AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. HRG. 111–66

S. 313, S. 443, S. 633, AND H.R. 326

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

S. 313, WHITE MOUNTAIN APACHE TRIBE WATER RIGHTS QUANTIFICATION ACT OF 2009

S. 443, HOH INDIAN TRIBE SAFE HOMELANDS ACT

S. 633, TRIBAL HEALTH PROMOTION AND TRIBAL COLLEGES AND UNIVERSITIES ADVANCEMENT ACT OF 2009

H.R. 326, COCOPAH LANDS ACT

APRIL 2, 2009

Printed for the use of the Committee on Indian Affairs

U.S. GOVERNMENT PRINTING OFFICE

51–274 PDF WASHINGTON : 2009

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

COMMITTEE ON INDIAN AFFAIRS

BYRON L. DORGAN, North Dakota, *Chairman*
JOHN BARRASSO, Wyoming, *Vice Chairman*

DANIEL K. INOUYE, Hawaii
KENT CONRAD, North Dakota
DANIEL K. AKAKA, Hawaii
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington
JON TESTER, Montana
TOM UDALL, New Mexico
_____, _____

JOHN MCCAIN, Arizona
LISA MURKOWSKI, Alaska
TOM COBURN, M.D., Oklahoma
MIKE CRAPO, Idaho
MIKE JOHANNS, Nebraska

ALLISON C. BINNEY, *Majority Staff Director and Chief Counsel*
DAVID A. MULLON JR., *Minority Staff Director and Chief Counsel*

CONTENTS

	Page
Hearing held on April 2, 2009	1
Statement of Senator Barrasso	2
Statement of Senator Cantwell	53
Prepared statement	54
Statement of Senator Dorgan	1
Statement of Senator Kyl	3
Prepared statement	4
Statement of Senator Tester	5
Statement of Senator Udall	51

WITNESSES

Lupe, Hon. Ronnie, Tribal Chairman, White Mountain Apache Tribe	6
Prepared statement with attachments	8
Reyes, Hon. Jonette, Vice Chairperson, Hoh Indian Tribe	14
Prepared statement with attachments	15
Soto, Hon. Paul, Tribal Council Member, Cocopah Indian Tribe	35
Prepared statement	36
Taylor, Linda D., Dean of Nursing, College of Menominee Nation	38
Prepared statement	39

APPENDIX

Gordon, Phil, Mayor, City of Phoenix, prepared statement	60
Jackson Sr., Mike, President, Quechan Tribe, Fort Yuma Indian Reservation, prepared statement	57
Response to written questions submitted by Hon. Byron L. Dorgan to Hon. Paul Soto	62
S. 313 support letters submitted by:	
Anger, William H., Attorney, Engelman/Berger, P.C.	75
Berman, Steven M., Mayor, Town of Gilbert, Arizona	77
Brown and Brown Law Offices, P.C.	79
Brown, Marshall P., General Manager, Water Resources Department, City of Scottsdale, Arizona	81
City of Tempe, Arizona	76
Garfield, William M., President, Arizona Water Company	84
Smith, Scott, Mayor, City of Mesa, Arizona	78
Smith, Susan Bitter, President, Board of Directors, Central Arizona Project	82
Williams, Jr., John M., President, Salt River Project	73

S. 313, S. 443, S. 633, AND H.R. 326

THURSDAY, APRIL 2, 2009

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

The Committee met, pursuant to notice, at 10 o'clock a.m. in room 628, Dirksen Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. The hearing will come to order.

This is a hearing of the Indian Affairs Committee in the United States Senate.

This morning, the Committee will hold a hearing on four pieces of legislation dealing with lands, water and health education. These issues are vital to the long-term development of tribes as self-sufficient governments, and the two lands bills we will consider today would be instrumental in allowing the tribes to meet the infrastructure needs of their tribal memberships.

The PATH Act is intended to strengthen the ability of tribal colleges and universities in their capacity to help native communities achieve greater health opportunities and more stable and secure families and greater economic competitiveness.

The water settlement bill would ensure the tribes access to the water sources necessary to sustain the needs of the tribal community.

Two of these bills, the PATH Act and the Cocopah Lands Act were introduced in the prior Congress. The Committee held a hearing on the PATH Act in the last Congress and has also addressed Indian lands and water settlement issues in the last Congress.

So today we will hear from the tribes and organizations impacted by the legislation that we are considering. I want to mention that although the Administration is not a witness at today's hearing, we will seek their formal views on each of the bills before we consider them at a business meeting.

The four bills are S. 313, the White Mountain Apache Tribe Water Rights Quantification Act. This bill would settle pending water claims filed by the United States on behalf of the Tribe in water rights adjudications in the Gila River and Little Colorado River basins in the State of Arizona.

S. 443, the Hoh Indian Tribe Safe Homelands Act. This bill would direct the Secretary of the Interior to acquire certain National Park Service lands into trust for the benefit of the tribe.

S. 663, the Tribal Health Promotion and Tribal Colleges and Universities Advancement Act. This bill, which I have cosponsored along with Senators Tester and Johnson on the Committee, would authorize a number of new programs for tribal colleges dealing with health promotion, wellness, disease prevention, economic development initiatives, and related research programs.

And finally, H.R. 326, the Cocopah Lands Act. This bill would direct the Secretary of the Interior to acquire certain parcels of land in trust for the tribe as a part of the tribe's reservation.

I will encourage interested parties to submit written comments to the Committee. The hearing record will remain open for two weeks from today. We will have witnesses provide testimony shortly.

I want to note that Senator Kyl is here and wishes to make a comment at the start with respect to one of the bills. I believe Senator McCain was going to be here, but may not be able to be here because of business on the floor of the Senate.

So I will call on the Vice Chairman.

Senator Kyl, I will call on you following any comments, unless they wish to defer comments, but I will call on Vice Chairman Barrasso at this point.

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

Senator BARRASSO. Thank you, Mr. Chairman. Thank you for holding this important hearing. I will be very brief.

I want to welcome all the witnesses. You traveled great distances to be here and I appreciate you coming.

I also welcome our good friend and colleague from Arizona, Senator Jon Kyl. Senator Kyl, as you know, authored one of these bills, the White Mountain Apache Tribal Water Rights Quantification Act. His bill would confirm a complex agreement reached after years of negotiations among various water user groups, districts and agencies, several Arizona municipalities, and the White Mountain Apache Tribe.

I admire the hard work that Senator Kyl has put into this settlement. Water negotiations require a consistent and sustained effort by all parties to reach a successful conclusion. Settlement of water issues may take time, but the process brings certainty so no one is unduly burdened with risk.

Thank you, Mr. Chairman. I look forward to hearing the testimony.

The CHAIRMAN. Senator Tester?

Senator TESTER. I will pass, Mr. Chairman.

The CHAIRMAN. Let us go to Senator Kyl, and then I will call on Senator Tester for his opening statement.

Senator Kyl, welcome to the Committee.

STATEMENT OF HON. JON KYL,
U.S. SENATOR FROM ARIZONA

Senator KYL. Thank you very much, Mr. Chairman. There is a markup in Judiciary which I need to get to, so I very much appreciate your courtesy and the other Members of the Committee as well.

This White Mountain Apache Tribe settlement stands out because ordinarily Indian water rights settlements are very difficult, time consuming, hard to put together, costly and they just are difficult.

Because of the goodwill of all the parties here, and to some extent the relative simplicity of the issues, this water settlement came together quite quickly and I think is in very good shape. Here is just the outline. My statement for the record will provide the details.

Eastern Arizona has some beautiful mountains called the White Mountains. They get almost up to 12,000 feet. The White Mountain Apache Tribe has a good share of that country, and because of a lot of snowfall and quite a bit of rain, there is a lot of water that runs off of those mountains. But in the past, the tribe has not had the ability to capture and use that water, and didn't have the need for it at the time, so under Arizona water law most of that water was claimed by the cities in the central part of the State because it ran all the way down to them.

The tribe, backed by the United States Government, has made claims now to those tributaries, and this settlement settles all of those claims, provides the White Mountain Apache Tribe with just under 100,000 acre feet of water, and resolves all of the claims so that there is certainty now with the cities as to how much they have.

The remaining problem for the tribe, though, was a critical people problem. They are running out of drinking water, and this settlement translates their water right on paper to a drinking water project that serves the bulk of the community.

We got a head start on that last year, passing the bill that provided a loan of about $9 million to begin that project so that we could save something like $20 million or $30 million by getting started on it quickly. So we have already started it, and what the project does is to divert water from one of these tributaries. There is a small reservoir that will created, and then water treatment facilities and related piping to the various communities.

So it is a great settlement, and I attribute, Mr. Chairman, a lot of the success of this to the Tribal Council led by Ronnie Lupe, who is the Tribal Chairman, who is here. The entire Council attended every one of the meetings, which is, you know, ordinarily you have the lawyer here. Well, in this case while they have a fine lawyer, the lawyer sat in the second row and the Council did the horse trading, as the Chairman likes to put it, and because of their strong commitment to this, the settlement came together very well.

So I really appreciate the Committee's holding this hearing today, and want to commend the testimony of Chairman Ronnie Lupe, who has really led these negotiations to the successful conclusion that has come about.

And I thank you, Mr. Chairman.

[The prepared statement of Senator Kyl follows:]

PREPARED STATEMENT OF HON. JON KYL, U.S. SENATOR FROM ARIZONA

Mr. Chairman, Vice Chairman Barrasso, and members of the Committee, thank you for holding this hearing on S. 313, the White Mountain Apache Tribe Water Rights Quantification Act of 2009. I, along with Senator McCain, introduced this legislation in January 2009 to authorize and confirm the tribe's water settlement and authorize funding for a vital drinking water project on the tribe's reservation in eastern Arizona – the Miner Flat Dam and Reservoir. Representative Kirkpatrick introduced the House companion bill in February 2009. The bipartisan legislation is the product of nearly three years of negotiation and the tremendous work of the settlement parties.

The underlying settlement would, among other things, resolve the tribe's significant claims to water in the Gila River and Little Colorado River basins in Arizona by allocating to it a total annual depletion amount of 52,000 acre-feet per year and a maximum annual diversion amount of approximately 99,000 acre feet per year through a combination of surface water and Central Arizona Project (CAP) water sources. In consideration for the water rights quantified by the parties and the funding authorized in the settlement legislation, the tribe would provide waivers and releases of its water rights claims.

In addition to the tribe's water claims, another major factor driving the settlement is the drinking water needs of the White Mountain Apache Tribe. Currently, a relatively small well field serves the drinking water needs of the majority of the residents on the tribe's reservation, but production from the wells has declined significantly over the last few years. As a result, the tribe has experienced summer drinking water shortages. The tribe is planning to construct a relatively small diversion project on the North Fork of the White River on its reservation this year. It indicates that when the project is completed it will replace most of the lost production from the existing well field, but will not produce enough water to meet the demand of the tribe's growing population.

The Miner Flat Project, consisting of a small dam, reservoir, and pipeline, would provide a long-term solution for the tribe's drinking water shortages. The project would replace the groundwater well system and provide the White Mountain Apache Tribe with a reliable and safe drinking water supply that would meet its current and future drinking water needs.

Last year, I introduced legislation, which became law in October (P.L. 110-390), that authorized a $9.8 million federal loan to the tribe for the planning, engineering, and design of the Miner Flat Project. The loan will expedite the construction of the project and, as a result, reduce the project's costs.

A significant percentage of the water and funding for the White Mountain Apache settlement has already been set aside by the Arizona Water Settlements Act, which I sponsored. The Arizona Water Settlements Act, which became law in 2004, set aside 67,300 acre-feet of Central Arizona Project (CAP) water per year to resolve Indian water claims in Arizona. It also authorized the use of up to $250 million of the funds deposited into the Lower Colorado River Basin Development Fund for future Arizona Indian water settlements.

Under S. 313, approximately 24,000 acre-feet per year of the CAP water set aside in the Arizona Water Settlements Act will be used to settle the White Mountain Apache Tribe's claims. In addition, the legislation would authorize the use of $100 million from the Lower Basin Fund for the Miner Flat Project. While a potential scoring issue exists relating to the use of these funds, I am confident that these issues will be resolved as the legislation progresses.

S. 313 would also (1) authorize appropriations to pay for the difference between the cost of the Miner Flat Project and the amount of funding (up to $100 million) taken from the Lower Basin Fund and (2) authorize approximately $166 million in appropriations for (a) the OM&R of the Miner Flat Project; (b) fisheries; (c) rehabilitation of existing irrigation systems; (d) forest management; (e) snow making infrastructure; and (f) recreation lakes. With the exception of the authorization for the appropriation for the construction of the Miner Flat Project, no other appropriation is tied to the enforceability of the settlement.

Finally, the bill would authorize up to $100 million from the Emergency Fund for Indian Safety and Health to be used for the design, planning, and construction of the Miner Flat Project if the funds from the Lower Basin Fund and appropriations are insufficient to complete the project (see P.L. 110-293, Sec. 601).

In sum, not only would S. 313 provide certainty to water users in the State of Arizona regarding their future water supplies, it would provide the tribe with a long-term reliable source of drinking water. Given the importance of the legislation and its bipartisan nature, I hope the Committee will work with me in securing its swift passage in the 111th Congress.

The CHAIRMAN. Senator Kyl, thank you very much.

I would observe that this Committee, as you know, passed the legislation last year for the loan that you described, and also worked with our House counterparts in order to get that done. We are pleased to have done that. I think that is an important first step on the journey to trying to resolve this issue.

Thank you for being here.

Senator Tester?

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

Senator TESTER. Yes, thank you, Mr. Chairman.

I will save my comments for Senate bill 633, which is the PATH Act. We all know the unacceptable levels of poverty and unemploy-

ment in Indian Country. What this bill will aim to do is also address another challenge in Indian Country, and that is the challenge of appropriate health care.

By empowering our tribal colleges to train Indian people to meet the needs of Indian people in Indian Country, I think the PATH Act will be a giant step forward, using education as the key to opportunity, training health care professionals that will be able to work anywhere they choose, but hopefully most of them will be able to work in Indian Country addressing the issues that revolve around the challenges with health care in Indian Country.

So Mr. Chairman, I just want to thank you for the opportunity to have this hearing. Again in this Congress, I look forward to working to get this bill through the process.

The CHAIRMAN. Senator Tester, thank you very much.

We have four witnesses today at our hearing. And as is usually the case, what happens to us is the schedule in the Senate is not very accommodating. We are going to begin what is called a vote-a-thon. That is, we will have 20 or 30 or perhaps even more votes today, beginning in about one hour.

Some had suggested that perhaps we should cancel committee hearings this morning. I wanted to go ahead and have this hearing because people have traveled to come to attend this hearing and testify, and these are important pieces of legislation to the tribes that are involved. And so we will by necessity perhaps have to limit the hearing to an hour.

But we appreciate very much the time all of you have taken to come and explain your perspective about the various pieces of legislation.

We are joined today by the Honorable Ronnie Lupe, the Tribal Chairman of the White Mountain Apache Tribe in Whiteriver, Arizona.

Mr. Lupe, we are pleased that you are here.

We are joined also by the Honorable Jonette Reyes, Vice Chairperson of the Hoh Indian Tribe in Forks, Washington.

We are very pleased that you have come to the Committee today.

The Honorable Paul Soto, the Tribal Councilman of the Cocopah Tribe in Somerton, Arizona.

Mr. Soto, welcome.

And Ms. Linda Taylor, the Dean of Nursing at the College of the Menominee Nation in Keshena, Wisconsin.

Ms. Taylor, we welcome you.

We will begin, Mr. Lupe, with you.

Your entire statement, I would say to all four witnesses, will be made a part of the permanent record of this Committee. We would encourage you to summarize, and we very much appreciate your being here, so you may begin.

STATEMENT OF HON. RONNIE LUPE, TRIBAL CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE

Mr. LUPE. Chairman Dorgan, Vice Chairman Barrasso, Committee Members, thank you for the opportunity to testify in support of S. 313, Senate bill 313, the White Mountain Apache Water Rights Quantification Act of 2009.

My name is Ronnie Lupe. I am the Tribal Chairman of the White Mountain Apache Tribe. We live on the Fort Apache Indian Reservation in the White Mountains about 200 miles northeast of Phoenix. We have lived there since time immemorial. Our reservation has over 1.6 million acres of trust land.

The headwaters of the Salt River system are on our reservation. One-third of the cold water streams in the State of Arizona are on our land. We have Indian reserve rights to that water.

Our reservation streams merge and become the Salt River, which flows downstream to Phoenix metropolitan area and to the 3.5 million people who live there. Thirty years ago, lawsuits were filed in the Arizona State courts to determine everyone's water rights to the Gila River, Salt River, the Little Colorado River and their tributaries. These lawsuits have cost millions of dollars with no end in sight and create uncertainty for everyone about their water rights.

We have a drinking water problem crisis on our reservation. Although we have hundreds of miles of streams, we do not have sufficient safe, clean and reliable drinking water for our people, schools, hospitals, and reservation residents. The reason is mother nature. We are 100 percent dependent on a well field that was built in 1999, and 14,000 people on our reservation depend on it, almost our entire population.

The well field is failing fast. Production is down to half of what it was in 1999. There is no recharge. There is natural arsenic in the groundwater. We have to blend it to meet EPA standards. Drinking water must be hauled by hand in one community and piped into another. Drilling more wells will not help.

Tribal, Federal and Salt River experts agreed that our groundwater aquifers discharge into our springs and rivers, and that our drinking water needs can only be met by surface water, and then only by building a reservoir on the north fork of the White River.

Years ago when we came to Washington, D.C. to ask for help to build a reservoir, treatment plant and pipeline, we were politely told that we had to quantify and settle our Indian reserve water rights if we hoped to obtain congressional and State support to fund it. They called it a global settlement. The trustee of the United States said the same thing.

Although the litigation, hostility and natural suspicion existed between us and our Trustee, the United States, the SRP and other downstream water users, we realized that we had to change in order to progress. In 2004, we asked the Secretary of the Interior to appoint a Federal negotiation team to help us quantify and settle our reserve water rights.

At the same time, we ended almost 50 years of hostility between us and the Salt River Project. We invited the SRP, the Phoenix negotiators to come visit our sacred springs. There, I reminded them that our springs had built many skyscrapers in the Phoenix Valley. They came and listened. We listened and respect replaced hostility. We talked to them about reaching a dignified, honorable and equitable settlement of our trust reserve water rights.

A lot of horse trading went on, went on. We finally approved a water rights settlement agreement in January, 2009 with downstream State parties. It has been approved by our tribe, the governing bodies, and the Boards of Directorship of the State parties.

The cornerstone of our settlement agreement and the S. 313 is a reservation-wide drinking water system. We call it the Miner Flat Project. The project will require a dam and small reservoir of about 6,000 acre feet active storage on the north fork of the White River. The maps attached to my written testimony show the location of the proposed Miner Flat Reservoir, treatment plant, and a pipeline to serve several communities all the way to Cibecue, about 50 miles away. The reservoir will meet our drinking water needs for decades to come.

That is my statement for the time, five minutes time now, and I am ready for the questions.

[The prepared statement of Mr. Lupe follows:]

PREPARED STATEMENT OF HON. RONNIE LUPE, TRIBAL CHAIRMAN, WHITE MOUNTAIN APACHE TRIBE

Chairman Dorgan, Vice Chairman Barrasso and members of the Committee:

Thank you for the opportunity to testify in support of S. 313, the White Mountain Apache Tribe Water Rights Quantification Act of 2009. My name is Ronnie Lupe. I am the Tribal Chairman of the White Mountain Apache Tribe. We live on the Fort Apache Indian Reservation upon aboriginal lands which we have occupied since time immemorial. Our Reservation is located about 200 miles Northeast of Phoenix in the White Mountain Region of East Central Arizona as illustrated in the attached map.

S. 313 will quantify, preserve, recognize, and settle the reserved water rights of the White Mountain Apache Tribe in perpetuity, provide Tribal waivers and releases of claims regarding all State law water users in the Gila River and Little Colorado River basins and against United States (except for the United States acting as trustee on behalf of other Indian Tribes).[1]

The White Mountain Apache Tribe holds full beneficial title to 1.66 million acres of trust land in the east central highlands of the State of Arizona. The Tribe's Fort Apache Indian Reservation was established by Executive Order in 1871. We have retained actual, exclusive, use and occupancy of our aboriginal lands within the boundaries designated by the Executive Orders dated November 9, 1871 and December 14, 1872, without exception, reservation, or limitation since time immemorial. The Tribe's vested property rights, including its aboriginal and other federal reserved rights to the use of water, often referred to as Winters Doctrine Water Rights, that underlie, border and traverse its lands, have never been extinguished by the United States and are prior and paramount to all rights to the use of water in the Gila River drainage, of which the Salt River is a major source.

Except for a small portion of the Reservation that drains to the Little Colorado River Basin, virtually the entire Reservation drains to the Salt River. The headwaters and tributaries of the Salt River arise on our Reservation and are the principal sources of water for the Tribe, the downstream Cities of Avondale, Chandler, Gilbert, Glendale, Mesa, Peoria, Phoenix, Scottsdale and Tempe; the Salt River Reclamation Project and the Roosevelt Water Conservation District, among other parties to the Gila River and Little Colorado Adjudication Proceedings.

In 1985, the United States in its capacity as the Tribe's Trustee, filed a substantial reserved water rights claim in the name of the White Mountain Apache Tribe to the Salt River as part of the Gila River Adjudication Proceedings still pending in the Maricopa County Superior Court, State of Arizona. It also filed claims for the Tribe in its capacity as trustee in the Little Colorado River Adjudication Proceedings also still pending in the Apache County Superior Court, State of Arizona.

At the urging of the Tribe, the United States amended its water rights filings for the Tribe in the Little Colorado River and the Gila River General Stream Adjudications in September 2000, to assert the Tribe's prior and paramount, aboriginal and federal reserved rights to the transbasin aquifer sources that sustain the base flow of the Tribe's Reservation springs and streams. The amended claim filed by the

[1] Tribal waivers of potential water related breach of trust claims against the United States far exceed the authorization in S. 313 for approximately $166 million in federal appropriations for (1) the OM&R Trust Fund for the Miner Flat Project; (2) existing lakes infrastructure enhancement; (3) fish hatchery repair, rehabilitation and expansion; (4) fisheries Center; (5) repair of existing irrigation systems; (6) forest management study and Sawmill retooling to accommodate smaller diameter trees; (7) snowmaking infrastructure; and (8) future lake development.

United States in its capacity as trustee for the Tribe, specifically recognizes the Tribe's unbroken chain of aboriginal title and time immemorial priority rights to the base flow of the springs and streams, and the contribution to those surface waters by rainfall and snowmelt runoff on the Tribe's Reservation.

For decades, the White Mountain Apache Tribe has asserted its rights to preserve, protect, use and develop its aboriginal and federally reserved water rights. As late as the 1950s, a physical confrontation became imminent between the Tribe and downstream water claimants when the Tribe began to develop outdoor recreation lakes on its Reservation trust lands by diverting water from Reservation streams. This activity was considered a threat to water supplies in the Salt River system by downstream water users in the Phoenix Metropolitan area and was vigorously opposed. A litany of water right controversies involving the White Mountain Apache Tribe, the United States in its role as the Tribe's conflicted trustee, and the Salt River Valley Reclamation Project has predominated throughout the 20th century, all of which will be resolved by S. 313.

Since the appointment of a Federal Negotiating Team by the Secretary of the Interior in 2004, we have met and negotiated in good faith with the downstream water users and claimants in both the Gila River and Little Colorado River Adjudication Proceedings to reach an honorable, dignified and equitable quantification and settlement of our Tribe's reserved water rights.

The White Mountain Apache Tribe Water Rights Quantification Agreement, which was respectfully negotiated amongst all parties, has been concluded and has been formally approved by the White Mountain Apache Tribe and by the majority of the downstream parties' respective governing bodies in the greater Phoenix Metropolitan area, including the Board of Directors of the Salt River Project and the Central Arizona Water Conservation District (CAWCD). The remaining City approvals are only a matter of formality and scheduling, and will be completed by the end of April 2009.

The Tribe's sizable and senior water rights claims in the pending Gila River and Little Colorado River Adjudication Proceedings have generated considerable uncertainty regarding the availability of Salt River water supplies currently used by the downstream Salt River Project, which serves the greater Phoenix Metropolitan area. As many as 3.5 million people depend in large part upon the water sources that arise on the Fort Apache Indian Reservation to which the White Mountain Apache Tribe claims sufficient water to meet its present and future needs. The WMAT Water Rights Quantification Act of 2009, which will authorize and confirm the Parties' Settlement Agreement will resolve uncertainties among all of the parties and claimants in both the Gila River and Little Colorado River Basins.

S. 313 will also resolve potential claims by the White Mountain Apache Tribe against the United States for water related breach of trust damage claims that could potentially result in liability far in excess of the funding authorized by S. 313. Specifically, beginning with the completion of Roosevelt Dam for the Salt River Reclamation Project in 1911, the trustee United States, acting by and through its principal agent, the Secretary of the Interior, has as a matter of policy, suppressed, neglected, ignored, and opposed the reserved water use rights of the White Mountain Apache Tribe. These policies, fostered by an inherent conflict of interest on the part of the Secretary, favored development of the non-Indian Salt River Project at the expense of the welfare of the White Mountain Apache Tribe.

For example, as set forth in greater detail in the Tribe's Paper[2] on the liability of the United States for water related, breach of trust damage claims, the Secretary of the Interior in the 1960s intentionally destroyed thousands of Cottonwood trees and other riparian vegetation along the Tribe's streams to increase water runoff to the Salt River Valley and Roosevelt Reservoir. The Secretary also cleared thousands of acres of Juniper trees under the auspices of rangeland restoration for the purpose of increasing runoff. The ecosystem damage from this action continues and is ongoing. The cost of riparian restoration is in the millions of dollars.

Another example of a water related, breach of trust damage claim that will be waived by the Tribe in S. 313, are damages to water rights resulting from the doubling of the annual allowable cut of the Tribe's commercial forests by the Secretary for the purpose of increasing water runoff from the Tribe's Reservation to Roosevelt Reservoir.

Other potential water related, breach of trust damage claims, *inter alia,* which are discussed in the Liability Paper and that will be waived by S. 313, will be claims arising from:

---

[2] This Paper, outlining the potential liability of the United States for breach of trust for water related damage claims, will be filed with the Secretary of the Interior.

- an historic failure to maintain approximately 90 miles of irrigation ditches on the Reservation (waived after funding received to repair)
- failure to support future OM&R expenses for the Miner Flat Dam Project Rural Water System (waived after OM&R Trust Fund established)
- an historic failure to meet the trust obligation to provide a safe drinking water supply for the Tribe,
- suppression of agricultural irrigation to date,
- expense of litigating the Tribe's reserved water rights claims,
- failure of the Secretary to reserve Tribe's water from contracts issued downstream for storage after Roosevelt Dam was originally built in 1911,
- failure of the Secretary to set aside New Conservation Storage (NCS), for the White Mountain Apache Tribe in the 1995–1996 enlargement of Roosevelt Reservoir (result is that Tribe compelled to obtain 25,000 acre-feet of CAP instead of Salt River Water valued by SRP at $6,000 per acre-ft.),
- failure of the United States to assert the reserved water rights of the White Mountain Apache Tribe in the EIS for the reallocation of CAP water, and
- holding the trustee United States harmless by the Tribe relinquishing 26,000 acre-feet diversion annually for the Reservation's Bonito Prairie area.

The Tribe and Reservation residents are in urgent need of a long-term solution for their drinking water needs. Currently the Tribe is served by the Miner Flat Well Field. Well production has fallen sharply and is in irreversible decline. Over the last 8 years, well production has fallen by 50%, and temporary replacement wells draw from the same source aquifer that is being exhausted. The Tribe experiences chronic summer drinking water shortages. There is no prospect for groundwater recovery. The quality of the existing water sources threatens the health of our membership and other Reservation residents, including the IHS Regional Hospital and State and BIA schools. The only viable solution is replacement of failing groundwater with surface water from the North Fork of the White River. A small water division system along the White River (North Fork Diversion Project) will help the Tribe's short term drinking water needs, but this is only a temporary measure to replace the quickly failing well field.

Without reservoir storage behind Miner Flat Dam, a feature authorized by S. 313, the stream flows of the North Fork of the White River, supplemented by short-term capacity of the Miner Flat Well Field, are together inadequate to meet community demands of the White Mountain Apache Tribe for the Greater Whiteriver Area, Cedar Creek, Carrizo and Cibecue and to maintain a minimum flow in the North Fork of the White River. The demands of the Tribe for its Rural Water System as proposed in H.R. 1065 and S. 313 will dry up the North Fork of the White River before 2020, even in combination with a supplemental supply from the Miner Flat Well Field. Therefore, Miner Flat Dam is necessary to store 6,000 acre feet of water during runoff periods for release and enhancement of the North Fork of the White River to meet demands of the Reservation rural water system and maintain a minimum flow for aquatic in riparian habitat preservation and enhancement.

The WMAT Rural Water System, including the Miner Flat Dam Storage Facility, water treatment plant, and pipeline to deliver drinking water to Reservation communities is the cornerstone of the WMAT Water Rights Quantification Act of 2009 and the Settlement Agreement. The Quantification Act and Settlement Agreement will confirm the Tribe's and other settling parties' water rights without prolonged, protracted and expensive litigation that began in 1979, and could last for decades more. The Miner Flat Project will replace the failing groundwater well system and enable the Tribe to construct a secure, safe and reliable drinking water supply for the current 15,000 White Mountain Apache Tribal members and residents living on our Reservation and will meet the increasing drinking water needs of the Reservation for a future population of nearly 40,000 persons in the decades to come. *See attached Miner Flat Reservoir and Pipeline Location Map.*

Last year, on September 11, 2008, I testified in support of S. 3128, the White Mountain Apache Tribe Rural Water System Loan Authorization Act, which became law on October 10, 2008 (Pub. L. 110–390). The $9.8 million authorized by that law will allow the Tribe to complete within the next two to three years, the design, engineering, planning, and federal environmental compliance for the proposed Miner Flat Dam drinking water system thereby saving millions of dollars in construction costs that inflation will generate with delay in the design and construction of our project.

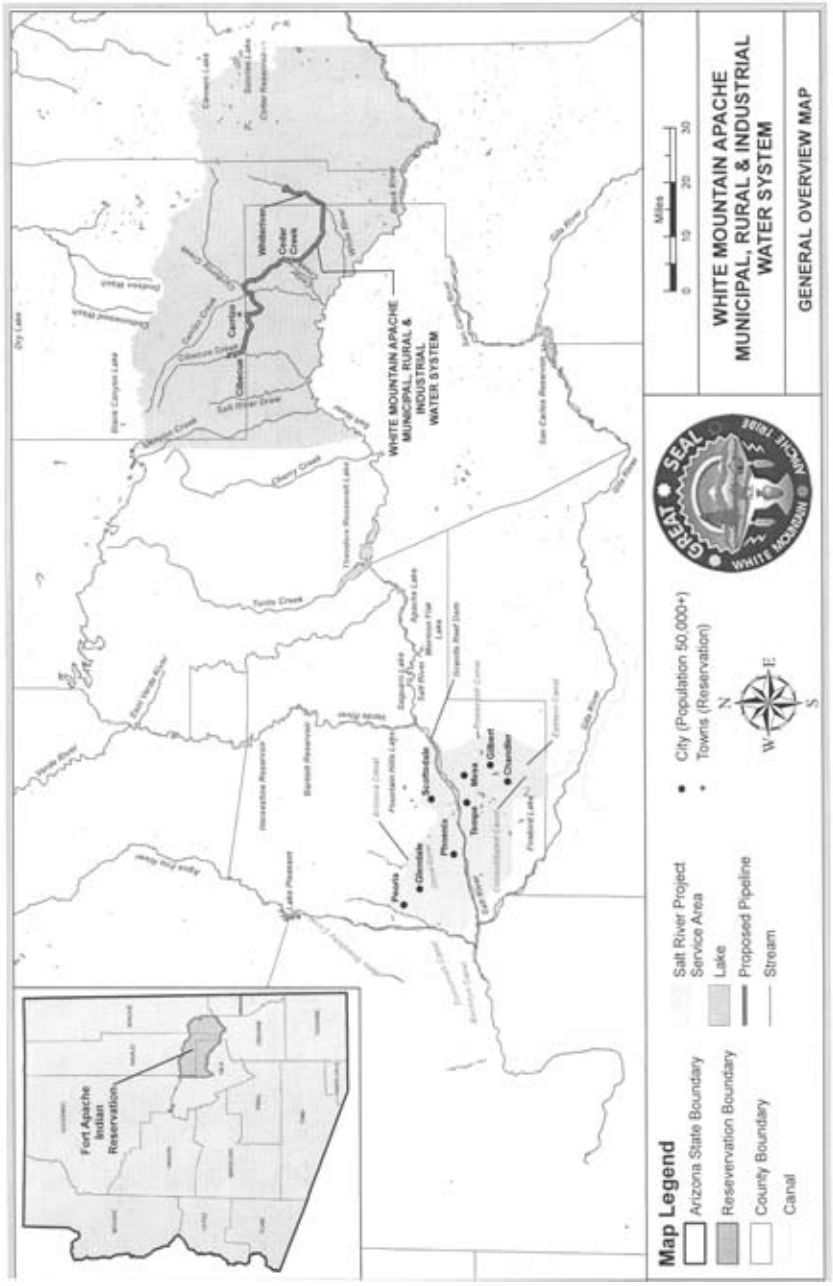
In settlement negotiations, the White Mountain Apache Tribe agreed to relinquish its water rights claims on Bonito Prairie, totaling 26,000 acre feet annually for irri-

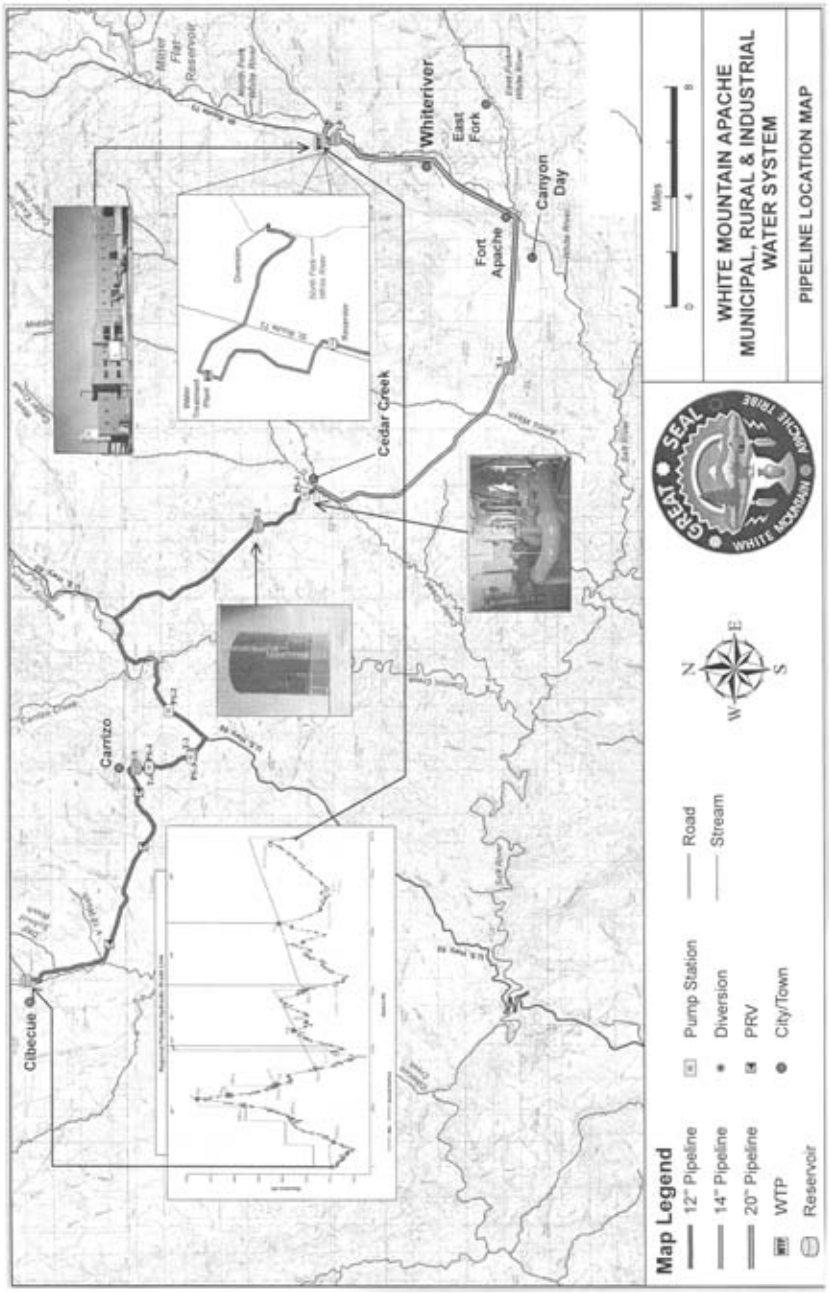
gation, and opted instead for rehabilitation of existing recreation lakes, development of new recreation lakes, forest management and timber manufacturing improvements, snowmaking at our ski area and other economic development features embraced by S. 313. These provisions in S. 313 are essential to our future and were a significant factor in reaching the settlement agreement, now before Congress for approval, with the downstream parties.

Conclusion

The White Mountain Apache Tribe appreciates the opportunity to appear before the Committee, the co-sponsorship of S. 313 by Arizona Senators Jon Kyl and John McCain, and unanimous support of S. 313 by the settling State parties to the White Mountain Apache Water Rights Quantification Agreement.

Attachments





The CHAIRMAN. Chairman Lupe, thank you very much.

Just for information, what is the enrolled membership of your tribe?

Mr. LUPE. Fourteen thousand, presently.

The CHAIRMAN. Thank you very much.

Next, we will hear from the Honorable Jonette Reyes, Vice Chairperson of the Hoh Indian Tribe in Forks, Washington.

Ms. Reyes, thank you very much. You may proceed.

STATEMENT OF HON. JONETTE REYES, VICE CHAIRPERSON, HOH INDIAN TRIBE

Ms. REYES. Good morning. My name is Jonette Reyes. I am the Vice Chairperson for the Hoh Indian Tribe. Good morning, Chairman Dorgan, Vice Chairman Barrasso, Mr. Tester.

Our bill was introduced by Maria Cantwell. The purpose of the bill, it is called the Hoh Tribe Safe Homelands Act, bill S. 443. Here, you will see our reservation is fairly small. We live in the flood zone. We live in the western Jefferson County. It is a rural part of the county that is separated by Clallam County. And we live in tsunami territory.

We have acquired some land within the last couple of years to try to move our tribe out of flood zone. The bill is basically to transfer 37 acres of Olympic National Park into trust in order to make our land contiguous. We have another, I think we have another poster, that will show parcels. We have acquired parcels. On our own, we purchased Rainier property which is on 101, and the Rainier property is, you know, basically the property that we started out with, other than our land we have already acquired.

Okay, there is Rainier property, other property that we purchased from homesteaders that live around the reservation. And then we got some land from the Department of Natural Resources transferred to the Hoh Tribe. The only thing that is keeping land contiguous is the 37 acres of Olympic National Park.

As I say, we live in flood zone, tsunami territory. We have flooding every year for as long as I can remember. I am 30-plus years old, and we always deal with flooding. There were times when we had river boats picking us up at our front doors to deliver us to higher ground, which is now in the flood zone, and we have to move even higher.

So we are not asking for any land other than the 37 acres of park which was, you know, in discussion with the park, they are not certain how they acquired the land themselves. And we have had discussion at local level and we have also started out our main discussions here.

With whatever directive that we were given here, with the parks, and with Natural Resources, we have gone back and followed through with every directive that they have given.

We have worked recently with Jefferson County to reopen Fire District 7. We don't have a fire district that serves our county. And like I said, we are the rural part of western Jefferson County. We are not located within the county area itself. We are like about three hours away, so we don't get the services of the county.

So when there are storms and floods, you know, it is kind of, the resources are hard to find. We usually use our, you know, our money that we have, no other county resources which we should be available to because we are in a tsunami zone.

I am drawing a blank.

[Laughter.]

The CHAIRMAN. Ms. Reyes, let me ask you a question. I understand that your reservation as it was originally established is one square mile in size.

Ms. REYES. Right, but we have purchased more land. The only thing that is keeping, you know, the transfer from happening of the land into trust is the 37 acres of the park land that we are asking for.

The CHAIRMAN. And would the 37 acres connect your reservation to the other part?

Ms. REYES. It would be contiguous all the way up to the land that we have acquired. And then, you know, we are not eligible right now to get any, you know, new housing. Our houses, you know, the people who live on our reservation, the families are like two- and three-family households within one house. And we are not eligible to apply for any other grants because we are in flood territory.

The CHAIRMAN. I understand. Most of the reservation is in a flood zone.

Ms. REYES. Yes.

The CHAIRMAN. How many enrolled members in your tribe?

Ms. REYES. Three hundred plus.

The CHAIRMAN. All right.

Ms. REYES. Yes.

The CHAIRMAN. All right. Well, I think we have the picture. It is a pretty significant issue. You need to be able to acquire this land, the park land, in order to connect to other property that you have acquired in a Federal flood zone. All right.

Ms. REYES. And on a regular basis, like this spring, the snow is melting and everything, and we have flooding. We are actually expecting a storm by the time we get home, so will most likely have flooding. And we sandbag regularly with members of the OCC, I mean, Olympic Correctional people.

[Laughter.]

The CHAIRMAN. All right. Thank you.

Ms. REYES. So.

The CHAIRMAN. Those of us from North Dakota know about flooding and sandbagging these days.

Ms. REYES. Right.

[Laughter.]

The CHAIRMAN. It's a very difficult time.

Thank you very much for telling us the story of the need. I think it is compelling. Senator Cantwell may be joining us before we complete this hearing, and we will of course ask her to comment as well, but we appreciate your being here.

Ms. REYES. Thank you for the time.

[The prepared statement of Ms. Reyes follows:]

PREPARED STATEMENT OF HON. JONETTE REYES, VICE CHAIRPERSON, HOH INDIAN TRIBE

Chairman Dorgan, Vice Chair Barrasso, Senator Cantwell, and other Members of the Committee, I am Jonette Reyes, Vice Chair of the Hoh Indian Tribe from Washington State on the Olympic Peninsula. Accompanying me today from the Hoh Tribe are Chairman Walter Ward, his wife and tribal member Katherine Ward, Council Member Marie Riebe, Council Member Dawn Gomez, and Tribal Administrator

Alexis Barry. It is a great honor for me to testify before you on behalf of my people and in support of this bill.

I would like to begin by thanking Senator Cantwell and Senator Murray for introducing S. 443, the "Hoh Indian Tribe Safe Homelands Act." Their support for this bill means a great deal to us. Along with Congressman Norm Dicks on the House side, they and their staffs have been wonderful in working with us to solve the serious land and water problems we face. We would also like to thank our representatives in the Washington legislature, Senator Jim Hargrove, Representative Lynn Kessler, and Representative Kevin Van De Wege for their strong support and commitment to this legislation.

Today's hearing is an important step toward realizing our dream: a safer place to live. It has been a very long journey for us, and we would not have made it this far were it not for the steadfast dedication, perseverance, and vision of our Council and our tribal members. Our hope is that this legislation will help the Hoh Tribe to grow and prosper on lands safe for our children and elders.

For as long as anyone can remember, the Hoh people have lived near the mouth of the Hoh River where it flows into the Pacific Ocean. The Blue Glacier and other smaller glaciers on Mount Olympus in the Olympic National Park feed the Hoh River. Our traditional history teaches us that "the Upside Down People," as we call ourselves, were created here and blessed with plentiful smelt in the waters to fish. We also traveled inland into the coast range of the Olympic Mountains and by canoe in the Pacific Ocean north into Canada and south to Quinault.

Our lives were changed, however, when the 1856 Quinault Treaty preserved our rights to fish, hunt, and gather roots and berries in parts of our ancestral territory but greatly diminished our land base. In 1893, 37 years after the Quinault Treaty was signed, President Grover Cleveland set aside 640 acres of land, one square mile, bordered by the Hoh River and the Pacific Ocean. This is our current homeland, the Hoh Indian Reservation. We are still living along the Ocean and the Hoh River, but we cannot move upland like we once could.

The Hoh Indian Reservation is located 30 miles south of the town of Forks, Washington, where the closest grocery store is located. While we are rich in culture, our 230 tribal members face serious educational, health care, and housing challenges. Although our tribal education programs are making a positive difference for our people, about half of our tribal members who are 25 years or older have not received a high school diploma or GED. It takes an ambulance about 45 minutes to respond to a call at our remote location, and about 45 minutes to get the patient to the hospital in Forks. Jobs are scarce, so about 70% of the 130 tribal members who reside on the Reservation are unemployed. We are blessed with many children and grandchildren, 60% of our population is under 18 years of age, but our baby boom makes housing and child care an issue for Hoh families.

The waters that provide for us also pose the threat of danger from floods and tsunamis to our people and our lands. The Ocean and the River have slowly claimed our lands through erosion and changes in tide and river course. In fact, the 640 acres of the original Reservation land base now includes only 443 acres of dry land, more than a 30% decrease. The exact causes of this encroachment are not clear, but we believe that climate change is impacting us. The glaciers on Mount Olympus are melting and feeding more water to the River than we have seen in the past. Also, the Army Corps of Engineers stopped dredging the River years ago, so that may be a contributing cause as well.

Ninety% of the Hoh Reservation is now located within a 100 year flood plain, and 100% is located within a tsunami zone. Winter and spring floods now regularly impact Reservation homes, government facilities, and utility structures. Flooding restricts further development and causes ongoing problems with existing structures. In addition to the flooding danger, all of the Reservation facilities and homes are at or below 40 feet elevation and within inundation zones if a major tsunami were to strike.

Mr. Chairman, we empathize with the people of Fargo, North Dakota, and the surrounding areas who have seen the Red River swell to historic highs. In 2006, we purchased and filled 6,000 sand bags to protect homes and tribal buildings. Inmates from the Olympic Correctional Center helped our community members in making and placing the sand bags, which we greatly appreciate. Unfortunately, flooding still destroyed or severely damaged many buildings, our waste water treatment system, and other utility structures, causing critical environmental and safety hazards. Sand bags now create a permanent grass-covered berm around our Tribal Center that FEMA tells us is a health hazard.

We have turned to federal agencies such as the BIA, HUD, and FEMA for assistance, but these agencies are limited in what they can do to help because of the dangerous and unsustainable location of the Reservation.

A recent survey indicates that there are less than 73 acres of lands within the 443 acres of dry land of the Reservation that may be suitable for building. Flood plain, wetlands, buffers, slopes, and cultural exclusion areas all impact the land area available for the future needs of the Tribe. Most of the 73 acres is in areas that are at the extreme southern edge of the Reservation and not practical for development due to ocean cliffs, potential erosion, wetlands, and protected habitat. There are 11 acres of land that have been surveyed for development of housing above the flood plain, but this land is still within the area of danger from tsunami, prohibiting HUD from providing us funding to build in this area. Of the 30 homes located on the Reservation, many of them are in serious disrepair and approximately 20 of them have two or more families living in them. No new home has been built on the Reservation in 20 years. There is an immediate need to build 20 to 30 homes and growth projections are for at least 60 additional homes within 40 years.

We do not come to this Committee without having taken significant steps to help ourselves. Over the past year and a half, we have purchased two parcels of land near the Reservation to the East, upland from the Ocean. The "HOH INDIAN TRIBE SAFE HOMELANDS ACT LAND ACQUISITION MAP" shows the two tracts we have purchased: the Fletcher Tree Farm parcel, approximately 195 acres, and the Rayonier parcel, approximately 65 acres. We do not have gaming on our Reservation because of its remote location, so the decision to purchase these lands demonstrates our commitment to move our people to a safer area.

The fee lands described above are separated from our current Reservation by a 37-acre parcel of non-pristine land owned by the National Park Service, and the only road to the Reservation crosses this parcel. Based upon extensive collaboration with the Olympic National Park, the National Park Service Pacific West Region, and other National Park Service personnel, the legislation would place the 37-acre National Park Service parcel into trust for the benefit of the Tribe. The legislation sets forth restrictions on the use of the National Park Service land being transferred by prohibiting the placement of any buildings or other structures on the land and banning any major improvements or road construction. Further, logging and hunting would be prohibited on the land. The legislation contains provisions for cooperative efforts between the Tribe and the National Park Service to enter into mutual aid agreements for emergency fire response, agreements on the development of hiking trails from Highway 101 to the Pacific Ocean, and agreements on programs for the public to learn about the culture and traditions of the Tribe.

Also providing enormous support to this effort, the Washington State Legislature and Governor Gregoire authorized the transfer of a 160-acre parcel of State Department of Natural Resources land to the Hoh Tribe. This land is a short distance and upland from our current Reservation.

This bill would direct the Secretary of the Interior to take the lands purchased by the Tribe, the lands transferred to the Tribe by the State, and the National Park Service lands into trust for the Hoh Tribe, adding a contiguous, upland area to the Hoh Reservation. It would prohibit gaming under the Indian Gaming Regulatory Act on any of these lands.

We thank you for the opportunity to offer this testimony. This legislation represents new hope for the Hoh people, and we look forward to working with you on its passage.

Attachments

Hoh Indians head for higher ground

By Phuong Le, Associated Press
Story Published: Jan 13, 2009
Story Updated: Jan 13, 2009

HOH INDIAN RESERVATION, Wash. (AP) – Flooding used to be a problem every five or 10 years for the Hoh Indian Reservation. These days it's an annual event.

Sandbags permanently surround the tribal center and many homes because the nearby Hoh River has meandered dangerously closer over time. Meanwhile, most of the 443-acre reservation is less than 40 feet above sea level, and could be devastated by a major tsunami.

So the Hoh Indians are trying to move to higher ground.

"We're literally moving the village," said Alexis Barry, executive director of the tribe in remote northwestern Washington. "We've known for a long time this has had to happen."

There's just one catch: The tribe needs 37 acres of the Olympic National Park to connect their existing land with property they've acquired from private owners and the state.

The river and its salmon have always been focal to its history and identity, but the tribe wasn't always confined to this one-square mile plot at the mouth of the river.

Tribal members historically used the entire river to fish, hunt and forage. But the Hoh and other tribes ceded their land to the government under the Quinault Treaty of 1856.

In 1893, the Hoh were moved to this reservation on land hemmed in by the river, the ocean and what is now the rain-soaked Olympic National Park.

Since then, the Hoh River, which descends 7,000 feet as it winds 50 miles from Mount Olympus west to the Pacific Ocean has shifted a half-mile south, cutting into land near the tribal center.

"The Hoh decides where it's going to go," Barry said.

With 90 percent of the reservation in a flood zone, there isn't enough land on the reservation to move all the tribal buildings and homes out of harm's way. The tribe has sought to relocate its buildings for two decades, but only recently made progress.

"You can't be a sovereign land without land," said Marie Riebe, the tribal secretary.

Standing at the shore where the ocean crashes into the mouth of the river, Riebe pointed to a patch of overgrown blackberry. "There was a house there, and another home there," she said.

No one lives there now. The ocean washed several homes away, and the ones left standing were abandoned long ago.

Amy Benally, who lived in one of the homes lost to the river, remembers the water flowing to the front door and the night a Coast Guard helicopter circled above warning them of a tsunami threat.

Gaming revenues in recent years allowed the tribe to buy 265 acres of private land from nearby tree farms. The tribe doesn't have a casino, but leases its gaming rights to other tribes.

It's also increased its political clout and enlisted several state lawmakers to help it acquire 160 acres of state trust lands in June.

"It's the right thing to do," said state Democratic House Majority Leader Lynn Kessler, whose district includes the reservation. "The land was available and no reasonable person would deny them the ability to get above the flood zone."

Carving out the last 37 acres from the Olympic National Park may be a tougher proposition.

The Hoh Tribe has been working quietly to line up support.

Democrat U.S. Rep. Norm Dicks plans to reintroduce a bill in January to transfer land from the park and put it in trust for the Hoh tribe, his spokesman George Behan said.

Barb Maynes, a park spokeswoman, said the park has been working with the tribe at Dicks' request to make sure both tribal and park interests are included.

Park conservationists have been largely supportive.

"If there's no other alternative, you need to protect human life," said Sean Smith, Northwest regional director for the National Parks Conservation Association.

The tribe wouldn't be able to develop on the land and must maintain a natural wildlife corridor on it. Hunting, logging or gaming would not be allowed.

While conservationists are reluctant to see lands withdrawn from the park without additional lands added, it's a reasonable request, said Tim McNulty, a trustee of Olympic Park Associates.

The 133 residents who live on the reservation are used to stepping over sandbags and keeping boots at the ready. The nearby park's lush rainforest gets about 12 feet of rain a year.

When it rains, the river crests, the creeks overflow and water courses down the main road. During one recent storm, the National Guard had to truck in clean drinking water and food to residents.

Sandbagging is second nature. Recently, the tribe, with the help of state prison labor bagged 6,000 pounds of sand, just in case.

A berm, four sandbags high, surrounds Eric Penn's house. Some of the sandbags are so old, vegetation grows from it.

"It's worse than it used to be," he said.

Benally said recent progress in acquiring land has infused new energy into the tribe. It is opening a new clinic, daycare center and tribal center on safe ground at the edge of the reservation. It has plans to build new homes in the newly acquired land.

"We have a lot of respect for the river," she said. But "now we have the new land and can relocate."

Washington State Legislature

LYNN KESSLER
REPRESENTATIVE

JIM HARGROVE
SENATOR

KEVIN VAN DE WEGE
REPRESENTATIVE

July 7, 2008

Senator Patty Murray
173 Russell Senate Office Building
Washington DC 20510

Dear Senator Murray,

First of all I want to commend you on all of the hard work and support your office has provided the communities of the 24th Legislative District, and especially the Hoh Tribe's community in Jefferson County.

For the Hoh Tribe, flooding is an annual event. They are working hard to relocate their housing and governmental services out of harm's way. As you know, the State of Washington has transferred 160 acres of DNR Land to the Tribe. Additionally, the Tribe has purchased 280 acres of property from US 101 that connects to the reservation. Congress needs to have this land plus the National Park Service parcel of 28 acres moved into trust status for the Tribe.

These parcels are now included in the 'Hoh Indian Tribe Safe Homelands Act of 2008' before Congress. I am delighted to express to you my support of the bill and my offer to assist locally if there are any concerns. The Hoh Tribe has worked close with all local officials to seek consensus on their legislation and I hope you can see it though this year.

The progress the Tribe has made in the development of a plan to acquire lands out of the floodplain, their hard work with the local community and the State of Washington are noteworthy, and I am proud to support them on their federal legislation.

Respectfully,

Jim Hargrove
24th District
State Senator

Lynn Kessler
24th District
State Representative

Kevin Van De Wege
24th District
State Representative

CC Senator Cantwell, Congressman Dicks

24TH DISTRICT LEGISLATORS
PO BOX 40600
OLYMPIA, WA 98504-0600

Washington State Legislature

LYNN KESSLER
REPRESENTATIVE

JIM HARGROVE
SENATOR

KEVIN VAN DE WEGE
REPRESENTATIVE

July 7, 2008

Senator Maria Cantwell
511 Dirksen Senate Office Building
Washington DC 20510

Dear Senator Cantwell,

First of all I want to commend you on all of the hard work and support your office has provided the communities of the 24th Legislative District, and especially the Hoh Tribe's community in Jefferson County.

For the Hoh Tribe, flooding is an annual event. They are working hard to relocate their housing and governmental services out of harm's way. As you know, the State of Washington has transferred 160 acres of DNR Land to the Tribe. Additionally, the Tribe has purchased 280 acres of property from US 101 that connects to the reservation. Congress needs to have this land plus the National Park Service parcel of 28 acres moved into trust status for the Tribe.

These parcels are now included in the 'Hoh Indian Tribe Safe Homelands Act of 2008' before Congress. I am delighted to express to you my support of the bill and my offer to assist locally if there are any concerns. The Hoh Tribe has worked close with all local officials to seek consensus on their legislation and I hope you can see it though this year.

The progress the Tribe has made in the development of a plan to acquire lands out of the floodplain, their hard work with the local community and the State of Washington are noteworthy, and I am proud to support them on their federal legislation.

Respectfully,

Jim Hargrove
24th District
State Senator

Lynn Kessler
24th District
State Representative

Kevin Van De Wege
24th District
State Representative

CC: Senator Murray, Congressman Dicks

24TH DISTRICT LEGISLATORS
PO BOX 40600
OLYMPIA, WA 98504-0600

Washington State Legislature

LYNN KESSLER
REPRESENTATIVE

JIM HARGROVE
SENATOR

KEVIN VAN DE WEGE
REPRESENTATIVE

July 7, 2008

Congressman Norm Dicks
2467 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Congressman Dicks,

First of all I want to commend you on all of the hard work and support your office has provided the communities of the 24th Legislative District, and especially the Hoh Tribe's community in Jefferson County.

For the Hoh Tribe, flooding is an annual event. They are working hard to relocate their housing and governmental services out of harm's way. As you know, the State of Washington has transferred 160 acres of DNR Land to the Tribe. Additionally, the Tribe has purchased 280 acres of property from US 101 that connects to the reservation. Congress needs to have this land plus the National Park Service parcel of 28 acres moved into trust status for the Tribe.

These parcels are now included in the 'Hoh Indian Tribe Safe Homelands Act of 2008' before Congress. I am delighted to express to you my support of the bill and my offer to assist locally if there are any concerns. The Hoh Tribe has worked close with all local officials to seek consensus on their legislation and I hope you can see it though this year.

The progress the Tribe has made in the development of a plan to acquire lands out of the floodplain, their hard work with the local community and the State of Washington are noteworthy, and I am proud to support them on their federal legislation.

Respectfully,

Jim Hargrove
24th District
State Senator

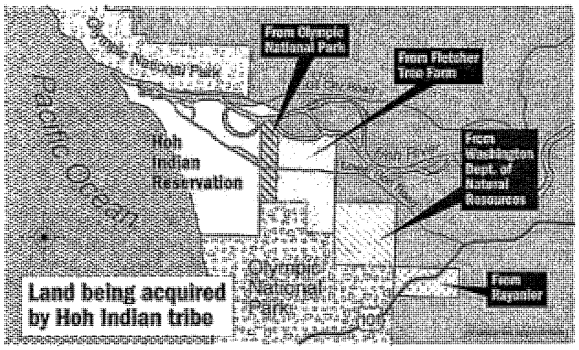
Lynn Kessler
24th District
State Representative

Kevin Van De Wege
24th District
State Representative

CC: Senator Murray, Senator Cantwell

24TH DISTRICT LEGISLATORS
PO BOX 40600
OLYMPIA, WA 98504-0420

Hoh tribe relocating to higher ground



Map by Keith Thorpe/Peninsula Daily News

From the PDN:

By Tom Callis
Peninsula Daily News

The Hoh tribe is a congressional bill away from moving its reservation to higher ground.

The tribe, located on about 640 acres of flood plain at the mouth of the Hoh River south of Forks, has purchased an additional 425 acres of land over the past year to relocate its village.

On Sept. 25, U.S. Rep. Norm Dicks, D-Belfair ¬-- who represents the 6th District, which includes the North Olympic Peninsula -- introduced House Bill 7073 that would designate the land as part of the Hoh reservation and transfer 37 acres of Olympic National Park property to the tribe.

Alexis Barry, Hoh executive director, said the national park land would connect the current reservation with the newly acquired land.

The reservation was created in 1893 and has stayed the same size since.

Since the bill was submitted at the end of Congress' 2008 session, it will have to be reintroduced in January, Barry said.

"There was a lot of hooting and hollering when we saw the bill," she said.

"It's a big thing for a small tribe."

"There has been a lot of sweat, and a lot of praying, and a lot of crossed fingers."

Barb Maynes, Olympic National Park spokesperson, said the National Park Service assisted in the drafting of the bill upon the request of Dicks.

"We worked to ensure that both parties' interests are protected in drafting the bill," she said.

Barry said the tribe would have to maintain the natural wildlife corridor on the park property and could not use it for development.

90 percent in flood zone

Barry said 90 percent of the reservation's 133 residents live in the flood zone, and that all of the homes are at risk of being destroyed by a tsunami.

Marie Riebe, Hoh Tribal Council secretary, said flooding has increased over the last 10 years because of erosion from the Hoh River, adding that the mouth of the river has moved a half mile south closer to the village over the last 50 years.

Relocating the village to higher ground will keep the tribe out of the way of the destructive powers of nature, which will also hopefully lead to economic development that the reservation lacks, Barry said.

"It's a pretty phenomenal project," she said.

"We've been lucky and blessed."

The properties the Hoh have acquired include:

• 160 acres of state Department of Natural Resources trust land, which was transferred to the tribe in June.

• The 200-acre Fletcher Tree Farm, purchased by the tribe for $750,000 April

• 65 acres purchased from Rayonier Inc. by the tribe for $280,000 in fall 2007.

Barry said the Muckleshoot tribe provided a loan for the purchase of the tree farm.

Celebration

On Wednesday, the tribe honored the state Legislature and Congressional

representatives who have supported the tribe's efforts to relocate the village.

The former tree farm owners, representatives of Rayonier and Resources also were honored at the ceremony.

Representatives of Gov. Chris Gregoire and state Commissioner of Public Lands Doug Sutherland were present.

Barry said the ceremony included speeches and gifts such as tribal crafts and photographs of the former village in 1905, before it was washed away by the Hoh River.

"It was very touching," said State Rep. Kevin Van de Wege, D-Sequim, who represents the 24th District which covers Clallam, Jefferson and a portion of Grays Harbor counties.

"The Hoh are obviously very proud and excited."

'Team effort'

Dicks said the Hoh have come together as a community to move out of the flood-stricken land.

"It's a team effort," he said.

"This is a big thing to them."

Van de Wege said transfer of land from Resources to the tribe was part of the state's 2007 capital budget.

Barry estimated the land to be worth about $750,000, which couldn't be confirmed by Resources.

The Natural Resources board approved the transfer in March.

State trust lands fund education, mostly through timber sales.

Van de Wege said the land was logged after the state Legislature passed the capital budget.

By transferring the land, the state Legislature and Resources acknowledged the importance of relocating the tribe's housing out of the flood plain, Van De Wege said.

"This 160 acres is best used for the Hoh," he said.

Barry said that, upon Congressional approval of the park land transfer, the tribe could relocate housing in about three years.

"It's going to be a long process," she said.

Barry said that about 20 to 30 people are in the most danger of flooding and would be moved first.

Eventually, at least 120 of the residents will need to be moved.

First, she said, the tribe will attempt to secure funding from the U.S. Department of Housing and Urban Development and U.S. Department of Agriculture rural development to finance the relocation.

Before then, Barry said the tribe would like to have fire and medical services reinstated to the area.

Three years in making

Barry said the tribe has been moving toward this point for the last 20 years, but that the project started to gain momentum about three years ago.

That was when tribal members began meeting with Congressional members, she said.

Though the tribe has acquired the property, developing it without including it in the reservation would be much more complicated, Barry said.

"Having it be part of the reservation is a fundamental piece," she said.

Barry said 60 percent of the 133 people living in the reservation are under 18 years of age.

"It's been a real commitment of the [Tribal Council] and the community to make sure there is a place for the children to be able to have homes and places to work and still be in their homeland," she said.

A dream come true

Riebe said that moving out of the flood plain has been a dream of the tribe for many years.

"We are one step closer to seeing our dream come to fruition," she said.

In December, heavy rains isolated the tribe, which couldn't get out to renew supplies after food spoiled during a power outage.

The Olympic Community Action Program and National Guard delivered 800,00 pounds of food and water to the tribe after the storm.

But Riebe referred to the flooding of November 2006 as "the bad one."

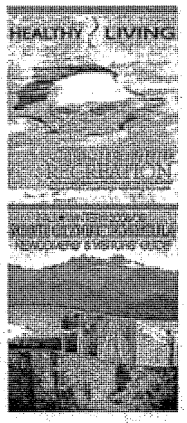
When the river crested, she said, it carried wastewater down the through the village, drowning offices and homes.

Barry said the tribe almost had to evacuate the village.

"We recognized that we've got to get out of there," she said.

The tribal center is lined with sandbags and concrete berms to protect it from flooding.

Riebe said that dredging done by the U.S. Army Corps of Engineers during World War II prevented erosion. The Army used the mouth of the river as a port during the war.



THE QUILEUTE TRIBE at LaPush, whose negotiations for higher land predate those of the Hoh, has reached no agreement with the National Park Service.

The Quileute seek to exchange land at Rialto Beach, which has been the object of a decades-long boundary with the park service, for land in the Olympic National Park to the south of the reservation.

The park land would allow the tribe to relocate several buildings, including its school and senior center, out of a tsunami zone.

The national park land to the south is the only higher ground surrounding the tribe's square-mile reservation.

In April 2007, the tribe opened access to Second Beach -- the parking lot and trailhead are on Quileute land, while the beach is in the park -- after closing it in October 2005 when negotiations went awry.

In August, 2007, U.S. Rep. Norm Dicks said, "We're close, but we're not there yet."

Last week, he said no agreement had been reached.

Barb Maynes, Olympic National Park spokeswoman, said that Dicks has asked the National Park Service to assist in resolving land disputes with the Quileute and Hoh tribes.

"In both cases we have done that," she said.

Seattle Times
Originally published Monday, February 2, 2009 at 12:00 AM
Comments (19) E-mail article Print view

Bill would move Hoh Indians to higher ground

The tribe is counting on a bill in Congress to double the reservation's size and place its inhabited areas out of the way of damaging tides and floods.

By Kim Murphy
Los Angeles Times

HOH INDIAN RESERVATION — If anything is a certainty on the Hoh reservation, it is rain.

Blinding sheets, gentle showers, a slow drizzle in the trees: It comes in different forms almost every day. The Hoh Rain Forest in the Olympic Peninsula gets more precipitation than anywhere in the continental United States, up to 14 feet a year.

Floods happen so often that the wood-plank structure housing the tribe's administrative offices is permanently surrounded by sandbags, as are several buildings nearby. Half-a-dozen homes on the reservation have been abandoned or washed away by the constant flooding, not to mention the occasional tsunami.

Alexis Barry, the tribe's executive director, keeps wader boots next to her computer.

"Where before, maybe a large flood used to be a 10-year event, the last few years it's been almost an annual event," Barry said.

"It's just wet all the time."

So fed up are this tribe's 133 resident members that, after 106 years at the Hoh River's edge, they have started a bid to move — not just a few houses but their entire village — to higher ground.

If passed as expected, a bill scheduled to be introduced in Congress will award 37 acres of nearby Olympic National Park to the Hoh tribe and allow members to consolidate and place into permanent trusteeship other new lands they have purchased. The move would double the size of the reservation and place its inhabited areas well out of the way of damaging tides and floods.

In exchange, tribal leaders pledged not to log or hunt on the national park lands scheduled to become part of the reservation.

"We ... certainly understand their need to have housing and other facilities outside of the flood zone and outside of the tsunami zone, so we have been working closely with the tribe to help develop language that will reflect both the tribe's needs and interests that the park has," park spokeswoman Barb Maynes said.

The Hoh reservation is 28 miles south of Forks, Clallam County — the dark and rainy setting for the popular teenage vampire series "Twilight" — and straddles the only coniferous rain forest in the continental United States, one of the jewels of the Western national-park system.

The tribe took title to the reservation in 1893, but the Hoh River has since shifted half a mile to the south, endangering homes and tribal buildings as it makes its final hurtle into the Pacific.

"I used to live right there," Amy Benally, the tribe's director of health and wellness programs, said recently as she stood in what once was the center of the village. Now there is nothing but a couple of boarded-up houses and piles of driftwood.

Some of the village disappeared during a tsunami many years ago, former tribal Chairwoman Mary Leitka said.

"We've actually had two of them," she said. "The earliest one I can remember, it was in the 1950s. We had just got a fish house down at the lower river, and all of a sudden ... the park ranger (was yelling) ... 'You've got to get up to higher ground, because a tidal wave is coming.' "

Leitka said the tribe ran up on a hill and watched as the sea retreated far back from the beach.

"It was amazing. I'd never seen it get dry like that. And then all of a sudden we seen that wave coming, and it ... came right up the river and grabbed that new fish house and took it right out."

Leitka and other tribal leaders think road construction and widespread logging in the hills outside the reservation worsened flooding in more recent years by pouring debris into the river. Even the newer houses — built on somewhat higher ground — are seeing the river edge closer every year. In 2006, floodwaters inundated the area around the tribal headquarters and several homes.

Recently, widespread flooding across Washington again had tribe members working the sandbags.

Thanks to gambling revenues distributed to every tribe in Washington, even those such as the Hoh that do not have a casino, the tribe has been able to buy two large tree farm parcels adjacent to the reservation. The state has donated an additional parcel.

Adding the 37-acre corridor that is part of Olympic National Park will make the lands contiguous and allow the tribe to put its administration and other government buildings, a new fire station and the bulk of its housing on higher ground.

A new clinic and police station have been built on land the tribe owns outside the flood zone, near the proposed new tribal village.

Still, Barry said, the move will take years.

"It's a huge endeavor," she said.

Federal officials said the legislation authorizing the park-land transfer likely will win final passage soon.

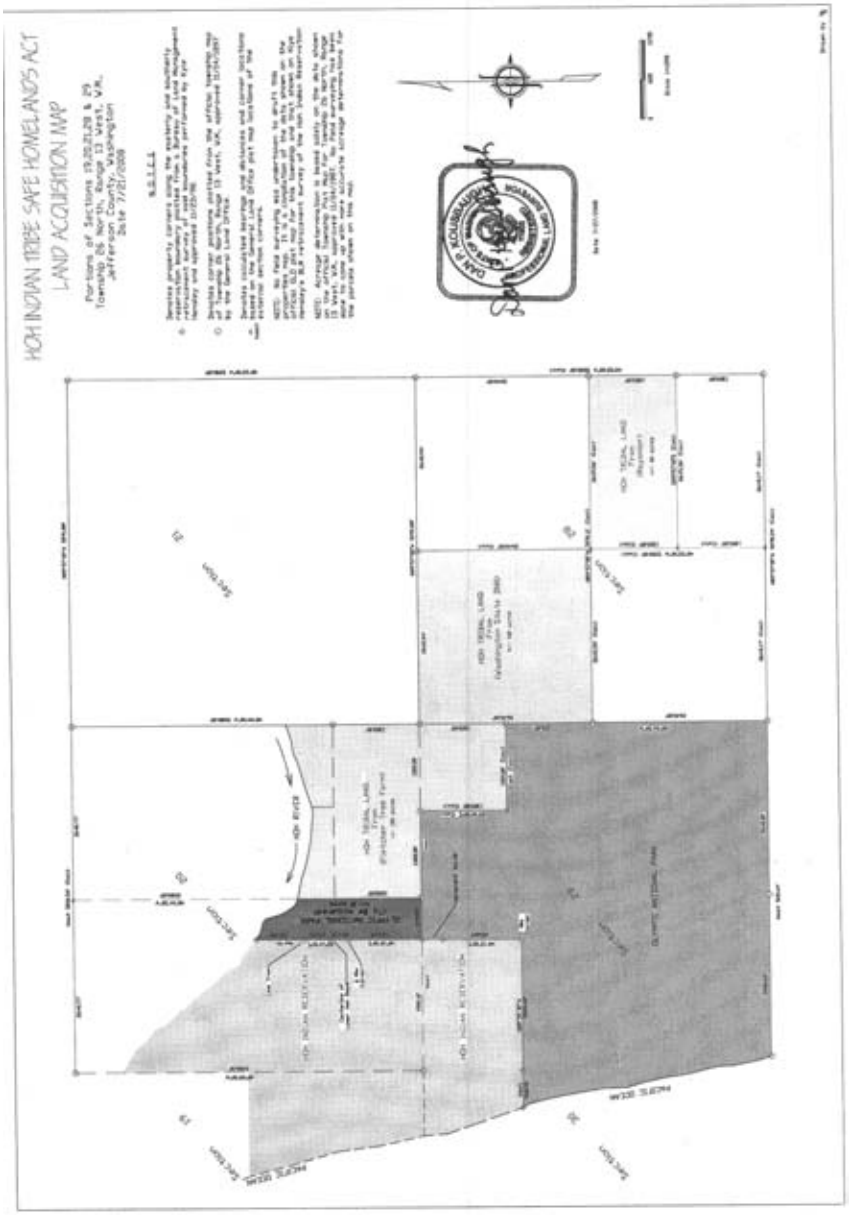
"Since it's safety-related, and all parties appear to be in agreement, all that's required is an adequate hearing," said George Behan, spokesman for U.S. Rep. Norm Dicks, D-Wash., who is sponsoring the legislation.

The relocation plan touched off a renaissance for the tribe of 220 registered members. Hoh who fled the reservation years ago are beginning to move back.

"Now that we're moving out of the flood zone, we're eligible for grant funding again, and that has made all the difference," said Benally, who returned to the reservation a year ago after a 14-year absence.

"It has opened all kinds of new doors. There are people coming back we haven't seen in years, saying, 'What can we do to help?' "

Hoh River
Hoh Tribal Center
River
Migration Channel
Chalaat Loop
Housing
Pacific Ocean
1000 Feet


HOH INDIAN TRIBE SAFE HOMELANDS ACT
LAND ACQUISITION MAP
Portions of Sections 19,20,29 & 30
Township 25 North, Range 13 West, W.M.
Jefferson County, Washington
Date 7/21/2009
N.O.T.E.S.
Section property corners using the exterior and interior reservation boundary provided from a Bureau of Land Management reservation survey of 1873-76.
Section corner positions derived from the office records of Township 25 North, Range 13 West, W.M. approved 12/31/1921 by the General Land Office.
Section corners marked by stone pillars and cairns indicate exterior section corners.
NOTE: No field surveying was undertaken to verify this project map. It is a compilation of the data shown on the Bureau of Land Management's 1873-76 reservation survey of the Hoh Indian Reservation.
NOTE: Acreage determination is based solely on the data shown on the Bureau of Land Management's 1873-76 survey. Data is not to scale or can not accurately acreage determinations for the parcels shown on the map.
HOH TRIBAL LAND
Washington State 2000
HOH TRIBAL LAND
Fee
Grandpa Tree Farm
HOH TRIBAL LAND
(Reserve)
HOH TRIBAL LAND
Fee
HOH TRIBAL LAND
Fee
HOH TRIBAL LAND
Fee

STATEMENT OF HON. PAUL SOTO, TRIBAL COUNCIL MEMBER, COCOPAH INDIAN TRIBE

Mr. SOTO. Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you today on behalf of the Cocopah Indian Tribe to discuss the Cocopah Lands Act, H.R. 326.

My name is Paul Soto. I am a member of the Cocopah Indian Tribe. I have served intermittently for 36 years in various capacities in the Cocopah Tribal Government and have served 20 years as a Tribal council member. I am currently serving as the Tribal Resource Planner and Acting Tribal Council Secretary.

In the early part of this decade, the Cocopah Indian Tribe requested fee-to-trust service of the Fort Yuma Bureau of Indian Affairs office in facilitating the process to convert tribally-owned fee land to trust land. Due to limited resources, the Fort Yuma office was not equipped to provide such service.

The tribe was directed to the Bureau of Indian Affairs regional office. However, the regional office at that time directed the process back to the local Fort Yuma office. Because this appeared to be the start of an ongoing unsolvable dialogue, the tribe was advised by the Fort Yuma office to initiate a more direct approach.

After five years of working with U.S. Representative Pastor and U.S. Representative Grijalva, this direct approach has brought me before you today. In 2002, Representative Pastor first introduced the Cocopah Lands Act, H.R. 5000, during the 107th Congress. The bill was introduced on June 22, 2002, sent to the House Committee on Natural Resources, where it stayed without further development.

At that time, the second port of entry along the U.S.-Mexico border near San Luis, Arizona, was introduced and became a priority for Representative Pastor and the Cocopah Indian Tribe. Since the first introduction of this very important legislation, Representative Grijalva has replaced Representative Pastor as representative of our district.

The Tribal Council requested the support of Representative Grijalva in sponsoring the reintroduction of the Cocopah Lands Act, which he fully supported, and took up efforts on behalf of the tribe. Representative Grijalva introduced the bill in 2006 during the 109th Congress and again on January 24th, 2007 during the 110th Congress.

The tribe is requesting congressional support to place five properties that are divided into seven individual parcels into trust to be included as part of the reservation. The five properties would increase the total size of the currently 6,500 acre reservation by 422 acres, with the majority of the acreage being used as agricultural land.

Currently, the Cocopah Reservation consists of three non-contiguous reservations called the North, West and East Reservations. Our community members reside in all three reservations and much of that land is leased as agricultural land.

As stated by the Cocopah Tribal Chairwoman Sherry Cordova, when we purchased the different parcels in the 1980s and 1990s, it was the only way we could secure the land to continue in our efforts to expand much-needed infrastructure for the people. If we are able to get these lands into trust, it would be a great thing for

our tribe, to be able to make decisions, plan and build knowing that we can now consider this part of our reservation.

To have these lands in trust will give our tribal governments the authority to govern in its true intent.

In summary, I would like to thank you, Mr. Chairman and Members of the Committee for the opportunity to address you and speak on behalf of the Cocopah Indian Tribe. The tribe graciously asks for your support in placing the additional 423 acres of tribally owned land into trust for the betterment of our community and infrastructure, for enhanced economic opportunities for our future generations, and for the authority for our tribal government to govern to its true intent.

Thank you.

[The prepared statement of Mr. Soto follows:]

PREPARED STATEMENT OF HON. PAUL SOTO, TRIBAL COUNCIL MEMBER, COCOPAH INDIAN TRIBE

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today on behalf of the Cocopah Indian Tribe to discuss "The Cocopah Lands Act" (H.R. 326). My name is Paul Soto, and I am a member of the Cocopah Indian Tribe. I have served intermittently for 36 years in various capacities in the Cocopah Tribal Government and have served 20 years as a Tribal Council member. I am currently serving as the Tribal Resource Planner and Acting Tribal Council Secretary.

In the early part of this decade, the Cocopah Indian Tribe requested fee to trust service of the Fort Yuma Bureau of Indian Affairs Office in facilitating the process to convert tribally-owned fee land to trust land. Due to limited resources the Fort Yuma Office was not equipped to provide such service, the tribe was directed to the Bureau of Indian Affairs Regional Office. However, the Regional Offices at that time directed the process back to the local Fort Yuma Office. Because this appeared to be the start of an on-going unsolvable dialogue, the Tribe was advised by the Fort Yuma Office to initiate a more direct approach. After five years of working with U.S. Representative Pastor and U.S. Representative Grijalva, this direct approach has brought me before you today.

In 2002, Representative Pastor-D first introduced *"The Cocopah Lands Act"* (H.R. 5000) during the 107th Congress. The bill was introduced on June 21, 2002 and sent to the House Committee on Natural Resources where it stayed without further development. At that time the second Port of Entry along the U.S.-Mexico Border near San Luis, Arizona, was introduced and became a priority for Representative Pastor and the Cocopah Indian Tribe.

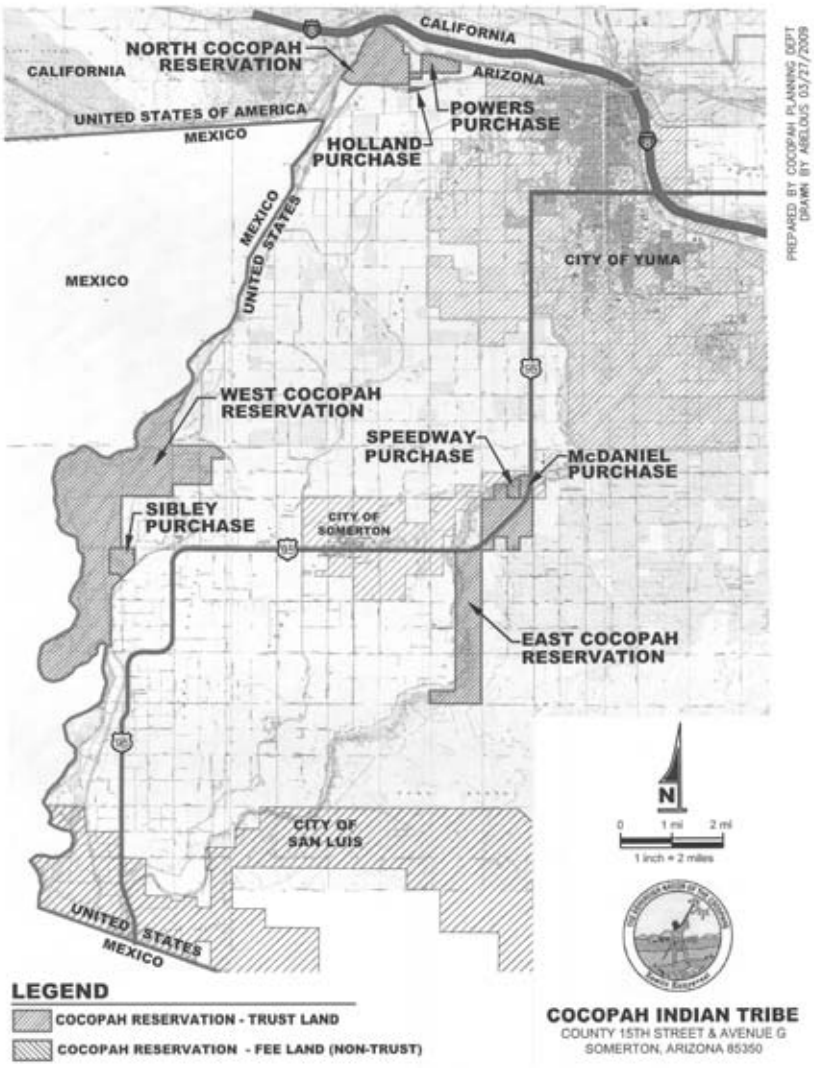
Since the first introduction of this very important legislation, Representative Grijalva-D replaced Representative Pastor as representative of our district. The Tribal Council requested the support of Representative Grijalva in sponsoring the re-introduction of *"The Cocopah Lands Act,"* which he fully supported and took up efforts on behalf of the Tribe. Representative Grijalva introduced the bill in 2006 during the 109th Congress and again on January 24, 2007 during the 110th Congress.

The Tribe is requesting Congressional support to place five properties that are divided into seven individual parcels into trust to be included as part of the reservation. The five properties would increase the total size of the currently 6,500-acre reservation by 423 acres with the majority of the acreage being used as agricultural land. Currently the Cocopah Reservation consists of three non-contiguous reservations, called the North, West and East Reservations. Our community members reside on all three reservations and much of that land is leased as agricultural land.

As stated by The Cocopah Tribal Chairwoman Sherry Cordova: "When we purchased the different parcels in the 80s and 90s, it was the only way we could secure the land to continue in our efforts to expand much needed infrastructure for the people. If we are able to get these lands into trust, it would be a great thing for our tribe—to be able to make decisions, plan and build, knowing that we can now consider it as a part of our reservation. To have these lands in trust will give our tribal government the authority to govern in its true intent."

In summary, I would like to thank you, Mr. Chairman and members of the Committee, for the opportunity to address you and speak on behalf of the Cocopah Indian Tribe. The Tribe graciously asks for your support in placing the additional 423

acres of tribally-owned land into trust for the betterment of our community and infrastructure, for enhanced economic opportunities for our future generations, and for the authority for our tribal government to govern to its true intent.



The CHAIRMAN. Councilman, thank you very much for being here.

And finally we will hear from Ms. Linda Taylor, the Dean of Nursing at the College of Menominee Nation in Keshena, Wisconsin.

Ms. Taylor, you may proceed.

STATEMENT OF LINDA D. TAYLOR, DEAN OF NURSING, COLLEGE OF MENOMINEE NATION

Ms. TAYLOR. Mr. Chairman and distinguished Members of the Committee, on behalf of my institution, the College of Menominee Nation and the other 35 tribal colleges and universities (TCUs) that compose the American Indian Higher Education Consortium, thank you for inviting us to testify on S. 633, the Tribal Health Promotion and Tribal Colleges and Universities Advancement Act of 2009.

My name is Linda Taylor. I am a member of the Oneida Nation and the Dean or Nursing at the College of Menominee Nation in Keshena, Wisconsin. We are grateful to have the opportunity to thank you in person, Mr. Chairman, for your tremendous work on behalf of all native people.

This morning, I will just highlight some of the important programs that are included and that we would like to see restored in S. 633. I ask that my full written statement submitted to the Committee be included in the hearing record.

Mr. Chairman, S. 633, modeled after our successful 1994 land grant legislation, includes authorizations for, (1) community-based outreach programs; (2) education and workforce development programs; (3) an endowment to be held by the U.S. Treasury.

This legislation wisely targets health promotion strategies to address both the immediate and long-term health and wellness challenges that are threatening the very survival of Native people. Some of the opportunities proposed in the legislation include annual TCU health fair outreach grants and competitive grants to allow tribal colleges, in partnership with tribal governments, to develop and implement long-term community-based strategies to address health promotion and disease prevention.

The need for tribal college-specific grant programs is critically needed and long overdue, a fact that was illustrated last week by a tribal college president when he said, "We applied for suicide prevention funding three times from SAMHSA. We thought we had a very competitive proposal, but it was never funded. They kept encouraging us to resubmit the proposal 'next year', and meanwhile our people are still killing themselves."

S. 633 authorizes an American Indian Health Professions and Research Program. Tribal colleges are the ideal places to prepare the future American Indian health care workforce. At College of Menominee Nation, we have established a nursing career ladder program beginning with personal care workers, then progressing to a certified nursing assistant program, the licensed practical nursing program, and then the registered nurse program.

The need is great. Every year more tribal governments are asking their local tribal college to establish some type of allied health professions program. College of Menominee Nation, for example, admitted our first students last fall, and already we are receiving requests from other tribal nations to expand our health care programs.

As important as the program on health promotion, disease prevention, and health workforce development, S. 633 also contains provisions aimed at strengthening partnerships between tribal governments and tribal colleges that will develop and expand reserva-

tion-based economies and communities. The key to our success lies in our ability to create strong partnerships to tell our success story effectively and to stay focused on our collective vision of building stronger tribal nations through tribal higher education.

In closing, as truly engaged institutions, tribal colleges are preparing an American Indian health workforce, improving the health and wellness of students and their families, combating substance abuse, including alcohol and methamphetamine use, vitalizing native cultures and language, and creating economic development opportunities in some of the Nation's poorest communities.

In its original form, this legislation addressed all of these areas. However, for various reasons during the 110th Congress, some provisions were removed that are critical to the legislation's goal and to the future of Native America.

I respectfully request that Senator Tester and Members of this Committee work with AIHEC to ensure that the bill exemplifies its original intent—the creation of a comprehensive strategy through which tribal colleges are full partners with Federal agencies, working together to help build, strengthen, and sustain thriving tribal communities.

Thank you, Mr. Chairman, for this opportunity to share our story, our successes, and our needs with you today, and we thank Senator Tester and the cosponsors of S. 633 for their commitment to and trust in tribal colleges and universities.

We look forward to working with all of you to achieve enactment of S. 633, the Tribal Health Promotion and Tribal Colleges and Universities Advancement Act of 2009.

[The prepared statement of Ms. Taylor follows:]

PREPARED STATEMENT OF LINDA D. TAYLOR, DEAN OF NURSING, COLLEGE OF MENOMINEE NATION

Mr. Chairman and distinguished members of the Committee, on behalf of my institution, the College of Menominee Nation in Keshena, Wisconsin, and the 35 other Tribal Colleges and Universities that compose the American Indian Higher Education Consortium, thank you for inviting us to be here today to testify regarding S. 633, the Tribal Health Promotion and Tribal Colleges and Universities Advancement Act of 2009.

My name is Linda Taylor. I am Dean of Nursing at the College of Menominee Nation in Keshena Wisconsin, and it is an honor to speak with the members of this Committee about Tribal Colleges and the work we are doing to transform Indian Country. We are also grateful to have the opportunity to thank you in person, Mr. Chairman, for your tremendous work on behalf of all Native people. I would also like to thank Senator Tester for his leadership in sponsoring S. 633, the Tribal Health Promotion and Tribal Colleges and Universities Advancement Act of 2009. We are pleased that he has taken the initiative to introduce this legislation so early in the 111th Congress and that the Committee has so expeditiously scheduled a hearing.

This afternoon, I will speak briefly on three topics: The Tribal College Movement; the need for enactment of S. 633; and finally, additional provisions that we hope can be included in S. 633 to accomplish the original intent of Senator Tester's legislation. I ask that my written statement be included in the Hearing Record.

Background: The Tribal College Movement

Mr. Chairman, you and the members of this Committee are well acquainted with Tribal Colleges and Universities. Perhaps no one other than the Tribal College presidents and students knows better of our near daily struggles to survive as the most poorly funded institutions of higher education in the country. You also know of our tremendous successes, from our work to build self esteem and change the life and future of a student through a nurturing educational environment that is culturally-based and relevant to that student, to our efforts to build stronger and more

prosperous Tribal nations through the restoration of our languages, applied research on issues relevant to our land and our people, workforce training in fields critical to our reservation communities, and community-centered economic development and entrepreneurial programs.

American Indian tribally controlled colleges and universities are young, geographically isolated, poor, and almost unknown to mainstream America. They are also amazingly bright catalysts for revitalization and change—so much so that Tribal Colleges are often called "higher education's best kept secret."

Located in some of the most rural and impoverished regions of this country, Tribal Colleges are planting resilient seeds of hope for the future; nurturing and sustaining languages, cultures, and traditions; and helping to build stronger tribal economies and governments. Yet, the oldest Tribal College is younger than many of the people in this room. Our oldest institution, Diné College on the Navajo Nation, just turned 40 last year.

The Tribal College philosophy is simple: to succeed, American Indian higher education needed to be locally and culturally based, holistic, and supportive. The education system needed to address the whole person: mind, body, spirit, and family. Today, the nation's 36 tribal colleges are located throughout Indian Country: all seven tribes in Montana and all five in North Dakota have colleges. Tribal Colleges are also located in the Southwest, the Great Lakes, and the upper Northwest. We are expanding in all regions, including Wyoming, Alaska and Oklahoma, and through distance education programs, our colleges reach all of "Indian Country."

In only four short decades, Tribal Colleges have achieved tremendous results. For example, in Montana, before Salish Kootenai College was established in 1976, less than 30 members of the Salish and Kootenai tribes had earned a college degree. Between 1976 and 1994, SKC alone graduated more than 400 tribal members. Today, Salish Kootenai College offers several bachelor's degree programs, including Bachelor's degree programs in Computer Engineering, Elementary Education, and Nursing, among others.

Tribal Colleges are first and foremost academic institutions, but because of the number of challenges facing Indian Country—high unemployment, poorly developed economies, poor health status, and lack of stable community infrastructures, Tribal Colleges are called upon to do much more than provide higher education services. Tribal Colleges often run entrepreneurial and business development centers. Many TCUs are the primary GED and Adult Basic Education provider on their reservations, and all TCUs provide a variety of evening, weekend training and para-professional programs for tribal employees, BIA and IHS staff, K–12 schools, tribal courts and justice system staff, and many others. TCUs run day care centers, health promotion and nutrition programs, community gardens, and often, the community library and tribal museum or archives. Tribal Colleges have strong partnerships and linkages with the local K–12 education system, offering Saturday and summer "bridge" programs for high school students, running summer camps for youth, and providing after-hours gymnasiums and computer labs for young people.

In terms of agriculture and land-based programs, Tribal Colleges are working diligently to protect our environments and sustain our lands and waters. My college, the College of Menominee Nation, has developed the "Sustainable Development Institute," founded on the principles of sustainability and Menominee values. Prompted by Menominee's long tradition of sustainable forestry practices, tribal leaders created the Sustainable Development Institute to encourage and build upon Menominee approaches to sustainable development.

Perhaps most important, like the College of Menominee Nation, all Tribal Colleges are actively and aggressively working to preserve and sustain their own tribal languages and cultures. All TCUs offer Native language courses, and in fact, passing a language course is a condition of graduation from a TCU. In some cases, the tribal language would have been completely lost if not for the Tribal College. Turtle Mountain Community College in Belcourt, North Dakota, was established primarily for this purpose, and over the years, its success in writing and revitalizing the Turtle Mountain Chippewa language has been tremendous. Fort Belknap College in Montana runs a K–6 language immersion school, right on campus. At the White Clay Immersion School, children learn the White Clay language and culture in addition to subjects they would normally study at any other school.

Many TCUs offer unique associate and bachelor degree programs, as well as in-service training, in elementary education. At the TCUs, teacher education programs follow cultural protocols and stress the use of Native language in everyday instruction. Well over 90 percent of teachers who graduate from a TCU teacher education program receive jobs on the reservation shortly after graduation, providing positive role models to Indian children.

Finally, Tribal Colleges are accountable institutions, always striving to be more accountable to our funders, our students, and our communities. Several years ago, AIHEC launched an ambitious and landmark effort called "AIHEC AIMS," which is a comprehensive data collection system for TCUs, created by Tribal College faculty and presidents, community members, funders, students, and accrediting agencies, aimed at improving our ability to measure and report our successes and challenges to our key stakeholders. Today, each Tribal College reports annually on a comprehensive set of 116 qualitative and quantitative indicators that allows us, for the first time, to share the true story of our success with funders, and most important, with our communities.

Tribal Colleges have made tremendous strides since we first began four decades ago, but many challenges remain. Tribal Colleges are poor institutions. In fact, Tribal Colleges are the most poorly funded institutions of higher education in the country:

(1) Tribal Colleges are not state institutions, and consequently, we receive little or no state funding. In fact, very few states provide support for the non-Indian students attending TCUs, which account for about 20 percent of all tribal college students. However, if these students attended a state institution, the state would be required to provide the institution with operational support for them. This is something we are trying to rectify through education and public policy change at the state and local level.

(2) The tribal governments that have chartered Tribal Colleges are not the small handful of wealthy gaming tribes located near major urban areas. Rather, they are some of the poorest governments in the nation. In fact, three of the ten poorest counties in America are home to Tribal Colleges.

(3) The Federal Government, despite its trust responsibility and treaty obligations, has never fully-funded our primary institutional operations source, the Tribally Controlled Colleges and Universities Act. Today, the Act is appropriated at about $5,490 per full time Indian Student, which is less than half the level that most states fund their institutions.

To continue to thrive and expand as community-based educational institutions, Tribal Colleges must stabilize, sustain, and increase our basic operational funding. Through tools such as AIHEC AIMS, we hope to better educate the public, lawmakers, and federal officials about the cost-effective success of our institutions. Through opportunities such as this, we hope to share with the Congress and others how we are helping to meet the challenges facing our tribal nations.

S. 633, The Tribal Health Promotion and TCU Advancement Act

Mr. Chairman, S. 633, the Tribal Health Promotion and TCU Advancement Act, is a critical component of our strategic efforts to help address the needs of our tribal communities and build stronger and more prosperous tribal nations. By maximizing TCU participation in a set of key programs within the U.S. Departments of Health and Human Services and Labor, this legislation will strengthen and sustain TCU capacity to help Native communities achieve healthier, longer, and more prosperous lives; more stable and secure families; and greater economic competitiveness.

This legislation is modeled after our successful 1994 land grant legislation, which established a partnership between Tribal Colleges and the U.S. Department of Agriculture that benefits all of Indian Country. Like the Educational Equity in Land Grant Status Act, this legislation includes authorizations for: (1) community-based outreach programs; (2) education and workforce development programs; and (3) an endowment, to be held by the U.S. Treasury, with the interest being used by TCUs for activities consistent with the goals of the legislation.

Key provisions of the legislation include:

Title I: Health Promotion and Health Workforce Training (Dept. of Health and Human Services)

1. Community-based Health Promotion and Disease Prevention Partnerships with Tribes

This section of the Act focuses on strategies to address the immediate and long-term health and wellness challenges that are threatening the very survival of Native people.

Health Fair-Outreach Formula Grants

The bill proposes very modest ($15,000 per TCU annually) formula grants to help us conduct annual, community-based, and culturally relevant health and wellness fairs at TCUs, building on existing but unfunded outreach programs at our institutions. This funding will help us bring more elders in for health screening and refer-

rals, conduct diabetes screening for our Indian youth, who are contracting this deadly disease at rates far higher than any other group in the United States, and it will help us raise awareness about the warning signs of diseases that are literally killing our people—from children to Elders—every single day: alcohol and substance abuse, domestic violence, and depression and other behavior health issues.

Competitive Capacity Building Grant Program

The bill proposes a competitive grant program to help tribes and Tribal Colleges and Universities build the capacity to develop and implement long-term and community-based strategies in health promotion and disease prevention. Through five-year collaborations with tribal governments, Tribal Colleges could address targeted health promotion and disease prevention areas, including:

- Education Programs in Diabetes Prevention and Care, Obesity, and Nutrition;
- Injury Prevention;
- HIV–AIDS Prevention;
- Substance Abuse, including methamphetamine abuse; and
- Depression and other behavior health issues.

This program is critically needed and long overdue. Each day that ends before this legislation is enacted represents the loss of more of our precious young people. The American Recovery and Reinvestment Act and the Fiscal Year 2010 budget recommendations from this Committee prioritize funding for the Indian Health Service and include increased funding to address substance abuse and other challenges facing our communities. We greatly appreciate those efforts, but it is not enough. It will never be enough until Tribal Colleges and Universities—the very institutions that serve as nurturing and safe families for our youth—are included as strategic partners in these efforts. Today, unfortunately, we are not partners.

This fact was illustrated last week by one of the Tribal College presidents. He said: "We applied for funding three times from SAMHSA. We thought we had a very competitive proposal, but we were never funded. They kept encouraging us to resubmit the proposal next year; and meanwhile, our people are still killing themselves."

Another Tribal College president recently cited an alarming—but all too common—statistic from his institution: a recent survey revealed that 75 percent of all students had suicidal thoughts in the past year. "With statistics like that," he said, "we can't just have one prevention counselor on campus. Everyone on campus, whether he is an instructor, a counselor, a janitor, or a student, needs to know how to intervene. It's an epidemic."

Funding sources to address these issues are practically non-existent for our institutions, and the Indian Health Service, even if its leaders want to help us, focuses more on tertiary, rather than preventive, care. Tribal Colleges can help pick up the slack: we know how to teach, we know how to conduct community based activities, and we know how to reach young people, older people, and families. We have them—young, old, families, individuals, friends, and relatives—on our campuses every day. We simply lack the funding needed to establish and sustain programs that will address individual needs and ultimately, turn our communities around.

Through the competitive grant program established under this legislation, we will have access to some of the resources we need.

2. American Indian Health Professions and Research Programs: Health Resources and Services Administration (HRSA) and the National Institutes of Health (NIH)

Health Professions Training Programs and Endowment: HRSA

In addition to providing community-based health promotion and disease prevention outreach, Tribal Colleges and Universities are the ideal places to prepare the future American Indian health care workforce. I can make that statement confidently because I know first-hand that we are doing it now at the few Tribal Colleges that have been able to establish nursing, social work, and allied health programs. At the College of Menominee Nation, we have established a nursing career ladder program, beginning with Personal Care Workshops, and then progressing to the Certified Nurse Assistant (CNA) program, the Licensed Practical Nursing (LPN) program, and then to the Registered Nursing (RN) program.

Oglala Lakota College on the Pine Ridge Reservation in South Dakota provides another example: Twenty years ago, only 10 percent of the workforce at the local Indian Health Service hospital was American Indian. Today, 80 percent or more of the nursing staff at the local IHS hospitals and clinics were educated and trained at Oglala Lakota College. Likewise, Southwestern Indian Polytechnic Institute in Albuquerque trains virtually *all* of the optical technicians trained in the State of

New Mexico. Salish Kootenai College on the Flathead Indian Reservation is the regional testing site for radiology technicians, not just for the American Indians entering this profession, but for *all* radiology technicians in that region of Montana.

I believe that Tribal Colleges are making a bigger impact in training the American Indian health care work force than any other institutions of higher education, but a tremendous need exists for more registered nurses, Community Health Representatives, and other allied health professionals. Every year, more tribal governments are approaching their Tribal College, asking the college to establish some type of allied health professions program. College of Menominee Nation, for example, established our LPN/RN programs just two years ago, and already, we are receiving requests from other tribes in Wisconsin to expand the program. Fort Belknap College in Montana was asked by its tribal government to establish a Certified Nursing Assistant program a few years ago, and already it has trained 50 CNAs, 90 percent of whom have become certified and are working today.

To help Tribal Colleges develop and expand programs such as these, S. 633 authorizes a competitive grant program specifically for TCUs and establishes a Federal Treasury Endowment Account to help TCUs sustain and equip such degree programs. An endowment program is essential to these types of programs due to the high cost of nursing and other health professions programs. Programs like these, targeted specifically to Tribal Colleges are necessary because few programs currently exist that are accessible to TCUs. In fact, many of the programs administered by the Department of Health and Human Services effectively prohibit TCU participation due to strict requirements regarding the qualifications of the Principal Investigator (such as mandating that he or she hold a Ph.D.) or other prohibitive practices. Similar to programs that the Congress has funded at the National Science Foundation and Department of Education, a program specifically established for Tribal Colleges and Universities would help ensure that the Indian Health Service and tribal health programs have trained health professions to help them meet the many health-related challenges facing our people.

Public Health Research and Capacity Building Program: NIH

To help ensure that tribes, Tribal Colleges, and our health educators can effectively meet the unique needs of Indian people living in rural or remote areas with depressed economies, inferior infrastructures, and limited access to services, our Tribal Colleges must have the resources needed to conduct applied research in our communities, particularly research involving epidemiology. Likewise, to better address the evolving needs and challenges facing our youth, research and information sharing on effective outreach and prevention strategies is essential. However, faculties at Tribal Colleges currently have limited access to federal research funding, for reasons similar to those outlined above. Specifically, because many TCU faculty members do not have Ph.D.s and must spend more time in the classroom than faculty at mainstream universities and research institutions, Tribal College research proposals are not scored competitively by federal agencies and their review panels. A research program specifically targeted to faculty at Tribal Colleges and Universities, particularly one that allows for research experiences for TCU students, ultimately could significantly improve the health status of American Indians and others in rural America.

S. 633 would establish such a program for TCUs, similar to the USDA's 1994 land grant research program, which funds applied research projects at Tribal Colleges. Over the past several years, TCUs have used this program to conduct vitally needed research on issues particularly relevant to their communities and tribes. Salish Kootenai College in Montana and Lac Courte Oreilles Ojibwa Community College in Wisconsin are conducting vitally needed research—research that no one else is doing—on invasive plants that threaten tribal lakes and lands. Fort Belknap College in Montana is assessing the impacts of mining activities on soil microbes at a cyanide-leach mine site, and it, like many other TCUs, is involved in reservation-based water quality testing and research.

All of these research activities involve students and are helping to build a future science workforce throughout Indian Country.

Title II: Advancing Tribes Through TCUS (Department of Labor)

Economic Development to Address Generational Unemployment and Economic Development Capacity Building

In addition to its focus on health promotion/disease prevention and health workforce development, S. 633 also contains important provisions aimed at strengthening partnerships between tribal governments and Tribal Colleges that will help develop and expand reservation-based economies and communities. Specifically, the bill would establish a competitive grant program to fund TCU-tribal partnerships that

encourage micro-enterprise development, entrepreneurship, business degree programs, municipality planning, and leadership development.

With very little and extremely competitive resources, Tribal Colleges are working to strengthen tribal governments and build thriving economies and communities. Sitting Bull College in Fort Yates, North Dakota, offers small business incubators to the community, with training in business plan development and marketing. Chief Dull Knife College in Lame Deer, Montana, recently helped create a community development corporation and provides workshops in e-commerce, financial literacy, and youth entrepreneurship. These are just two examples of efforts currently underway that could be replicated at other Tribal Colleges if resources were available.

In addition to implementing strategies to encourage entrepreneurship, Tribal Colleges also serve as key infrastructure providers on their reservations. For example, Salish Kootenai College has served as a local ISP (Internet Service Provider) in its area, bringing broadband Internet access into peoples' homes. Sitting Bull College runs a nationally recognized reservation-wide bus service, taking thousands of residents to doctors' appointments, classes, and community functions. Some TCUs run building trades programs that partner with the tribe to build vitally needed housing for their communities, and a number of TCUs have student dorms, often including married-student and family housing.

Tribal Colleges are economic drivers on their reservations and in their communities. For example: A study conducted by United Tribes Technical College in North Dakota revealed that UTTC contributes $46.7 million in direct and secondary benefits to State's economy in one year. Oglala Lakota College employs 300 people, runs the tribal day care and Head Start programs, and as I mentioned above, trains 80 percent of the local Nursing force. Tribal Colleges throughout the nation are educating and training K–12 teachers, tribal leaders, and Native scientists.

The keys to our success lie in our ability to create strong partnerships, to tell our story of success effectively, and to stay focused on our collective vision of building stronger Tribal Nations through Tribal Higher Education.

We look forward to working with Senator Tester and the co-sponsors of S.633 to achieve this vision, and thank them for their commitment to and trust in Tribal Colleges and Universities.

Expansion of S. 633, to Achieve the Original Goals of Comprehensive Legislation

In closing, Mr. Chairman, I respectfully request that Senator Tester and the members of this Committee work with us to better achieve the original intent of the legislation: the creation of a comprehensive strategy through which Tribal Colleges are full partners with the U.S. Department of Health and Human Services, working together to help build, strengthen, and sustain thriving tribal communities.

As truly engaged institutions, Tribal Colleges are the catalysts for change in Indian Country. Although our institutions are the most poorly funded institutions of higher education in the U.S., I have tried to demonstrate today how TCUs are addressing many of the economic and social challenges facing Native communities. We are:

- Preparing an American Indian health workforce;
- Improving the health and wellness of students and their families;
- Combating substance abuse, including alcohol and methamphetamine use;
- Vitalizing Native cultures and languages; and
- Creating economic development opportunities in the Nation's poorest communities.

In its original form, this legislation addressed all of these areas, strengthening and sustaining TCU capacity to help our underserved Native communities achieve healthier, longer, and more prosperous lives; more stable and secure families; and greater economic competitiveness through access to vitally needed new and existing programs, resources, and partnerships within the U.S. Department of Health and Human Services.

However, for various reasons during the 110th Congress, the legislation was changed before being reported by the Committee to the full Senate and some provisions were deleted that are critical to the legislation's goal and to the future of Native America.

Native Language Research and Programs

As originally introduced by Senator Tester in the 110th Congress, this legislation included a modest provision authorizing $12 million in funding for Native language vitalization and training at Tribal Colleges. However, this provision was removed, and AIHEC began pursuing and alternative strategy in this area.

Due to the extreme lack of funding available in this area and the urgent need for action, we respectfully request that the Committee thoughtfully revisit this issue. As you know, the "Esther Martinez Native American Languages Preservation Act" currently provides only $3.5 million per year, to be awarded competitively among potentially hundreds of American Indian and Alaska Native language projects. Quite simply, we must set our goals higher, both in terms of funding and activities: we need to significantly increase resources, and we must move beyond "preservation" to the vitalization of our Native languages. These are the goals of Tribal Colleges and Universities.

Mr. Chairman, nothing is more central to the core function of Tribal Colleges and Universities than the restoration and vitalization of tribal languages and cultures. In fact, it is the mission of every Tribal College in this country because we realize that without our language, our very identity will be lost.

Language restoration and vitalization is our mission and our life's work. It is not, however, the mission of state public schools, which educate 90 percent of all American Indian children; nor is it in the mission of North Dakota State University, the University of Montana, or any other state university. More so than any other group of institutions, Tribal Colleges are actively and aggressively working to preserve, sustain, and vitalize our own tribal languages and cultures, as I mentioned earlier. In some cases, the tribal language would have been completely lost if not for the Tribal College. Turtle Mountain Community College in Belcourt, North Dakota, was established primarily for this purpose, and over the years, its success in writing and revitalizing the Turtle Mountain Chippewa language has been tremendous.

All TCUs offer Native language courses, and passing a language course is a condition of graduation from a TCU; and Tribal Colleges are responsible for the vast majority of the 50 or so Native language immersion programs in the U.S. Fort Belknap College in Montana runs a K–6 language immersion school, right on campus. At the White Clay Immersion School, children learn the White Clay language and culture in addition to subjects they would normally study in public school.

Mr. Chairman, of the 155 Indigenous languages still being spoken in the United States, 135 or more are spoken only by elders. We do not believe that a modest $12 million program will threaten any other program—the need is so great, and the current resources are so pitifully small. We simply must work together to do more. We urge you to include authorization for a TCU Native language program, similar to the provisions of Senator Tester's original legislation. Such a program could be located within the Department of Health and Human Services, as originally proposed, or perhaps within the Department of Education or the Interior.

TCU Health and Wellness Centers

Likewise, we urge the Committee to consider including Senator Tester's original provisions regarding health and wellness centers at Tribal Colleges. These provisions were deleted because some individuals stated that authorization for funding of health and wellness centers at Tribal Colleges would: (1) potentially take funding away from vitally needed funding for Indian Health Service hospitals and clinics and tribal health facilities; and (2) that health and wellness centers at TCUs would compete with tribal health care delivery services.

Mr. Chairman, we believe that over the past few months, the situation regarding IHS and tribal health facilities construction has changed so dramatically as to remove any fear anyone could have over a *modest authorization* for a TCU health and wellness facilities program. Specifically, both the American Recovery and Reinvestment Act and this Committee's Fiscal Year 2010 priorities should put that fear to rest. Further, we believe that attempts to prohibit Tribal Colleges from establishing health and wellness centers, particularly when the establishment of such facilities is at the request of and in partnership with their respective tribal governments, restricts the exercise of tribal sovereignty and should not be tolerated. Already, several Tribal Colleges, at the request of their tribal governments and governing boards, have established health and wellness centers or student health clinics. Other requests are currently pending. For example, the Salish and Kootenai tribes have asked Salish Kootenai College to establish a student health clinic.

Community-based Social Science Research

We urge the Committee to ensure that the bill exemplifies Senator Tester's original intent regarding joint Tribal College-Tribal Government Economic and Community Development Research, including provisions authorizing funding for workforce inventories and industrial analysis, community development through coordinated planning, and multi-stakeholder partnership models. As outlined above, Tribal Colleges are economic drivers on our reservations and we should be working closely with our tribal governments to strengthen our tribal economies and communities.

Dedicated funding for social science research at Tribal Colleges, in consultation with tribal governments is essential for good and data driven decision making. We ask that social science research provisions be included in the legislation.

Thank you, Mr. Chairman, for this opportunity to share our story, our successes, and our needs with you today. We look forward to working with you to achieve enactment of S. 633, the Tribal Health Promotion and Tribal Colleges and Universities Advancement Act of 2009.

The CHAIRMAN. Ms. Taylor, thank you very much. We appreciate your testimony.

A couple of questions.

Mr. Lupe, Mr. Chairman, the bill that is before us, will that permanently settle the tribe's water rights claims in the Salt River watershed? In other words, is this a permanent settlement that is all encompassing?

Mr. LUPE. Yes, this is a permanent settlement. Yes.

The CHAIRMAN. Okay. Is there opposition that you know of to this quantification agreement?

Mr. LUPE. None that I am aware of. All parties are agreed to it.

The CHAIRMAN. Will the project to build the Miner Flat Dam that you describe in your testimony, will that be in compliance with Federal environmental laws, and has the environmental analysis been done on that?

Mr. LUPE. Oh, definitely. We always comply with all the laws, the various environmentally. You name it.

The CHAIRMAN. Ms. Reyes, I neglected to mention I believe Senator Murray and Senator Cantwell are cosponsors. I think the legislation was introduced by Senator Murray in the Senate. The Supreme Court recently issued its decision in the Carcieri case, decided the Secretary of the Interior did not have the authority to place land into trust for tribes not under Federal jurisdiction at the time the Indian Reorganization Act was passed in 1934. We are going to do a hearing on that. I think this has a pretty substantial impact on a lot of tribes.

Have you or the attorneys for your tribe taken a look at that? Do you anticipate that has an impact for you?

Ms. REYES. Well, of course, anything that has to do with transferring land into trust is going to impact us, especially when our whole reservation is located in a flood zone. It is actually holding up any progress of working with the county that, you know, we already have plans working with the county for the fire district, to reopen Fire District 7. And also, we neighbor the park, the national park, and we are working on the local level to—it was actually written into the bill—to work together to build a visitor cultural center with West Trails, that we have already had meetings about and are really excited about. But this is one of the things that is stopping anything from going forward.

The CHAIRMAN. Has the tribe made the efforts to obtain the support of the BIA or the National Park Service, HUD? Have you had any outreach to them?

Ms. REYES. Oh, they are supporting us with this whole bill.

The CHAIRMAN. Good. That is very helpful. You make a strong case for the bill and I think that certainly we will work with our colleagues on it.

Mr. Soto, the efforts that you describe, you have had some acquisitions in the past and the seven parcels that you are talking about

here, have you abandoned your effort to acquire them through the existing process in the Department of the Interior? Is that the reason that there is Federal legislation required?

Mr. SOTO. No, we haven't abandoned that process. It was just on their advice that we proceed in a different manner, and that is what we are doing.

The CHAIRMAN. And whose advice was that?

Mr. SOTO. The BIA.

The CHAIRMAN. I see. Okay. All right.

Ms. Taylor, just quickly, the PATH Act would require partnerships with various levels of government and various agencies. And yet in your testimony, you suggest cooperation hasn't always been what you would expect. What would lead us to believe that if we passed this legislation, which I support and am a cosponsor of, that we will have a better experience?

Ms. TAYLOR. Well, the end product of this bill is to decrease health disparities in Native communities. And part of doing that is to enable tribal colleges to provide health care workforce for native peoples within their own lands and their own native culture.

Health care is highly regulated through out the United States and those regulations are all necessary as we look to build health care promotions. Those regulatory agencies will need to become partners with us as we develop those kind of networks. If that answers your question?

The CHAIRMAN. Thank you.

Senator Barrasso?

Senator BARRASSO. Thank you, Mr. Chairman.

Chairman Lupe, if I could, I am wondering whether the advancement of this Act will help economic development as well?

Mr. LUPE. Oh, yes, definitely.

Senator BARRASSO. Will you tell us a little about that?

Mr. LUPE. Economic development is in dire need on our reservation, and we have included a separate agreement between the parties which we all agree on as a need, and along with the reservoir, there will be built a Miner Flat Dam. Yes. We have utter inclusion in the area of Sunrise Ski and several lakes improvement, and the sawmill, and just the reforestation and so forth, so environmentally. And also the economic development stretches all the way across our reservation. There is a dire need for environmental, excuse me, economic development, yes.

Senator BARRASSO. Ms. Reyes, Vice Chairman Reyes, the same question to you, about economic development opportunities if this goes through

Ms. REYES. Yes, as I mentioned, we are working with Jefferson County currently to reopen Fire District 7. We have no fire district within our area because we are a rural community, and we need to actually relocate all of our homes out of the flood zone.

During our last flood, we had FEMA come down and meet with us, and they were willing to relocate us, but the only thing that stopped that from happening was we had nowhere to relocate anything because everything is the flood zone right now.

Senator BARRASSO. Okay.

Chairman Soto, same question about economic development opportunities.

Mr. SOTO. Right. Four of the parcels are currently being utilized as farmland. Three of the parcels are being considered as recreational-themed development in the very near future.

Senator BARRASSO. What about law enforcement, if I could ask about that? Will that be provided by the tribe or by the Bureau of Indian Affairs? Or how are you going to handle the issue of law enforcement?

Mr. SOTO. The local jurisdiction is annexing all around and about us. They have indicated to us that they would be willing to provide law enforcement if necessary, but we do have our own police department and they are also charged with that. So we have dual jurisdictions on that property currently.

Senator BARRASSO. Thank you.

And Ms. Taylor, could you talk a little bit about recruitment and retention of health care professionals? I know in Wyoming, we have a real challenge of recruiting and retaining, and I think that educating at home is a helpful way to do that, for it is more likely that someone is willing to stay there than move elsewhere.

Are there specific pieces of the legislation that additionally help with recruiting or retaining, or any kind of bonuses or any kind of pay for, you know, a year for your service if you get the education? We have been experimenting with certain things in Wyoming to try to get local folks educated and then keep them there, so they don't just get the education that we invest in and then they move elsewhere.

Could you visit a little bit about that?

Ms. TAYLOR. Okay, it seems that your question is a little multifactoral.

Senator BARRASSO. Yes.

Ms. TAYLOR. One of the things that existed before we initiated our program at the tribal college, there was an agreement between the college and the university to make sure that we cold train Native people at the university. And that program was not very successful because native people tend to want to stay near home and near family and near community. By putting health care and health careers in the tribal colleges, that will facilitate that, instead of sending people away to work at the universities.

Nurses notoriously like to work at the place where they were trained. And so if you send a student away to work at a university, they will tend to want to stay in that particular area.

And so by having the programs themselves on the reservation for the Native people that facilitates them staying on the reservation and taking care of their own people.

Senator BARRASSO. Are there any additional incentives in terms of either financial incentives or scholarships or the forgiveness of loans for staying so many years and serving in that community? Because it seems the ones that even start working there, and then become more and more involved, that then it is more likely they would stay as well.

Ms. TAYLOR. I do not have the answer to that question. In my read-through, I did not see any specific monies for that, but I can get that answer back to you.

Senator BARRASSO. I would appreciate that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Barrasso, thank you very much.

Senator Tester?

Senator TESTER. Thank you, Mr. Chairman, for holding the hearing once again.

Mr. Lupe, Senator Barrasso asked you about economic development. What are your current unemployment levels on the reservation right now?

Mr. LUPE. What now?

Senator TESTER. Your unemployment levels, what are they at?

Mr. LUPE. I would say it is right in the area of 80 percent.

Senator TESTER. Eighty percent?

Mr. LUPE. Yes.

Senator TESTER. And what this water compact bill is about $293 million associated with it also. Correct? And is that for building and maintaining, basically, the drinking water system? Is that mainly what that money is for, or is it for other uses there too?

Mr. LUPE. Yes. We have also included in there the sawmill retooling. We have a mainstay economy. We have a high stand of timber.

Senator TESTER. Yes.

Mr. LUPE. And we had a terrible burn not too long ago which devastated our economy. So we are redefining our machines so we can go into the smaller diameter trees. That will take quite a bit of money in reinvestment so we can put people back to work again.

And there are other areas, like snow-making for the Sunrise Ski Resort and also the recreation lakes development.

Senator TESTER. Good. And that is all part of the $293 million?

Mr. LUPE. Yes.

Senator TESTER. Okay, good.

My geography isn't the best. Where does the Salt River go? It leaves your place and it goes to central Arizona? And then is the water used up at that point in time? Or does it go into New Mexico or another State? Give me an idea.

Mr. LUPE. The headwaters of our reservation all stems from springs and streams from our reservation which forms the Salt River, which flows into Phoenix.

Senator TESTER. Yes. And is that the end of it? They use it all there?

Mr. LUPE. It starts from our reservation. We don't go into another State at all.

Senator TESTER. Okay. And I just want to make sure, as Senator Kyl said, the urban folks are okay with all this? They have been part of the negotiations and they are okay, too. Right?

Mr. LUPE. Oh, yes. All parties in the Phoenix Valley have signed. They have agreed to our bill.

Senator TESTER. Good. Okay.

Jonette, you talked about the park, 37-acre national park. Is that the whole park, or is that a portion of the park?

Ms. REYES. It is a small portion of the park.

Senator TESTER. It is a small portion of the park.

Ms. REYES. Yes, as I mentioned before, they weren't even certain how they acquired that land.

Senator TESTER. Okay. Is the Park Service, what has been their comment about this bill?

Ms. REYES. They are actually pretty supportive.

Senator TESTER. Good.

Ms. REYES. You know, we meet with them regularly. They know what our need is to relocate. They are just very supportive. We have had support with pretty much everybody that we met with in regards to this bill.

Senator TESTER. That is good to know. Okay, thank you.

Mr. Soto, there are seven parcels of land that you have acquired that you want to put into trust.

Mr. SOTO. Yes.

Senator TESTER. And it also talks about 360 acres. Those seven parcels and 360 acres are the same? Or is there more than that in the seven parcels?

Mr. SOTO. I think there is 423 in total.

Senator TESTER. So why isn't it all being transferred at this point in time?

Mr. SOTO. I believe they are.

Senator TESTER. Oh, they are? Okay. That is good to know. Thank you.

And is there anybody that is non-supportive of this happening at the local level?

Mr. SOTO. No, none to this point.

Senator TESTER. Okay, good. Thank you.

Ms. Taylor, I just kind of want to get an idea. You are in Wisconsin. You run a nursing program there at a tribal college in Indian Country. What are the needs as far as workforce needs where you are at? And what percentage of them are you able to supply right now?

Ms. TAYLOR. First of all, I would like to thank you, Senator Tester, for sponsoring this bill. It is very important to the tribal colleges.

One of the sad things about reported data on the American nursing workforce is that only 0.5 percent of the nursing workforce, and yet there is a shortage, is declared American Indian-Native Alaskan.

One of the things that I realized as I was looking at the potential of starting this program, that Native people like to stay near home and community and comfort areas, and take care of their own, and do a lot of those kind of things.

So the workforce I am trying to develop is a workforce to care for our own, to hopefully stay on the reservation, take care of the needs of our elderly. Many of the students that are in my certified nursing assistant course are not looking to get jobs. They are actually looking to take care of their elders at home, which is significant in understanding the mind set.

So yes, we are definitely developing hopefully a Native American-focused workforce to address the needs of the area. But we have shortages of nurses that cycle periodically, and so we are hoping to be able to help meet some of the needs in the area for Native nurses and culturally appropriate care.

Senator TESTER. Is the demand for your program, and it is going to vary throughout the U.S. depending on where you are at and which reservation you are on, but is the demand for your program, I am talking about the people who want to go to school there. Can

you supply them with the educational opportunity? Or do you need to ramp up your program in order to meet the needs of the folks who want to come?

Ms. TAYLOR. Well, the program is sound, I can tell you that.

Senator TESTER. Yes.

Ms. TAYLOR. But what we are trying to do is we are trying to make an educational career ladder so that we can get people slowly into the rigors of a nursing program. A lot of people, everybody, you know, all over the Nation, don't realize how rigorous a nursing program is.

Senator TESTER. Right.

Ms. TAYLOR. And so sometimes they think because we are a tribal college, we are less rigorous, and that is not the case. So we are building our student base, remediating them before they come into the program.

Senator TESTER. Good. And I think you made this point, but I am going to repeat it. The intent of this bill is to train Native Americans in Indian Country so that they will stay there and give the treatment, because I know, at least in Montana, and I think it is true throughout the Country, they want to stay at home. They don't want to leave and get a job off-reservation.

So I appreciate your testimony.

Senator Udall?

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

Senator UDALL. Thank you very much.

Senator Tester, I want to compliment you on this piece of legislation, S. 633, the Tribal Health Promotion and Tribal Colleges and Universities Act.

And Linda, I want to focus on one thing on the Act to see what it is that could really make a difference in Indian Country. I mean, you are a nurse. You are very aware of the epidemic we have of diabetes in Indian Country. We have it severely in New Mexico on many of our reservations. And we all know that it is prevention and really getting out in front of these kinds of issues that could make a real difference.

I at one point had an experience on the Navajo Reservation where several Navajo women, elderly women that knew the traditional Navajo diet, which is much different than, as they would describe, they called the white man's diet the biliganna diet. They said stay away from the biliganna diet and focus on the traditional native diet, which was high in complex carbohydrates and protein and things like that.

And what they did is they had a fair in their community, and they cooked the traditional diet, because many people didn't know what the diet was, and then brought in the young people and had them sample it and see how good it was, with the idea of also having health people there that could talk about the health benefits of it.

And I am wondering in this legislation, do you think health fairs like that, those kinds of events where tribal communities take control of their health, that you know, there is a personal responsi-

bility element. They step up to the plate like you are probably doing in your community.

Is that allowed under this bill? Is this something that would be encouraged?

Ms. TAYLOR. Very much encouraged under this bill. Health and Wellness Fairs are an integral piece of this particular bill. So yes, and I agree with you that having wellness fairs are very, very important, but I also want to reiterate, just like the rest of us when we go to the physician and he tells us we need to adjust our diet, we do so for a month, and then we are kind of like looking at the Twinkies and we are going, oh, let's go back to that.

So it needs to be redone on a regular basis. So we need to hit it often with looking at changing diet. That kind of behavioral modification isn't done with one single wellness fair. It needs to be done on a regular basis to get people talking about it, sharing recipes, and looking at different ways of preventing health disparities.

Senator UDALL. My sense is what this legislation is trying to do is grow those capabilities and capacities at the tribal level, as you are doing at your tribe where you are a nurse, and build that to move forward with these kinds of preventive agendas.

Ms. TAYLOR. Correct. Prevention, if we can get them young, if we can get them to think about their health and the choices that they make on a regular basis, it would definitely be beneficial to the overall health and wellness of the people.

Senator UDALL. And isn't it much better to start earlier and get those habits early than it is to have to try to break bad habits later? That's the idea of focusing on young people and focusing on a prevention agenda.

Ms. TAYLOR. Right. And the more you can get the elders and the children to interact, the better off the generations will be.

Senator UDALL. In your statement, you say perhaps no other tribal college presidents and students know better of our nearly daily struggle to survive as the most poorly funded institutions of higher education in the Country. Can you speak to that and to how you think this piece of legislation would make a difference on that front?

Ms. TAYLOR. We are entirely grant funded, so that makes it very difficult. The tuition that we charge is about the same as the State community colleges in the area, but we get no State funding the way the community colleges do. And so that makes it necessary to apply for grants on a regular basis.

Legislation like this will facilitate some of that, to know that there are some monies out there to help us as we definitely address the wellness needs of our communities in multi-factoral ways. And as a tribal college, I think we need to become the center of that health initiative.

Senator UDALL. Thank you very much.

I also thank the other witnesses for their testimony today, and very much appreciate Chairman Dorgan bringing these important pieces of legislation before the Committee.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator Cantwell?

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman.

I, too, want to thank you for holding this important hearing, in particular having Senate bill 443 on the docket today.

I welcome Ms. Jonette Reyes to Washington. Thank you for traveling all this way to give testimony to this Senate bill on safe homelands. I was looking for the right word, safe homelands.

Ms. Reyes, I don't think that someone could probably travel further in the continental United States to get to Washington, D.C. How far is the Hoh Reservation from the Pacific Ocean?

Ms. REYES. Right out our back door and sometimes outside our office window.

[Laughter.]

Senator CANTWELL. Which is part of the problem.

Ms. REYES. Definitely.

Senator CANTWELL. And what is the closest city to you?

Ms. REYES. Well, it is not necessarily a city. It is the town of Forks.

Senator CANTWELL. And how large is Forks?

Ms. REYES. If you blink during the drive through, there is one stoplight. If you blink, you might miss it and there are some people that do. But it is not very large. There is like one grocery store and the nearest shopping place after that is probably about an hour and a half away in both directions. So it has maybe 3,000 and a couple of vampires. I don't know if you have heard.

[Laughter.]

Senator CANTWELL. Yes, that movie is very popular. I am glad to know that Forks has made it to international fame in that particular movie that has caught everyone's attention.

So to say that you are in a remote location doesn't even quite do it justice, does it?

Ms. REYES. No, not really. I think Forks is remote, but we are even more so.

Senator CANTWELL. Yes, and so having the ability to use whatever available land on your reservation for your own tribal economic sustainability is critical?

Ms. REYES. Yes, definitely. And you know, we already have an emergency management plan in the works with the county, as I had mentioned numerous times. And we are going to be serving not only our own tribal community, but the whole community of the west end Jefferson County. Because like I mentioned before, we work with the Olympic Correctional Center. We do sandbagging with the inmates. And you know, they have no fire protection as well as ourselves, and there is also in Olympic National Park like resort, Kalaloch Lodge. There is no fire protection for them as well.

Senator CANTWELL. So how much of the tribal acreage is buildable land?

Ms. REYES. Right now?

Senator CANTWELL. Yes.

Ms. REYES. Well, we are in the flood zone, so the land that we purchased right now, we are just kind of hoping for all that to get into trust. We need the one little 37-acre piece of Olympic National Park for that to happen.

Senator CANTWELL. So that you could actually have some——

Ms. REYES. Contiguous land all the way to the other land that we purchased.

Senator CANTWELL. Yes. But the purchase of that property had been to give the reservation some sustainable development land. Is that correct?

Ms. REYES. Correct, to move us out of the flood zone.

Senator CANTWELL. Yes.

Ms. REYES. We haven't been able to build anything because we are in a flood zone and we are not eligible to apply for any 184 loans for home grants or anything. As I mentioned before, our households have two to three families per household.

Senator CANTWELL. So I know that you mentioned in your written testimony that you expressed your condolences to the people of North Dakota on the Red River who have basically faced this same challenge you are facing.

Ms. REYES. Yes, we are familiar with it. Actually, we have three storms coming in on Sunday. We are going back home Saturday night, so maybe the next day we can help sandbagging.

Senator CANTWELL. Yes.

Ms. REYES. So we completely understand when it comes to flooding.

Senator CANTWELL. So Mr. Chairman, I think this legislation truly is important to helping these individuals really sustain their current site and reservation and to provide some opportunity for economic development. I think it has been well thought out, well discussed with the various partners in the region. I very much appreciate Ms. Reyes traveling all of this way to be here to give testimony to it, and again for you holding the hearing on it. I hope we can move the legislation.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Mr. Chairman, thank you for moving to consider the Hoh Indian Tribe Safe Homelands Act so quickly.

The situation facing the Hoh Tribe is dangerous and desperate, so it is important that we move as fast as we can on this bill.

I also want to thank the Vice Chair of the Hoh Tribe, Jonette Reyes (Jone-ette Rays) for making the long trip from the other Washington, and for her willingness to testify on such short notice about this important piece of legislation.

It is vital to hear directly from the Tribe about the conditions they face.

Since 1893, The Hoh Tribe has occupied a one-square-mile reservation on the banks of the Hoh River where it meets the Pacific Ocean in Washington state.

While this location may sound picturesque, the fact is that the reservation is bordered by:

- An ever-changing river
- The unpredictable Pacific Ocean; and
- The Olympic National Park

This severely limits the Tribe's ability to get out of harm's way if necessary.

Due to repeated storms, heavy rain, and the movement of the Hoh River by a half of a mile, the Tribe's village is continually threatened with flooding during the winter months.

In fact, areas near the reservation can receive over 100 inches of rain a year.

Ninety percent of the reservation now sits in a flood plain and 100 percent of their land sits within a tsunami zone.

Many of the buildings located on the existing reservation are permanently sandbagged due to the threat of flooding. And, many houses have been lost to the river over the last 10 years.

Year after year, the Hoh Tribe must battle Mother Nature as ocean waters threaten to wash away their homes and tribal buildings.

These native peoples deserve to live in a place where sandbags aren't the norm, and it is our trust responsibility to take action.

Transferring the ownership of a 36 acre piece of federal land should never be taken lightly, but in this unique situation, we are in the position to help these people rest a little easier.

By transferring this land to the Tribe and taking land the Tribe already owns into trust, the Tribe will be able to move out of danger . . . and breathe a much-needed sigh of relief.

Over 20 individuals and groups are supporting this legislation including:

- The Governor of Washington, Christine Gregoire;
- All of the local House and Senate office holders;
- The Affiliated Tribes of Northwest Indians; and
- The National Congress of American Indians.

I look forward to working with you to schedule a quick markup for this legislation, so we can help this group of people that we have a responsibility to help.

Thank you.

The CHAIRMAN. Senator Cantwell, thank you very much.

It is a long trip for, was it 37 acres?

Ms. REYES. Yes.

[Laughter.]

The CHAIRMAN. But you make a compelling case, and I will work with Senator Cantwell and Senator Murray.

Ms. REYES. But everything lays on the transfer of those 37 acres.

The CHAIRMAN. I understand.

Ms. REYES. Not only for us, but for our surrounding communities as well.

The CHAIRMAN. You make a very compelling case.

Let me thank all four witnesses who have come to us today. We wanted to hold this hearing. We will, as I said, begin a series of votes in the Senate very shortly. We appreciate your traveling long distances to make the case.

Chairman Lupe and Ms. Reyes, Councilman Soto, Ms. Taylor, thank you very much.

And we will obviously consider the testimony and begin working on this legislation, and we will also keep the hearing record open for those who may wish to submit testimony to be part of the permanent record. We will hold this record open for two weeks if there are those who wish to submit supplemental testimony.

This hearing is adjourned.

[Whereupon, at 11:04 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF MIKE JACKSON SR., PRESIDENT, QUECHAN TRIBE, FORT YUMA INDIAN RESERVATION

I am writing to the Committee on behalf of the Quechan Tribe of the Fort Yuma Indian Reservation located in California and Arizona in opposition to H.R. 326, the Cocopah Lands Act, which was passed by the House of Representatives on March 3, 2009, and subsequently referred to your Committee. The Quechan Tribe requests that the Senate Committee on Indian Affairs reject H.R. 326 for the following reasons. First, existing federal statute and Department of the Interior regulations provide a process for tribal fee to trust land acquisitions, making it unnecessary for Congress to pass special legislation. Second, lands proposed to be taken into trust under H.R. 326 fall within, and adjacent to, the traditional territory of the Quechan Tribe. Third, taking lands into trust (even with the current restriction on gaming contained in H.R. 326) increases the likelihood that gaming could ultimately occur on the trust lands, threatening the economic security of the Quechan Tribe. Fourth, the scattered nature of the proposed trust parcels could lead to resource management conflicts, especially with regard to future discoveries of cultural resources on the subject lands.

A. Existing Federal Statute and Department of the Interior Regulations Provide a Process For Tribal Fee To Trust Land Acquisitions.

In 1934 Congress passed the Indian Reorganization Act which, among other things, allows the Secretary to take land into trust for Indian tribes and declare such lands to be reservation lands. Regulations promulgated by the Bureau of Indian Affairs provide an administrative procedure for implementing the Act. That process allows interested parties, including nearby Indian tribes, to participate in the administrative process, to receive notice of proposed and final administrative actions, and to seek judicial review of final administrative decisions relating to fee-to-trust acquisitions. The Cocopah Lands Act, H.R. 326 would short cut

that procedure and deny interested parties such as the Quechan Indian Tribe an opportunity for meaningful input into the administrative decision or the ability to seek judicial review of any final administrative decision. The Quechan Tribe urges that Congress not make fee-to-trust acquisition decisions on a case-by-case basis without allowing procedural input and participation by interested parties. Further, for Congress to act on a case-by-case basis would serve to thwart any meaningful standards for such acquisitions.

B. H.R. 326 Is An Infringement On The Quechan Tribe's Traditional Territory.

The Quechan people and their ancestors have inhabited the area surrounding the confluence of the Colorado and Gila Rivers for centuries. The Quechan Tribe's Fort Yuma Indian Reservation was created in 1884 within the traditional territory of the Tribe. As recognized by the 1964 opinion of the Indian Claims Commission (Docket 319), the Tribe's traditional territory extends far beyond the established boundaries of the present day Fort Yuma Reservation. The Tribe believes its traditional lands extend even further than the Claims Commission determined was compensable under the Indian Claims Commission Act.

The existing Cocopah Reservation, created by Executive Order in 1917, is located directly across the Colorado River from the California portion of the Quechan Tribe's Fort Yuma Reservation. A portion of the Fort Yuma Reservation is located in Arizona in the vicinity of the seven parcels to be taken into trust for the Cocopah Tribe under H.R. 326.

It is inappropriate for the United States to take lands into trust for the Cocopah Tribe, where those lands fall within, and adjacent to, the traditional territory of the Quechan Tribe. One or more of the parcels in question fall within the adjudicated boundaries of the Quechan Tribe's traditional territory. All of the parcels are in close proximity to the Tribe's territory and the lands have a strong historical, traditional, and cultural connection to the Quechan. H.R. 326 is an infringement on the Quechan Tribe's traditional territory.

C. H.R. 326 Could Threaten The Quechan Tribe's Economic Security.

The Quechan Tribe also opposes any effort of the Cocopah Tribe to lay the groundwork for future gaming on lands nearby the Fort Yuma Indian Reservation. The Quechan Tribe operates two casinos within the Fort Yuma Reservation. The first was opened in 1996 in the Arizona portion of the Fort Yuma Reservation under the terms of a Class III Gaming Compact between the state of Arizona and the Quechan Tribe, and approved by the Secretary of the Interior pursuant to the Indian Gaming Regulatory Act. The second casino, which opened on February 13, 2009, is located approximately six miles west of the City of Yuma, Arizona within the California portion of the Fort Yuma Reservation.

As passed by the House, Section 2(7) of H.R. 326 expressly provides that "the acquired parcels shall not be taken into trust for gaming purposes." The Cocopah Tribe currently operates a gaming casino and hotel on trust lands within the Cocopah Tribe's original Executive Order

Reservation created in 1917. If the Cocopah Tribe were allowed to conduct gaming on the newly acquired lands closer to the City of Yuma and the Quechan Tribe's existing gaming operations, the Quechan Tribe's gaming operations and revenue would be detrimentally affected.

Although the Tribe strongly agrees with the House's restriction prohibiting the use of the lands for gaming, the Quechan Tribe does not believe that the restriction goes far enough. By taking the lands into trust, the United States is laying the groundwork for future Cocopah arguments that the restriction on gaming should be removed, or that other avenues for gaming under IGRA may apply. Any time that land is taken into trust, there is a possibility of future gaming. This causes great concern to the Quechan Tribe and threatens the economic security of the Tribe.

D. H.R. 326 Would Lead To Resource Management Disputes.

Taking these parcels into trust would lead to resource management conflicts. First, the non-contiguous scattered nature of the parcels in question could lead to difficulties. Trust management of lands is always more difficult when parcels are not contiguous and boundaries in the desert environment are often hard to locate.

In addition, there have been disagreements in the past between the Cocopah and Quechan Tribes with regard to cultural resource discoveries and protections within and adjacent to the Quechan traditional territory. If the proposed lands are taken into trust, and cultural resources are discovered on those lands in the future, the Cocopah may obtain an unjustified advantage in claiming rights or interests to the discovered resources - even though the Quechan have a stronger historical and traditional connection to the land.

Finally, allowing these lands to be taken into trust for the Cocopah Tribe would create environmental, land use and development issues that could affect the Quechan Tribe, but because of the trust status of the land, the Quechan Tribe's ability to protect its interests would be weakened.

The Quechan Tribe opposes H.R. 326 and requests that the Senate reject its passage. Thank you for your consideration in this matter.

PREPARED STATEMENT OF PHIL GORDON, MAYOR, CITY OF PHOENIX

Chairman Dorgan, Vice Chairman Barasso, and Members of the Committee, thank you for holding this hearing to discuss White Mountain Apache Tribe Water Right Quantification Act, S. 313. The City of Phoenix, an incorporated municipality within Maricopa County, Arizona, greatly appreciates the opportunity to offer testimony in support of the White Mountain Apache Tribe Water Right Quantification Act, S.313, which settles the long standing water rights claims of the White Mountain Apache Tribe. The Act provides many benefits to the Tribe, the federal government, the State of Arizona and the City of Phoenix.

Passage of this legislation is a critical step for the implementation of a quantification agreement so that construction of a desperately needed municipal water supply on the White Mountain Apache Tribe (WMAT) reservation can begin. Completion of the WMAT Rural Water System that includes construction of the Miner Flat Dam and Pipeline on the North Fork of the White River to deliver municipal water supply on the reservation to the cities of White River, Cedar Creek, Carrizo, and Cibecue will fill this critical need for a dependable drinking water supply for the Tribe.

To provide some background to the quantification agreement, the City and WMAT have competing claims to the rights to Arizona's most scarce and precious natural resource, water. The City and the Tribe are not alone in this regard. The water rights claims and controversies attendant to these claims also involve other cities and towns, agricultural users, water providers the State of Arizona and the federal government. The quantification agreement, which the City helped craft, provides resolution for all these claims and controversies in a fair and equitable manner to all parties, including the federal government.

The nature and extent of the disputes deserves some explanation. The Fort Apache Reservation, home to the WMAT, is at the headwaters of the Salt River. Over 40% of the flow of the Salt River originates on the Reservation. The City of Phoenix currently meets about 50% of its total water demand with supplies that come from the Salt River. Thus, the Salt River is a vital water resource for the 1.5 million people living in Phoenix. The WMAT contends that it has a right to use substantial amounts of water that now flows to Phoenix and other downstream water users. The City of Phoenix has relied upon its water rights to the Salt River and its tributaries, through deliveries by the Salt River Project, for many years and use by WMAT upstream will negatively impact the City.

Without this legislation the quantification agreement will not become effective, and the parties, including the federal government, will be forced to continue to litigate their disputes in court. A general stream adjudication to the rights of the Gila River and all its tributaries, the Gila River Adjudication, has been underway in Arizona since the 1970's. Without this bill the Tribe, the federal government and thousands of state parties will continue to have to assert and defend their claims in an expensive and lengthy process. This settlement solves that problem as well.

There is a clear need for settlement of all these disputes. This settlement is appropriate and it is fair to all parties including the federal government and the WMAT. All parties have been well represented in negotiating it. The City of Phoenix, for its part, has given up some of its Salt River water supplies, for the benefit of the WMAT. The City will also lease 3505 acre-feet per year of the Community's CAP water supply at an upfront cost of about $9,000,000. Congressional authority for the Tribe to lease its water is necessary and that authority is contained in this bill. Phoenix' contributions to the settlement package are significant, as are the contributions of the other parties in Arizona. Reciprocal waivers of claims between the Community, the federal government and the City of Phoenix and other state parties are also a key part of this legislation and are a vital component of the settlement.

In summary, the City of Phoenix believes the Apache Tribe Water Right Quantification Act is a fair, equitable and cost effective solution for the settlement of financial and water claims for the benefit of the State of Arizona and its citizens, Arizona Indian tribes and the federal government and urges its enactment.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BYRON L. DORGAN TO HON. PAUL SOTO

1. Both the Speedway and McDaniel purchase areas are inside the Accident Potential Zone of the Marine Corps Air Station Yuma (MCAS) runway. Is the Tribe aware of the safety hazards associated with these parcels? What actions will the Tribe take to ensure this area isn't developed in a manner detrimental to the continued operations at MCAS?

The Tribe will continue to keep open lines of communication with the Marine Corps Air Station. In previous correspondence with the base commander and his representative in civil matter, the Tribe is aware of the concern of the MCAS in reference to its mission and will cooperate in a community spirit. (Attachment 1A)

2. Please explain in greater detail the Tribe's efforts to seek an administrative land-into-trust acquisition. How many requests were made to the BIA? Did the Tribe receive a written response that it could share with the Committee?

The Tribe began inquiry with the area BIA office in the late 90's for assistance in moving the properties into trust. (Attachment 2A & 2B)
Before or about the time the administrative application was being put together the Secretary began the process of amending 25 CFR, specifically the Land to Trust procedure. The Tribe was then advised orally by BIA that no request would be processed until the amendments were completed and enacted. The administrative Land to Trust process was on hold and no lands could be moved into trust administratively for several years. The Tribe in consultation with its then Representative, Congressman Pastor, began pursuing the Land to Trust through Congressional action since the administrative process was unavailable. This continued on with Congressman Grijalva's assistance to today. (The Cocopah Tribe is now in Congressman Grijalva's District.)
It wasn't until more recently that the 25 CFR amendments became effective. The Cocopah Tribe has already committed to the present congressional action path. To go back to the administrative process would probably set the Tribe back in its quest another 4-5 years. If that is the decision of this Congress so be it, the Tribe will have no choice. The Cocopah Tribe has historically relied on Congress. Congress is truly its trustee. In 1985, Congress enacted legislation which more than doubled this still very small reservation to its current 6431 acres. The Cocopah People have always looked to Congress for assistance and does so again.

3. Would placing the land into trust impact any existing easements, mineral claims, or rights-of-way?

Our research at this time does not indicate any impact.

4. Do any of the purchased lands have Federal reserved rights to surface water or groundwater?

No.

5. Has the Tribe consulted with neighboring governments regarding the impact of trust acquisition on their tax or assessment base?

   The Cocopah Tribe Planner has consulted with the Tribal General Counsel on the issue and has also met with the Yuma County Assessor at various times discussing relevant topics. The general response from Yuma County has been positive. Surrounding towns and cities are currently being surveyed, but we are confident of a favorable response as well.

6. Has the Cocopah Tribe entered into any inter-governmental agreements with State and/or local governments to address matters such as water supply, sewage, or law enforcement or emergency fire protection services that would apply to the lands that would be taken into trust under this bill?

   The Cocopah Tribe has an Intergovernmental Agreement with the City of Somerton AZ Fire Department for fire and related services on the reservation. All other services are provided by the tribe. (Attachment 6A – Coversheet)

7. With respect to the land to be taken into trust under the bill, will police or law enforcement services be provided by the Bureau of Indian Affairs, by the Cocopah Tribe, or by local, non-tribal agencies?

   The Tribe operates its own Police Department and provides 24 hour 7 days a week law enforcement to every part of the reservation. All officers are state certified peace officers

8. Who, or what entity or agency, will provide emergency fire protection services for this land?

   The City of Somerton/Cocopah Fire Departments will provide all fire protection services for this property.

9. Is there an adequate supply of water to the land in question for all of its planned uses?

All research the tribe has initiated indicates there is more then adequate water

10. What is the source of supply of water to be used on the land?

Parcel 1 & 2 ***(Sibley Purchase 1986)***

This property is farmland abutting the West Reservation on the eastside and the crops are irrigated from the ground water wells located on the property. There are no existing surface water rights or rights to water from the Colorado River. The water table is less than 10 feet and ground water use is not regulated in the Yuma Valley.

Parcel 3 ***(McDaniel Purchase 1993)***

This property is vacant non-agricultural desert land on the Yuma Mesa abutting the East Reservation and Highway 95 and has no established water right from the Colorado River water. It has access to the same ground water supply as is accessible to the entire East Reservation.

Parcel 4 & 5 ***(Holland Purchase)***

This property has no known water right from the Colorado River water. It abuts the North Reservation and provides ingress and egress to and from the Cocopah R.V. Park and Golf Course.

Parcel 6 ***(Powers Purchase 1997)***

This parcel abuts the North Reservation through the Holland Purchase. It is agricultural land with fully established prior perfected rights with a priority date of 1915 as set forth in the U.S. Supreme Court Supplemental Decree of 1979 in Arizona v. California 439 U.S 419, 581 Ed 2d 627, 99 S Ct 995 (1979).

Parcel 7 *(Speedway Purchase 2005)*

> ***This parcel abuts the East Reservation on the North. It is non-agricultural desert land located on the edge of the Yuma Mesa. It has been used as a dirt race track with grandstands approximately the last 40-50 years. It has no known existing water rights from the Colorado River water. Water is available from ground water wells on the property.***

11. Who, or what entity or agency, will provide water to be used on the land?

Parcel 1 & 2 *(Sibley Purchase 1986)*

> ***There are existing tribally owned and operated ground water wells and domestic/commercial water systems in place to supply the water necessary to the use of this property.***

Parcel 3 *(McDaniel Purchase 1993)*

> ***There are existing tribally owned and operated ground water wells and domestic/commercial water systems in place to supply the water necessary to the use of this property.***

Parcel 4 & 5 *(Holland Purchase 1997)*

> ***Any necessary water supply will be furnished by the existing tribally owned and operated water systems on the North Reservation.***

Parcel 6 *(Powers Purchase)*

> ***The Tribe will continue to provide water to this property.***

Parcel 7 *(Speedway Purchase 2005)*

> ***Existing tribally owned and operated water systems serving the East reservation will be utilized for further development.***

12. What are the planned or contemplated uses of the land?

Parcel 1 & 2 ***(Sibley Purchase 1986)***

Planned use for this property will be agriculture.

Parcel 3 ***(McDaniel Purchase 1993)***

There is currently no land use plan in force for this property. Any anticipated use will be mindful of the Marine Base restrictions.

Parcel 4 & 5 ***(Holland Purchase 1997)***

There is currently no land use plan. This property may be used as storage units for the R.V Park and Reservation residents.

Parcel 6 ***(Powers Purchase 1997)***

This property will continue to be agriculture.

Parcel 7 ***(Speedway Purchase 2005)***

While there is currently no land use plan in place for this property, the interest from the Yuma community is to continue the racetrack activity.

Attachment 1A

UNITED STATES MARINE CORPS
U.S. MARINE CORPS AIR STATION
YUMA, ARIZONA 85369-5001

IN REPLY REFER TO:
11000
3AQ
24 Nov 93

DEC 1993
FORT YUMA
AGENCY
YUMA, ARIZONA

Chairman
Cocopah Tribe
P. O. Bin G
Somerton, AZ 85350

Dear Chairman:

It has come to our attention that the Cocopah Indian Tribe has purchased 70 acres of land adjacent to the East Cocopah Indian Reservation. The acreage that was acquired is in the Accident Potential Zone-2 (APZ-2) for one of the main jet runways at the MCAS Yuma/Yuma International Airport Complex.

APZ's were created for the express purpose of describing compatible land uses for the safety of people and property under the aircraft flight path. These zones are based on national historical data which indicate significant aircraft crash and accident potentials.

In an interest to protect the safety of aircraft and persons on the ground, land use in APZ-2 is limited to open space agricultural buildings and restricted to industrial use with a limit of 50 person assemblies in a building or area (per acre). These limits are described in the County Zoning Ordinance. We, therefore, request that the 70 acres not be incorporated into the reservation and remain subject to the County Zoning Regulations.

We are not aware of what your plans are for your acquired land, but I am confident that we can work together and reach mutual agreement on compatible land use. If we can answer any questions, please call my representative, Mr. T. A. Manfredi. His phone number is 341-2103/2272.

Sincerely,

W. H. HANSEN
Colonel, U. S. Marine Corps
Commanding Officer

Copy to:
Bureau of Indian Affairs (Ft Yuma Agency)

Route
Supt.
Admin.
1. Real Prop.
Tribal Op.
2. Land Occ. 12/1/93
Fire Suppression

Attachment 2A

THE COCOPAH INDIAN TRIBE

COCOPAH TRIBAL OFFICE
County 15th & Avenue G
Somerton, Arizona 85350

Telephone: (520) 627-2102 or 627-2061
Fax: (520) 627-3173

January 6, 1997

MR. WILLIAM PYOTT
ACTING SUPERINTENDANT
FT. YUMA AGENCY
BUREAU OF INDIAN AFFAIRS
P.O. BOX 11000
YUMA, AZ 85366

Re: Tribal Land Acquisition

Dear Mr. Pyott:

The Cocopah Tribe has been pursuing the purchase of the W.S. Power Property, legal description and map enclosed. As you are aware the process whereby a Tribe can put land into Trust has been modified to include a 30 day public review period. Likewise the Tribe is in the process of completing some internal matters before the purchase can take place. We would like the Bureau to begin its review process, evaluation, and appraisal of the subject property. Ideally the Tribe would like the Property to go directly into Trust at the closing of the transaction. We are requesting your input on how this can take place and what the Bureau's time frame would be in completing its review and input on this transaction. Perhaps we could begin drafting the Trust Proposal Application for review and comment from the appropriate officials.

In any event I will like to meet with you after I receive additional instructions from the Tribal Council.

Very truly yours,

Rodney Martin
Tribal Administrator

cc. Sherry Cordova, Tribal Chairperson

Attachment 2B

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
FORT YUMA AGENCY
P.O. BOX 11000
YUMA, ARIZONA 85366-1000

SEP 16 1999

IN REPLY REFER TO:

Office of the Superintendent
(760)572-0248

Honorable Sherry Cordova, Chairperson
Cocopah Indian Tribe
County 15th & Avenue G
Somerton, Arizona 85330

Dear Ms. Cordova:

This acknowledges our September 7, 1999, receipt of Tribal Resolution No. CT-99-23[1].

Through a September 8, 1999, telephone conversation between Mrs. Laura Austin, Agency Realty Officer, and Mr. Paul Soto, Tribal Council Secretary, the regulatory requirements for taking land into trust were discussed. Reiterating Mrs. Austin's conversation with Mr. Soto, delivery of Resolution No. CT-99-23 alone does not satisfy the regulation governing tribal requests for land acquisitions found at Title 25 Code of Federal Regulation Part 151 (25 CFR 151)[2].

Also, consequent to Mrs. Austin's conversation with Mr. Soto, we were advised all the documentation needed to satisfy the regulation will be provided. Regrettably, this has not occurred to date.

With respect to the intent expressed in this tribal enactment, Secretarial approval is required for such matters pursuant to Article VI, Section 1.B(1), of the Cocopah Tribal Constitution. In addition, Article VIII of the Tribe's constitution requires the Agency Superintendent to approve or disapprove a tribal enactment within ten days of receipt.

---

[1] Four with original signatures and without attachments.

[2] Specifically, Sections 151.9 through 151.12.

We are unable to initiate action as requested by Tribal Resolution No. CT-99-23 because we have not been provided documents and information needed for Secretarial consideration.

Finally, the lack of required documents and information combined with the time limit stipulated in the Cocopah Tribal Constitution dictates that we disapprove the enclosed Tribal Resolution No. CT-99-23.

If you have any questions, please call Ms. Karen Clingenpeel, Agency Indian Self-Determination Specialist, at the telephone number referenced on page one.

Sincerely,

Superintendent

Enclosure

cc: PAO Area Director, w/cy
PAO Real Estate Services, w/cy
Cocopah Tribe, Attn: Paul Soto, Tribal Council Secretary
FYA Land Ops., Attn: Bill Pyott, Land Ops. Officer, w/cy
FYA Real Estate Svs., Attn: Laura Austin, Realty Officer w/cy

Received
SEP 27 1999
FYA

RESOLUTION NUMBER CT-99-23
OF THE GOVERNING BODY OF THE COCOPAH TRIBE
OF THE COCOPAH RESERVATION

A RESOLUTION OF THE COCOPAH TRIBE TO PLACE PROPERTY WHICH THE TRIBE HAS PURCHASED AND DESIRES TO PLACE INTO TRUST FOR THE BENEFIT OF THE COCOPAH INDIAN TRIBE.

WHEREAS: The Cocopah Tribal Council is empowered to act on behalf of the Cocopah Tribe under Articles V and VI of the constitution and Bylaws of the Cocopah Tribe, and

WHEREAS: The Cocopah Indian Tribe is a federally recognized tribe, and

WHEREAS: the Cocopah Indian Reservation consists of three non-contiguous parcels of property that make up the West Cocopah, East Cocopah, and North Cocopah Reservations, and

WHEREAS: the Cocopah Indian Tribe has purchased parcels of fee land adjacent to each of its Reservation, and has determined that the land would best serve the members of the Cocopah Tribe if placed into Trust and thus becomes part of the Cocopah Reservation.

NOW THEREFORE BE IT RESOLVED: that the Tribal Council of the Cocopah Indian Tribe formally requests the Secretary of the Interior of the United States to initiate the process whereby the property will ultimately be placed into Trust. BE IT FURTHER RESOLVED that the Cocopah Tribal Council authorizes the Chairperson or a designated representative to execute all necessary documents on behalf of the Cocopah Tribal Council..

********** CERTIFICATION **********

The foregoing Resolution was adopted by the Tribal Council at a special meeting held on 27th day of August, 1999, by a vote of 3 "FOR", and 0 "OPPOSED",with 0 "ABSTAINING".

Sherry Cordova, Chairperson

Paul Soto, Council Secretary

APPROVED/DISAPPROVED

Superintendent, Fort Yuma Agency

Date 9/16/99

Attachment 6A

SECOND REVISED INTERGOVERMENTAL AGREEMENT BETWEEN COCOPAH TRIBE AND CITY OF SOMERTON FOR JOINT FIRE DEPARTMENT

I. PURPOSE OF AGREEMENT

The City of Somerton (Somerton) and the Cocopah Tribe shall establish a Somerton-Cocopah Fire Department (Fire Department) to provide fire fighting, emergency services, and related services within the jurisdictional limits of Somerton and on the Cocopah Reservation, consisting of the North, East and West Reservations.

II. PARTICIPANTS

This Agreement amends and replaces the revised agreement entered into by and between the Cocopah Tribe and Somerton on June 8, 2005, as originally adopted on August 11, 2000.

III. STATUTORY AUTHORITY

A. The constitution of the Cocopah Tribe permits the Tribe to make such contracts, leases and agreements and incur such obligations as are deemed reasonably necessary or desirable within the general scope of its activities and operations to enable it to perform its duties.

B. A.R.S. § 11-951 through § 11-954, Joint Exercise of Powers, permit Somerton to enter into an agreement with the Cocopah Tribe for joint or cooperative action.

IV. DURATION

This Agreement may be terminated as provided in Paragraph VI. Until such termination the Agreement shall remain in full force and effect without expiration unless the Agreement violates any Arizona law, rule or regulation either now enacted or which may be enacted in the future. In case of violation of Arizona law, this Agreement shall immediately terminate. Upon termination, property of the Fire Department shall be disposed of as agreed to at that time between Somerton and the Cocopah Tribe, except that:

A. Any equipment or property donated or otherwise provided by Somerton during the term of this IGA shall be returned to Somerton and any equipment or property donated or otherwise provided by the Cocopah Tribe during the terms of this IGA shall be returned to the Cocopah Tribe;

B. Any property or equipment funded solely by Somerton during the term of this IGA shall be deemed to be the property of Somerton and any property or equipment funded solely by the Cocopah Tribe shall be deemed to be the property of the Cocopah Tribe.

SALT RIVER PROJECT
P. O. Box 52025
Phoenix, Arizona 85072-2025

JOHN M. WILLIAMS, Jr., PRESIDENT
DAVID ROUSSEAU, VICE PRESIDENT
RICHARD H. SILVERMAN, GENERAL MANAGER

February 27, 2009

Chairman Byron Dorgan
Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Vice Chairman John Barrasso
Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

RE: White Mountain Apache Tribe Water Rights Quantification Act of 2009 (S. 313)

Dear Chairman Dorgan and Vice Chairman Barrasso:

Settlement of water rights disputes in the Gila River and Little Colorado River Basins in Arizona is a major priority for the Salt River Project (SRP). After years of negotiations, late last year, agreement on the terms of a water rights quantification with the White Mountain Apache Tribe (Tribe) was reached by the major users of water from the Salt River, the major tributary of the Gila River, local water users adjacent to the Tribe's reservation in the Little Colorado River Basin, and the state of Arizona. In recognition of this, on January 26, 2009, Senator Kyl introduced the White Mountain Apache Tribe Water Rights Quantification Act of 2009 (S. 313). Passage of S. 313, which has been referred to your Committee, is one of the last major steps before implementation of the water rights quantification agreement and construction of a desperately needed municipal water supply for the Tribe's reservation. SRP fully supports S. 313 and looks forward to working with you and your Committee on passage of this important legislation.

S. 313 would approve the settlement of the Tribe's water rights claims and authorize construction, in compliance with all federal environmental laws, of several projects contained in the quantification agreement. The most critical project is the White Mountain Apache Tribe Rural Water System consisting of the Miner Flat dam, a water treatment plant and water delivery system to serve the majority of the reservation's population. Currently a small well field provides municipal drinking water for the majority of the Tribe's population, but the aquifer is insufficient to meet reservation water demands and severe water restrictions are commonly implemented

across the reservation during the dry summer months. A new source of municipal water supply is greatly needed on the Tribe's reservation.

The Miner Flat dam and reservoir, located on the North Fork of the White River, a tributary of the Salt River, would serve as the municipal water supply for the communities of Whiteriver, Cedar Creek, Carrizo, and Cibecue, located on the reservation. The White Mountain Apache Tribe Rural Water System has been determined by the settlement parties, including the United States, to be the best option to meet the needs of the nearly 15,000 residents on the reservation and is estimated to cost approximately $128 million.

Thank you for your commitment to tribal water settlements in Arizona and throughout the west. Settlement of the Tribe's water rights claims is critical to provide water supply certainty for the Tribe, SRP, and its stakeholders, and your consideration of the issue is greatly appreciated. I look forward to working with you and your staff on the White Mountain Apache Tribe Water Rights Quantification Act of 2009.

Sincerely,

John M. Williams, Jr.

John M. Williams, Jr.

cc: Senator Jon Kyl
Senator John McCain
Representative Ann Kirkpatrick

William H. Anger

ENGELMAN | BERGER, PC
ATTORNEYS AT LAW

March 18, 2009

Chairman Byron Dorgan
Chairman
Senate Committee on Indian Affairs
322 Hart Senate Office Building
Washington, DC 20510

Vice Chairman John Barrasso
Vice Chairman
Senate Committee on Indian Affairs
307 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 313

Dear Chairman Dorgan and Vice Chairman Barrasso:

The Arizona Cities of Avondale, Chandler, Glendale, and Scottsdale ("Cities") submit this letter in support of the White Mountain Apache Tribe Water Quantification Act of 2009 (S. 313), which was referred to the Committee on Indian Affairs. The Cities collectively represent more than 800,000 people within the Phoenix metropolitan area of Maricopa County, Arizona. The Cities along with numerous other parties have been involved in water rights negotiations with the White Mountain Apache Tribe. The Cities are contributing substantial financial resources to the Quantification by paying the WMAT for leasing Central Arizona Project water from the WMAT.

S. 313 approves the Quantification of the White Mountain Apache Tribe's ("WMAT") water right claims. The WMAT Reservation is located at the headwaters of the Salt River watershed which the Cities substantially rely upon to serve their customers' water needs. S. 313 quantifies the WMAT's water rights claims in a manner that is fair and equitable to all parties.

City of Tempe
P.O. Box 5002
255 E. Marigold Ln.
Tempe, AZ 85281

Tempe

The Tempe Way *Our Mission* To make Tempe the best place to live, work and play. *We Value* People... Integrity... Respect... Openness... Creativity... Quality...

Water Utilities
Department

April 1, 2009

Chairman Byron Dorgan
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Vice Chairman John Barrasso
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Subject: White Mountain Apache Tribe Water Rights Quantification Act of 2009 (S. 313)

Dear Chairman Dorgan and Vice Chairman Barrasso:

The City of Tempe, which relies primarily on Salt River water for its municipal water supply, supports passage of the White Mountain Apache Tribe Water Rights Quantification Act of 2009 (S. 313). The Act, being heard in your Committee this week, provides for implementation of the agreement reached among numerous Salt River water users to quantify the water rights of the White Mountain Apache Tribe upstream of Tempe. Passage of the Act is necessary to begin construction of an urgently needed municipal water supply on the Tribe's reservation. The Tempe City Council has approved the quantification agreement and fully supports the passage of this important legislation.

The Miner Flat Dam and Pipeline on the North Fork of the White River, tributary to the Salt River, will deliver municipal water supplies to the communities of White River, Cedar Creek, Carrizo, and Cibecue on the Tribe's reservation. Those communities do not have enough drinking water to meet their needs, especially in the summer. The Miner Flat Dam and Pipeline project has been determined by the parties to the agreement, including the United States, to be the best option to provide a domestic water supply to nearly 15,000 residents on the reservation. That project is estimated to cost approximately $128 million.

The Act authorizes the planning and construction of needed on-reservation projects in addition to the Miner Flat project. The City of Tempe supports the passage of the Act to implement the water rights agreement and to assist the Tribe in improving living conditions on the reservation.

"Most Livable City"
U.S. Conf. of Mayors

Town of Gilbert, Arizona
A Community of Excellence
Municipal Center
50 East Civic Center Drive
Gilbert, Arizona 85296

From the Office of
Mayor
Steven M. Berman

March 31, 2009

Chairman Byron Dorgan
Chairman
Senate Committee on Indian Affairs
322 Hart Senate Office Building
Washington, DC 20510

Vice Chairman John Barrasso
Vice Chairman
Senate Committee on Indian Affairs
307 Dirksen Senate Office Building
Washington, DC 20510

Re: **S. 313**

Dear Committee Chairman Dorgan and Vice Chairman Barrasso:

I am writing to express, on behalf of the Town of Gilbert, our support of the White Mountain Apache Tribe Water Quantification Act of 2009 (S. 313), a bill introduced by Senator John Kyl and scheduled for a hearing in your Committee on Indian Affairs for Thursday April 2, 2009. This legislation approves the Quantification of the White Mountain Apache Tribe's water right claims in a manner that is fair and equitable to all parties.

Gilbert has been participating with the White Mountain Apache Tribe, the United States, the Salt River Project and other local parties to quantify and settle the claims of the Tribe for several years now. Indian water rights claims have been a vital tool for our region to reach accord regarding allocation of scarce water resources in our arid climate. The proposed settlement with the White Mountain Apache Tribe is vital to Gilbert, as we depend upon rights in the Salt River, which originates on the White Mountain Apache Tribe reservation, for almost half of the water for our 210,000 citizens.

Thank you for your consideration of S. 313, and your commitment to tribal water settlements in Arizona and throughout the west. Settlement of White Mountain Apache Tribe water rights claims is critical to provide water supply certainty for the Tribe, SRP, and its stakeholders, and your consideration of the issue is greatly appreciated.

Sincerely,

Steven M. Berman
Mayor
Gilbert, Arizona

mesa·az
OFFICE OF THE MAYOR

20 E Main St Suite 750
PO Box 1466
Mesa, Arizona 85211-1466

mesaaz.gov

March 30, 2009

Chairman Byron Dorgan
Senate Committee on Indian Affairs
322 Hart Senate Office Building
Washington, DC 20510

Vice Chairman John Barrasso
Senate Committee on Indian Affairs
307 Dirksen Senate Office Building
Washington, DC 20510

Re: S. 313

Dear Committee Chairman Dorgan and Vice Chairman Barrasso,

I am writing to express, on behalf of the City of Mesa, our support of the White Mountain Apache Tribe Water Quantification Act of 2009 (S. 313), a bill introduced by Senator John Kyl and scheduled for a hearing in your Committee on Indian Affairs for Thursday April 2, 2009. This legislation approves the Quantification of the White Mountain Apache Tribe's water right claims in a manner that is fair and equitable to all parties.

The City has been participating with the White Mountain Apache Tribe, the United States, the Salt River Project and other local parties to quantify and settle the claims of the Tribe for several years now. Indian water rights claims have been a vital tool for our region to reach accord regarding allocation of scarce water resources in our arid climate. The proposed settlement with the White Mountain Apache Tribe is vital to Mesa because it depends on rights in the Salt River, which originates on the White Mountain Apache Tribe reservation, for almost half of the water it supplies to over 450,000 people.

Thank you for your consideration of S. 313.

Sincerely,

Scott Smith
Mayor

BROWN & BROWN LAW OFFICES, P.C.
A PROFESSIONAL CORPORATION
OF ATTORNEYS

POST OFFICE BOX 1890
128 EAST COMMERCIAL
ST. JOHNS, ARIZONA 85936

DAVID A. BROWN
DOUGLAS E. BROWN
F. MORGAN BROWN
JOHN C. HOLMAN
BRADLEY J. PALMER

April 2, 2009

Senator Byron Dorgan, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Senator John Barrasso, Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

RE: White Mountain Apache Tribe Water Quantification Act of 2009 (S. 313)

Dear Chairman Dorgan and Vice Chairman Barrasso:

In regards to S. 313 and the hearing that was scheduled to take place on said bill this afternoon, the numerous cities, towns, irrigation companies and districts, ranches and other water users in the Little Colorado River Basin located in northeastern Arizona, which are listed on the attached Exhibit A and referred to collectively herein as the Little Colorado River Parties (LCRP) would like you to consider this letter as our support of S. 313 and our encouragement for the passage of said bill.

After years of negotiations, agreement on the terms of a water quantification with the White Mountain Apache Tribe (WMAT) were reached by the 20 settling parties in August of 2008 and the White Mountain Apache Tribal Council voted to approve the agreement on January 13, 2009. On January 26, 2009, Senator Kyl introduced the legislative component of the agreement, the White Mountain Apache Tribe Water Quantification Act.

The clients we represent are located adjacent to the WMAT reservation. Settlement of WMAT water rights claims is critical in order to provide a consistent water supply for the Tribe and to provide certainty for the numerous clients we represent and the other parties to the settlement.

S. 313 would approve the settlement of water claims and authorize construction, in compliance with all federal environmental laws, and funding of projects contained in the agreement. Construction of the Miner Flat Dam and Pipeline on the North Fork of the White River will deliver a reliable municipal water supply to the reservation cities of Whiteriver, Cedar Creek, Carrizo and Cibecue and is the center piece of the quantification agreement and legislation. Currently, a small well filed supplies municipal drinking water but the aquifer is not sufficient to meet the current demands of these reservation cities, especially when water restrictions are implemented during the dry summer months. A new source of municipal water supply is sorely needed on the WMAT reservation. It was determined by the United States and the settlement parties that the Miner Flat Dam and Pipeline are the best option to meet the water needs of the nearly 15,000 residents on the reservation. The passage of S. 313 is critical to sustaining the lives of the members of the White Mountain Apache Tribe who currently live on the reservation and any chance for that population to increase.

In addition to the authorization of the Miner Flat Project, S. 313 authorizes the planning and construction of additional important on-reservation projects that the enforceability of the water rights settlement are not contingent upon. These projects are very important to the White Mountain region of Arizona.

Thank you for your consideration and support of S. 313 and for your continued efforts and assistance in this water settlement for northeastern Arizona.

Sincerely,

BROWN & BROWN LAW OFFICES, P.C.

David A. Brown
Bradley J. Palmer

Water Resources

9388 E. San Salvador Dr.
Scottsdale, AZ 85258

6 April 2009

Senator Byron Dorgan, Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Senator John Barrasso, Vice Chairman
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Re: Support of White Mountain Apache Tribe Water Quantification Act

Dear Chairman Dorgan and Vice Chairman Barrasso:

Settlement of water rights disputes in the Salt River Basin is a major priority for water users in that basin, including the City of Scottsdale. Passage of the White Mountain Apache Tribe Water Quantification Act of 2009 (S. 313), which was heard before the Committee on 2 April 2009, is one of the last major steps toward implementation of the water rights quantification agreement and construction of an important municipal water supply system on the White Mountain Apache Tribe (WMAT) reservation. The City of Scottsdale fully supports S. 313 and looks forward to working with you and your Committee on passage of this important legislation.

Agreement on the terms of a water rights quantification with the White Mountain Apache Tribe (WMAT) was reached in August of 2008. The White Mountain Apache Tribal Council voted to approve the agreement on January 13, 2009. On January 26, 2009, Senator Kyl introduced the Senate legislative component of the agreement, the White Mountain Apache Tribe Water Quantification Act (S. 313). Representative Ann Kirkpatrick introduced the House companion bill, H.R. 1065, on February 13, 2009.

These two bills would approve the settlement of the water rights claims and would also authorize construction and funding of several municipal water supply projects contained in the agreement. A new municipal water supply is greatly needed on the WMAT reservation The Miner Flat Dam and Pipeline on the North Fork of the White River will deliver a municipal water supply to meet the needs of the nearly 15,000 residents in the cities of White River, Cedar Creek, Carrizo, and Cibecue on the reservation. This project is estimated to cost approximately $126 million. S. 313

also authorizes the planning and construction of additional important on-reservation projects that are not related to the enforceability of the water rights settlement.

Thank you for your commitment to tribal water settlements in Arizona and throughout the West. Settlement of WMAT water rights claims is critical in order to provide water supply certainty for many cities in the Phoenix metropolitan area, including the City of Scottsdale, and your consideration of this legislation is greatly appreciated. The City of Scottsdale looks forward to working with you and your staff on the White Mountain Apache Tribe Water Quantification Act of 2009.

Sincerely,

Marshall P. Brown
General Manager, Water Resources Department
City of Scottsdale

P.O. Box 43020 • Phoenix, AZ 85080-3020
23636 North Seventh Street • Phoenix, AZ 85024

April 9, 2009

The Honorable Byron L. Dorgan
Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Building
322 Hart Senate Office Building
Washington, DC 20510

The Honorable John Barrasso
Vice Chairman, Senate Committee on Indian Affairs
838 Hart Senate Office Building
307 Dirksen Senate Office Building
Washington, DC 20510

RE: S. 313 (White Mountain Apace Tribe Water Rights Quantification Act of 2009

Dear Chairman Dorgan and Vice Chairman Barrasso:

I am writing to express, on behalf of Central Arizona Water Conservation District, our support of the White Mountain Apache Tribe Water Quantification Act of 2009 (S. 313).

CAWCD is the Arizona political subdivision responsible for operating the central Arizona project ("CAP"). The CAP is a massive water delivery project, a federal Reclamation project, constructed under the authority of the Colorado River Basin Project Act of 1968, to enable Arizona to make full use of its Colorado River entitlement. In 1964, the United States Supreme Court confirmed Arizona's right to 2.8 million acre-feet of Colorado River water annually. Until construction of the CAP, however, Arizona had no practical means of putting its full Colorado River entitlement to use, because it lacked a delivery system capable of transporting water from the Colorado River to the rapidly growing regions of central Arizona.

S. 313 would authorize and confirm a settlement of the water right claims of the White Mountain Apache Tribe. The settlement agreement, among 20 settling parties and the Tribe, would also authorize funding for a crucial drinking water project on the White Mountain Apache Tribe reservation. After years of negotiations, agreement on the terms of a water rights settlement with

the White Mountain Apache Tribe was reached by the settling parties in August of 2008. The settlement agreement has been approved formally by the White Mountain Apache Tribe and by the governing bodies of the majority of the downstream parties in the greater Phoenix Metropolitan area, including the CAWCD Board of Directors.

CAWCD strongly supports S. 313 because it will provide certainty to water users in central Arizona about their future water supplies. The settlement also provides for the lease of 2,500 acre-feet of the White Mountain Apache Tribe's Central Arizona Project water to CAP for 100 years to support CAP in performing its obligations as a groundwater replenishment authority. A critical component of the settlement is construction of the Miner Flat Dam and Pipeline on the North Fork of the White River to deliver municipal water supplies on the reservation to the cities of White River, Cedar Creek, Carrizo, and Cibecue. A small well field supplies the current municipal drinking water, but the aquifer is insufficient to meet reservation demands and severe water restrictions are commonly implemented during the dry summer months. A new source of municipal water supply is greatly needed on the WMAT reservation. The Miner Flat Dam and Pipeline project has been determined by the settlement parties, including the United States, to be the best option to meet the needs of the nearly 15,000 residents on the reservation and is estimated to cost approximately $128 million.

Thank you for your consideration of S. 313, and your commitment to tribal water settlements in Arizona and throughout the west. Settlement of the water rights claims of the White Mountain Apache Tribe through passage of S. 313 is critical to provide water supply certainty for the water users of central Arizona and the Tribe.

Sincerely,

Susan Bitter Smith
President, Board of Directors

ARIZONA WATER COMPANY
3805 N. BLACK CANYON HIGHWAY, PHOENIX, ARIZONA 85015-5351 · P.O. BOX 29006, PHOENIX, ARIZONA 85038-9006

April 1, 2009

Chairman Byron Dorgan
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Vice Chairman John Barrasso
Senate Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510

Re: Settlement of Water Rights Disputes in the Salt River Basin

Dear Chairman Dorgan and Vice Chairman Barrasso:

Settlement of water rights disputes in the Salt River Basin is a very important matter for Arizona Water Company (the "Company"). Passage of the White Mountain Apache Tribe Water Quantification Act of 2009 ("S. 313"), which was referred to the Senate Committee on Indian Affairs, is one of the last major steps before implementation of the quantification agreement and construction of a desperately needed municipal water supply on the White Mountain Apache Tribe ("WMAT") reservation can begin. The Company fully supports S. 313 and looks forward to working with you and your Committee on passage of this important legislation.

After years of negotiations, agreement on the terms of a water quantification with the WMAT were reached by the 20 settling parties in August 2008 and the White Mountain Apache Tribal Council voted to approve the agreement on January 13, 2009. On January 26, 2009, Senator Jon Kyl introduced the legislative component of the agreement, the White Mountain Apache Tribe Water Quantification Act. This bill, S. 313, would approve the settlement of water claims and authorize construction, in compliance with all federal environmental laws, and funding of projects contained in the agreement. Representative Ann Kirkpatrick introduced the House companion, H.R. 1065, on February 13, 2009. The Company was also pleased to learn that your committee has scheduled hearings on S. 313.

Thank you for your commitment to tribal water settlements in Arizona and throughout the West. Settlement of WMAT water rights claims is critical to providing water supply certainty for the parties to the settlement, and your consideration of this issue is greatly appreciated. The Company looks forward to working with you and your staff on the White Mountain Apache Tribe Water Quantification Act of 2009.

Yours very truly,

William M. Garfield

William M. Garfield
President