

**H.R. 4384, TO ESTABLISH UTAH NAVAJO
TRUST FUND COMMISSION; H.R. 5023,
“REQUIREMENTS, EXPECTATIONS, AND
STANDARD PROCEDURES FOR EXECU-
TIVE CONSULTATION WITH TRIBES ACT”;
AND H.R. 5468, “BRIDGEPORT INDIAN
COLONY LAND TRUST, HEALTH, AND
ECONOMIC DEVELOPMENT ACT OF 2010”**

LEGISLATIVE HEARING

BEFORE THE

**COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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LEGISLATIVE HEARING ON H.R. 5023, TO PRESCRIBE PROCEDURES FOR EFFECTIVE CONSULTATION AND COORDINATION BY FEDERAL AGENCIES WITH FEDERALLY RECOGNIZED INDIAN TRIBES REGARDING FEDERAL GOVERNMENT ACTIVITIES THAT IMPACT TRIBAL LANDS AND INTERESTS TO ENSURE THAT MEANINGFUL TRIBAL INPUT IS AN INTEGRAL PART OF THE FEDERAL DECISION-MAKING PROCESS. “REQUIREMENTS, EXPECTATIONS, AND STANDARD PROCEDURES FOR EXECUTIVE CONSULTATION WITH TRIBES ACT, RESPECT ACT”; H.R. 4384, TO ESTABLISH THE UTAH NAVAJO TRUST FUND COMMISSION, AND FOR OTHER PURPOSES; AND H.R. 5468, TO TAKE CERTAIN FEDERAL LANDS IN MONO COUNTY, CALIFORNIA, INTO TRUST FOR THE BENEFIT OF THE BRIDGEPORT INDIAN COLONY. “BRIDGEPORT INDIAN COLONY LAND TRUST, HEALTH, AND ECONOMIC DEVELOPMENT ACT OF 2010.”

**Wednesday, July 28, 2010
U.S. House of Representatives
Committee on Natural Resources
Washington, D.C.**

The Committee met, pursuant to call, at 10:00 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II, [Chairman of the Committee] presiding.

Present: Representatives Rahall, Napolitano, Grijalva, Christensen, Luján, Hastings, Lummis, Herseth Sandlin, Inslee and Baca.

**STATEMENT OF HON. NICK J. RAHALL, II, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF WEST VIRGINIA**

The CHAIRMAN. The Committee on Natural Resources will come to order. The Committee meets this morning to conduct a hearing on three bills related to Indian matters: H.R. 5023, the RESPECT Act, H.R. 4384, the Utah Navajo Trust Fund Act, and H.R. 5468, the Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2010. Over the last few years, the Committee has received numerous complaints from Indian Country about the Administration's failure to effectively consult with tribes despite the Executive Order mandating that agencies consult and collaborate with tribal officials in the development of Federal policies that impact their tribal communities. Even when consultation does occur, tribes report that the Administration often construes it so narrowly that it merely means advance notice of what the Administration intends to do—again, without adequate consideration of tribal views.

President Obama renewed his commitment to the Executive Order by directing agencies to develop a plan of action to implement policies and directives of the Executive Order within 90 days. Despite this directive, some agencies failed to meet the deadline, leaving the status quo and inconsistent application of the tribal consultation policy intact. This has resulted in a breakdown of the Nation-to-Nation relationship and the mutual trust between governments that is necessary for the United States to meet its trust responsibility to Indian tribes. Our Committee colleague, Raúl Grijalva, has introduced H.R. 5023 to address this situation, and I commend him for it. His bill prescribes procedures for the effective consultation and coordination by Federal agencies with the Indian tribes and would ensure that meaningful tribal input is an integral part of the Federal decisionmaking process.

Turning to H.R. 4384, until recently, the State of Utah had been administering oil and gas royalties through a trust fund created in 1933 for the benefit of individual Navajo members residing in Utah. The State no longer wishes to engage in this activity. As such, our colleague from Utah, Mr. Jim Matheson, has introduced H.R. 4384 to establish the Utah Navajo Trust Fund Commission to administer the Utah Navajo Trust Fund, replacing the State of Utah as trustee. The Committee has been working with Mr. Matheson, and I commend him for his leadership on this issue and many others important to Indian Country. We have been working with him to draft changes to the bill in order to ensure that the beneficiaries have local control over the Trust Fund. In addition, the bill would set forth strong accountability measures to ensure that the Trust Fund will continue for future generations.

The third bill on our agenda, H.R. 5468, is sponsored by our colleague from California, Mr. Buck McKeon. The Bridgeport Indian Colony is a Federally recognized Indian tribe with a 40-acre reservation located near the town of Bridgeport, California. Presently, the reservation lands are insufficient for the housing and community development needs of the tribe. H.R. 5468 would place two separate tracts of BLM land in trust for the benefit of the Bridgeport Indian Colony. Taking these lands into trust for the benefit of the Bridgeport Indian Colony would facilitate the tribe's

ability to provide housing, community development and much needed health services for its membership. That concludes my opening statement. I look forward to this morning's testimony, and I recognize the Ranking Member, Mr. Hastings of Washington.

[The prepared statement of Chairman Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II, Chairman,
Committee on Natural Resources, on H.R. 5023, H.R. 4384, and H.R. 5468**

The Committee meets this morning to conduct a hearing on three bills related to Indian matters: H.R. 5023, the "RESPECT Act"; H.R. 4384, the "Utah Navajo Trust Fund Act"; and H.R. 5468, the "Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2010."

Over the last few years, the Committee has received numerous complaints from Indian Country about Administration failures to effectively consult with tribes, despite an Executive Order mandating that agencies consult and collaborate with tribal officials in the development of federal policies that impact tribal communities.

Even when consultation does occur, tribes report that the Administration often construes it so narrowly that it merely means "advance notice" of what an Administration intends to do, again without adequate consideration of tribal views.

President Obama renewed his commitment to the Executive Order by directing agencies to develop a plan of action to implement policies and directives of the Executive Order within 90 days. Despite this directive, some agencies failed to meet the deadline, leaving the status quo and inconsistent application of the tribal consultation policy intact.

This has resulted in a breakdown of the Nation-to-Nation relationship and the mutual trust between governments that is necessary for the United States to meet its trust responsibility to Indian tribes.

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H.R. 5468 would place two separate tracts of BLM land in trust for the benefit of the Bridgeport Indian Colony. Taking these lands into trust for the benefit of the Bridgeport Indian Colony would facilitate the Tribe's ability to provide housing, community development, and much needed health services for its membership.

I look forward to hearing the testimony this morning.

Mr. HASTINGS. Thank you, Mr. Chairman. Mr. Chairman, I don't have an opening statement, but I do look forward to the testimony of our two colleagues on their bills and the testimony of the witnesses—three colleagues. Sorry, Mr. Grijalva, I didn't see you over there. Our three colleagues on their bills, and also the testimony of the witnesses. With that, I yield back.

The CHAIRMAN. Does the gentleman from Arizona, Mr. Grijalva, wish to make an opening statement?

**STATEMENT OF HON. RAÚL GRIJALVA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ARIZONA**

Mr. GRIJALVA. Thank you. Thank you very much, Mr. Chairman. I am very grateful to you for holding this hearing today on the issue that is important to many of my constituents in southern Arizona and many others across the nation, which is the relationship between the Federal Government and tribal governments. We all know since the formation of the Union that the United States has recognized Indian tribes as domestic, dependent nations under its protection. The Constitution gave Congress exclusive jurisdiction over Indian affairs and set forth as supreme law of the land the provisions of any treaties negotiated with tribes. The Federal Government has enacted numerous statutes, promulgated numerous regulations that establish and define a trust relationship with Native Indian Tribes.

However, Congress has never established broad-based standards for the behavior of the Federal Government itself in its interaction with tribes. This is left to the Executive Branch, often with less than ideal results. In 2000, President Clinton issued Executive Order 13175. This Executive Order reaffirmed the government-to-government relationship between the United States and Indian tribes and established the principle that the Federal Government needs to consult meaningfully with tribes before undertaking activities that will have tribal impacts. However, the Order left the formulation of implementing regulations entirely up to each agency with no specific direction for how to do so. As a result, Federal agencies have too often decided on the course of action and consulted with affected tribes by notifying these tribes of the decision that had already been made.

In fact, in my office, the number one complaint I receive from tribal representatives is that the Federal Government took action without tribal consultation. This is different from a disagreement over policy. This is a relationship issue. It is about respect and the obligation of the United States to act with integrity and maturity in its dealings with the unique and special entities that are our Indian tribes. Real consultation requires a two-way exchange of information, a willingness to listen, an attempt to understand and genuinely consider each other's opinions, beliefs and desired outcomes, and a seeking of an agreement on how to proceed concerning the issues at hand. Consultation does not guarantee agreement, but at a minimum contributes to the building of relationships based on mutual respect and understanding.

Consultation could be considered successful when each party demonstrates a genuine commitment to learn, acknowledge and respect the positions, perspectives and concerns of the other party. The RESPECT Act does two things. First, it sets into law provisions of Executive Order 13175 concerning tribal sovereignty and Indian tribal waivers. Second, it takes the mandate for consultation with tribes and prescribes procedures that all agencies must follow. It is my hope that the officials that will be interacting with tribes according to these rules will develop a special relationship with the partners in the tribes. The RESPECT Act shows that the United States takes its government-to-government relationship with tribes very, very seriously and will result in better interactions that will

greatly benefit all parties. I appreciate again, Mr. Chairman, you holding this hearing, and I look forward to continuing to work with my colleagues on the Committee on this issue as it moves forward. Thank you very much. I yield back.

The CHAIRMAN. The Chair thanks the gentleman from Arizona, and again, appreciates his leadership in bringing this issue before us. We will now go to our first panel comprised of two of our colleagues, The Honorable Jim Matheson, U.S. House of Representatives, from Utah, Second District, and the sponsor of H.R. 4384, and our colleague from California, The Honorable Buck McKeon, sponsor of H.R. 5468. Gentlemen, we welcome you and thank you for your leadership on these issues. We do have your prepared testimony, and of course, we have read every word of it and it will be submitted to the record as if read. You may proceed as you desire. Jim, you want to proceed first?

**STATEMENT OF HON. JIM MATHESON, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF UTAH**

Mr. MATHESON. Well, thank you, Mr. Chairman. Thanks, Ranking Member Hastings as well. I also want to first acknowledge my constituents, Mark Maryboy and Dr. Janet Slowman-Chee, who are agreeing to testifying at today's hearing. They will be on the next panel. Today we are addressing a unique situation that needs to be resolved. As the Chairman mentioned in his opening comments, the Utah Navajo Trust Fund was created by Congress in 1933 and it was set up to administer revenues from oil and gas leases on land that was ceded to the Utah Navajos. Since 1933, 37 and one-half percent of the revenues have been administered by the State of Utah and the remaining 62 and one-half percent have been managed by The Navajo Nation for the benefit of all Navajos. So that has been the relationship since 1933.

The State of Utah, based on this Act of Congress in 1933, was required to use the funds for the benefit of Utah Navajos to provide for educational benefits, road and transportation improvements, and to develop housing for the Utah Navajo Chapters. Now, it is important to note that, as I said earlier, this was unique. Utah is the only state in the Nation that had been directed by the Federal Government to administer a trust fund for the benefit of American Indians whose lands are within specific state boundaries. In 2008, after years of litigation for mismanagement of the trust fund, the Utah State Legislature enacted legislation divesting the State of Utah of the responsibility for managing this fund. This was effective at the end of 2009.

Funding for approved construction projects and education benefits continued until June 30 of this year, but since then, Utah Navajos have not had access to the funds, so that is why it is important we move forward on resolving the situation. I said this was unique. When this first came to my office, we tried to come up with a solution. We came to the Committee staff as well and said what should we do? They said there is no precedent for this, we have never seen something like this before, so this has taken a lot of work and a lot of thought to come up with a practical, pragmatic, and effective solution. My office has met with each of the Chapters in Utah. The Natural Resources Committee staff came out to Utah

to also meet with each of these Chapters. It was clear during these discussions that the Utah Navajo Chapters would like to determine how the 37 and a half percent, that Utah share, is going to be managed in Utah and how they are going to be spent.

Now, I introduced H.R. 4384 after initial discussions and input with the Chapters earlier, and I did that in the past year. Since that time, it has generated a lot more discussion. So the text, as introduced today, isn't what I think we should do. We have come up with a series of changes that are right now before Legislative Counsel, and I am sorry that text isn't available for this hearing today, but I think they are going to help resolve some of the concerns that have been outstanding. We have also worked with my senator from Utah, Senator Bennett, who had a different bill he had introduced to resolve those differences, and we are now on the same page in terms of how we want to try to move forward and resolve this situation.

By the way, as part of creating these changes to the text, as it was introduced, the Natural Resources Committee conducted another set of hearings out in Utah, meeting with all the Chapters. So the Committee has made two separate trips to Utah to meet with all the Chapters, to work through these issues and that is what legislating is all about. I think we have worked hard to try to improve this bill. Let me just briefly update you on some of the issues we have tried to address in revising this bill. The bill is going to allow for local control of the funds and it gives the power to the beneficiaries to determine what spending decisions are made, and allows them to choose a financial manager for the trust fund.

There are over 7,000 Utah Navajos. Local control will ensure that the funds are committed to projects within the State of Utah. The ability to manage these funds will be providing an expedited process for much needed improvements to transportation and education benefits. Now, by codifying an election process to allow for beneficiaries to decide the best management, this bill will ensure that the beneficiaries always have a mechanism to determine a new manager if there is mismanagement. Now, Mr. Chairman, I know that my friend, and I mean that, my friend President Shirley from The Navajo Nation, is going to testify, and friends sometimes agree on things, and in this case, we have a little bit of a different point of view.

The Navajo Nation is going to be opposed to this bill because they want to manage all the funds. I believe this is a Utah-specific issue, it has been that way since 1933, and I think those beneficiaries located in San Juan County, Utah, should make the spending decisions. I also believe that in order to protect the beneficiaries in Utah, and given the history of mismanagement of this fund over many decades, we should allow, in fact, we must allow, for the Utah Navajos a process by which they can litigate in Federal Court if negligence is suspected in the fund. Unfortunately, due to tribal law, Utah Navajos would be unable to litigate against The Navajo Nation in Federal Court due to tribal sovereignty if The Navajo Nation was administering this fund.

Please understand my bill does nothing to affect The Navajo Nation authority or jurisdiction over its lands, citizens, resources,

so there is no impact on The Navajo Nation's internal affairs. So, Mr. Chairman, I appreciate this opportunity to come before the Committee regarding this unique situation. This has been a tough one, and I really want to acknowledge all the effort that the Committee has put forth to help my office figure out a path to resolve this issue. It is an important one for us to resolve for my constituents in Utah, and this Committee has acted very thoughtfully and productively in helping me resolve this issue. I look forward to moving ahead with this legislation. I will yield back my time.

STATEMENT OF HON. HOWARD P. "BUCK" McKEON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. McKEON. Thank you, Chairman Rahall, Ranking Member Hastings, for holding this hearing today on H.R. 5468, the Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2010. I want to also thank Chairman Joseph Art Sam and Vice Chairman Herb Glaser, both leaders of the tribe, for making the trip from California to be here today in support of this bill. They will be testifying later. This simple, but important piece of legislation will help the tribe to create critical economic development and access better health care for both the tribe and the surrounding community. This legislation provides a good model for helping a sovereign tribe build self-sufficiency in partnership with local governments and the Federal Government.

The tribe worked closely for many months with Mono County to come to a fair and transparent agreement on county services and tribal development plans. Prior to introduction of this legislation, the tribe and county entered into a detailed Memorandum of Understanding which addresses critical areas of law enforcement, emergency medical services and health and safety codes. Most importantly, the tribe received the unconditional and unanimous support of the county for taking the two parcels in this legislation into trust. Currently, the tribe has a 40-acre reservation in a geographically remote area of Mono County near the Town of Bridgeport, the County Seat. However, the size of the reservation is insufficient for the tribe's housing and community development needs.

Many members of the tribe have expressed interest in returning home should housing and economic opportunities become more readily available. In order to create this economic development and housing, my legislation would transfer from the BLM to the BIA to hold in trust for the tribe one parcel of land, approximately 31 acres, contiguous to the tribe's existing reservation. The tribe has been working to acquire this parcel for approximately 15 years. Expansion of the reservation into this parcel will allow for increasing tribal self-sufficiency with creation of an RV park, gas station, convenience store and residential housing for tribal members and a recreation center for the benefit of the tribal and local community.

Second, the tribe needs better access to health care. Tribal members currently have to drive 90 miles to Bishop to obtain Indian health care services. In the 1980s, the tribe worked with the Toiyabe Indian Health Project to develop a health clinic on the approximately 7-acre property also proposed to be taken into trust with this legislation. That clinic closed in 2006, but both the tribe

and the Toiyabe agree it needs to be reopened. Reopening of the clinic would greatly improve the availability of health care for the tribes' members, as well as non-Native residents of Mono County. My legislation would transfer from the BLM to the BIA to hold in trust this parcel also for the benefit of the tribe. Again, thank you for holding this hearing today, and I look forward to working with the Committee to move forward on this important legislation for the benefit of the Bridgeport Indian Colony. Thank you, Mr. Chairman.

[The prepared statement of Mr. McKeon follows:]

Statement of The Honorable Howard P. "Buck" McKeon, a Representative in Congress from the State of California, on H.R. 5468

Thank you, Chairman Rahall and Ranking Member Hastings for holding this hearing today on H.R. 5468, The Bridgeport Indian Colony Land Trust, Health, and Economic Development Act of 2010. I want to also thank Chairman Joseph Art Sam and Vice-Chairman Herb Glazer, both leaders of the Tribe, for making the trip from California to be here today in support of this bill. This simple but important piece of legislation will help the Tribe to create critical economic development and access better healthcare for both the Tribe and the surrounding community.

This legislation provides a good model for helping a sovereign Tribe build self-sufficiency in partnership with local and Federal government. The Tribe worked closely for many months with Mono County to come to a fair and transparent agreement on county services and tribal development plans.

Prior to introduction of this legislation, the Tribe and County entered into a detailed Memorandum of Understanding which addresses critical areas of law enforcement, emergency medical services, and health and safety codes. Most importantly, the Tribe received the unconditional and unanimous support of the County for taking the two parcels in this legislation into trust.

Currently, the Tribe has a 40-acre reservation in a geographically remote area of Mono County near the town of Bridgeport. However, the size of the reservation is insufficient for the Tribe's housing and community development needs.

Many members of the Tribe have expressed interest in returning home should housing and economic opportunities become more readily available. In order to create this economic development and housing, my legislation would transfer from the BLM to the BIA to hold in trust for the Tribe one parcel of land of approximately 31 acres and contiguous to the Tribe's existing reservation.

The Tribe has been working to acquire this parcel for approximately 15 years. Expansion of the reservation into this parcel will allow for increasing tribal self-sufficiency with creation of an RV park, gas station, convenience store, residential housing for Tribal members, and a recreation center for the benefit of the Tribal and local community.

Secondly, the Tribe needs better access to health care. Tribal members currently have to drive 90 miles to Bishop to obtain Indian healthcare services. In the 1980s, the Tribe worked with the Toiyabe Indian Health Project to develop a health clinic on the approximately 7-acre property also proposed to be taken into trust in the legislation. That clinic closed in 2006, but both the Tribe and Toiyabe agree it needs to be reopened.

Reopening the clinic would greatly improve the availability of healthcare for the Tribe's members as well as non-native residents of Mono County. My legislation would transfer from the BLM to the BIA to hold in trust this parcel for the benefit of the tribe.

Again, thank you for holding this hearing today. I look forward to working with the Committee to move forward on this important legislation for the benefit of the Bridgeport Indian Colony.

The CHAIRMAN. The Chair thanks both of our colleagues for their testimony. I have no questions. I am sure some of our later panelists will be responding to both of our colleagues' testimony. Mr. Hastings? Dr. Christensen? Mr. Grijalva? Gentlemen, thank you. I appreciate it. Our next panel testifying on all three bills is Mr. Paul Tsosie, the Chief of Staff, the Office of the Assistant Secretary

for Indian Affairs, Department of the Interior, Washington, D.C. Mr. Tsosie, we welcome you to the Committee on Natural Resources. We do have your prepared testimony. It will be made part of the record as if actually read. You may proceed as you desire.

STATEMENT OF HON. PAUL TSOSIE, CHIEF OF STAFF, OFFICE OF THE ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

Mr. TSOSIE. Thank you. Good morning, Chairman Rahall, Ranking Member Hastings and Members of the Committee. My name is Paul Tsosie. I am the Chief of Staff for the Assistant Secretary for Indian Affairs, Department of the Interior. First of all, I want to thank you for this opportunity to testify on H.R. 5023, H.R. 4384 and H.R. 5468. Before I start my testimony, I just want to thank Darren Pete, Chastity Bedonie and Sequoyah Simermeyer in their help in my preparation for this testimony. H.R. 5023, the RESPECT Act, the Requirements, Expectations, Standard Procedures for Executive Consultation with Tribes Act, calls for detailed procedures for consultation. Just as a note, this testimony presents the views of the Department of the Interior. However, because H.R. 5023 would affect almost every agency in the Federal Government, other agencies should be afforded an opportunity to review and comment on this bill.

The Department of the Interior, we strongly support tribal consultations. We have a strong commitment to regular and meaningful consultation and collaboration with Indian tribes. As a piece of background, on November 6, 2000, President Clinton signed Executive Order 13175, entitled Consultation and Coordination With Indian Tribal Governments. As a follow-up on this Executive Order, President Barack Obama on November 5, 2009 signed a Presidential Memorandum which called for a detailed plan of action to carry out 13175. Now this detailed plan of action was developed. What happened is we went out to Indian Country. There were seven meeting locations all across the country, all the way from Alaska to Washington, D.C. We got input from over 300 tribal leaders and we submitted plans of action to the Administration.

Now we are in the process of carrying out this plan of action. This plan of action calls for each agency to have a point person responsible for coordinating and implementation of their plans of action. These plans of action, we are going to submit reports to the Administration, and these reports will take place every year. Now, we have essentially consulted on consultation with the Indian tribes. We are getting the input from Indian tribes all over across the nation. Such an all-inclusive, governmentwide determined effort to consult with tribal nations has never been before undertaken with the United States Government. It is certainly a marked contrast to the past and serves as the foundation for a new era in Federal tribal relations.

Despite the fact that we have put a lot of resources and time into consulting with Indian tribe on our internal consultation process, we cannot support H.R. 5023 for a number of concerns. H.R. 5023 seeks to codify 13175 Executive Order by prescribing detailed standards that an agency must follow before undertaking any activity that may have a substantial direct impact upon the lands or

interests of one or more Indian tribes on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes. A couple of our other concerns are that in H.R. 5023 some of the definitions are too broad. It also calls for specific and excessively burdensome procedures and it is a one size fits all approach.

In addition to that, it also subjects the Department of the Interior and other Federal agencies to judicial review. Based upon an allegation, tribes can go to Court, get a restraining order and hold the Federal Government liable for damages from adverse impacts on perceived violations of H.R. 5023. So, in conclusion, we cannot support H.R. 5023. However, I want to reemphasize our strong commitment that we have to support tribal consultation, to support regular and meaningful consultation and collaboration with Indian tribes.

H.R. 4384, which is established to establish the Utah Navajo Trust Fund Commission. We are not taking a stance on this legislation. We are looking at three issues right now to see their impacts upon the Federal Government. First of all, whether the Commission, or its agents, or the employees of the Commission are arms of the Federal Government, and second, whether this bill creates a causative action against the United States Government, and third, the Department would like more time to review Section 12 of the bill which would require the State of Utah to transfer funds it currently holds in trust to the new trust administrator selected under this bill and would require the current beneficiaries of the trust to deposit any damages they may recover from the State of Utah in litigation into the new trust fund created by this bill. So we just want to take some time to review Section 10[f], 12 and 19 of this bill.

H.R. 5468, Bridgeport Indian Colony Land Trust, Health and Economic Development Act. We are supporting this bill. What it does is it takes an internal transfer of 39 acres of public lands and transfers that from the BLM to the Department of the Interior to hold in trust for the Bridgeport Indian Colony. This land is in Bridgeport, Mono County, California, and we support this piece of legislation, and we look forward to working together with the sponsor and the Committee to make minor technical modifications. At this time, if there are any questions.

[The prepared statements of Mr. Tsosie follows:]

**Statement of Paul Tsosie, Chief of Staff, Office of the Assistant Secretary—
Indian Affairs, U.S. Department of the Interior, on H.R. 4384**

Good morning Mr. Chairman, Ranking Member, and members of the Committee. Thank you for the opportunity to provide the Department of the Interior's (Department) position on H.R. 4384, a bill that seeks to establish the Utah Navajo Trust Fund Commission, and for other purposes. The Department takes no position on this legislation, but would like more time to review two provisions in the bill.

In 1933, Congress established the Utah Navajo Trust Fund (UNTF) through legislation (47 Stat.1418), which designated Utah as the trustee. The corpus of the UNTF comes from 37.5 percent of net royalties derived from exploitation of oil and gas deposits under the Navajo Reservation's Aneth Extension located in the State of Utah. According to the statute, the 37.5 percent net royalties are to be paid to the State of Utah, which was to be used for the health, education and general welfare of the Navajo Indians residing in the Aneth Extension. In 1968, Congress ex-

panded the beneficiary class to include all Navajo Indians living in San Juan County, Utah (Pub.L. 90–306, 82 Stat. 121).

In approximately 1959, oil and gas wells in the Aneth Extension began producing in paying quantities, and the United States Department of the Interior, through oil and gas mining leases on the Navajo tribal land, began collecting oil and gas royalties. The leases are between the Navajo Nation and the producer, and are subject to approval by the Secretary of the Interior.¹ The State of Utah is not a party to the tribal leases.

Previously, the Navajo Nation would collect the Aneth lease royalties directly and remits 37.5 percent to the UNTF account administered by the State of Utah. The State, upon receipt of each check, deposits it into the Trust Fund and invests the unused royalty funds according to rules set forth in Utah’s statutes. In 2008, however, the Utah State Legislature enacted legislation that divested the State of the responsibility of managing the UNTF.

H.R. 4384 would establish a Utah Navajo Trust Commission (Commission) to administer the Utah Navajo Trust Fund. The Commission would be made up of 7 members, elected from each of 7 Navajo Chapters located in Utah. Among other duties, the Commission would be responsible for selecting a Trust Administrator for the Utah Navajo Trust Fund; ensuring that amounts in the Trust are invested, managed, and administered for the health, education, and general welfare of the beneficiaries; establishing written investment goals, objectives, and guidelines for the investment of the Trust assets, determining which projects are to be funded; authorizing the expenditure of amounts in the Utah Navajo Trust Fund for approved projects; report to the beneficiaries through each Chapter; limiting the amounts of the Trust Fund spent on the Commission’s administrative costs; and establishing policies and procedures for Trust Fund management and accounting.

The legislation would also direct the State of Utah to prepare and audit an accounting of the Trust assets in the UNTF, as established and administered by the State of Utah prior to its divestiture, and to transfer the Trust Assets to the Trust Administrator of the Commission.

The Department does not take a position on this bill but does note two provisions in the bill and would like more time to review these provisions. First, Section 10(f) of the bill, which provides that the Commission, its officers, agents, and employees would not be a department, agency, or instrumentality of the Federal Government and would not be subject to Title 31 of the United States Code. Moreover, the Commission, its officers and employees would not be considered officers, employees, or agents of the Federal Government. Secondly, the Department would also like more time to review Section 19 of the bill which provides that the bill would not create a cause of action against the United States, and that the United States would not be liable for any actions or inactions of the Commission or the Trust Administrator, but that nothing in the bill would affect the liability of the United States for misdeeds by the United States when it had control over Trust assets. Finally, the Department would like more time to review section 12 of the bill, which would require the State of Utah to transfer funds it currently holds in trust to the new Trust Administrator selected under this bill and would require the current beneficiaries of the trust to deposit any damages they may recover from the State of Utah in litigation into the new Trust Fund created by this bill.

Again, the Department takes no position on H.R. 4384 but would like more time to review Section 10(f), 12 and 19 of the bill. This concludes my statement. I would be happy to answer any questions the Committee may have.

**Statement of Paul Tsosie, Chief of Staff, Office of the Assistant Secretary—
Indian Affairs, U.S. Department of the Interior, on H.R. 5023**

Good morning, Chairman Rahall, Ranking Member Hastings, and Members of the Committee. Thank you for the opportunity to appear before you today to discuss H.R. 5023, the Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes Act (RESPECT Act). This legislation would prescribe detailed procedures for consultation between Federal agencies and federally recognized Indian tribes. This testimony presents the views of the Department of the Interior, however, because H.R. 5023 would affect every “agency” within the meaning of 44 U.S.C. §3502(1), other agencies should be afforded an opportunity to review and comment on the bill.

¹See, e.g., 25 U.S.C. §396a (provision in 1938 Indian Mineral Leasing Act allowing tribe to lease unallotted Indian land for mining purposes, subject to Secretary of Interior approval); 25 C.F.R. Pt. 211 (Leasing of Tribal Lands for Mineral Development).

Consultation that respects the sovereignty of tribal governments and the right of tribal nations to govern themselves is a critical ingredient for a sound, productive Federal-tribal relationship. Thus, regular and meaningful consultation and collaboration with tribal officials is a touchstone of this Administration's policy with respect to Indian tribal governments. Though we certainly recognize the ways in which dialogue has greatly improved Federal policy toward Indian tribes, we cannot support H.R. 5023 because it is vague and overbroad. Indeed, the law has the potential to bring much of the Federal government to a standstill.

Tribal Consultation

Executive Order (E.O.) 13175, entitled *Consultation and Coordination With Indian Tribal Governments*, was signed on November 6, 2000. It directed each agency to have "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" refers to "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." Section 10 of E.O. 13175 makes absolutely clear that the Executive Order is intended "only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person."

To further the purposes of E.O. 13175, and because this Administration believes that tribal nations do better when they make their own decisions, on November 5, 2009, President Barack Obama invited leaders from all 564 federally recognized tribes to the White House Tribal Nations Conference. The President was joined by Members of Congress, several cabinet secretaries and other senior administration officials from the Departments of State, Justice, Commerce, Education, Energy, Agriculture, Labor, Health and Human Services, Housing and Urban Development, the Interior, and the Environmental Protection Agency. At the Conference, the President signed a memorandum directing Federal agencies to submit detailed plans of action for how they will secure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, as defined by E.O. 13175.

In accordance with the President's memorandum, Federal agencies immediately began developing their detailed plans of action. Numerous agencies hosted listening and consultation sessions with tribal leaders across the country. For example, on November 23, 2009, the Department of the Interior sent a letter to all federally recognized tribes inviting tribal leaders to engage in an interactive dialogue discussing their experiences with consultation. The letter also asked tribal leaders to suggest ways to improve tribal consultation practices, for inclusion in Interior's Action Plan. The Department hosted full day, face-to-face listening sessions that brought together tribal leaders with senior Department officials representing all Interior bureaus and offices, in seven locations – Anchorage, Alaska; Portland, Oregon; Washington, D.C.; Ft. Snelling, Minneapolis; Oklahoma City, Oklahoma; Phoenix, Arizona; and Palm Springs, California. The Department invited representatives from other Federal agencies, such as the Department of Labor, the Environmental Protection Agency, and the Department of Education, to attend these listening sessions. Attendance at the listening sessions totaled approximately 300 tribal leaders and representatives and over 250 officials from Interior and other Federal agencies.

To date, all of the largest agencies – including every cabinet department as well as major agencies such as the EPA – have submitted Plans of Action. Now, every Cabinet agency is implementing its own detailed plan of action. To ensure accountability, each agency has a point person responsible for coordinating implementation of the plan. In the coming months, these agencies will submit progress reports to update the Administration on steps they have taken to meet the requirements of the November 5 memorandum. In fact, they will submit such progress reports every year hereafter. Such an all-inclusive, government-wide, determined effort to consult with tribal nations has never before been undertaken within the United State government. It is certainly a marked contrast to the past and serves as the foundation for a new era in Federal-tribal relations.

H.R. 5023

H.R. 5023 seeks to codify E.O. 13175 by prescribing detailed standards that an "agency" must follow before undertaking any "activity" that "may have substantial direct impacts" on the lands or "interests" of one or more Indian tribes, on the rela-

tionship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H.R. 5023 would apply to every “agency” within the meaning of 44 U.S.C. § 3502(1), which includes “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.”¹ Furthermore, the Act would apply to every “activity,” which is defined to include “a project, program, policy or other action including, infrastructure projects, regulations, program comments by Federal entities, and agency-drafted proposed legislation, that is funded in whole or in part under the direct or indirect jurisdiction of an agency, including those carried out by or on behalf of an agency; those carried out with Federal financial assistance; or those requiring a Federal permit, license, or approval.” Notably, the bill as drafted defines neither the phrase “may have substantial direct impacts,” nor what constitutes an Indian tribe’s “interests.”

H.R. 5023 would create what it terms “scoping stage consultations” that would require an agency to consult “[a]s early as possible in the planning stage of an activity.” The Act would create standards for all phases of the “scoping stage” consultation, including: the initial contact with consultation partners, efforts to arrange consultation meetings, and even for the format of a consultation meeting. The bill would go so far as to require that adequate time be made for introductions at the consultation meeting.

The scoping stage consultations would be terminated on the execution of a memorandum of agreement (MOA). The MOA would include the terms and conditions agreed upon by an agency and Indian tribe through the consultation process. The terms might often include measures to resolve or mitigate any adverse impacts on an Indian tribe. If an MOA is not executed, the agency would terminate the scoping stage consultation only after providing all consultation partners with written notification and an explanation for its decision. The head of the agency would be required to sign the notification. The process would then move to “decision stage procedures,” whereby an agency would be required to submit a “Proposal Document” to all consultation partners and follow up with phone calls to confirm receipt of the Proposal Document. The Proposal Document would be published in the Federal Register for a public comment period of 90 days. One or more extension periods of 30 days would apparently be required, upon request of a tribal member.

After the comment period ends, the agency would be required to prepare a preliminary decision letter, signed by the head of the agency, that describes the decision – the details of the decisions itself, the agency’s rationale in making the decision, any changes made to the proposal in response to comments, and any points on which the decision conflicts with the requests of any consultation partners. The preliminary decision letter would be mailed to all consultation partners, and the agency would follow up with a phone call to confirm receipt of the letter. After the agency submits the preliminary decision letter to the consultation partners, the consultations partners would have 60 days to comment. The agency would then be able to issue its final decision.

Moreover, presumably beginning during the scoping stage consultations, the agency would be required to keep an official consultation record that could be referred to in any litigation that may arise. The record would include, but not be limited to, correspondence, telephone logs, and emails. The agency would also be required to keep notes recording the dates, content, and identities of participants in consultation meetings, site visits, and phone calls.

Lastly, Section 501 of H.R. 5023 would allow for judicial review when an Indian tribe alleges that the requirements of the Act have not been met. Under this provision, an Indian tribe may seek a court order restraining an agency from taking action in furtherance of an activity until the requirements of the Act have been met. The provision makes agencies liable for any damages resulting from activity conducted without consultation.

Interior’s Position

Interior cannot support H.R. 5023, as written, because it is vague and overbroad. The Act would apply to every “activity” that “may have substantial direct impacts” on an Indian tribe. It is unclear whether “activity” would include, for example, the

¹ The term “agency” does not include, however, the Government Accountability Office, the Federal Election Commission, the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions, nor does it include Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities. See 44 U.S.C. § 3502(1)(A)-(D).

President's annual budget, the positions the Administration takes on legislative proposals (such as the position I am describing in this statement), and other day-to-day operations of the Federal Government. The ambiguity is particularly problematic because tribes could bring civil actions to protest Federal agencies' interpretations of the requirements of the Act.

The consultation process that the Act would set up is not optimal for all situations. While the need for tribal consultation is uncontroverted, the process for consultation is not "one-size-fits-all." Federal and tribal governments must have the freedom to design an appropriate consultation process for each matter on which they confer. The Act does not give Federal and tribal governments that flexibility. For example, dissemination to tribes of a planning document may not be the best way for Federal agencies to begin a consultation process. Tribes often prefer to be consulted before Federal agencies draft any planning document, and in some instances, tribes wish to consult very quickly. In these situations, tribes would most likely not want to wait for the completion of the scoping stage consultations.

Similarly, a consultation meeting might not be the appropriate second step in a consultation process. For government-to-government consultations between a Federal agency and one tribe, telephone calls may be more efficient. For government-to-government consultations between a Federal agency and many tribes, smaller scoping meetings or regional meetings may be more effective.

Indeed, the Act's requirement that Federal agencies negotiate the logistics of the initial consultation meeting with "stakeholder representatives" seems more appropriate for government-to-government consultations with one tribe rather than for multi-tribal consultations. To begin with, the Act does not define who the appropriate "stakeholder representatives" are for a multi-tribal consultation. This ambiguity is likely to give rise to litigation on the part of tribes that consider they were not included in decisionmaking about the logistics of the first consultation meeting.

The Act's requirement that scoping-stage consultation terminate in a MOA is similarly cumbersome, particularly when multiple tribal governments are involved. Multi-tribal consultation can be expected to terminate often without a MOA acceptable to all tribes. The Act does not make adequate allowance for failure of the MOA process in multi-tribal consultations.

The Act's reference to nongovernmental consultation partners in section 203 is problematic. The Act does not explain the reasons for the presence of nongovernmental consultation partners at government-to-government consultations between the United States and tribes. Nor does the Act define the roles and rights of nongovernmental consultation partners.

Some logistical requirements of the Act do not appear to offer benefits proportionate to their costs. For example, section 204 of the Act would require Federal agencies to mail and e-mail, if possible, the Proposal Document and the Preliminary Decision to the tribal leader and all members of any elected tribal governing body of each consultation partner, and then to follow up with phone calls to confirm receipt of the Proposal Document and the Preliminary Decision. Communication with the head of a government normally suffices for government-to-government consultation.

Another logistical requirement whose cost would likely exceed its benefit is the requirement in section 204 (b) that a 30-day extension of the public comment period on a Proposal Document shall be granted upon request by any member of an Indian tribe that is a consultation partner. It is uncommon for individual tribal members to play such a substantial role in government-to-government consultation. Particularly ambiguous are the provisions on judicial review in section 501 of the Act. Federal agencies must be accountable for their actions, but the judicial review provisions are likely to hamper effective consultation rather than help to achieve it. The language of section 501 would not require a tribe to be directly affected in order to file suit alleging that the Act's requirements have not been met. We can only assume that courts would read the usual standing requirements into section 501. Section 501 provides that courts could restrain Federal agencies from "further action in furtherance of the activity," without specifying what activity is meant. Courts could be left to decide whether the "activity" is further consultation, or the particular element of the consultation process in which the agency was engaged, or the activity that the agency proposes to carry out.

H.R. 5023 also does not make exception for certain circumstances. For example, the Act does not account for situations in which a Federal "activity" must be undertaken immediately due to exigent circumstances. The Act also does not make an exception for individual enforcement decisions that must be made under Federal law by the applicable Federal agency, such as enforcement actions by regulatory agencies.

The goals of H.R. 5023 are laudable. Many of the goals are being met by this Administration's current initiative to insure that the consultation policies of each Federal agency comply with E.O. 13175. This Administration's initiative will result in each Federal agency having an accountable consultation policy that meets the requirements of E.O. 13175. The agencies' policies will have the necessary flexibility to accommodate the various circumstances in which the United States and tribes must carry out government-to-government consultation. Thus, the Executive Branch is committed to accomplishing the primary goal of H.R. 5023, even though it cannot support H.R. 5023 itself.

**Statement of Paul Tsosie, Chief of Staff, Office of the Assistant Secretary—
Indian Affairs, U.S. Department of the Interior, on H.R. 5468**

Thank you for the invitation to testify on H.R. 5468, the Bridgeport Indian Colony Land Trust, Health, and Economic Development Act. The legislation directs that approximately 39 acres of land currently administered by the Bureau of Land Management (BLM) be taken into trust for the Bridgeport Paiute Indian Colony of California (Tribe). The Department supports this legislation, and would like to work with the sponsor and Committee to make minor technical modifications to ensure that the property to be transferred is accurately described.

Background

The Bridgeport Indian Colony is a federally-recognized tribe located near the town of Bridgeport, in Mono County, California. The Tribe's 40-acre reservation is located approximately a quarter mile from Highway 182, and currently has no highway frontage or pass-through traffic.

The Tribe seeks to have two parcels of BLM managed land transferred to their reservation and held in trust by the United States. The 31.86-acre Bridgeport Parcel, which was identified by the BLM for disposal in a 2004 amendment to the Bishop Resource Management Plan, lies between the Tribe's current reservation and Highway 182. The Bridgeport Parcel is contiguous to the existing Colony. Trust status for this parcel would enable the Tribe to construct housing and a community activity center, and facilitate economic development. The 7.5-acre Bridgeport Camp Antelope Parcel, near the small town of Walker, is currently under lease to the Toiyabe Indian Health Project for operation of a community health clinic under the Recreation and Public Purposes Act. The Toiyabe Indian Health Project is operated by a consortium of tribes. The clinic is currently closed, but the Bridgeport Indian Tribe has expressed a desire to reopen this facility, which has suffered major interior water damage and has been vacant since December, 2005. We suggest that the bill state that any structures on the parcel would remain the property of the tribe and would not become part of the trust property.

H.R. 5468

Under H.R. 5468, the United States would hold in trust for the Tribe both the Bridgeport and Bridgeport Camp Antelope Parcels, subject to valid existing rights. The Tribe has sought a means to acquire the Bridgeport parcel for many years, and the BLM has been working cooperatively to help them achieve this goal under existing authorities. The Bridgeport Camp Antelope Parcel has been under Recreation and Public Purposes Act lease since 1987.

Conclusion

Thank you for the opportunity to present a statement for the record to express the Department's support for H.R. 5468. We would be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you. I have one question. The previous Administration testified in opposition to my tribal consultation legislation last Congress, and today, you are testifying on behalf of the current Administration in opposition to Mr. Grijalva's tribal consultation legislation, yet all, all of the tribes last Congress and today support this type of legislation. I am wondering if you could just tell me where the disconnect is and what can be done to resolve this issue.

Mr. TSOSIE. Well, all of the tribes, and also the Department of the Interior, strongly support tribal consultation. In the goals of

the bill of the RESPECT Act, it focuses on enhancing the government-to-government relationship, the respect for sovereignty, the need for tribal input on actions that affect the Indian tribes, and tribes all across the Nation are all in support of that, and so are we. Just the specific particulars in this bill, for example, this bill has a one size fits all approach, there are some instances where such a strict procedure is not required, not needed, but we still have a duty to consult with the Indian tribes. One specific example I want to throw out there is recently we just chose a director of the BIE, the Bureau of Indian Education.

We understood that we have a strong commitment to consult with the Indian tribes; however, this was an internal Department of the Interior hiring process, a Federal Government hiring process. If we would have had to follow the strict requirements under the RESPECT Act, we couldn't have because of the strict Federal hiring guidelines. So what we did is we had to be creative. We videotaped interviews with the consent of all the applicants and we sent those out to Indian tribes that had BIE schools and also Indian tribal organizations and got their input. We solicited input from all over the country and at the end of the Federal hiring process, we took that into consideration. Instances like that are not covered under the RESPECT Act. So just as an emphasis there that we do have a strong commitment for tribal consultation, and this RESPECT Act was just too burdensome.

The CHAIRMAN. So am I interpreting you right that where there is a need to hire somebody that needs to meet certain qualifications within your agency, that you feel the need to do that without tribal consultation?

Mr. TSOSIE. No. What I am saying is that we understand that we do have a duty to consult, and sometimes we have to be creative, and putting everything into one box under the RESPECT Act would not allow for us to be creative and get the input of tribes where we cannot specifically follow those procedures because there were, you know, hiring deadlines and issues like that that we also had to deal with because each arm of the Federal Government is different. We understand that. That is why each arm of the Federal Government on consultation is developing their own action plan and carrying out their own action plan. The Department of the Interior, we have submitted ours and we are in the process of carrying that out, but there are sometimes when each entity needs that flexibility and the RESPECT Act just doesn't allow for it.

The CHAIRMAN. Mr. Hastings?

Mr. HASTINGS. Thank you, Mr. Chairman. To follow up on the Chairman's line of questioning, you mentioned a personnel problem, but on your testimony, at the last sentence of the second paragraph regarding H.R. 5023 you say, "Indeed, the law has potential to bring much of the Federal Government to a standstill." Now, personnel issues won't bring the Federal Government to a standstill, but give me an example of what you mean by that statement.

Mr. TSOSIE. That statement, I am going to use the same example. There are specific deadlines, and conversations, and telephone calls and emails that have to be met under the RESPECT Act. Obviously, the hiring of a BIE director would be something that affects the interests of Indian tribes. Any perceived violation based

upon an allegation, a tribe could go in under the RESPECT Act and get a restraining order basically stopping the Federal hiring process from going forward.

Mr. HASTINGS. Well, let me expand upon that because, I mean, hiring one, you know, personnel within the bureaucracy doesn't bring the government to a halt. On page 4 you say that it is unclear whether the activity would include, for example, the President's annual budget. Would you elaborate on that?

Mr. TSOSIE. The definitions under the RESPECT Act are either nonexistent or very broad. Under my quote, I am going to turn to my quote now, H.R. 5023 prescribes detailed standards that an agency must follow before undertaking any activity that may have a substantial direct impact on the lands or interests of one or more Indian tribes. Now, the definitions under the RESPECT Act may have a substantial direct impact and interest of an Indian tribe is not defined, so under those two definitions, those are open for interpretation.

Mr. HASTINGS. So you are suggesting then in your testimony that somebody could interpret this to affect the President's annual budget proposal, is that correct?

Mr. TSOSIE. Exactly.

Mr. HASTINGS. And that would not be confined simply to Interior, but to all agencies, is that correct?

Mr. TSOSIE. Exactly.

Mr. HASTINGS. OK. Good. Well, that is a big hurdle. Good. Well, Mr. Chairman—thank you for your testimony.

Mr. GRIJALVA. I am glad other tribal members had input into that very important position and a great candidate and a fine person was chosen. That kind of creativity and communication and inclusiveness is, nothing in this Act would prevent you from continuing to do that. You know, Executive Order 13175 and its predecessor, which includes Executive Order 13084, have been in effect now under four Administrations, and yet, you still hear the same issues that the Chairman brought up about the number one complaint coming from Indian Country has to be about the consultation process with Federal agency. This bill does nothing but codify Executive Order 13175 with the addition of explicit procedure for consultation so we don't leave, as you mentioned, flexibility, a flexibility to do it right and a flexibility not to do it all, to individual agencies.

So my question is why should we trust and why should Indian Country trust that this new Administration of which you are a part of that is working hard on the action plans for each agency, and that process is going to continue, what guarantee do we have that in future Administrations that that same kind of attitude is going to be present without a codified law that requires future Administrations to do that? Maybe in the future that with each Administration comes a different attitude. Some are proactive, some are not. The complaints go back and forth, but there has been a consistent complaint about the lack of consultation and the lack of procedure and consultation.

All we are trying to do is codify it. You know, many of the points that you brought up of bringing the President's budget to a halt, there are some parts that should be halted, none of this in this law

even attempts to deal with that. With all due respect, I think your opposition is based on exaggeration of this legislation. We will be glad to respond, and specifically to the points that you made because we think you are wrong, some of the exaggerations are not true about what is in this legislation, and we will proceed from here. Taking a snapshot of what you are doing right now on tribal consultation as a voluntary policy gesture is a good thing.

We are saying let us codify that good will that you are implementing into law so that future Administrations, future tribal governments, will have the security of knowing that there is a procedure that needs to be followed by Federal agencies. The fact of the matter is that this Congress, and all Congress has the jurisdictional responsibility and the authority to enact these kinds of procedures, as uncomfortable as it might make an agency. Our constituency is much broader than the agency at this point. The trust issue, it is not really a question, it is more of a comment, and I really don't expect a response. I yield back, Mr. Chairman.

Ms. CHRISTENSEN. Thank you, Chairman Rahall. I want to thank you and Ranking Member Hastings for holding this hearing. For the record, just before I ask my questions, I want to raise an issue that is really not before the Committee just for a second just for the record. I had an opportunity to meet with the Congress of American Indians a few weeks ago and their major concern was the Carcieri decision and the negative impact it could have on economic development contracts, loans and provision of services, as well as long years of litigation. As you know, that decision reverses years of precedent under the IRA, and I hope that we can address it before the end of this Congress, as they would like us to do, either through one or a combination of the two bills that are in this Committee.

The CHAIRMAN. I hope we can, too.

Ms. CHRISTENSEN. Thank you. I wanted to just say that for the record because I promised them I would, you know, work with you to try to get that done. Let me ask, this bill, H.R. 5023, wouldn't even be before us if the Executive Order was being followed consistently. Some of the Departments have, to my understanding, not even responded. What is your office doing to bring them into—I think Homeland Security might be one of them. What is the office doing to bring them into accordance with the directive?

Mr. TSOSIE. Thank you for the question. First of all, I want to say that at the White House Conference last year in November, the President of the United States indicated that under his watch that Indian tribes would not be forgotten, and, as a result, that is where the Executive Memorandum came, out of that conference.

Ms. CHRISTENSEN. I was there, and I remember that.

Mr. TSOSIE. What is happening right now is that we are weaving this consultation process into all parts of the Federal Government. Each agency has the lead person in charge making sure that everything happens. Now, as far as which Departments have responded and which ones haven't, I don't know exactly which ones have or have not. I would like to submit that for the record at a later time. Now, in order to bring them in we are sharing a lot of information and we are encouraging them. We have invited a number of other entities out with us on the road when we went and consulted

across the nation. Now, there may or may not be other entities that have not responded, and you have my commitment that we will follow up with those other entities and at least encourage them to respond.

Ms. CHRISTENSEN. Well, thank you, and I look forward to hearing from you in writing. I just think that having that memorandum not complied with, you know, now it is almost a year later. The office should have been more on top of those agencies by now. I am at a loss, like the Chairman of the Subcommittee, and parks and the sponsor of this legislation. After even eight years of an Obama Administration, why shouldn't the tribes have some sense of security that this executive will be followed regardless of what Administration is in office even if, you know, we have confidence in this one. Why not give the tribes the security that this Executive Order would be followed regardless of what Administration is in office?

Mr. TSOSIE. We also realize that, you know, different priorities change with different Administrations. That is why we are involving tribes as much as possible, getting their input as much as possible, because other Administrations will have a hard time arguing against Indian tribes to change this process. Now, with the particulars on this RESPECT Act, we would be happy to give more specific input on how we think that this piece of legislation can be modified in the future here. We would be happy to work with the Committee. We would have to vet it through, you know, our own internal process to make sure that we could support this, but on how this RESPECT Act is written, we cannot support it just because of how stringent it is and how it does not allow for different things to happen. The good part about it is we are all on the same page. We want to further the same goals, we want to be on the same team and work together.

Ms. CHRISTENSEN. Well, thank you, Mr. Chairman. I will yield back the balance of my time and look forward to working with the sponsor. I think he has indicated that he is willing to have discussions with the Administration on how the bill can move forward.

The CHAIRMAN. Any further questions? If not, we thank you for your testimony, Mr. Tsosie, and we look forward to continuing to work with you on this.

Mr. TSOSIE. Thank you.

The CHAIRMAN. Our third panel is composed of the following individuals: The Honorable Ned Norris, the Chairman, Tohono O'odham Nation, from Sells, Arizona; The Honorable McCoy Oatman, the Chairman of the Nez Perce Tribe of Lapwai, Idaho; Mr. Robert A. Williams, Professor of Law and American Indian Studies, James E. Rogers College of Law, University of Arizona, Tucson. Gentlemen, we welcome you to the Committee on Natural Resources today. We have your prepared testimony. It will be made part of the record as if actually read. You may proceed as you desire, and in the order I announced. Chairman Norris?

**STATEMENT OF DR. NED NORRIS, CHAIRMAN,
TOHONO O'ODHAM NATION, SELLS, ARIZONA, ON H.R. 5023**

Dr. NORRIS. Thank you. Thank you, Mr. Chairman Rahall and Members of the Committee. Dr. Christensen, thank you for your comments regarding the National Congress of American Indians.

As a member in good standing, I was there at the NCAI, and I appreciate your support and your comments that you made in reference to Carcieri. We do hope that there is some resolution in the near future on that issue. Thank you very much. I appreciate the invitation to testify today regarding the tribal consultation and the RESPECT Act. I am the Chairman of the Tohono O'odham Nation coming from the State of Arizona. Our tribe is in the southwestern part of the State of Arizona. We have about 2.8 million square acres of Indian reservation with about nine villages that continue to exist south of the international border of Mexico.

This legislation has a direct impact on the O'odham Nation and other Indian tribes across the country as tribes regularly request timely, meaningful government-to-government consultation. The Act in many ways reflects the purposes and mandates of tribal consultation as established on November 6, 2000 by President Clinton's Executive Order 13175 and recently reaffirmed by President Obama's Memorandum of November 5, 2009. The RESPECT Act recognizes the Federal Government's responsibility to consult with tribes when Federal activities impact tribal lands and interests. The Act further establishes a flexible and accountable process for timely and meaningful consultation.

Of particular importance to the O'odham Nation is the provision of the Act that provides for consultation to begin early in the planning and development of the process. The nation has experienced more than one instance where a Federal agency has drafted proposed regulation directly affecting nation's interests, yet never consulted with the O'odham Nation during the process. Mr. Chairman, I would like to highlight a couple of situations most recently that have occurred. With all due respect to Mr. Tsosie's testimony, recently the Intertribal Council of the State of Arizona, upon learning that the regional director within the Bureau of Indian Affairs had retired about two months ago, noticed the Bureau of Indian Affairs that the Intertribal Council of Arizona wanted to be involved in the process of who was going to take that position after the retirement of that individual.

We believed that we had the interest of the Bureau to go ahead and allow the process for consultation and have the Intertribal Council involved in that process. It was disheartening to learn not many days ago, about two or three weeks ago, that that position had been filled without any consultation, without any involvement from Intertribal Council, yet we had requested that. So I think that is one example of how this bill I think would ensure to us, as the tribal leaders and tribes in Arizona and the United States, that we would be involved in the process. Second, another example I would like to raise in reference to the U.S. Border Patrol and the impacts that the Border Patrol has on the O'odham Nation.

We were never consulted when the Border Patrol made the decision to increase their presence on the lands of the O'odham Nation. Although the O'odham Nation is concerned and will, and does support the need to secure the United States of America, the presence of the Border Patrol has had significant impact on not only the membership of the O'odham Nation, but also the land, our cultural issues and our sacred sites. Those are things that we initially were not consulted with. They took a time where we had to take a posi-

tion with the Border Patrol and say we need to be at the table with you, we need to be at the table when you make the decisions that are going to have some level of impact on our membership, on our land, on our sacred sites and our culture. So I think as a result we have been able to develop a good working relationship in that regard, but I think, again, this Act would address those issues that are concerning to us.

So, indeed, the agency scheduled the meetings after the regulations. I mean, that is simply pretty much the typical way that things are done. Whenever decisions are made under the guise of consultation, tribes will be asked to come in and meet with the Federal agencies, many times to learn that those decisions have already been made. The consultation is a process. It is a back check meeting requirement. That is unfortunate because tribes need to be involved in the process, tribes need to be involved in decisions that are going to have some level of impact. Whether it is a positive or negative impact, tribes need to be at the table and consulted with, and this Act assists tribes and assures tribes, guarantees tribes that that process is going to be adhered to. So, Mr. Chairman and Members of the Committee, thank you for your time. Thank you for giving the Tohono O'odham Nation this opportunity to share these thoughts with you. Thank you.

Mr. GRIJALVA. [Mr. Grijalva presiding.] Thank you, Chairman Norris. Appreciate very much your leadership and your tribe's critique of the legislation that you got ahead of time. I appreciate it very much, and it was very helpful. Let me now turn to Chairman Oatman. Thank you very much, sir. Welcome. We look forward to your comments.

[The prepared statement of Dr. Norris follows:]

**Statement of Dr. Ned Norris, Jr., Chairman,
Tohono O'odham Nation, on H.R. 5023**

Good morning Chairman Rahall and Members of the Committee. I appreciate the invitation to testify today regarding tribal consultation and the RESPECT Act. My name is Ned Norris, Jr., and I am the Chairman of the Tohono O'odham Nation. The Tohono O'odham Nation is a federally recognized tribe located in southwestern Arizona.

This legislation has a direct impact on the Nation and other Indian tribes across the country as tribes regularly request timely and meaningful government-to-government consultation. The Act in many ways reflects the purposes and mandates for tribal consultation as established on November 6, 2000 by President Clinton's Executive Order 13175, and recently reaffirmed by President Obama's Memorandum of November 5, 2009. The RESPECT Act recognizes the federal government's responsibility to consult with tribes when federal activities impact tribal lands and interests, and the Act further establishes a flexible and accountable process for timely and meaningful consultation.

Of particular importance to the Nation is the provision of the Act that provides for consultation to begin early in the planning and development process. The Nation has experienced more than one instance where a federal agency has drafted proposed regulations directly affecting the Nation's interests, yet never consulted with the Nation during the process. Instead, the agencies scheduled meetings with the Nation after the regulations were published. Tribal consultation in these instances occurred as an afterthought, rather than as an integral part of the process and severely limited the Nation's ability to have meaningful input. The RESPECT Act addresses this issue by requiring that consultation be completed early in the planning and decision process.

The Act also requires agencies to draft a Planning Document early in their planning process. The agency is required to send its Planning Document to tribal government leaders. Notice to tribal leaders is a fundamental element of tribal consultation. Recently, the Nation experienced one agency's concept of government-to-

government consultation, which consisted of a general notice to the public of a planned activity and the hosting of public hearings. The Act's requirement for actual notice to tribal leaders will alleviate this problem.

The agency's Planning Document that will be provided to tribal leaders describes the geographic areas that might be affected by the activity and any anticipated tribal impacts. The Planning Document is critical because it will help the Nation to determine whether consultation is desired and, if so, to what extent and in what format. As a practical matter, tribes are generally the primary source of knowledge and information concerning how a proposed federal action may affect tribal rights. In fact, tribes are sometimes the only source of such information in circumstances involving confidential sacred sites or details of cultural or religious practices. The Act provides a mechanism for protecting sensitive tribal information which will facilitate more open communication about sensitive matters. With open communication, the anticipated result is that the agency is better aware of potential impacts on tribal rights, resources and interests, and therefore is better equipped to avoid or seek to mitigate those impacts. Communication, awareness, and understanding are fundamental elements of consultation and collaboration. The earlier they occur in the process, the more likely the parties will be able to come to an Agreement as anticipated by the Act.

Unique to the RESPECT Act is the provision for Judicial Review. As the Committee is aware, both the Executive Order and Presidential Memorandum on Tribal Consultation make clear that they do not create any enforceable substantive or procedural rights. However, express authorization to bring an action to restrain an agency from further damaging a jaguar habitat, a burial site, an archaeological site or other cultural resources until the agency complies with its consultation obligations is a big step in the right direction and demonstrates, with more than just words, the government's commitment to timely and meaningful tribal consultation. Judicial review makes agencies accountable for their consultation actions, or lack thereof. In government matters, in particular, accountability is a good thing.

In conclusion, Chairman Rahall and Members of the Committee, for the reasons I have stated here today, the Nation supports H.R. 5023, the RESPECT Act. Thank you.

**STATEMENT OF HON. McCOY OATMAN, CHAIRMAN,
NEZ PERCE TRIBE, LAPWAI, IDAHO, ON H.R. 5023**

Mr. OATMAN. My name is McCoy Oatman. I am the Chairman of the Nez Perce Tribal Executive Committee. I would like to first thank Chairman Rahall for the opportunity to testify on this important issue of consultation. I would also like to thank the Representatives from Oregon and Washington, Idaho and Montana for their work on the Committee. Although the Nez Perce Reservation is located in Idaho, the Nez Perce Tribe's ceded territory includes lands in the present States of Oregon, Washington, Idaho and Montana. Primary points of our testimony today are the government-to-government consultation between the United States Government and the tribal governments and is an important component of the trust relationship between the tribes and the United States.

My tribe, particularly, holds this in high regard because we are a treaty tribe. The first treaty that we signed with the United States was in 1855 which established that trust relationship, so we believe it is sound public policy to provide a codified framework setting forth the parameters for consultation. Despite the frequent affirmations of the need for proper tribal consultation that have been expressed and affirmed through Executive Orders and Memorandums, meaningful and effective consultation has been too frequently ignored or inconsistently utilized by Federal agencies. Nez Perce Tribe strongly endorses the efforts of Congress to address this issue directly through the proposed legislation. We believe it is a good public policy.

Congressional findings of the bill state that there has been a long historical and legal relationship enjoyed by the Federal Government and the tribes. As President Lyndon B. Johnson said in 1968: Indians must have a voice in making the plans, and decisions and programs important to their daily lives so that the relationship between tribes and the Federal Government would be one of a full partnership and not dependency. Today, tribal governments are still looking to meaningful government-to-government consultation as the way to work with the Federal Government as partners on the issues that affect tribal interests. Consistency and implementation of consultation by the Federal agencies. Different Presidential Administrations since have made general commitments to the government-to-government relationship, but there has been inconsistency in carrying out that general commitment.

There is a great need for some type of structure for consultation as there are a myriad of examples that illustrate this trust relationship is being ignored. A few examples from my tribe, the Nez Perce Tribe, is recently one of the national forests took action to permit a certain activity on one of our trails, a Nez Perce national trail, and there was no consultation with the tribe, and so the tribe had to express their concerns and the project, we had to have a meeting with them. If formal consultation would have occurred, the project probably would have moved forward. So we had expressed our concerns and expressed that, you know, we had not been consulted, and so the forest and the supervisor met and we were able to get them to rescind their decision, and so now they will be resubmitting that project and following the proper process.

Another example involved action by the Bureau of Land Management to permit domestic sheep grazing and occupied bighorn sheep habitat within the tribe's treaty territory and without any formal consultation with the tribe. The decision posed a great risk to the bighorn sheep in the area. Bighorn sheep are a culturally important species to the tribe that are in danger of extirpation in the area. In this instance, the tribe was forced to participate in the litigation contesting the decision. Based on scientific information provided by the tribe, the Court ultimately ordered the Bureau of Land Management to enjoin grazing on that allotment. Another example is the tribe also confronted significant hurdles over the years with respect to the Federal Energy Regulatory Commission's interpretation and implementation of its own tribal consultation policies.

As co-manager of treaty reserve natural resources, the tribe expects predecisional access, deferred proposals that stand to affect tribal trust resources. However, Nez Perce tribal government access has been limited, and, in some cases, ignored on several important projects within the tribe's treaty territory. These are but a few examples of the problems that exist between the tribe and that the tribes encounter in working with the United States. Some agencies are better at implementing consultation policies than others. In particular, the Indian Health Service and Dr. Roubideaux has worked hard to include tribes in decisionmaking, such as the work on implementation of the recently passed health care reform.

The tribe has also had good experiences working with the Department of Energy and the work in the DOE have for a nuclear

site. Unfortunately, for some agencies their consultation policy will sit on a shelf and gather dust while other agency heads will seriously and actively solicit and consider tribal comments on Federal actions that impact them. The Federal bureaucracy is inconsistent and is too dependent on the philosophy or personnel agency administrator with regard to implementation of consultation procedures and their importance. This legislation will help eliminate that inconsistent implementation by requiring each agency to follow the same procedures and process in relation to agency actions that affect Indian tribes.

In examining this legislation, Nez Perce Tribe applauds the efforts of Congressman Grijalva to put in some statute concrete concepts and consultation that have been sought by the tribes for a long time. The statute makes the Federal agencies accountable for their actions, providing enforcement provisions in Section 501. The legislation also mandates tribal involvement from the beginning of any process or action. The procedural requirements for notification of consultation, as well as notice to proceed forward if no response is given outlined in Section 203, are important. The Nez Perce Tribe also encourages the Committee to consider expanding the scope of consultation provided in Section 201[a].

While Federal actions that occur within Federal lands that border Indian Country mandate consultation, recognition that Federal lands that may not border Indian Country but are lands that are reserved through treaties with treaty reserve rights are exercised should also invoke mandatory consultation if Federal action occurs. The protection of sensitive tribal information provided in Section 207 is greatly appreciated. In conclusion, for the Nez Perce Tribe, solid, trusting relationships begin with communication that is meaningful and sincere or from the heart. As one of our great leaders, Chief Joseph, said: Good words do not last long unless they amount to something.

He also stated that it makes my heart sick when I remember all the good words and all the broken promises. Passing this legislation will put to paper that heart to heart claim and to work together that our tribe desires and help ensure the promises that were made through the treaties are remembered and kept. There are too many examples of this not happening. This bill, the RESPECT Act, will simply put in writing what tribes have been promised for years: A seat at the table, an opportunity to comment and a chance to help determine our own destinies. Thank you.

Mr. GRIJALVA. Thank you, Mr. Chairman. Mr. Robert Williams. Welcome, sir. Look forward to your testimony.

[The prepared statement of Mr. Oatman follows:]

**Statement of McCoy Oatman, Chairman,
Nez Perce Tribal Executive Committee, on H.R. 5023**

Ta'c M'eewi, Good Morning. My name is McCoy Oatman and I am the Chairman of the Nez Perce Tribal Executive Committee. I would like to thank Chairman Rahall for the opportunity to be here today. Since the Nez Perce Tribe is located in the Northwest, I would also like to thank some of the representatives from the Northwest for their work on this committee: Rep. Peter DeFazio from Oregon and Representatives Jay Inslee and Kathy McMorris Rodgers from Washington. Although the Nez Perce Reservation is located within the state of Idaho, the Nez Perce Tribe's aboriginal territory included lands in the present states of Oregon, Wash-

ington, Idaho and Montana and the Nez Perce Treaty of 1855 reserved the right of the Nez Perce Tribe to exercise treaty reserved rights in those areas.

I am honored to be asked to provide testimony today on the important topic of government-to-government consultation between tribal governments and the United States. Government to government consultation is an important component of the trust relationship that exists between tribal governments and the United States and it is sound public policy to provide a codified framework setting forth the parameters for consultation. Despite the frequent affirmations of the need for proper tribal consultation that have been expressed and affirmed through executive orders and memorandums, meaningful and effective consultation has been too frequently ignored or inconsistently utilized by federal agencies. This inconsistent application and implementation of consultation policies is extremely frustrating for tribal governments. Many of the components of the proposed legislation appear to address some of the primary problems tribal governments encounter during interactions with federal agencies. The Nez Perce Tribe strongly endorses the efforts of Congress to address this issue directly through the proposed legislation.

Effective and meaningful consultation with the federal government is something that Indian Tribes have been seeking since the first treaties were signed. As is illustrated in the Congressional findings of the bill, there has long been an historical and legal relationship enjoyed by the federal government and tribes. However, this essential component of the foundation of the relationship between the United States and tribal government has been inconsistently followed through the years. It was President Lyndon B. Johnson, who said in 1968, "Indians must have a voice in making the plans and decisions in programs important to their daily lives", so that the relationship between tribes and the federal government would be one of "full partnership—not dependency." Today, tribal governments are still looking to meaningful government-to-government consultation as a way to work with the federal government as partners on issues that affect tribal interests.

Different presidential administrations since that time have made general commitments to this government-to-government relationship, but there has been inconsistency in carrying out that general commitment. There is a great need for some type of structure for consultation as there are a myriad of examples that illustrate this trust relationship being ignored. For example, the most recent past President recognized and reaffirmed the unique tribal-federal relationship and promised to work with tribes to strengthen the federal trust relationship. Yet, very soon following this commitment, the Department of Interior released a decision to reorganize the Bureau of Indian Affairs without prior consultation with tribes. An entirely new agency was created from this process.

On a more personal level, the Nez Perce Tribe has many examples of an agency's failure to properly consult and the resulting consequences to the Tribe. Recently, one forest took action to permit activity near an important tribal historic trail of the Tribe without prior consultation with the Tribe regarding the action. Fortunately, this failure to consult did not result in immediate harm to the Tribe and the forest supervisor took swift action to rescind the decision prior to its implementation once the Tribe made its concerns known. Discussions are now proceeding to initiate proper consultation on the project. However, this will result in delays to the project which could have otherwise been avoided if consultation had occurred in a timely manner.

Another example involved action by the Bureau of Land Management to permit domestic sheep grazing in occupied bighorn sheep habitat within the Tribe's treaty territory without any formal consultation with the Tribe. This decision posed a great risk to bighorn sheep in the area. Bighorn sheep are a culturally important species to the Tribe that are in danger of extirpation in the area. In this instance, the Tribe was forced to participate in litigation contesting the decision. Based on scientific information provided by the Tribe, the court ultimately ordered the Bureau of Land Management to enjoin grazing on the allotment.

The Tribe has also confronted significant hurdles over the years with respect to the Federal Energy Regulatory Commission's (FERC) interpretation and implementation of its own tribal consultation policies. As a co-manager of treaty reserved natural resources, the Tribe expects pre-decisional access to FERC proposals that stand to affect tribal trust resources. However, Nez Perce governmental access has been limited, and in some cases, ignored on several important projects within the Tribe's treaty territory. These are but a few examples of the problems tribes encounter working with the United States.

In the past months, the Nez Perce Tribe was pleased to be able to provide written comments on several agency consultation policies that were being revised and revisited pursuant to the Executive Order issued by President Obama on November 5, 2010. The Nez Perce Tribal Executive Committee submitted written comments to:

The Departments of Interior, Education, Commerce, Treasury, Defense, Transportation, Energy, Labor, Justice, and many others. However, we all know that some agencies are much better at implementing such policies than others. The Indian Health Service under Dr. Roubedieux has worked hard to include tribes in decision making such as the work on the implementation of the recently passed health care reform. The Tribe has also had good experiences with the Department of Energy in our work with them at the DOE Hanford nuclear site. Unfortunately, for some agencies, their consultation policy will sit on the shelf and gather dust, while other agency heads will seriously and actively solicit and consider tribal comments on federal actions that impact them. The federal bureaucracy is inconsistent and is too dependent on the philosophy or personality of the agency administrator with regard to implementation of consultation procedures and their importance. This legislation will help eliminate that inconsistent implementation by requiring each agency to follow the same procedures and processes in relation to agency actions that effect Indian tribes.

I am certain that some of the testimony you will hear today will touch on questions, such as: What does "consultation" mean? What does "cooperation" mean? What does the phrase "effective and meaningful" mean? What is the true definition of a "trust relationship"? For the Nez Perce Tribe, solid trusting relationships begin with communication that is meaningful and sincere or from the heart. As Chief Joseph said "good words do not last long unless they amount to something." He said that "it makes my heart sick when I remember all the good words and all the broken promises." Passing this legislation would put to paper that heart-to-heart commitment to work together that tribe's desire and help ensure the promises that were made through the treaties are remembered and kept. There are too many examples of this not happening. This bill, the "RESPECT Act" will simply put in writing what tribes have been promised for years: a seat at the table, an opportunity to comment, and a chance to help determine our own destiny.

It only makes sense to consult with tribes when government action will impact them. Yet, there are many examples from hundreds of years that this did not happen. One example is Public Law 280. This is the law that Congress enacted in 1953 to allow states to establish state jurisdiction on Indian reservations within their states. Tribes were not consulted, notified or asked to comment. It just happened. Another example is the allotment act, which was intended to make Indians into farmers by making them individual land owners, rather than having community-owned lands. Congress was doing what they felt was best for Indian people. In fact, Senator Henry Dawes, a sponsor of that bill, seemed to be appalled at the concept of tribal land ownership. He said, "there is no selfishness [among them], which is at the bottom of civilization. In other words, he, a Senator from Massachusetts knew what was best for the Indians and there was no need to consult with them and determine their opinion.

As is illustrated above, there is strong historical and legal basis to support the need to have mandatory consultation with Indian tribes upon matters that will affect them or their treaty reserved rights. In examining this legislation, the Nez Perce Tribe applauds the efforts of Congressman Grijalva to put into statute concrete concepts on consultation that have been sought by tribes for a long time. First, the statute makes the federal agencies accountable for their actions by providing enforcement provisions in Section 501. I am sure that many tribes have encountered the following scenario: an action is taken without consultation and then implemented. Currently, tribes have no recourse to remedy such actions and are usually left with nothing more than an apologetic "It won't happen again" excuse from the action agency. The Nez Perce Tribe strongly supports the inclusion of the judicial review concept in the proposed legislation as tribes must have recourse to prevent actions taken without their knowledge or without consultation.

The legislation also mandates tribal involvement from the beginning of any process or action. This involvement at the early stages of decision making is crucial for truly meaningful consultation. Many times, tribal involvement begins at the latter stages of an agency's decision making process. Unfortunately when this occurs, the direction that an agency has chosen to pursue is usually not going to be altered dramatically at the late stages of a process. Early involvement is a key cog in any consultation procedure and it is good to see that concept in this draft.

The procedural requirements for notification of consultation as well as notice to proceed forward if no response is given outlined in Section 203 are important. If consultation efforts are being made by all the federal agencies, a tribal government can be inundated with requests from agencies considering actions. Therefore the procedures in Section 203 that ensure that agencies are not allowed to interpret silence as non-interest in a process and that require the agency to take affirmative action to ensure receipt of the action notice are very important. Also, Tribes do need time

and opportunity to process these requests. A natural resource intensive tribe such as the Nez Perce can receive hundreds of action notices from just the various national forests that the Tribe works with alone.

The Nez Perce Tribe also encourages the committee to consider expanding the scope of consultation provided for in Section 201 (a). While federal actions that occur within federal lands that border Indian Country mandate consultation, recognition that federal lands that may not border Indian country but are lands where treaty reserved rights are exercised should also invoke mandatory consultation if federal action occurs. As was discussed above, many of the Nez Perce Tribe's concerns extend far beyond the present day reservation boundaries pursuant to the Treaty of 1855 and required consultation should include those areas.

The protection of sensitive tribal information provided in Section 207 is greatly appreciated. The Tribe works hard to ensure that simply working with a federal agency does not expose confidential information of the tribe to public review. Many times issues that invoke consultation involve important and culturally sensitive information that should be protected. The Tribe appreciates the efforts to protect this information in the legislation.

The Nez Perce Tribe is encouraged that Congress is considering legislation to address this longstanding issue and believes it is good public policy. The Tribe strongly supports passage of legislation that will provide a permanent framework for agency interaction with tribal governments. Thank you for the opportunity to comment on the importance of this issue.

**STATEMENT OF ROBERT A. WILLIAMS, JR., PROFESSOR OF
LAW AND AMERICAN INDIAN STUDIES, JAMES E. ROGERS
COLLEGE OF LAW, THE UNIVERSITY OF ARIZONA**

Mr. WILLIAMS. Thank you, and thank you, Mr. Chairman, and Members of the Committee. Thank you for this opportunity to testify on H.R. 5023, the RESPECT Act. I think the most important point to make about this legislation is that it would restore Congress to its rightful specified role intended for it by the framers of our Constitution as the branch of government with the primary responsibility for managing Indian affairs. Chief Justice John Marshall, a member of the founding generation, emphasized this point in the leading Indian law case of *Worcester v. Georgia* in 1832. Let me quote his words. "That instrument, the Constitution, confers on Congress the powers of war and peace, of making treaties and of regulating commerce with foreign nations, among the several states and with the Indian tribes." Marshall went on to say, "These powers comprehend all that is required for the regulation of our intercourse with the Indians".

Given this clear constitutional mandate as to which branch of the Federal Government was to be primarily responsible for regulating this country's government-to-government relations with Indian tribes, the founders would not only approve of H.R. 5023, they would want to know what took Congress so long to enact it. I had reduced my remarks from my prepared testimony, but after hearing Mr. Tsosie testify on the legislation, I think I can be of most benefit in my testimony by just running through some of Interior's and the Administration's concerns with this legislation. Respectfully, I had read the prior Administration's objections to Congressman Rahall's earlier version of this legislation, H.R. 5608, and, quite frankly, it sounds like déjà vu all over again.

I think really what we have here is just a lack of close study of what this bill does. The three major objections are that it would bring the Federal Government to a standstill, that it lacks flexibility with its one size fits all approach, and don't worry, we are doing it already. Let us just run quickly through the bill in the

short time I have. Section 201 says the agencies have to develop an accountable consultation process for consultation with tribes for any activity that may have substantial direct impacts on Indian lands and interests. That is a one size fits all approach, but it is entirely appropriate here as public policy and it needs to be set into law. That is what the tribes are telling us.

Draft a planning document during the planning stage that discusses the scope of the project and effects on tribes. Again, that is a one size fits all approach, but it is entirely appropriate. I have worked with tribes whereas Chairman Norris has said the Federal Government agency has started to put its plan together and then notifies the tribes. Once that happens, the agency takes an attitude oftentimes that the tribe is an obstacle. This approach, this very flexible approach, makes the tribe a partner in the planning process. Again, that is what tribes are asking for in their government-to-government relationship. 203[c], contact those tribes and request consultation. What could be more flexible than that? You can do it by email or letter, but just do it.

Section 203[d], set up a meeting with a good faith effort. If that would bring the government to a standstill, it is because the agency is standing still on doing it. 203[e], agree on a format, a facilitator, agenda and a schedule and a plan for the next meeting. Again, incredibly flexible. Let us just get talking about this at an early stage in the process. 203[a], 203[f], hopefully execute an MOA on a consultation process. It doesn't demand and MOA, it sets up the procedure that hopefully will lead to an MOA so we can get this project online, get this regulation going and serve the public interests. 203[g], if they can't agree, let the tribes know why with a written explanation and proceed to the decision stage. Again, that is a one size fits all approach, but it is perfectly appropriate.

204[a] and 204[b], set out the decision stage process. Again, this bill just simply requires tribes to be notified of what was decided and why. That is not just good public policy, it is good relations and encourages open dialogue, and perhaps gives the agency a chance to correct a mistake. As for the arguments that we are doing it already, the Administration's efforts are commendable, as have been those Administrations which have passed the previous Executive Orders, but those Executive Orders could be ended on January 2012 or 2016 and the tribes would have to start developing a consultation process all over again. I urge you to read my testimony. It is amazing the degree of respect that the founders gave to the right of consultation belonging to Indian tribes. President Washington would call tribes into his own, personal office and personally respond point by point to their concerns. It is an example that this Federal Government needs to adopt once again, and so I urge passage of this legislation. Thank you.

[The prepared statement of Mr. Williams follows:]

Statement of Robert A. Williams, Jr., Professor of Law and Director of the Indigenous Peoples Law and Policy Program, The University of Arizona Rogers College of Law

Good Morning Chairman Rahall and members of the Committee, and thank you for this opportunity to testify on H.R. 5023, *Requirements, Expectations, and Standard Procedures for Executive Consultation with Tribes Act* ("the RESPECT Act"). As Director of the Indigenous Peoples Law and Policy (IPLP) Program at the

University of Arizona, I have worked with American Indian tribes and their leaders on issues of tribal self-governance, community and economic development and protection of tribal treaty rights for thirty years. As a law professor and legal scholar, my teaching and research have focused on the legal history of the Federal-tribal relationship, dating back to the Founding era of the United States. In my testimony this morning, I hope to show that the type of effective, agency-wide consultation process that would be enacted into law by passage of H.R. 5023, the RESPECT Act, is something that Indian tribes and their leaders have been seeking in their government-to-government relationship with the United States for a very long time.

This landmark legislation would establish for the first time in our nation's history clear and precise procedures for effective consultation and coordination by all Federal agencies regarding their activities that impact tribal lands and interests. Just as important, and as I hope to show by my testimony, passage of this legislation would restore Congress to its rightful, specified role intended by the Framers of our Constitution as the coordinate branch of our national government assigned with the primary responsibility for managing Indian affairs.

History shows that Indian tribes have been seeking effective consultations with the Federal Government on matters of vital concern to their lands and interests going back to the time of the Revolutionary War. The Founding Fathers who negotiated and signed the United States' very first Indian treaties recognized and acted upon the principle that meaningful consultation with tribes was not only a wise and prudent approach to Indian policy; it was a basic right belonging to all self-governing peoples, and that included Indians. The Founders, recall, had just fought their war for independence from Great Britain over grievances mainly arising from King George III's failure to adequately consult with them on issues of taxation, government regulations, quartering of soldiers, and other rights they regarded as basic and inalienable. The Founders' own experiences and views on consensual government convinced them of the need for effective consultations, on-going communications, frequent inter-actions and close coordination with the Indian tribes of the United States. Let me add that all of these consultative processes are expressly encouraged and supported by the RESPECT Act.

The wisdom and example of the Founders are both highly instructive in recognizing how the right to effective consultation is part of the very fabric of the government-to-government relationship and the trust responsibility growing out of that relationship that has existed between Indian tribes and the United States since the first days of the Republic. The Founders' earliest legislative acts and policies in the field of Indian affairs explicitly recognized the basic right to consultation belonging to Indian tribes in their dealings with the Federal Government. Congress' role as the primary policy-making branch of government with respect to the Federal Government's duty of consultation with tribes, as well, is clearly recognized and embodied in the text of the Constitution.

As Chief Justice John Marshall, a leading member of the Founding Generation who helped to secure Virginia's ratification of the Constitution, emphasized in the leading Indian law case of *Worcester v. Georgia*, 31 U.S. 515 (1832); "That instrument confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and *with the Indian tribes*. These powers comprehend all that is required for the regulation of our intercourse with the Indians." Given this clear constitutional mandate and the Framers' clearly stated intentions as to which branch of the Federal Government was primarily responsible for regulating this country's government-to-government relations with Indian tribes, the Founding Fathers would not only approve of H.R. 5023; they would want to know what took Congress so long to do it!

The Federal Government's early Indian policies closely followed British colonial-era precedents, which placed Indian affairs and the negotiation of treaties under the sovereign authority of the Crown. Under this authority, close consultation and coordination between tribes and the Crown's colonial representatives and agents were commonplace and customary. Treaties and agreements were negotiated after extensive discussions with tribal leaders. The chiefs of the tribe would meet with colonial officials in their own villages or travel personally to Richmond, Philadelphia, Albany, Boston and other colonial capitals to engage in extensive consultations, voice their grievances, and discuss important issues such as regulation of trade and military alliances. As the respected historian, Alden T. Vaughan, has documented in his book, *Transatlantic Encounters: American Indians in Britain, 1500-1776* (2006), it was not uncommon, as well, for tribal leaders to travel to England to meet personally with the King in order to make their feelings, wishes and grievances known to the government. History records a number of instances where the King's ministers and representatives would be instructed and even admonished in the strong-

est of terms to accommodate tribal requests and address the concerns that were voiced during these formal consultation sessions.

The Founders were not only familiar with this long-established history and custom of close and meaningful consultation with Indian tribes, many of them had been active participants in the treaty negotiations, talks and embassies of the colonial period. George Washington, Benjamin Franklin, and James Wilson, for example, were all signers of the Declaration of Independence and also major participants in the Constitutional Convention held in Philadelphia in 1787. They provide the most prominent examples of noted members of the Founding Generation who helped to frame the Constitution and who had extensive experience in dealing with Indian tribes according to this tradition of close and meaningful consultation that had developed in the colonies prior to the Revolutionary War.

Throughout the Revolutionary War period, the Founders made it a point to engage in effective and meaningful consultations with the tribes whose support was vital to the success of their war efforts against the British. For example, the first Indian treaty negotiated by the United States was in 1778 with the Delaware Nation. That historic agreement provided for the Delawares and other friendly tribes that might join them “to form a state whereof the Delaware nation shall be the head, and have representation in Congress.” It would be hard to imagine a more explicit example of the Founders’ recognition of a right to consultation belonging to Indian tribes than this offer to the Delawares of a representative voice in the Congress of the United States.

In the 1785 Treaty of Hopewell with the Cherokees, one of the first treaties ratified by Congress following the Revolutionary War, the tribe’s right to effective consultation was secured by Article XII; “That the Indians may have full confidence in the justice of the United States, respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress.” It is worth noting that the most prominent member of the congressionally appointed negotiating team for this treaty was Benjamin Hawkins. His resume as a member of the Founding Generation includes his service as a colonel on George Washington’s staff in the Continental Army. Elected to the North Carolina House of Representatives in 1778, he was chosen as a delegate to the North Carolina convention that ratified the United States Constitution.

It is also worth noting that the same basic offer to the Cherokees of sending a delegate to Congress was renewed by the United States half a century later in 1835, in the Treaty of New Echota. The important point to recognize is that the right of consultation belonging to Indian tribes was well-established at the founding of our nation, and can be found embraced as precedent by the United States in the early decades of our national experience.

Under the authority of the new Constitution ratified in 1789, President George Washington and other leading figures of the Founding Generation continued to recognize and act upon the basic right of consultation belonging to the tribes as the best policy for guaranteeing good relations, peace and amity under the treaty relationship. As Father Francis Paul Prucha, the dean of American historians when it comes to early United States Indian policy, has documented in *American Indian Treaties: The History of a Political Anomaly* (1994), tribal delegations and embassies frequently visited the nation’s capital to meet with the “Great Father” (several of the tribes’ term of formal greeting for the President of the United States). Federal Indian agents and appointed treaty negotiators in the field assured a steady flow of communications and exchange of information with the tribes, and Congress closely monitored these consultations and negotiations in the years immediately following ratification of the Constitution.

The first major piece of legislation passed by Congress under the new Constitution, for example, was the 1790 Trade and Intercourse Act, a law that is still on the books today. It would be difficult to cite a more convincing example of the Framers’ intent with respect to the importance of the right to consultation belonging to Indian tribes under our Constitution than that provided by President George Washington’s talk to the chiefs and counselors of the Seneca Nation in 1790, shortly after passage of that historic Act. The Senecas and their chief, Cornplanter, had come to speak with the President of the United States personally about the threats they perceived to their rights and interest in their lands, guaranteed by the Treaty of Fort Stanwix negotiated with the Seneca Nation by the United States immediately following the Revolutionary War. The mutual exchange of views, the evidence of close listening by the President, and the utmost respect shown for the Seneca Indians as human beings entitled to be meaningfully consulted by the President of the United States is instructive of the Founding Fathers’ own example when it comes to this country’s early dealings with Indian tribes.

I have received your Speech with satisfaction, as a proof of your confidence in the justice of the United States, and I have attentively examined the several objects which you have laid before me, whether delivered by your Chiefs at Tioga point in the last month to Colonel Pickering, or laid before me in the present month by the Cornplanter and the other Seneca Chiefs now in Philadelphia...

Here then is the security for the remainder of your lands. No State nor person can purchase your lands, unless at some public treaty held under the authority of the United States. The general government will never consent to your being defrauded. But it will protect you in all your just rights."

Unfortunately and tragically, the wisdom and experience of President Washington and his Founding Generation respecting the basic right of effective and meaningful consultation belonging to Indian tribes on important matters affecting their lands and interests was too often ignored or forgotten in our nation's subsequent history. Congress, the Executive Branch and the nation itself have been less than consistent in listening seriously and responsively to tribal views and concerns and showing respect for this founding principle of our democratic, consensual form of government.

Indian tribes are still plagued today, for instance, by the problems of fractionated land interests, checker-boarded reservations, and the loss of billions of dollars in lease revenues under the failed laws and policies implemented by the Allotment Acts of the late 19th century. The Allotment Acts were passed over strenuous tribal objections and resistance and without any meaningful form of tribal consultation. The Termination policy of the 1950s provides another example of the fateful consequences of the Federal Government's failures to adequately consult with tribes. Following World War II, again over significant tribal objections and little in the way of meaningful efforts at consultation, Congress enacted the Termination policy and accompanying legislation that ended the federal trust relationship with dozens of tribes. Termination was strongly resisted by tribes, fought, and finally reversed after being recognized as a dismal failure by Congress and the Executive Branch within a decade of its attempted implementation. Many tribes that were restored to the federal-tribal trust relationship following their termination are still struggling with the long-term effects and problems caused by that failed policy.

The lessons of our history are clear, as I have tried to show in my brief testimony. As Chairman Rahall stated in 2008 in introducing legislation that was similar to this present bill, but which only sought to require specified Federal Agencies to establish an effective and accountable consultation process with Indian tribes; "Throughout history when Indian policy has been made without tribal input, the results have been failure after failure. When Indian tribes are consulted and a part of the process up front, the results are successful policies." I couldn't agree more.

It is significant that in more recent decades, Congress, acting on the lessons of the past, has enacted several important laws that require varying levels of consultation with tribes on specific issues and agency actions. The most significant of these include:

- The American Indian Religious Freedom Act (AIRFA) (16 U.S.C. 1996), which establishes the policy of the federal government "to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise" their traditional religions and spiritual beliefs;
- The Archeological Resources Protection Act of 1979. (ARPA) (16 U.S.C. 470aa-mm), which requires federal agencies to consult with tribal authorities before permitting archeological excavations on tribal lands (16 U.S.C. 470cc(c));
- The National Historic Preservation Act (NHPA) (16 U.S.C. 470 et seq.), which requires Federal agencies to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to sites covered under section 106 of the Act;
- The Native American Graves Protection and Repatriation Act (25 U.S.C. 3001, et. seq.); which requires consultations with Indian tribes and traditional religious leaders and regarding the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects and other items.

A number of Federal agencies in recent years have complimented these statutory requirements with specific regulations requiring consultation with tribes. Important examples of such regulations include:

- The Native American Graves Protection and Repatriation Act (NAGPRA) Implementing Regulations (43 CFR 10);
- The National Environmental Policy Act (NEPA) Implementing Regulations 40 CFR Part 1500, requiring agencies to contact Indian tribes and provide them with opportunities to participate at various stages in the preparation of an environmental assessment (EA) or environmental impact statement (EIS);

- National Historic Preservation Act (NHPA) Regulations Implementing Section 106 (36 CFR Part 800), requiring consultation with Indian tribes throughout the historic preservation review process. Federal agencies are required to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of tribal sovereignty. The regulations require federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are of religious and cultural significance to them.

In addition to these important legislative and regulatory initiatives and reforms, Executive Orders and Memoranda requiring consultation with tribes on a government-wide basis have been issued by recent Presidential Administrations. Notable examples include:

- EO 13175: Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000)
- EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994).

Most recently, President Obama's "Consultation and Coordination with Tribal Governments" policy requires that Federal agencies have an accountable process for meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. The new Administration policy also requires a written statement by the agencies as to why they did not follow recommendations that may have been proposed or suggested by the concerned tribe.

As the current United States Ambassador to the United Nations, Dr. Susan Elizabeth Rice, recently stated; "[T]he level of tribal consultation is now at historic levels—marking a new era in the United States' relationship with tribal governments." But this statement relates only part of the story that tribal leaders tell. As the testimony of tribal leaders before this Committee on Chairman Rahall's 2008 bill, the *Consultation and Coordination With Indian Tribal Governments Act* (H.R. 5608), demonstrated, and as my own experience in working with and listening to tribes served by the IPLP Program in Arizona and throughout the United States confirms, the levels of consultation and coordination between tribes and the myriad number of Federal Agencies they must deal with on numerous types of issues and concerns are highly inconsistent across agencies, departments and programs.

In some cases, as tribal leaders have testified, consultation is non-existent, or simply a *pro-forma* exercise in box-checking. "Yes we consulted with you," tribes are told, but only after the decision had been effectively made, and certainly without *listening* to tribal concerns. In point of fact, the goal of institutionalizing meaningful and effective consultation with tribes by all agencies of the Federal Government is far from being achieved. The key elements missing from the equation, as tribal leaders have consistently explained, are *accountability* and *definite and certain procedures* applying to all the agencies that make decisions affecting tribal rights and interests under the Federal Government's trust responsibility.

This is why passage of H.R. 5023, The RESPECT Act, is so important, timely and necessary. The bill restores Congress' historic role, established at our nation's founding in the Constitution, as the coordinate branch of our system of government with primary responsibility for the management of Indian affairs with the Federal Government. The RESPECT Act expresses the sense of Congress that consultation with Indian tribes constitutes more than simply notifying an Indian tribe about a planned undertaking that some agency bureaucrats have already made up their minds about, regardless of what the tribes might have to say. Under H.R. 5023, every Federal agency, as required by act of Congress, will be accountable for establishing a process of consultation that seeks out, seriously discusses, and meaningfully considers the views of tribes, and, where feasible, seeks agreement with them regarding proposed activities and other matters that affect tribal lands and interest. Most significantly in terms of ensuring accountability and follow-through, the RESPECT Act puts the force of law behind what had previously been left to agency discretion under the recent Executive Orders I've mentioned. Under this legislation, for the first time, Indian tribes would be permitted to bring a civil action in a U.S. district court if the tribe believes that the requirements of this Act have not been met.

In my own view, the right to judicial review included in this legislation represents the most important and indispensable element of H.R. 5021. Agencies like the Department of Health and Human Services, for example, have mandated that all its operating divisions develop their own policies on tribal consultation, but, as tribal leaders have testified, many failed to follow-up in a timely manner on these mandates. The RESPECT Act will require them to follow-up, with definite set guidelines to follow. Executive Orders and Memorandums, as tribes know, do not carry the full force of the law. This bill will have that force behind it. By passing this legislation, Congress will reassert its constitutionally specified role of primary responsibility for

management and oversight of the government-to-government relationship between tribes and the Federal Government under the trust responsibility.

This bill will be highly cost-effective. Tribal leaders have testified that where agency consultation has been done in an effective manner in the past, citing the example of the Indian Health Service's consultation process on the Indian Health Care Act and its special diabetes program for Indians, the outcomes have been successful in terms of good public policy and improved health care delivery in Indian country. The RESPECT Act will institutionalize these types of best practices throughout the Federal Government.

This bill will also improve and actually work to speed-up in many instances the regulatory process as it affects Indian tribes and their lands. Tribal leaders have said repeatedly that the failure to provide proper consultation is what really leads to delay in implementing new regulations. Oftentimes they feel they have no recourse except to bring costly and time-consuming legal challenges to agency actions that might otherwise be avoided under an effective consultation process. The RESPECT Act will work to achieve significant cost-savings for the government and tribes in bringing needed legislative and administrative reforms to Indian country.

Let me point to what Justice Louis Brandeis memorably once called "the laboratory of the states" to show that it is not only possible, but good public policy to implement this type of comprehensive, government-wide approach to tribal consultation. New Mexico, a state with a large number of federally recognized Indian tribes, passed a bill in 2009 designed to promote cooperation between state government and Indian tribes. The measure requires every cabinet-level state agency to designate a tribal liaison to report directly to the head of the agency. It also orders state agencies to develop policies promoting better communication and culturally appropriate delivery of services. One of the most respected tribal leaders in Indian country, Joe Garcia, Chairman of the All Indian Pueblo Council, stated that the signing of this bill marked a new era in state-tribal relations, and put New Mexico on the map as a guiding light for the rest of the country, including Congress, to follow.

Let me close by noting that there is an important opportunity for the United States and this Congress, in particular, to not only follow, but lead here as well. I recently returned from the July 2010 meeting of the United Nations Expert Mechanism on the Rights of Indigenous Peoples, held in Geneva. The Expert Mechanism provides expertise and guidance on the rights of indigenous peoples to the United Nations Human Rights Council. At its July meeting, the UN Expert Mechanism reviewed its "*Progress Report on the Study on Indigenous Peoples and the Right to Participate in Decision-Making*." The report takes special note of the critical importance of promoting "the full and effective participation of indigenous peoples in decisions which directly or indirectly affect their lifestyles, traditional lands and territories, their cultural integrity as indigenous peoples with collective rights or any other aspects of their lives, considering the principle of free, prior and informed consent." The report can be found at *Human Rights Council, Expert Mechanism on the Rights of Indigenous Peoples Third Session, Progress report on the study on indigenous peoples and the right to participate in decision-making*, A/HRC/EMRIP/2010/2, 17 May 2010, at para. 1.

Throughout much of the twentieth century, the United States of America was at the forefront of many of the most important advances in the protection and promotion of indigenous peoples' human rights, achieved through its domestic Indian legislation and policies promoting tribal self-determination. Without question, it has been Congress that has been primarily responsible for this influential leadership role and its salutary effects on the development of customary international law norms and international human rights standard-setting activities applied to indigenous peoples around the world. Landmark congressional legislation passed during the latter part of the twentieth century such as the American Indian Religious Freedom Act, the Indian Self-Determination and Education Assistance Act, and the Indian Child Welfare Act, are routinely cited within the United Nations and Organization of American States human rights systems as worthy examples of best practices that other countries should strive to emulate. Without question, congressional passage of H.R. 5023, the RESPECT Act, would reassert the United States' global leadership role in the protection and promotion of indigenous peoples' fundamental political freedoms and human rights in the twenty-first century.

In closing, I would emphasize that H.R. 5023 does not in any way represent some sort of radical departure from the past practices and precedents of the United States and this Congress in its dealings with Indian tribes. Rather, passage of this bill would represent a long-overdue return to the true principles upon which this nation was founded. As I've tried to show in my testimony, the Framers of our Constitution clearly intended that the Federal Government respect the right to meaningful con-

sultation belonging to Indian tribes in their dealings with the United States. The RESPECT Act will not only honor those founding intentions; it will, at long last, enact them into the law of the land.

Thank you and I am happy to answer any questions the Committee would like to ask.

Mr. GRIJALVA. Thank you very much. Let me thank the witnesses. Let me ask any, it is for all the panelists if anybody, but maybe beginning with Chairman Norris. Section 207 of the RESPECT Act provides protections for sensitive information, such as the location of sacred sites. Have agencies been respectful of this type of information in past consultations?

Dr. NORRIS. Mr. Chairman, Members of the Committee, I would like to share with you the most recent activities with respect to the Border Patrol. There are many sacred sites that have been identified and that are important to the O'odham people on our nation and we have had periodically to been having to remind or to bring to the attention of the United States Border Patrol that certain areas that they are conducting their activities are at sacred sites that are important to the O'odham Nation, and so I don't believe that—and for the most part I think they are respectful of that, but, on the other hand, we do have situations where it really didn't matter that those sacred sites were important to the O'odham people and their business would be conducted anyhow.

You know, and again, I have to reiterate, and I don't want the Committee to misinterpret, the O'odham are very concerned about the security of the United States of America and we have been doing what we can to ensure that the security is in place. We have 75 miles of international border that borders the southern part of our O'odham Nation and we have nine villages in Mexico, and so it is important for us. We have a vested interest not only in our villages in Mexico, but in our membership in Mexico and those sacred sites that are there as well. So, Mr. Chairman, I think that there are some that respect and understand when the Nation raises its concerns about Border Patrol activities on sacred sites or in sacred site areas, but I think this Act would give us the assurance that those areas would be protected.

Mr. GRIJALVA. Thank you very much. One other question, Chairman Norris. You state that judicial review would make agencies accountable for their consultation actions or lack thereof in your testimony. Has there been situations where the Nation could have utilized the mechanism of judicial review?

Dr. NORRIS. Well, most recently, Mr. Chairman, the O'odham Nation in 1986 was Congress passed a bill, the Gila Band Indian Land Replacement Act, and it is clear in that Act that the United States Government will take into trust certain lands that the Nation was able to acquire as a result of the Public Law 99-503. Most recently, as recent as March, the Tohono O'odham Nation has had to file suit against the Department of the Interior for failing to enforce Public Law 99-503. I am happy to report as a result of that lawsuit, as recent as last Friday, the Department of the Interior has granted the land acquisition that the Nation has had to file suit against them.

Mr. GRIJALVA. Thank you. Chairman Oatman, your testimony, I think, highlights the fact that meaningful and effective consulta-

tions is often ignored or inconsistently utilized by Federal agencies. How has this uncertainty about how consultation will be employed impacted your tribe? If you could just comment on that.

Mr. OATMAN. I think one of the examples that were provided was the impact of the bighorn sheep issue. I think one thing that we are dealing with right now is with the NOAA administration. We have an ongoing thing going right now with them in regards to our—I am sorry, this particular issue is new, it is not in our testimony, but there was some treaty or treaty territories from 1855, there was the boundaries are set for exclusive use for the Nez Perce Tribe, and then in 1863 there was another treaty, a land cessation treaty, would have still been changed the right for our right for that exclusive use in the 1855 boundary area, and so we have a feeling from our tribe that NOAA is not recognizing that that boundary is, you know, that area was set exclusively for us and now they are allowing other tribes to come into our area and fish in our exclusive right area. So that has been a big concern for us where we think we need, you know, a little more consultation on that because it creates hostilities between the tribes which becomes a public safety issue.

Mr. GRIJALVA. Thank you. I have a couple more questions for Mr. Williams on the follow-up. My time is up now. Mr. Hastings?

Mr. HASTINGS. I just have one question. As you can note, there are a lot of Members that aren't here because of conflicts, and I know that there are Members probably on both sides that want to ask questions of you. Could I just get confirmation from all of you that if you get a question from somebody that is not here, that you will respond?

Mr. WILLIAMS. Absolutely.

Dr. NORRIS. Yes, sir.

Mr. OATMAN. Yes.

Mr. HASTINGS. I would be more than happy to yield back to the Chairman if he wants to follow up in his questioning.

Mr. GRIJALVA. Thank you, Mr. Hastings. Mr. Williams, in your testimony you state that the right to judicial review included in the legislation is the most important element of the bill because it permits tribes to seek redress for an agency's failure to meet the requirements of the act. Practically speaking, how will this authority improve best practices by an agency? That is a question that came up in other testimony. Could it backfire by encouraging litigation between sovereigns and overwhelming the Court system, which was another point that was brought up as an objection.

Mr. WILLIAMS. Yes, Mr. Congressman. I think it is clear from the testimony that the goal of institutionalizing meaningful consultation with tribes by all agencies of the Federal Government is far from achieved, and the key elements that are missing from this equation as the tribal leaders have told us and as Members of Congress themselves have recognized are accountability and definite and certain procedures. This bill guarantees both, and the primary mechanism for guaranteeing that is not necessarily the threat of litigation. I don't like to look at the right of judicial review as a threat, but rather simply a right and a mandate and sets the clear policy of Congress, telling administrative agencies that this is the law of the land and you ought not to look at this as a threat to

your actions, but rather as just part of the legal structure in which you operate.

Let me also comment that it is important to recognize that the right to self-determination, which is clearly the law of the land and which Indian tribes have in numerous instances gone to Court to sue on that particular right under Federal legislation passed by this Congress, the right to self-determination is meaningless without the right to consultation. You can't have one with the other. How can you be informed about the choices that you need to make as a self-determining people unless you are fully consulted and educated and have a chance to engage in dialogue. That is what this bill does. I think it is inappropriate to look at the right to give judicial recourse as a threat to the actions of Federal agencies. I think it is a necessary guidance as to the clear sense of Congress as to the importance of this right to consultation as part of the larger fabric of our various pieces of legislation which guarantee the right to self-determination for Indian tribes.

Mr. GRIJALVA. Yes. Let me just follow-up on that. I think as we follow up with Interior and working on this legislation as it moves forward one of the points of contention will be judicial review and the removal of that section. The removal of that section would do what to this legislation?

Mr. WILLIAMS. It would gut the legislation and make it essentially meaningless. Again, without that force of law, Congress has not told Federal agencies what it wants to do in terms of implementing the government-to-government relationship. Yes, while you are sitting there in those negotiations and consultations, what it does is it makes Federal policymakers accountable and it makes them go through the steps and requirements of this act. So without having that mandate what we are going to get is the type of inconsistent application of the Executive Orders that we have heard today. Essentially, the Executive Order is this legislation without the mandate is what you are basically talking about. The mandate is what is going to give it the teeth that it needs to satisfy the need for consultation the tribes are constantly asking for from this Congress.

Mr. GRIJALVA. Thank you very much. Ms. Christensen? Doctor?

Ms. CHRISTENSEN. Thank you, Mr. Chairman. I guess I really just have one question and Professor Williams has partly answered it because the question is do you agree, and this is to everyone on the panel, both the Chairmen and attorney Williams, do you agree that the bill is too restrictive in this particular instance that I am going to refer to in that it limits the Department of the Interior from consulting in other ways that may have to be crafted in a unique way to meet some special situation. As the representative from DOI cited as one way in which the bill might be too restrictive, they might not be able to craft a special consultation for a unique situation. Do you believe that the bill is too restrictive in that way? That is my only question.

Dr. NORRIS. Mr. Chairman, Members of the Committee, Dr. Christensen, I don't agree with that at all. I don't think it does restrict tribes and the Department, I don't think, from being able to do that. I think that what it does is it gives me assurance as a tribal leader that when the bureau fails to do what is right and fails

to consult with tribal governments on a government-to-government level, it gives me the assurance that they are going to be required to do that. I don't think there are any restrictions associated to that. So thank you for your question.

Ms. CHRISTENSEN. So it is not overly prescriptive in how they must consult. Chairman Oatman?

Mr. OATMAN. Yes. I would be in agreement with the Chairman said. I don't think it would be restrictive, I think it would just be strengthening that consultation and providing that, you know, strengthening that structure and that framework with the discussions with the tribes and the tribal leaders.

Mr. WILLIAMS. Yes. Thank you, Congresswoman. If you look at the Act itself, it very clearly states that nothing in the Act limits the ability of an agency to engage in additional consultation procedures, and the very flexible procedure which I outline is essentially, very early in the planning stage, let the tribe know. From my reading of the act, in fact, I think the Administration's concerns can be addressed within the structure of this Act by saying, OK, it is very early in this planning stage and I think we might need a different type of consultation process, let us contact all the tribes that might be affected and come to an MOA or some sort of understanding. That is perfectly consistent within the confines of this legislation. So, again, I think it gives that needed flexibility, which I agree is one of the most important values you need in this type of one size fits all approach. Congress legislates one size fits all many times. That is what a law is. It applies to everybody. The key is to get it right so that it can be applied in a flexible fashion to address the needs of both the public and the tribes.

Ms. CHRISTENSEN. Thank you. Thank you, Mr. Chairman.

Mr. GRIJALVA. Gentlelady from Wyoming, Ms. Lummis.

Ms. LUMMIS. Thank you, Mr. Chairman. For Chairman Norris and Chairman Oatman, since the Executive Order has been put in place and the creation of action plans by some agencies, have either of your tribes been in consultation with agencies under that new rubric?

Dr. NORRIS. Mr. Chairman, Members of the Committee, Congressman, I have to say that since this Administration has taken office I have received many calls from the Indian Office of the President's Office asking for information or asking for opportunity to consult, so I have to agree that, yes, this Administration has overwhelmingly—in my 33 years of tribal government service, I have begun more calls from D.C. in this last year and months than I have ever gotten in my 33 years of service. I think, though, that there are times when, I mean, what constitutes consultation, you know, and some of the questions that we have in tribal government? So we have to ask is this a consultation session or what is it? You are asking for information but are you going to use that as a box check issue and say, OK, well, we consulted because we called Chairman Norris, you know? So I think that what this law does is it clearly defines what that process is and gives and assures tribes that when we say consultation, we truly mean consultation.

Ms. LUMMIS. So under your understanding within the law of what a consultation means, would those contacts that you received,

those phone calls, have constituted a legal consultation pursuant to the law?

Dr. NORRIS. I think when I get the calls I don't believe those are consultations. I think consultations are when you sit down, and you meet face to face and you lay out the issues, or the ideas, or the things that are being brought to the table and we discuss, and we negotiate and we consult with each other on those issues.

Ms. LUMMIS. Chairman, have any of those types of consultations occurred?

Dr. NORRIS. Yes, they have.

Ms. LUMMIS. OK. How are they working?

Dr. NORRIS. Well, about a year or so ago I was involved with a consultation on transportation with the Bureau of Indian Affairs, and too many times my experience has been that the parties that are usually involved from the Federal side are not necessarily those individuals that have any decisionmaking authority, and so when we realize that as tribal leaders we are like, OK, well—when we ask questions, well, the response typically would be, well, I will have to check with the office, or I will have to check with so and so, and so it sort of defeats the purpose of consultation if we can't deal with people that have any direct authority or responsibility to make and answer the questions to make the decisions that we need to be made then and there.

Ms. LUMMIS. I hear you. Do you think H.R. 5023, the law we are discussing today, will require people who are capable of calling the shots, making the decisions, to be at the consultation?

Dr. NORRIS. That would be my hope, and that is my understanding. If it isn't explicit in the law, I would ask that that also be a consideration as well.

Ms. LUMMIS. OK. Thank you. Chairman Oatman, any comments on this line of questioning?

Mr. OATMAN. Yes. We have sent some comments in, actually, after President Obama signed that, but we have written comments to their actual consultation policies. We have written letters in to Interior, Education, Commerce, Treasury, Defense, Transportation, Energy, Labor and Justice, are some of the main ones that we have had contact with. As far as consultation, I think for the tribe we have a very good relationship with majority of the national forests that we do business with. We actually have an eight national forest meeting locate on our reservation are the ones that are within our seated territory and they come in and they meet with us once a year. I think we are probably one of the only tribes that meet with that many national forests. I do think that, you know, this law will help strengthen and build those relationships so that we can, you know, build upon that, what we have started with the national forest, and reach out to the other agencies.

Ms. LUMMIS. Thank you, Mr. Chairman. I yield back.

Mr. GRIJALVA. Thank you. Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chair. I will take just a little bit of a different line of questioning. To the two Chair and the Professor, will any of these bills be able to assist the tribes—and I heard you talk about transportation, dealing with the BIA that can answer the questions. I deal with water. How would this affect any of your ability to negotiate, to be able to carry forth programs,

whether it is water storage, water recycling, delivery of water, infrastructure, all of that, which I am sure your tribes need, your reservations are in need of. How would that affect your ability to be able to directly lead into solutions or helping get your word in to be able to be queued in in assistance with the Federal Government?

Dr. NORRIS. Mr. Chairman, Members of the Committee. Congresswoman Napolitano, it is good to see you again. Thank you for your question. I think for me it will have a significant impact in giving me some level of assurance that where we may have resistance for whatever reason on the part of the Federal agency to meet with the tribes, that it will assure me that I have a process that is engraved in law that obligates that Federal agency to consult with me as a tribal leader. So I think with regard, whether it is water, whether it is transportation, whether it is land acquisition, whether it is housing, whether it is Border Patrol, whatever the case may be, I think that this law will give me some assurances that I am going to be dealt with on a government-to-government level.

Mr. OATMAN. For my tribe, in regards to the water, we had a big water summit back in 2005, Snake River Basin adjudication, but, and particularly for this bill I think it would benefit us. We are a big fishing tribe. We have one of the largest Salmon runs and Steelhead runs in the nation, and so, you know, this bill would help us ensure that we provide clean water, and help us with our flows, in stream flows, for our creeks and for our rivers to ensure that we have adequate, you know, water supply for those particular species of fish.

Mr. WILLIAMS. Yes. Thank you, Congresswoman. My program works with tribes, including Chairman Norris' tribes and a number of tribes through the southwest, on water issues, natural resource issues, and we have worked over the long term. What typically happens is the tribe engages in the planning process, lines up financing, starts working in Congress for support, hires people and then hears a rumor that some bureaucrat in Washington is about to implement a regulation or issue a policy letter that could halt those plans, and trying to get information becomes impossible. This process, the strength of this bill is that it incorporates definite and set procedures into the process, so it will have short term, as well as long term affects for tribes. They know what is coming down the pipe, particularly in the critical area of natural resources where the timelines are so long, so that they can intervene early and, for example, tell the administrator look at all we have invested in this particular project, and this is what your planned action and what you are thinking about might do. So that is why I think this is such good public policy.

Mrs. NAPOLITANO. I have a little bit more time. I will delve into another area which is also part of what I am very involved in this, mineral health services and health service delivery on reservations. How would this be able to assist you in getting additional service rendered on behalf of your people for a reduction in suicide, or health services, whether it is obesity or alcoholism, for instance?

Dr. NORRIS. Mr. Chairman, Members of the Committee, Congresswoman Napolitano, I think that, you know, in having to deal

with the Indian Health Service or the Department of Health and Human Services, although, you know—and I have to admit I have had at least one audience with other tribal leaders and Secretary Sebelius on many of those issues you just mentioned. I have to admit that there has been an expressed willingness to continue to work with tribes and ensure that those services are ensured to tribal members within our tribal community. So I would like to share that with you. I think, though, that if there was a change in the attitude or a change in the perspective on delivering those services to tribes, I think that this bill would give me, again, some assurance that I would have something to fall back on in the event that that sentiment changed in the willingness to work with tribes and to have an open door policy, and work with us and allow us to be at the table when those issues are discussed.

Mr. OATMAN. Yes. Our tribe, we have our own health clinic. Nimiipuu Health is what it is called. We actually have two clinics, one on the western end of our reservation and a smaller one on the eastern end of our reservation. I think this, you know, would provide vital information for us if there are any policies or anything that are going to change that are going to, you know, impact our services that we provide to our tribal members. You know, we see a lot of those, we see on the ground, you know, what are affecting our tribal members and things that they go through, and particularly, you know, diabetes, you know, a high rate of diabetes on the reservations. Some of my other councilmen suffer from this disease and so it is really a personal aspect for our tribe because we lose, you know, quite a few family and tribal members to diabetes, and so anything that is coming down the pipeline in formal consultation to figure out, you know, how can we address that, you know, through prevention or whatever it may be.

Mr. WILLIAMS. Congresswoman, I have worked with tribes for 30 years and I can't think of an area that is more important for early, effective and meaningful consultation with tribes than public health. Dealing with the front line agency, tribal officials, doctors, nurses, program administrators in the communities before an agency contemplates significant action. Because you get those folks in there and they can say, well, why are you working on this problem, this is what we are really concerned about. Or why are you thinking about this as an approach, this is the approach that we have used. This is why the relationship between consultation and self-determination is so critical, because if we really care about tribes running their own health programs and taking self-determination seriously, then that duty of early, effective and meaningful consultation has to be legislated into law.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I think it is quite evident that things change with Administrations that impact how they deal with the tribes. Thank you, sir.

Mr. GRIJALVA. Thank you. Gentleman from New Mexico, Mr. Luján.

Mr. LUJÁN. Mr. Chairman, thank you very much, and thank you for bringing us together today. To our Ranking Member as well. To the two Chairmen, thank you very much for being here and for honoring us with your attendance, and many of your staff that has joined us as well today. Professor, it is good to have you here as

well. Chairmen, has HHS began any consultation with you tribes regarding the implementation of the Patient Protection and Affordable Care Act? If so, how are those going?

Dr. NORRIS. Mr. Chairman, Members of the Committee, Congressman Luján, I have to share that I believe that we have been involved. You know, we do get, I am not sure if that is through the Indian Health Service, but there have been a number of calls or information that has been exchanged there. If we are talking about consultation in the sense that we are sitting down and discussing this issue with those entities, we look forward to that opportunity. There may have been one or two opportunities in the past that we have done that, but I am not fully aware of that.

Mr. LUJÁN. Mr. Chairman?

Mr. OATMAN. Yes. I haven't seen I guess at the level I would like to see it. You know, like them coming out and visiting with us on these issues. It seems to be there is an announcement that there is—you know, I know they are trying to get as many tribal leaders as they can in one place, but I think it would be nice if they could send, you know, a representative from HHS out to the reservations to actually have a sit-down with the tribal leaders. We do have, you know, delegated tribal officials that do go to those meetings, but I think it would be good, it would strengthen it if they could come out and have a face to face with the tribe and say, you know, this is how it is going to impact you guys.

Mr. LUJÁN. Mr. Chairman, the reason I asked that question is I believe that the RESPECT Act is something that will assist us with this going forward and that as we see the many benefits associated with the Patient Protection and Affordable Care Act, that this is something that needs to be implemented timely and in close consultation with the tribes around the country, especially in regards to the line of questioning that Mrs. Napolitano had as well. Professor, with your expertise or interpretation of consultation, how is it varied from Administration to Administration, and how, through your studies and research, have our tribal leaders responded to the variations to attempt to be included with full and thorough input?

Mr. WILLIAMS. Yes. Thank you. I started teaching Indian law and working with tribes in 1980 and witnessed the Reagan Administration, which really made some significant strides in the area of consultation, following up on the Nixon Administration Self-Determination and Education Assistance Act, creating a culture of an expectation the tribes would make decisions themselves. It was very consistent with President Reagan's philosophy. I think it was also very consistent with the Administration's philosophy of close consultation at the local government level, whether that government with the states or the tribal governments. It made a real difference.

Tribes had their differences, but the level of consultation significantly improved. I think we have seen those levels increasing. As tribes have become more educated, as tribes have taken seriously the mandates of their own people to exercise self-determination, they have realized they need closer consultation with Washington. So I think it has been a two-way street. I think we have seen a steady level, a steady growth curve of consultation mainly responsive to tribal demands, and I think this bill is an outgrowth. Tribes

will tell you quite frankly they are being consulted to death. They get phone calls, they get emails, they get letters.

What this legislation would do is institutionalize and regularize that process so that tribes know when they are actually involved in legal consultation requirements. I think it is going to reduce the workload of Congress. I know I have worked with congressmen before on tribes who complain about agencies not consulting them. This bill, I think, will address that issue. It is going to reduce the workload on tribes, and it is going to make agencies much more efficient and responsive and get public policy out there faster because nothing steps a regulation faster than tribal opposition, particularly when the tribe feels it hasn't been consulted.

Mr. LUJÁN. Thank you very much. Mr. Chairman, again, thank you for bringing this forward. As we saw some of the challenges and problems created through No Child Left Behind, I think clearly as we talk about the importance of the recognition of sovereignty and the importance of tradition, but especially language and the absence of the ability to include tribal languages through our educational system is something that we cannot allow to occur. Through proper consultation and looking at the development of programs, such as No Child Left Behind, it is clear as we talked about the importance of the inclusion of language and preservation of language as part of our tradition and sovereignty, that that is another example, Mr. Chairman, that the RESPECT Act will be able to help clear up. So appreciate that very much. Thank you, Mr. Chairman.

Mr. GRIJALVA. Thank you. Any Member, Ranking Member, any further questions? Let me thank the panelists. Very informative. Appreciate your comments. My gratitude for all of you being here and for traveling so far on sometimes a short notice. I appreciate it very much. Thank you. Let me call up the next panelists, please. Thank you very much, and thank you for your patience. Let me begin with The Honorable Joe Shirley, President, Navajo Nation. Good to see you again, my friend. Welcome.

**STATEMENT OF HON. JOE SHIRLEY, JR., PRESIDENT,
THE NAVAJO NATION, WINDOW ROCK, ARIZONA, ON H.R. 4384**

Mr. SHIRLEY. Thank you, Congressman Grijalva. Good morning. Ranking Member Hastings, Congresswoman Napolitano, good to see you. Congressman Lujan, good to see you, my brother, and the other honorable Members of the Committee. As the President of The Navajo Nation, I am honored to appear before this Committee on behalf of The Navajo Nation, and particularly on behalf of the Navajo people who reside in Utah. I appreciate the opportunity to provide testimony regarding H.R. 4384. Over the last 50 years, the Federal Government has shifted from a policy of paternalism, assimilation and termination to one that respects the sovereignty of native peoples and which promotes tribal self-determination on matters relating to internal and local affairs.

The Utah Navajo Trust Fund is an internal and local Navajo issue as it directly affects the lands, resources and citizens of The Navajo Nation. The future of this trust fund has been falsely characterized as a Utah issue, a misperception that divides the Navajo people into artificial and geographic groups. The Navajo people are

one people and one nation, and this is first and foremost a Navajo issue. The Navajo Nation has made it clear in previous testimony that The Navajo Nation wishes to be the trustee of this trust fund to protect our Navajo beneficiaries. H.R. 4384 fails to recognize The Navajo Nation as the rightful trustee over the trust fund.

The Navajo Nation has consistently opposed legislation that diminishes the right of The Navajo Nation government to maintain jurisdiction over our Navajo people, policies imposed upon us without consultation or consent. It is ironic that on the same day that this Committee is discussing H.R. 4384, which fails to promote tribal self-government, this Committee just finished discussing H.R. 5023, which, if passes as written, recognizes the right of tribes to self-government and supports tribal sovereignty and self-determination and requires standards for effective consultation between tribes and the Federal Government. I am hopeful that based on our long government-to-government relationship this Committee will not support any legislation directly affecting Navajo lands, resources and citizens that does not have The Navajo Nation's government's consent and support.

I sit before you today to oppose this legislation for just such reasons. The Navajo Nation has made clear The Navajo Nation wishes to be trustee of this trust fund to protect our Navajo beneficiaries. This bill does not name The Navajo Nation as the new trustee of this trust fund and an abrogation of the Federal trust responsibility. In regard to The Navajo Nation being named trustee, it is especially important that this Committee understand the following. The Navajo Nation is already a fiduciary of the trust fund monies and will always be a fiduciary of the Navajo trust fund monies. In nearly 30 years, the nation's controller and The Navajo Nation have never mismanaged, misappropriated or diverted any Utah Navajo trust fund monies.

Also, The Navajo Nation has a proven record of honoring its fiduciary duties as the trustee of numerous Navajo Nation trust accounts. The Navajo Nation manages and has successfully increased its own trust fund monies through the expert guidance of its investment committee and the outside investment managers. The Navajo Nation opposes this bill because it would waste fund resources by duplicating administrative services that The Navajo Nation already provides through the Office of the Navajo Utah Commission and The Navajo Nation Office of the Controller. The Utah Navajo Commission regularly administers projects for Utah beneficiaries.

The Office of the Controller handles numerous funds and accounts, including trust accounts. It is therefore a waste of trust fund resources and a further abrogation of the Federal trust's responsibility to duplicate administrative services where the Nation can already provide them. This bill acts in contravention of Navajo Nation sovereignty and Federal law by imposing Utah state law within The Navajo Nation in violation of Navajo Nation sovereignty and contrary to existing Federal law. This bill creates a quasi governmental entity and a Navajo Nation to be comprised of Navajo chapter representatives who would be beyond the jurisdiction of The Navajo Nation, contrary to the jurisdictional integrity as guaranteed by The Navajo Treaty of 1868.

The Commission would bear the sole fiduciary liability for the trust fund and further abrogation at the Federal trust responsibility to the Navajo people. The bill imposes a requirement on Navajo Nation chapters and Navajo Nation elected officials to carry out elections which are outside their official duties which are contrary to Navajo Nation law and which are mandated to be paid for by Navajo Nation general funds. Although The Navajo Nation objects to this bill for the above-mentioned reasons, we also want to provide this Committee with recommendations on how to move forward. First, this Committee could have requested all interested parties to testify at today's hearing.

For example, the Aneth Chapter, the largest chapter of Navajos in the State of Utah, a chapter where the majority of the resources that provide revenues for the existing trust fund and the chapter where the majority of the beneficiaries reside, have stated their wish that The Navajo Nation serve as trustee, and yet, they have not been invited here to date to express their wish. The Office of Special Trustee, who has also expressed their preference that The Navajo Nation serve as trustee, is also absent. Second, as we have always thought to be trustee of this trust fund, we simply have asked what does it take to make The Navajo Nation the trustee of this trust fund? We have never received a response. Let us know what it will take for The Navajo Nation to be the trustee and we will work together on it together. Congressman Grijalva, honorable Members of the Committee, thank you for this opportunity to provide testimony. Again, The Navajo Nation does not support this bill. Thank you.

Mr. GRIJALVA. Thank you very much, Mr. President. let me know ask Dr. Janet Slowman-Chee, if you would please provide us the testimony. Welcome. Look forward to it.

[The prepared statement of Mr. Shirley follows:]

**Statement of The Honorable Joe Shirley, Jr., President,
The Navajo Nation, on H.R. 4384**

Good Morning Chairman Rahall, honorable Members of the Committee. As President of the Navajo Nation, I am honored to appear before this Committee on behalf of the Navajo Nation and its citizens, and particularly on behalf of the Navajo people who reside in Utah and who are beneficiaries of the Utah Navajo Trust Fund (hereinafter "UNTF"), to provide testimony today in regard to House Bill H.R. 4384.

The Navajo Nation has consistently opposed legislation that diminishes the right of the Navajo Nation Government to assert jurisdiction over our Navajo People, that is imposed upon us without consultation or consent, and that is developed outside of the normal policy process that ensures that all interests are properly considered. Unfortunately, I sit before you today to oppose this legislation for just such reasons.

Government-to-Government Relationship

Over the last forty years, the federal government has shifted from a policy of paternalism, assimilation and termination, to one that respects the sovereignty of Native peoples, and which promotes tribal self-determination on matters relating to internal and local affairs. It is indeed essential to the sovereignty and self-determination of the Navajo Nation that we maintain a government-to-government relationship with the United States in deciding matters that concern and affect Navajo lands, resources and citizens. We are here today to discuss legislation proposed by Congressman Matheson that directly affects the lands, resources and citizens of the Navajo Nation. I am hopeful that based on our long government-to-government relationship, this Committee will not support any legislation directly affecting Navajo lands, resources and citizens that does not have the Navajo Nation's Government's consent and support. The future of the Utah Navajo Trust Fund is mischaracterized as a "Utah" issue. It is first and foremost a Navajo issue.

The Navajo Nation Opposes House Bill H.R. 4384

The Navajo Nation adamantly opposes House Bill H.R. 4384 for several reasons. First, as the Navajo Nation has made clear in testimony and in meetings with Congressman Matheson's staff, the Navajo Nation wishes to be the trustee of the UNTF to protect the Navajo beneficiaries. This trust fund has been plagued by a lack of accounting, mismanagement, and misappropriation. House Bill H.R. 4384 does not name the Navajo Nation as the new trustee of the UNTF and is an abrogation of the federal trust responsibility.

In regard to the Navajo Nation being named trustee, it is especially important that this Committee understand the following:

- *The Navajo Nation is already a fiduciary of the UNTF monies and will always be a fiduciary of the UNTF monies.* The UNTF is capitalized by royalties generated from Navajo Nation oil and gas leases on Navajo Nation Trust Lands. All royalties from Navajo oil and gas leases go directly to the Navajo Nation. Only after the royalties are in the control and custody of the Controller of the Navajo Nation does the Navajo Nation then distribute those royalties to the UNTF. See Exhibit A. In nearly thirty years, the Nation's Controller and the Navajo Nation have never mismanaged, misappropriated or diverted any UNTF monies. *Any claim that the Navajo Nation should not be named the trustee because it would not honor its fiduciary duties as a trustee is simply preposterous.*
- The Navajo Nation also has a proven record of honoring its fiduciary duties as the trustee of numerous Navajo Nation trust accounts, including the Permanent Trust Fund, the Trust Fund for Handicapped Services, the Trust Fund for Vocational Education, the Trust Fund for Senior Citizen Services, etc. Through its Office of the Controller, the Navajo Nation manages, and has successfully increased, its own trust fund monies through the expert guidance of its Investment Committee and outside investment managers.

Second, the Navajo Nation opposes House Bill H.R. 4384 because it would waste trust fund resources by duplicating administrative services that the Navajo Nation already provides through its Office of the Navajo Utah Commission and the Navajo Nation Office of the Controller:

- The Office of the Utah Navajo Commission (UNC) should be the Trust Administrator for community projects which utilize UNTF monies. The Office of the UNC regularly administers projects for the Utah beneficiaries, leveraging funding provided by the Navajo Nation, the UNTF, the Utah Navajo Revitalization Fund, and federal agencies. The Utah Navajo Commission is comprised solely of representatives from the seven Utah Chapters who would ensure fairness in the administration of UNTF funded projects for the Utah beneficiaries.
- The Office of the Controller handles numerous funds and accounts, including trust accounts. As previously stated, the Office of the Controller already handles the royalties which capitalize the UNTF.
- It is therefore a waste of trust fund resources *and a further abrogation of the federal trust responsibility* to duplicate administrative services where the Nation can already provide them.

Third, House Bill H.R. 4384 is deeply flawed in both its substance and in the process used to bring it to consideration today:

- This bill acts in contravention of Navajo Nation Sovereignty and seeks to divide the Navajo People into geographic groups imposed on us by the federal government.
- Although this legislation directly impacts Navajo Nation lands, resources and citizens, the Navajo Nation has been given limited opportunity to comment and consultation has been solely of a cursory manner.
- H.R. 4384 imposes Utah state law on the "Commission" and "Trust Administrator" in violation of Navajo Nation sovereignty and contrary to existing federal law.
- H.R. 4384 creates an ill-defined quasi-governmental entity on the Navajo Nation (the "Commission"), to be comprised of Navajo Chapter representatives, who would nonetheless purportedly be beyond the jurisdiction of the Navajo Nation, contrary to Navajo Nation and federal law and violating the Nation's right to territorial and jurisdictional integrity as guaranteed by the Treaty of 1868.
- By the express terms of the statute the Commission would bear the sole fiduciary liability for the trust fund, in further abrogation of the federal trust responsibility to the Navajo people.
- H.R. 4384 imposes a requirement on Navajo Nation chapters and Navajo Nation elected officials to carry out elections which are outside their official

duties, which are contrary to Navajo Nation law, and which are mandated to be paid for by Navajo Nation general funds (the costs for which only “may” be reimbursed from the trust fund at the discretion of the Commission).

- The Navajo People are one People. We were here before the Federal government created states in the Southwest. Our people are subject to the jurisdiction of the Navajo Nation government and to federal jurisdiction. H.R. 4384 seeks to divide the People by treating them differently from Navajos who reside in New Mexico or Arizona.
- The process for considering this legislation is flawed. The Aneth Chapter, the largest Chapter of Navajos in the State of Utah, the Chapter where the majority of the resources are that provide revenues for the existing trust fund (and where the environmental impacts occur), and the Chapter where the majority of the beneficiaries reside, have consistently stated the wish that the Navajo Nation serve as trustee and yet they have not been invited here today to express their wish. The Office of Special Trustee, who has also expressed their preference that the Navajo Nation serve as trustee is also absent, as is the Bureau of Indian Affairs.

Democracy and the Rule of Law on the Navajo Nation

On a final note, this Committee may hear testimony today which disparages the Navajo Nation government, Navajo Nation officials or even the Navajo people, or which creates the impression that the Navajo Nation government is in disorder. On the contrary, it is vital that this Committee understand that, while many of our political institutions are young, the concept of democracy has always been part of the Navajo life-way and is indeed taught to the Navajo people through our creation stories as part of Navajo Fundamental Law. Navajo Fundamental Law functions much like a constitution for the Navajo people and government. Recently, the Navajo people have exercised their democratic voice and, under Navajo Fundamental Law, their ultimate authority over the Navajo Nation government, through the petition process. As a result, there will be substantial changes to some of our political institutions. Through democratic elections to take place this fall, the Navajo Nation Council will be reduced in size from 88 delegates to 24 delegates.

These changes have been challenged in the Navajo Nation courts and ultimately upheld by the Navajo Nation Supreme Court. It is a testimony to the Rule of Law on the Navajo Nation, the integrity of the Navajo people, and the health of our democracy that all the branches of the Navajo Nation government are respecting these judicial decisions and that elections are moving forward. Please be aware, however, that nothing in the upcoming changes to the legislative branch will affect the Office of the Controller, or the Controller’s responsibility, authority and capability to manage the UNTF.

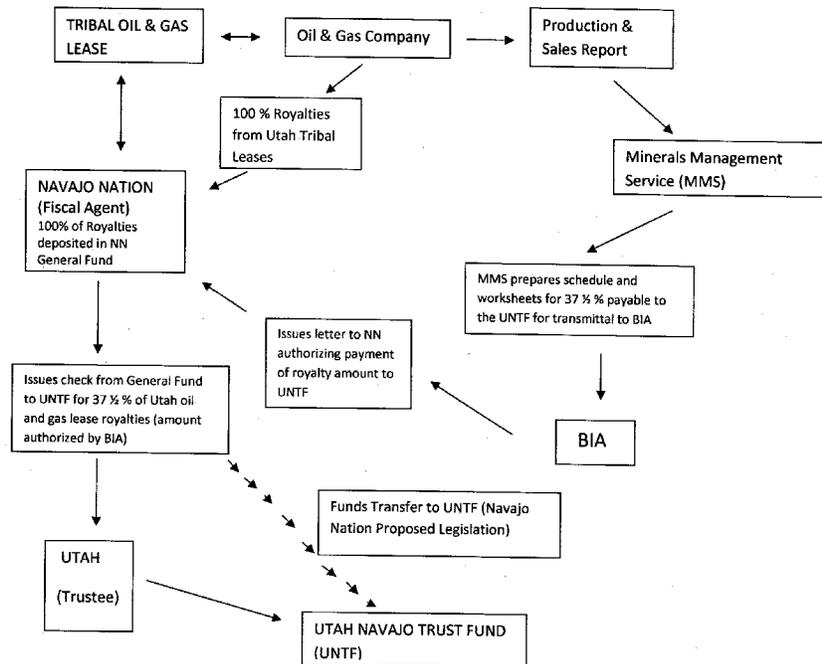
Further, our government is much like the federal government. Some individuals who assert to speak for certain groups of constituents seek only to further their own interests. Our government’s policy is quite clear: only authorized Navajo officials may speak for the wishes of the Navajo People. All others may speak only for their own interests and must be considered accordingly.

Conclusion

Chairman Rahall, Honorable Members of the Committee, on behalf of the Navajo Nation, I thank you for this opportunity to provide testimony to the Committee on Natural Resources in regard to House Bill H.R. 4384. We do not support this bill. However, the Navajo Nation looks forward to working with the Committee through our government-to-government relationship and with other members of Congress to introduce legislation naming the Navajo Nation as the new trustee of the Utah Navajo Trust Fund.

Thank you.

Exhibit A
Utah Navajo Trust Fund Fiscal Process
 (Navajo Nation Is Already Fiscal Agent & Fiduciary for Trust Fund Royalties)



**STATEMENT OF DR. JANET SLOWMAN-CHEE,
 TEEC NOS POS, ARIZONA, ON H.R. 4384**

Dr. SLOWMAN-CHEE. Chairman Rahall and distinguished Members of the Committee, Ya' aaht'eeh doo Ahehee'. Thank you for the opportunity for me to testify about H.R. 4384, to establish a Utah Trust Fund Commission and other purposes. I have waited for this opportunity since I was a little girl herding sheep. I am from the State of Utah right at Four Corners. I had the wonderful opportunity of looking after my sheep every day in four states. I lived in Utah, I herded sheep in Arizona, New Mexico, and I watered the herd in Colorado every day. I come before you this morning to share with you our thoughts, our feelings, our heartfelt feelings in regards to H.R. 4384 as a Utah resident as declared, as beneficiary as declared by the 1933 Act. I have reviewed what the Declaration of Independence says. This country coined this concept in 1776.

This particular document is soaked with the ideas and concepts of what it means to be independent. Mr. Chairman, Committee

Members, 234 years later the Utah Navajo people are still asking what is independence? How do we do that? How do we get a handle on that? How do we hold that? The authors of the Declaration of Independence were not wrong. We honor and we cherish the concepts that are within that document. The State of Utah once oversaw the management of the Utah Navajo Trust Fund. The State of Utah themselves said we will step back, we no longer wish to manage these funds, and they did so in 2008. Their responsibilities expired December 31, 2009.

That was a very gloomy day for us as Utah Navajo people because we have our children, our grandchildren, that look to these funds for scholarships, we have elders that look at these funds for housing, health care, the general welfare of our Utah Navajo people. I am a beneficiary. I live in Utah. I have lived in Utah all my life. My relatives, my grandparents, my cousins live in Utah. I remember growing up my aunties would tell me if you see an energy truck coming toward our house, our hogan, toward you when you are herding sheep, be sure to hide. Hide from the people that come in those energy company trucks. I didn't understand why, but those were strict instructions I got from my aunties and my mother. Today I know why.

However, I arose from that situation and I embraced the opportunity of what it means to receive education. I have earned my doctorate in education. I have attended Utah State University, University of New Mexico and Arizona State University. I hold a license as a school psychologist, a special education teacher, a counselor and also as an administrator. I have worked all my life with children with disabilities and their families. Despite the hardships that we have in Utah on Utah Navajo, I truly believe our Utah Navajo people have the strength, the inspiration to overcome the hardships, to say yes, I will and I can obtain knowledge and skills to help enrich our communities. It is my testimony today that we are fully ready. We have the strength to become managers to manage the Utah Navajo Trust Fund.

We are there every day. We know what it is. We know what we have and don't have. We know the smell of the oil spills. Do you know there was a great cry about the oil spill in the Gulf? Mr. Chairman, Committee Members, we have oil spills in Navajo Utah every day that no one cries about. We have pipes that are exposed that no one cries about. I am here to tell you today that we, the Utah Navajo people, know what needs to be done. We want to do it. We want to oversee these activities. We welcome these challenges. In terms of supporting—

Mr. GRIJALVA. Need to ask you to begin to wrap it up so that we can go on to the next witnesses as well, with all due respect.

Dr. SLOWMAN-CHEE. We envision that the Utah Navajo trust Fund would meet the needs of the Utah Navajo people through effective organizational techniques. We are aware of investment principles and the need to be prudent with the resources and the procedures and policies that we would have. We know we would be subject to regulatory supervision under Federal IRS and state statutes. We welcome that. We are ready to be in partnership with that. Again, I would like to say that we want to keep the funds in Utah. We want to keep the Utah Navajo Trust Fund in Utah. The Utah

Navajo people have knowledge and skills to manage the trust. So we are asking you, this Committee, to partner with us in doing so. I thank you for this opportunity.

Mr. GRIJALVA. Thank you. Mr. Mark Maryboy, Montezuma Creek, Utah. Welcome, sir. Look forward to your testimony.

[The prepared statement of Dr. Slowman-Chee follows:]

Statement of Dr. Janet Slowman-Chee on H.R. 4384

Representative Rahall and distinguished members of the committee. Ya' aah't'eeh doo Ahehee', thank you for the opportunity to testify about H.R. 4384, "to establish the Utah Navajo Trust fund commission and other purposes".

I have waited for this opportunity since I was a little girl herding sheep in the Four Corners area on the Navajo Nation in the state of Utah. Today I stand before you to share with you that the Utah Navajo people deserve to fully execute the power of independence in their lives every day. In 1776, the United States Congress coined the Declaration of Independence; this document is completely drenched in the people's desire to be independent. We as Utah Navajos are still looking for avenues to enjoy independence, like every other American. It has been 234 years since this unique empowering document was created for all people including Native Americans and the Utah Navajo people.

In 1933, Congress created the Utah Navajo Trust Fund providing that such funds be spent on the benefit of the Utah Navajos for education, transportation, education, health and general welfare. The State of Utah administered these funds until 2008 when they enacted legislation which released them from the responsibility of managing the trust fund effective December 31, 2009. A new trustee has not been designated. In the absence of a trustee the trust fund is not being used for the benefit of the Utah Navajos.

I am from Utah Navajo Nation; I am a beneficiary as declared by Utah Navajo Trust Fund. We, the Utah Navajos are faced with the unfortunate complexities of life such as inadequate infrastructure, dilapidated housing, inadequate health care, and limited access to higher education. Public transportation is nonexistent, and the general welfare of my people is truly at risk. The Utah Navajos live in a dangerous environment where fumes from the gas lines and oil wells continuously seep into their homes and create health problems.

As a young woman, I personally experienced horrifying incidents of running and hiding from energy companies who were exploring for drilling possibilities. I did not know who these outsiders were, what they were looking for or what they would do to me. I only knew what my aunt told me which was to immediately hide. However, today I am in an empowered position to confront the questions of how to wisely manage and invest the revenues from the oil and gas extracted from my home state. I embraced the awesome opportunity of higher education; I earned my doctorate in education from Arizona State University. The Utah Navajo Trust Fund gave me support and made my dreams come true, it made me independent.

The point of my testimony is to tell you that despite the hardships of Utah Navajo we are ready to take full control of our destiny. We know what the problems and issues are, we know what resources we have and do not have, and we know what the Utah Navajo people desire. We speak and understand the language of "strengthening the general welfare of Utah Navajo" because we live and breathe Utah Navajo every day. This is true autonomy and the capacity to manage. Ultimately, our goal is to make a positive difference by improving opportunities for our children, families and communities, and still meet our long term financial goals to sustain Utah Navajo life. We believe we can responsibly preserve and grow the Utah Navajo Trust fund resources, while realizing greater social change and serving the public good.

We will do this by supporting and meeting the needs of vulnerable children, their families, and our communities in the areas of education and learning, food, health and well-being, family, economic and development, security and wealth creation. We are prepared and committed to fully execute direct representation of the Utah Navajos, to manage the trust with prudence and assure accountability and transparency.

We understand and value the importance of an effective organizational structure, policies and procedures to meet the mission and goals of the Utah Navajo Trust Fund.

We envision growing the Utah Navajo Trust Fund to meet the needs of the Utah Navajos through the following strategies:

1. A clear investment and spending policy that outlines the roles and responsibilities of the board, staff and investment consultants.
2. A clear investment strategy that includes reasonable assumptions about the organization's risk tolerance, spending plans and expected returns needed to support the spending.
3. A straightforward process to implement the asset allocation (diversification) and investment strategy.
4. A recognition that investment theory is often at odds with behavioral tendencies, making it very important that investment committee members adopt a disciplined investment process that helps them stay focused on the long term investment goals in a challenging economy.
5. A willingness to discuss issues based on facts, data, and thoughtful analysis.
6. A commitment to educate the board about prudent investing standards and process.
7. A collaborative approach that focuses on fulfilling the mission and goals of meeting the needs of the Utah Navajo people.

We understand that trustees and directors are subject to regulatory supervision under several Federal, IRS and State Regulatory Statutes. In particular, in regards to fiduciary duties, The Uniform Prudent Management of Institutional Funds Act (UPMIFA) passed in 2007 for the state of Utah to guide charitable trustees. The training, education, guidance and compliance with prudent investment standards are critical for us. The Utah Navajos deserve transparency and accountability of the trust fund.

Today, I am here to urge you to partner with us as Utah Navajos in the journey of independence for Utah Navajo and the right to use the resources to meet the needs of our Utah Navajo people. The authors of the US Declaration of Independence were not wrong; the concepts they fought for can be fully implemented, celebrated and enjoyed by the Utah Navajo. The Navajo people in Utah have the knowledge and skills of stewardship responsibilities for the Utah Navajo Trust Fund.

Mr. Chairman and distinguished committee members, H.R. 4383 stands to preserve the revenues from the oil and gas leases in Utah Navajo Nation for the benefit of the Utah Navajos. Secondly, H.R. 4384 stands for direct representation of the Utah Navajo people on spending decisions, complete management of the trust and annual audits to establish accountability and transparency.

In summary, Mr. Chairman, we the Utah Navajo people are ready, without hesitation, to completely take on the challenges of complete oversight of the Utah Navajo Trust Fund. My Navajo name is Yik'oozbaa', this means to conquer, to complete, to accomplish, to succeed, as I sit before you I am ready to conquer, accomplish, and succeed with this challenge. In addition, there are thousands of other Yik'oozbaa' back home in Utah Navajo who are ready to conquer, accomplish, and succeed in investing in their communities.

Thank you Mr. Chairman and distinguished committee members, for the opportunity to work with each one of you on this historical moment of guaranteeing independence for my Navajo people in Utah. I am ready to answer any questions you might have.

Mr. GRIJALVA. For the record, everything in writing is going to be made part of the record, and so if we could, both in the response to questions, try to keep it within that five minute time limit, that would be excellent. Sir?

**STATEMENT OF MARK MARYBOY, MONTEZUMA CREEK, UTAH,
ON H.R. 4384**

Mr. MARYBOY. Thank you.

Mr. Chair and Committee Members, I appreciate the opportunity to present before this very distinguished Committee. For the sake of time, as you stated, you have my written statement, so I will make a very brief summary statement regarding my presentation. First of all, I just wanted to say that the Utah Navajos are different and unique from the rest of the Navajos from Arizona and New Mexico. The Utah Navajos are far north of The Navajo Nation capitol. Many of The Navajo Nation, the Utah Navajos, were not a part of The Navajo Nation government at the onset of The

Navajo Nation government. Utah Navajos were always considered foreigners. It wasn't until a great, great quality of oil and gas was discovered in Utah, and we have all of a sudden become a part of The Navajo Nation.

The unfortunate situation with the oil and gas in Utah is it has been a curse to the Utah Navajos. The Utah Navajos have been very proud, self-sufficient tribe living along the San Juan River. The oil companies have basically destroyed their farming land, their grazing area. Currently, they are the poorest of the poor. A majority of the revenue that has arrived from the oil and gas production goes to The Navajo Nation. With all due respect, I disagree with The Honorable President Joe Shirley's statement. He talks about government-to-government consultation. I know that Congressman Matheson has been relentlessly been in contact with him, but unfortunately, he has not, the President of The Navajo Nation has not officially met with any of the Utah chapter regarding this particular issue.

So the fear from the Utah chapter is this particular royalty, the 37 and a half percent funding, will disappear and will never come back to provide goods and services to the Utah Navajos. I used to be the Chairman of The Navajo Nation Budget and Finance when I was The Navajo Nation Counsel. Eighty percent of the revenue goes to administration. Probably less than five percent of the revenue goes to the Utah side of the reservation. I must say that since 1933, the 37 and a half percent has provided tremendous services to the Utah Navajos. Regardless of that, there are many families that still don't have running water and electricity in their homes. Recently, we heard about the news of the Gulf Coast oil spill and people are appalled by that.

Everywhere in the Nation people are concerned with the oil leaking out of the ground. But on the Utah side of the Navajo Reservation we have an oil spill almost every day and The Navajo Nation EPA does not do very good job in cleaning up those oil spill. We suffer from noise pollution, air pollution, water pollution and the likes. For this reason, Mr. Chair, Committee Members, I beg you that this particular money stays on the Utah side of the reservation. Certainly, we have the education, the ability to administer and manage this particular fund to address the poverty situation, and we believe that self-determination, decentralization is the key. Privatization, free enterprise zone. That is what we want to do. We believe that a welfare state type of assistance does not work, and we do not want to be drain on the society. We want to be independent economically. So, in closing, I beg all of you to support our proposal and to support our congressman, Congressman Matheson. He has been willing and very supportive of the Utah Navajos. Thank you very much.

[The prepared statement of Mr. Maryboy follows:]

Statement of Mark Maryboy, Montezuma Creek, Utah, on H.R. 4384

Chairman Rahall and Members of the Committee, I appreciate my opportunity to provide my testimony to the committee this morning. First of all, on behalf of the Utah Navajos, I would like to acknowledge and thank our congressman, Mr. Jim Matheson for his concern and willingness to help Utah Navajos and keep their trust fund in San Juan County Utah, as intended in 1933.

Two years ago in June 2008, I presented and provided a testimony before this committee regarding the Utah Navajo Trust Fund. At this committee hearing you heard a presentation from me, President Joe Shirley, and Secretary of the Interior, Ross O. Swimmer.

During my presentation, I recommended that this trust fund be controlled and administered by the Utah Navajos because. My position at that time was that, within our Utah Navajo community, we have the ability manage and administer the fund. President Shirley recommended a different position which was to have the Navajo Nation manage the trust fund for the Utah Navajos. The Final presentation was made by the secretary of the interior. Mr. Swimmer proposed two options. Give the responsibility to the Navajo Nation, or have the Utah Navajos form a private non-profit organization to manage the trust.

Since this hearing, the Utah Navajos and Congressman Matheson have met as chapters and communities regarding these two options. The Utah Navajos and Mr. Matheson came to an understanding and agreement to go with the second option, which was to keep the funds in San Juan County.

Chairman Rahall, your staff also traveled to San Juan County Utah and met with the seven Utah Chapters regarding this matter in the fall of 2008 and also in early in 2010. During the first visit with the chapters, most of the chapters preferred to keep the trust fund administration in San Juan County Utah. This was reiterated during your staff's second visit this year.

Regarding the current bill being proposed, we have met extensively with Mr. Matheson's staff and with Chairman Rahall's staff to discuss the language. Our intent has been to insure that the bill reflects the wishes of the beneficiaries of the trust fund, the Navajos residing in San Juan County, which are to directly provide a resource to the people for their development. Namely to foster economic growth, provide education, health, and general welfare services to our communities.

Specific to this proposed legislation, the people have expressed a desire to see the following provisions:

1. The election process must be something the Chapters can handle on their own familiar terms—the resolution process.
2. A simple majority of Chapters must be required for both the selection and removal of a non-profit as the trustee. The way the original bill structures this (super majority/simple majority) makes me nervous.
3. The non-profit should have the flexibility to either hire or contract for its administrative functions (CEO/CFO)
4. A non-profit trustee should have the ability, to the highest degree possible, to operate under its own bylaws.

I respectfully request that these issues be considered and incorporated in the bill.

With full respect to our leaders from the Navajo Nation we ask for the trust of this committee. The Utah Navajos were named the beneficiaries of this trust in 1933, but since that time they have not been allowed to manage the fund or even to have a voice. This bill provides an opportunity for Utah Navajos to take on the full responsibility of managing this resource. We are proud to be a part of the great Navajo Nation. It is our deepest desire to make a meaningful contribution to the progress and development of our people. This trust fund represents a valuable asset, which if managed properly can do tremendous good. We believe that the Utah Navajos are in the best position to effectively manage the trust.

Conclusion: The Utah Navajos are happy and excited as we look into the future. We are anxious to create an entity that provides true economic and community development. As intended between tribes and congress in its treaties to foster self determination and self governance.

Our dream and vision is to develop a non-profit organization that would work in cooperation with San Juan County, The State of Utah, and the Navajo Nation, to develop jobs, industry, education, healthcare, and prosperity. We see clearly the objective of our people. For too long our economy has been stagnant. We have been deprived of the resources that exist right beneath our feet. All we ask is for the chance to grow. By granting the Utah Navajos the privilege of controlling their own asset, we see a better future for our children and our grand children. We see a better future for the Navajo Nation as a result of the contribution we are anxious to make.

Again, I thank you for allowing me the opportunity to present my testimony. I humbly ask for your support by approving this bill that is before you.

Mr. GRIJALVA. Thank you, sir. Chairman Joseph Art Sam, Bridgeport Indian Colony, Bridgeport, California. Sir, welcome. Mr. Chairman, look forward to your comments.

**STATEMENT OF THE HON. JOSEPH ART SAM, CHAIRMAN,
BRIDGEPORT INDIAN COLONY, BRIDGEPORT, CALIFORNIA,
ON H.R. 5468**

Mr. SAM. Thank you. I am new at this and I am a little bit nervous, so you may have to bear with me a little bit on it, but I will work through it. First of all, I just want to thank the Chairman and the Committee Members for holding this hearing on H.R. 5468 for legislation that is very important to our small tribe out in California. First, I want to introduce some members that are with me here today. We also have an easel here, which one of them will help sort of demonstrate or illustrate what we are proposing here. First of all, with us here is our Vice Chairman, Herb Glaser, standing there. Also, our legal counsel is present, Patty Marks, who resides here in Washington, D.C., and attorney Mark Levitan from out in California, who are all present and they may help with any questions we may have here regarding this.

With that, I will just get into it. The Bridgeport Indian Colony is a very small California tribe located in central eastern California along the eastern Sierra region. The total enrollment of the tribe is 120 members. We currently have a reservation land base of 40 acres which is approximately three-fourths of a mile from the Town of Bridgeport. Like I said, it is in central eastern California, pretty remote location. The map there of California shows the actual location. We are very close to Lake Tahoe and Carson City, Nevada. We received the 40-acre reservation land base in 1974 through legislation that Congress—the tribe received Federal recognition through the Indian Reorganization Act in 1976, so we are a pretty recently recognized tribe in that location.

H.R. 5468 addresses two very important issues to our reservation, primarily for health care services to our membership and it also provided health services to the residents of northern Mono County which are non-Native residents. Also, it provides land for our tribe for housing and economic development near the reservation. The first parcel is a seven and a half acre parcel which is BLM land. It is located about 30 miles north of our reservation. The tribe in 1984 received small community development block grant to construct a small clinic parcel on that land. We are a member of the Toiyabe Indian Health Project which is a consortium of Indian tribes in California on the eastern Sierra region who provides health care service to the Indian population in that area.

The Toiyabe leased the subject land, the seven and a half acres, from the Bureau of Land Management in the early 1980s to provide health care services there, and they also lease the clinic facility building from our tribe to provide those services. The original intent of that agreement was that Toiyabe would provide those services in northern Mono County and would purchase that land from the Bureau of Land Management and then in turn transfer that land to our tribe who would apply to the Bureau of Indian Affairs to have it put into trust status. For some reason, that never

really occurred, and now, about 30 years later, we are in a situation where the tribe owns the clinic on BLM lands.

So just recently here, as a part of this legislative process, the tribe, the Toiyabe Indian Health Project and the Bureau of Land Management have all agreed that transferring this land into trust from the BLM to the Bureau of Indian Affairs would benefit our tribe and resolve this issue, so that is one of the primary reasons we are pursuing this legislative land transfer for that parcel of land at Walker. The second parcel of land is located at Bridgeport, which is adjacent to our existing 40-acre reservation land, and it consists of 31.86 acres. This is the land the tribe has been trying to acquire now for about 15 years through the Bureau of Land Management Federal Land Policy Management Act.

Our existing reservation, first of all, is pretty much built out. We have very limited space for additional housing and no space, really, for economic development on the existing reservation land. If we were able to secure this additional land that has highway frontage on Highway 182, which is a north/south small highway, and our intended uses for that land is to construct, actually, a small community recreation center and a daycare center attached to that which is surely needed in our area for both the Indian and non-Indian population.

Mr. GRIJALVA. Mr. Chairman, I am going to ask you if you can start wrapping it up so that we can go on to questions.

Mr. SAM. OK.

Mr. GRIJALVA. Thank you.

Mr. SAM. The Mono County board of supervisors pretty much supports that. As Representative McKeon reported this morning, that the tribe has entered into an MOU with the county for those services for the impacts that our proposed development would have on the county services. The other issue that I really wanted to mention here was—

Mr. GRIJALVA. You need to kind of wrap it up pretty soon, if you don't mind, sir.

Mr. SAM. OK. Sure. Thank you. We just wanted to mention the gaming issue because we know it is an issue of concern to some Committee Members. The tribe has explored gaming in the past and we have determined that it is not really a viable opportunity for our tribe due primarily to the location and the population of the area. The Mono County board of supervisors basically agreed with that. So, with that, I would like to thank the Chairman and the Committee for this hearing today. I would like to thank Representative McKeon for introducing the bill and his support in the process, and also thank the BLM, BIA, Mono County and the Committee staff for assisting us to bring us to this level. So, with that, I would just entertain any questions that you may have. Thank you.

[The prepared statement of Mr. Sam follows:]

**Statement of The Honorable Joseph Art Sam, Chairman,
Bridgeport Indian Colony, on H.R. 5468**

My name is Joseph Art Sam, and I am the Chairman of the Bridgeport Indian Colony. Thank you for holding this hearing concerning H.R. 5468. I am accompanied today by the Vice-Chairman of our Tribe, Herb Glazer, and our legal counsel: Patty Marks from here in Washington, D.C. and Mark Levitan from California.

The Bridgeport Indian Colony is a small federally recognized California Tribe with 120 members. Our Tribal Government was organized under the Indian Reorganization Act in 1976, after Congress designated our 40-acre reservation in 1974. Our reservation is located just outside the town of Bridgeport, California, on the Eastern side of the Sierra mountain range. We have attached a map of California (Exhibit A) which shows the location of our reservation. As you can see, due to mountains on the East and the West, we are in a geographically remote area of California. The two closest passes over the Sierra mountains close for the winter, further isolating our region. The closest metropolitan areas of any significant size are Carson City and Reno, Nevada, which are about a 1.5—2 hour drive north.

The two BLM to BIA land transfers authorized by H.R. 5468 address two issues critical to the Tribe: health care; and additional lands for housing and economic development.

The first parcel is a 7.5-acre site approximately 30 miles north of the reservation. You can see the location of the parcel on the map attached as Exhibit B. In the 1980s, utilizing funds from a Community Development Block Grant, the Tribe was able to build a small health clinic on this parcel. The project was orchestrated by the Toiyabe Indian Health Project, a non-profit consortium of tribes in the Eastern Sierra which provides health care services to the Native and non-Native population. Toiyabe leased the parcel from the BLM under the Recreation and Public Purposes Act, and leased the building from the Tribe. It was the documented intent of all the parties that after the clinic was built Toiyabe would purchase the land from the BLM, transfer it to the Tribe, and the Tribe would request the BIA to accept it into trust for the benefit of the Tribe. For unknown reasons, this never occurred. Now, almost 30 years later, the BLM acknowledges that the Tribe owns the building, but for technical legal reasons BLM is no longer comfortable with the Tribe obtaining title to the property through this process. The Tribe, BLM, and Toiyabe have mutually agreed that a Congressional transfer of the parcel from the BLM to the BIA, to be held in trust for the Tribe, is the most efficient way to resolve our situation.

Toiyabe closed the clinic in 2006 for lack of funding. The Tribe and Toiyabe are committed to reopening the clinic; and both the Native and non-Native population have expressed that they miss the clinic and feel its presence is important to the area. It is our hope that maintaining the clinic on trust land will help Toiyabe and the Tribe to obtain additional funding to reopen the clinic and keep it open. In the process of preparing the legislation, the BLM State office decided to redraw the parcel boundaries slightly to clarify the boundaries of the parcel and to make the legal description simpler by using aliquot parts. Following their approach, the parcel boundary described in the legislation just encompasses the clinic and its parking area, and does not include additional lands.

The second parcel is located adjacent to the Tribe's reservation. As you can see on the aerial photograph attached as Exhibit C, this parcel of BLM land sits in-between the Tribe's 40-acre reservation and Highway 182. The Tribe's current reservation is the shaded orange area, and the adjacent parcel has red lines across it. Highway 182 is a small, two-lane highway which connects Bridgeport to Hawthorne, Nevada. Note that the main thoroughfare through Bridgeport is Highway 395, about seven-tenths of a mile to the south. We've also included a ground-level photograph of the parcel attached as Exhibit D, which gives you a better idea of the rural nature of the area. The adjacent parcel is in the foreground, covered simply with sage brush. The collection of buildings in the middle of the photograph is the town of Bridgeport, and the mountains in the background are the Sierras as seen from the east.

The Tribe has been trying to acquire this parcel from the BLM for over 15 years. The current reservation is completely built out, and we still have additional housing needs for our population. There is also no space on our current reservation for any economic development projects. It is the goal of our Tribe to become self-sufficient and self-reliant as a government, and we know that economic development is the only option for us to reach that goal. If this land can be acquired, we plan to build an RV park, gas station and convenience store, a recreation center open to the Native and non-Native population of the area, as well as additional residential housing for Tribal members. Most of our on-reservation members currently receive public assistance, and the majority of the remainder of our Tribal members are lower income. We are in desperate need of both jobs and additional sources of income.

We have entered into a binding MOU with the County of Mono to address the off-reservation impacts of the development of this parcel, and we have the strong support of the Board of Supervisors. We have attached a copy of the executed MOU as Exhibit E, and a letter from the County Administrative Officer expressing the County's strong support for the bill as Exhibit F. The economy of the town of Bridgeport has suffered significantly in the past few years, with many businesses

closing and even more being put up for sale, and the County hopes that the Tribe's development of the adjacent parcel will serve as a local economic stimulus.

The Tribe went through a Federal Land Policy Management Act (FLPMA) land sale process with the BLM to obtain this parcel. After numerous delays, and a decision to sell the Right of Way on the parcel for Highway 182 to Caltrans directly in fee, the BLM decided to sell the parcel to the Tribe in 2005. The decision was protested and appealed by some non-Native Bridgeport residents, and on May 28, 2009, the Interior Board of Land Appeals issued a decision which generally upheld the land sale, but which remanded the decision back to the BLM to clear up a few technical issues. The BLM has addressed the technical issues and they have assured us that they will make those findings available to the Committee as part of the record of this bill.

When the Tribe realized that its acquisition of the health clinic parcel would necessitate Congressional action, we decided that it would be most beneficial to include the adjacent parcel in our request as well. To be honest, our main incentive was financial. When we set out to purchase the adjacent parcel from the BLM the sale price was estimated at approximately \$50,000. During the long delay caused by the IBLA appeal, the BLM reappraised the parcel and determined that the sale price will now be over \$250,000. Our Tribe has been fortunate to receive distributions from the California Revenue Sharing Trust Fund, and we have been setting aside funds to use as seed money for economic development. But if we were forced to pay \$250,000 for this parcel, it would significantly impact our ability to develop projects to benefit the Tribe.

Finally, I would like to address the gaming issue straight on, because I know it is an issue of concern to many of your Committee Members. Our Tribe has investigated gaming as an economic development option, and we have come to the conclusion that we do not have a viable location for a casino. Our Tribe will only continue to receive distributions from the Revenue Sharing Trust Fund as long as we remain a non-gaming tribe pursuant to the definition in the California 1999 gaming compacts. It would not make sense for us to develop our own gaming facility, because the population of our region simply would not support it. As I mentioned earlier, the closest metropolitan area of any significant size is Carson City and Reno, Nevada, located 1.5–2 hours north; there are of course plenty of gaming options in the Reno area already. According to the last Census, the population of Mono County is under 13,000. The population of the town of Bridgeport is not measured by the census, but the County estimates the population is approximately 800. To the east and west we are bordered by mountain ranges. To the south one has to travel all the way to Victorville (the northernmost suburbs of Los Angeles), approximately 5 hours away, to reach any significant population.

Given our location, we understand why some Members may ask why the Tribe has not proposed language which would prohibit gaming on these parcels, as some other tribes have done recently, and avoid any debate over the issue. With respect, we submit that the Indian Gaming Regulatory Act was passed in part to benefit tribes, and we do not believe we should be excluded from the rights that Act designates for us. We do not know how the demographics of our region or gaming may change over the next 20 years or 50 years, and we do not want to give away the rights of our children and grandchildren. Also, it appears from our research that a majority of the tribes that have agreed to such language for Congressional land transfers were already operating casinos on their existing lands, which we submit is not an analogous situation.

In our recent negotiations with the County of Mono Board of Supervisors for the MOU, many members of the public encouraged their representatives to address casino development, but after listening to the Tribe's perspective, the County did not insist that the MOU specifically prohibit or address gaming in any way. We request that Congress take its cue from the local government in this regard.

We've attached as Exhibit G excerpts from the Mono County Board of Supervisors meeting at which they voted on whether to support the Tribe's efforts. The Supervisor at the time for the area of the County where the reservation sits was Bill Reid. The excerpts from the meeting are all quotes from Supervisor Reid, as he spoke powerfully in support of the proposed Congressional land transfer, and eloquently addressed both the gaming and the local economy issues. Unfortunately Supervisor Reid passed away that very night after the meeting, and his work had to be taken up by the other Supervisors. We are profoundly grateful to Supervisor Reid for his support and believe that his efforts helped to redirect the relationship between the Tribe and the County into a positive area.

After H.R. 5468 was introduced, we reviewed the legal property descriptions with the BLM State Office, and there are some minor changes to the bill language that our legal counsel believe should be made. On page 5, line 20 (Section 3(b)(1), the

paragraph should end after “more or less,” and the remainder of the paragraph, “as identified on the map titled “Bridgeport Camp Antelope Parcel”” should be deleted. On page 5, line 22, Section (3)(b)(2) should be revised in its entirety, and should read: “Lots 1 and 2 of the Dependent Resurvey and Metes-and-Bounds Survey of Township 5 North, Range 25 East, of the Mount Diablo Meridian, California, as approved by the Chief Cadastral Surveyor of California, Lance J. Biby, February 21, 2003.”

In closing, on behalf of our Tribe I would like to thank you Mr. Chairman, and the Committee, for taking the time to consider this land transfer. Thank you also to our Congressman, Representative McKeon, for introducing this bill and for his strong support of the Tribe’s efforts. Finally, I would like to thank the BLM, the BIA, the County of Mono Board of Supervisors, and the Committee staff for all of their assistance in helping our Tribe to reach this point. I hope I have provided the Committee with the information you need to report this bill to the House floor in the near future. I look forward to answering any questions you may have.

Mr. GRIJALVA. Thank you. Mr. Chairman, I really don’t have any questions for you. I think Congressman McKeon’s legislation is fair, it is balanced and the stipulation that some people be concerned with regarding gaming on the acquired land, you have dealt with that, and so I really don’t have any question. I don’t see where opposition would be to it. So, well, thank you very much, and congratulate the Congressman. It is a good piece of legislation. Thank you.

Mr. SAM. Thank you very much. We appreciate your support.

Mr. GRIJALVA. Let me welcome Mr. Matheson’s bill. Discretion not being the better part of valor in this issue. President Shirley, you mentioned the special trustee and the recommendation. Could you elaborate on that point? You said that the recommendation was that The Navajo Nation be the beneficiary and the trustee. Could you elaborate on that?

Mr. SHIRLEY. Just the Office of Special Trustee in the guise of a Mr. Ralph Schwimmer gave testimony I believe back in 2008 saying that The Navajo Nation as a nation should be the trustee of these funds that we are talking about. I believe he has left since then. I believe the acting person is of like mind.

Mr. GRIJALVA. Yes. Maybe for Ms. Chee and Mr. Maryboy, it is my understanding, and correct me as I go along, that the State of Utah and the Federal Government do not want to be the trustee in this issue, and your opposition to The Navajo Nation as a whole being the trustee is noted in your testimony. So if we are down to those kinds of alternatives and we have Mr. Matheson’s bill that creates a whole other process of entity, wouldn’t it be simpler to have The Navajo Nation as a whole be the trustee with stipulated receivership in terms of resources for the Utah Navajo chapter that you represent?

Mr. MARYBOY. Let me very quickly respond to your statement. Let me make clarification on the testimony provided by Secretary of the Interior Ralph Schwimmer. He recommended two solution. One was have Navajo Nation be the trustee, the other one was a nonprofit organization, so the Utah Navajos chose option number two that was to run its own trust fund. Now, going to your question, the reason why—

Mr. GRIJALVA. Let me follow up on that. Thank you.

Mr. MARYBOY. OK.

Mr. GRIJALVA. Let me follow up on that. You have the Senate version that has the nonprofit entity status, you have Mr. Matheson's legislation that has the election percentage status in it.

Mr. MARYBOY. Yes, sir.

Mr. GRIJALVA. Where do you stand on those two?

Mr. MARYBOY. We support the legislation proposed by Senator Bennett and also Congressman Matheson. Your staff came to the Utah side of the reservation twice last year and earlier this year working on the particular legislation and all of the Utah chapters met on the legislation, had numerous discussion and ended up supporting the documentation that you have on the Floor at this time.

Mr. GRIJALVA. Thank you. I needed that clarification. I appreciate it. I don't have any other questions. Mr. Hastings?

Mr. HASTINGS. Thank you, Mr. Chairman. Let me be kind of a Devil's advocate here, and the question that I would have would be to President Shirley, and Dr. Slowman-Chee and Mr. Maryboy. Treaty rights are a relationship between Indian Country and the Federal Government. Obviously you knew that Congressman Matheson made that observation when he was in his testimony by entering at least into the discussion a relationship between Indian Country and a state, in this case Utah, and of course what he is seeking to rectify in this recognizes at least the Utah part of The Navajo Nation. Now, I don't know the answer to this, but does this raise conflicts, issues with the historic relationship between tribal governments and the Federal Government in the future that we should be aware of? Are you following what I am saying here? I am just asking for observations because I certainly don't know the answer because this is unique, but I would invite all three of you to respond to that observation, if you would. President Shirley?

Mr. SHIRLEY. Certainly, Congressman Hastings, I agree that I think it creates a conflict. Certainly in my testimony I had said that this is a nation thing, it is not a chapter thing, which is a political subunit that The Navajo Nation—we have 110 political subunits we call chapters, and there are seven chapters within the Utah portion of Navajo land. It is an in house thing regarding the Utah Navajo Trust Fund, you know, between The Navajo Nation and each chapters. Between the Federal Government and The Navajo Nation, it is a Nation-to-Nation thing. It is a nation to, you know, the U.S. Government to The Navajo Nation. A government-to-government issue. Back home it is an in house and a local issue, and that is where it should be.

I believe that the Utah Navajos are not apart, are not separate from The Navajo Nation. It is The Navajo Nation. They are very much a part of it. They have representation on the legislature, they have access to the presidency. The presidency goes out there. If this legislation were to be had, if it were to be wrought, the U.S. Government will come between a nation and part of its people and that is going to create conflict and that is not good because, like I said, the U.S. Government has a Naation-to-Nation and a government-to-government responsibility, not U.S. Government to a chapter of a political subunit. Not that. That is where The Navajo Nation has responsibility, and that is where we want to have it.

Mr. HASTINGS. Dr. Slowman-Chee?

Dr. SLOWMAN-CHEE. In my speculation, no, there is not a conflict. It clearly states in the 1933 legislation that the State of Utah would oversee the funds and for the general welfare of the Navajo people residing in Utah. Also, the Bureau of Indian Affairs has also given two options. One option is, as Mr. Maryboy stated, The Navajo Nation become the trustee, or second, that nonprofit organization becomes the trustee. Furthermore, the visits that we have been making to the seven chapters in Utah, it is very clear and strong in unity that the Navajo people in Utah, that it is their choice to say we want the nonprofit status to manage these funds. I do not see how it could be a problem, especially when we can partnership with The Navajo Nation, we can, through cooperation, match funds with various projects that need to be taken care of in Utah. Thank you.

Mr. HASTINGS. Mr. Maryboy?

Mr. MARYBOY. You have to understand that Navajo Nation is huge. About the size of West Virginia. Three hundred thousand people and 88 council members. There were only two members of the council from Utah, and I was one of them for 16 years. Recently, The Navajo Nation has reduced its council from 88 to 24. When I was on the 88 council, I was strong advocate for the Utah Navajos. I fought the council for the people. I am afraid that with this 24 members there is going to be virtually no representation from the Utah side of the reservation. The Navajo Nation government is not really stable at this point in time.

The legislative branch tends to do whatever they want, and we believe that if this funding should go to The Navajo Nation, it will probably go to some organizations besides the Utah Navajos. That is the biggest concern that the Utah Navajos. In fact, President Shirley was fired by The Navajo Nation council this year. He had to sue the council, and fortunately, The Navajo Nation Supreme Court ruled in his favor to come back and serve the people. So the fear from the Utah side of the reservation is there is uncertainty, instability within the government to handle this trust fund. The other thing that is going on is decentralization. As I stated, Utah Navajos are probably the poorest of the poor and they feel that this funding is the only source, the only way to move out of poverty. They value education as the number one priority. Dr. Slowman and I have used the trust fund to attend university.

Mr. HASTINGS. Mr. Maryboy, I am over my time. I appreciate the response of all three of you, and I understand that in any government there may be some differences of opinion. Heaven knows there is a difference of opinion in the Federal Government, so that is something that is probably the price we pay when we have self-government. My issue was, and I look more forward if you would like to respond to me, more the distinction that you have a Navajo Nation recognized by the Federal Government and you have a distinction in this case of a dividing line, demarcation by state lines. I just don't know the consequences of that in the long term, and that is my reason for the question. So if you would like to elaborate on that to all the Members of the Committee, I am sure we would appreciate that. With that, Mr. Chairman, thank you for your indulgence.

Mr. MARYBOY. Can I very quickly respond to that?

Mr. GRIJALVA. Mr. Luján, any questions? Comments?

Mr. LUJÁN. Mr. Chairman, I give the gentleman a short chance to respond.

Mr. GRIJALVA. Thank you. Sure. Sir?

Mr. MARYBOY. When I was a member of The Navajo Nation council, I created a commission. It is called the Utah Navajo Commission. That was designed to address all the issues on the Utah side of the reservation. Unfortunately, what happened was more and more Arizona delegates got on that commission, and pretty soon that commission became the voice of Arizona rather than the Utah Navajos. So you might say that I have tried that, trying to create an agency, but never got the support from the executive branch from The Navajo Nation in doing that.

Mr. LUJÁN. I have a few questions, Mr. Chairman, on the technical side of things and anyone that may be able to provide information along these lines, or, Mr. Chairman, if we need to just get additional information. How much is yielded at the 100 percent level, and how much money are we talking about at the 37 and a half percent?

Mr. SHIRLEY. We are talking about approximately \$20 million at this point in time. Five million a year, approximately. Let me explain. The 37 and a half percent in the past has gone to Utah on behalf of the Utah Navajos. Sixty-two and a half percent has gone to The Navajo Nation. This is in the Aneth Extension. Everything outside of the Aneth Extension, 100 percent of the royalty goes to The Navajo Nation, so approximately on an annual basis Navajo Nation receives a little bit over \$40 million a year from the Utah side of the reservation.

Mr. LUJÁN. So the money is collected by the State of Utah, Mr. President?

Mr. SHIRLEY. The Navajo Nation collects those monies. The monies go to The Navajo Nation as a government, as a nation, and then from there it is distributed, you know, 37 and a half percent to Utah for them to administer their trust responsibility.

Mr. LUJÁN. So, Mr. President, it sounds like there is a fund created that the Nation administers where 100 percent of the revenue is collected and then at that point there is a distribution of 37 and a half percent to the State of Utah to manage which is kept separately for the Utah Navajo.

Mr. SHIRLEY. The 62 and a half percent is for all Navajos, including Utah Navajos, Navajos living in the State of Utah. So they get more than the 37. At 37 and a half percent in reality, in truth. See? See, not the whole truth is being said here. Just like, for instance, the biggest chapter in the State of Utah, Aneth Chapter, is not in support of this legislation. I don't know why they were not invited. Maybe that is the reason why they were not invited, so they could say that, because they would say that. The biggest chapter, and where all the resources, where all the monies are had for this trust fund is not in support of this legislation. They are in support of The Navajo Nation being trustee.

Mr. LUJÁN. To any of the panelists, is there a process? How are the revenues measured? How are we getting an accurate accounting based on the production of oil and gas on the nation? How is it determined what is being paid in royalty to The Navajo Nation?

Mr. MARYBOY. As Mr. President stated, The Navajo Nation, mineral resource is in charge of observing the well heads to ensure that the exact amount of revenue is given to the State of Utah and Arizona, but for the record, let me state that the Utah Navajos had to sue The Navajo Nation for not paying each portion of the revenues five years ago, and the revenue was something like \$5 million. Then, I just wanted to make clarification about Mr. President's statement, Aneth Chapter being the largest chapter on the Utah side of the reservation, which is true. I was their council delegate for 16 years, their county commissioner for 16 years, so I have served that chapter for 32 years, and they pass a resolution supporting this endeavor. However, recently, a family from Aneth, which is comprised of about 100 people, claiming that this particular money belongs to them, and that is the issue that Mr. President is talking about.

Mr. LUJÁN. Thank you. Mr. Chairman, I see that my time has expired. I would only say, Mr. Chairman, I think that that is good information to include in here, and also just the recognition of the Treaty of Guadalupe Hidalgo which took us back to some of the decisions and the importance therein which may come up in some future legislation, Mr. Chairman. Thank you very much.

Mr. GRIJALVA. Thank you very much. Let me thank the witnesses, and just a brief comment. Mr. McKeon's bill, I believe that it is a good piece of legislation, as I told you, Chairman, and look forward to working with the Congressman to expedite it. Mr. Matheson's bill, I think Mr. Hastings asked for what I was trying to ask and that is the crux of a lot of this discussion on this legislation. We will work with Mr. Matheson, but I think there is some fundamental precedence that could be set, and there are some fundamental issues that need to be resolved about government-to-government relationships, and so we will work with him and also with the Senate version. Nothing more to be said on that. The RESPECT Act. We are going to expedite the discussions with the Administration. We think it is a good piece of legislation and enjoys tremendous bipartisan support in the House and with interest from Senators on the other side of this hearing, so we are going to keep moving this legislation forward. We are going to meet with Interior, deal with their concerns, but the fundamental issue of a procedure codified and a fundamental issue of judicial review, while discussable, are not necessarily negotiable. So, with that, let me thank everybody and adjourn the meeting.

[Whereupon, at 12:24 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows:]

[The prepared statement of Mrs. Napolitano follows:]

**Statement of The Honorable Grace Napolitano, a Representative in
Congress from the State of California, on H.R. 5023**

I would like to thank Chairman Rahall for this hearing on H.R. 5023 and the witnesses for their cooperation and testimony. We must continue to honor our first Americans as they are the pioneers of our country.

For decades, tribes have had to endure many hardships. They have struggled long enough to preserve their land, their identity, traditions, proper health care, businesses and education.

H.R. 5023, the RESPECT Act, recognizes the importance of honoring our government-to-government relationship with tribal communities. It will enable a more in-

volved process in consulting tribes, on issues that directly affects their native nations. I am also aware that this legislation will not only affect tribes, but it also affects other stakeholders, from a local, state and federal level.

As the Chair of the W&P Subcommittee, we work with many different constituents; from tribes, water districts, irrigators, power customers and environmental groups. In the West, we have seen the importance of collaboration from different stakeholders to deal with our water challenges.

Because of the importance of this legislation, I want reach out to our constituents in a collaborative manner to understand the possible effects on all water and power stakeholders.

I look forward to hearing about proper consultations with the tribes and how early involvement in the planning process of all activities will affect tribal nations.

This is a strong new beginning for the tribes, but one that is long overdue. I would like to thank the witnesses and Chairman Rahall again for convening this important hearing.

