

**S. 2285, S. 3234, S. 3261, AND H.R. 4685**

---

---

**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS**

**UNITED STATES SENATE**

**ONE HUNDRED FOURTEENTH CONGRESS**

**SECOND SESSION**

—————  
**SEPTEMBER 7, 2016**  
—————

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

23-557 PDF

WASHINGTON : 2017

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON INDIAN AFFAIRS

JOHN BARRASSO, Wyoming, *Chairman*  
JON TESTER, Montana, *Vice Chairman*

JOHN McCAIN, Arizona	MARIA CANTWELL, Washington
LISA MURKOWSKI, Alaska	TOM UDALL, New Mexico
JOHN HOEVEN, North Dakota	AL FRANKEN, Minnesota
JAMES LANKFORD, Oklahoma	BRIAN SCHATZ, Hawaii
STEVE DAINES, Montana	HEIDI HEITKAMP, North Dakota
MIKE CRAPO, Idaho	
JERRY MORAN, Kansas	

T. MICHAEL ANDREWS, *Majority Staff Director and Chief Counsel*  
ANTHONY WALTERS, *Minority Staff Director and Chief Counsel*

## CONTENTS

	Page
Hearing held on September 7, 2016 .....	1
Statement of Senator Barrasso .....	1
Statement of Senator Burr .....	5
Statement of Senator Daines .....	4
Statement of Senator Heitkamp .....	31
Statement of Senator Hoeven .....	5
Statement of Senator Tester .....	2
Statement of Senator Udall .....	4

### WITNESSES

Andrews-Maltais, Cheryl, Senior Policy Advisor to the Acting Assistant Secretary on Indian Affairs, U.S. Department of the Interior .....	7
Prepared statement .....	9
Godwin, Jr., Hon. Harvey, Chairman, Lumbee Tribe of North Carolina .....	13
Prepared statement .....	15
McDarmont, Hon. Kenneth, Vice Chairman, Tule River Indian Tribe .....	17
Prepared statement .....	18
Watchman, Derrick, Chairman, National Center for American Indian Enterprise Development .....	21
Prepared statement .....	22

### APPENDIX

McCaleb, Neal, Ambassador at Large, Chickasaw Nation, prepared statement	39
Response to written questions submitted by Hon. Al Franken to Derrick Watchman .....	46
Smith, Leonard, Executive Director, Native American Development Corporation (NADC), prepared statement .....	39
Snell, William, Executive Director, Rocky Mountain Tribal Leaders Council, prepared statement .....	42
United South and Eastern Tribes Sovereignty Protection Fund, prepared statement .....	43



**S. 2285, S. 3234, S. 3261, AND H.R. 4685**

---

**WEDNESDAY, SEPTEMBER 7, 2016**

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

The Committee met, pursuant to notice, at 2:50 p.m. in room 628, Dirksen Senate Office Building, Hon. John Barrasso, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

The CHAIRMAN. Good afternoon. I call this legislative hearing to order.

Today the Committee will examine four bills: S. 2285, the Lumbee Recognition Act; S. 3234, the Indian Community Economic Enhancement Act of 2016; S. 3261, the Native American Business Incubators Program Act; and H.R. 4685, the Tule River Indian Reservation Land Trust, Health and Economic Development Act.

The bill S. 2285, the Lumbee Recognition act, was introduced on November 7th, 2015, by Senator Burr. On June 7th, of 1956, Congress passed the Lumbee Act which designated certain Indians to be Lumbee Indians of North Carolina, but did not identify them as a federally-recognized tribe. The 1956 Act did not provide the Lumbee Indians eligibility for Federal services, which the United States provided to recognized Indian tribes because of their special status as an Indian tribe.

Since the passage of that 1956 Act, Congressional actions have been sought to remove the prohibition from accessing Federal Indian programs. This Committee has held several hearings on the status of the Lumbee Indians during which differing views on prior legislation have been considered. We will now hear this bill address these views in light of the 1956 Act. I will turn to Senator Burr in a moment, who has joined us today for any comments he would like to make.

On July 14th of 2016, I introduced S. 3234, the Indian Community and Economic Enhancement Act of 2016, along with Senator McCain. During this Congress, the Committee held a series of hearings, roundtables and listening sessions to examine how to develop Indian communities' economies. Access to capital was one of the key challenges and public priorities identified, and the top priorities identified by Indian tribes, by business leaders and by entrepreneurs.

This bill is intended to do three things: Increase access to capital for Indian tribes and businesses; to increase opportunities for Indian business promotion; and to create mechanisms and tools to attract business to Indian communities.

Since the bill's introduction, my staff has been engaged in discussions with affected agencies, tribes, business organizations and business owners. We have received considerable positive feedback and look forward to addressing the recommendations received over the past recess as well as at today's hearing. This bill will assist Indian businesses and communities in developing sustainable economies and jobs.

I look forward to moving this bill expeditiously through Congress.

I also want to take a moment to thank Gary Davis, the outgoing President of the National Center for American Indian Enterprise, for the work he and the National Center have done on this bill and for Indian economies. Both he and Mr. Derrick Watchman, the Chairman of the National Center Board, who is testifying here today, have testified before this Committee. They have provided substantial input in support of this bill and the Indian Energy Act, S. 209.

So I appreciate your work and ask that you, Mr. Watchman, will send the Committee's gratitude and best wishes to Gary in his new adventures. Thank you.

On July 14th of 2016, Vice Chairman Tester introduced S. 3261, the Native American Business Incubators Program Act, along with Senators Cantwell and Udall. This bill develops a program for physical workspaces, or incubators, to develop Native business and Native entrepreneurs.

I will turn to Senator Tester in a moment to talk about his bill.

On March 3rd, 2016, Representative McCarthy introduced H.R. 4685, the Tule River Indian Reservation Land Trust, Health and Economic Development Act. This bill passed the House of Representatives on July 5th of this year. H.R. 4685 would take 34 acres of Federal land located in Tulare County, California, and to trust for the benefit of the Tule River Indian Tribe.

I would like to turn to Vice Chairman Tester at this point for any opening statement.

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

Senator TESTER. Thank you, Mr. Chairman, for holding this hearing to consider important legislation for this Committee. A special welcome to Senator Burr, and appreciation for his leadership on Lumbee Recognition.

One of the bills that we are going to hear today is S. 3261, the Native American Business Incubators Program Act, which I introduced with my colleagues Senators Cantwell and Udall. This bill will help promote tribal economic development by investing in small business where it is needed, on the reservation. This Committee has heard from tribal leaders about many factors that prevent economic growth in tribal communities. They include a complicated regulatory environment unique to Indian Country, capacity

issues and problems accessing capital, and attracting good business partners.

These issues translate into fewer on-reservation businesses, fewer jobs in tribal communities, and Native youth having to leave home in search of opportunities elsewhere. This bill will help address these issues by providing resources to establish business incubators that serve Native entrepreneurs in tribal communities. Each business incubator will be a one-stop shop that helps Native entrepreneurs navigate both typical obstacles of starting a business as well as those obstacles that make doing business in Indian Country unique.

The bill would do this by ensuring that each incubator has quality staff members that are experts in conducting business in Indian Country. Additionally, it would require incubators to ensure Native entrepreneurs have access to resources necessary for the business to thrive, such as connected workspaces, business skills, training, mentorship opportunities and access to professional networks.

S. 3261 would also ensure that incubator programs complement other resources available to tribes. The bill would require the Secretary of Interior to coordinate with heads of other Federal agencies, so each incubator is equipped to provide assistance to Native entrepreneurs that want to utilize Federal business development programs at those agencies.

The bill also calls on the Secretary to set up a pipeline program between education institutions and business incubators to encourage entrepreneurship among Native youth.

I also want to talk briefly about the Tribal Recognition, since we are also considering the Lumbee bill here today. As you all know, I introduced, along with Senator Daines as a co-sponsor, the Little Shell Recognition Bill. This issue is very important to me and to Senator Daines. While I am interested in the discussion we are having today, I do hope that we can get the Little Shell Recognition Bill across the finish line.

We don't always agree on a lot of things around here. But when there is bipartisan support for a bill like there is with the Little Shell, it would be great to get it done.

Finally, I want to acknowledge Mr. Bill Snell for his great work with Native American communities with the Rocky Mountain Tribal Leaders Council. He was scheduled to testify before us today, but unfortunately due to an illness, had to cancel his trip and could not make it. He has submitted a statement, which I would ask unanimous consent be part of the record.

With that, once again, thank you, Mr. Chairman. I look forward to hearing from the witnesses today.

The CHAIRMAN. Thank you, and without objection, that full statement will be made part of the record.

The CHAIRMAN. Any other members who would like to make an opening statement? Senator Daines.

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

Senator DAINES. Thanks, Mr. Chairman. I want to start by wishing a warm welcome to Tafuna Tusi, Financial Management Officer of the Rocky Mountain Tribal Leaders Council who is here from Billings, Montana. It is good to see you here in D.C., Mr. Tusi.

Montana is home to four Native Community Development Financial Institutions. I had the pleasure of joining one of them, the Native American Development Corporation, at the conference back home in Montana just last month. These organizations are key to increasing Native access to capital in our Native communities, and I am glad we are visiting ways to more effectively provide credit solutions in Indian Country.

I would like to point out an example of success. So often around this table we seem to talk about failures. There is a success. The Crow Nation was the first tribe in the Country to enact the Model Tribal Secured Transaction Act, and was also the first to enter into a formal Uniform Commercial Code filing system agreement under a tribal transaction law. This historic compact is helping facilitate lending at economic development on the Crow Reservation there near Hardin, Montana.

Congress, the Administration and tribes must continue working together so we can replicate that success on other reservations in Montana and across our entire Country. Enacting legislation that fosters the creation of these good, high-paying jobs is absolutely key to Native nations' success and their long-term prosperity.

I appreciate the work my colleagues have done on this, particularly Chairman Barrasso, as well as Vice Chairman Tester. They have gone before us, they brought this before us for consideration, and I look forward to today's discussion.

Thanks, Mr. Chairman.

The CHAIRMAN. Senator Udall?

**STATEMENT OF HON. TOM UDALL,  
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman.

Good afternoon, Mr. Chairman and Vice Chairman. I am pleased to see that S. 3261, the Native American Business Incubators Program Act, is on today's legislative hearing. Spurring economic development in Indian Country is a critically important issue.

According to the National Congress of American Indians, 39 percent of Native Americans living on reservations are in poverty and the unemployment rate is 19 percent, more than three times the national average. It goes without saying that we need to do everything we can to improve opportunity for Indian Country. I am pleased to have joined Senators Tester and Cantwell in sponsoring S. 3261 to help establish and maintain business incubators to serve Native American communities. The bill will help Native American business owners navigate obstacles, cut through the red tape and get access to start-up funding. These important tools will help promising entrepreneurs get off on the right foot, so they can launch their businesses and stay in business.

Thank you again. I look forward to hearing from the witnesses today.



The CHAIRMAN. Thank you, Senator. Senator Hoeven?

**STATEMENT OF HON. JOHN HOEVEN,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HOEVEN. I am pleased to be here to discuss the merits of these bills, particularly S. 3234, which is the Indian Community Economic Enhancement Act and S. 3261, the Native American Business Incubators Program.

In North Dakota, we have reservations with thousands of Native American-owned businesses that are pleased with what they are doing. They are encouraged and want to continue to promote further economic development efforts for these small businesses, which are vital to their communities and their reservations. So I very much look forward to hearing from this panel in regard to the legislation that we are proposing here, and also other ideas that you have to help small businesses on the reservation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hoeven.

Before turning to Senator Burr, would any other members like to make an opening statement? If not, Senator Burr, welcome to the Committee.

**STATEMENT OF HON. RICHARD BURR,  
U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Mr. Chairman and Mr. Vice Chairman, thank you; thank you, colleagues for the Committee's time and for your efforts regarding Federal recognition for the Lumbee Tribe.

I would also like to thank my North Carolina colleagues, Representatives Hudson and Butterfield, for their passion and dedication on this issue. Mr. Chairman, it is good to see the frugality of the Indian Affairs Committee. They have left my name tag over from when I served on the Committee, I think, unless you hunted this down somewhere.

I would also like to thank Chairman Harvey Godwin. He was sworn in as chairman earlier this year, for traveling up from North Carolina for this hearing. I welcome him and his son, Quinn, who is here with him today, to Washington. Chairman Godwin brings with him over 20 years of business experience and a long history of public service to his community. He has been a proven leader in Robeson County. I know he will bring that same work ethic and integrity to the Lumbee Tribal Council and the Tribe.

Mr. Chairman, for more than a century, the Lumbees have been recognized as an American Indian. North Carolina recognized the tribe in 1885 and the tribe began their quest for Federal recognition three years later, in 1888. The Lumbees are in a unique situation. They are the largest Indian tribe east of the Mississippi, with a membership of over 34,000. Yet, they have remained unrecognized for over a century.

The Lumbee Act of 1956 designated the Indians designating in Robeson County and adjoining counties of North Carolina as the Lumbee Indians of North Carolina. That also inexplicably prevented the Lumbees from being eligible for any services provided by the Federal Government or any benefits that are provided to other tribes.

While the Lumbee Act somewhat recognized the tribe, it was strictly conditional. This 1950s-era law specifically blocked Federal assistance to the Lumbee Tribe. It is nothing short of discrimination. And decades of discrimination against the Lumbees have resulted in severe economic and societal consequences for the Lumbee people.

Robeson County is one of the ten poorest counties in the United States of America. The 1956 law has put them on an unequal footing, compared to other federally-recognized tribes. And it has prevented them from obtaining access to critical services through the Bureau of Indian Affairs and the Indian Health Service. This is simply unjust and immoral.

When the Bureau of Indian Affairs established its process for formal recognition in 1970, the Lumbees were once again denied equal treatment and barred from participating, due to the 1956 Lumbee Act. They were denied a third time in 1989, when the Department of Interior determined that the Lumbee Act of 1956 prohibits the Tribe from going through the BIA process, and the only way for a tribe to obtain full Federal recognition would be by an act of Congress.

Therein lies the reason I am before you today. The BIA's process is reserved for tribes whose legitimacy must be established. As we know, and when you hear from Chairman Godwin today, the Lumbees have established legitimacy time and time again. The Lumbees have been part of eastern North Carolina's history for centuries. Like Chairman Godwin, they serve their community effectively and tirelessly. They have been teachers, farmers, doctors, small business owners, lawyers. Some have served as sheriffs, clerks of court, State legislators and judges. Many have protected our Nation by serving in the United States armed forces. The contributions they have made to their local communities and the State of North Carolina have not gone unrecognized or unappreciated.

The question I want the Committee to ask themselves today is, how can this federally-recognized tribe be denied the benefits that other federally-recognized tribes receive through their sovereignty? This tribe is not looking for a handout. But it is looking for a hand up. That hand up is full Federal recognition that will give them the additional tools needed to improve their economic situation in their county, in their health care system and in their schools.

For those members that may not know historically, in 1956, the legislation dealt with five tribes. Today, only one of those five tribes has not, by an act of Congress, been federally recognized, and they are the Lumbee Indians. Congress has gone back and remedied four other tribes that were caught in the same congressional malaise, and they have by an act of Congress recognized these tribes. Only the Lumbees, only the Lumbees have been excluded from that Federal recognition.

I am confident that after Chairman Godwin's testimony today, you will understand the injustice and discriminatory policies against the Lumbee Tribe. The Lumbee were put into this situation by Congress in 1956, and it is time we act and grant the Tribe their much-deserved full Federal recognition.

I ask that you right this wrong for current and future generations of Lumbees. Mr. Chairman, I thank you for the privilege of

speaking on an issue that is not only important to me, not only important to the Lumbees, but I think it should be important to us as members of Congress. It was an act of Congress that put them in the box that they are in. Four-fifths of that box has been fixed. One-fifth remains still to be fixed. And I do hope that this Committee will see it as their mission to right a wrong and to fix the fifth.

I thank the Chairman.

The CHAIRMAN. Thank you very much, Senator Burr.

We will now hear from our witnesses. We have four. The first is Ms. Cheryl Andrews-Maltais, who is the Senior Policy Advisor to the Acting Assistant Secretary of Indian Affairs for the Department of Interior. We will also hear from the Honorable Harvey Godwin, Jr., who is the Chairman of the Lumbee Tribe of North Carolina; the Honorable Kenneth McDarment, Vice Chairman of the Tule River Indian Tribe, Porterville, California; and Mr. Derrick Watchman, who is the Chairman of the National Center for American Enterprise Development from Mesa, Arizona. I would ask that each of you try to limit your remarks to five minutes. We will make sure that your entire written testimony is made part of the official hearing record today. So if you could keep your remarks to five minutes, that will allow time for questioning.

We look forward to hearing your testimony, beginning with Ms. Andrews-Maltais.

**STATEMENT OF CHERYL ANDREWS-MALTAIS, SENIOR POLICY ADVISOR TO THE ACTING ASSISTANT SECRETARY ON INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY JACK STEVENS, ACTING DIRECTOR, OFFICE OF INDIAN ENERGY AND ECONOMIC DEVELOPMENT**

Ms. ANDREWS-MALTAIS. Thank you, and good afternoon, Chairman Barrasso and members of the Committee. My name is Cheryl Andrews-Maltais, and I am a senior advisor to the Assistant Secretary on Indian Affairs in the Department of the Interior. I would like to thank you for the opportunity to provide the Department's statements on four bills today.

The first bill is Senate Bill 2285, the Lumbee Recognition Act. We think it is important to restate that under the Constitution, Congress has the authority to recognize a distinctly Indian community as an Indian tribe. Federal acknowledgement enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and recognizes certain legal rights under Federal law.

We note that the authority to acknowledge an Indian tribe has been delegated to the Secretary of the Interior to act in appropriate cases. However, in this instance, we are barred by statute from recognizing the Lumbee Tribe, and we do note a few administrative concerns. However, the Department supports the bill, with amendments as discussed in our written testimony.

Second is Senate Bill 3234, the Indian Community Economic Enhancement Act, a bill to amend the Native American Business Development, Trade Promotion and Tourism Act, the Buy Indian Act and the Indian Trader Act and the Native American Programs Act,

which would provide industry and economic development opportunities to Indian communities. The Obama Administration has consistently supported avenues that foster and promote economic development in Indian Country. For far too long, Native communities have experienced disproportional barriers to opportunities for economic development. This bill seeks to improve economic conditions in Native communities by expanding capital for Native entrepreneurs, creating Native procurement opportunities and encouraging tourism as a revenue source.

In reviewing this bill, the Department is pleased to see legislation that seeks to directly impact and foster economic development in Indian Country. We support these goals and offer a number of technical changes to improve the bill which are specifically noted in our written testimony.

For example, Section 3 of the bill would change the Native American Business Development Trade Promotion and Tourism Act to expand the use of and funding for the Loan Guarantee, Insurance and Interest Subsidy Program created under the Indian Financing Act, and would offer increased resources for this program. In Section 4, the Buy Indian Act is an important component of the Department's goal of fostering and supporting American Indian and Alaska Native entrepreneurship by promoting the Federal procurement of goods and services from Native-owned businesses, thereby supporting economic development in Indian Country.

One specific technical change to this section would be adding language that allows reporting of Buy Indian Act actions to include procurement via 8(a) whenever applicable. We also request the drafters consider adding a category that captures other Indian enterprises, as Indian Affairs does business with Indian enterprises that may not meet the specific requirements of the Act.

Additionally, we believe the Buy Indian Act could work as a socioeconomic set-aside in the Small Business Administration. Established on a larger scale and applicable to other agencies beyond the Indian Health Service and the Department. Section 5 of the bill amends the Indian Trader Act to include a provision granting the Secretary the authority to waive certain license requirements if the tribe has enacted tribal laws to govern its licensing, trade or commerce.

Because tribes have a strong interest in creating a comprehensive tribal regulatory scheme to regulate trade and commerce on tribal lands, improving the Indian trader statutes by creating a contemporary, comprehensive framework regarding trade in Indian Country benefits everyone. The Department supports the goals and objectives of these bills and offers to continue to work with the Committee and tribes in developing legislation to meet the unique economic and employment needs of Indian Country.

The Department also understands that other agencies within the Administration may have additional comments on this bill and would like to provide that to this Committee.

Third, the Native American Business Incubators Act is a bill that would establish a business incubator program within the Department to promote economic development on Indian reservations and communities. The Department strongly supports this bill's purpose, which is to impart critical knowledge and provide technical assist-

ance to entrepreneurs and start-up businesses in Indian Country. The department notes that Section 4 contains very detailed and prescriptive requirements related to the establishment and administration of the program. We would like to work with the Committee to simplify these requirements to ensure the program can be flexibly implemented.

To conclude, the Department supports this bill, S. 3261, and is committed to working with the Committee on helping to improve it.

Lastly, we have House Rule 4685, the Tule River Reservation Land Trust, Health and Economic Development Act. This bill declares that approximately 34 acres of public land currently managed by BLM shall be held in trust for the benefit of the Tule River Indian Tribe. The Department of the Interior welcomes the opportunity to work with Congress on lands to be held in trust and supports the bill with minor technical edits as noted in our written testimony.

Thank you very much, and I am available to answer any questions anyone may have.

[The prepared statement of Ms. Andrews-Maltais follows:]

PREPARED STATEMENT OF CHERYL ANDREWS-MALTAIS, SENIOR POLICY ADVISOR TO THE ACTING ASSISTANT SECRETARY ON INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

H.R. 4685

Thank you for the opportunity to testify on H.R. 4685, which declares that approximately 34 acres located in Tulare County, California, shall be held in trust for the benefit of the Tule River Indian Tribe. The Department of the Interior welcomes opportunities to work with Congress on lands to be held in trust and supports H.R. 4685, if amended to address concerns noted below.

#### **Background**

The Tule River Indian Tribe (Tribe) is a federally recognized Indian tribe that resides on the Tule River Indian Reservation (Reservation). The Reservation was initially set aside in 1873, and currently comprises approximately 54,000 acres of rugged foothill lands of the Sierra Nevada Mountains in south central California. The lands proposed to be held in trust for the Tribe under the bill are immediately west of the Reservation and are adjacent to fee lands owned by the Tribe. This isolated parcel has been used mainly for tribal grazing land. The Tribe is constructing a waste water treatment facility on the fee lands.

#### **H.R. 4685**

H.R. 4685 declares that approximately 34 acres of public land currently managed by the BLM shall be held by the United States in trust for the Tribe, subject to valid existing rights and management agreements related to easements and rights-of-way (including pending ROW applications). Under the bill, the Secretary of the Interior would be required to verify valid existing rights by notifying anyone claiming a management agreement, easement, or other right-of-way, that the lands are now held in trust. Upon this notification, any parties claiming such rights would have 60 days to submit an application to the Secretary requesting that the valid existing rights be converted to a long-term easement or other right-of-way. After submission, the Secretary would be required to grant or deny the application within 180 days; if the Secretary has not acted within this time period, the application would be automatically granted.

Currently, the lands proposed to be held in trust contain two rights-of-way authorizations in place for roads and water pipelines, both for the benefit of the Tule River Tribe, and one right-of-way authorization for power lines to the reservation held by Southern California Edison. Based on a review of aerial imagery, a house may straddle the boundary between the reservation and public land; a survey would be required to determine exact location, and if further action is needed to resolve

boundary. There are no other BLM authorizations, such as easements and leases, on the property, and no mining claims or other encumbrances are known to exist.

The Department supports placing the 34-acre parcel into trust status for the Tribe, and we would like the opportunity to work with the sponsor and Committee on language clarifying the Department of the Interior's responsibilities regarding any improvements, appurtenances, and personal property that may be transferred along with the lands. The Department believes that this clarification is necessary to address concerns about the Federal government having a fiduciary obligation to repair and maintain any acquired improvements. Also, the claimed valid existing rights verification process outlined in Section 2(d) appears to establish an additional, unneeded forum for the resolution of such claims. Generally, valid existing rights on lands held in trust continue in effect until the end of the term, at which time the BIA may negotiate any new or renewed authorizations.

### **Conclusion**

The Department of the Interior welcomes opportunities to work with Congress and tribes on holding lands in trust. We support the intent of the legislation and look forward to working with the sponsor and the Committee to address the issues we have outlined in this testimony.

S. 2285

Chairman Barrasso, Vice-Chairman Tester and members of the Committee, my name is Cheryl Andrews-Maltais, Senior Policy Advisor to the Assistant Secretary—Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide the Administration's testimony on S. 2285, the "Lumbee Recognition Act."

The acknowledgment of the continued existence of another sovereign is one of the most important responsibilities of the United States. Under the Constitution, Congress has the authority to recognize a "distinctly Indian community" as an Indian tribe. Federal acknowledgment enables Indian tribes to participate in Federal programs and establishes a government-to-government relationship between the United States and the Indian tribe, and recognizes certain legal rights under Federal law. We note that the authority to acknowledge an Indian tribe has been delegated to the Secretary of the Interior to act in appropriate cases. In this instance, we are barred by statute from recognizing the Lumbee Tribe. We support S. 2285, with amendments as discussed below.

### **S. 2285, the "Lumbee Recognition Act"**

In 1956, Congress designated Indians then "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee Indians of North Carolina" in the Act of June 7, 1956 (70 Stat. 254). Congress went on to note the following:

Nothing in this Act shall make such Indians eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians.

In 1989, the Department's Office of the Solicitor advised that the 1956 Act forbade the Federal relationship within the meaning of the acknowledgment regulations, and that the Lumbee Indians were therefore precluded from consideration for Federal acknowledgment under the administrative process. Because of the 1956 Act, the Lumbee Indians have been unable to seek Federal acknowledgment through the Department's administrative process.

Given that Congress specifically addressed the Lumbee Indians in the 1956 Act, which Interior interpreted as barring the Department from undertaking an acknowledgment review, only Congress may take up the matter of Federal recognition for the Lumbee Indians.

S. 2285 extends Federal recognition to the "Lumbee Tribe of North Carolina" and permits any other group of Indians in Robeson and adjoining counties whose members are not enrolled in the Lumbee Tribe to petition under the Department's acknowledgment regulations. Before 2015, the Department's Office of Federal Acknowledgment received letters of intent to petition from multiple groups including the Lumbee Tribe named in this bill whose claims and memberships may overlap. Therefore, we recommend Congress clarify the Lumbee group that would be granted recognition under this bill based on the group's current governing document which includes clear enrollment requirements and procedures and its current membership list. Not doing so could potentially expose the Federal Government to unwarranted

lawsuits and possibly delay the Department's acknowledgment process for the other groups not enrolled in the Lumbee Tribe.

Under S. 2285, the State of North Carolina has jurisdiction over criminal and civil offenses and actions on lands within North Carolina owned by or held in trust for the Lumbee Tribe or "any dependent Indian community of the Tribe." Additionally, the Secretary of the Interior is authorized to accept a transfer of jurisdiction over the Lumbee Tribe from the State of North Carolina, after consulting with the Attorney General of the United States and pursuant to an agreement between the Lumbee Tribe and the State of North Carolina. Such transfer may not take effect until two years after the effective date of such agreement.

We are concerned with the provision requiring the Secretary, within two years, to verify the tribal membership and then to develop a determination of needs and budget to provide Federal services to the Lumbee group's eligible members. In our experience, verifying a tribal roll is an extremely involved and complex undertaking that can take several years to resolve. Moreover, S. 2285 is silent as to the meaning of verification for inclusion on the Lumbee group's membership list. The Act should define who bears the burden of proof, the standards and procedures for evaluating acceptable generation-by-generation descent evidence, and appeals processes.

In addition, section 5(c) of S. 2285 may raise a problem by purporting to require the Secretary of the Interior and the Secretary of Health and Human Services to submit to the Congress a written statement of a determination of needs for the Lumbee Tribe for programs, services and benefits to the Lumbee Tribe. The appropriate means for communicating to Congress a determination of needs for programs administered by the Department of the Interior and the Department of Health and Human Services is the President's Budget.

#### **Conclusion**

Thank you for providing the Department the opportunity to provide input into S. 2285. The Department supports S. 2285 with amendments. I am available to answer any questions the Committee may have.

S. 3234

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Cheryl Andrews-Maltais, and I am the Senior Advisor to the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide testimony before this Committee on S. 3234, the Indian Community Economic Enhancement Act of 2016, a bill to amend the Native American Business Development, Trade Promotion, and Tourism Act of 2000, the Buy Indian Act, the Indian Trader Act, and the Native American Programs Act of 1974 to provide industry and economic development opportunities to Indian communities.

During the Obama Administration we have consistently supported avenues that foster and promote economic development in Indian Country. For too long, Native communities have experienced disproportional barriers to economic development. Economic development is critical for building capacity in Indian Country in other areas such as law enforcement, health, education, natural resource management, and infrastructure. Even in good economic times, the unemployment rate in these communities and villages is double the national average. As antidotes to these conditions, our Department offers access to capital, technical assistance for Native entrepreneurs and business start-ups, guidance on developing the legal infrastructure necessary for economic progress, and expert assistance in the development of commercially valuable minerals and conventional and renewable energy resources. In reviewing S. 3234, the Department is pleased to see legislation that seeks to directly impact and foster economic development in Indian Country.

We support the goals of S. 3234.

S. 3234 seeks to improve economic conditions in Native communities by expanding capital for Native enterprises, creating Native procurement opportunities, and encouraging tourism as a revenue source. Currently, our Department's Office of Indian Energy and Economic Development (IEED), which carries out much of the work addressed by the bill, works to foster stronger American Indian and Alaska Native economies. The Division of Capital Investment (DCI) within IEED facilitates access to capital for Indian-owned businesses. In FY 15, the Program was able to guarantee \$99.8 million in loans to Indian Country from an appropriation of \$6.7 million. Since 1992, the Program has encouraged well over \$1.4 billion in Indian business lending that would not otherwise have occurred.

Section 3 of S. 3234 would change the Native American Business Development, Trade Promotion, and Tourism Act of 2000 to expand use of and funding for the

Loan Guarantee, Insurance and Interest Subsidy Program created under section 201 of the Indian Financing Act of 1974 (25 U.S.C. 1481). S. 3234 would offer an increase in resources for this program. We suggest a number of technical changes to improve S. 3234:

- In Section 8 the bill refers to the “the loan guarantee program of the Bureau of Indian Affairs.” This should be changed to “the Indian Loan Guarantee, Insurance and Interest Subsidy Program.” (ILGIISP)
- The bill should also be amended to clarify how the additional credit subsidy would be made available pursuant to the Federal Credit Reform Act of 1990, or how the bill would affect procedures developed by the Office of Management and Budget, the Department of the Treasury, and our Department to assure transparent use of funds.

S. 3234, Section 4 the “Buy Indian Act” is an important component of the Department’s goal of fostering and supporting American Indian/Alaska Native entrepreneurship. The Buy-Indian Act promotes the federal procurement of goods and services from American Indian- and Alaska Native-owned businesses, thereby supporting economic development in Indian Country. The Bureau of Indian Affairs has obtained services and supplies from Indian sources using the Buy Indian Program since 1965, based on policy memoranda and acquisition. In 2013, we finalized the first rule to implement the Buy Indian Act within the Department.

Section 4 of S. 3234 concerns the Buy Indian Act. We recommend a number of technical changes to these provisions, such as adding language that allows reporting of Buy Indian Act actions in procurement via 8(a), when applicable. It would also be helpful to scale down the reports to reflect summary data only and to include only those set-aside contracts that deviate from this policy. The bill’s authors might want to consider adding a category that captures “Other Indian Enterprise,” as Indian Affairs does business with Indian Enterprises that may not meet the requirements of Buy Indian Act. Furthermore, we believe the Buy Indian Act could work as a socio-economic set-aside in SBA, whereby the goals can be established on a larger scale and applicable to agencies beyond Indian Health Service and the Department. Finally, we recommend adding language to the reporting requirement to include “action” along with “acquisition.”

Section 5 of the bill amends the Indian Trader Act of 1876 to include a provision granting the Secretary the authority to waive any applicable licensing requirements if a tribe has enacted tribal laws to govern licensing, trade, or commerce. Passed in 1876 and 1901, respectively, the Indian Trader Statutes are still vitally important but could be improved to reflect the current policies of Tribal self-determination and self-governance. Tribes have a strong interest in comprehensive tribal regulatory schemes regulating trade on tribal lands. There remains a strong Federal and Tribal interest in a comprehensive framework regarding trade occurring in Indian Country. The Department supports section 5 and offers to work with the Committee and tribes in developing legislation to modernize the Indian Trader Statutes to meet the needs of Indian country.

We understand that other agencies within the Administration may have additional comments on the bill.

Conclusion Thank you for providing the Department the opportunity to prove input into S. 3234. I am available to answer any questions the Committee may have.

S. 3261

Chairman Barrasso, Vice-Chairman Tester, and members of the Committee, my name is Cheryl Andrews-Maltais. I am the Senior Policy Advisor to the Assistant Secretary—Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to provide testimony before this Committee on S.3261, the Native American Business Incubators Act, a bill to establish a business incubators program within the Department of the Interior to promote economic development in Indian reservation communities. The Department supports S. 3261.

S. 3261 would establish a program in the Office of Indian Energy and Economic Development under which the Secretary would provide financial assistance in the form of competitive grants to eligible applicants for the establishment and operation of business incubators that serve reservation communities by providing business incubation and other business services to Native businesses and Native entrepreneurs. Eligible applicants would include Indian tribes, a tribal college or university, an institution of higher education, and a private, non-profit organization or a tribal non-profit organization that could provide services to Native businesses and Native entrepreneurs. The bill allows for joint projects and sets forth application



and selection processes and requirements. Section 5 provides for the Secretary to promulgate regulations to implement the program. Section 6 would facilitate the establishment of relationships between eligible applicants and educational institutions serving Native American communities. The Secretary would also coordinate with the Secretaries of Agriculture, Commerce Treasury and the Administrator of the Small Business Administration.

The Department strongly supports this bill's purpose, which is to impart critical business knowledge and provide technical assistance to entrepreneurs and start-up enterprises in American Indian and Alaska Native (AI/AN) communities. Should S. 3261 be enacted, the Department would evaluate the incubator grant proposals, disburse grant funding, and provide the on-site audits and monitoring of incubators described in the bill.

We note that section 4 of S. 3261 contains very detailed and prescriptive requirements related to establishment of the program, the application and selection process, and the evaluation process. We would like to work with the Committee to simplify these requirements to ensure that the program can be flexibly implemented. The Department is committed to working with the Committee to improve S. 3261.

Currently, Indian Affairs' Office of Energy and Economic Development prepares and publishes online technical assistance primers for use by Native entrepreneurs on topics such as "Choosing a Tribal Business Structure," "Making an Effective Business Presentation," "Financing a Tribal or Native Owned Business," and "Procurement Opportunities for Native Americans," among others. S. 3261 strengthens this work by facilitating on the ground technical assistance to Native entrepreneurs.

There are structural barriers to economic development that are unique to Indian Country which both prevent interested entrepreneurs from coming forward and existing ones from being successful. First, Native entrepreneurs lack access to capital. Eighty-six percent of tribal lands do not have a bank and 15 percent of AI/AN live 100 miles or more from a bank. Of financial institutions on or near AI/AN communities, only 33 percent offer start-up loans, 29 percent offer small business loans, and just 26 percent offer micro business loans.<sup>1</sup> Too many Native American communities are in poverty because of the unavailability of hands-on technical training centers for Native American business men and women to build and sustain businesses. Second, small businesses are not yet creating enough employment opportunities in Native communities.<sup>2</sup> Right now, only 13 percent of AI/AN entrepreneurs have entrepreneur parents, compared to 75 percent in the general population.<sup>3</sup> The incubators envisioned in S. 3261 would address the dearth of Native entrepreneurs and small businesses by providing critical know-how to aspiring entrepreneurs.

#### **Conclusion**

Thank you for the Department the opportunity to provide testimony on S. 3261. The Department supports S. 3261. I am available to answer any questions the Committee may have.

The CHAIRMAN. Thank you very much for your testimony.  
Now, Chairman Godwin.

#### **STATEMENT OF HON. HARVEY GODWIN, JR., CHAIRMAN, LUMBEE TRIBE OF NORTH CAROLINA**

Mr. GODWIN. Good afternoon, Chairman Barrasso, Vice Chairman Tester and members of the Committee on Indian Affairs. My name is Harvey Godwin, Jr., and I proudly serve as Chairman of the Lumbee Tribe of North Carolina.

It is my honor and privilege to address you this afternoon regarding Senate Bill 2285, an act to provide for full recognition to the Lumbee Tribe. I would like to give a special thank you to Senator Richard Burr for sponsoring this legislation. We greatly appreciate his efforts and this opportunity.

<sup>1</sup>Drew Tulchin and Jessica Shortall, "Small Business Incubation and Its Prospects in Indian Country," Social Enterprise Associates, December 2008, p. 1.

<sup>2</sup>According to the U.S. Small Business Administration, small businesses account for two-thirds of new jobs. See, Brookings Policy Brief Series #175, "The Future of Small Business Entrepreneurship: Jobs Generator for the U.S. Economy," May 10, 2012.

<sup>3</sup>Ibid., Tulchin and Shortall, p. 2.

The Lumbee have sought full federal recognition for 128 years. As I come before you today, I can't help but think of my great-grandfather, Quinny Godwin, one of the original petitioners for Lumbee Federal Recognition in 1888. Could those petitioners have conceived their great-grandchildren would still be involved in this same pursuit of justice?

As part of our pursuit of recognition, we have endured an array of research, pseudo-scientific studies and even congressional legislation, that while recognizing the existence of our Indian community has ultimately resulted in the political and legal marginalization of our people. With an ever-diminishing regional economy, the Lumbee people currently suffer high levels of unemployment, resulting in low socioeconomic status and significant health-related issues.

Since 1990, over 12,000 jobs have been lost within our territory. Robeson County, the home of our tribal government, has the highest county-level poverty rate in the State, and is rated one of the top ten poorest counties in the Nation, with one in three residents living in abject poverty. Approximately 34 percent of children in Robeson County live in food-insecure homes, placing our county 10 percent higher than the North Carolina average. American Indian children in Robeson County experience food insecurity at almost double the rate of Robeson County as a whole.

Despite all of our setbacks, our leaders continue to advocate for self-determination amongst our people, through the creation of Indian schools, churches and civic organizations. We work to establish ourselves as contributing members of our local and regional communities. We regularly engage with other Native nations through institutions such as the National Congress of American Indians.

In 1990, we adopted our first formal constitution. We are committed to good governance, for our people, by our people. We recently instituted a number of critical reforms to ensure greater transparency and efficiency for the benefit of our people. My election was a mandate from our citizens to re-establish core Lumbee values. Number one, belief in God, cultural preservation and emphasis on education and protecting our connection to the land.

Our homeland is fortunate to have proximity to major industry to interstate trade routes, viable infrastructure and educational venues, all of which are primary ingredients for sustainable economic development. Federal recognition would help us to leverage these existing assets. For instance, we have a recognized natural resource in the Lumbee River, and it holds tremendous opportunity for recreational business development and cultural tourism.

The provision of health care to tribal members would not only be a boost to the well-being of our people, it would also reduce our dependence on Medicaid and create more health care jobs in the area as access to health care improves. Recognition would help us build on existing momentum, as we recently received tribal a tribal 8(A) certification administered by the Small Business Administration.

Although we participate in some Federal programs, such as the Workforce Innovation and Opportunity Act, access to the full range of programs as a federally-recognized tribe would allow us to grow

our efforts, promoting workforce development, education and entrepreneurship.

In conclusion, the Lumbee people are seeking a new type of partnership with the Federal Government. We will use full Federal recognition to create an atmosphere for economic development in rural southeastern North Carolina. Your support of this bill is a strategic investment in the Lumbee people and our neighbors. It will become an example of how bringing justice also empowered our tribe to develop a sovereign, self-determined, broad-based economy that will improve our quality of life and that of the region in which we reside.

On behalf of the Lumbee Tribe, I thank you for this opportunity. I will entertain any questions that you may have.

[The prepared statement of Mr. Godwin follows:]

PREPARED STATEMENT OF HON. HARVEY GODWIN, JR., CHAIRMAN, LUMBEE TRIBE OF NORTH CAROLINA

Good Afternoon Chairman Barrasso, Vice Chairman Tester, and members of the Committee on Indian Affairs. My name is Harvey Godwin, Jr. and I proudly serve as Chairman of the Lumbee Tribe of North Carolina. It is my honor and privilege to address you this afternoon regarding Senate Bill 2285, a Bill to provide for the recognition of the Lumbee Tribe of North Carolina. I would like to give a special thank you to Sen. Richard Burr for sponsoring this legislation. He has proven to be a champion of the Lumbee people, and we greatly appreciate his efforts to bring us here today.

The Lumbee Tribe of North Carolina represents approximately 35,000 enrolled members. Our tribal territory has traditionally consisted of Robeson, Scotland, Hoke, and Cumberland counties. North Carolina recognized the Lumbee's status as an Indian tribe in 1885. The Lumbee began their fight for federal recognition in 1888 by petitioning the Federal Government for educational aid to support the Croatan Indian Normal School.

After successfully establishing what is now the University of North Carolina at Pembroke, historically the Nation's first American Indian university institution, tribal leaders then sought assistance, resources, and tools from the government so that they might, through hard work and self-determination, build a better and more prosperous life for their members.

The Lumbee have respectfully and patiently sought federal recognition for 128 years. During this pursuit, we have endured an array of research, pseudoscientific studies, and even congressional legislation that has ultimately resulted in the marginalization of our people. As a result of this and an ever-diminishing regional economy, the Lumbee people currently endure high levels of unemployment resulting in low socio-economic status, low educational attainment, and significant health-related issues. Since 1990, over 12,000 jobs were lost within the tribal territory. Manufacturing has all but evaporated. Farming, once the life-blood of our people, is not at all what it used to be. Robeson County, the seat of our tribal government, has the highest county-level poverty rate in the state and is one of the top ten poorest counties in the nation, with 1 in 3 residents living in abject poverty.<sup>1</sup> Lumbee Indians make up 39.9 percent of the population of Robeson County.<sup>2</sup> Approximately 34 percent of children in Robeson County live in food insecure homes, without even the most basic needs, placing our county 10 percent higher than the North Carolina state average. American Indian children in Robeson County experience food insecurity at almost double the county rate.

Without the benefits afforded to fully recognized tribes, our efforts have focused on developing a strong tradition of self-governance to try to combat the socio-economic afflictions we face. We developed a tribal government committed to the Rule of Law and governed by a Constitution crafted for our people by our people. There are three branches of government: the Legislative, a 21 member tribal council, comprised of representatives from 21 districts; the Executive: a Chairman elected by the membership; and the Judiciary to hear disputes arising out of our tribal law.

<sup>1</sup><http://pulse.ncpolicywatch.org/2014/01/11/north-carolinas-counties-remain-in-povertys-tight-grip/>

<sup>2</sup><http://www.census.gov/quickfacts/table/RHI125215/37155>

Our formalized government is young and like any other government there have been bumps and growing pains as we have found our way. Recently, however, there have been a number of governmental reforms instituted to ensure that there is greater transparency and efficiency for the benefit of our people. My own election represented a mandate from our tribal members to take back our government and reestablish our core Lumbee values: Belief in God, preserving our unique culture, the importance of education, and our connection to the land.

The Lumbee Tribal Government today views federal recognition as an opportunity to create a solid economic foundation that will ensure a better future for the next seven Generations of our People. Federal recognition is a vehicle for empowering our communities rather than an end-all-be-all for our problems. We do not seek recognition as an entitlement fostering dependency on the Federal Government rather we seek resources to help us cross the bridge towards prosperity that we have been seeking for these many years. To us, recognition is a tool that will greatly aid our current endeavors to create sustainable economic development for the Lumbee and the poor rural areas of Southeastern North Carolina that we occupy. Through federal programs such as the WIOA, we will implement programs promoting workforce development, giving our members the skills they need to find their own success, as opposed to merely relying on support from the tribal government. The national conversation is always focused on the American Dream. The American Dream is and always has been the Lumbee Dream. Provide people the tools necessary and the opportunities and they will excel and create a better life for themselves and the seven generations that come after them.

Our home area is fortunate to have proximity to major interstate trade routes, viable infrastructure and educational venues, all of which are primary ingredients for sustainable business/industry development. It is our desire to utilize federal recognition as a tool to leverage these existing assets, guided by tribal leadership that is focused on the will of the People. We envision the Lumbee Tribe assisting tribal members in developing business ventures based on our cultural and natural resources. For instance, we have a recognized natural resource in the Lumber River that holds tremendous opportunity for recreational business development. Our own Cultural Center has significant potential for cultural and recreational tourism, and is the site of our planned Tribal Community Garden. Endeavors such these could employ not only tribal members, but others in the area that are in pursuit of opportunity, thereby enriching the entire area.

The Lumbee are known for our entrepreneurial spirit. Just this year, the Lumbee Tribe of North Carolina along with the University of North Carolina at Pembroke and the North Carolina Military Business Center hosted the first annual Lumbee Nation Economic Summit. Federal recognition will allow the Tribe to assist entrepreneurial development, help members with attaining necessary banking/lending support, and promoting the economic development partnerships created by federal recognition. Additionally, the provision of adequate healthcare for tribal members would be a boost to the health and well being of our people. Establishing an economic engine that will create more healthcare jobs for our people and reduce dependence on such things as Medicaid. We have obtained Tribal 8A Certification administered by the Small Business Administration. As a state recognized tribe, our corporations are eligible for some government contracts but until we gain full federal recognition, we cannot fully claim our seat at that table. Full federal recognition will make the Lumbee eligible for grants through the USDA and other federal governmental agencies, programs that we are ineligible to participate in now because of our status as non-federally recognized tribe. There are a number of Lumbee Indians who currently employed by the Federal Government; because they are not members of a federally recognized tribe they are ineligible for Indian Preference when applying for jobs and promotions within our government.

The Lumbee's unique legal status was created through congressional action and should be rectified by congressional action. The Lumbee Act of 56 acknowledged that the Lumbee were in fact an Indian tribe. However language was added to the Lumbee Act, denying our people federal benefits. Congress's action in 1956 placed the Lumbee in a quasi status, acknowledged as Indian tribe but denied the federal benefits that are associated with that recognition. It is important to understand that during this period of our country's history Congress's policy toward all Indian tribes was termination. History shows us that Congress's views on American Indians and Indian policy evolved. They repealed all legislation that was interpreted as termination from this era EXCEPT for the Lumbee Act. In fact, there is one other tribe who has suffered from the same quasi status as the Lumbee, The Tiwa of Texas. Congress passed legislation in 1968 that recognized the Tiwa Indians of Ysleta, Texas and included the same language that denied benefits, that was a part of the Lumbee Act. Congress rectified this in 1987, passing legislation that restored the

federal trust relationship with the Tiwa and provided federal Indian services for the tribe.

The Department of the Interior has created a process for acknowledging American Indian Tribes. This process is not an option for the Lumbee Tribe of North Carolina. In 1989, the Department of the Interior released an opinion from the Associate Solicitor regarding the 1956 Lumbee Act. The opinion advised the Department of the Interior that the Lumbee were ineligible to complete the BIA process because of the language of the Lumbee Act.

In recent hearings the Department of the Interior has gone on record a number of times supporting Congressional Legislation to restore full federal recognition to the Lumbee Tribe. During a 2009 hearing before the House Natural Resource Committee, Assistant Secretary for Policy and Economic Development for Indian Affairs for the Department of Interior George Skibine advocated for congressional action for the Lumbee. Assistant Secretary Skibine said “. . .there are rare circumstances when Congress should intervene and recognize a tribal group, and the case of the Lumbee Indians is one such rare case.” In 2013, Assistant Secretary for Indian Affairs, Kevin Washburn testified before this very committee saying “Given that it is Congress that has specifically addressed the Lumbee Indians on a previous occasion and has barred Interior from undertaking this review, only Congress can take up the matter of federal recognition for the Lumbee Indians”. Congress placed the Lumbee Tribe in legal limbo with the Lumbee Act of 56 and only Congress can remove this status and restore the Lumbee to full federal recognition.

I want to reiterate that the Lumbee people are seeking a new type of partnership with the Federal Government. We will use federal recognition to help create an atmosphere for economic development in rural North Carolina, thereby bolstering the American Middle Class. Your support of this bill is a strategic investment in the Lumbee people and the country as a whole. It will become a new reference point for how to allow American Indians to truly develop sovereign, self-determined, broad-based economies that will improve the lives of all.

I would like to end my testimony by emphasizing the importance of the circle in indigenous cultures. The circle is important in all Native cultures, and especially so in the Lumbee Tribe. The circle shows our connection with each other, with our past, our present, and our future, representing the 7 Generations. I cannot help but feel the significance of that connection today as I come before you asking for your support in empowering my people, in much the same way as my Great Grand Father Quinny Godwin did as one of the original petitioners of Lumbee federal recognition in 1888. I am blessed that things have come full circle today and like my great-grandfather before me, I am asking this Committee to do the same. My greatest hope is that my great-grandchildren will not have to fight this battle three generations from now.

On behalf of the Lumbee Tribe, thank you for the opportunity to address this Committee.

The CHAIRMAN. Thank you very much, Chairman Godwin. I appreciate your being here. I appreciate you, Senator Burr, staying for the entirety of the testimony. Thank you.

Vice Chairman McDarment, please proceed.

**STATEMENT OF HON. KENNETH MCDARMENT, VICE  
CHAIRMAN, TULE RIVER INDIAN TRIBE**

Mr. MCDARMENT. Good afternoon, Chairman John Barrasso, Vice Chairman Jon Tester, fellow members of the Committee. My name is Kenneth McDarment. I serve as Vice Chairman of the Tule River Tribe. I am a graduate of Porterville High School, in Porterville, California, class of 1992. After graduating, I worked in the oil fields and then on to trade school. Currently, I am serving my second term on the Tule Tribal Council. I am married, with four children. I humbly serve my community as a tribal leader, father, husband, rancher.

I come before you today to respectfully request support of the United States Government in securing land for the Tule River Reservation. I send greetings and best wishes from all the members of the Tribal Council.

The Tule River Tribe of California considers land within our aboriginal territory very important. In H.R. 4685, we are taking about 34 acres. Although this may not seem like a lot of land, every acre of land is important to our tribe. We have lived in California for thousands of years and the land and our language have been an integral part of our culture. It is important for us to be able to control this particular parcel of land, because it is situated at the main entrance to our reservation.

To me, the Tule River Indian Reservation means a lot to me. I was born and raised there. The Tule River Indian Reservation consists of a little over 56,000 acres. The land runs from the lower foothills of the reservation to the redwoods at the 6,500-foot elevation.

This land that we have is used by our tribal members for hundreds of years, thousands of years, it is used for ranching, it is used for hunting, fishing, camping, recreational purposes for our community and our community members. Just like every other tribe in the United States, our tribe has problems going on with it, too. Since our current reservation was created along with the other reservations within California or the San Joaquin Valley, from the time we were herded to our first reservation on to our current location where we are now, there have been problems. Back in 1922, we lost our water rights. We have been fighting ever since 1922 to get it back. We are still unsuccessful with that.

Along with the water problems that we have currently, the other morning when I left, my wife called me and said, hey, we are out of water. This is an ongoing thing for us, running out of water. The chairman is out of water, our community is out of water. And with the water again, we are also fighting the illegal crops within our mountains that bring in illegal chemicals from Mexico that go into our watershed.

Housing is a problem. We have 28 departments that the tribe funds which supports our community and also provides jobs for the community. We have a little over 1,800 members.

This piece of land that is at the very entrance to our reservation, to get to our reservation, you have to cross this land. It is a little rough area, through a little valley right along the river. You can't do much with the land. So it does mean a lot to us. It does mean a lot to my people.

Thank you.

[The prepared statement of Mr. McDarment follows:]

PREPARED STATEMENT OF HON. KENNETH MCDARMENT, VICE CHAIRMAN, TULE RIVER INDIAN TRIBE

The Tule River Tribe of California considers land within our aboriginal territory very important. In H.R. 4685, we are talking about 34 acres. Although this may not seem like a lot of land, every acre of land is important to our Tribe. We have lived in California for thousands of years and the land and our language have been an intricate part of our culture. It is important for us to be able to control this particular parcel of land because it is situated at the main entrance to our Reservation.

**Introduction**

Good afternoon to Chairman John Barrasso, ranking member Jon Tester, and fellow members of the Committee. My name is Kenneth McDarment, and I serve as the Vice-Chairman of the Tule River Tribe. I am a graduate of Porterville High School, in Porterville California, Class of 1992. After graduation, I worked in the oil fields and then attended trade school. Currently I am serving my second term

on the Tule River Tribal Council. and I am married with four children. In these capacities, I humbly serve my community as a tribal leader, father and husband. I come before you today to respectfully request the support of the United States government in securing land for the Tule River Reservation.

I send greetings and best wishes from all the members of the Tribal Council. We are very grateful for the expeditious scheduling of this hearing on H.R. 4685, the Tule River Indian Reservation Land Trust, Health, and Economic Development Act.

#### **Tule River Indian Tribal Land History**

The Tule River Reservation is the homeland of the Tule River Tribe. We are descendants of the Yokuts Indians, a large group of linguistically-related people who occupied the vast San Joaquin Valley, and most of the adjoining foothills that surround the Valley, in California for thousands of years prior to contact with Euroamerican settlers. Historically there were over fifty (50) independent clans of Yokuts, each with its own territory and dialect of the Yokuts language. These clans were friendly to one another and there was much visiting between each. We were peaceful hunters and gatherers.

Mexico ceded California to the United States in 1848 and also around that time, gold was discovered near Sacramento. As a result of this a huge influx of settlers began to move into our aboriginal territory. California became a State in 1950 and as new people began to make claims to what had always been our land, there were many hostilities between the new settlers and the tribes. During this time, the official Indian policy of the United States was removal of east of the Mississippi, into the unsettled western lands. But with the California Indians, there was no more western lands to move to.

Because of the continuing tensions between the new settlers and Native tribes, three federal Indian commissioners visited California and negotiated a series of eighteen (18) treaties with the California Indians. The Tule River Tribe's ancestors were signatories to a treaty of peace and friendship, formed and concluded at Camp Burton, on Paint Creek, in the State of California, on the third day of June, 1851.

By this treaty, we relinquished all the claims to the territories that we had and in return were promised two (2) reservations that were to be forever held for our sole use and occupancy. At the time, what was unknown to our ancestors was that in June of 1852, the United States Senate, meeting in secret session, rejected the treaties and ordered them filed under an injunction of secrecy. The treaties were later discovered by a clerk 1905. In 1871, Congress ended the treaty-making era with Indians. The 18 treaties signed with the Indians of California were never ratified because of an overwhelming expression of anti-Indian sentiment by the California delegation. Because of this, the reservations promised to our people were never created. Instead, in March 1853 Congress established a Superintendent of Indian Affairs in California, to relocate Indians to reservations, and also provided for the establishment of five (5) reservations in California. The site of the first reservation was at the southern end of the San Joaquin Valley, near the Tejon Pass area. Our ancestors were rounded up and forced to move to the Tejon Reservation.

Because of crop failures and the loss of the land to an Indian agent, the Tejon Reservation was eventually closed. The Tule River Indian Reservation was established in 1856. Initially known as the Tule River Indian Farm, it was set up and administered as part of the Tejon Reservation. During this time, the stated goal of federal Indian policy in California was to establish reservations throughout the state as permanent homelands for tribes. The reservations were also intended to provide tribes with access to traditional hunting territories and timber in the mountains, land suitable for agriculture, and plenty of water year-round for irrigation.

The Tule River Farm was located near a Koyote Yokuts village site, on approximately 2,240 acres of prime San Joaquin Valley farmland in Tulare County. The land was transected on the southwest corner by the mainstream of the Tule River. It included part of what is today the eastern portion of the City of Porterville. The location of this original Reservation was purposefully selected by the Federal Government to provide our Tribe with the arable land and water resources necessary to establish a self-sufficient homeland for its people. Upon being promised this land as our homeland—ostensibly forever—we built homes and began to actively cultivate crops.

Despite our relative prosperity in those years, two of the federal Indian agents assigned to reservations in the area nonetheless saw fit to capitalize upon the distance and ignorance of the Indian officials in Washington, D.C. Thomas Madden, a federal Indian agent assigned to the neighboring Tejon Indian Reservation, applied for and was issued a land patent under fraudulent circumstances to 1,280 acres of the Tule River Reservation land from the State of California.

Four years later under a similar arrangement a land patent for 1,160 acres of Tule River Reservation land was issued to Mr. John Benson, another Indian Agent. These two state land grants encompassed all of our Reservation lands. The Federal Government was fully aware that these lands were expressly reserved to us, but it made no effort to challenge the Madden and Benson land grants. Because the lands had been set aside for the Tribe, the State of California, had no legal basis upon which to issue the patents. The land transfers were also a violation of the federal Trade and Intercourse Act, which expressly prohibited Indian agents from having "any interest or concern in any trade with the Indians." Rather than setting aside the issuance of these patents, the Federal Government actually paid rent to Messrs. Madden and Benson for at least a dozen years to enable my ancestors to continue farming what was in actuality our land.

Gradually, over the years, hostility increased between the Indian farmers and the settlers in the area. In response to the tension, and rather than enforcing our rights to what should have been our Reservation land, in January 1873, President Grant issued an Executive Order creating a new reservation for the Tule River Tribe. It was comprised of mostly mountainous lands located about fifteen miles to the east of our original Reservation. The Tule River Indians and the Indian agent protested the removal; as the new lands would be difficult to cultivate. The Indian agent, J.B. Vosburgh, stated "The new reservation is not suited to the wants of the Indians for whose benefit it has been set apart, if the intention be, as heretofore, to teach them to become self supporting by means of agriculture, the soil of the reservation being insufficient both in quantity and quality for their need." He further requested that the government inquire into the legality of Madden and Benson land patents and, if necessary, requested the Federal Government to purchase the property from them for the benefit and use of the Indians. However, no such action was taken, and our people were forcibly removed from their homes and cultivated fields.

The removal was very hard on our people. The new Reservation, though it contained 48,000 acres, was determined by the federal agents, based on the knowledge and technology of the time, to have scarcely 100 acres of arable land. Even that land was deemed by the agents to be of poor quality, and thought to be able to support only six families—far below the needs of our people. An Indian agent reported, "Year by year our number has decreased by death and removal, until now there are only 143 Indians, embraced in 30 different families, residing on the reservation." Our situation was so dire that, in response, President Grant, in October 1873—just 9 months after the initial Executive Order—signed another Executive Order almost doubling the Reservation's size to 91,837 acres. Again, very little of these additional lands was deemed by the federal agents to be suitable for agriculture, and the few acres which were proven arable were coveted or settled by settlers, and history repeated itself. In August 1878, President Hays issued an Executive Order reducing the reservation back to the January 1873 size. For approximately 140 years we have lived on the Tule River Indian Reservation.

#### **The Modern-Day Tule River Indian Reservation**

Today, our current Reservation includes about 58,000 acres. The reservation is located in south-central California, approximately 75 miles south of Fresno and 45 miles north of Bakersfield in Tulare County. The Reservation is situated on the western slope of the Sierra Nevada Mountains, east of Porterville, and lies almost entirely within the South Fork Tule River drainage basin. The topography is generally steep, with elevations ranging from about 900 to 7500 feet above sea level. Most of the inhabited land is along the lower reach of the South Fork Tule River on the western side of the Reservation.

The injustices and inequities of the past are still present and are still affecting our people. We have been plagued with unemployment and mortality rates substantially higher, and a standard of living substantially lower, than is experienced by the surrounding non-Indian communities.

While the on-Reservation socio-economic conditions have improved over time, to this day, the Reservation residents generally continue to suffer from a relatively low standard of living.

#### **Conclusion**

In closing, I would ask that my testimony and supporting materials be made a part of the record of this hearing by unanimous consent.

I would be happy to respond to any questions which the members of the Committee might have.

The CHAIRMAN. Thank you so much for your testimony, Vice Chairman McDarment.



Chairman Watchman?

**STATEMENT OF DERRICK WATCHMAN, CHAIRMAN, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT**

Mr. WATCHMAN. Thank you, Chairman Barrasso, Vice Chairman Tester and members of the Committee. I am Derrick Watchman, and I am Chairman of the Board for the National Center for American Indian Enterprise Development. I am also a member of the Navajo Nation, so yah'eh-teh'.

I appreciate the invitation to testify on S. 3234, the Indian Economic Enhancement Act of 2016. We commend this Committee for innovative thinking and distilling all the ideas and recommendations that we put forth from the National Center and from the Committee hearings and from our reservation conferences.

The National Center has provided services to Indian tribes, Indian businesses, tribally-owned and individually-owned, for over 50 years. We appreciate partnering with this Committee to make sure that the Indian Tribal legislation is enacted, such as 3234 and 3236. We also support the Native American Business Incubation program.

I have submitted my written testimony, but I want to highlight a few of the items. Section 3 of the bill. This section would strengthen the Native American Business Development Trade Promotion and Tourism Act of 2000 in ways that we have long advocated. It would elevate and enhance the Office of Native American Business Development and Commerce by placing the Director at the Secretary level. We have been advocating for this, we think that by placing the Director at this level, it would provide more authority for policy-making, tribal consultation and commerce within and amongst the Commerce departments and entities. We also think that by doing this, it would also enhance the Indian Loan Guarantee Program, the CDFI and other capital programs.

Most important, though, this office needs to be standalone within the Secretary's office. We urge, and I ask that you, in this year's appropriation, that you set aside funds for this specific office, the Office of Native American, we think it is very important. I also recommend that Section 3(d) in the appropriation take a different approach regarding the Indian Economic Development Fund. We support the fund, but this bill also augments the Indian Loan Guarantee Program. For years, we have urged that the Indian Loan Guarantee Program be funded by approximately \$7.5 million. By augmenting this program, we think that this program will enhance and provide over \$250 million in tribal loan guarantees out there in Indian Country, and that is very much needed.

So this appropriation could be handled also by the Interior Appropriations Committee.

By contrast, the proposed funding would also take a considerable amount of time to establish. The sources and mechanisms for this fund can't be done overnight. Also, there is no incentive to create this fund. We think that by providing some incentives, like tax incentives to help fund this development fund, it would be a great enhancement.

We also think that by asking for a study by the GAO, it will help to quantify the true need of this program. What we need to do is

look at how do we increase incentives into the new markets tax program.

Finally, we commend your efforts in working with the Senate Finance Committee. We think that repealing the essential governmental function test for tribal taxes and bonds is essential. We urge, I urge this Committee to consider introducing a Senate companion bill to H.R. 4943. This bill is pending in the House and we are looking for enactment this year.

As to Section 4, amending the Buy Indian Act, the National Center has long sought for the expansion and updating of this program. At our workshops that we have at our reservation conferences, we have talked to the Bureau of Indian Affairs and they have been there to really support the Buy Indian program.

We urge that the Indian Health Service also be in the room, also be a part of the Buy Indian program. We think it is important. So we urge that the Indian Health Service also look at adopting rules similar to what the BIA has.

We think the departments should also set up annual percentage goals when they do utilize the Indian Procurement Act, when they buy goods and services from Native-owned businesses.

Finally, on Section 6, reauthorizing and amending the ANA programs, I am glad to see that the recommendations that I provided last year to this Committee when you had your testimony that access to capital has been translated. It also prioritizes ANA so that they can get involved in social and economic development grants for groups like Native CDFIs and other important projects like COACH, tribal programs, tribal master plans and identifying the unique tribal business structures. We think that it is good that ANA is involved and we urge the ANA to prioritize and provide technical assistance for grantees.

I want to say thank you to this Committee. I also want to say thank you, Chairman, for acknowledging Mr. Davis. He decided to move on, so from the National Center, we wish him well. He has done a great job for the National Center. So we stand for questions. Thank you, Mr. Chairman.

[The prepared statement of Mr. Watchman follows:]

PREPARED STATEMENT OF DERRICK WATCHMAN, CHAIRMAN, NATIONAL CENTER FOR AMERICAN INDIAN ENTERPRISE DEVELOPMENT

Chairman Barrasso, Vice Chairman Tester, and members of this distinguished Committee, I am Derrick Watchman, Chairman of the Board of Directors of the National Center for American Indian Enterprise Development, and a citizen of Navajo Nation. Thank you for inviting me to testify at this important hearing to present the views of the National Center on S. 3234, the "Indian Community Economic Enhancement Act of 2016." As stated in our letter of support for S. 3234, we commend you and the staff for the care and innovative thought that went into distilling years of testimony and recommendations presented by the National Center, other national tribal and native organizations and leaders of Indian communities across the country, and then producing this legislative proposal to spur business and economic development in Indian Country. The measure responds favorably to many of the National Center's recommendations presented to this Committee in hearings and listening sessions over the years to enhance programs and better target them to address Indian Country's unique sovereign and business characteristics, capabilities, and access to capital challenges.

As you know, the National Center has successfully provided business and procurement technical assistance for nearly 50 years to Indian tribes, Alaska Native regional and village corporations, Native Hawaiian Organizations, and enterprises owned by these entities or individual members of these communities. For this broad

constituency, the National Center also hosted Reservation Economic Summits (RES) for 30 years and has advocated for policies to advance Indian business and economic development interests. We have appreciated working in partnership with the Committee and national tribal and other native organizations to support important initiatives of the Committee on energy, business and economic development especially. We applaud the Committee's bipartisan, effective leadership in spearheading toward passage of S. 209, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2015, and for developing business and economic development legislation in the form of Chairman Barrasso's bill, S. 3234, co-sponsored with Senator McCain, and Vice Chairman Tester's bill, S. 3261. These bills contain innovative responses to the drumbeat of recommendations that have been presented in oversight hearings and some Committee listening sessions hosted at our RES conferences. As background for my testimony today, I have referred to the National Center's views presented at: the Oversight Hearing on "Economic Development: Encouraging Investment in Indian Country" on June 25, 2014; the Committee's "Listening Session on Economic Development" at RES Wisconsin on October 9, 2014; the Oversight Hearing on "Indian Country Priorities for the 114th Congress" on January 28, 2015; the Committee's Listening Session on "Buy Indian Act and Community Development Financial Institutions" on June 16, 2015; the Oversight Hearing on "Access to Capital in Indian Country" on June 17, 2015 (when I testified in my personal capacity as a former banker, and the hearing was streamed into RES DC for hundreds of our conference participants to see); and the Committee's Listening Session on the President's FY 2017 Budget Requests on February 17, 2016.

#### **Comments on S. 3234**

In previous hearings and listening sessions, the National Center has repeatedly called for actions that S. 3234 proposes to advance, including elevating and enhancing the Office of Native American Business Development reporting directly to the Secretary of Commerce, augmenting support for the Indian Loan Guarantee Program, and for the Community Development Financial Institutions (CDFI) Fund bond guarantee program to help more Native CDFIs. The bill also addresses Buy Indian Act implementation issues we have raised, and moves toward achieving parity in the tax treatment of tribal governments' bond financings. Below are specific comments.

#### *Section 2. Findings*

Overall, we agree with the thrust of the findings. Some important points, raised at numerous hearings, should be added. Paragraph (1)(A) lists several barriers that must be overcome, such as lack of infrastructure or capacity and lack of sufficient collateral. To that list, "lack of sufficient capital" should be added. Paragraph (5)(B) noted that access to private capital for projects in Indian communities may not be "realized" but the word "available" would be more appropriate. In paragraph (7), we recommend revising it to read: "(7) there are a number of federal loan guarantee programs available to facilitate financing of business, energy, economic, housing, and community development projects in Indian communities, but those programs may be oversubscribed or not yet fully used; and". As the National Center has testified repeatedly, the Indian Loan Guarantee Program has been woefully underfunded, resulting in backlogs of financings that could not be timely completed because the credit subsidy for the guarantees was exhausted well before the end of the last two fiscal years. Our views on the FY 2017 Budget Requests noted the omission of any funding request for the Indian Energy Loan Guarantee Program. We were delighted that Senator Franken was successful in adding credit subsidy funding in the Energy Appropriations bill for FY 2017 to implement the Indian Energy Loan Guarantee Program if that measure becomes law. The Department of Agriculture's loan guarantee program also lost ground in the FY 2017 requests.

#### *Section 3. Native American Business Development, Trade Promotion, and Tourism Act of 2000*

As mentioned earlier, the National Center has long advocated for elevating and enhancing the Office of Native American Business Development headed by a Director reporting directly to the Secretary of Commerce, as contemplated in the enactment of the Native American Business Development, Trade Promotion, and Tourism Act of 2000 (Public Law 106-464, referenced herein as the "2000 Act"). We have made this request every time the National Center has testified before this Committee over the last 10 years at least.

The Department of Commerce operates so many agencies and programs that could benefit Indian communities, and link them with opportunities domestically and globally. It is essential that Commerce embrace that challenge by supporting the Office of Native American Business Development! Yet, from 2000 to 2005, Commerce

disregarded the directives of the Act, and those of another passed in 2000, the Indian Tribal Regulatory Reform and Business Development Act. In mid-2005, Commerce's Minority Business Development Agency (MBDA) paid some attention, as noted in our June 25, 2014 testimony, with the MBDA Director assuming the title of Director of the Office of Native American Business Development and allocating about \$200,000 for an experienced Native American to be hired, develop a business plan, and begin fulfilling the requirements of the two statutes enacted in 2000. Three Native Americans, successively, held that position, with the latter two also designated as the Senior Advisor to the Secretary on Native American Affairs. The last "Senior Advisor" was housed in the Inter-Governmental Affairs Office and had to split his time between Indian Country initiatives and many other, unrelated responsibilities. To be effective, the Director's sole focus should be on the Office of Native American Business Development, with its own budget and some staff to assist with full implementation of the duties prescribed in the Act and the amendments to it proposed in S. 3234.

Mr. Chairman, the National Center commends you and your staff for responding to our recommendations. We strongly support Section 3 provisions that define the "Director" of this Office, elevate the Office by placing the Director in the Office of the Secretary of Commerce, and enhance the Director's authority to coordinate the activities of Commerce and other key departments, to be actively involved in policy, and to ensure timely assistance and consultation with Indian tribes regarding the policies, programs, assistance and activities, as required by the Act. This legislation, coupled with needed action in Commerce Appropriations bills to make funds available for the Office within the Departmental Management budget, have long had the support of at least a dozen national and regional native organizations.

The National Center also supports the provisions of Section 3(d) that would add a new section 8 to the Act to require the Director to coordinate with the Departments of the Interior and the Treasury (acting through the Administrator of the CDFI Fund) on the development of certain "initiatives" that encourage, promote, and provide education regarding investments in Indian communities through (1) the Indian Loan Guarantee Program, (2) the CDFI Fund and Native CDFIs, and (3) other capital development programs. Additional important "initiatives" would include examining and developing alternatives that would qualify as collateral for financing in Indian communities, and identifying regulatory or legal barriers to increasing investment, including qualifying or approving collateral structures, in Indian communities.

There are two provisions of Section 3(d) that the National Center would like to see revised, however. First, in the new section 8(a)(1)(C) proposed to be added to the Act, we suggest some expansion of the directive to provide "entrepreneur and other training relating to economic development through tribally controlled colleges and universities"—no doubt valuable curricula for these educational institutions. The National Center knows the importance of this training for Indian Country, and therefore hosts our national and regional RES conferences and our Native Edge webportal to provide a vast array of entrepreneurial and other training relating to economic development. Other Indian organizations also provide such training. For many years, Commerce's MBDA supported some of this training, as part of entrepreneurial and business assistance, under cooperative assistance agreements for operating Native American Business Enterprise Centers (NABECs). The National Center and other Indian organizations operated NABECs across the country, until MBDA withdrew that support in favor of funding "MBDA Business Centers" only. The point here is that, if S. 3234 becomes law and new initiatives involve funding of entrepreneurial and other training relating to economic development, other Indian organizations—in addition to tribally controlled colleges and universities—should be eligible for such funding opportunities.

Second, Section 3(d) proposes to add a new section 9 to the Act that would establish an "Indian Economic Development Fund" in the Treasury of the United States. The intended purpose of this Fund would be to augment the existing credit subsidies of the Indian Loan Guarantee Program (25 U.S.C. 1481) and to establish a credit subsidy solely for any eligible CDFI that applies for financing under the CDFI Fund bond guarantee program and whose investment area includes an Indian reservation or whose targeted population includes an Indian tribe. The National Center has long urged Congress to augment the credit subsidy supporting the Indian Loan Guarantee Program—to which Congress can and should respond by increasing the amount it appropriates for that line item in the annual Interior Appropriations Act. We have testified repeatedly that adding just \$7.5 million more for the program would double the value of the private loan financings that could be made for business and economic development projects in Indian Country! Such a relatively small increase could be deployed immediately to leverage about \$250 million in private

sector loans. In 2006, Congress recognized the importance of the program by increasing the aggregate value of guaranteed loans from \$500 million to \$1.5 billion. Funding the Indian Loan Guarantee Program is a federal obligation, and Congress can and must act now to increase this line item in the FY 2017 Interior Appropriations Act.

While the National Center supports the proposed purpose of the Fund, we are concerned about the time it would take to establish the Fund, the mechanism proposed for deposits to the Fund, and the lack of any identified incentives that would attract such deposits to generate at least \$7.5 million to augment the Indian Loan Guarantee credit subsidy, and amounts specified for the CDFI Fund bond guarantee program. A more helpful interim step would be consideration of an Indian Economic Development Feasibility Study (perhaps by the Government Accountability Office) to quantify and assess the past use and allocation, and feasibility of expanding, incentive programs to facilitate and increase business, economic, energy, housing, community and infrastructure development in Indian communities—specifically the following: the New Market Tax Credits; the Low Income Housing Tax Credits; the Indian Employment Tax Credits and Accelerated Depreciation provisions; the Investment Tax Credit; and Renewable Energy Tax Credit and other energy-related tax credits. The study also could assess the feasibility of providing a tax credit, with a value equivalent to the New Market Tax Credit, to entities investing in an “Indian Economic Development Fund” for the purposes proposed in S. 3234.

Our final comment on Section 3(d) relates to its provision defining “Tribal Government Functions” such that “the essential governmental functions of an Indian tribe shall be considered to include any function that may be performed or financed by a State or unit of local government with general taxing authority.” The National Center supports the underlying purpose of this provision as generally consistent with our repeated testimony advocating tax legislation to eliminate the restrictive “essential governmental function” test for tribal tax exempt bond issuances, and to provide fairer tax treatment of tribal governments in parity with state and local governments. Now pending in the House of Representatives is bipartisan, non-controversial legislation, H.R. 4943, the Tribal Tax and Investment Reform Act of 2016, that would amend the necessary provisions of the Internal Revenue Code to accomplish these and other objectives. We join the Indian tribes, national tribal and other organizations in urging the members of this Committee to consider introducing a Senate companion bill, and supporting enactment of this important tax legislation before the 114th Congress adjourns.

#### *Section 4. Buy Indian Act*

As noted earlier, the National Center has advocated for strengthening and expanding the Buy Indian Act’s reach. Our June 25, 2014 testimony recounted how National Center leaders called on this Committee back in 1987 and 1990 hearings to broaden use of Buy Indian Act authority beyond the BIA and IHS to other federal agencies that expend funds for the benefit of American Indians and Alaska Natives. Together with other Indian organizations, we urged the Department of Interior to promulgate modern-day regulations (after a 100-year delay). We submitted public comments urging the Department to establish a 100 percent goal for utilization, monitor compliance, and report annually on the extent of utilization and amount and value of contracts awarded to Indian-owned economic enterprises. Subsequently, the National Center has hosted many RES conferences with workshops on Buy Indian Act implementation, inviting both BIA and IHS, but only BIA speakers have attended. We hope that Section 4 will spur IHS officials to dedicate far more attention to their Buy Indian Act obligations by adopting updated regulations along the lines of BIA’s new rules, using the authority in far more procurements, and showing up when they are asked to speak about the status of their implementation efforts.

We are gratified that Section 4(b) includes provisions to require greater use, with the presumption that Buy Indian Act authority will be used for procurements, unless the Secretary of the Interior and or the Secretary of Health and Human Services determines such use to be impractical and unreasonable. We also appreciate the provisions in Section 4(c) to improve implementation by requiring the Secretaries to conduct outreach to Indian industrial entities, provide training, require BIA and IHS regional offices to aggregate data regarding compliance with the new provisions, require procurement management reviews that include assessment of implementation, and consult with Indian tribes and other stakeholders regarding methods to facilitate compliance with the Act and other small business or procurement goals. And, we are delighted that Section 4(d) requires, as we had recommended, that the Secretaries submit reports to this Committee and its House counterpart containing information on the names of agencies making Buy Indian procurements,

the types of purchases from and contracts with Indian economic enterprises, description of the percentage increase or decrease in total dollar value and number of purchases and awards made within each agency region (as compared to the preceding fiscal year) from Indian and non-Indian economic enterprises, and any administrative procedural, legal or other barriers to achieving the purposes of Section 4, together with recommendations for legislative or administrative actions to address those barriers. To this list should be added the requirement to determine an annual departmental goal for the percentage of awards that will be made in the coming year using Buy Indian Act authority.

*Section 5. Indian Trader Act*

As the National Center has not been involved with any efforts to update, revise or otherwise deal with this 1876 Act, we respectfully defer to others who may wish to offer comments on this section based on their substantive knowledge of the subject matter.

*Section 6. Native American Programs Act of 1974*

When I testified at this Committee's oversight hearing on "Access to Capital in Indian Country" on June 17, 2015, I was asked to discuss the elements that I believe are essential for facilitating access to capital in Indian Country and what some of the roles are that the Federal Government, tribal governments, and bankers can play to improve access to capital. I mentioned, for example, that tribal access to capital can be facilitated by tribal uniform commercial codes or similar ordinances, good tribal court systems with commercial dispute resolution mechanisms, planning (including business plans, feasibility studies, master plans), among other financial elements (sophisticated financial management, etc.). I also spoke about traditional banking institutions, native owned banks, and the increasing numbers of Native CDFIs operating across Indian Country. The National Center frequently has voiced support for increased funding for the Native CDFIs, and for the Administration for Native Americans (ANA) that administers the grant program amended by Section 6. The section proposes to reauthorize ANA's grant programs through FY 2021, make Native CDFIs eligible to apply for ANA's economic development program grants, prioritize economic development grants for certain types of applications, and prioritize any technical assistance for grantees and applications submitted under this session. Given the identified need, it makes sense to encourage the ANA to support grants to develop (1) tribal codes and court systems relating to economic development, (2) nonprofit subsidiaries and other tribal business structures, and (3) tribal master plans for community and economic development and infrastructure. However, Section 6 would reauthorize ANA's funding only at current levels, and many Indian tribes, other tribal entities and Indian organizations should be able to compete on a level playing field for grants in these priority areas. If funding were increased for ANA's grant programs, there would be more leeway to prioritize ANA's funding and technical assistance for Native CDFIs, or for development or maintenance of CDFIs, including training and administrative expenses, beyond that which already may be available from the CDFI Fund for such Native CDFI development-related activities.

**Comments on S. 3261**

The National Center also supports enactment of S. 3261, the "Native American Business Incubators Program Act" that responds favorably to requests of the National Center and other native organizations over the years for Congress to create a business development program tailored specifically to Indian Country's unique sovereign and business characteristics and capabilities, and focused on incubation and access to capital challenges. During the 1990s, the Small Business Administration (SBA) provided about \$5 million per year to support Tribal Business Centers, but that funding ended in 2001. Subsequent efforts were persistent but unsuccessful in moving legislation to authorize creation of a Native American small business development center program within SBA. Then, in 2012, as I noted earlier, MBDA decided to end the cooperative assistance agreements it had funded NABECs' operations. So, since 2012, there has been no federal program support focused on Native American entrepreneurial and business assistance, incubation and mentoring of tribes and Native Americans striving to start and grow their business enterprises. S. 3261 presents an innovative response to this urgent need.

**Conclusion**

Again, I thank the Committee and staff for working collaboratively with the National Center to encourage Indian Country stakeholders to think about, articulate and offer up policy recommendations and then develop the proposals discussed at this hearing to enhance Indian community economic development. Since our organi-

zation's launch in 1969, National Center leaders have worked to ensure that Indian-owned businesses, whether tribal member startups or major enterprises, have the opportunity to acquire entrepreneurial skills, receive business assistance and training, meet potential business partners, and receive procurement technical assistance to become capable of competing in private and public marketplaces, both nationally and internationally. The National Center supports S. 3234, with our suggested amendments, as important to galvanize key departments and agencies to work much more proactively with Indian communities and their economic enterprises. We look forward to working with the Committee, its staff and others to perfect the language and move toward enactment to advance business and economic development in Indian Country.

The CHAIRMAN. Thank you very much for your testimony.

We will start with Senator Hoeven.

Senator HOEVEN. Thank you, Mr. Chairman. I would like to thank all the witnesses for being here today and direct my first question to Cheryl Andrews-Maltais.

In your testimony, you discussed the Department's support for S. 3261, which creates grants to establish and maintain business incubators for Native American entrepreneurs. In my State of North Dakota, we have the North Dakota Indian Business Alliance, which is a joint venture between our Department of Commerce, the State's Department of Commerce, and the Indian Affairs Commission, which is also an agency of North Dakota. The idea is to strengthen Native entrepreneurs by building working relationships to enhance their developing.

My question is, in your opinion, is there flexibility in S. 3261 to partner with State or regional agencies or groups and try to leverage their help? Is that in the legislation? Or is there something else we should do to try to make sure that that is possible in order to create that leverage?

Ms. ANDREWS-MALTAIS. Well, I do have one of our subject matter experts with us, Jack Stevens. But what we are asking for as part of our testimony is to work with the Committee to improve the flexibility for implementation, so that it works, it provides more flexibility than what the bill currently has. If you'd like any more greater detail with that, I can have Jack come up and answer that question with more specificity, if that would help.

Senator HOEVEN. That would be great, if you have something to add.

The CHAIRMAN. Could you please start by identifying yourself for the record?

Mr. STEVENS. Yes, sir, Mr. Chairman and members. I am Jack Stevens, the Acting Director of the Office of Indian Energy and Economic Development, Department of the Interior.

The question, sir, I believe in the bill that there is broad eligibility for groups to apply for these grants. Some of the private entities that you mentioned that are affiliated with tribes could actually apply to become incubators themselves.

Senator HOEVEN. Good. We are always working to try to come up with resources, whether it is at local, State, Federal, tribal level. So we have to find some way to pool our resources. I am hopeful this bill will help us do that.

My other question is for Mr. Watchman. We have seen some success in our State with tribes adopting the Uniform Commercial Code, UCC. That helps investors mitigate risk in lending to tribes,

it helps tribal businesses gain financing, develop credit. But we have found that not all the tribes utilize the Uniform Commercial Code, and that can create confusion and uncertainty for investors.

So in your opinion, what can be done to encourage tribes to utilize the UCC as a way to create more certainty and hopefully more business development?

Mr. WATCHMAN. Thank you for the question. I am the Chairman of the National Center, but before this, I was a lender with Chase Bank. So I did a lot of commercial lending in Indian Country. One of the big things was uniformity.

Senator HOEVEN. Yes, then you know what I am talking about.

Mr. WATCHMAN. I know exactly what you are talking about. The big issue, as a former banker, is that you have over 580-plus or 60 different tribes, so in essence, you have over 580 different systems. So one of the things, as a former banker, was how do we get consistency. So I strongly urged, and in fact, as a member of the Navajo Nation, the Navajo Nation is also looking at a uniform commercial code system. But it needs to be something that everyone can adopt. I strongly think that it is important so that on the investor side, the investor understands that, in this case, it is hard to say, but we need one system that fits all. It is similar to what the States have, they do have a uniform commercial code, so you can go from one State to the next and you know that you have certainty, you have things that are written.

So as the Chairman of the Board for the National Center, I think it is important to have one system. There could be some changes per tribe, but it is very important, so that when we have a lender or investor, they understand that you do have, for example, you do have a place to hear your dispute, you do have a place, if there is a bankruptcy, you know what the issues are. So from the National Center, although it is a challenge, I think a system that all tribes adopt would be the best, so that lending, credit, agreements can take place. So the issue that we are dealing with is, if there is a dispute, how do you resolve the dispute. This UCC system would certainly address that. So that has been my experience.

Senator HOEVEN. Is the Navajo Nation the largest by number of members of any of the tribes? Or is that not the case? I know it is a very large tribe, isn't it?

Mr. WATCHMAN. One of the largest tribes, but I guess that depends on each day. But yes, we are one of the larger tribes.

Senator HOEVEN. Obviously, if you could work something out to adopt the UCC, that would be a big step. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hoeven. Senator Udall?

Senator UDALL. Thank you, Mr. Chairman. Let me welcome Derrick Watchman. Thank you for your testimony, all the witnesses today. Thank you, Derrick. I have known you for years. You come from a family with a long history of public service. You not only have extensive background in banking and economic development that is here, but you have been CEO of the Navajo Nation Gaming Enterprise, you have also been chief of staff to the Navajo Nation and served as the Director of Indian Affairs at the Department of Energy. So we appreciate you and your family and the long public service.



When you were talking, Mr. Watchman, about the set-aside provisions in the Buy Indian Act, and you talked, I think, specifically that there should be specific targets, do you have in mind a specific number, a percentage? And could you tell me why you think it would be better to put a specific target in the legislation?

Mr. WATCHMAN. Mr. Chairman and Senator Udall, I think targets are important. Otherwise, as a former official at the Department of Energy, one of the things I was trying to do was to get all the others, there's billions and billions of dollars in all these departments. So if you don't have a target, there is no goal. If you strongly urge that you need to buy from Native Americans, it is not going to happen.

I was just talking to the Navajo Nation Washington office this morning. They told me, make sure you say, at least 15 percent, at least 15 percent of all purchases should be from a Native-owned business or a Native-owned concern. I don't have the right answer, but at least that is a target. So every year, when these departments get their budgets, they have to start looking at, how much should I utilize from Indian America, Indian business America, for this.

So I think targets are important. I am not sure what the number is, but I will go with what the Navajo Nation recommended to me this morning, 15 percent of all the annual purchases should come from Native American-owned businesses and concerns. That is one suggestion, Senator.

Senator UDALL. Thank you, Derrick, very much.

Cheryl, could you also address this issue? As you know, Section 6 of the Indian Community Economic Enhancement Act of 2016 has a Buy Indian Act provision to consider in terms of procurement. I would like to see this Buy Indian Act be stronger. As you know, in many of the Federal statutes, as he has alluded to, if we have a set-aside for whether it is veterans or small business or those kinds of things, it is much stronger. Do you have a specific goal or target? Does the Department have a position on setting a target for agencies to award a percentage of contracts to Indian-owned businesses?

Ms. ANDREWS-MALTAIS. Specifically underneath the Buy Indian Act, 100 percent of the acquisitions performed by the Department are supposed to be considered tribally-owned. So the goal is 100 percent wherever we can. So a percentage, in our opinion, would basically limit, or be contrary, to the role that we are looking at today overall.

Now, if we are saying to a percentage, limit that goal to tribal entities and remaining amounts to IEEs, then that would also be contrary to the competitive basis of the nature of how the bills are set up and how they are used in trying to contract for reasonable prices. So I am not exactly sure what the aspect of a percentage goal is, because the goal is 100 percent. The Department itself is trying to promote and encourage contracting and acquisitions of tribally-owned businesses.

Senator UDALL. Thank you very much for that answer. I am pleased to see the Department supports S. 3261. We have these high unemployment rates, as you know. Regardless, if enacted this Congress, we need boots on the ground on a persistent basis, work-

ing with tribes and relevant stakeholders to really get tribally-owned businesses going. I hope I can get your commitment from you or the Assistant Secretary to come to New Mexico and meet with Pueblos and tribes including the Navajo Council of Economic Advisors, to share best practices and work with us to foster entrepreneurs in Indian Country.

I hope I can get your commitment on that.

Ms. ANDREWS-MALTAIS. Absolutely. We are happy to work with the Committee and the tribes to be able to really help invigorate economic development for the tribes themselves.

Senator UDALL. Thanks very much. Thanks for your service.

I yield back, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Udall. Senator Daines?

Senator DAINES. Thank you, Mr. Chairman.

The conversation in my office recently, Bill Snell of the Rocky Mountain Leaders Council, which is based in Billings, Montana, shared how important it was that lenders feel more comfortable in doing business with tribes, and if they have better assurances that there is a legal recourse should any bumps along the road arise.

Unfortunately, lenders don't currently have that comfort in Montana, and I am guessing in other States around our Country. It is a detriment, frankly, to the economies in Indian Country.

Ms. Andrews-Maltais, in studying the barriers to lending on reservations, it appears that unfamiliarity with tribal laws, because each has their own uniqueness, may cause conventional lenders to almost freeze up because of the uncertainty. Do you agree with that and could you share any insights to that point?

Ms. ANDREWS-MALTAIS. There are several factors that seem to preclude lenders and conventional financial institutions from working with tribes. Some of it has to do with their lack of familiarity. Some of it has, with tribes that do have standardized codes that they can rely on, some of it has to do with their lack of understanding that there are significant opportunities in Indian Country. And part of it is that you have tribes that are at varying stages of their governmental process. So those that are in positions that have significant advantages to either having the in-house expertise are able to reach out, and that number is small, where the overwhelming majority doesn't have those capacities. Therefore, having legislation like this and working with the Federal Government and the tribes and the Administration to develop some sort of uniform codes I think would be really advantageous for anybody involved to make people aware that not only do these opportunities exist, there are codes, there are codes that can actually, these outside entities can rely upon. It elevates both Indian Country and their neighbors as well.

Senator DAINES. I also wonder, is there a little of the chicken and egg here? In other words, does some of this uncertainty come from the fact that some of these lenders, frankly, just haven't done business in tribal communities before?

Ms. ANDREWS-MALTAIS. Yes, a lot of it is because nobody has done business in Indian Country. But you also have to take into consideration that although the tribes have had our governments and we have continued being prosperous since time immemorial, underneath this new structure of government that we work cur-

rently, it is rather new. So these opportunities are kind of new for outside entrepreneurs and/or financial institutions to recognize.

Senator DAINES. There is a recent study that was conducted by the University of Arizona, regarding increasing access to capital and credit in Native communities. It recommended that the best way to spur economic growth in Indian Country is for the Federal Government sometimes just flat out get out of the way. In fact, let me read a quote from the report. It says, "A reduction in Federal bureaucracy is like to generate the most revenue and capital for tribes."

Ms. Andrews-Maltais, would you agree with that recommendation?

Ms. ANDREWS-MALTAIS. To an extent, I have to say that it does make sense. There are several models that are currently within the Federal system that are a good way of demonstrating that. Within the IRA, the Section 17 corporate structure, the tribes negotiate and develop their own corporate structure internally and bring that to the Federal Government for the Secretary of the Interior to in fact approve so that there is a structure by which the tribes can go into business partnerships with non-tribal entities.

Additionally, another model that is similar to that, that allows the tribes the flexibility and sovereignty to negotiate their own deals is through the compacting underneath the gaming, underneath the Indian Gaming Regulatory Act, where the tribes and their partners and the States negotiate their agreement. And then the Federal Government basically approves that, stepping out of the way of being too involved but yet standing as an advocate and protecting the rights and interests of the tribes so they are not taken advantage of as well. Specifically when tribes may not have the particular expertise internally to protect themselves.

Senator DAINES. So it is certainly probably a mixed bag?

Ms. ANDREWS-MALTAIS. I believe so.

Senator DAINES. In your opinion, what are some of the places or programs that you see where the Department of the Interior might be able to change, scale back, streamline the approach to make the bureaucracy less burdensome for tribes?

Ms. ANDREWS-MALTAIS. I think that is part of the challenge that we are offering to work with Congress and the tribes in order to develop a really strong program that can be universally applied through Indian Country on a broad base, and then bring those specifics into the individual negotiations of contracts between the individual 567 tribes that we do have.

Senator DAINES. Thank you for your very articulate answers. I appreciate it. Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, Senator Daines. Senator Heitkamp?

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Mr. Chairman. I want to start out by talking a little bit about impediments to lending, one of which obviously is collateral. Kind of traditional way that you would envision a mortgage or a business loan, go to the bank, you can put the land up as collateral. In the case of tribal entities, and certainly certain individuals, the Federal Government, because

they retain title, has created an impediment to traditional lending. Would you agree with that, Ms. Andrews-Maltais?

Ms. ANDREWS-MALTAIS. We have found that it has been a challenge and there have been a few lending institutions that have actually stepped forward to work with tribes, and understand the complexities of the land in trust versus being able to use that as collateral. But we do have a lot of subject matter experts within our Department that would be happy to sit down and go over the specifics of how best to approach this, and/or bring more of their particular expertise through their experiences with the challenges that tribes have brought to them that might be a little bit more appropriate.

Senator HEITKAMP. From my experience, one of the best outlets is working with a local community banker who lives in the community. Probably works very closely every day with members of the tribe. We have one banker in North Central North Dakota who has done many, many home mortgages on trust land. He has never had a foreclosure, in part because that is what community banks do, they engage in relationship banking. I think that the more we can work with community banks to create programs that give them the certainty, the better we are going to be in terms of providing capital, get that capital right at home.

That is why I really applaud both the Chairman and the Vice Chairman for introducing bills that look toward entrepreneurship, look toward building that business ability. Because we know in today's world, we can do a lot of things in rural America and tribal America if we just have the resources and the infrastructure.

The concerns that I have are that every agency seems to have a program. I think you would get my tribes in North Dakota to say that USDA has been almost more significant of a partner in economic development than any other Federal agency, because USDA provides the lending for infrastructure.

One of the concerns that we have been talking a lot about is the lack of infrastructure, whether it is broadband, whether it is just roads and bridges, whether it is hospitals, whether it is schools, and what impact that has on business development. So it is not that we can just look at business development or adopting a UCC or doing all of those things that will guarantee to lenders that there is rule of law. The question is, what is it that people want to do.

And it seems to me that, Mr. Watchman, that there is a real wealth of information in Indian Country that doesn't get disbursed very well, that we don't apply best practices in terms of tribal development and tribal member development. How do we bridge that? How do we have a broader platform for all the good things that are happening, so that they can be shared in ways that could achieve broader economic development goals for all tribes?

Mr. WATCHMAN. Mr. Chairman and Senator, that is a tough question. But from the National Center, we have periodic reservation economic summits. It is a big forum and venue to bring all the different parties together to talk about the success stories and things that are happening in Indian Country. Indian economic development and community development has been a challenge,

whether it is access to capital, the availability of land, the varying rules and regulations in law.

So it is a big challenge. I know that our group, along with the other national Indian organizations, we do try to bring all the different parties together and talk about the success stories. And we do showcase that. We have an annual reservation economic summit conference, and we try to highlight all the good things, whether it is someone who acquired a huge loan or someone who was able to create a business, or has a lot of jobs. It is just more communication and all of us working together.

Yes, there are over 567 different tribes. But the forums that are out there, we need to communicate more. That is what we do with the National Center. We try to highlight, again.

So there is challenge in everything.

Senator HEITKAMP. I am out of time, but I think it would be interesting, from that gathering, to do a look-back. What were the obstacles? What were the biggest impediments that successful Indian businesses have had? And how do we overcome those kind of in a generality? Because we won't be able to attack all of them. But to get at these impediments that could be limiting everybody uniformly I think would be pretty critical.

But entrepreneurship, it seems to me that if we are going to grow tribal America, we have to start at home.

The CHAIRMAN. Thank you, Senator Heitkamp. Senator Tester?

Senator TESTER. Thank you, Mr. Chairman. This is for you, Cheryl. Between 2010 and 2014, BIA contracting was between 7 percent and 13 percent. You had said that the Buy Indian Act goal should be 100 percent. That is a pretty good gap.

Do you have any intermediate steps or goals that might make this more attainable?

Ms. ANDREWS-MALTAIS. That is certainly the goal, of 100 percent, and I have to agree, that is a big gap. But in, I think, I am not sure, I believe that Jack would be much more appropriate to respond to that.

Senator TESTER. With the Chairman's consent, Jack can answer that question.

The CHAIRMAN. Go ahead.

Mr. STEVENS. Jack Stevens, once again, Mr. Chairman and Senators.

The answer to the question is that we have, the default position is Buy Indian. As a manager who does procure, I can tell you that we enacted new regulations last year. Since that time, the default position, as I say, is Buy Indian. That means that anything, any type of purchase, if we don't buy Indian, we have to justify it. So immediately, we look for Indian vendors.

This is a new culture in the Administration.

Senator TESTER. That is good. What level are you at now as far as buying Indian?

Mr. STEVENS. We really don't have a fix on what has happened since the regulations were enacted. But I think you are going to see that when the statistics are gathered, you are going to see a much higher increase than 15 percent.

Senator TESTER. All right. When will you have the statistics?

Mr. STEVENS. [No audible response.]

Senator TESTER. It should be pretty easy, quite frankly, because I am sure you have a database of expenditures. Could you just get me that information? That would be great.

Cheryl, and this not only could go to Cheryl, it could go to any of the tribal leaders, the issue of sovereignty is a big issue in Indian Country. And it is a real issue and it is an issue that is important to Native Americans, I know for a fact, because I hear about it a lot.

You have a situation where, and it is not with all tribes, just some tribes, where investors and business do not feel like they have adequate recourse through the courts because there is a lot of turnover when there is a turnover on the Council. Oftentimes the courts turn over too.

Is there a solution for this? Because I think part of the bill, 3261, part of its goal is not only to work with entrepreneurs, but also work with tribes, to let them understand from a business perspective what kind of infrastructure they need to put in place to be successful.

Could you touch on that a little bit? Because I think if we are impeding upon sovereignty, it is over with, it isn't going anywhere. By the same token, there are some things we can do to help move forward. And I can give you examples of tribes who are very successful in business, because there is predictability, and ones that aren't successful at all, because there is a lack of predictability.

Ms. ANDREWS-MALTAIS. Sovereignty does play a very large role. Each tribe has the ability to waive their sovereignty, depending upon what the tribal constitutions or structures provide for for businesses. That is also one of the reasons why we wanted to work with the Committee and the drafters, in order to develop something that is more universal that tribes can elect. Because by exercising their sovereignty, they can elect to participate in something or not participate. By having some sort of universal codes or structures for trade and commerce in Indian Country, that should be able to alleviate some of the concerns that these investors have.

But it is complicated, but it is certainly something that the Department, as well as the tribes and obviously the Committee is committed to finding some sort of resolution on this.

Senator TESTER. It is good. I mean, the thought has occurred to me and this is off topic for what we are doing today, with entrepreneurship, but the thought has occurred to me that if there was some sort of sharing of information between the tribes on what each tribe is doing that they have been very successful at, maybe through one of the tribal organizations, it could be a big help.

Along those same lines, training personnel for technical assistance for entrepreneurship is critically important. Are there enough resources being provided right now for Native entrepreneurs?

Ms. ANDREWS-MALTAIS. There is never enough money in Indian Country to do what it is that we need to do. However, with the resources that we have, we have been putting as many, training as many people as we can. But this incubator bill, as it is, we are hoping that by utilizing not only the resources in the bill to set up the incubators themselves, but part of those agreements would also include the training for other people to learn how to help impart

business knowledge that is necessary and use this as a starting point to develop more and more people for technical assistance.

Senator TESTER. Yes, I just think it is really, really important. We do it off-reservation all the time. In Montana, for example, with unemployment on the reservations north of 50 percent, on most if not all, and sometimes significantly north of 50 percent, I think it could be good. Thanks for your testimony.

Harvey, you guys are in the same boat as the Little Shell in Montana. There are some things with recognition that are obvious, access to programs, that can help your tribe. Are there things that we are not thinking about, if you were to get recognition, that would help your tribe and tribal members, other than the programs you would have access to at the Federal level?

Mr. GODWIN. Thank you, Senator Tester. I would like to say first that you spoke earlier about public education and how important it is. My wife is a school teacher, art teacher in high school. My mother is a retired school teacher, for 33 years. She is 90 now. My sister is a school teacher, all my aunts and uncles are school teachers. And that was the educational saving grace for our family, and for many families, because of our origin from 1888, from Indian Normal School.

But for the Lumbee, we are a little bit fortunate in the line of questioning you are asking now. Because we have Lumbee Bank, that has been in place since the early 1970s. And entrepreneurs, Lumbee tribal entrepreneurs, started this bank in the early 1970s, and they have a great lending relationship. That is what my background comes from, is partnerships. You can turn your tribal council over, but if you create true business partnerships, that is going to stand the test of time, no matter who is on the council or who is not.

The Lumbee Tribe has recently partnered with Campbell's Soup to start a Lumbee tribal community garden in our culture center. And we partnered with Wal-Mart for the first time, to help us with our pow-wow. So there are business partners out there that we have been fortunate to partner with on our own.

But with full Federal recognition, that would certainly leverage by many times over for the Lumbee Tribe to be able to build on the relationships that we currently have.

The Little Shell Tribe is, I think, known as the Homeless People, have been for a long time. They have been in the acknowledgement process for 28 years. Well, between 1888 and 1956 was 68 years. I am sad to say right today, is the 60 year anniversary since the 1956 bill.

I guess what hurts a lot is, you start talking about cultural self-esteem, where your membership doesn't feel like they have opposition. Other tribes oppose us to this recognition. We used to say, it is about the money. It is about the money. I don't think I believe that anymore. I think it is a little bit about discrimination, because federally-recognized tribes don't see the Lumbee as real Indians. And that is hurtful. It is traumatic, and it is very hurtful to our people, to our children coming up. They look at each other and say, well, there is a real Indian, because they're from another tribe that is federally-recognized.

Growing up like I was, you watch a western and you want to be the cowboy instead of the Indian. Because we have been denied our true identity.

I go back to the Civil War. And you have seen the film, Lincoln. In that movie, there was a place that was talked about a lot, Fort Fisher, a fort in North Carolina, where I am from, an hour and a half from Fort Fisher. Still stands today. During the Civil War, our people were challenged by the U.S. Government that wanted to annihilate us with the rest of the southerners in the Confederacy. And the Confederacy was kidnapping our young people, our young men, and driving them as free labor to Fort Fisher. Malaria, getting shelled on, getting killed with the Confederate soldiers.

And if you go there today, there is not one sentence there about the Lumbee people and their forced labor there. See, we have overcome those kinds of challenges. We have overcome discrimination from other tribes. We have overcome not being fully federally-recognized on 1956 because we made the decision that we were going to decide who were are.

Senator TESTER. Thank you. Thank you all for your testimony. I appreciate it very, very much. I have already used twice as much time as I was allocated, and I appreciate the Chairman giving me that flexibility. Thank you.

The CHAIRMAN. Thank you, Mr. Vice Chair.

Mr. Watchman, the ISAC proposes to create this Indian Economic Development Fund. We talked about it, the fund would allow tribes to voluntarily contribute to the Treasury to establish the credit subsidy for eligible community develop institutions that then financially serve the Indian communities. This idea isn't new.

What types of incentives can you think of beyond just good will that you think would make it attractive for tribes to continue to contribute to this kind of proposed fund?

Mr. WATCHMAN. Mr. Chairman, thank you for the question. There are a couple of incentives that come to mind. Obviously you have the tribes that have some resources to invest. There are maybe some other concerns, so perhaps some tax credits for those relationships that tribes have with businesses. In my area we deal a lot with the coal mining companies, the oil and gas companies. So perhaps some type of tax incentive or credits for them if they do invest in such a fund.

On the tribal side, since tribes are tax-exempt, a tax credit won't be beneficial. But that is the one thing that comes to mind, is a tax credit for a related entity to get some type of reduction in taxes. That is the first thing I can think of.

That is probably all I have at this point, that is the big thing. You need to look at those partners that do have resources available.

The CHAIRMAN. The Buy Indian Act, and then the Small Business Section 8(a) program require purchases of goods and services, as you know, from Indian and other minority businesses under certain circumstances. Some of the businesses that qualify as a Buy Indian Act business may not qualify as an 8(a) business and vice versa.

So the Department of the Interior has recommended adding language to S. 3234, the ICE bill, to allow reporting of Buy Indian Act



actions through the Section 8(a) program. How do you think that those two procurement requirements should be reconciled? What do you think we ought to do about that?

Mr. WATCHMAN. I am familiar somewhat with the 8(a). So it is a program where a small, Indian-owned concern can give its designation and you have a time period. Once you reach a certain amount in sales, then you graduate and move into a different program. So there is a lot of reporting behind that. To be simply an Indian-owned company, obviously you have to verify that you are Indian-owned. So there are data bases, there are ways to track these programs. I think it is possible.

The biggest issue, from my experience, is that in all these programs, and I have it too, we have all these folks that are out there charged with purchasing. So a lot of them have, not their favorites, but they know what is reliable. So to go and find a new vendor, that is always a challenge. You have to test them to make sure they are reliable, they have enough capital. If it is Indian-owned, do they have enough capital, do they have loans? If they need a loan, is it backed by an Indian loan guarantee? So it is the reliability of these companies.

But there are ways to track it. When I was involved at the Department of Energy at one time, we were working on how to track that. So by having the data in front of all these folks that are in charge with million dollar contracts to say, this is the possibility, I think it will work. By tracking, it gives them recognition so they say, even though there is a suggestion, if you have a mandate, you have to buy Indian, I think that is one step in many that could be done.

The CHAIRMAN. Cheryl, anything you would like to add on that?

Ms. ANDREWS-MALTAIS. Exactly. That is one of the reasons why we are looking to add additional language, to incorporate the 8(a), and also maybe broaden that through, beyond the Indian Health Services and the Department as an option. I agree totally with the tax credits. We would be happy to provide some recommendations, or additional recommendations to reach that goal of trying to make it comport, or balance with the Buy Indian Act. The specificity of the standard the companies have to maintain doesn't always comport with them being able to be included in that data. That is one of the reasons why we wanted to broaden that definition's perspective.

The CHAIRMAN. Vice Chairman McDarment, in your written testimony, you talk about the physical location and description of your reservation. The Tule River Indian Tribe's reservation is situated on the western foothills of the Sierra Nevada, mountains near the Sequoia National Forest. Can you explain how placing these 34 acres of land into trust is going to benefit your tribe? Number two, is the nearest town supporting the placing of this land into trust?

Mr. MCDARMENT. There is no opposition from the neighboring town. The benefit to the reservation by acquiring these 34 acres is that it is the main entrance to the reservation. There are a couple other entrances, on the very top of the reservation, which are inaccessible during the winter time, or even just certain parts of the year. So it is the main paved entrance to the reservation.

The CHAIRMAN. Thank you.

There are no other questions for today. Members may still submit follow-up written questions that you may receive over the next week or so. The hearing record will be open for two weeks. I want to thank all of you for being here today, for your time and your testimony.

The hearing is adjourned.

[Whereupon, at 4:06 p.m., the hearing was adjourned.]

## A P P E N D I X

PREPARED STATEMENT OF NEAL McCALEB, AMBASSADOR AT LARGE, CHICKASAW NATION

My name is Neal McCaleb, Ambassador at Large for the Chickasaw nation and former Assistant Secretary of the Interior for Indian Affairs. I appreciate the opportunity to submit this testimony relative to SB 3234 (ICE) and to enthusiastically support the intent and language of this legislation.

While I endorse each and every section of the proposed Bill as needed and effective remedies to the substandard economic environment in "Indian Country". My comments will deal specifically with Section 4 on the "Buy Indian Act" which has a one hundred year history of Congressional affirmation however it has been ineffective implemented to the detriment of Indian enterprise and individual economic and social advancement.

The Government Accounting Office in its report to Congress in July of last year on the implementation of the "Buy Indian Act" made it abundantly clear that the Department of the Interior has fallen far short of Congressional intent for the application of this long standing legislation and unique purchasing authority. This Act seeks to improve the extent of the application of the Buy Indian Act in Section 4 a systematic biannual report to Congress on the efficacy and extent of the Departments use of this Act.

The current regulations for the application of this authority are limited to Bureau of Indian Affairs and the Indian Health Service or other agencies and divisions of the Interior Department that maybe authorized at the discretion of the Secretary of Interior. So far this discretion has not been extended beyond the BIA in Interior notwithstanding the clear authority to apply it, if not the obligation to ensure implementation of the Buy Indian Act to all Agencies, Bureaus and Offices of the Department of the Interior that have a direct impact Indian Tribes.

The secretary of Interior has identified several agencies in Interior which have a Trust responsibility to Indian Tribes. These are the Bureau of Land management, Bureau of Reclamation, Fish and Wildlife Service and the National Park Service.

I propose that this legislation be amended to include direction to the Secretary of Interior to apply the Buy Indian Act to all agencies within the Department of Interior which impact Indian Tribes and/or exercise Trust responsibilities to individual Indians.

This provision to expand the application of the buy Indian Act will have salutary effect of Tribal economies and individual Indian economic enterprise. From my personal experience in the mid 1970s I witnessed a remarkable upsurge Indian owned professional engineering and architectural practices when the BIA division of Construction and Maintenance in Albuquerque began to apply the Buy Indian Act to the acquisition of professional design services which are exempted from competitive bidding by the "Brooks Act". The Buy Indian Act is one of the few business development mechanisms that applies equally to individually owned Indian Economic Enterprise as well as Tribally owned enterprises and its expansion will stimulate greater investment and opportunity in Indian Country.

Thank you for the privilege of submitting these brief comments on this important legislation.

---

PREPARED STATEMENT OF LEONARD SMITH, EXECUTIVE DIRECTOR, NATIVE AMERICAN DEVELOPMENT CORPORATION (NADC)

### Introduction

Chairman Barrasso, Vice Chairman Tester and members of this Committee, my name is Leonard Smith and I am the Executive Director of the Native American Development Corporation (NADC), located in Billings Montana. I thank you for the opportunity to present testimony on Native American economic development issues. My comments today focus primarily on S. 3234, and its provisions, however, our

NADC Board supports the intention and scope of both S. 3234 and S. 3261. From our Board's perspective both bills seek to address needed funding and programs in Indian Country to better promote successful business development opportunities.

The NADC is a non-profit corporation that provides a range of training, technical assistance and capital services to Tribes, Tribal enterprises and individual American Indian Communities and firms in Montana, Wyoming, and North and South Dakota. Some of the services NADC provides includes: housing, business start-up and expansion, project financing/funding, business plans, feasibility studies, and project management. NADC is a certified Native Community Development Financial Institution (CDFI) established in 1996 by tribal enterprise business managers in Montana and Wyoming in collaboration with the Montana Indian Manufacturers Network Board of Directors.

I am an enrolled member of the Assiniboine Sioux Tribe of Fort Peck Indian Reservation in northeastern Montana. I have a bachelor's degree in Business Administration from Montana State University—Billings with over 25 years of experience as a business owner, Chief Executive Officer of a tribal enterprise, Deputy District Director of the Montana Small Business Administration Office, Assistant Vice President of Indian Credit Corporation, and Loan Officer of a Tribal Business Development Office. Most of my career has been in the realm of Native or Tribal economic development.

**Comments on S. 3234 the Indian Community Economic Enhancement Act of 2016**

*Indian Loan Guarantee Program:* As the National Center testified, the Indian Guarantee Loan Program has been underfunded and delays make the program not useful to those who need quick or immediate assistance for their business. We saw that the FY 2017 Presidential Budget Request omitted any increase to the funding of the Indian Energy Loan Guarantee Program. And the Department of Agriculture's loan guarantee program has also lost ground. We believe credit subsidy funding found in Energy Appropriations for FY 2017 for the Indian Energy Loan Guarantee program may provide relief, but we believe the only real fix will be more direct appropriations for loan guarantee programs that benefit Indian Country.

*Buy Indian Act:* NADC has been instrumental in the Rocky Mountain and Great Plains service area in the support and strengthening of the Buy Indian Act. In May of 2010, NADC organized an economic development and procurement conference with top level Bureau of Indian Affairs (BIA) staff in attendance. A Buy Indian Act breakout session was on the agenda with many local contractors in attendance. These contractors raised questions directly to the BIA officials on the lack of a required regulatory process for the use of the Buy Indian Act thereby rendering it useless to them. This discussion contributed to tribal consultations with the BIA nationwide in developing regulations for the Buy Indian Act. By July 2012 regulations were in the Federal Register and being implemented. As a Regional Procurement Technical Assistant Center NADC has worked closely with the BIA Rocky Mountain Regional procurement staff to promote and support Indian Economic Enterprises. The Bureau of Indian Affairs has made progress in strengthening the Buy Indian Act and we hope that the Indian Health Service will follow suit by adopting updated regulations similar to the BIA's. NADC appreciates the language included in Section(s) 4(b)-(d), we believe the Buy Indian Act could work as a socio-economic set-aside as a Procurement goal with the U.S. Small Business Administration applicable to all federal agencies. In addition technical assistance and an educational campaign for Indian Economic Enterprises and Federal Government employees should be developed for implementation of the procurement goal.

*Native American Business Development, Trade Promotion, and Tourism Act of 2000:* The NADC strongly supports elevating and enhancing the Department of Commerce Office of Native American Business Development by making its Director report directly to the Secretary of Commerce. It is important that this Office have the authority to coordinate the activities of Commerce and other key departments, to ensure timely assistance and consultation with Indian Tribes. This is especially true to assist with the administration of the CDFI Fund programs that encourage investments in Indian Country. We also support the establishment of an Indian Economic Development Fund in the Treasury of the United States. The purpose of the fund would be to increase the existing credit subsidies of the Indian Loan Guarantee Program and provide subsidy solely for any eligible CDFI that applies for financing under the CDFI Fund bond guarantee program. We are concerned however, that a study of the mechanism to support these increases would only delay badly needed funding, the need for this funding has already been studied and found severely lacking. We therefore recommend direct appropriation to ensure funding. A small increase in funding could leverage millions in private sectors funds.

*Native American Programs Act of 1974:* We support the purpose and goals of S. 3234; which are to increase access to capital for Tribes and Indian businesses, increase opportunities for Indian business promotion and create mechanisms and tools to attract businesses to Native communities.

S. 3234 seeks to provide a permanent waiver of cost sharing for Native CDFIs, require Tribal consultation regarding increasing investment in Native communities, and provide a requirement between the Secretaries of Treasury, Interior and commerce to coordinate between agencies in the development of Indian Country programs.

The economic conditions on the reservations in Montana, Wyoming North and South Dakota cause many challenges for Native businesses. The reservations experience persistent poverty (double the statewide average), and unemployment rates three to five times the state average. And poverty rates for Native Americans in Montana were at 30 percent in 2010, triple the state rate of 9.7 percent. A significant restraint for economic growth and development in Native American communities has been a lack of access to capital and credit.

Because they are such important economic engines in the markets they serve, Native CDFIs in the Great Plains and Rocky Mountain Regions are constantly looking for increased access to operating and lending capital to be able to expand their services to their customers. Native American Development Corporation is proud to be one of four Native CDFIs operating in Montana. We are a certified CDFI that provides loans and equity-like loan products to businesses owned by, serving, and creating jobs for Native American people on and off the reservation. We also provide technical assistance to Native business owners to help them be more successful entrepreneurs and to access government contracts.

Native CDFIs have become vital to building and sustaining Native Communities' local economic momentum and represent a key private sector approach to Native Nation self-sufficiency. Native CDFIs are private-sector, financial intermediaries with community development as their primary mission. They are market-driven, locally-controlled, private-sector organizations. CDFIs measure success by focusing on the "double bottom line:" economic gains and the contributions they make to the local community.

In the short term, Native CDFIs are filling the credit and capital gaps in Indian Country left by traditional lenders and investors. In the long term, they are grooming Native consumers, entrepreneurs, and potential homebuyers to access traditional lenders in the future. They have been working to create innovative solutions to overcome economic development barriers, and they have proven themselves as vehicles towards developing healthy, vibrant Native economies and communities. They have entered markets normally considered "high-risk" and have been responsible for an astounding transformation—serving as the catalyst for developing local economies, building assets, and reducing persistent poverty.

NADC strongly supports making CDFI's eligible to apply for Administration for Native American's (ANA) economic development program grants, prioritize economic development grants for certain types of applications and prioritize any technical assistance for grantees and applications submitted under this legislation. We support the Bill's intent to encourage ANA to support grants to develop, tribal codes and court systems relating to economic development, non-profit subsidiaries and other tribal business structures, and tribal master plans for community and economic development and infrastructure

#### **Comments on S. 3261 the Native American Business Incubators Program Act**

The NADC has long supported programs that foster and support Native American small businesses. NADC has been able to implement funding partnerships with the Montana Indian Business Association and various agencies to provide start-up and expansion services to Native owned businesses in Indian country. NADC therefore endorses S. 3261 for its innovative response to the great need to foster Native businesses and entrepreneurs. S. 3261 would establish a program in the Office of Indian Energy and Economic development under which the Secretary of Interior would provide financial assistance through competitive grants to eligible applicants for the establishment and operation of business incubators that serve reservation communities. The legislation would allow various eligible applicants including non-profit organizations that could provide services to Native business and Native entrepreneurs, a vision long shared by NADC.

#### **Conclusion**

Thank you for the opportunity to submit testimony to the Committee on the issues that could have a tremendous impact on the future of economic development

in Indian Country. We look forward to working with the Committee in the future to address significant provisions and to advance enactment of both S. 3234 and S. 3261.

---

PREPARED STATEMENT OF WILLIAM SNELL, EXECUTIVE DIRECTOR, ROCKY MOUNTAIN TRIBAL LEADERS COUNCIL

The Rocky Mountain Tribal Leaders Council (RMTLC) is an eleven-member tribal association comprised of tribal governments from Montana, Wyoming and Idaho. Its mission is dedicated to improving the health, economic development and education for tribes and their members through a variety of programs, policy recommendations, and tribal leaders' meetings. The RMTLC also endeavors to coordinate the similar interests of member tribes through various collaborative initiatives and projects.

I would like to take this opportunity to thank Senator Jon Tester, Senator Maria Cantwell and Senator Tom Udall for the introduction of Senate Bill 3261—The Native American Business Incubators Program Act. As with other racial and ethnic groups, economic opportunity and prosperity are major drivers to the social, educational and political stability of Native Americans. Every senator on this committee is very well aware of the multiple challenges facing Indian Country in their pursuit of small business ownership and entrepreneurship. But we are not without hope, for conditions can be established and sustained by which new and existing American Indian entrepreneurs can be successful.

While we as tribal governments and as a people have been geographically and culturally isolated, we seek economic development to not only uphold our political sovereignty but also our cultural sovereignty. Indian Country need not be forced to choose between dependent poverty or middle class assimilation. Rather we seek to determine our own economic future and note that all labor has dignity and importance. None of us should believe that what we do does not matter or what we do only matters.

The overriding concern that presents itself in Indian Country, and what this legislation seeks to address, is the absence of fully functioning economies on far too many reservations. This is caused by an absence of small businesses and the fact that Indian Country owns private businesses at the lowest per capita rate for any ethnic or racial group in the United States. Notwithstanding the positive economic developments in Indian Country since the advent of Indian gaming, one need not have to travel to third world countries to experience third world hunger, poverty, disease, addiction, housing, medical care, or unemployment. They exist here in the states that you call home. They are your islands of poverty amidst a sea of plenty. We all breathe the same air—can't we all be afforded the same chance?

While economic opportunity should be afforded to all Americans, an examination of this legislation and the historical economic literature and lessons involving Native American entrepreneurs also reveal unique impediments in starting, locating and operating a business. While noting that the journey of a thousand miles begins with single step we applaud the sponsors of this legislation for highlighting the need to address the lack of access to capital, geographic isolation, the need for educational development and technical training, measuring and enforcing accountability through oversight, poor physical infrastructure, networking opportunities, and the all too often difficult state regulatory interaction with tribal governments and tribal members.

In addition to the above, in order for entrepreneurial endeavors to be successful, a few key issues need to be continually reinforced and highlighted today as we move forward on the problem this legislation seeks to address. These include the need for first rate research that gives us solid evidence of what works and what does not in this effort. We cannot continue to fly blind as we are forced to choose among the alternative spending constraints that the two political parties have annually sought to enforce on one another, for all too often it is those who exist in the shadows of our society that disproportionately suffer most from these alternative budgetary realities.

What is extremely important for this legislation is that government leaders need a new and more mentally rigorous way to make decisions about the success or failure of public policy initiatives and the need for more public policy experimentation. As has been noted before by renowned management consultant W. Edwards Deming that "if you can't measure it you can't manage it." In order to have an impact on the long term challenges facing Indian Country, more must be done to drive resources toward high-impact solutions that get results. Indian Country greatly needs evidence, we need data, we need investment in research so that we can enforce ac-

countability and demonstrate effectiveness for our people. We need to focus on outcomes and lives changed, rather than simply compliance and numbers served. Then we will be able to tell our children success stories. Then we can elevate hope and we can provide them a way out of this cycle of poverty and despair. Then we can much like the first United States Attorney General to visit a Native American reservation, when asked in an interview shortly before he was killed what he would like his obituary to read he replied. . . "I would like to feel that I had done something to lessen the suffering of children."

We know that faith is taking the first step even when you can't see the whole staircase. Having faith and taking risks are necessary components to economic success but those risks must be informed and evidence-based risks. We know that no matter how lofty or how common one's profession is, one should do it with honor and pride. But we refuse to believe as Dr. King stated that there are insufficient funds in the great vaults of opportunity in this nation. This incredibly bountiful country has the resources but there have always been other more immediate or emerging priorities. We are still waiting like Chief Joseph to be brothers of one father and one mother, with one sky above us. We will proceed on this essential journey with you, for change is what dominates our world. We know more than any other people that unless we move with change we will become its victims.

Thank you for the honor of allowing me to appear before you today and to hear my words of truth to you. I am available for any questions you might have.

PREPARED STATEMENT OF UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY  
PROTECTION FUND

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the Senate Committee on Indian Affairs (SCIA) with testimony for the record of its legislative hearing on: S. 2285, the *Lumbee Recognition Act*, S. 3234, the *Indian Community Economic Enhancement Act* of 2016, S. 3261, the *Native American Business Incubators Program Act*, and H.R. 4685, the *Tule River Indian Reservation Land Trust, Health, and Economic Development Act*. The following testimony will address three of the four bills, as USET SPF defers to others with greater knowledge on H.R. 4685, especially the Tule River Tribe of California.

USET SPF is a non-profit, inter-Tribal organization representing 26 federally recognized Indian Tribes from Texas across to Florida and up to Maine.<sup>1</sup> USET SPF is dedicated to enhancing the development of Tribal Nations, to improving the capabilities of Tribal governments, and assisting member Tribal governments in dealing effectively with public policy issues and in serving the broad needs of Indian people.

**The Indian Community Economic Enhancement Act of 2016**

For years, USET SPF and Tribal Nations and organizations across the country have called for legislation to address numerous barriers to comprehensive economic development in Indian Country. That is why we were pleased to learn of Chairman Barrasso's introduction of S. 3234, the *Indian Community Economic Enhancement Act of 2016* (ICE). USET SPF extends our appreciation the Chairman for his willingness to take on the expansive and substantial issue of economic development, and fully supports the intent of S. 3234.

We support many of the provisions within S. 3234, as well. The permanent waiver of matching funds for Native Community Development Financial Institutions (CDFIs) is long overdue and a welcome provision in the bill. USET itself is in the process of establishing the first Native CDFI to service its entire region, and the permanent waiver will be of enormous assistance to this effort. In addition, we welcome the opportunity for Native CDFI's to access grants through the Native American Programs Act that would provide CDFI's with the opportunity for development and maintenance, and allow them to provide assistance to Tribal Nations in the development of Tribal law and court systems, as well as Tribal master plans.

<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Arosotook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Repeal of the “essential government function” test in the Tribal issuance of tax-exempt bonds is a critical step forward in the pursuit of parity within the tax code for Tribal Nations. USET SPF strongly supports this provision.

We also offer our support for the elevation of the Director of the Office of Native American Business Development. Providing direct access from this position to the Secretary of Commerce will assist in the removal of some of the barriers described in the “Findings” section of the bill.

Further, USET SPF is supportive of amendments to the Buy Indian Act that would require the Bureau of Indian Affairs and the Indian Health Service to certify that procurement from Indian businesses is not practicable before purchasing outside Indian Country. We also look forward to the issuance of a biannual report from the Departments of Health and Human Services and Interior regarding the implementation of the Buy Indian Act.

While USET SPF believes that S. 3234 provides a variety of much needed change in policy and law, we note that there are a number of opportunities for improvement within the bill as introduced. With this in mind, we support the testimony provided by the National Center for American Indian Enterprise Development, and others, including the Native American Finance Officers Association. In addition, we provide the following section-specific comments designed to strengthen ICE’s impact for Tribal Nations:

- *Section 2. Findings.*

While the Findings section as drafted does describe many existing barriers to economic development in Indian Country, USET SPF notes a major omission: taxation. Through inequities in the tax code as well as state dual taxation, revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Moreover, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. We strongly encourage the addition of language within the Findings section that acknowledges and seeks to lift these deep inequities. For your consideration, we propose the addition of the following:

(1)(A) The U.S. Constitution vests the Congress with the authority to regulate commerce with the Indian tribes.

(B) Under its Indian commerce authority, the Congress has enacted federal laws promoting Indian self-determination, economic development, and strong tribal governments.

(C) Promoting Indian self-determination requires that the Secretary of the Interior recognize the tribal governments’ authority to regulate and license business entities and commercial activities within Indian Country.

(D) Achieving Indian self-determination will not be possible until barriers to economic development are eliminated.

[The current Findings subsection (1)(A) would be renumbered (2)(A) (and the subsequent numeration would change accordingly)]

[With regard to the barriers to economic development in Findings subsection (1)(A) (now numbered (2)(A)), USET SPF recommends inserting new roman numerals iv and v (and renumber current iv as vi) as follows:

iv. The uncertainty of case-by-case adjudication has invited conflict with other governments over regulatory authority and impeded the development of tribal capacity to regulate commercial activity and exercise sovereign authority over fiscal policy in Indian Country.

v. Lack of jurisdictional clarity often exposes business activity to multiples layers of regulation, assessment and costs.

- *Section 3. Community Development.*

Again, while USET SPF supports much of the language in this section, we note the absence of additional provisions addressing issues related to taxation. Although we recognize that the addition of a high number of taxation provisions could have resulted ICE being referred outside of SCIA’s jurisdiction, we reiterate the urgent need for comprehensive tax reform in Indian Country. The provision repealing the “essential government function” test for tax-exempt bond financing appears in a much larger Indian Country tax reform bill on the House side, H.R. 4943, the Tribal Tax and Investment Reform Act, a bill that does not currently have a companion in the Senate. As such, we urge SCIA to work with the Senate Finance Committee on the introduction of a companion bill for possible inclusion in ICE.

In addition, we strongly recommend the inclusion of an amendment to the Native American Business Development, Trade Promotion, and Tourism Act like that which was included in H.R. 4699, the Indian Country Economic Revitalization Act, intro-



duced by Rep. Suzan DelBene during the 113th Congress. H.R. 4699 requires a regular report from the Secretary of Commerce that includes:

- data on Indian business development and employment during the preceding 3-year period, except for the first report which is to include data from the preceding 10 years;
- an assessment of existing structural advantages and barriers to the economic development of Tribal Nations and lands;
- an analysis of Indian access to adequate infrastructure, affordable energy, educational opportunities, and investment capital; and
- recommendations on legislation to strengthen the economies of Tribal Nations and lands in areas that include regulatory, tax, and trust reform.

This type of data would provide a more accurate picture of the status of economic development in Indian Country, which would aid in advocacy efforts, as well as provide the Administration and Congress with the opportunity to understand how policy affects Tribal Nations and areas for improvement.

- *Section 4. Buy Indian Act.*

As a part of the reporting described under this section in ICE, USET SPF recommends regional, in addition to national, reports. Regional reporting would provide the type of information needed for Tribal Nations and organizations, like USET SPF, to work with regional offices to increase implementation of the Buy Indian Act amendments.

- *Section 5. Indian Trader Act.*

USET SPF recommends amendments to the Indian Trader Act to reflect the Federal Government's commitment to the policy of Indian Self-Determination and in order to address changes in the manner in which commerce and government regulation operate in Indian Country since the Act was passed in 1876. Additionally, the delegation of congressional authority to the executive branch should be updated to reflect that the Department of Interior no longer employs a "Commissioner." USET SPF proposes the following amendment to Section 5 of the Act of August 15, 1876 (the Indian Trader Act), which would replace the existing legislative language:

- (a) IN GENERAL. The Secretary of Interior shall have the sole power and authority to regulate trade and commerce on Indian lands and to make such rules and regulations as necessary to promote Indian commerce and maximize the generation of revenues in Indian Country.
- (b) SELF-DETERMINATION—With the approval of the Secretary of Interior, Indian tribes shall have the authority under subsection (a) to enact tribal laws to govern licensing, fees, assessments, taxes and other charges with respect to trade and commerce on Indian lands.

#### **The Native American Business Incubators Program Act**

S. 3261, the Native American Business Incubators Program Act, would establish a grant program to provide financial assistance for the establishment and operation of business incubators serving Tribal communities within the Department of the Interior. The growth and diversification of Native businesses within Indian Country is critical to economic sovereignty, self-determination, and Nation rebuilding. We agree that Native business owners face unique and greater barriers to economic success than many of their peers. USET SPF strongly supports this legislation as an opportunity to create jobs and strengthen Tribal economies, particularly in the USET SPF region. We further support the necessary authorization of funding for this program and appreciate attempts to ensure that S. 3261 is not implemented at the expense of other equally necessary programs at Interior. We thank Vice Chairman Tester for the introduction of this legislation and look forward to its enactment.

#### **The Lumbee Recognition Act**

USET SPF, as indicated through previous Congressional testimony and organizational resolutions, supports the use of the Federal Acknowledgement Process (FAP), administered by the Department of the Interior, for determining whether Indian groups should be federally recognized. This method, based upon criteria recommended by the American Indian Policy Review Commission, provides for an orderly process, administered by experts, such as ethno-historians, genealogists, anthropologists, and other technical staff.

On October 23, 1989, William Lavell, Associate Solicitor for Indian Affairs, issued an opinion stating that federal law bars the Lumbee group from going through the FAP process due to the June 7, 1956 Lumbee Act. The Act prohibits the Lumbee from receiving, "any services performed by the United States for Indians because

of their status as Indians.” With this in mind, USET SPF strongly supports legislation that would overturn this prohibition, if necessary. This would allow the Lumbee to access the FAP, from which they have been unfairly excluded.

In the past, Congress has considered and rightly rejected numerous Lumbee recognition bills. USET SPF encourages Congress to again reject Lumbee recognition via Act of Congress in S. 2285. Rather, Congress should consider legislation that would offer a fair remedy to the barriers created by the 1956 Lumbee Act, and allow Lumbee recognition to be reviewed by the Department of the Interior.

### **Conclusion**

USET SPF appreciates the opportunity to submit testimony on these, and other bills, before the SCIA. We remain committed to working with the Committee to preserve, protect, and advance the sovereignty of Tribal Nations within the USET SPF region and across the country.

---

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AL FRANKEN TO  
DERRICK WATCHMAN

### **Impediments to small business development in Renewable Energy Sector**

Senator Franken, as you know from my testimony at the Committee’s hearing on September 7, 2016, I serve as Chairman of the Board of Directors of the National Center for American Indian Enterprise Development. All of the National Center’s Board members and staff have long been dedicated to removing impediments and enhancing opportunities for business development in Indian Country, including improving access to capital so desperately needed for investment in business, economic and energy development in Indian communities across the United States.

As I noted in my testimony on September 7, we at the National Center applaud your developing and securing approval, with bipartisan support, of your amendment to the FY 2017 Senate Energy and Water Appropriations bill to provide \$9 million to fund the Tribal Energy Loan Guarantee Program. As you note in your question, this \$9 million could be leveraged into \$50–85 million worth of private sector loans for energy projects in Indian Country. The National Center is anxious to see this \$9 million come to fruition as soon as possible in Omnibus appropriations for FY 2017, or if not, then in FY 2018.

As to your questions about working with small businesses working in the renewable energy sector in Indian Country, about the impediments to deploying renewable energy in Indian Country, and our recommendations to Congress to address those impediments, below are responses based on my years as Native American Policy Advisor to the Secretary of Energy (1999–2001) and National Center Board member (2002–Present):

1. *Access to Capital*—Energy projects are capital-intensive, especially renewable energy projects (e.g. wind, solar, photovoltaic, hydropower, geothermal, etc.). The initiative to fund the Tribal Energy Loan Guarantee Program at \$9 million would help tribes, tribal enterprises and other Native American-owned businesses attract private loan financing, in addition to other types of investment, for some renewable energy projects. Due to the large amounts of capital needed, however, more funding for this program will be necessary. Also well worth enhancing is the Indian Loan Guarantee Program of the Department of the Interior, currently funded at only about \$8 million (credit subsidy of about \$7 million) to leverage up to about \$100 million in private sector loans. To date, that guarantee program’s aggregate loan limit has not been sufficient to consider guarantees for a major energy project (although a 2007 loan guarantee, made to an Indian borrower for a portfolio of renewable and other energy projects, helped fund a gas turbine generator). With a single commercial wind turbine costing about \$2 million, a wind farm of 50 turbines would consume the entire \$100 million loan limit! Guarantees for funding wind and solar projects of modest size might be possible, however, if the program’s credit subsidy could be increased by \$9 million (similar to the program funding in your Indian Energy Loan Guarantee amendment), which would increase the aggregate loan limit to upwards of \$250 million. As tribes look to smaller renewable projects that could lower energy costs to their tribal members, or that could generate utility rate payments that could repay guaranteed loans, it would make great sense to add a modest \$9 million to the existing Indian Loan Guarantee Program—a great program that is currently oversubscribed and returns \$15 for every \$1 invested.

2. *Capacity Building*—Energy projects also are capacity-intensive, requiring capabilities to obtain required licenses, permits, environmental impact statements or assessments, leases, as well as financing. Technical and regulatory knowledge is essential, and familiarity with the energy industry is invaluable. Tribes need to har-

ness, recruit and/or spend time and money to obtain the expertise needed to pursue energy projects. Congress made strides in years past to authorize the Indian Energy Loan Guarantee Program and the Office of Indian Energy to help build tribes' capacity to tackle energy development, and this Congress finally came close to appropriating the funding request for them. Congress also could be on the brink of authorizing more regulatory reforms (e.g., Chairman Barrasso's Indian energy bill, S. 209) to reduce regulatory burdens impeding Indian energy project development, including by advancing Tribal Energy Resource Agreements (TERA) to allow tribes more control in entering into energy leases, business agreements and rights-of-way for developing energy resources, whether renewable or nonrenewable. Part of the TERA approval process involves determining a tribe's "capacity" to regulate energy development on its tribal lands. So, in addition to getting these reforms enacted, it is essential for Congress to approve additional funding for FY 2018 for grants for capacity building, feasibility studies, and technical assistance, as well as other financial assistance that may be available through the Department of Energy's Office of Indian Energy Policy and Programs and the Department of the Interior's Office of Indian Energy and Economic Development.

*3. Partnership Collaborations*—Tribes, tribal enterprises and Native American businesses, of all sizes, can benefit greatly through partnering with energy industry players, energy advisors, lenders, investors, production companies, etc., whose representatives are willing to collaborate to develop and deploy renewable energy or other energy projects in Indian Country. We also recommend much more collaboration among the federal agencies that have, and can play larger, roles in assisting tribes and tribal members interested in pursuing renewable and other energy projects. Key federal participants should be the Departments of Energy, Interior, Agriculture/Rural Development, Treasury, Commerce, and the Small Business Administration.

