise of tribal treaty rights, protection of Native sacred places, and protection of tribal investments on federal lands.