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ECONOMIC AND SOCIAL ISSUES AFFECTING THE NORTHWEST TRIBES

FIELD HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

AUGUST 12, 2010

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ECONOMIC AND SOCIAL ISSUES AFFECTING THE NORTHWEST TRIBES

THURSDAY, AUGUST 12, 2010

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Fife, WA.

The Committee met, pursuant to notice, at 10:30 a.m. in the Emerald Queen Hotel 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. Ladies and gentlemen, we are going to call the hearing to order. This is the hearing of the Indian Affairs Committee of the United States Senate. I'm Senator Byron Dorgan, Chairman of the Committee, and I'm accompanied by Senator Maria Cantwell, the Senator from the State of Washington and a very active member of the Indian Affairs Committee.

I'm really pleased to be here today in the State of Washington and here at this facility. I'd like to begin today by calling on the President of the Affiliated Tribes of the Northwest Indians from Portland, Oregon, Brian Cladoosby to offer an opening prayer.

[Opening prayer was given.]

The CHAIRMAN. President Cladoosby, thank you very much. Let me thank the Honorable Herman Dillon, the Chairman of the Puyallup Tribe. The Puyallup Tribe is our host today, and thank you so much for allowing us to be here with you at your wonderful facility.

Let me also start by saying how pleased I am to be able to work with Senator Maria Cantwell and also Senator Patty Murray from the State of Washington. And I know we have some folks from Oregon here, and the Senators from Oregon, Ron Wyden and Jeff Merkley, work very closely with us as well. In fact, I think we have some legislation pending right now in the Senate for a unanimous consent request dealing with leasing opportunities for Indian tribes in both states, the States of Washington and Oregon.

This hearing was originally scheduled to be held at the Chief Leschi School, the Puyallup tribe's Chief Leschi School which is one of the largest and most diverse Bureau of Indian Affairs schools in America. Unfortunately and tragically, a young tribal member, Canaan Pluff was killed in a motorcycle accident at 21 years of age, and I know this is a very difficult time for the tribe and for this young man's family, and I know that there's a funeral in that facil-

ity and so our hearts and our prayers go out to them as well, and Mr. Chairman, I hope you'll pass that along to them. And I thank you for allowing us to use these facilities in these difficult circumstances for the Tribe.

I thank very much Senator Cantwell for finding time in her day to come here and participate. She participates very actively on this Committee, and I want to say that she and I and other members of the Committee, including Senator Murray of the State of Washington, I think it is the case to say that we have perhaps accomplished more legislative success for American Indians in the last 12 months than existed in the past three decades, and let me explain that.

We finally at last, at long, long last have passed the Indian Health Care Improvement Act. And we not only passed it, we made it permanent.

[Applause.]

The CHAIRMAN. So it was not only reauthorized, but it is made permanent which is a big, big deal. You know, it's the first time in 18 years that the Congress has successfully dealt with this subject, and in no small measure due to the work of Senator Cantwell and Senator Murray. I'm really pleased. We said look, we are going to focus like a laser to get this done. We did.

Now, just weeks ago we also passed the Tribal Law and Order Act. That is a big, big deal.

[Applause.]

The CHAIRMAN. And I want to tell you what we did. Senator Barrasso, the Vice Chair of the Committee, myself, Senator Cantwell and others, we sent staff around the country to consult with tribes. First and foremost we have always believed consultation is critical in order to understand how we need to legislate. We consulted for a couple of years all around the country: What are the needs, what should we do, how do we address this. And then we put together the Tribal Law and Order Act, and finally at long last, just weeks ago, Senator Barrasso and I and others were at the White House and the President signed the Tribal Law and Order Act, and it's going to make a big difference.

It allows for so many new approaches, including cross-deputization with law enforcement authorities on and off the reservation, access to the National Criminal Database for—I won't go into the details, but let me just say that we have made major progress, and again, in no small part to the work of the Indian Affairs Committee, and I'm just really pleased to be here to describe that.

Let me make one other point to you: When the President proposed an Economic Recovery Act, we supported that Act, Senator Cantwell and I supported the Economic Recovery Act, but we insisted that there be some investment for American Indians. There was not in the original proposal by the President a body of money that would go to create jobs and invest money on Indian reservations across the country.

We got them to include $2.5 billion, $2.5 billion dedicated to Indian reservations to build and construct and create jobs, and it's making a big difference with respect to the building and rehabilitation of health care facilities, detention centers, roads, school construction, housing, and much more. And all that is going on now

across the country on Indian reservations. It is the single biggest investment that has ever been made at one time on Indian reservations in America. I think we've made so much progress and I'm so proud of the work, as I've said, that particularly the two Senators from the State of Washington have made with Senator Cantwell being a member of this Committee.

I don't know much about fishing and, you know, all the things that you do up here, but I know a lot about the Plains Indians and those needs, but now I know a lot about everything because Maria Cantwell has described to me all of the challenges that come with your tribes and your needs, so what we wanted to do today in the shadow of having passed this legislation, we wanted to hold a hearing in this region to talk about the economic and social challenges and needs going forward now that we've passed a health care bill, now that we've passed the Tribal Law and Order Act.

We are working on a number of other issues such as housing and education, and so we want to find out what's on your minds, what do you see as the priorities that we ought to take a look at moving forward, and especially the priorities with respect to the implementation now of this new legislation.

We have six witnesses, and we very much appreciate their willingness to be here. We will also at the conclusion of the witness statements ask some questions, and I will also have a brief open mic so that if there are those that come and wish to say a few words and add their voice, we'll be happy to hear that. We don't have unlimited time, but we will be happy to hear that and we will also extend for two weeks the opportunity for anybody to submit formal written testimony to be included in the hearing record for today.

Let me call on my colleague, Senator Cantwell from the State of Washington who just does such a great job on these issues. Senator Cantwell?

[Applause.]

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

Senator CANTWELL. Thank you. And thank you Senator Dorgan for bringing the Indian Affairs Committee to a field hearing in the Pacific Northwest. We thank you for continuing to pay attention to these important issues, and we certainly believe in the Northwest that we have very creative ideas as it relates to the economic success of Indian country. So thank you for allowing everyone here to be able to share those with you today. I want to recognize the Chairman's great efforts at that legislative agenda that he just mentioned. I don't think that there has been a more effective or efficient chairman in the passage of Indian legislation in the last 30 years. So thank you for your leadership as Chairman of that Committee.

[Applause.]

Senator CANTWELL. And while you say you don't know a lot about fish, which I'm sure we could tell you a lot, you do know that health care is important and that's why you pushed so hard to get this legislation passed, so it is truly, truly, truly historic. And so for all of those who are going to benefit from the increase in the

health care delivery system, we thank you. We pride ourselves in the Northwest in being leaders in this area, and the fact that you're going to hear about some of that innovation today, we just thank you for being such an advocate.

And I want to thank all the tribal leaders who are here today, our witnesses, and those who are attending in the audience because they are coming to share their concerns about Indian Country from all over the state and from the Northwest. I think we have people here from both Idaho and Oregon, and maybe even people from Alaska, I don't know.

And I know that our colleague Senator Murray was unable to join us today because of a scheduling conflict, but we certainly appreciate the work that she has done on many pieces of legislation, including helping us with the Indian health care issue, housing, and infrastructure projects.

And Christina Reeves is here from Senator Murray's office, if she would just stand or raise your hand there, and Mendy Droke is here from Congressman Inslee's office. So thank you both for being here today as well.

[Applause.]

Senator CANTWELL. Senator Murray has been working on protecting our natural resources and salmon recovery, and I look forward to continuing to work with her and my other colleagues on issues of protecting tribal sovereignty and just continuing the government-to-government dialogue between our governments.

I know that she really believes that this historic moment when 1.9 million Native Americans who have been waiting too long to modernize their health care system will actually have the first modernization of this policy since 1992, and so it's very important that we change the health care system and make sure that we continue to increase the advantages.

For example, the Indian Health Service and tribal health care providers needed appropriate tools and programs in place to diagnose, treat, and prevent various physical and mental illnesses, and the Health Care Act that we passed does just that. It gives more flexibility to the administrator of the funds, it authorizes new programs at the Indian Health Service, including long-term care as we know is so important, and also programs for youth suicide prevention, and mental health treatment. So we all look forward to hearing what the Tribes have to say today about that legislation.

I also wanted to mention because Chairman Dorgan talked about the law that was signed by President Obama on the 29th, and many people here—well, Chairman Dillon and Chairman Finley of Colville are here today and I think they came to testify before our Committee in Washington, D.C. on this legislation, so we thank them for that.

And I know that we had several members, including Chairman Allan from the Jamestown S'Kallam who were actually there when President Obama signed the legislation, so we were there along with Brian Cladoosby to make sure that everybody knew how important this legislation was to the Pacific Northwest. And this critical new law will give us the ability to address violence on Indian reservations. And tribal law enforcement officials in the Northwest report a total of 89 different documented gang activities on reserva-

tions. So gang activities which we're seeing all over the State of Washington know no boundaries, and so we want to make sure that Indian Country has effective tools for making sure that we can fight those gang activities and other crimes and that we can continue to be effective, so another success in the progress for Indian Country and working together.

And I know many people here know that the Committee also passed out legislation from our Committee that Senator Murray has sponsored dealing with the Hoh Indian Reservation. We hope that that legislation will pass as soon as we return in September. I think we've worked out the differences between the House and Senate version.

Is anybody from Congressman Dicks' office here today? They're probably going to be here a little bit later, but they have been working on that legislation, so it has also been progress from our Committee.

So I know that many of you here have so many ideas. One thing I love about representing you in our Nation's Capital is I just take the good ideas that you have back to Washington, and that is on areas of Indian Country energy issues, self-governance, government-to-government relations and our continued focus as we're going to talk today about economic and social issues.

So again, Chairman Dorgan, thank you for being here to hold this important hearing and thank you particularly to the Puyallups for hosting us and for everybody here in the Northwest showing up to give the Chairman a direct viewpoint here in the Northwest about these important issues. Thank you.

[Applause.]

The CHAIRMAN. Senator Cantwell, thank you very much. A couple brief introductions, then I'm going to call on the first witness. And let me also say, I made it sound like we passed the health care bill all by ourselves. That, of course, is not the case. Congressman Inslee and Congressman Dicks and so many others played a very important role and I want to acknowledge that as well.

We have some folks who are here at the hearing taking a look at some of the tribal facilities in this region as well. Denise Desiderio with the Indian Affairs Committee, Allison Binney is the Staff Director of the Indian Affairs Committee, Jim Hall is working for Senator Barrasso on the Indian Affairs Committee, Rhonda Harjo with Senator Barrasso is right behind me, and Christine Reeves has already been introduced I guess as well.

Chairman Dillon, thank you very much. We will ask that you begin today, and if you'll speak directly into the microphone so that everyone in the room can hear and participate in your conversation, then we'll go on down the line and ask other witnesses as well. Your entire statements will be made part of the permanent record, so we will ask that you summarize your statements. Chairman Dillon, thank you, you may proceed.

STATEMENT OF HON. HERMAN DILLON, SR., CHAIRMAN, PUYALLUP TRIBE; ACCOMPANIED BY CHAD WRIGHT, DIRECTOR OF MARINE VIEW VENTURES

Mr. DILLON. Thank you, Mr. Chairman. I'm the Senior Chairman of the Puyallup Tribe. I would like to welcome you and all your staff and the Committee members, all our tribal leaders from different reservations to the Puyallup Tribe Reservation.

I'm just going to make it short and sweet and let you get on so that they have more time to do what they need to do. We presented our written testimonies, so with that, thank you for honoring us by being here.

The CHAIRMAN. Mr. Chairman, thank you very much. That will be the shortest testimony of the day.

Mr. DILLON. I've made shorter ones.

[The prepared statement of Mr. Dillon follows:]

PREPARED STATEMENT OF HON. HERMAN DILLON, SR., CHAIRMAN, PUYALLUP TRIBE

My name is Herman Dillon, Sr. I am Chairman of the Puyallup Tribe of Washington State and I want to welcome the Senate Committee on Indian Affairs once again to the Puyallup Reservation. As is clearly apparent, the Puyallup Reservation is located in the urbanized Seattle-Tacoma area of the State of Washington. Our 18,061-acre reservation encompasses most of the City of Tacoma, but the area is a "checkerboard" of Tribal and trust land, Indian-owned fee land, and non-Indian owned fee land. Our reservation land includes parts of six different municipalities (Tacoma, Fife, Milton, Puyallup, Edgewood and Federal Way). The Puyallup Tribe also provides services for 3,680 tribal members and over 24,000 additional Native Americans from over 345 Tribes and Alaska Native villages in our service area.[1]

The Puyallup Tribe has enjoyed remarkable success in the more than forty years since game wardens arrested many of our members for exercising their treaty-protected right to fish on the Puyallup River. These arrests resulted in what many herald as the most significant legal victory for Tribes in modern times: the *Boldt* decision and its progeny. The *Boldt* decision held that the Tribal signatories to the many Stevens Treaties in the Northwest are entitled to fifty percent of the harvestable catch of salmon and shellfish in their usual and accustomed areas. This decision resulted in the revitalization of Tribal communities throughout the Northwest because once our members could earn a living at home fishing and gathering, they came home in droves.

The return of our members required Tribal governments to respond to their most basic needs, which included law enforcement, health care, schools, road and utility infrastructure, and economic development. In these areas, the Puyallup Tribe has also been a national leader. Nonetheless, while we have achieved many successes in the last forty years, we have a great deal that remains to be done.

A. Education

I want to begin today by talking about education. We have come a long way since the Puyallup Tribe opened its first school in 1976 in order to address the high drop-out rate experienced by our students in public schools. That first school was in a facility that we borrowed from the Tacoma School District. It was through the persistence of many Tribal leaders, including our former Chair and present councilwoman Roleen Hargrove, that Congress provided to us the funding to build this facility that we use now. We completed this facility and opened it to students in 1996.

Today, the Chief Leschi School is the largest of the seven tribal schools in Washington State, and it remains one of the largest in the BIE School System. The School serves approximately 910 students attending pre-kindergarten through 12th grade. We also have more than 60 different Tribes represented in our student body. The current enrollment figures represent near capacity with all classrooms being utilized on a daily basis.

While our basic educational facilities are outstanding, there are aspects of the school's facilities that remain incomplete. In particular, we have an auditorium and athletic fields that still require substantial work—today we must rent and bus our

[1] The City of Tacoma has the sixth highest percentage among U.S. cities of American Indians and Alaska Natives, 3.6 percent of the total population.

students to practices on other schools' fields. Completing the auditorium will allow us to complement and further our students' academic progress by providing them, quite literally, a stage upon which to shine and demonstrate their talents. Our athletic fields are similarly crucial because at present, our athletes do not have a field of their own and, consequently, we have never possessed a home field advantage. It is well known that participation in sports and other extra curricular activities increases students' investment in their school which often translates into personal and academic success. With no home field advantage or sense of team ownership, our student athletes are missing out on this important component of school life. While our athletes do their best and we are proud of them, we need these facilities so that they can enjoy success on the playing field and understand true school spirit.

We understand the great need for school facilities in Indian Country, including the enormous backlog to ensure that BIA and Tribal school facilities meet even basic safety requirements—we were at that point once. But Congress must understand that until we provide our children with every opportunity to succeed, and demonstrate that we, as a Nation, are willing to invest all our resources to ensure that they will have a better and brighter future, I can promise you that these Indian children will not believe us when we tell them that we want the very best for them. We commend Congress for including Tribal and BIA schools in the legislation to secure teacher jobs. Specifically, the measure provides $50 million for BIA-funded schools. This will be important because BIA and Tribal schools have not had any measurable increase in school operating funding in several years.

In the area of reauthorization of the Nation's education law, we endorse the priorities of the National Congress of American Indians and the National Indian Education Association. In particular, Congress must be vigilant to ensure that BIE schools are included in the authorized programs.

B. Law Enforcement

I want to take the opportunity to thank you, Senator Dorgan, for your steadfast leadership in obtaining passage of the Tribal Law and Order Act. This Act will be vitally important to the Puyallup Tribe as we seek to address the public safety needs of our community.

We share law enforcement authority with State, local and Federal governments. Due to the number of governments involved, the checkerboard nature of our land, and the fact that our reservation touches many local jurisdictions, the question of jurisdiction over a specific crime is complicated. The answer depends on who the defendant is, whether the land is trust land, and which local jurisdiction the land is in. The Tribal Law and Order Act will therefore help rectify this complex jurisdictional maze and allow the Tribe to further build on existing relationships in order to meet the law enforcement needs of our community.

As we have testified before, we have *28 active gangs* on the Puyallup Reservation. A few of these gangs are Native gangs, and others are national gangs with Native members, while still others are non-Native gangs that operate on or near the Reservation. Regrettably, many of these gang members are teenagers, but we have seen gang members as young as eight years old. These gangs are involved in various criminal activities, including drug trafficking, weapons sales, and turf wars. They are aided by easy access to I–5, which is widely known as a drug corridor. The Puyallup Tribe responded to the gang problem, by establishing a Gang Task Force comprised of the Tribal Police Department, representatives from various Tribal Services Divisions, and community members. The Gang Task Force developed a working definition of a "street gang" and a four-pronged approach to preventing gang activities, which includes: (1) enforcement, (2) intelligence, (3) education, and (4) physical-mental health. This Task Force is celebrated by our many sister law enforcement agencies as being one of the most highly-developed gang response strategies of any law enforcement agencies in the area.

Today, we are preeminently concerned with the threat that drug use and in particular prescription drug use presents to the future of the Puyallup Tribe. Presently, nearly half of Puyallup Tribal members are 17 years old or younger, and one-third of them are under 10 years old. As they grow up, our children face many of the risk factors that lead to unhealthy behaviors including drug use and gang activity, such as poverty (73 percent of students at our Tribal school qualify for free or reduced lunch), lack of education (the dropout rate for Native students in Washington state is consistently twice that of all students), and family instability (the number of dependency, guardianship and family services cases at Puyallup has almost doubled last decade).

This last winter, federal officials made a significant arrest of a major drug supplier on the Reservation. When this supplier was put out of business, our social service program experienced a major increase in the number of clients seeking drug

treatment and prevention services. This taxed all of our programs, including our police force, who worked closely with our family and social services departments to meet the needs of not only the people addicted, but also of their families and most importantly their children. We continue to work with these people as they seek to overcome their addictions and become healthy members again. The provisions of the Tribal Law and Order Act intended to facilitate better coordination among Federal agencies to better address substance abuse with respect to public safety and health will go a long way in assisting with these efforts. However, it is critical that Congress fully fund these efforts so that these programs do not wither on the vine.

In many respects, the Tribal Law and Order Act codified programs and initiatives that the Puyallup Tribe has been implementing for nearly a decade in responding to the needs of our members and community. Now, the challenge is to ensure that Federal agencies, in particular the U.S. Attorneys Office, take seriously the intent of Congress and work with Tribes to implement the Act, while achieving the positive change in public safety that Indian Country deserves. This will require consultation with Tribes, focused dedication by the Federal agencies involved, and regular oversight by Congress. It will also require funding. In this era of severe budget deficits, we understand that this endeavor will be challenging, but the failure to fund these programs will cost the Federal government more in the long run and, even more critically, it could cost Tribes our very future.

C. Economic Development

For decades, the Puyallup Tribe focused on improving the economy of the Tribe and the Region. The Tribe now operates seven businesses, including two casinos, a marina, and four gas stations. The Tribe also leases its industrial and commercial lands in and around the Port of Tacoma to widely varying businesses, sometimes in unique partnerships, which bring additional jobs and economic activity to the region.

The Tribe is very excited about the opportunity to become part of one of the largest shipping terminals on the Pacific coast. Through the Puyallup Land Settlement Act of 1987, the Tribe received more than 300 acres of land located on the Blair and Hylebos Waterways on Commencement Bay. The tribal port properties are within or adjacent to the Port of Tacoma. In 2008, the Tribe (through its economic development arm Marine View Ventures, hereafter "MVV") entered into an Agreement with SSA Containers, Inc. ("SSA") for the development of a new international container terminal facility that, when fully constructed, will be the largest in the Pacific Northwest. Soon after, the Tribe, MVV, SSA and the Port of Tacoma separately entered into a set of agreements that coordinate the development and operation of their facilities, related transportation, and other infrastructure.

This Agreement has created significant business development opportunities for the Tribe and will have tremendous economic benefits to the state and region. Specifically, it significantly increases container terminal handling capacity and creates living-wage jobs. While the economic downturn and overcapacity at all container terminals on the West Coast suggest the project may have a longer development timeline than originally anticipated, the parties' relationships remain strong and there exists a vibrant commitment to cooperation. However, it is now also clear that in order to take advantage of these opportunities, we need to change the Federal-Tribal leasing law to eliminate some of the bureaucracy from the process. This is why our Congressional delegation introduced S. 2906, which would eliminate the BIA from the process for surface leases for terms of less than 75 years, so long as such leases are approved pursuant to Tribal leasing regulations that have already been approved by the Secretary of the Interior. This authority is essentially identical to the authority that the Tulalip Tribe to our north has maintained for almost thirty years. We thank the Committee for approving this legislation and ask that you work with your colleagues to seek final enactment of this small but important measure.

D. Transportation.

Related to economic development is infrastructure development. The Puyallup Tribe has a unique interest in the reauthorization of the transportation legislation. We must ensure that Congress funds and makes available to Tribes all aspects of inter-model transportation, including rail, port, trails and roads. We urge Congress to reauthorize the Nation's transportation programs because they are an important element to securing economic development and security in Indian country.

While we do not own the roads on our reservation as large land based Tribes do, we nonetheless have wide and diverse transportation needs. As you can see, we are an urban Tribe, and although local governments own the roads within our reservation, we still experience the same needs as if we did own them. Using the IRR Pro-

gram, the Tribe is currently working on the development of a boat ramp/park facility that the Tribe will manage for our fisherman and their families. At the same time, we are currently repairing an unpaved City-owned street for access to our Grandview Learning Center. We are also currently improving a street that is the main access road to Tribal programs and services for our members, and we will complete a safety project for the administrative offices there.

In sum, it is vital for Congress to include the kind of changes proposed by Chairman Dorgan last year for the next transportation reauthorization measure so that we can continue to address our needs. As we understand them, the proposed changes would bring significant and much-needed funding increases for Tribal transportation programs, create new safety programs to address the high rates of traffic injuries and deaths experienced in Indian country, and streamline existing transportation programs and funding mechanisms. Tribal governments, the Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) can then put the maximum amount of program funds into improving the transportation infrastructure that is so important to tribal governments across the country. However, the Puyallup Tribe opposes any changes to the current funding formula. We fear that unless there is a provision in the next legislation that protects urban reservations like Puyallup's, our Tribe will not be able to adequately address our transportation needs.

One final consideration that we would ask of the Committee in the next reauthorization is to allow Tribes greater flexibility in using their IRR dollars for roads that provide access to treaty protected resources. Specifically, we have about 50 miles of "private" roads that provide the only viable access to Tribal fisheries facilities on the northern portion of the Puyallup River. These facilities require daily and weekly access and they include a fish ladder, rearing ponds, and acclimation ponds. The roads are severely impacted by weather and require regular repair. We have an agreement from the private landowner to use the roads, and we have an MOU providing that once the roads are repaired, they will maintain them. Still, the BIA will not approve the MOU or put the roads on our inventory because they are not considered "public" roads and as a result, we cannot use the IRR funding. We even agreed not to use road mileage to generate additional IRR funding, for we simply wish to use IRR funds to repair these access roads to our fisheries facilities. But the BIA and DOT will not let us to do this, and consequently, these important treaty protected resources are in danger.

E. Health Care

The Puyallup Tribe, as a long-time leader in the area of health care in Indian Country, again extends our greatest appreciation to the Committee for its dedicated efforts in securing passage of the Indian Health Care Improvement Act. The Puyallup Tribe was the first Tribe in the country to take over operation of an IHS facility on Indian lands. This was in 1976. Today, we continue to operate one of the most utilized ambulatory health centers in the country.

While we heralded the success of the passage of the Patient Protection and Affordable Care Act, we again caution that Congress must ensure that Federal agencies properly implement the Act to address the needs and interests of Indian Country. We have already heard that Federal agencies narrowly construe key areas of the law. Specifically, Congress authorized Tribes to participate in the Federal Employee Benefits Program as a mechanism to enable Tribal governments to comply with the employer mandate in providing health insurance for their employees. We also understand that the Office of Personnel Management, without Tribal consultation, has interpreted this provision of the Act to apply only to Tribal employees hired pursuant to an Indian Self-Determination Act contract with the Indian Health Services. This interpretation flies in the face of the clear statutory language and, we believe, the unambiguous intent of Congress.

Finally, as with the Tribal Law and Order Act, in order for Tribes and Indian people to realize the promise of the Indian Health Care Act Reauthorization Act, it is important for Congress to fully fund the programs authorized under the Act.

F. Environment

I will end today talking about something that ties our community together economically, socially and culturally, namely our natural environment and the need to protect the land and resources that are the very heart of our people. The Puyallup Tribe, as a steward of the land and marine waters in the usual and accustomed fish and shellfish areas, has both treaty and Governmental obligations and responsibilities to manage natural resources for uses beneficial to the regional community. As I said in the beginning of this testimony, the ability of our people to make a living by exercising their treaty protected right to fish and gather where our ancestors

fished thousands of years revitalized our communities. Today, fishing and gathering activities support almost 80 percent of Indian families living on the Reservations on the Puget Sound. Thus, if these resources are not available or if they become degraded such that harvesting is unfeasible, 80 percent of the Indian families on the Puget Sound must find another way to survive. Furthermore, Tribes generate substantial tax dollars from the Tribal taxes levied on the harvests, but will not receive this revenue if the harvests are no longer available. Consequently, the economic survival for Tribes and Indian people on the Puget Sound is very much dependent on the health of our natural resources.

Thus, we urge Congress to undertake initiatives that support the health of the Puget Sound and that ensure that Tribes are an equal voice at the table, while considering the actions and activities that take place on the Puget Sound.

I thank you for the opportunity to present testimony today.

The CHAIRMAN. All right. Next we will hear from the Honorable Brian Cladoosby who is President of the Affiliated Tribes of the Northwest Indians, and he reminded me earlier this morning that when he testified before our Committee in Washington, D.C. I really didn't do well by his name, so I have practiced and practiced and practiced and President Cladoosby, I've gotten it right today.

Mr. DILLON. Excuse me a minute. I would like to make one comment. You know, Senator Cantwell made the comment about the gang warfare that we're working on. My Vice Chairman is leaving Sunday for Chicago, and with his participation that's Lawrence LaPoint, who him and I testified in front of you back in D.C. a couple years ago, he's going back to Chicago to receive an award for his participation in this.

I'm very honored. I wanted to go with him, but he's Vice Chair and I'm Chair. Somebody's got to stay home and take care of business. But I'd be there with him if I could, but I just wanted to make a statement and we honor that he is going to receive that award.

The CHAIRMAN. Please congratulate him for us.

[Applause.]

The CHAIRMAN. Will he stand so we can recognize him? Is he in the room? Congratulations.

[Applause.]

The CHAIRMAN. Mr. Cladoosby, you may proceed.

STATEMENT OF HON. BRIAN CLADOOSBY, PRESIDENT, AFFILIATED TRIBES OF NORTHWEST INDIANS

Mr. CLADOOSBY. Thank you. Maybe Chairman Dillon can yield the rest of his time to me.

Good morning, Chairman Dorgan. Good morning, Senator Cantwell. Before I start I just wanted to ask that we have a moment of silence for the Stevens family, the late Senator Ted Stevens and his family. ATNI and the Swinomish Tribe offer our condolences. I know both of you were very good friends. Even though you might have been on opposite sides of the aisle, you still recognized that you were all part of a family there in D.C. as Senators. And even though you guys might not see eye to eye, you guys respected each other as colleagues. So I would just like to offer a moment of silence for the Stevens family at this time.

[Moment of silence.]

Mr. CLADOOSBY. Thank you. Chairman Dorgan, once again my name is Brian Cladoosby. For the record I'm the Chairman of the Swinomish Indian Tribal Community and also President of the Af-

filiated Tribes of Northwest Indians and it's a real honor to be asked to testify here before you on economic and social issues affecting Indian tribes in the Northwest.

ATNI was founded in 1953. It represents 57 tribes in 7 western states and we have some very, very large land-based reservations from the Colville who has millions and millions of acres to the Samish Tribe who was newly recognized in 1996 and I think have yet to get an acre of land into trust. So we are very diverse in the Northwest in the amount of land and natural resources that we have to call upon.

And we, just like many other tribes across the nation, face very diverse challenges, and our primary goal is to ensure we have communities that are healthy, safe, and sustainable. And so first I'd like to share some thoughts.

We as Northwest tribes are learning more as we progress. As you know, we have many casinos here in the Northwest and we have learned that distributing income from these casinos is not always the answer. Indeed, just as would be imagined for any other community, free windfall money is more likely to reduce motivation, destroy self-esteem and aggravates long endured and reinforced symptoms of poverty than it is to solve them. So we have learned that job creation alone is not the solution.

People accustomed to living outdoors, people accustomed to hunting, fishing, remain among the most valued possible human endeavors, and they aren't necessarily drawn to windowless, smoke-filled rooms lit with flashing lights or corporate-style offices.

Gaming has been a success for many communities but not all. People out there think that just because Indians have casinos that all Indian tribes are doing well. That could not be further from the case. We have many issues that we need to address: Health care, education, and housing, and as you said, the Indian Health Care Improvement Act finally is permanent and we thank you and all those that worked very, very hard on that to make that possible for Indian Country.

We still have many, many social issues that are affected in Indian Country. Poverty is a big issue. It's safe to say that since the Great Depression, many of the tribes are still in a great depression with unemployment rates still as high as 40, 50, 60, 70 percent. So when the United States is talking about 10 percent double-digit unemployment rates, some tribes across the nation have not even seen unemployment rates under 50 percent since the Great Depression.

We thank God that we're able to provide essential governmental services for our people, but in many of the remote communities, that is not always the case. And we thank God that many of us can provide these services and make them available to many of our neighbors through economic development and providing jobs to other communities.

It's safe to say that the Northwest tribes have been leaders in assuming direct management of our natural resources. According to the BIA statistics, Northwest tribes and their enterprises support approximately 40,000 jobs and buy over a billion dollars a year in supplies and services, much of which support our larger local communities outside of our reservations.

We deliver a full range of governmental services of a complexity unsurpassed in the U.S. except by the Federal Government, and we operate businesses of a size and scale on par with almost any private businesses. Yet, we typically do so with the human resources of a small town.

Some of our tribes in our region exceed 10,000 population and some exceed 200. So we have a wide range of the number of tribal members in our reservations within our ATNI borders.

With these observations in mind, I'd like to talk briefly on seven points that we would like to talk about. One, expanding self-determination and self-governance opportunities. That is a key. When you have found that tribes have been given the resources, they can do the job almost better than anyone else. Many ATNI tribes seek to contribute to restore their resources so they can once again be contributors to their spiritual, physical, and economic health.

We ask that the Federal Government actively pursue with us as our lead under the directives of the Indian Self-Determination Act, P.L. 93–638. This will include making the policy of self-determination a proactive element in the Congress and the Federal Government, not just a consequence of the tribe's insistence.

Two, renewable energy development and climate change. ATNI member tribes are very interested in energy development. It is very important that we be at the table when these things are discussed. Many of our reservations are impoverished and have unemployment rates, like I said, that are much higher than any other part of the country. ATNI member tribes are currently exploring wind, biomass, solar, geothermal and hydroelectric energy opportunities, among others.

While some tribes have experience in these areas, most do not and seek help in building expertise and knowledge to get us to the point where we can diversify. To this end we need to obtain capacity building grants to allow our tribes to create the expertise to diversify away from a reliance on casino gaming, which would be critical to ensuring that these projects progress and become successful.

In addition, climate change is a very important aspect to the tribes in the Northwest. We are seeing the affects of climate change in the oceans, in the rain, in the snowfall, and we are seeing that adversely affect our fish and wildlife and our culture.

Three, streamlining the fee-to-trust process. That is key for tribes, as you know, as you Senators know, half of our reservations were lost from trust-to-fee during the Dawes Act to the Indian Reorganization Act of 1934. And so we are trying to reacquire tribal lands so we can become productive and make these lands productive, and that is very, very important to ATNI tribes.

This includes breaking down unnecessary barriers and expenses that the BIA requires of tribes, especially to put our reservation lands into trust status. That should be a no-brainer. When you have an exterior boundary of a reservation and we buy an acre of land within that reservation, there should be no question. That should be able to be done immediately.

Four, the enactment of the *Carcieri* fix to ensure that all federally recognized tribes have the opportunity to get land back into trust. I love preaching to the choir. You two know what needs to

be done on the *Carcieri* fix. You know what you'd like to do. It's something that we need to work on continually.

For example, the Sauk-Suiattle Tribe in our area is trying to get 1.5 acres into trust for a housing development. Because of *Carcieri*, that is not happening because they're rerecognized after 1934, and so we would continually ask that you do your best to try to ensure that a *Carcieri* fix is put in place this year.

Five, trust reform. It's an area where ATNI has been a national leader for several years. ATNI tribes have been working very hard to make sure that the United States' trust responsibility will be and continually does do what it's supposed to do for the tribes, not only in the Northwest but across the U.S.

The Trust Reform Act of 2005 introduced as H.R. 4322 in the 109th Congress was a bill that was worked on extensively by the ATNI tribes in our organization. Looking ahead we hope that the Committee will consider these views as it considers other bills and initiatives relating to administration of Indian trust assets.

Six, federal and state taxation. This is very, very important, because as you know, Indian lands are not subject to federal taxes, and the property that is owned by tribes are not subject to taxes.

For too long Indian tribes have been at a disadvantage in the area of taxation. I would like to give you one example. In Thurston County in southwestern Washington, the Chehalis Tribe has invested over $170 million in a hotel convention center and water park known as the Great Wolf Lodge, and Thurston County has taken upon themselves to file a lawsuit and say that the tribe must pay taxes on properties that are on their tribal lands that they own in trust, and the Courts have agreed and so we are asking that a legislative fix be implemented as soon as possible to make sure that these types of activities do not occur in the future where lands that are in trust are not taxed. That's like Skagit County trying to tax a military base within our borders. It's just not going to happen.

The CHAIRMAN. Mr. Cladoosby, I want to ask you to summarize if you can so I can have time for the rest of the witnesses.

Mr. CLADOOSBY. Sure. No problem.

Seven, I'm finally to my last point here, natural resources. Natural resources is and will always be an important part of the Northwest. We rely heavily on our natural resources. We rely on the fish, the game, the shellfish, everything that you see out there to sustain ourselves for our culture, and so it's important that we continue to work on restoring and implementing policies that will make sure that our natural resources are always there now and seven generations in the future.

Once again, thank you for giving me this opportunity, and if you have any questions, I'd be more than happy to answer them. Thank you.

[The prepared statement of Mr. Cladoosby follows:]

PREPARED STATEMENT OF HON. BRIAN CLADOOSBY, PRESIDENT, AFFILIATED TRIBES OF NORTHWEST INDIANS

Good morning Chairman Dorgan and members of the Committee. My name is Brian Cladoosby , and my traditional name is Speepots. I am the President of the Affiliated Tribes of Northwest Indians (ATNI) and the Chairman of the Swinomish

Indian Tribe. ATNI appreciates the opportunity to testify on the economic and social issues affecting Indian tribes in the Northwest.

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, western Montana, Alaska, northern California, and Nevada. Today, I am proud to be able to highlight for the Committee some of the economic and social issues affecting Northwest Tribes. The Northwest Tribes are very diverse. The Northwest is home to Tribes with large reservations and natural resource based economies and others with very little, if any, land. Despite our ranging differences Northwest Tribes stand strong together under ATNI to face the challenges of ensuring our communities are healthy, safe and sustainable.

First, I would like to share some thoughts. We, as Northwest Tribes, are learning more as we progress. We have learned that distributing income from casinos is not the answer. Indeed, just as would be imagined for any other community, free, windfall money is more likely to reduce motivation, destroy self-esteem, and aggravates the long endured and reinforced symptoms of poverty than it is to solve them. We have learned that job creation alone is not the solution. People accustomed to living outdoors, to whom hunting and fishing remain among the most valued possible human endeavors aren't necessarily drawn to windowless, smoke filed rooms lit with flashing lights or corporate style offices.

Gaming has enabled many Northwest tribes to provide basic health care, education, and housing. We address many of those by-products of poverty with childcare, provide for law and justice, care for the elders, and drug and alcohol programs. We provide these social services not only to ourselves, but in many of the remote communities that are our homes. In many cases, we are the only providers of these services and make them available to our neighbors.

Increasingly, the Northwest Tribes have been leaders in assuming direct managing of our natural resources. According to Bureau of Indian Affairs statistics, the Northwest Tribes and their enterprises support 40,000 jobs and buy over a billion dollars a year in supplies and services, much of which supports our larger local communities. We deliver a full range of government services of a complexity unsurpassed in the U.S. except by the Federal Government. And we operate businesses of a size and scale on par with almost any private business. Yet we typically do so with the human resources of a small town. The largest Tribes in our region seldom exceed 10,000 in total population and smallest tribes go as low as 700 in population.

With these observations in mind, below are some issues, concerns, and opportunities that ATNI sees with respect to economic and social issues for its membership.

Expanding Self Determination and Self Governance opportunities is a key to the future of many ATNI Tribes. Many ATNI Tribes seek to continue to restore their resources so that they can once again be contributors to their spiritual, physical, and economic health. We ask that the Federal Government actively pursue with us our lead role under the directives of the Indian Self Determination Act (P.L. 93–638). This would include making the policy of self-determination a proactive element of the Congress and the Federal Government, not just a consequence of the Tribes' insistence.

Renewable Energy Development and Climate Change: ATNI member tribes are very interested in energy development because it is a key to economic development for many Northwest Tribes, many of which are impoverished and have unemployment rates that are much higher than other areas of the country. ATNI members tribes are exploring wind, biomass, solar, geothermal, and hydroelectric energy opportunities, among others. While some Tribes have experience in those areas, most do not and seek help in building expertise and knowledge. To this end, the ability of Northwest Tribe to obtain capacity building grants to allow them to create the expertise to diversify away from a reliance on casino gaming will be critical to ensuring that these projects progress and become successful.

In addition, several ATNI member Tribes, such as my own Tribe, the Swinomish Tribe, have climate change policies and are concerned about the effects of climate change in ocean, rain and snowfall, and changes in fish and wildlife, and in our culture.

Streamlining the fee-to-trust process so lands reacquired by Tribes can become productive for them more quickly is also important to ATNI. This includes breaking down unnecessary barriers and expenses that the Bureau of Indian Affairs requires of Tribes to put even on-reservation land into trust status.

The enactment of a Carcieri "fix" to ensure that all federally recognized Tribes can avail themselves of the opportunity to have land taken into trust for economic development or other purposes is a critical issue for ATNI. Although opponents have attempted to make this a gaming issue, the case negatively affects Northwest Tribes at the most fundamental levels. For example, the uncertainty caused by the decision has indefinitely delayed a fee-to-trust application submitted by the Sauk-Suiattle In-

dian Tribe for 1.5 acres for a housing development. A number of other Tribes in the Northwest are potentially affected by the decision.

Trust reform is an area where ATNI has been a national leader for several years. ATNI's commitment to this issue is grounded in maintaining the integrity of the United States' trust responsibility that is, as you know, based upon the historical cession of millions of acres of ancestral lands by the tribes. In return for these lands, the United States government committed itself to protecting the tribes in the possession and occupancy of their remaining homelands. ATNI believes strongly that Congress should consider a comprehensive approach to trust management. ATNI and other tribal organizations spent significant time and energy in working with both this Committee in recent years on these issues, specifically developing Title III of the Indian Trust Reform Act of 2005 (introduced as H.R. 4322 in the 109th Congress) and transitioning the Office of the Special Trustee back to the Bureau of Indian Affairs. Looking ahead, we hope that the Committee will consider these views as it considers other bills and initiatives relating to administration of Indian trust assets.

Federal and state taxation of Indian land and property is another area of concern and interest to ATNI and its member tribes. For too long, Indian tribes have been at a disadvantage in the area of taxation. For example, Thurston County, in southern Washington, is attempting to impose personal property taxes on permanent buildings on tribal trust land on the Chehalis Tribe's Reservation. Under a joint venture, the Tribe and its minority-interest non-Indian business partner use the buildings to operate a $170-million hotel, convention center, and water park known as the Great Wolf Lodge. The Tribe has invested in upwards of $86 million of its own cash, credit and sweat equity in the Great Wolf Lodge project and project is a sterling example of the benefits of non-gaming economic development to tribal and surrounding communities.

For more than 100 years, Indian lands and property have been tax exempt. Because there is no federal statute that expressly preempts property taxes in this context, however, the Chehalis Tribe has been forced to defend its rights through expensive and burdensome litigation. This problem is not confined to the Northwest. Renewable energy projects on Indian lands, which necessarily require non-Indian partners to be viable, have also been targeted by state and local governments in the Great Plains and the Southwest for personal property taxes.

The Committee can help Tribes address these issues through legislative reforms that will bring more substantial private investment and in turn economic opportunity to Indian Country. In this regard, ATNI encourages the Committee, together with the Senate Committee on Finance, to explore opportunities to clarify that (1) Tribal majority-owned businesses should be treated like other Tribal businesses and not taxed locally; and (2) improvements to Indian Trust Land should be treated like the underlying real property for state and local tax purposes. Given the potential benefits of these clarifications for renewable energy development in Indian country, ATNI suggests that they would be candidates for inclusion in the energy package that the Senate is expected to consider next month. Unless Congress clarifies existing law in this manner, Tribes will continue to face obstacles in moving away from casinos and into green energy, hospitality, and countless other areas of non-gaming economic development.

Housing is still far more substandard than for the rest of the country. An estimated 200,000 housing units are needed immediately in Indian Country and approximately 90,000 Native families are homeless or under-housed. Overcrowding on tribal lands is almost 15 percent, and 11 percent of Indian homes lack complete plumbing and kitchen facilities. Although Economic Development produces much needed jobs it is slower to improve the housing conditions of Native Americans. ATNI recognizes that without faster results to improving housing conditions tribes continue to maintain federal funding dependency. ATNI urges congress to maintain the levels of housing funding for budget year 2011.

Natural Resources have always been at the center of our cultures for the Pacific Northwest Tribes, a fact no less true today than when many of our tribes signed agreements with the U.S. government. These resources are essential for our spiritual, economic and cultural survival as Indian people. The tribes of the Pacific Northwest depend economically on healthy salmon, wildlife, forests as well as on optimal water and air quality. Habitat destruction, pollution, unregulated water withdrawals, poor land-use planning, and many other environmental issues today threaten to make meaningless our reserved rights. ATNI asks for adequate and efficient funding of federal reserved obligations through tribal natural resources management programs, projects, and agreements. Flat funding levels and inflation have stripped us of buying power, leaving us with real funding equal to that we received 30 years ago, despite the fact that our management responsibilities have grown ex-

ponentially. Areas in critical need of funds are water resources management, hatcheries, habitat restoration, timber and wildlife management. Our reserved rights are dependent on healthy natural resources, which in turn depend on a healthy environment. Healthy environments lead to healthy communities and healthy economies.

I appreciate the opportunity to provide this testimony before the Committee. At this time, I would be happy to answer any questions that the Committee may have.

The CHAIRMAN. We thank you once again for your appearance before the Committee and appreciate your testimony. Next we'll hear from the Honorable Chief Allan who is the Tribal Chairman of the Coeur d'Alene Tribe in Plummer, Idaho. Mr. Allan, you may proceed.

STATEMENT OF HON. JAMES ALLAN, TRIBAL CHAIRMAN, COEUR D'ALENE TRIBE

Mr. Allan. Thank you, Mr. Chairman. First of all, I'd like to thank you, Mr. Chairman, and Senator Cantwell for taking the opportunity to let me testify here before you on issues that affect the Coeur d'Alene Tribe. I also want to commend you two on your efforts this past year for fighting the good fight for Indian people. I think, like you said, this past year it's been a long time coming for Indian people.

As I sat down last night and thought about what I was going to say today and think about what was to be the best use of time and not repeating what everything's going to be said here today, I actually kind of got angry. I was thinking about all the testimonies that tribal leaders have done over the last 50 years to the Indian Affairs Committee, to various committees, fixes to what will help Indian people. And I got angry because it was an insult to Indian people, because top CEOs of companies don't have to come and—you know, they have an idea, they have a business idea, they put it forward. And that's what the Coeur d'Alene Tribe has done since my tenure as chairman over the last six years, we own businesses in Spokane, Washington that's off the reservation. We own businesses in Coeur d'Alene which is off our reservation. We own a bunch of land that's off our reservation because we have to for survival. We can't sit around and wait for a Congressional fix on everything all the time.

And so with that I want to get to just a couple things I really wanted to say today. The Supreme Court boldly stated if we've got something wrong here, we invite Congress to fix it. With all due respect to members of the Court, that's what we want. We want Congress to fix it.

And I want to just concentrate on just a couple cases. As set forth in *U.S. v. Montana* and *Oliphant v. Suquamish Tribe* have caused more confusion and erosion to the tribal sovereignty than possibly any two other cases.

This is my opinion.

The *Montana* case has diminished the Tribe's ability to control their own destiny, and that's sad, as tribes want to control their own destiny. We don't want to sit back and have to wait and get answers.

You know, this case, you know, unfavorable rulings regarding taxation, land use, regulation of hunting and fishing, so these things are important to tribes and actually all people. The *Oliphant v. Suquamish Tribe* has endangered literal lawless zones on some

reservations. And I know this recent Law and Order thing is going to help, but there's some tribes that have checkerboard reservations like ourselves who it does help them. You know, we do have negotiated compacts with the counties for law enforcement, and we have done that. But I'm just saying that some of these issues will really help us.

And like the Chairman and President of ATNI said—I wanted to just touch base a little bit on land in trust. I sat down with the BIA and asked them What's the problem here? I know, for example, we pay hundreds of thousands of dollars to both our counties that lie within our reservation because of our tax bill, and I guess I just asked them point-blank If there is going to be a fix to the land in the trust or if there isn't going to be a fix, let us know because I'm sure tired of wasting money on lawyers going over there all the time and knocking on the door and saying Are we going to get land in the trust? If not, be honest with us. That's all the tribes are asking for is be honest with us.

We are just like anybody else, just be honest with us. If something can't get done, you know, it can't get done, but let's be honest about it. And that's what I told the Secretary of the Interior and he smiled and he actually helped—right after that we got like 400 acres put into trust that were sitting on a desk for a long time as just red bureaucratic tape.

And that's all I guess we're saying, and with that, I don't want to take much more of your time. We have submitted written testimony. Again, I thank you guys for all your hard work. Like he said, we're preaching to the choir because we know—it's actually sad that you're going to be retiring and we are losing a Chairman like you that fights the good fight for Indian Country and you're going to surely be missed, and with that I will turn the mic over to my colleague, Chairman Mike Finley.

[The prepared statement of Mr. Allan follows:]

PREPARED STATEMENT OF HON. JAMES ALLAN, TRIBAL CHAIRMAN, COEUR D'ALENE TRIBE

I first would like to thank you, Chairman Dorgan and others on the Committee, for the opportunity to present testimony today regarding issues that matter most to the Coeur d'Alene Tribe and other similarly situated Tribes here in the Northwest. I would also like to commend you and this committee for the efforts you have undertaken to improve the lives of Native people. The recently passed Tribal Law and Order Act is a great illustration of this and we applaud you for its passage. We appreciate your dedication to fighting the good fight for Indian County. There is no doubt you will be dearly missed.

While it is certain that Tribes all across Indian Country often suffer from many of the same issues, I would like to address a few issues of utmost importance to the Coeur d'Alene Tribe, which are likely not exclusive to our Tribe, but may provide a perspective into the issues that other Tribes in the Northwest struggle with as well.

One of the major issues facing the Coeur d'Alene Tribe is the direct and indirect effects of the massive land losses suffered on the Coeur d'Alene Reservation in the late 1800s and early 1900s brought about by the General Allotment Act. During the years of allotment and homesteading, ownership of nearly eighty percent (80%) of our reservation land base was transferred to non-Indians, in most cases without the consent of the Tribe or our members. As a result, only about 1,500 of the 10,000 people living on the Coeur d'Alene Reservation are tribal members.

While we have embraced the non-Indian population on the reservation with open arms, the US Supreme Court has placed ambiguous and difficult limitations on what conduct Tribes can govern on the Reservation through rulings in cases like *Oliphant, Montana* and *Yakima*. This ambiguity creates confusion and sometimes hostility when Tribes

attempt to regulate certain practices within the boundaries of their reservations. This tightrope act has been one of the primary challenges facing the Coeur d'Alene Tribe.

In response to concerns about certain decisions, the Supreme Court boldly stated "If we have got something wrong here, we invite Congress to fix it." With all due respect to members of the Court, they have gotten several things wrong in cases involving Tribal interests and we must implore Congress now to fix it. We appreciate the Committee's efforts to push a remedy to the *Carcieri* decision but we feel that Congress and Tribes must work together to tackle other issues imposed upon us by questionable US Supreme Court rulings.

The decision set-forth in *US v. Montana* has caused more confusion and erosion of Tribal sovereignty than possibly any other single case. The *Montana* case and its progeny have diminished Tribes' ability to control their own destiny on their own lands with unfavorable rulings regarding taxation, land use regulation and hunting and fishing. This trend of chipping away at Tribal sovereignty must be reversed and a legislative fix to *Montana* that establishes and identifies tribally regulated and proscribed forms of conduct on reservation lands is in order. We would respectfully request that the Committee consider establishing clear Tribal authority over land use regulation, air and water quality, and management of the fish and game on reservation lands, regardless of land ownership.

County of Yakima v. Yakima Nation is another questionable Supreme Court decision that adds further insult to injury regarding the loss of our homelands. Under *Yakima*, Tribal lands that have been recovered and owned in fee status, usually purchased by the Tribe at above-market prices, can be assessed a property tax by the state or county. Our lands, once promised and dedicated to our sole use and occupancy, later taken without our permission, and now restored after paying top dollar to buy them back, are still subject to the taxation of the State. The Coeur d'Alene Tribe pays hundreds of thousands of dollars in property taxes each year. This notion is offensive. We respectfully request that the committee explore and adopt a legislative remedy for the ill-conceived policy created by the *Yakima* case.

The *Oliphant v. Suquamish Tribe* case has engendered literal lawless zones on some reservations. The fact that Tribes do not have criminal jurisdiction over non-Indians does not go unnoticed by criminals. On a reservation where 85% of the residents are non-Indian, our Tribal police department is consistently responding to incidents involving non-Indians. If the state or county is unable or unwilling to assist in the incident and the Tribal officer is not authorized to enforce state law, the perpetrator goes unpunished. While we feel that the Tribal Law and Order Act takes significant steps toward addressing these problems, it may not do enough for checkerboarded reservations with high populations of non-Indians. A legislative fix to the *Oliphant* case would.

Another derivative from the loss of our ancestral lands is the process set up by the federal government to restore those lands to trust status, commonly referred to as the Fee to Trust process. Fee lands owned by the Coeur d'Alene Tribe and its members have not been

taken into trust in over three decades. Recently, the BIA has made some progress on streamlining this process and the Tribe has even received a few favorable decisions recently, but the costs associated with the application process make it extremely difficult for the Tribe and its members to pursue. In addition, appeals from local counties cause further delays in the acquisition process.

While this is just one of the components of a much larger issue that we refer to as Trust Reform, it is one that must be remedied. This Committee has heard hours of testimony from Tribes frustrated with this broken process. We urge you to consider legislation that would eradicate the bureaucratic red-tape and effectuate the transfer of lands acquired by Tribes or Tribal members in fee status to an automatic trust status if those lands are located within the boundaries of their reservation. We must keep in mind that these lands, were taken from us, and it frustrating and demeaning to have to petition the federal government for three decades to put it back to a status where it will again be considered "Indian lands."

Another major issue facing the Coeur d'Alene Tribe and other Northwest Tribes is education. It is no secret that the quality of life one can attain is often commensurate with the amount of education one gains. The education system in Indian Country is in dire need of assistance. Many of our students today have parents and grandparents that were once taken from their homes, exiled to boarding schools and beaten if they spoke the Coeur d'Alene language or engaged traditional practices. This may help explain some of the history behind the resistance to education in Indian Country. But it must be overcome and it has to start with parental involvement at a young age and continue throughout the rest of their schooling. When parents don't stress education, our students lose interest and drop out. Our school district suffers from one of the lowest proficiency and highest drop out rates in the state. We would welcome assistance from the Committee in exploring programs tailored to the unique history and needs of Indian people as it relates to education. A program must be developed that involves and educates parents at the same time teaching the value of education to our kids, who are our future.

While many of the foregoing issues impact the economic development of a Tribe, there are other more specific concerns we ask the Committee to consider that will protect and develop economic self-sufficiency on a reservation. Congress must do more to preserve and develop the SBA 8(a) program. This program, one of the few government programs providing the results for which it was intended, has been under a systematic attack from some members in Congress. Section 811 of the Defense Authorization Act of 2010 and the confusion with parity among SBA programs has effectively singled out Native-owned 8(a) firms, reducing the amount of jobs and revenue for such companies, most of which located in the most poverty-stricken areas of the nation. This program must be protected and expanded. We ask the Committee to join us in our fight to preserve Native 8(a).

We would like to commend the Committee in its development of the Native American Employment Act, that spawned the Native American Investment Initiatives Amendment (the "Amendment")- that will hopefully be included in some future successful legislation. The Coeur d'Alene Tribe got its name from French trappers for our savvy business and

trading practices and we continue to invest in businesses on and around the reservation as a means to diversifying our tribal economy. The Amendment will take steps to further this mission. There is a great need to facilitate small business on reservations, prevent leakage in the Tribal economy by fostering business friendly environments for individual Tribal members and outsiders alike. It is a foundation built upon small business that has provided the stability of this country and Indian Country is no different.

Like many Tribes, the Coeur d'Alene Tribe suffers from the lack of adequate infrastructure and viable funding for such infrastructure needs. Roads, sewer systems, housing, bridges and other projects need to be updated, improved or simply constructed to provide basic living accommodations to our tribal members and prepare for any realistic growth opportunity. As earmarks become increasingly scarce and loans are beginning to replace grant dollars, we would ask that the Committee revisit the need to invest in the dire infrastructure deficiencies prevalent throughout Indian Country.

Another issue of immense proportions is the amount of drug and alcohol abuse on the Coeur d'Alene Reservation and others. We feel strongly that this epidemic can be better treated with transitional treatment houses and other forms of substance abuse treatment centers. Currently, these transitional treatment houses do not exist on many reservations. Without them, one wise elder once put it, "we are taking the kids out of the mud puddle, cleaning them off and putting them right back in it." We ask the Committee to dedicate efforts to addressing the realities of substance abuse in Indian Country and looking at funding for transitional treatment centers on reservation as a viable solution.

The Coeur d'Alene Tribe is honored to provide our testimony today.

The CHAIRMAN. Chairman Allan, thank you very much. And next we'll hear from the Honorable Michael Finley, Business Council Chairman of the Confederated Tribes of Colville Reservation, Nespelem, Washington.

STATEMENT OF HON. MICHAEL FINLEY, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Mr. FINLEY. Chairman Dorgan, Senator Cantwell, it's truly an honor to be here today. I too would like to thank the Puyallup Tribe for hosting us, wonderful venue here. They're doing good things. It's a good model to follow. I'll try not to take up too much of your time today.

As you stated, I am the Chairman of the Colville Confederated Tribes of Northeast Washington State. We're proud of our reservation. It's 1.4 million acres as Chairman Cladoosby mentioned earlier.

The CHAIRMAN. Mr. Allen, could you turn your microphone off? All right. I think that will fix it.

Mr. FINLEY. I was wondering, I thought I had magic.

Mr. CLADOOSBY. You do.

Mr. FINLEY. Thank you. So we're a natural resources rich tribe. You know, we're bounded on the east with the Columbia River all the way down south and on the west, the Okanogan. So we are extremely rich with our natural resources. I want to thank you guys for all your work on the Indian Health Care Reauthorization as well as the Tribal Law and Order Act. Those are monumental Acts

that are going to directly benefit not only the Indians in our state but beyond across the United States.

But as you mentioned earlier, a lot's been done this year, but more can be done. In my mind the next big ticket item is trust reform. Notwithstanding what happens with Cobell, I think trust reform is the next big one that we would like to see the Committee to address next. As I mentioned, being from the Colville Reservation, we are rich in natural resources. Historically, we've been a timber resources tribe. But with the downturn in the housing market, the housing starts being down, it's had a direct impact on our economy at Colville. It's been our cash cow for years.

We've had to close two of our mills because of it, so not only have we lost jobs, the 250 jobs of mostly tribal members who are employed at mills, but it's the subcontractors who supply the mills with the timber. And consequently, it's also had an effect on stumpage dollars that we receive back that goes straight to the tribal revenues that provide the needed money to many of our essential services that we serve our people. So we are seeing a big strain on our services within our tribal organization. We are extremely complex. We offer a lot more services than a lot of other tribes don't have or, you know, just don't have the resources to support, and so that's a big problem for us and so we're looking at different ways where we can curtail that, but there's no easy answer. We don't have control over the national housing market.

When that turns around, we might look at making improvement within our mills to get some of those reopened. We're also looking at leasing them out because that's how desperate the situation is.

Renewable energy, we are also looking at that. We have a power project with the Washington State University on canola and different things within our boundaries that's shown dramatic results, good results. We also have a cogeneration plant that we have been planning up to 40 megawatts. We are hoping to use the Tribal Forest Protection Act to maybe hopefully get help to feed the cogeneration plant from some of the contiguous federal properties that are on the northern boundary of the Colville Reservation.

I'd also like to mention that we're heavily involved and watching closely the "America's Great Outdoors," they've been having hearings across the nation on that. It's going to do a lot of different things for tribes. It's going to do a lot of things in general for just, you know, the treasured landscapes in general that are talked about. And underneath that initiative, but it's going to allow tribes to do a lot of different things, either co-manage or get lands that otherwise wouldn't be available to them.

So without further ado I just want to thank you for allowing me this opportunity today and I'll pass the mic on. Thank you.

[The prepared statement of Mr. Finley follows:]

PREPARED STATEMENT OF HON. MICHAEL FINLEY, CHAIRMAN, CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Good morning Chairman Dorgan, Senator Cantwell, and members of the Committee. On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "Tribes"), I would like to thank the Committee for convening this hearing and allowing me to testify. My name is Michael Finley and I am the Chairman of the Colville Tribes and am testifying today in that capacity. In addition, I also serve as the Chairman for the Intertribal Monitoring Association on Indian

Trust Funds, a national organization comprised of 65 federally recognized tribes from all regions of the country.

Today, I am pleased to share the Colville Tribes' ideas and experiences as the Committee considers its agenda for the remainder of the year and into the 112th Congress. As a rural, land-based Indian tribe, the economic and social issues affecting the Colville Tribes mirror those of similarly situated tribes in the Great Plains and elsewhere.

Before I begin, I would first like to express my thanks to the Committee for its work in securing passage of the Tribal Law and Order Act of 2010. The Colville Tribes was pleased to have been able to participate in two oversight hearings that the Committee held on law enforcement during this Congress and applauds the Committee for crafting legislation that addresses such a broad scope of public safety concerns in Indian country. This law will make an immediate, on-the-ground impact on the Colville Reservation and on the safety of the Colville Tribes' citizens.

Background on the Colville Tribes

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of twelve aboriginal tribes and bands from all across eastern Washington State. The present day Colville Reservation is located in north-central Washington State and was established by Executive Order in 1872. At that time, the Colville Reservation consisted of all lands within the United States bounded by the Columbia and Okanogan Rivers, roughly three million acres. In 1891, the North Half of the 1872 Reservation was opened to the public domain. The North Half consists of approximately 1.5 million acres between the Canadian border and the northern boundary of the present day Reservation. The Colville tribal members exercise reserved hunting, fishing, and gathering rights on the North Half and the Colville Tribes maintains strong political and economic interests in this area.

Today, the Colville Tribes has nearly 9,400 enrolled members, making it one of the largest Indian tribes in the Northwest. About half of the Tribes' members live on or near the Colville Reservation. Between the tribal government and the Tribes' enterprise division, the Colville Tribes collectively accounts for more than 1,700 jobs—making it one of the largest employers in north central Washington.

Impact of the National Economic Downturn on the Colville Tribes

The Colville Reservation contains more than 660,000 acres of harvestable timber. Although the Colville Tribes and its enterprise divisions operate a diverse range of businesses, timber and wood products has been and remains the Tribes' largest source of revenue for governmental programs and services. The Colville Tribes owns a traditional sawmill, Colville Indian Precision Pine (CIPP), and a plywood manufacturing facility, Colville Indian Power and Veneer (CIPV). CIPV is the only tribally owned and operated plywood plant in the U.S.

The health of the Colville Tribes' wood products industry is tied closely to the nation's housing market. The severe downturn in new housing construction has impacted the Colville Tribes particularly hard and has weakened demand for wood products generally, which has resulted in lower prices and decreased sales. The depressed market conditions forced the Colville Tribes to make the extremely difficult decision to suspend production and close CIPV in January 2009, and then CIPP in November 2009, until market conditions improve.

The closure of both mills has directly resulted in the loss of more than 350 jobs for an already economically depressed rural area, not including the loss of the secondary jobs that the facility supports, such as contract loggers and truck drivers. The shutdown has also put increased strain on the Tribes' social services programs and personnel. These tribal government programs, most of which are funded by the Tribes' stumpage revenue (in addition to third party grants), were already stretched thin with the inherently high unemployment rate on the Colville Reservation. Like state and local governments, the current state of the national economy has presented the Colville Tribes' government with extremely difficult choices on how best to provide for its citizens.

Although the condition of the housing and wood products market is an issue national in scope, this Committee nonetheless has the authority to press initiatives that will help the Colville Tribes and similarly situated tribes get through these difficult times and plan for the future. Most notably, the Native American Employment Act of 2010 (S. 3471), in addition to bolstering the Indian Guaranteed Loan Program, would also help the Colville Tribes by enabling it to reduce administrative costs in its delivery of social services and job training programs. Specifically, section 5 of that bill would update Public Law 102–477, commonly known as the "477" pro-

gram, and the Colville Tribes has estimated that it would be able to save approximately $500,000 annually if those provisions were to become law.

The Colville Tribes encourages the Committee not only to continue to seek passage of S. 3471 this year, but also to continue to explore other initiatives in the next Congress that will increase the efficiency of tribes' delivery of social services to their citizens.

Trust Reform As Enhancing On-Reservation Economic Development

As the Committee is aware, Northwest tribes have been leaders for the past several years in efforts to reform the manner in which the federal government administers tribal trust resources. The Affiliated Tribes of Northwest Indians (ATNI) has established a trust reform workgroup of tribal leaders and technical staff to comment and provide recommendations on initiatives that affect the trust relationship, and the Colville Tribes has been an active participant in these efforts. The ability of Indian tribes to enter into leases, have fee land taken in trust, and to otherwise expedite federal approval of transactions involving trust property is a critical component of enhancing on-reservation economic development. These issues are important not only to large land-based Indian tribes like the Colville Tribes, but also for tribes with smaller land bases in western Washington and other more populous areas. In this regard, the Colville Tribes applauds the Committee's work on the HEARTH Act of 2010 (S. 3235), which would allow tribes on a voluntary basis to lease tribal trust land to third parties without the Bureau of Indian Affairs' approval.

Regardless of the outcome of the proposed settlement of the *Cobell v. Salazar* litigation, the Colville Tribes is hopeful that the Committee will explore broad scale forward-looking trust reform in preparation for the next Congress. With the enactment into law of the Tribal Law and Order Act and the Indian Health Care Improvement Act this year, it makes sense that trust reform should be the next big-ticket item on the Committee's agenda.

Energy Development and Natural Resource Management on Indian Lands

Renewable energy development has been of particular interest to the Colville Tribes as the Tribes seek new ways to utilize its land base to promote on-reservation economic development and to diversify its economy. Utilizing grants and technical assistance from both the Department of the Interior and the Department of Energy, the Colville Tribes is hoping to take advantage of the growth in the biofuels market. The Tribes is developing a cogeneration facility on the Colville Reservation that will utilize woody biomass from the Tribes' forestry activities, both on-reservation and on adjacent federal lands. In this regard, the Indian Energy Parity Act of 2010 contains several provisions that will greatly assist this and other projects that the Colville Tribes is pursuing.

Closely related to energy development is natural resource management, another issue of great interest to the Colville Tribes and other Northwest tribes. The Colville Tribes has been fortunate to have been able to work with the Department of the Interior in its implementation of "America's Great Outdoors," an Administration initiative focused on conservation and acquisition of federal land. The Department intends for this initiative to be a mechanism for tribes to reacquire fee land into trust and manage federal lands to which tribes have historical or cultural connections. One of the barriers to implementing this initiative, however, has been the inability of Indian tribes to access the Land and Water Conservation Fund, which would be used to fund these acquisitions. This initiative holds great potential to bolster tribal economies nationwide and the Colville Tribes urges the Committee to examine ways to assist the Department in implementing it as we look ahead to 2011.

The Colville Tribes appreciates the Committee convening this hearing and appreciates its consideration of these and other issues identified by Northwest tribes. We look forward to working with the Committee during the remainder of this year and in the 112th Congress.

The CHAIRMAN. Mr. Finley, thank you very much. Next we will hear from the Honorable Leo Stewart who is the Vice Chairman of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, and he's from Pendleton, Oregon. Thanks for joining us. You may proceed.

STATEMENT OF HON. LEO STEWART, VICE CHAIRMAN, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

Mr. STEWART. Good morning. Thank you for having this opportunity to come forward and speak on our issues.

Water is real crucial to the Indian people and to the communities. And it's the most social and economic issues we face at home. It's essential to our culture and to our efforts to develop a tribal economy for our people and our future. Our reservations overappropriated Umatilla River Basin. We have prioritized water rights settled in the Umatilla Basins, and in neighboring Walla Walla basins we're working with partners in the federal, state, and the community to establish irrigation and with irrigation districts. And each basin is to provide for water rights negotiation which we hope to commence next year.

There's a need for more resources to facilitate tribal water rights settlements and to fund the implementation of these settlements that had been approved by Congress. The Federal Government has an obligation to fund these settlements because as we experienced at Umatilla, the Federal Government failed to protect the senior water rights reserved under our treaties, and in some cases it was Federal Government that constructed water projects that served non-Indian communities which ignored tribal rights and needs.

Since I've been talking about water, the implication and operation of the river treaty between the Canadian and the United States efforts arising interest, natural resources of the Umatilla Tribe and many other tribes, that treaty as entered into by the United States and Canada in 1961 are proposed for flood control and hydroelectric power generation only and it has no set end date. Though it can be terminated in 2024, and then at least has a ten-year notice on it. Therefore, decisions need to be made before 2014 to provide the best opportunity to improve the treaty.

Fifteen tribes in the Columbia basin have been working together for over a year to consider the effects of the treaty on our interest. We are seeking assurance that the United States government will address tribal interests when this treaty is amended.

The two goals that the Columbia Treaty has crossed, first the tribal representation on the Columbia River review team and on the United States negotiating team if the treaty is amended. And the management of the Columbia River Basin is to achieve ecosystem functions coequal with the flood control and power production, including measures that restore and preserve tribal resources and cultures.

And Senator Cantwell, the next two issues which can aid tribal economic development need to be addressed by the Senate Finance Committee. Tribal governments currently have limited authority to issue tax exempt bonds a basic economic development tool available to state and local governments. The Umatilla Tribe supports amending the Indian Tax Status Act so that the tribal governments can have the same authority and to issue tax exempt bonds as do the state and local governments.

Without that authority tribal governments are placed at a disadvantage with respect to economic and development opportunities to comparison of state and tribal governments. Employment oppor-

tunities for tribal members are really essential here to improve the economic and social lives of our communities.

To address the education needs for our youth the tribal government chartered the Nixyaawii School on our reservation for the Oregon State 16R School District and due to the lack of state funding, we have provided annual subsidies to support the school in order to improve the quality of education offered at Nixyaawii. There is a great need for additional financial support.

If Indian tribes could be included within the definition of local education agencies under 6 the Elementary and Secondary Education Act, tribes would be able to apply for more federal funding, education grant funding to improve tribal educational facilities and programs.

So the Umatilla tribes strongly encourages the Senate to approve the *Cobell* settlement and we appreciate where it's at and continue to go forward on that.

We finally applaud the passage of the Tribal Law and Order Act. We thank the Committee for their effort to field this bill to become law, and I want to thank you Senators for your attention for these important issues that was all brought up, and especially a lot of the social issues that was brought to the table here by the other tribal leaders that are important across Indian Country and we appreciate that. Thank you.

[The prepared statement of Mr. Stewart follows:]

PREPARED STATEMENT OF HON. LEO STEWART, VICE CHAIRMAN, BOARD OF TRUSTEES, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

The Confederated Tribes of the Umatilla Indian Reservation ("Confederated Tribes") appreciates the opportunity to provide the Senate Committee on Indian Affairs with written testimony regarding its priorities on economic development and social issues. While the issues listed below are high priorities for the Confederated Tribes, please do not view this as an exhaustive list. Due to the broad subject matter involved, and the short amount of time afforded for developing written testimony, the Confederated Tribes requests the opportunity to supplement this written testimony to further expound upon the identified issues and identify further priority issues in subsequent discussions with tribal staff and policy bodies.

Following is a list of seven economic development and social issues that are of high priority to the Confederated Tribes:

1. *Tribal Water Rights Settlements.* There is an existing need for more resources to facilitate tribal water rights settlements and to fund the implementation of those settlements. The Confederated Tribes have learned from experience that substantially more resources are necessary to fund the required studies to quantify and negotiate a settlement of its reserved water rights. Additionally, as a "Palmer-Stevens" treaty tribe with water rights in many river basins, the Confederated Tribes and the Department of Interior have found unworkable the department's policy that a tribe must bring a single comprehensive settlement to the table. Lastly, with a number of tribal water rights settlements pending before Congress and awaiting either authorization or funding, it is clear the Committee needs to demonstrate the importance of completing these settlements efficiently and expeditiously so that settlements in negotiation—such as that of the Confederated Tribes—are not delayed further. The Confederated Tribes support the Committee's proposal to hold field and oversight hearings specifically on the status and experience of a tribes that provide working examples of tribes with implemented settlement, tribes with authorized but not completed settlement, and tribes in the process of negotiating a settlement. These case studies would help demonstrate the need for policy changes necessary to facilitate settlements, and increase the understanding of the import of Indian Water Rights Settlements to regional and national economic development and achieving national water supply certainty.

2. *Tribal Tax Exempt Bond Authority.* Tribal governments currently do not have the ability to issue tax exempt bonds, a basic economic development tool available to state and local governments. The Confederated Tribes supports amending the Indian Tax Status Act to make it clear that tribal governments have the same authority to issue tax exempt bonds as do state and local governments. This would permit tribes to finance facilities like golf courses, RV parks and campgrounds and public utilities using tax exempt financing as do state and local governments. Without the authority to issue tax exempt bonds, tribal governments are placed at a disadvantage with respect to economic development opportunities in comparison to state and local governments.

3. *Tax Credits.* Expanding on-reservation employment opportunities for tribal members is absolutely essential to improving their economic and social life. Attracting employers to the Umatilla Indian Reservation is critical to providing increased employment opportunities. As a means of inducing employers to locate on-reservation, the Confederated Tribes urges multi-year Congressional extension or renewal of both the Accelerated Depreciation Expense and the Indian Employment Tax Credit. Multi-year extension would provide private investors the necessary planning and negotiating time to utilize these credits in our shovel ready light industrial park. Without the multi-year extension investors cannot figure these incentives into any proposed projects.

4. *Tribes Designated as Local Education Agency.* The Confederated Tribes has chartered the Nixyaawii Community School on its Reservation with the Oregon State 16R School District. Due to a lack of state funding, the Confederated Tribes has provided annual subsidies to support the school. In order to improve the quality of education offered at Nixyaawii, there is a need for additional financial support. If Indian tribes could be included within the definition of Local Education Agencies under the Elementary and Secondary Education Act, tribes would have access to apply for more federal education grant funding to improve tribal educational facilities and programs.

5. *Columbia River Treaty.* The Confederated Tribes and 14 other tribes in the Columbia River Basin have met many times over that the past year to discuss common issues of concern and goals with respect to this Treaty between the U.S. and Canada, which formally operates only for purposes of flood control and power generation. This narrow focus has negatively impacted tribal resources and economies. The 15 tribes are seeking formal representation and participation on the Review Team that is conducting a multi-year review to develop options to provide the State Department with respect to terminating, renegotiating or continuing the Treaty, decisions the State Department must make prior to 2014. The goal is achieve consideration of ecosystem function on a par with flood control and power generation.

6. *Cobell Settlement.* The Confederated Tribes strongly encourages the Senate to approve the *Cobell* settlement (the House of Representatives has already approved it). If approved, the settlement would not only compensate individual Indians for past mismanagement of their Individual Indian Money accounts, but would also provide 2 billion dollars over a 10-year period towards the purchase of fractionated interests in allotted trust lands on Indian reservations. Those interests would be transferred to tribal ownership, facilitating consolidation of ownership on allotments and thus improving the ability of tribal governments to manage and use of reservation lands.

7. *Law and Order.* The Confederated Tribes closely monitored and provided testimony regarding the recently enacted Tribal Law and Order Act. Effective law and order is critical to social life on the Umatilla Indian Reservation as well as economic development. Because of the complex rules governing criminal jurisdiction for on-reservation crime, and given the large non-Indian population living within the checkerboarded Umatilla Indian Reservation, the enactment of the Law and Order Act represents a critical step toward improving federal and tribal prosecution of persons engaged in criminal activity on the reservation.

The Confederated Tribes reiterates that these seven issues are not intended to represent the full breadth of its priorities concerning economic development and social issues. We would appreciate the opportunity to follow up with additional written testimony for the Committee's consideration. Again, the Confederated Tribes appreciates this opportunity to provide input to the Committee regarding these important issues.

The CHAIRMAN. Mr. Stewart, thank you very much for being here. And finally we will hear from the Honorable Kathleen Tom, the Tribal Council Secretary to the Confederated Tribes of the Grand Ronde Community of Oregon. We appreciate your being here and you may proceed.

Ms. TOM. That was close. It's "Grand Ronde."

The CHAIRMAN. Grand Ronde.

Ms. TOM. Yes.

The CHAIRMAN. All right. I've got it. Next time, as Mr. Cladoosby knows, I never make the same mistake twice.

STATEMENT OF HON. KATHLEEN TOM, TRIBAL COUNCIL SECRETARY, CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

Ms. TOM. Okay. Good morning, Senator Dorgan and Senator Cantwell and the Committee. My name is Kathleen Tom. I'm one of the Tribal Council Members of the Confederated Tribes of Grand Ronde. I'm one of the officers. I hold the secretary position.

I'm proud to be here today representing my tribe and my 5,000 tribal members. Sometimes they think that council members sit around and do nothing, but when they hear the things and when we report back to them some of the things that are going on here and in our state and with our other governments, it's like, oh, the light comes on that, yes, we really do do work.

My testimony today is in part about the struggles of the Grand Ronde, some of the things that have happened to the Grand Ronde people. The Confederated Tribes have been in the Northwest area for many, many thousands of years, and during the treaty-making era we had seven ratified treaties; I won't go over them, they're in my written report.

Our reservation lands were abundant. We had natural resources, we had timber, we had water, we had fish and wildlife and we had plants and food, and it was very abundant. And through the treaties our lands were ceded to the Federal Government, and so our tribe feels like we've prepaid taxes by our lands and we've prepaid our health care by our lands and all of our resources.

The Confederated Tribes of Grand Ronde is pleased to see Congress's action in specifically directing money to Indian Country. I think Mr. Echohawk said a beautiful thing that finally tribes are people of prayer and finally our prayers are being answered by the Law and Order Act, by the Indian Health Care Act and by having Indian people in positions that really listen to Indian people.

Those government-to-government relationships and those consultations with Indian tribes is first times, and it's wonderful, and so I think that our prayers are finally being answered not only here at home but also in Washington, D.C. with the leaders there. So I thank you for that.

We talk about the recession here in the United States, but tribes have been in recession for decades. We've lived recession for decades. And I think you brought that up, Senator, about tribes going without health care, not being fully funded, not having enough money appropriations and to help our people, so I thank you for those. I believe that our prayers are being answered.

Economic development requires good roads, good schools and good phone systems and good health care. And there's been a 30-year gap in that history and we are starting at ground zero. The effort to build and sustain our community has been a monumental challenge and significantly more complex than faced by a mature establishment municipality with a continuous history of development.

However, we continue to advance our mission to improve the quality of life for our tribal members. We do have housing and we do have health care that the tribe pays for, and we do have education dollars and we are very thankful our prayers have been answered.

Since restoration in 1984 the Tribe has had this small pocket of time to get back on our feet, build our infrastructures and make sure that we have those dollars for education and housing and health care, and we're blessed by that. We really are a blessed tribe.

We've invested over $100 million to date towards that effort, and however, the ultimate objective requires additional investment and we're hoping that the government does help us with those additional dollars to continue that effort.

I request the Committee and Congress to fulfill their treaty obligations of this nation by appropriating more economic dollars to develop in Indian Country in the 2011 budget, and I think I was listening to the news and there was some good news from the President that he was going to do that.

With the land base of almost 12,000 acres and without adequate federal funding, Grand Ronde has relied on its on-reservation casino to be able to do the things that I just spoke of. We do oppose the efforts of some tribes locating near our ancestral homelands. We oppose off-reservation gaming, and we believe that this is wrong. Such moves outside of ancestral lands to build casinos can compromise the sovereignty and culture of other tribes which have a genuine connection to the land.

And in a memo dated June 18th by Secretary Salazar I understand that the department currently has a two-part application under review, and we would like to recommend that you undertake a thorough study of these issues, review the guidance, the current guidance and regulatory standards to guide the Department's decision-making when they decide that two-part application.

During this review we would like the office to engage in government-to-government consultation consistent with the policy of this administration to obtain from Indian tribes. I realize that engaging in this exercise in connection with the application of the two-part test may cause some delay, but given the Department's discretion in this area, we believe it's appropriate.

We ask the Committee to ensure deliberations between government-to-government consultation occur, that the Bureau makes determinations on off-reservation proposals such as other tribes building casinos off their reservation.

Finally, the IRS has taken the position with our tribe that tribal members serving on our boards and committees have to pay taxes. We have those boards and committees delegated to do a lot of our culture or health—the committees that sit and are the eyes of the

tribal membership, and the IRS is asking them to pay taxes on a small stipend that's for travel and their time on those committees. So we ask that you take a look at the IRS and they shouldn't have to pay those. And again, I will say that the tribes have prepaid their taxes with our land and our resources.

And I want to thank the Committee for coming here today. Like I said, I think our prayers are being answered in Indian Country, and finally our prayers are being heard in Washington, D.C. and I think we're moving in a wonderful direction. And I'm sorry to hear, Senator Dorgan, that you're not going to be with us, and my tribe wants to send you their best wishes in whatever you choose to do and thank you, Committee, for hearing me today.

[The prepared statement of Ms. Tom follows:]

PREPARED STATEMENT OF HON. KATHLEEN TOM, TRIBAL COUNCIL SECRETARY, CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

My name is Kathleen Tom. I am the Tribal Council Secretary of the Confederated Tribes of the Grand Ronde Community of Oregon. I am proud to be here today representing over 5,000 Tribal members.

My testimony today is shaped in part by a life of service to my Tribe. Four generations of my family have served on Tribal Council. My father served on Tribal Council for eight years. Before being elected to Tribal Council, I was a Tribal employee for thirteen years. I am now in my second three-year term on Tribal Council.

The peoples of the Confederated Tribes of Grand Ronde have lived in western Oregon for thousands of years. During the treaty-making era, our Tribes entered into seven ratified treaties with the federal government. Those treaties were the 1855 Treaty with the Kalapuya, two treaties signed in 1853 and 1854 with the Rogue River, an 1854 treaty with the Umpqua and Kalapuya, an 1853 treaty with the Umpqua-Cow Creek Band, an 1854 treaty with the Chasta, and an 1855 treaty with the Molalla. Vast territory of western Oregon was ceded through the treaty-making process with our people being driven to the Coast Reservation and the Grand Ronde Reservation. Our reservation lands were desirable to settlers and, consequently, our lands were significantly diminished through various land acts. In 1954, the Western Oregon Termination Act took all of our land, without compensation, and severed our ties with the federal government. For almost thirty years we were landless, invisible Indian people in our territory, but we rejoice today because this great injustice was overturned through the Grand Ronde Restoration Act of 1983.

The Confederated Tribes of Grand Ronde was pleased to see Congressional action to specifically direct money to Indian Country in the American Recovery and Reinvestment Act of 2009. I must, however, add that the recession the nation is now experiencing has long been the norm for Indian Country—in fact, Indian Country suffers from much higher rates of unemployment and poverty than the rest of the nation. Economic development is critical for Indian Country and tribal governments know this better than anyone. But economic development requires good roads, good schools, good phone systems, and good health care among other things. Termination for Grand Ronde resulted in a thirty-year gap in our history and suspension in community and infrastructure development. Starting from ground zero, the effort to build and sustain our community has been a monumental challenge, significantly more complex than one faced by a mature, established municipality with a continuous history of development. However, we continue to advance our mission to improve the quality of life for our Tribal members.

Since restoration, the Tribe has worked diligently to develop the foundation necessary to sustain a viable community. We have invested in excess of one hundred million dollars to date toward this effort. However, to accomplish our ultimate objective requires an additional investment of hundreds of millions of dollars in areas such as land acquisition, physical infrastructure, government institutional systems, support services, and other resources which promote a sustainable community and provide a reasonable opportunity for our people to realize social and economic stability and progress.

I request the Committee help Congress fulfill the treaty obligations of this nation by appropriating more economic development funds for Indian Country in the 2011 budget and any future stimulus package.

With a land base today of just 12,335 acres, and without adequate federal funds, Grand Ronde has relied on its on-reservation gaming facility to support critically needed government programs and provide jobs for its members. We oppose efforts of some tribes to locate new casinos off their reservation lands and outside their traditional homelands. Unfortunately, the desire for off-reservation casinos has led some tribes to claim territorial rights outside their traditional homelands so they can build casinos in more marketable locations. This is wrong. Such moves outside ancestral lands to build casinos can compromise the sovereignty and culture of other tribes which have a genuine connection to the land in question.

In a memo dated June 18, 2010, Secretary Salazar stated:

> "I understand the Department currently has nine "two-part" applications under review. For these, I recommend that you undertake a thorough study of these issues and review current guidance and regulatory standards to guide the Department's decision-making in this important area. During this review, your office should engage in government-to-government consultations consistent with the policy of this administration to obtain input from Indian tribes. I realize that engaging in this exercise in connection with the application of the two-part test may cause some delay, but given the Department's discretion in this area, it is appropriate that we take the necessary time to identify and adopt principled and transparent criteria regarding such gaming determinations. Moreover, deliberate government-to-government consultations will lead us to the implementation of a sound policy in this area."

We ask the Committee to help ensure that this "deliberate government-to-government consultation" occur before the Bureau makes determinations on off-reservation proposals, such as the Warm Springs' proposed off-reservation casino in the Columbia River Gorge.

Finally, the IRS has taken the position with our Tribe that Tribal members serving on boards and advisory committees are employees for tax purposes. Our members are not performing services in the capacity of employees; instead, they are serving their Tribe on matters of community interest and concern. Consistent with our culture, such members receive reimbursement for out-of-pocket costs and a small stipend to compensate for their time and travel away from their homes and families. We request the Committee, in setting its agenda for 2011, hold a hearing on the IRS's relationship to Indian Country and attempts to impose additional taxes on Tribes and Tribal members.

I want to thank the Committee for holding this oversight hearing and inviting the Confederated Tribes of Grand Ronde to testify. Senator Dorgan—on behalf of the Confederated Tribes of Grand Ronde and Indian Country, I would like to thank you for your leadership as the Chairman of the Committee. We appreciate your commitment and tireless attention to the needs of Indian Country. You will be missed.

The CHAIRMAN. Well, thank you very much for your testimony. Let me just since several of you remarked that I'm not seeking reelection, let me just observe that I have served 30 years in the U.S. Congress and it has been a great gift to be able to do that and a remarkable privilege, and I'm not leaving for any other purpose other than I think there are other things I wish to do in life.

But the opportunity to serve, and particularly the opportunity to work on these issues with my colleagues, has been a really great gift for me. And this work will continue, as you know. The work carries on. That's one of the reasons Senator Cantwell is here today. I mean, she's a very active member of this Committee and we've got a lot of people that will continue to make sure we address these issues.

I'm struck by how many different issues you have raised today, all of them on our agenda. The *Carcieri* fix just as an example or land into trust and leasing, bonding authority, all of these issues are issues we talk a lot about, and I have some questions. Before I ask questions, let me call on my colleague, Senator Cantwell, for questions. And as I do that, let me thank all of the witnesses for your testimony.

Senator Cantwell?

Senator CANTWELL. Thank you, Senator Dorgan. And you're right. There's a lot of different things that we could ask our panelists about, but we are in tough economic times in our country and in the Pacific Northwest, so I'm particularly interested in your thoughts on economic development.

Chairman Finley and Chairman Allan, you both mentioned strategies that you are pursuing. I know, Chairman Cladoosby, you see probably in your leadership role this as well. But you both mentioned economic development besides gaming.

Chairman Allan, you mentioned strategies affecting small business, so I wondered if you could elaborate more on what you thought the opportunities were for coordination on small business, and then Chairman Finley, if you could talk about energy policy. We have legislation before the Senate on an energy bill that would allow for some demonstration projects. I think it's your bill, Senator Dorgan.

The CHAIRMAN. Yes.

Senator CANTWELL. And allowing for streamlined processes and working with Interior. So I'm interested in your thoughts about how that could help improve the economic conditions in the northeast region of our state if that legislation was passed or other ideas which would help Indian Country proceed more quickly on these ideas of renewable energy because it seems like you're very big players in what could happen there.

Mr. ALLAN. Thank you, Senator Cantwell. Twofold for us, one is one of the companies that we have is an 8(a) company. We secured a $400 million contract with the Army to make these big fill bladders that we send out to Iraq. And our members are really, truly proud of that. They build these things right on the reservation. And we're being attacked on the 8(a) program, tribes as a whole. And that is something that we would really like looked at.

Our brother tribes in Alaska seem to get a lot of the press and when they do have hearings, they get a lot of the slots and that's something we would like a fair shake at.

The CHAIRMAN. When you say you're being attacked on the 8(a), if I might just ask a question——

Senator CANTWELL. Yes, go ahead.

The CHAIRMAN. What does that mean? Describe that.

Mr. ALLAN. By Congress. Actually there's a move in Congress to do away with the 8(a) program.

The CHAIRMAN. I understand that. I thought there was something else going on.

Mr. ALLAN. No, no, just that.

The CHAIRMAN. Okay.

Mr. ALLAN. So that's one thing. The other thing is we have a couple businesses in Spokane, and just from our observations, I think the State of Washington loses a lot of business to Idaho because of the high tax rates that we have to pay in Washington State, and so that's something that would be helpful not only to us, but any small business owner in the Washington market.

A lot of businesses want to move across state lines because they had cheaper—every tax available, so I think that might be something that we would like to look at.

So like I said, we are very blessed to have a gaming facility, but I also know that we don't want to put our eggs in one basket, so we try to expand our portfolio with other things and sometimes we pay the tax because, you know, we want to expand the portfolio just like any other company would do.

Senator CANTWELL. Do you have a specific goal in mind on how much you would like to diversify that portfolio from a revenue perspective?

Mr. ALLAN. For us we would like another probably 35, 40 percent coming in from these other sources, and I think we're on the right track, you know. I don't want to say too much because then we have everybody trying to sell us snake oil, but you know, we want to take a look at everything that's legit and see if we can make it work.

Senator CANTWELL. And I'm just curious, I mean that's interesting that that's your thought that that would be your concern. I'm just asking for more of a business perspective. Do you look at that as a way to insulate the tribe by not having an overdependence on gaming, or how do you look at that from a business investment?

Mr. ALLAN. Well, like I say, we respect everybody and every tribe, you know, they have their own way of dealing, but this is the way we look at it. We look at it as also we have to look where we come from. We come from the state of Idaho which is probably one of the most conservative states in the union. I mean, they are pretty conservative, so we've done a really good job, the leaders before me have done a really good job of preserving gaming in Idaho, but you just never know. You never know when something's going to happen and so we don't want to become too overdependent on gaming.

Like I said, we are very blessed right now with that, and with this economy we are still very blessed that we are right in the middle of a big expansion of our gaming facility, that our numbers are slightly down. So we want to keep moving forward and we take that money and we invest into other companies, other businesses. And we have taken on other partners, nonnative partners with our companies too because we see strength in numbers, and they actually help us when we go to D.C. and they lobby, it's kind of nice to have a regular business owner, a nonnative looking at these folks across the aisle and say Hey, you know, this is affecting us just as much as it is tribal governments.

Senator CANTWELL. Well, I know that a lot of Indian Country is also making investments from gaming to the human infrastructure, basically the education level of the tribal community which is also an investment, because you never know who's going to create the next thing that comes out of your individual enrollment as well, so I think that's a very positive investment.

Chairman Finley, could you comment about your economic diversification strategy and what else, if that energy bill is something that's of interest to you or——

Mr. FINLEY. Yes, it definitely is. We've been watching it fairly closely. We are aware of the four pilot projects that are mentioned therein and we're hoping to be one of them because we're uniquely situated where I think we would be able to show that we would be

a good pilot project for that purpose, and you know, that's one of the options we're looking at, specifically for our cogeneration.

With the downturn in the market that I mentioned to you earlier, we realized we needed to diversify because we had relied so heavily for so many years on our timber as our revenues, and we do have casinos, but we are off the beaten path, everybody knows that, we're out of the way, so we haven't really invested in our casino properties either, but we found that investing more in one more recently we've seen significant returns and so we're going to do that, but we realize just gaming and timber isn't enough and that's why we've turned to energy, biodiesels, and this cogeneration plant.

This pilot project that I alluded to earlier with WSU, there's four phases to it. They've completed one phase of it but they're out of money. And so we're faced with either funding it through the tribe, for it to continue, so we have an overall plan on how we're going to approach canola and biodiesels within the boundaries of our reservation because we have so much there to offer as far as agricultural land along the river bottoms near the Okanogan and Columbia Rivers.

And so with that comes many jobs because there's a lot of labor involved in doing that work. And you know, having unemployment of upwards of 53 to 56 percent on the reservation since 2004 which certainly has escalated with the closing of our mills, our people are hurting right now. They need the work. They want to work.

And so more recently we're able to put some of our timber sales out to the market, but it didn't come without a degree of difficulty in getting those out. But with the timber markets still being down, we're seeing low returns on that, but it's putting our people back to work which is most important to us.

So we are looking at other areas. And I think that certainly the legislation that's being championed by Senator Dorgan, you know, we are excited about it. We are hoping to see that come to fruition. So I hope that answers your question.

Senator CANTWELL. Thank you. I wanted to turn it back to the Chairman to ask his questions, but is there anything that you wanted to add, Chairman Cladoosby, or anyone else, on the panel about economic development strategies?

Mr. CLADOOSBY. Well, I think it's important to understand that tribes want to create economic development, especially on the reservations. As you heard, 50-plus percent unemployment—it's unacceptable from a leader's standpoint. And when we have situations where we sometimes need to attract partners with us that we sometimes do not have the capital, and Chehalis I used as a good example where they attracted a partner, they created a model business, they're creating jobs, probably majority non-Indians at this point, but we need to make sure that the rules are in place where we attract investment in Indian Country and we are not penalized for doing that. And so that is very key for economic development in Indian Country that a county cannot go to a judge and say They owe us taxes on their property from an investment that they've created where they're the majority interest owner. So we want to create economic development, but there's things that need to be changed to ensure that economic development can occur on Indian

reservations when we invest $180 million that the Chehalis tribe has. That's just one example.

Senator CANTWELL. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Cantwell. Which of you have now felt the effects of the *Carcieri* decision? In other words, are there tribes here that have now the issue of land that's been taken into trust in question because of the *Carcieri* decision? Anyone?

Mr. HARJU. Don't have land in the trust.

The CHAIRMAN. What's that?

Mr. HARJU. We don't have land in trust because of the *Carcieri* decision.

The CHAIRMAN. All right. So it's been delayed because of the decision.

We understand that we need to fix this and we're trying very hard. We've gotten some pushback by some who believe this is a decision with respect to gaming. It is not. The gaming issues, whether some tribe in some state can game, that's between the governor and the determination of a compact in the state with the tribe.

We have to fix this because we're going to have a lot of land that is in trust that's now in question. We'll have a lot of other land that is supposed to be taken into trust that will be delayed now. So we're working very hard to try to fix this.

Ms. Tom, you talked about the Internal Revenue Service issue. I'm just curious; has the IRS consulted with the Tribe at all on these issues? Has there been consultations or just the IRS says, "Here's the way the world works"?

Ms. TOM. The second part is the way it was. It's not free to go up against the IRS. We've had to pay special attorneys that are knowledgeable in IRS issues and it's cost us a fortune. No, there hasn't been, to answer your question, Senator Dorgan, there hasn't been any consultation.

It's gotten up into the millions, and so we do need help in that area with the IRS, and so if there's anything that you guys could do, that would be great. The things that they're trying to tax us on is, like I said, those stipends—they are actually thinking that our committee members that come there once a month, travel maybe 50 miles, sit there for 2 hours, make $9 an hour, that they are employees and they have to pay taxes which is crazy.

The CHAIRMAN. All right. We'll look into that. I wish these agencies would have consultations because I think the issue of sovereignty is very important. Senator Cantwell and I especially understand the sovereignty issues, and I think consultation is very important.

Ms. TOM. Thank you.

The CHAIRMAN. Chairman Dillon, the issue of leasing I expect is very important because you have port facilities here and so we're working very hard to try to have opportunities with much greater capability for the tribes to make their judgments and also 99-year leases. Is your tribe seeing restrictions in this area that have been unhelpful to your economic development?

Mr. DILLON. I got a gentleman sitting right next to me that can answer that.

The CHAIRMAN. All right.

Mr. DILLON. He's our director of Marine View Ventures and that is part of our port development and he's the head of the——

The CHAIRMAN. What's his name?

Mr. DILLON. Chad Wright.

The CHAIRMAN. All right. Mr. Wright?

Mr. WRIGHT. If I may, our leasing legislation is really a social and an economic issue. It's a social issue in the sense that we're a sovereign nation and we're not given the right to make our own decisions on what we want to do with our land, and it's hurtful to us to not be able to make decisions that we're prepared and qualified to make on our own. And to see my cousins to the north at Tulalip have that privilege and us to not have that privilege is hurtful. So from a social standpoint we're hurt by that inability to make those decisions.

From an economic standpoint, not having the ability to make decisions in a timely manner do not allow us to attract businesses that work at the speed of business. The uncertainty of timing, the uncertainty of approval of leases that may have 50-year time horizons or even longer if legislation is passed, really doesn't put us in position to attract outside businesses to come to our reservation and sign up for a deal that involves in some instances many hundreds of millions of dollars of investments on their part. They will go find another opportunity somewhere else that doesn't have that timing risk or that just uncertainty that approvals that are necessary will be achieved.

The CHAIRMAN. All right. Let me ask a question somewhat related to that economic development issue, we have the highest rates of unemployment often on Indian reservations. What is the importance of attempting to provide additional tax exempt bonding authority for reservations in the context of your plans for economic development? Where does that rank in importance to you, tax exempt financing?

Mr. ALLAN. For us it ranks high. I would put it in the top five because we're always looking at other avenues of what we can do, and tax exempt bonds it's cheap money that we can pay back and it really helps us to—you know, instead of just a regular loan to the bank, where they get their money, the taxes and bonds really do help us.

The CHAIRMAN. Mr. Stewart, did you want to respond to that?

Mr. STEWART. Yes, I'm going to back that up because it does help us in the long run to be competitive. And Senator, I hate to say this, but I have to catch a plane and so I'd like to excuse myself.

The CHAIRMAN. All right. Thank you so much for being here, and thanks for your testimony, Mr. Stewart. I appreciate it.

I didn't mean to chase you away from the table, but tax exempt financing, the Puyallup Tribe, does that rank near the top as well?

Mr. WRIGHT. It would be helpful. In many instances we've had to find creative ways to resolve that issue through partnerships with the Port of Tacoma or through partnerships with private business that has the capability of attracting interest rates on loans that are competitive with the tax exempt market. But if we were capable of making those same investments with tax exempt bonds it would free us up to make more investments in our land in a

more accelerated manner, thus putting our lands to productive use for our membership and also for the community at large.

The CHAIRMAN. Mr. Cladoosby and Mr. Finley, let me just say that both of you have described energy as important. And you know, we have a reservation in North Dakota called the Three Affiliated Tribes: Arikara, Hidatsa, Mandan Tribes. It's a very large reservation with many thousands of American Indians living there.

It's right in the middle of the most active oil plate in the United States. It's called the Bakken Shale. It was assessed by the U.S. Geological Survey as the largest assessed reservoir of recoverable oil using today's technology in the history of the lower 48 states. And so I just wanted to tell you how big that oil play is up there.

And yet, about a year and a half ago I put up a big map and I showed there's massive oil drilling north of the reservation, west of the reservation, and south of the reservation, and there was virtually no drilling on the reservation. Why? Because the Interior Department had a 49-step process to have a drilling permit, number one, and four separate agencies inside the Interior Department had to approve the drilling permit, number two.

So you just set up a mountain of trouble trying to go do what is being done on all other lands—and now I fixed that largely, not quite done, but mostly fixed it. We have I believe 30-some drilling rigs now drilling active wells on the reservation. We've got a lot of stuff going on.

In North Dakota we've got 120 rigs drilling a new oil well every month and they never miss. This isn't a dry hole. They never miss when they drill because they know where the shale formation is and they go get it.

So the point is, though, that in economic development and energy development it is always the case where you put up all these barriers. In this case the energy was oil and natural gas, but it might be something else. It might be wave power or biodiesel. We have just completed work on an energy bill, Indian Energy Bill in the Indian Affairs Committee, and you know, we delayed that to try to make sure we got done with Indian health care and then tribal law and order, but now we have the Indian Energy Bill which is very important to try to streamline and remove some of these burdens so the tribes can themselves say Here's the kind of energy future we want to create. Here's what we want to produce and eliminate the barriers to do so.

And both of you, Mr. Cladoosby and Mr. Finley, mentioned this in your testimony and we'll take special note of that. I hope you will do special review of the bill that we've introduced because it's a work in progress and we certainly can make changes and want to improve it as well.

Mr. Cladoosby?

Mr. CLADOOSBY. Yes. Thank you for that. I think it's very important to understand that ATNI Tribes are very, very involved in energy projects. I believe Andrea Alexander is here with us that heads that up for us, and so, I think you have to tie a lot of this somehow to unemployment and underemployment in Indian Country.

I mean, that's the key right there, because for example, in Washington, some counties get tax rebates from the state because they

have high unemployment rates in their counties. And I think, you know, if you do the same thing for Indian Country and say that We are going to streamline this process because of the unemployment and underemployment, and you don't have to say Indian Country, you can just say, you know, in these areas. You know, Indian Country would qualify more highly because if you tie it to 20, 30, 40, 50 percent unemployment, I mean, that's the key right there, to make sure that we streamline this based on the conditions that are occurring out there today.

And we can show you on the record that many of our communities would qualify, and streamlining these would make these projects a lot easier to implement.

The CHAIRMAN. Mr. Finley? Thank you.

Mr. FINLEY. I would have to agree with that. And as I said earlier, we are well aware of the work that's being done right and we're grateful. Anything we can do to help with that, just let us know.

I'd like to also make a plug that we also have several met towers that have been up on our reservation for over a year now, and two of the sites have come back showing that it would be feasible to build wind farms, wind energy. And so we're looking to do that and we've actually partnered with Clipper Wind to do that. And they're going to take up most of the cost initially.

You mentioned bonding, and getting financing is a big problem so, I would have to agree with my colleagues to my left that it would be beneficial to Indian Country to all tribes to have that access to it. And so with that, we would need to—with the 40-megawatt cogeneration plant that we are looking to build as well as the wind farm, if both of those are up, you know, getting the energy generated is one thing, but getting it into the grid is another. And talking to BPA, they are almost at full capacity, so soon they are going to be cutting people off.

The CHAIRMAN. There needs to be additional transmission capability.

Mr. FINLEY. Correct.

The CHAIRMAN. Senator Cantwell and I've worked on that as well. You've got the three problems of planning, pricing and siting, and it's very hard to site the interstate high voltage transmission capability.

Just to give the audience a notion of how difficult it is, in the last ten years we have laid about 11,000 miles of natural gas pipeline across this country. During the same period we were only able to build 680 miles of high voltage interstate transmission, and that's the problem. In order to maximize the energy capability for renewables, we need transmission capabilities. So we're working on that as well.

I want to mention to all of you I'm impressed by the forward-leading sound of business plans that you're involved with and I take great heart in that, and our job is to try to remove some of the burdens to the extent we can and some of the impediments to what you're trying to get done to build better economic opportunity and put people back to work. So I am impressed by that.

We only have about another 20 minutes and I wanted to first of all thank all of you who presented formal testimony. It really is ex-

cellent testimony, and there are some others who wish to testify. I do want to recognize them and I would ask if they would be willing to be mercifully brief, but I do want to make sure that they have an opportunity to say a few words.

David Bean is over here standing against the wall or was standing against the wall, and he will take a microphone around to where you are. David is a council member from the Puyallup Tribe, "Puyallup", I'm sorry. And you know, maybe if I could just move out here and live here for a while I would get all these names just exactly right.

Mr. ALLAN. Come on out.

The CHAIRMAN. Let me take you to North Dakota and see if you can get our names right, a bunch of Norwegians and Swedes out there. At any rate, let me call on—here's who we have so far: Mel Sheldon, the Chairman of the Tulalip Tribe; Greg Abrahamson, Chairman of the Spokane Tribe; Leonard Forseman, Chairman of the Suquamish Tribe; Henry Cagey, Chairman of the Lummi Tribe, and John McCoy, a state representative in the back of the room.

So let's find Mr. Mel Sheldon. Thank you for being here.

STATEMENT OF HON. MEL SHELDON, CHAIRMAN, TULALIP TRIBE; ACCOMPANIED BY GLEN GOBIN, BOARD MEMBER

Mr. SHELDON. Thank you, Senator. Thank you both for coming out today and being with us and hearing the concerns of the overall Pacific Northwest. I'm going to make my comment shorter than Chairman Dillon. So if I could defer the next 17 minutes of my testimony to my colleague Glen Gobin.

The CHAIRMAN. All right. Glen, thank you for being here.

Mr. GOBIN. I also would like to welcome you here and thank you for being out here, thank the Puyallup Tribe for providing the space, Senator Cantwell, for your constant support of Washington state and in particular the sovereign nations within Washington State and all of your support, Senator Dorgan, for all your years of service with all the issues that our country is facing with the economy, the war, the health care issues, you have not forgotten Indian Country and in fact have pushed forward issues that have helped us make improvements, and I thank you for that and just say thank you once more.

Much has already been said about the needs in Indian Country, the social issues that we all face, and as you know, Indian Country's not immune to the issues that all of the United States faces. In fact, in particular, Indian Country sometimes becomes a haven for sometimes some of these activities because of jurisdictional questions, lack of funding to deal with that, whether that be economic dollars or federal dollars. Sometimes it's hard to get access to those dollars and get the programs in place that need to be in place.

But some tribes have been able to make improvements in those areas using their economic dollars. We seem to make a distinction between gaming dollars and economic development dollars. To us they're the same. They're economic development whether you call it a casino or resort or what, we're doing the same thing. We're providing jobs, we're buying goods and services, we're feeding the local economies.

And what I just want to touch on is that and I know that you all work really hard on trying to help us get there, but there's a lot of education that needs to take place. And sometimes it seems like our economies are not given the same value as outside non-Indian economies. When we are asking for dollars that come into Indian Country it's looked at as a taking of tax dollars rather than a grant dollar coming in like any other municipality, and you read in the paper so-and-so city gets $5 million grant to do something. It's a big news item. When tribes get that same $5 million grant it's viewed as a taking: We got something for nothing it seems like. And so we're not given the same value.

The same is when we're asking for changes to these programs that allow us or help get us access to these dollars, tax exempt bond financing in particular, changes to the IRS and some of the issues that are coming forward are across-the-board issues that we ask that you look at our economies and give them the same value—not you in particular, but our United States government look at that and be given the same value and the same weight for, after all, we're spending our dollars for the same thing, buying goods and services, paying for jobs, buying in the local economies, and those dollars have the same value because they're the same and they're recycled over and over again in our economies. And many times in our local economies the tribes are some of the largest employers.

But we're not given equal credit for that, so we just ask that a continued—from your program, your Committee looking at it in that way, but the United States government give us the same value for our economies that we provide and we bring in and we are asking for these changes.

The CHAIRMAN. We appreciate that very much and we certainly understand that on the Committee and we'll certainly work to make sure more understand it. Thank you very much for making the point.

[The prepared statement of Mr. Sheldon follows:]

PREPARED STATEMENT OF HON. MEL SHELDON, CHAIRMAN, TULALIP TRIBE

On behalf of the Tulalip Tribes, this is our official written testimony for the U.S. Senate Committee on India Affairs "Oversight field hearing on Economic Development and Social Issues Affecting the Northwest Tribes."

The Tulalip Tribes of Washington are the successors in interest to the Duwamish, Snohomish, Snoqualmie, Skykomish Tribes and other Tribes and bands signatory to the Treaty of Point Elliot of 1855. We, the Tulalip Tribes, are people who gathered, we self governed and believed all were equal and had a place in our community. Today, we provide culturally appropriate trainings and teachings for both spiritual and practical purposes. We hope to one day arrive at a time when each and every Tribal citizen becomes capable and productive. However, all of this comes at a great cost.

The Tulalip Tribes have been involved in economic development to better serve our community since time immemorial. Unfortunately, Tribes have been excluded and often ignored by federal and state governments. Tribes must be an integral part of the federal decision process through effective consultation and coordination. Tribes face severe economic disadvantages on many levels such as taxation, financing, and energy. This in turn affects our social programs and livelihood of our people.

Tribes have a legal and unique relationship with the Federal government and thereby have funding streams that do not pass through states hierarchy. Pass through funding historically does not reach Indian Tribes. Further, it undercuts our government to government relationship with the United States. As such, Tribal governments must be explicitly incorporated into all Federal transportation, bonding and government reauthorizations budgets. All Tribes need access to the same funds as States with the same level of importance.

Although our unmet needs are great and diverse, we will attempt to highlight a few of the issues that the Tulalip Tribes are currently facing.

TAXATION

Congress has never established tax policy on Indian trust lands which is a basic component of Indian Economic Development that CONGRESS HAS THE POWER TO RESOLVE.

The continuing lack of clarity and overlapping taxation authority with states and their subdivisions means that, even when tribes try to invest to develop economies beyond gaming, where other governments reap revenues the Tulalip Tribes are left without the ability to reap those same revenue benefits.

Tulalip's *economic strategy* was to create one of only two federal chartered cities in America, yet we cannot effectively collect local taxes. The federally recognized City of Tulalip called Quil Ceda Village generates 6,000 jobs. These employees in turn generate an additional tax base for local, state and federal taxes without benefit of any return to the Reservation for Roads, Public Infrastructure or Health and Welfare services.

Washington State collected $30 million plus in Sales Tax and B&O Taxes from the Quil Ceda Village on investments the Tribe has made. NONE of these taxes were available to the tribal development authority to construct and maintain the necessary infrastructure. This creates a huge windfall for State and County Coffers with no investment in the economic health or growth of our Tribe.

This is an injustice to the Tulalip Tribal Government and all citizens living on or near the Tulalip Reservation. We create resources, we create jobs, we create taxes and we create economic growth yet our Tribe does not receive the same value as our state's economic growth does. Tribes must be given equal credit. This will only be resolved when Congress takes this matter up by recognizing the Tribe's sovereign authority to levy taxes for health and welfare of its citizens. Tribal economic development must be given the same value as other governments do.

FINANCING

Develop lending and most of the home lending in Indian Country continues to be tribally financed as banks remain unwilling to loan into trust and reservation lands.

Tribal Economic Development Bond provision in Section 7871 (f) of the Internal Revenue Code (Tribal Government Tax Statius Act) must be amended to provide the same authority for Tribes as states receive in the ability to access municipality bonds to be utilized for economic development on or near Tribal Reservations.

Department of Treasury must work in a Government to Government manner with all Federally Recognized Tribes to ensure appropriate language is included in financing and to ensure Tribes are to put at a greater disadvantage then state governments.

NATURAL RESOURCES & ENERGY

The last major barrier to tribal sovereignty in the United States is energy and natural resource independence.

When tribes, such as Tulalip, try to develop resources, particularly in the water or energy independence area, the roadblocks we encounter are staggering. Most of these barriers come from those who benefit from these currently supplying the Tribe or from controlling the rules under which the supply is delivered to the tribe.

In order to most readily qualify for assistance in funding water projects, we would have to yield a portion of our sovereignty to the State of Washington's Dept. of Health. On the energy front, we

are blocked from bringing power to market from an innovative waste to energy plant by a lack of tariffs with our local energy providers.

We have learned from experience that, as important as financial resources are, we cannot combat the socioeconomic problems that plague our communities. For Tulalip Tribal members to become thriving tribal members, significant planning and coordination, consultation, and collaboration are necessary between the US Government and Tribal Governments.

HEALTH CARE

Historically, the Indian Health budget has never covered the health care needed by Native Americans/Alaskan Natives.

Official tribal involved policy must be developed at the federal level and ensure that the Indian health delivery system is an integral component of any health care reform initiative through tribal consultation. We are requesting full funding of the Contract Support Costs and Contract Health Services. Tribal Consultation in the development of State Plan amendments that provide greater flexibility and expansion to Medicaid services to Tribal communities are critical to our Tribe.

EDUCATION

Tulalip strives to ensure the federal government upholds its treaty and trust responsibilities for the education of Native students through the provision of direct educational services. No Child Left Behind has given the Federal government a full view of how inadequate Tribal children's education is across the Country.

The Tulalip Elementary School which was identified as having the lowest test scores in ALL of Washington State. 90% of the Tulalip Elementary School students are Native American with close to 88% on free or reduced meals. No Child Left Behind has proven you cannot take Indian students and teach them effectively to a standardized test when they are already years behind in education.

In 2008-2009 Washington used the Washington Assessment of Student Learning (WASL) to test students in reading and math. The Marysville School Districts Achievement Gaps states if students are behind in reading and math in the 3rd grade they are highly unlikely to graduate from high school. With this said, Tulalip Elementary 3rd grade reading test results showed only 21% passed the 3rd grade reading. Tulalip Elementary 3rd grade math results showed 24% passed.

These WASL test results combined with the local school districts assessment could mean that 89% of these students at the Tulalip Elementary School will not receive their high school diploma. Our Indian children are in need of adequate teachers, appropriate cultural assessments, and adequate school books to strengthen their chances of becoming a high school graduate.

Parents must be provided full opportunity to participate in their child's educational journey. Parent's voices are an integral part of their child's education and must be heard and treated with respect. Curriculum must be taught using teaching methods that allow children to learn in many

and varied ways. Finally, it is imperative that teachers are prepared to teach our Native American children utilizing methods that are culturally appropriate.

SOCIAL SERVICES

Tribes need to receive direct funding from the federal government so that states are not holding up progress and protection for our children. Indian children are the highest risk population in the United States. We are currently dependent on State services. The State consistently changes staff due to budget cuts which causes a constant need for Tribes to "re-educate" state employees to understand tribal processes. This makes it very difficult to have continuity of services.

Social Services have historically received little to no funding. We are asking for full funding at all levels to adequately meet the needs of our families.

TRANSPORTATION

The federal government has the ability to create a direct funding for tribal transportation planning, infrastructure, maintenance and development. Tribes understand our own transportation needs and priorities, the federal government does not. Transportation is an essential piece to economic development. The reauthorization of the Nation's transportation program is very important element to secure continued economic development.

The Bureau of Indian Affairs (BIA) and the Federal Highway Administration (FHWA) need to align their definitions of ownership and classification to ensure Tribes are given adequate funding for their needs. Tribal governments are not political subdivisions of state or local governments. Tribes are treated lower than county governments when attempting to access the same funding states are able to access. This can easily be corrected by including Federally Recognized Tribes as eligible receiving governments in transportation reauthorization bills.

The Indian Reservation Roads (IRR) Funding Formula has been of huge concern for us. An internal audit needs to be completed to ensure that all roads within the exterior boundaries of an individual reservation are within the newly defined road classification. How the cost of construction between road classifications is calculated and that methodology needs to be consistent with other federal methodologies for calculating road costs to construct. Finally, Tribes must be given appropriate access to transportation funding just as a state government does.

In summary, the Tulalip Tribes have poured a lot of resources into diversifying our economic development away from the gaming industry. Creating a federally recognized city was intended to address the many economic disadvantages Tribes run into when trying to access tax exempt bonds, transportation funding, infrastructure funding and basic economic growth. Yet, Tribes do not have the same access to federal funds as states do therefore putting Tribes at an even larger disadvantage to economic success.

In conclusion, appropriate consultation with Tribes is critical to enhance our Nations Government to Government relationship. It is the responsibility of Congress to penalize, monitor and enforce the agencies meaningful consultation with Tribes.

The Tulalip Tribes look forward to having a positive working relationship with the U.S. Senate Committee on Indian Affairs.

The CHAIRMAN. Mr. Greg Abrahamson, the Chairman of the Spokane Tribe.

STATEMENT OF HON. GREG ABRAHAMSON, CHAIRMAN, SPOKANE TRIBE

Mr. ABRAHAMSON. Thank you, Senators. Thank you, Chairman Dorgan for being here, and Senator Cantwell, thank you for being here. I echo what the other tribal leaders said because we really

do appreciate you guys taking the time and being here to listen to our needs.

The Spokane Tribe is—we are rich with our people and our lands, but economically we're not doing quite as well in that area there. We do thank the Committee for passing our bill S. 1388 out of Committee. We hope that with Senator Cantwell's help we can get it passed through this year. We got it passed in the previous Congress in the 108th on the Senate side and 109th on the House side. We believe that this is the year we will be able to get that bill taken care of there.

We do echo with some of our neighboring tribes here too with the timber industry. As the timber industry took the south decline there, we rose up to 52 percent unemployment. So we do echo what Chairman Finley of the Colville Tribe has said about the timber industry. It's really been a blow to us over there in Eastern Washington there as it went south there.

We do—on the tax exempt bonds, some of that we—it's good, but then again you got to have the partner, you got to have the financial backing to do it. We got that first round of tax exempt bonds that came through. We had 22½ million, but we had to turn it back because we did not have the money right there to take care of that financially at this time.

I also want to thank you and appreciate that you will allow us two weeks to put in the record for our testimony, written testimony. We appreciate that. And I'll keep it brief so that other tribal leaders can get in there.

The CHAIRMAN. Mr. Chairman, thank you very much. And I'll remind everyone again that two weeks from today would be the deadline, and anyone is invited to submit formal testimony as part of the permanent hearing record that would be published.

Leonard Forseman is the Chairman of the Suquamish Tribe.

STATEMENT OF HON. LEONARD FORSEMAN, CHAIRMAN, SUQUAMISH TRIBE

Mr. FORSEMAN. Thank you, Senators and the staff for coming out here to the beautiful Puyallup nation for this opportunity to speak, and I thank you for the opportunity.

I'm Chairman of the Suquamish Tribe here in Central Puget Sound and I just want to speak briefly on education. I had the opportunity to speak on Indian education back in a hearing a few months ago, and I worked really heard on this with a lot of the tribal leadership in this room and their policy people.

And as you know, the Elementary and Secondary Education Act is being considered for reintroduction and authorization and we want to make sure that Indian Country is in its complex education issues that you're familiar with are paid close attention to, one of those being the fact that the Obama Administration which has done a lot for Indian Country which there has been very much appreciated.

There appears to have an urban approach to this and there are some good things to look at, but we are very concerned about standardization of assessments and curriculum nationwide, although there's some savings that are taking place there, we are worried about the elimination or the reduction of tribal history and

culture in our tribal curriculum. And we know this is very important for the success of our students as tribal people because we have a low achievement gap, and also we think it's very important for everybody, all students to learn about the history of our nation which is intertwined with our Indian people here, treaties and all these things that we're pretty much familiar with, but there's a lot of things in science, math, english that can be taught in tribal curriculum and tribal history can be interwoven with that. So we'll be working more with you on that and I would like to thank you for the opportunity.

The CHAIRMAN. Mr. Chairman, thank you. And feel free to submit extensive comments on the education reauthorization provisions because we have not covered that in great specifics today, but that is very important to us.

Next, Henry Cagey, Chairman of the Lummi Tribe.

STATEMENT OF HON. HENRY CAGEY, CHAIRMAN, LUMMI TRIBE

Mr. CAGEY. I am Henry Cagey, Chairman of the Lummi Nation. And I do want to thank the Senate Committee for coming out and hosting the field hearing and also the Puyallup Tribes and all the other tribal leaders that showed up today.

One of the things that, you know, I guess the hearing is about economic development and social issues. You know, to remind the Committee that most of the tribes here in the Puget Sound are fishing tribes, and we've had a big impact here on our economy with the fishing industry. And again, the Lummi Nation is a fishing tribe. There's over 5,000 members and almost over a thousand fishermen. We do shellfish, we do fishing, and what that ties to is natural resources.

So again the natural resources side of funding and looking at natural resources has been lower on the totem pole as far as energy and fees to trust and *Carcieri*.

Most us here in the Northwest depend on the fishing industry, and our nation is really taking it very hard as far as what's happened to our fishermen. So what we're looking at as far as one of the strategies is workforce development. And one of the things we need to look at with the Committee is developing our workforce for the next generation of those kids that can't fish, for those kids that have no ability to understand what it's like to grow up on the water.

Their parents are the ones that have the fishing skills, but the kids behind them have no skills. Where we've seen this working is in the Department of Labor's Youth Build program. That's been one of the big things that we've seen that's working very good. We actually had the youth build a unit from the stimulus bonds through housing that actually built an apartment with those kids and it worked out very good.

The other part is again the Committee I would recommend looking at workforce development for those generations of kids coming behind you. Workforce is something that we need to think about for the next two or three generations. Workforce and jobs for those kids, so they're the ones that we need to target on what needs to happen for their future.

Infrastructure is another one. Infrastructure, again, is that I heard little discussion on infrastructure, roads, water and sewer as behind the fee to trust. Because once you get the land into trust you still need infrastructure and you need water and you need roads. And again without that it makes it very difficult to do. And one of the things that we're watching is the IRR program and redoing the formula, and I think there's a meeting coming up next month on a discussion with the formula. Our tribe has a big impact on that formula decision, and so infrastructure is a big one.

Also within the infrastructure is broadband and broadband meaning that we see broadband as being one of the tools to work with our new generations and broadband is something that we're seeing that's being shared with the state. But again, we hope the tribes aren't going to be left out of the broadband initiative. There's a lot of money being put into the economy, but we're not sure yet if Congress is going to recognize our needs in broadband infrastructure which we think will cover the youth and their technology skills. I have a grandson that knows more about the computer than I do. So the broadband is something that's important.

EDA's another one. And again I'm going to encourage the Committee to look at the EDA reauthorization. The Economic Development Administration has the tools andthey have tools that are called the Community Economic Development Strategy called CEDS, and that's a tool that's been working here, and that reauthorization is coming and we want the Senate Committee to encourage the tribes to be involved in that reauthorization. The other issue——

The CHAIRMAN. You'll submit others as well with the rest of your testimony?

Mr. CAGEY. And then the Farm Bill is the other one is that in the Farm Bill we aquaculture included somewhere in that Farm Bill that recognizes the need for the fishing tribes.

The CHAIRMAN. All right.

Mr. CAGEY. The last issue, Mr. Dorgan, is the tax policies. And again we feel very strongly about the tax policies that the IRS is imposing on the tribes which are violating the U.S. Constitution that Indians are not taxed.

So again, that concludes my economic issues. The last issue is social issues is drugs. That has not come up, but the drug issue here in the Northwest is very, very hard on our economy, our people, and drugs are not included in the law and order bill. We know that.

And again, the domestic violence and the other things we support, but drugs are not included, and we do need to hear more about what the plan is to deal with our drug problems. So on behalf of Lummi Nation, Hy'shqe, thank you.

The CHAIRMAN. Thank you very much. Let me just observe, however, that the dealing of drugs, the consumption of drugs, the trafficking of drugs represents criminal acts, and that's part of the issue on reservations, what kind of law enforcement capability do we have to intercept, to prosecute and so on. So the intention of the Tribal Law and Order Act is to substantially improve the capability of tribes to address the drug issue. We recognize drugs, gangs and other issues are very important to tribes at this point.

Finally I'm going to call on two additional folks for brief comments and then I'm going to call on Senator Cantwell for a concluding statement.

John McCoy is a state representative here in Washington but is also I believe Chairman of the Native American state representatives across the country, and I've known John for a long while, it's nice to see you. You may proceed.

STATEMENT OF HON. JOHN McCOY, U.S. REPRESENTATIVE FROM WASHINGTON

Mr. McCOY. Thank you, Senator. Senator Dorgan, Senator Cantwell, thank you for allowing me to make some brief comments.

I have to ditto everything that all the tribal leaders have said before me. Again, you asked the question about prioritization. You know, bonding and taxation work hand in hand. If you have taxation, you get bonding. So the taxation issue is extremely important in Indian Country so that we can get those better bonds and loans.

I myself work for the State of Washington for the tribes. The tribes are now eligible to participate in the municipal investment pool which will allow some very low interest rates for infrastructure projects. In the State of Washington I Chair the Technology, Energy, and Communications Committee. I sit on the ag and natural resources, and I also sit on Financial Institutions and Insurance.

So consequently, you know, I got a little bit that I can help Indian Country throughout for the State of Washington. So for the Washington tribes, please don't forget about the state because those federal dollars that come down, I'm ensuring that the tribes are eligible for those funds, for those various programs; *i.e.,* broadband.

I am fussing with the FCC over some of the policies they have in place because it actually hinders tribes from being able to participate. And at Tulalip it's been proven you bring in technology, economic development follows.

So those are extremely important, and I am working with Chairman Forseman on education. And yesterday I forwarded to Senator Cantwell's staff a policy paper that the National Caucus of Native Americans legislators put together on Indian education. So I will make sure your office gets a copy to forward on.

The CHAIRMAN. John, thank you very much for your leadership as well. And the last comment will come from Mikah McCarty.

Mikah McCarty is a councilman from the Makah Tribe, and he's traveled from the Northwest tip of the state of Washington to be here this morning, and I'm going to call on him for the last comment.

STATEMENT OF HON. MIKAH McCARTY, COUNCILMAN, MAKAH TRIBE

Mr. McCARTY. Thank you, Senators. Thank you, distinguished tribal leaders here. I just wanted to preface a comment related to the written testimony that we're submitting. We have some challenges with national marine sanctuary issues and there's a national ocean policy effort that the President's got underway, and

we've been heavily engaged. But I do want to say that we do have good work at hand. The Makah Tribe and the other coastal tribes in Washington state are working on a very important piece of work in the national symposium for a coastal indigenous perspective on climate change and sustainability.

So the energy bill and all this other good work is something that we really look forward to integrating into our agenda and we look forward to working with you in the future with the piece of legislation we just mentioned. Thank you.

The CHAIRMAN. Thank you very much, and thank you for making a special effort to be here.

Senator Cantwell, thanks for being here this morning. I know that you've got other things in other parts of the state of Washington today that you're doing, but I think it demonstrates again, as I know from your work in Washington, your attention to Native American issues that you're here. Do you have any concluding comments you wish to make?

Senator CANTWELL. Well, thank you Mr. Chairman. Again, thank you for holding this hearing and for the staff being here.

I too am struck about the diversity of issues that were brought up here and I think that just shows the diversity that exists within Indian Country. It is a government-to-government relationship, and these are a vast number of issues, but no doubt Indian Country is playing a role in the economic development and growth of our state. And just so, you know, Mr. Berney mentioned the fact that, yes, there are many tribes that benefit economically and have grown, as the Tulalip, I think you're the second largest employer in Snohomish County behind Boeing, but not every tribe benefits from the ability to do gaming. And so the issues that have been brought up here today about natural resource-based economies, whether based on timber or fishing or just, you know, the ability to diversify the economic base is important.

I know Mr. Wright left us, but one of the issues that I wanted to emphasize is tribes are also major cornerstones of economic development strategy within major urban areas like right here in Tacoma. The partnership that Tacoma and the Puyallup Tribe and Pierce County is trying to pull off as it relates to infrastructure development and the movement of goods and services because the port is such a key component to the livelihood of this community, so the trust issue, land into trust issue becomes a very important part of one partner in the community being able to close and solve business deals and business challenges.

So if we were going to come back to ask him a question about that, but perhaps Mr. Wright could submit some testimony on that very issue. But I think we're talking here about now just not just a simple economic deal but things that hold up the entire region'sability to move forward basically because we don't have a framework by which the tribes can make business decisions, or they're very, very delayed. And I'm sure the testimony reflected that as well as other people get slowed down in how they can proceed on that economic development.

I'm also struck, Mr. Chairman, because you and I serve on a couple of other committees together, how much Indian Country issues also spill over to those committees, whether we're talking about the

Commerce Committee and the communication infrastructure issues or whether we're talking about the Energy Committee and Interior streamlining the process for things like lease resource extraction or things of that nature.

And I think I take away from what the testimony was today, if nothing else, Please help us streamline the process and make sure that Indian Country is not only represented but streamlined in the ability to do the types of economic development you would like to do.

So anyway, I appreciate the testimony of everybody here today, and you've given us a lot to take away with, if nothing else, looking at the bond status tax policy and working with the finance committee on that issue and coming up with some answers.

So again, I want to thank you, Mr. Chairman, for your special interest in the Northwest and for your leadership. I know this won't be the last time, but it might be the last time you're here in this official capacity, and so again, the Northwest thanks you for your attention. I've been at other hearings with you here in the Northwest, so this isn't the first time you've done this as chairman, so we really appreciate the particular focus to our unique corner of the world.

The CHAIRMAN. Well, thank you very much. Thank you.

[Applause.]

The CHAIRMAN. Let me say as we conclude here that the government leaders of tribal governments who have testified and who have come here, you all wake up in the mornings with a significant task and burden. You belabor in many cases and circumstances where there's substantial poverty and unemployment, and yet you have aspirations to change all that and you're working on a lot of different programs to try to do that.

Earlier this week a teacher told me of a young Native American child in his school district, and he had asked this young third-grade child what the child—he knew it was going to be the kid's birthday—what this child wanted for his birthday. And this young third-grader said a flashlight. And he said, "Well, why do you want a flashlight?" He said, "So I can read at night. They turned our electricity off."

And I was thinking, in circumstances where you have the dilemma of poverty and lack of economic opportunity and fewer jobs than you need and so on, there is such a disadvantage, especially to children, and so that's why we have to focus. We have to focus like a laser on trying to put people to work and resurrect the economy so that people have a job and the money to pay their bills and raise their families and so on, and the first Americans have really been left behind.

And I've said so often, those who were here first should not have second-class health care or second-class housing or second-class educations. It is just not acceptable. And so we have tried very hard to focus on that and push and prod, and we're going to keep doing that. And despite it all, I think we've made very significant progress just in the last couple of years, and we're going to continue to make that progress. And part of that is in no small part as a result of your always being there.

Someone once said the world is run by those who show up. You always show up, and that's really important. Don't ever stop that. Always show up to say Here's who we are. Here's who we represent. Here's what we need for a better life, and that just makes all the difference in the world.

Now I started by thanking Chairman Dillon and I want to end by calling on Chairman Dillon because my understanding is that he has a treat for us.

Mr. DILLON. I would like to say yes, we do appreciate you being here and you, Senator Cantwell and your Committee, and we have the luncheon prepared. So anyone in the whole ballroom remain and enjoy that meal and we are looking forward to seeing you again whether it's in this capacity or any other one.

The CHAIRMAN. Thank you very much. I understand it's probably salmon.

Mr. DILLON. From the Puyallup River.

The CHAIRMAN. Thank you very much. This hearing is adjourned.

[Whereupon, at 12:30 p.m., the hearing adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. WILLIAM IYALL, CHAIRMAN, COWLITZ INDIAN TRIBE

Chairman Dorgan, Vice Chairman Barrasso, and Honorable Members of the Senate Committee on Indian Affairs. My name is William Iyall, and I am Chairman of the Cowlitz Indian Tribe of Washington State. I want to thank you for the opportunity to submit testimony on economic and social issues affecting tribes in the Northwest.

As a landless tribe restored to federal recognition in 2002, by far the most important obstacle to my tribe's ability to develop a self-sustaining economy is the fact that we have no trust lands or reservation on which to establish a tribal homeland and foster economic development for the tribe. The reason why we have no trust land is that the Supreme Court's decision in *Carcieri v. Salazar* has caused widespread confusion and consternation regarding which federally recognized tribes the Secretary does, or does not, have authority to take land into trust. The fact that this situation continues a year and a half after the decision was handed down has been absolutely devastating for tribes like mine.

With this testimony I again urge Congress to pass legislation to address the havoc the Supreme Court has caused with its decision in *Carcieri v. Salazar.* The Cowlitz tribe is just one of many landless and disadvantaged tribes in the Northwest, and around the nation, that has been severely impact by the fee to trust delays caused by the *Carcieri* decision. These tribes desperately need congressional action to fix that decision and to *make clear that all federally recognized tribes will be treated equally under the Indian Reorganization Act (IRA).* In 1994, Congress amended the IRA *to explicitly instruct* the federal agencies to treat all tribes equally under the law. In 2010, Congress needs to act once again to make this same principle apply to the federal courts.

History of the Tribe

The Cowlitz Indian Tribe was first recognized by the United States in land cession treaty negotiations that took place in 1855. Because my ancestors refused to be removed to another tribe's reservation in a different part of what would become Washington State, the United States simply extinguished all of Cowlitz's aboriginal title by Executive Order without reserving any lands for our use. In the 1930s, the Bureau of Indian Affairs refused to let us adopt an IRA constitution because we had no reservation. As a result, by the 1960s, the Bureau came to classify the Cowlitz as an "unrecognized" tribe even though we had had a long, continuous history of interaction with the United States Congress and with the Department of the Interior.

In 1977 we petitioned the Department to restore our recognition. After a 25-year administrative ordeal, in January 2002 the Cowlitz Indian Tribe was restored to federal recognition through the Department's Federal Acknowledgement Process. On the very same day on which the Tribe's recognition was restored, the Tribe petitioned the Secretary of the Interior to use his authority under Section 5 of the Indian Reorganization Act (IRA) to acquire trust title to land in Clark County, Washington so that the Tribe could have a reservation there. I should mention that in 2005, we received a legal opinion from the federal government that confirms that we have strong historical and modern ties to the area in which our Clark County land is located. Letter from Penny J. Coleman, NIGC Acting General Counsel, to Chairman Philip N. Hogen, at 11 (November 22, 2005) ("[U]nquestionable parts of the historical record establish that the Cowlitz Tribe, throughout its history, used the Lewis River Property area for hunting, fishing, frequent trading expeditions, occasional warfare, and if not permanent settlement, then at least seasonal villages and temporary camps.").

After having spent nearly seven years (and multiple millions of borrowed dollars) to navigate the fee-to-trust and reservation proclamation processes, in late January 2009 my Tribe's fee-to-trust and reservation proclamation applications, finally, were poised for action by the Department. A month later, the Supreme Court handed

down the *Carcieri* decision. For us, the year and a half since the *Carcieri* decision has been a devastating—and surreal—experience. In June of 2009 we submitted a lengthy legal analysis (which has been provided to Committee staff in its entirety) demonstrating that as a matter of law my Tribe was under federal jurisdiction when the Indian Reorganization Act was enacted in 1934. We also submitted over 260 documents from federal records demonstrating that not only did the federal government have jurisdiction as a legal matter, but also that the Department of the Interior was in fact *exercising* jurisdiction during that time period. Yet fourteen months after we made that submission, we have no decision.

The Economic Impact on My Tribe

Interest on the money we have had to borrow to buy land and complete the fee-to-trust process continues to accrue at an alarming rate. (No federal funds have been appropriated to acquire land for Indians since the 1950s, so landless tribes like ours have no other option but to borrow.) New money to borrow is almost impossible to find, as banks and lenders have become wary of loaning money so-called *"Carcieri"* tribes because of the uncertainty the *Carcieri* decision has created. And, we have entirely missed the opportunity to participate in any reservation-based Stimulus (The American Recovery and Reinvestment Act of 2009) funding. This is no small loss. Unlike landed tribes, we have had precious little opportunity to participate in the federal government's economic recovery efforts. *Without a reservation, my tribe has no hope of ever becoming economically self-sufficient.*

Without immediate help from Congress and from the Department of the Interior, our debts will continue to mount. Opportunities for economic development will be denied. Our inability to apply for reservation-based funding will be unresolved. Our ability to exercise true self determination will continue to be compromised. Eventually, the work we have done in compliance with the National Environmental Policy Act will become outdated and require new work—and new funding. Soon another year will pass and we will lose more elders, who, like my predecessor, Chairman John Barnett, passed away without ever having set foot on a Cowlitz reservation. If the Legislative and Executive branches fail to address the very real mischief caused by the Judicial branch, the Cowlitz Indian Tribe may forever continue to be landless and forever be treated as a second-class Tribe by the very federal government that is supposed to act as its trustee. With genuine respect, the Cowlitz Indian Tribe urges the United States Congress to take decisive action now to ensure that no tribe will ever be treated as inferior to another tribe under the law.

Need for a Legislative Fix: S. 1703

There is no doubt but that, absent action from Congress, the Department's exercise of its IRA authority will engender years of needless litigation, and tribes, the federal government, states, local governments and private parties will suffer the exorbitant costs associated therewith. Such law suits have already begun. Accordingly we implore this Congress to enact legislation to make crystal clear that the IRA is applicable to *all* federally recognized tribes regardless of the manner or date on which they received federal recognition. Congress must reconfirm the fundamental legal principles as well as the basic policies underlying passage of the IRA, and must confirm that the Department's implementation of the IRA (as equally available to all federally recognized tribes) over the past three-quarters of a century has been proper and entirely in keeping with those well-established legal principles and policies. Failure to act will result in unconscionable uncertainty, delay, and hardship for Indian country, and in particular, for landless tribes like Cowlitz.

Finally, Congress (and the Department of the Interior) must not let opponents of Indian gaming hijack the *Carcieri* issue to further their own political goals. The rhetoric about "reservation shopping" is particularly offensive to a tribe like mine, which has no reservation at all. Concerns about Indian gaming issues are not appropriately addressed in the context of a *Carcieri* fix, and most certainly are not appropriately addressed by avoiding fee-to-trust decisions altogether. The Supreme Court's decision in *Carcieri* adversely affects not only acquisition of land in trust for tribes and individual Indians, but also the Secretary's authority to proclaim Indian reservations, to adopt tribal constitutions, and to create tribal corporations. As our trustee, we beg you to reject efforts to conflate *Carcieri* issues with gaming issues.

Conclusion

On behalf of the Cowlitz Indian Tribe I first want to thank this Committee for its efforts to address the Court's misguided and confusing decision. I also want to underscore that land is key to economic development and that any further delay in resolving the problems engendered by the *Carcieri* decision will have severe and devastating impacts on the Cowlitz Indian Tribe and others like it. Having played by the rules for so many years with our pending application, it is fundamentally

unfair now to change the rules for tribes like ours. We respectfully, urgently, ask Congress to protect us (and the United States) from noxious litigation by enacting legislation making clear that all tribes will be treated equally under the Indian Reorganization Act regardless of the time and manner in which they achieved federal recognition.

PREPARED STATEMENT OF JEWELL JAMES, MASTER CARVER, HOUSE OF TEARS CARVERS, LUMMI NATION

Honorable Chairman Dorgan and Committee Members:

In the Pacific NW, Isaac Stevens was Territorial Governor and Indian Agent of Washington Territory. Joel Palmer performed the same functions for Oregon Territory. Both men were assigned by the Commissioner of Indian Affairs to use the Treaty with the Omaha as the model for securing treaties with the Indian Tribes. These treaties were a part of the campaign to colonialize the Indians (i.e., relocate them on to the reservations, to separate them from the citizens as settlers).Effectively, tribes west of the Mississippi and Missouri were all to be located on reservations. Before the General Allotment laws (1887-1934) removed 90,000,000 acres of the reservation lands for the benefit of white settlers, the Indians still owned 138,000,000 treaty-protected acres. For most of the tribes, the taking of two-thirds of their remaining lands guaranteed their socio-economic suffering for the next 100-plus years. A few of those tribes have pulled out of poverty due to Indian Gaming, but most have not been so fortunate even today.

The Lummi Nation is a treaty Indian tribe. It is party to the Pt. Elliot Treaty (12 Stat. 927), as negotiated 1855 and ratified in 1859. The Lummi Nation, thus, has a government-to-government relationship with the United States. Like most Indian reservations, the Lummi People suffer from socio-economic marginalization, with conditions existing on the reservation, statistically, that are reflective of most struggling third world economies. The Pacific N.W. was once recognized, post-treaty times, for the huge economic potential associated with its fishing and timber production. Both aspects of the regional economy has collapsed, causing severe impoverishment to the families that depended on these resources for several generations; this holds just as true for tribal people that were participants in those non-Indian economies as employees and laborers. Consequently, while the majority of the treaty fishermen have been driven out of the economy, due to extremely limited harvests and correlated huge operation costs & debt loads, those remaining few are working to increase the ex-vessel value of their harvests. Still, most of them are forced to seek additional job skills to survive through the year.

For many tribes, the women and children would have become artists as a matter of traditional pride, in perpetuation of sacred symbolic traditional knowledge. Today, however, the transmission of the arts from one generation to the next is a means of day-to-day survival for many families. The art provides a small income that allows the

families to literally purchase their "daily bread." Now, the Internal Revenue Service demands income tax on any income those artists make. The artists do not want to sell art to the Nation for fear that their few dollars made will expose them to charges of tax evasion.

The Lummi Nation has been able to work with the Northwest Area Foundation and secured a grant that seeks to help overcome poverty amongst the those suffering in the lowest (25%) economic strata of society. The administrators have focused upon tribal fisher families and artists. This seed grant takes effect for several years and will be matched with several million dollars from the Lummi Nation. One aspect is to attempt to provide the traditional tribal artists access to markets beyond the reservation boundaries. A few artists seek to couple the products of the artists with the ex-vessel value production of the fishermen; thereby increasing gain to both parties. This is a natural fit in that the "stories, myths, symbols, and ceremonial knowledge" traditionally associated with the "arts and crafts" are cultural vehicles for teaching tribal society, and others, the necessity of managing human activity and conduct in such a manner as to decrease immediate and long-term impacts to the fish populations, the correlated marine/riverine environments, and spawning habitat. Traditional knowledge, which includes the arts, has value because it provides public lessons on how to live with the surrounding environments that humanity is dependent upon for survival.

The traditional arts and crafts are venues of great traditional, cultural pride to native communities and artisans. It is for that reason that there has been a constant, national, effort to protect these forms of cultural expressions from exploitation by non-Indian persons and business entities that are not affiliated with the tribal communities. Tribal communities own the collective knowledge, expressions and sacred knowledge tied to its artistic, symbolic manifestations. Before the non-Indian schools systems became the standard teaching institutions, the Native People passed individual, familial, extended-family, and community collective knowledge from one generation to the next. This is known as traditional knowledge of the collective. In many cases this knowledge was shared and protected amongst intertribal affiliations.

The use of artistic symbolism is directly tied to tribal methods of teaching protection, respect, and preservation of the surrounding environs (inclusive of the floral, faunal,

environmental, elemental, mineral, etc. aspects). These traditional cultural teaching systems were defined by Dr. Gregory Cajete, University of New Mexico, as a form of "Native Science." And, our "native science" coupled with our traditional symbolism depicted in the traditional arts does deserve to be protected under national powers given to the congress under Article I, Section 8, Clause 3 of the Constitution (i.e., the "Indian Commerce Clause"). The 2009 amendments to the American Indian Arts and Crafts Act was a step in the rights direction that should have been addressed back in 1935. Not included in the protection from exploitation was a guarantee that the Internal Revenue Service cannot apply the income tax to traditional arts and crafts of Indian Country. To tribal artists, the IRS is another predator that seeks to take what is traditionally theirs.

We have even witnessed some tribal casinos buying Indian Art produced by non-Indians. Perhaps, this may be because they cannot find qualified tribal artists trained in the totem arts or other forms of mediums & expression. While this excuse has been voiced up front, the fact is that the federal laws were so lax that it was easy for non-Indians to infiltrate the industry and sell their products as Indian Art. It has been especially easier for them to sell their wares off-reservation, since the consumers cannot verify who is a real Indian. But, the 2009 Amendments to the Indian Arts and Crafts laws shall address a some of these marketing problems. We, as tribal members, know that much of our traditional knowledge is incorporated and expressed in our arts and crafts. We have a right to train our young in the arts. We have a right to expect that such cultural expressions shall not be impacted or hindered by non-Indian society, governments, and markets.

The House of Tears Carvers most often employs and trains single tribal mothers and their children and other tribal youth in the process of creating any commissioned totem pole work. We donate our art for public good, as well. Such gifts are for public display. The art products are used to teach our concerns about environmental protection and integrity. The experience of learning the art, the stories, and earning a commission for their work has always been a great experience for all youth involved. The process builds their self-esteem, cultural awareness, and pride within those involved. For many, we seek to undo the historical damage, felt by each succeeding generation, done by the United

States in its campaign to "Kill the Indian, to Save the man" (1872-1934) and to "Terminate" the reservation tribal identification as a matter of law (HJR #108, 1953).

While we can readily recognize that tribal members living on the reservation will routinely be recognized as tribal Indian artists, there are others. There is the indigenous rights question about "Our Relatives" that live in British Columbia, recognized as Canadians, but are "Lummi Indians" if they lived in the United States. Under U.S. law the aboriginal Canadian artist is considered "white" and not a Native American Indian, even though he is registered with a Canadian Band in British Columbia and has numerous relatives on the Lummi Reservation in the USA. Under indigenous law he is acceptable as a tribal community member but this is not true under U.S. law. The U.N. Declaration on the Rights of Indigenous Peoples addresses this subject. He would qualify as a native thereunder with cross-border inherent rights to cultural exchanges. By rights, under our intertribal ceremonial systems and transmission of traditional knowledge, we must accept our Canadian relative in accordance to traditional law. Thus, for Native Americans, if an aboriginal artist in Canada can show that he has blood relatives within a U.S. federally recognized "border-tribe" then that tribe should be authorized to certify his native art products as authentic Indian art under tribal law, and include him amongst their lists of traditional certified tribal artists qualified for protection under federal law..

Most importantly, in the 1980's, we witnessed the attempted federal taxation of our treaty reserved fishing rights income. In response, the U.S. Congress enacted Section 7873- the Indian Fishing Rights Exemption. Previously, in multiparty, complex litigation, Federal District Judge George Boldt ruled (1974), and the U.S. Supreme Court confirmed (1979), that the tribes had reserved their rights to the *commercial, subsistence, and ceremonial* shares of all the salmon stocks, as well as other food fish. Thus, the intent of Section 7873 was to assure that all income derived from the exercise of those commercial, subsistence, and ceremonial rights (whether reserved by treaty, executive order, or federal statute) was recognized as tax exempt (under both federal and state law). This covered the rights to harvest, transport, and market the harvested production of raw to finished marketable products. As interpreted by the tribes and the IRS, this exemption included the management and protection activities associated with modern tribal fisheries management and governance of the treaty fishing rights. As the attached supplemental

testimony addresses, we use our traditional arts to teach each generation native science about social responsibility to protect the fish populations and their habitat. When we teach the general public, as well, to maintain respect for the salmon species, the riverine & marine environments, and the spawning habitat, then that is the traditional equivalent to modern fish culture management with a correlated public education campaign.. And, it is good public relations to teach modern, post-industrial society to be more protective and caring for the fish stocks and the related rivers and environs.

We were, once, informed that the exemption included the artistic expressions of the reserved fishing rights. The IRS has since concluded that the income was not exempt. In our interpretation the income is a part of the treaty reserved rights and covered by Section 7873 as exempt income. But, it appears the IRS Indian Government Taxation Division, as the in-house experts, have concluded it is a taxable income as not directly related to the actual fishing activity. This is tragic in that many of the salmon/fish stocks are being listed on the extinction or endangered species lists. We believe our traditional arts, that depict our stories of conservation, are intended to be protected from taxation as much as the actual hands-on harvest, transportation, and marketing of the multitude of sea foods products, as much as the daily science & management practices are included. In fact, the art is one means to directly enhance the ex-vessel value for the fishermen's products at the market level (as in packaging and advocating quality, traditional native products). And, alongside rivers and streams, our artists have raised story poles to teach the public to respect and protect these salmon populations and their riverine & marine habitats. These poles are used to teach the "conservation stories" that advocate the need to protect the natural environment for all future generations.

We recognize that there is an opportunity to secure legislative clarification about the value of Pacific NW Indian Arts and Crafts in public awareness about duties tied to fisheries management and species protection & propagation. The 2009 Indian Arts and Crafts Bill failed to add protections for this important traditional industry, as pertains to clarification that the Supreme Court interpretations included this cultural/ceremonial aspect of the tribal industry as part of the treaty fishing rights.. We believe that, as a matter of clarification, Section 7873 applies here. We need language that any and all rights to the commercial value of harvested natural seafood resources is inclusive of the

tribal traditional artists' rights to express the ceremonial and cultural values artistically associated with the natural resources and that such expressions have a *direct value-added* attached to the traditional harvests, protection, and marketing of the product itself, as well as great significance toward preservation of the traditional & culture management of the resources. Our recommended general exemption language would be:

Indian Arts & Craft Tax Exemption: "*Any Native American Arts & Craft produced by enrolled members of a Federal Recognized Indian Tribe, within the exterior boundaries of an established Indian Reservation, whether established by treaty, executive order, or federal statute, that produces revenue or income for qualified tribal members and their dependents shall be exempted from all federal and state taxation. Such exemption shall extend and apply to the production, transportation, marketing, and management activities of said arts & crafts production when such activities are implemented by an enrolled Indian, or a 100% Indian business entity owned and operated by an enrolled tribal member, an Indian Artist Association, or otherwise tribally authorized corporation.*"

We believe that it was never the intent of the U.S. Congress to reach into Indian Country and apply federal taxation to traditional Indian Arts & Crafts. This activity is primarily the result of IRS Agents that have little understanding of the government-to-government relationship between the Indian Tribes and the United States. The agents control the system. They claim it and the Indian has to prove it was not true. Usually the cost to prove it as a fiction costs enormously more then it would cost the individual to pay the tax. Lawyers hate to take a tax case that their clients cannot afford to pay the costs for, especially when the IRS built up so much precedent against individuals. Tribes are not allowed to defend the "individual" because the US declared him a citizen. The case becomes one between the "citizen Indian" and "his government." .

The Congress has control, with the signature of the President, over the development of "Indian Commerce" as a matter of national economic interests. It has never been the position of the Congress to authorize this extension of the federal taxing laws to this area of Indian traditional commercial activity. It is a direct attack upon our tribal

governmental attempts to stabilize tribal culture, and tribal arts & crafts as a part of tribal society. After all,…" to tax a right is to destroy that right." As the great psychologist Carl Jung would recognize, the use of native symbolism, as expressed in their stories, the myths, and arts have great significance to the socio-psychological stability of the tribal collective and culture. We have the inherent and exclusive rights to allow our traditional arts and crafts to be expressed and to protect those rights as a matter of our entitlement to self-determination and self-governance, and treaty right. It is a non-taxable right. It would be like the US taxing the right of "freedom of speech" or "freedom of worship."

In the meanwhile, the Senate Committee on Indian Affairs has jurisdiction over Indian Affairs, and since it was the Senate that ratified our treaty (per Art. II, Sec. 2, Cl.2), the *Senate has the power to "advise"* it's peers and the President on the treaty ratified. Thus, any language that could be secured as a matter of law to clarify that our arts and crafts, as so much relates to the conservation of the environment and species, is covered by Section 7873 IRC. Such language, as recommended above, must recognize this artistic expression is a protected treaty ceremonial right. The law must declare that the use of traditional arts and crafts for teaching tribal members, and the off-reservation general public, the value of traditional knowledge and ceremonial respect for treaty reserved (fish) resources shall be classified the same and considered an inherent part of the modern day tribal management and science associated with said natural resources protection, management, harvests, and transportation. And, that the traditional artists are entitled to 100% of any revenue or income from such marketing as a matter of traditional tribal economy, and must not be subjected to external taxation by the state or federal governments.

We recognize that we cannot raise the issue of funds, finance, or taxes in the Senate first since the House controls this power (Art. I, Sec. 7, U.S. Constitution) and the House Parliamentarian would declare the language unconstitutional if originating in a senate bill.. But, the conflict is really about the IRS not recognizing that "native ceremonial and traditional knowledge" deserves the same respect as any modern science of fisheries management that originates from the colleges and universities. Our tribal use of the traditional arts and ceremonial knowledge was how we managed and controlled human impacts upon the fish populations and related environs. It is how we taught the people not

to overharvest or not to contaminate or impact salmon habitat and spawning grounds, or correlated environs.

Please consider language that would clarify, retroactively, that traditional Indian arts and crafts have valuable places in teaching respect for human relationships with the floral, faunal, mineral, and elemental aspects of the environmental and that amongst the fishing tribes it directly has a significant value to the development of modern fishery management, and that the laws of the United States that protect these reserved rights to protect, manage, harvest, or conserve those resources include use & incorporation of said traditional arts, ceremonial knowledge, and traditional knowledge into the principles and practices of modern tribal fisheries management.

Thus, we request that Senate consider the following additional recommendations as a matter of treaty fishing rights clarification:

(1) **Federally Recognized Indian Tribes located along US Borders**: *are recognized as affiliated with and related to other indigenous bands and tribes north of or south of these borders. And, that cross-border traditional cultural sharing of Arts and Crafts knowledge and practices, as directly associated with their indigenous extended-family systems, is a manifest native reality and necessary for comprehensive cultural preservation. Any indigenous Native from Canada or Mexico, originating from immediate border communities, that can prove they have blood relatives enrolled within said U.S. Border Tribes may be recognized and certified as a native artist affiliated with said tribe for purposes of cross-cultural sharing and preservation. Said federally recognized U.S. tribe may certify said recognized native artists and hold them accountable to the same laws as enrolled tribal artisans.*

(2) **Indian Arts & Craft Tax Exemption:**"*Any Native American Arts & Craft produced by enrolled members, or their children (whether enrolled or not), of a Federal Recognized Indian Tribe, operating and producing art within the exterior boundaries of an established Indian Reservation, whether established by treaty, executive order, or federal statute, that produces revenue or income to qualified tribal members and their dependents shall be exempted from all federal and state income taxation. Such products, once produced, can be shipped to any exterior location outside the established reserve and still remain a tax exempt activity. Such exemption shall extend to and apply to the production, transportation, marketing, and management activities of said arts & crafts production when such activities are implemented by a 100% Indian business entity owned and operated by an enrolled tribal member (or their children), an Indian Artist Association of enrolled tribal members, or otherwise tribally authorized corporation.*"

(3) **Traditional Arts and Crafts as Native Science:** *Native Americans, as tribal collectives and individual artisans, have developed their own native science that incorporates the uses of the traditional arts and crafts to express sound principles of natural resources management and environmental protection by preservation of the sacred, traditional, collective knowledge associated with traditional symbols and correlated teaching of stories, myths, legends, and ceremonial knowledge through the use of said ancient artistic symbology and artistic expressions. And, Congress, hereby, requires that all federal departments and agencies give recognition to and respect toward these traditional artistic forms of manifesting tribal teachings about care and respect for the inherent, original integrity of creation (floral, faunal, mineral, elemental, time) and declares that said traditional teachings belong in the same category as valued principles tied to modern day management & sciences associated with protection of natural resources and the environment. And, that the use of said traditional arts and crafts is essential to tribal preservation of traditional culture and is directly related to modern day tribal natural resources management and regime development. And, any associated market value tied to said traditional arts and crafts does not lessen or impact the value since said production perpetuates traditional native science systems and advocates care and respect for the environment.*

In order to provide immediately relief from the threats of the IRS to the incomes of on-reservation traditional Indian Artists that produce arts & crafts products- that express the "stories of conservation" associated with the treaty-reserved fisheries and environs, it would benefit said artists if legislative clarification language declared: **(4) "The Congress, hereby, recognizes for purposes of clarification that traditional Indian arts and crafts, when associated with traditional stories of conservation, are qualified forms of modern day fisheries management and protection activity tied to and associated directly with tribal fisheries and natural resources management, and are protected by the same laws that may before, now, or hereafter be applied to the treaty reserved fishing rights. "**

In 2010, the Head Carver of the Lummi House of Tears Carvers was forced to pay thirty-two thousand dollars in federal income taxes for income earned from the commercial commission of totem poles. These poles were used to teach the public the stories of conservation of the salmon and environmental protection of the river habitats. The head carver distributed the income earned to elders and youth that worked on the art projects. His choice, by federal income tax law, was to turn each tribal elder, youth, and child in for earning this income distributed, so that the IRS can go after them for unpaid income taxes, or to bear the complete burden himself. The Head Carver, acting as the master carver, had to sell his reservation land in order to pay the Internal Revenue Service for this tax claimed due on the traditional art income. If the above language is incorporated as a matter of law then it should provide a retroactive reimburse of taxes, fines, and penalties paid by tribal artists. This would extend back to seven years from the date of enactment..

It was our honor to submit this written testimony. Thank you very much!

ATTACHMENT TO JEWELL JAMES TESTIMONY: MEMORANDUM ON COAST SALISH TRADITIONAL ARTISTS-WHOSE PRODUCTS TEACH SALMON/FISH CONSERVATION AND THE PROTECTON OF THE RELATED HABITAT & ENVIRONMENTS- EXPRESSED AS PART OF THE TRADITIONAL CULTURE PROTECTED BY LAW AND SUPREME COURT DECISIONS OF THE UNITED STATES

January 2008

MEMORANDUM PURPOSE: Treaty Fishing Rights of the Indian Tribes were interpreted by the Supreme Court to have four basic characteristics to the treaty rights- (1) ceremonial/cultural/religious/spiritual value, (2) commercial value, (3) subsistence value, and (4) conservation value of the various fish/shell fish species. The IRS has failed to recognize the cultural/ceremonial/spiritual values of the treaty fishing rights because it is outside their normal understanding of Native American society and traditional culture. The Internal Revenue Service has developed the Indian Tribal Governments division that is guided by the "Employment Tax Desk Guide" published by ITG. Therein, there is Chapter 3- Treatment of Certain Payments. Specific reference is made to Internal Revenue Code Sec. 7873 per the Indian Fishing Rights Exemption language that was added to the Internal Revenue Code. The section deals with Indian Fishing Rights-Related Activities. Such activities are broadly defined, including aquaculture, and activities that are directly related to harvesting, processing, transporting, and marketing/selling the harvests. The right was clearly substantiated, in review of the applicable laws, as encompassing such rights as secured by treaty, executive order or (federal) statute. Of the diverse categories of tribal members/fishers, employees, entities qualified for the exemptions, the IRS/ITG list has not, until this time, included recognition that the ceremonial value (culture/religious/spiritual) aspects of the treaty right was a part of the adjudicated rights recognized by the U.S. Supreme Court, when it reviewed the extensive rights defining the treaty-protected activity. Traditional tribal artists use the cultural arts to teach the stories of "conservation- in the same capacity as the public education and information services performed by fishery personnel- such as habitat technicians, biologists, fisheries aides, fisheries biologists, program directors, public information staff, policy advisors, and other personnel actively engaged in teaching the general public about protection of the salmon/fish populations and related marine/riverine habitat and environments, and non-anadromous fish populations/species. The only difference is that the "science" included in cultural arts and teachings are elaborated by the use of cultural symbols. Qualified tribal artists, and tribal art associations or partnerships or entities, make their qualified Indian products within the tribal traditional territory and market or sell it from there. The tribal artists that use the salmon/fish symbols and recreate these traditional stories of conservation are enrolled members and protected as a matter of tribal and federal laws. The IRS/ITG should and must include the traditional arts as a part of the treaty fishing right industry and rule that it is protected under Section 7873 IRC. Such lack of clarification is currently causing undue hardship to the artists and has caused discouragement in the expressions of their traditional arts due to the threat of taxation.

POSITION ON SECTION 7873 APPLICATION TO COAST SALISH FISH CULTURE ARTISTS: The extensive litigation over the extent and definition of the Treaty Fishing Rights question has resulted in legal recognition that the right has three important legal characteristics- it has a commercial, a subsistence and a cultural component. And, as regards legal management, it requires a fair distribution (50/50) between the Indian and non-Indian fleets, with strict adherence to the legal requirement to meet conservation necessities to preserve the runs and species. The income tax exemption applied to all aspects of the treaty fishery, regardless of the source of income used to meet the legal requirements of providing the tribal people with a 'moderate living' from the secured rights. As pertains to the treaty fishing rights exemption clarification language of IRC Section 7873, the Internal Revenue Service should conclude as follows:

> *"Section 7873 incorporates and includes federal tax exemptions for all income derived from the sale of modern productions or reproductions of traditional arts, artifacts, or artistic totemic expressions that commemorate the necessity of the protection of the treaty-protected fishery resources, the salmon populations, salmon habitat, and related natural environments. And, that, such artistic expressions are a part of the value-added domain of the protected tribal fishery and culture; Provided that the art is done by a enrolled tribal member of a recognized fishing tribe, and created, woven, carved, beaded, or painted within the traditional territory of the members' nation's aboriginal or treaty-ceded territory. And, marketing such artistic expressions, artifacts, or totemic arts to any location or entity outside the Usual and Accustomed Fishing Grounds and Stations of the respective tribe is as qualified for the exemption as marketing, shipping, or transporting harvested salmon or seafood products to any market outside of the traditional territory of the harvesting tribe. Such artistic rights to market artistic representations of the tribal fish culture are an important part of the right to harvest the salmon and fish populations for commercial, subsistence, cultural, and conservation purposes. Such rights are a part of the Court interpreted treaty purpose to assure that fisher tribes' membership can secure a modern living from the protected rights and can participate in the modern economy of the United States unimpeded."*

THE COURTS CONSIDERED THE COMMERCIAL, SUBSISTENCE, AND CULTURAL VALUE OF THE TREATY PROTECTED FISHING RIGHTS:

The Courts have developed canons of construction dealing with Indian Treaty Rights termination questions. "The Congressional intent must be clear to overcome 'the general rule that doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection and good faith.' *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164, 174 quoting *Carpenter v. Shaw*, 280 U.S.363. Accordingly, the Court requires the 'Congressional determination to terminate…be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history.' *Mattz v. Arnett*, 412 U.S. at 505. The

federal courts, in the fishing rights cases, had recognized that the 'cultural aspects of the treaty fishing rights' was very important to the tribal fishing communities.

When the IRS began to hold that treaty reserved fishing rights were taxable, and secured Tax Court judgments in line with their determinations, the Treaty Fishing Tribes continued to maintain that such an act of taxation was contrary to treaty intent. Because it appeared there would be no resolution of the legal conflict with the IRS, in line with the tribes' interpretation, the tribes sought clarification by the U.S. Congress. The result was enactment of IRC Section 7873- *Indian Fishing Rights Exemption.* Included as a part of the intent of the section, it was understood that neither the tribes, nor their registered tribal fishermen, would have to even report their exempt treaty fishing rights income; nor were they required to pay other federal taxes on the income, nor would they have to pay any state taxes on such income. In addition, the tribes would basically self-regulate the interpretation, identification, management, and compliance enforcement of the treaty income exemptions. The scope of the exemptions have been interpreted by the IRS, in this light, and published in their documents on tribal governments and taxation. As to the cultural arts component of the treaty right, that is within the right of the tribal governments to define, especially since such rights to express tribal art is a federally protected right as well.

During the original proceedings of *U.S. v. Washington,* 384 F. Supp. 312 (1974), the tribes had to defend the historic relationships they had with the fish resources; in regards to their dependency upon the resources for commercial, subsistence, and cultural and ceremonial purposes. It was articulated in the 'Brief of Respondent Indian Tribes' ((in the Supreme Court of the United States, October Term, 1978 (Nos. 77-983, 78-119 and 78-139)), that the "Court found that the "first salmon ceremony" was celebrated virtually throughout the area as a religious rite to insure the continued return of the salmon (FF 6, 384 F. Supp. At 350, Joint App. 101). And, that "It is beyond question that fish were central to Indian religious beliefs. As the Court found, the first salmon ceremony was celebrated generally throughout the area and was essentially a religious rite to welcome and pay homage to the salmon and to insure their continued return to the area. It was thought that if the salmon were not treated properly they would become offended and cease to return to the stream where they had been improperly attended (Ex. USA-25, at 1, Joint App. 354). The religious rite was but a part of a wider conception of the interdependence and relatedness of all living things (Ex. USA-20, Joint App. 369).

"It was likewise clear that fish were important in a broader cultural context. Thus, the Nisquallies identified star constellations by reference to fish and fisheries (Ex. USA-20, Joint App. 369). Fishing played a central role in Puyallup culture and the Puyallups lavished attention and concern on the salmon (Ex. USA-26, at 11). The Quileutes named months of the year for fish or fishing activities (Ex. USA-30, at 13-14; see also FF 105, 384 F. Supp. At 372, Joint App. 140). And, of course, today, taking, preparing, eating and trading fish are still important functions for Indian communities. Fishing provides the basis for cultural identification and cohesive force in Indian Society (Ex. USA-20, Joint App. 394). We recognize, today, that Native American Coastal art is commonly filled with images that depict the creation of the various maritime/riverine life (salmon, halibut, seals, whales, shell fish, trout, sturgeon, otters, etc). This was all a symbolic celebration of the cultural dependence upon the natural resources, especially the salmon.

"Indian trade and commerce in fish was central to their way of life. Indians formed a very considerable proportion of the trade of the Sound (Ex. P.L. 11, Joint App. 329). Extensive trade was carried on in order to acquire not only food but raw materials and manufactured goods. This trade involved both necessities and luxuries (Ex. USA-20, Joint App. 369). At treaty times surplus food could be converted to wealth. Distribution was effected through a complex exchange system (Id. At 369)."

"After the treaties and in reliance thereon, the tribes continued to fish for commercial purposes (Ex. USA-21, Joint App. 409). This trade and commerce played an important part in economy of the area as a whole with the Indians playing a central role in the business of the non-Indians. The influx of settlers into the Territory increased the demand for consumption and export. Almost all of this demand, 'including that for export, relied on Indians to supply the fish.' Smoked salmon was exported to China…The business of securing that salmon had been done solely by the Indians (Id. At 372). Today, the value of the seafoods harvested is recognized nationally and internationally, and the greatest effort is now focused upon development of the "value-added" aspects of the treaty harvests. Value-added is extremely important now that the harvestable shares of the fish populations have become less and less, due to over-harvests and environmental damages to the salmon habitat and spawning grounds (e.g., damages caused by clear-cuts or culverts that limit upstream access).

"Fishing then was clearly the single most important activity to Western Washington Indians. It was central to their diet, religion, culture, trade and commercial activities. It was, as this Court has noted, 'not much less necessary' to their existence than the atmosphere they breathed." *United States v. Winans*, 198 U.S. 371, 381 (1905).

"Further, there is no question but that the treaty commissioners understood the importance of fish in Indian culture as noted above: "The treaty commissioners knew that fish were important to the Indians, not only from the standpoint of their food supply and culture, but also as a significant element of trade with the settlers." (Ex. USA-21, Joint App. 382).

"There was no intent to prevent the Indians from using fisheries for economic gain (See FF 21, 384 F. Supp. At 355, Joint App. 109, and sources cited therein). At Neah Bay, Governor Stevens told the Indians that far from wanting to stop their fisheries he wanted to send them more modern apparatus to help them (Ex. PL-16(b), Joint App.331). Not only was there no intention of creating a class society with the Indians on the bottom of the economic rung, but the treaty commissioners clearly wanted to provide the Indians a means of participating and prospering in the economy of the territory (Ex. USA-20, Joint App. 396). The Indians civilization was totally dependent upon fish for diet, religion, and culture. Their economy, which allowed most of them a relatively high standard of living, was based on commerce in fish.

The Court of Appeals correctly recognized that the Indians' fishing rights continued to be tribal rights, not belonging to any individual Indians. 530 F.2d at 688. In so doing, the Court specifically recognized the long-standing approach of the United States government to Indian property rights. Cf. 3 Kent's Commentaries, at 383. As the Court held in Montana Power Co. v. Rochester, 127 F.2d 189, 192-93 (9th Cir. 1942): "The Indian society is communal in character rather than individualistic; and this is particularly true in respect of the hunting and fishing grounds of the Indians." And, when a sovereign nation treats with another nation, the rights created are held by the sovereign, even

though individual citizens may derivatively enjoy the rights. This pertains to fishing rights as well as others.

In the case of the Washington tribes, of course, the basic consideration to the United States was that the tribes cede the portion of Western Washington west of the Cascades. The United States was not dictating to these tribes as conqueror to the vanquished, but rather the tribes, as co-sovereigns, treated with the United States in friendship and in order to secure peace between the parties to the treaty. It is hardly to be supposed that the tribes voluntarily entered into an agreement under which they ceded the entire Puget Sound basin and the portion of the State west of the Cascade Mountains and reserved for themselves mere access to their usual and accustomed fishing grounds and stations....

We, based on the above, soon come to recognize that the tribes had a permanent interest in the preservation of their treaty fishing rights, as regards its value for commercial, subsistence, and cultural value. And, that the well-known fact of the cases that were moved before the Supreme County have continued that "conservation" necessities is a duty and obligation that limits the harvests of both the treaty and non-treaty fleets. However, we have found that the Court has ruled that the tribes are entitled to secure a "moderate living" from the exercise of their treaty fishing rights. While the level of this "moderate living' has not been determined by the Courts, the idea that the tribal people are able to exercise their fishing rights for economic gain, even in the modern markets of the local, regional, national, and international communities.

Tribes, still today, continue to preserve their "traditional culture" and the significant teachings it preserves and transmits from one generation to the next as to the duty and obligation to preserve the salmon, bottom fish, related habitats, and related environments. Much of the cultural arts (regalia making, drums, rattles, masks, baskets, plagues, house posts, totem poles, woolen blankets and sweaters, etc.) are mediums of expression that are used to pass knowledge from one generation to the next, from one group to another about the necessity of being conservative in use and practice of harvest activity associated with the salmon/fish populations and related environments. Such artistic expressions take on the symbolic aspects of a modern day book on conservation management of the natural resources and environment necessary to fish and salmon population protection.

The Lummi People believed that the preservation and protection of cultural arts was so important to the tribal community that it was incorporated as a part of their tribal constitution as regards the regulation and administration to encourage "Indian handicrafts" (Art. VI, (n) and that the creation of cultural entities (such as the Lummi House of Tears Carvers) is authorized under the constitutional powers delegated to the tribal council (Art. VI, (p).). And, of course, nationally, the United States had created the American Indian Arts and Crafts Board in order to encourage the same Indian handicrafts and tourism industries, as well as to protect the respective rights of the tribes to their designs, symbols, knowledge, and other aspects of the ancestral and modern Indian art industry. This national protection is in recognition that such native arts have local, regional, national, and international market value. In fact, the national laws of the United States had to be crafted in order to prevent fraudulent sales of art pieces that are claimed or alleged to be Indian-made. The fact is that Indian handicrafts and arts and crafts are highly regulated and subject matter of federal legal protection. In the Pacific N.W., the Coast Salish Artists are using the stories and symbols of the traditional culture to create

art pieces, articles, artifacts, and other forms of artistic expression that incorporate the most important aspect of their culture- salmon and other sea foods, plants, sea mammals, and related environments. The tribal cosmology weaves the importance of their fishing culture into their artistic symbology. This is central to their ability to create and generate art pieces or textiles or woven or carved or painted or beaded products that have personal, interpersonal, tribal, intertribal, and inter-societal commercial value. Their art products are valuable to the local, regional, national, and international commercial markets and many tribes seek to encourage tribal members to expand this aspect of cultural expression, as a means to create small cottage industries. By meeting this market demand they are able to exercise a valuable part of their cultural fishing economy that the Supreme Court declared was a part of their right to secure a 'modern living.'

By using their cultural knowledge to produce their totemic arts, their woven blankets, baskets, drums, regalia, and other mediums of expression, the artists have been able to place great emphasis on the need to "conserve the salmon species and their dependent environments and spawning habitats." All tribes across the United States, and all cultures around the globe, have utilized traditional teachings, the traditional cosmology of their ancestors to develop a foundation to their cultural arts. In the Pacific Northwest, the salmon and surrounding environments, floral and faunal entities, have, likewise, been manifested in their cultural art expressions. These expressions have market value. This market value is associated with the marketing of Indian fishery products and the relevant industry. Marketing artistic expressions of the fishing rights is culturally acceptable and intrinsic to tribal society. Tribal cultures market the symbols through art. It is much like the value of a logo attached to a modern advertised fish product sold to the general public. Indian arts and crafts hold the same symbolic value when it comes to marketing parts of their cultural treaty fishing rights.

One example of a Coast Salish Artist is the Lummi Master Carver (SS#533-56-6366), who is protected by the Lummi Nation's enactment of the Articles of Incorporation for House of Tears Carvers. This artist is equivalent to any tribal fisheries management or biological director or staff that would be classified with a masters degree or doctorate in a comparative science of fish culture.. By teaching and instructing in the totemic arts, he teaches the Story of Conservation of the Salmon and related Fisheries resources. In addition, he is a registered tribal member (#1248) that has a treaty guaranteed right to "fish" in all the Lummi 'Usual and Accustomed Fishing Grounds and Stations.' As a Master Totem Pole artist, he uses his skills to teach and carve totemic symbols of the many stories of conservation that were used by the tribal ancestors. Such artistic expressions were used to traditionally and culturally influence and manage the tribal memberships' harvest of the (salmon) natural resources and to assure that the water habitat of the salmon and the environment was protected by the membership, and modern society. As a tribal Indian, registered with the tribal fisheries program and enrollment Office, we believe that Lummi Master Carver, and all his tribal apprentices, are qualified for legal protection under Section 7873-Indian Fishing Rights Tax Exemption. His totemic art stories are being located in various locations of the Lummi Usual and Accustomed Fishing Grounds and Stations- as adjudicated in *U.S. v. Washington*, 384 F. Supp. 312 (1974). All of his carvings are done on the Lummi Indian Reservation (at 4305 ½ Lummi Shore Road, Ferndale, Washington 98248) and transported to the various sites for public placement. His works are not museum pieces but pieces of totemic art used to

teach the general public about the need to protect the natural environment, the natural habitat of the salmon and related floral & faunal species, as well as protection of the marine and riverine environments the fish populations are dependent upon for survival.

The Lummi Indian Tribe, through the Lummi Treaty Protection Task Force, was the lead coordinator on the work to secure the passage of legislative amendments to the Internal Revenue Code that confirmed the tax-exempt status of treaty fishing rights. This language passed as Section 7873 of the Internal Revenue Code in 1988. The language addressed treaty fishing rights, tribal fishermen, and what is directly related to the fishing right that is exempt from federal taxation. The language was broadly interpreted in 1992. In compliance with this broad interpretation, the IRS issued substantial federal tax reimbursements to tribal fishermen and tribal fishing industry and fishery management employees. This reimbursement went to many persons- even the fish court personnel and biological staff in management, hatcheries, or those conducting test fisheries or stream monitoring activities, for example. The list of exempted tribal fishing industry employees is broad. But, it was significant and remains so today, that culture is an important part of the legally protected right. Native art is directly related to the fish culture. Exemption of income from marketing the native art is founded upon this 'directly related' aspect of the right, and provided for in Section 7873.

In the traditional way of management of our tribal fisheries, the Lummi and N.W. Tribes depended upon culture, tradition, ceremonies, sacred knowledge, and untold generations of experience to manage harvest activities of the membership and assure the salmon was distributed fairly to all tribal members. The tribal societies used song, dance, ceremony, sacred knowledge, and artistic representations to manifest a clear social expectation that the natural resources must be protected. Traditional means of Indian Tribal conservation contributed to the significant increase in the salmon populations found in the Pacific N.W. by the time of first contact. For example, the First Salmon Ceremony and the myths about Salmon Woman (her husband Raven, Brother-in-law Bear, and her Salmon Children, for example) were traditional tools for teaching the tribal children and adults about the necessity of respecting the salmon and their habitat. This teachings of respects reached from the spawning grounds upriver to the salmon return to that House of the Great Salmon Chief under the Ocean.

These oral stories hold the equivalent intent of written in words about conservation found in modern day fishery management regimes of the tribes, state, and federal governments. The stories, told orally and manifested in the arts, regalia, and common household items were the vehicles to constantly teach and remind the community to respect the salmon. The stories composed a societal function of teachings all tribal persons to take only that amount of salmon that was needed to survive. To teach them and remind them not to mismanage their relationships with the natural environments that supported or impacted the salmon populations. It was taught that mismanagement, disrespect or dishonoring of the salmon would result in famine and societal impoverishment.

This system of conservation was addressed in Phase I of *U.S. v. Washington*. It was in response to the state's claim that the tribal people did not understand the idea or philosophy of conservation of salmon populations. The tribes testified that their stories, their songs, their dances, their ceremonies were used to teach this very concept to all individuals and the tribal society. The associated traditional stories were used to teach

membership the necessary duty to protect the natural balance for a sustainable resource and healthy natural environment (as determined as an important part of our treaty right in Phase II of U.S. v. Washington, See: Culvert Case, 2006). These conservation lessons were taught by oral history. For example, oral history taught about Part I of the Salmon Story- How the Salmon Came to the People & First Salmon Ceremony and Part II- Story of Bear and the Steelhead. Other relevant stories, that carry importance to the understanding of the salmon is respect for the river itself- such as the creation of the Nooksack River and the Mountains that feed water into it, in Lummi Territory. Other tribes have similar creation myths.

Tribal traditional teachings came, in parallel, through the arts (totem pole art, rattles & masks for ceremonials, basket design, blanket/sweater designs, etc.). The master story teller, the master carver or master weaver were and are equivalent to the modern tribal biologists and managers in modern fisheries management parlance. Their job was and is to teach tribal people to honor, respect, and protect the salmon populations and their habitat, as well as about the needs to protect the riverine, marine, estuary environments and habitat. Woven into these teachings was the conservation of the floral & faunal aspects of life. All the figures that would be carved were a part of the story of creation and the cultivation of the necessary respect to maintain a healthy environment. For example, the Lummi Reef Netters owned the fishing sites as a priority right- they and their crew harvested for their families and then harvested for the women and children that did not have any fishers helping them, and they harvested for necessity, not greed, and closed the nets down to make sure they did not take more than was needed to live (U.S. v. Washington, at 360).

The right to the salmon was protected by the treaty with the United States, at the demand of the tribal leaders at all of the negotiations conducted throughout Oregon and Washington Territories. While salmon were specifically addressed in the treaty language, the tribes ended up in extensive lawsuits to protect their rights, in the state and federal courts. The tribes interpreted the treaties to mean that the traditional fisheries would remain a right of the tribes, managed and protected by the tribes, and was a right under tribal self-government and self-regulation. Such right to regulate reflects tribal concerns over the harvests commercial, subsistence, and cultural value.

In construing treaties and agreements, the courts have relied on several maxims: "We will construe a treaty with the Indians as 'that unlettered people' understood it, and 'as justice and reason demand in all cases where power is exerted by the strong over those to whom they owe care and protection,' and counterpoise the inequality 'by the superior justice which looks only to the substance of the right without regard to technical rules." United States v. Winans, 198 U.S. 371, 380-81 (1905); accord Choctaw Nation v. Oklahoman, 397 U.s. 620, 631 (1970); Tulee v. Washington, 315 U.S. 681, 684-85 (1942), United States v. Shoshone Tribe, 304 U.S. 111, 116 (1938). "Doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection and good faith." Carpenter v. Shaw, 280-U.S. 363, 367 (1930), accord with Winters v. United States, 207 U.S. 564, 576-77 (1908); "A treaty was not a grant of rights to the Indians, but a grant of rights from them- a reservation of those not granted." Washington v. Washington State Com. Passenger Fishing Vessels Ass'n, 443 U.S. 658, 680 (1979); accord with United States v. Winans, 198 U.S. 371, 381 (1905). The N.W. Tribes did not understand that sharing the salmon

and fish resources with the non-native society would require them to sacrifice the cultural (ceremonial, artistic) components of their fishing rights.

Although treaty negotiations were with the Indian tribes, the treaties reserved rights to every individual Indian, as though described therein. United States v. Washington, 384 F. Supp. 312 (1974). When the Internal Revenue Service attempted to tax the fishing rights of the tribes, we reflected on U.S. v. Washington, wherein it was stated, "Mindful that treaty fishing is a right, not a mere privilege, the following sentence from Murdock, quoted in a footnote, (p.402, 88 S.Ct. p. 1730) of Puyallup I seemed pertinent: "***The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.***" "As stated by the United States Supreme Court in Winans (198 U.S. pp.381-382, 25 S.Ct. 662), treaty fishing rights are personal rights held and exercised by individual tribal members. Although the exercise of that particular civil treaty right may be limited or modified in any particular or to any extend by or with the authority of Congress, ..." 384 F. Supp. 312, at 337 (1974). In tribal society, an individual that displays and inherent gift to create artistic representations of native culture are considered as having the individual right to practice that field and produce their products for distribution. Individuals that displayed the quality of craftsmanship in the arts would be hired time and again to create for others that do not have such an inherent gift. They products had marketable value that was recognized and appreciated.

As we are currently aware, the U. S. Congress and the Presidency did modify the Indian Treaty Fishing Rights in 1988. In that year the amendments to the U.S. Internal Revenue Code had added **Section 7873** – Indian Fishing Rights Exemptions. Thus, the income of Indian Fishermen (whether fishing under language of a treaty, executive order or federal statute) was declared exempt from federal and state taxation, as a matter of tribal treaty right. The management of the exemption is an act of tribal self-government and self-regulation. This is why tribal/treaty Indian fishing rights income is generally not reportable to the IRS, since having to have to report the income is a form of suppressing the freedom of the treaty right itself. Management of tribal members that exercise the fishing right is a legal right of the tribal government, and equally it may choose to manage the artistic expressions of tribal artists that practice in the tribal community; after all, the artists are depicting the collective knowledge of the tribal community, as it relates to their fishing rights.

In United States v. Washington, 312 F. Supp. At 343 (1974), the Court ruled that "For these reasons the court finds that the taking of fish for ceremonial and subsistence purposes has a special treaty significance distinct from and superior to the taking of fish for commercial purposes and therefore fish taken to serve ceremonial and subsistence needs need not be counted in the share of fish that treaty right fishermen have the opportunity to take." The court further held that, "..one common cultural characteristic among all of these Indians was the almost universal and generally paramount dependence upon the products of an aquatic economy, especially anadromous fish, to sustain the Indian way of life. These fish were vital to the Indian diet, played an important role in their religious life, and constituted a major element of their trade and economy. U.S. v. Washington, 312 F. Supp. At 350 (1974).

"The First Salmon Ceremony, which with local differences in detail was general through most of the area, was essentially a religious rite to ensure the continued return of salmon. The symbolic acts, attitudes of respect and reverence, and concern for the salmon

reflected a ritualistic conception of the interdependence and relatedness of all living things which was a dominant feature of native Indian world view. Religious attitudes and rites insured that salmon were never wantonly wasted and that water pollution was not permitted during the salmon season." U.S. v. Washington, 312 F. Supp. At 351 (1974).

"There is nothing in the written records of the treaty councils or other accounts of discussions with the Indians to indicate that the Indians were told that their existing fishing activities or tribal control over them would in any way be restricted or impaired by the treaty..... At the time of the treaties Indian control over fishing practices was by customary modes of conduct rather than by formal regulations. ...Subsequent to the execution of the treaties and in reliance thereon, the members of the Plaintiff tribes have continued to fish for subsistence, sport and commercial purposes at their usual and accustomed places. Such fishing provided and still provided an important part of their livelihood, subsistence and cultural identity. U.S. v. Washington , 312 F. Supp. At 387 (1974). "The Indian cultural identification with fishing is primarily dietary, related to the subsistence fishery, and secondarily associated with religious ceremonies and commercial fishing." U.S. v. Washington, 312 F. Supp. At 358 (1974).

"Fisheries management takes into consideration both the resource itself and the objectives and needs of the societies which control and seek to utilize it. The commercial, sport and Indian fisheries are managed for different use objectives and user interests. ... The Indian tribes have as their primary use objectives the fostering of Indian economic well-being, the preservation of Indian cultural heritage and way of life, and the provision of a significant element of Indian diet." U.S. v. Washington, 312 F. Supp. At 383 (1974). "Because of traditions, treaty provisions, and location of Indian communities, the Indian fisheries are largely place oriented. Management of Indian fishery objectives must consider this factor." U.S. v. Washington, 312 F. Supp. At 384 (1974).

The Lummi Indian Nation, by its culture, traditions, and ceremonials, incorporate a deep respect for the natural environment of the salmon, and the salmon itself. This environment includes the oceans, the rivers, and the forests & lands surrounding the salmon habitat. As Chief Seattle is often quoted as saying at the treaty negotiations, "all things are connected." The totemic arts depict the stories of the salmon and the creation of the environment surrounding the tribal Indians dependence upon nature for their traditional, cultural, ceremonial, religious life style. This traditional means of preservation of knowledge through the traditional arts is just as important to traditional tribal governance as the modern day form of biological and fisheries management knowledge is to self-governance.

Therefore, it is important to take official notice that carving totem pole designs and figures, and other artistic cultural expressions, for public and private display of the "Stories of Conservation" is an activity that is valuable to tribal society and the larger surrounding non-Indian society (which has done extensive damage to the fish populations and correlated environments). This type of art is used to teach the necessity of protecting the salmon and its habitat as much as commercial advertisements and Public Service Announcements are used today to market tourism, seafood products, or otherwise. It is completely within the self-determination and self-governing power of the Lummi Nation to recognize this truth and the value of this traditional cultural knowledge. It is an important vehicle for the Lummi to use traditional means of teaching preservation of

harmony with the natural salmon environment for their children and the surrounding public.

As noted above, the Federal Court, in U.S. v. Washington, 312 F. Supp. (1974), as confirmed by the U.S Supreme Court, in Washington v. Washington State Commerical Passenger Fishing Vessel Association, 443 U.S. 658 (1979), found that the tribal people have a right to take fish and not just a right to attempt to take fish. This means that there is an implied treaty right to have the environment (riverine, marine, forest, agricultural, etc.) protected so that the salmon populations are not destroyed. This is called Phase II of the U.S. v Washington decision- the environmental protection question. The Lummi note that this environmental protection of the salmon habitat is the very foundation to the lessons of the Salmon Story and First Salmon Ceremonies traditionally depicted in our oral history and totemic arts.

Thus, in conclusion, the totem pole carvers of the Lummi House of Tears Carvers (as incorporated under the Lummi Constitution), and other artists, are protected in the same manner as tribal members that are hired as fisheries management or fisheries biologists or fisheries enforcement staff in lieu of actually being fishermen. These employees, like the artists, are a form of "fishers" that are harvesting, marketing, and transporting another valued aspect of the treaty protected fishing right. This recognition that the "arts" of the traditional tribal community commonly depict these stories of conservation is an expertise that is taught to the artists by their traditional instructors, from one generation to another via oral tradition or otherwise. Their common function and mission is the teaching of conservation and the protection of the salmon stocks and their habitat, and the related floral and faunal environments (called biodiversity under modern management concepts).

In fact, the House of Tears Carvers was instituted by the late Vern Johnson, Jr.- a LIBC Member and Fisheries Staff member specialing in water rights and salmon habitat protection, along with the late Cha-des-ska-dum Whichtalem- the Lummi Culture Protection Specialist, and the current organization chairman/Master Carver is Jewell James. In result of their perception of the necessity of preservation of traditional knowledge for teaching respect for the salmon, its habitat, and the natural environment, the House of Tears Carvers was incorporated under the laws of the Lummi Nation. While most every traditional artist is first an individual that seeks to master a chosen medium of expression, they are all secondarily members of the tribal collective and held accountable to the expectations of the community, as teachers of the arts and the correlated stories that teach respect for creation of the natural environment.

A recent example of the use of tribal totem art for public good was the development of the totem pole pieces that were located along Whatcom Creek, in Bellingham, Washington. This was a site were a gas pipeline crossed the stream. It leaked and an explosion took place. Two forms of tragedy transpired- first, there were youth killed in the explosion (traumatizing their families) and two the explosion caused extensive damage to the stream habitat and resident fish, mammal, & bird populations. The Lummi & Nooksack Tribes worked with the City of Bellingham, Whatcom County, the state, and federal agencies to rebuild the natural habitat and stream, and to remember the tragedies imposed upon the community and the families that lost loved ones in the explosion. After the stream was rehabilitated, it was decided that totem poles shall be raised at the site- to help the community remember the lost of the youth as well as damages to the floral, the

faunal, the fish, the stream, and environmental integrity. These poles depicted the story of conservation of the salmon and animal life in the habitat.

Another recent example of teaching the public of the necessity of protecting the river and its environmental integrity was accomplished in cooperation between the City of Ferndale and Lummi's master carver. In Ferndale a Riverside Park was constructed and opened (December 14, 2007). Included in the park were three totem poles as public informative art. The first depicted the story of how the Lummis and Pioneers opened the river up by removal of a major log jam (removal was completed in 1877). This opened the river up for navigation and for the salmon that could now go around the log jam to reach up river spawning habitat. The next pole depicted the Story of How Raven Brought the Salmon to the people (Part I of the Story of Conservation of the Salmon). The second story depicted how Bear and His Wife influenced the Life Cycles of the Salmon (Part II of the Story of Conservation of the Salmon). The combined influences of the two parts of the story has, over the centuries, resulted in the Coast Salish Tribes instituting the First Salmon Ceremony- to teach the people to respect the salmon during its complete life cycle as well as its habitat.

In conclusion, the Lummi Nation requests that the respective Solicitor for the Northwest Regional offices of the Internal Revenue Services recognize that the use of traditional and modern Native American art is directly related to the treaty protected fishing rights and a direct manifestation of the cultural/religious/ceremonial aspects of the protected right. The Coast Salish Tribes and their fisher people, as a part of the on-going *U.S. v. Washington* litigation, have a right to secure a moderate living from the protected right and this includes all the tribally-enrolled artists that depict the fishing culture in their art products.

PREPARED STATEMENT OF HON. EDWARD L. METCALF, CHAIRMAN, COQUILLE INDIAN TRIBE

Chairman Dorgan,

I am the Chairman of the Coquille Indian Tribe, located on the Southern Oregon coast. I thank you for the opportunity to submit our Tribal comments describing some of the economic and social issues we face.

- Access to affordable capital

  Tribes need to have greater access to affordable capital for their non-gaming project, both on and off of fee land. The BIA Loan Guarantee program and the recent Tribal Economic Development Bonds have provided some assistance. The BIA Loan Guarantee program risks having some of its funds diverted to other purposes, and the Tribal Economic Development Bond program ends soon. These programs should be expanded to help more tribes. In particular, the BIA Loan Guarantee program should received additional funding.

- Disparate treatment for tribes wishing to issue tax-exempt bonds on the same basis as other domestic governments

  As you likely know, Tribes, for whatever original reason, cannot issue tax exempt bonds for the same range of projects available to states and local governments. These discriminatory restrictions prevent tribes from using tax exempt funds for ordinary governmental and economic development purposes. Congress should clearly authorize tribes to issues tax exempt bonds on the same basis as state and local governments.

- State and Federal excise taxes serve as disincentives for Tribal excise taxes.

  The Federal Indian Tribal Governments Tax Status Act afforded tribes exemptions from Federal taxes, but tribes continue to pay many Federal excise taxes. These taxes, combined with State excise taxes, serve as disincentives to economic development and often render tribal taxes ineffective because of their effect on the cumulative cost of goods and services. Congress should authorize an independent study of how changes to Federal and state excise taxes could promote economic development in Indian country.

- The current state and uncertain future of Chemawa Indian School

  Chemawa Indian School serves as an historical icon to every Oregon tribe, and to many tribes outside of Oregon. Members of all nine Oregon tribes have ancestors buried in its cemetery. Unfortunately, Chemawa Indian School is not operating to its best potential. At the same time, the Oregon Department of Transportation and other real estate developers wish to make use of some of these historical lands.

  Currently, Chemawa Indian School is held in fee by the Department of the Interior. Because of their strong interest in ensuring Chemawa's future, every Oregon tribe, except one, has adopted resolutions requesting that these lands be transferred into trust. There is a growing vision among Oregon tribes of changing Chemawa into a tribal consortium-operated school that serves the dynamic educational needs of 21st Century Indian people. We urge you to facilitate legislation to transfer these lands into trust and to fund a feasibility study for how to make Chemawa Indian School realize its potential.

- Funding to provide cultural competency training to local governments.

  You might know that, in recent years, the State of Oregon has invested significant time and resources in educating State government employees and officials about tribal governments and the needs of Indian people. This investment has reaped great rewards for the state and for Oregon tribes. Unfortunately, this effort has not reached the realm of Oregon local governments. As a result, Oregon tribes must rely on their own resources to educate their local cities, counties and special governmental bodies. It would be very helpful if Congress could fund an initiative that would extend this type of training to local governments.

- Amendment of the Coquille Forest Act to remove management limitations

  The Coquille Forest is the only Indian forest land in the nation required to be managed under Federal management standards and guidelines. Since 1999, the Coquille Tribe has expressed its grave concerns that this exceptional requirement is an unfair and unnecessary restriction. When this legislation was drafted, we were assured that the Federal management regime would still provide a sustainable revenue stream for the Self-Sufficiency of our tribe. This has not turned out to be the case. Imposition of this paternalistic requirement assumes that

the Coquille do not possess the knowledge and ability to properly manage their own forestlands. It is time to treat the Coquille Forest like every other Indian forest in the nation.

- Title VI Elder Meals Program

  The Federal Title VI Elder meals program allows tribes to help their needy elders. Unfortunately, eligibility for this program is based on number of elders that a tribe has. Tribes without the minimum number of elders are ineligible. This requirement forces tribes like the Coquille to co-apply with other eligible applicants and lose the ability to tailor the use of funds to our specific needs.

- Restrictions for use of IV(e) funding.

  Tribes are eligible to receive foster care funding under Title IV(e) of the Social Security Act. Currently, these funds can be used to assist only low income native American families. The Coquille think that use of these funds should be expanded to include all Native Americans in the foster care system, regardless of their family's income level. Native American families are per se disenfranchised people, and this restriction makes it more difficult for us to place our foster children with their relatives.

I thank you for the opportunity to provide these comments. Please direct any questions regarding this letter to Tribal Attorney Brett Kenney.

PREPARED STATEMENT OF HON. DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS

On behalf of the Confederated Tribes of Siletz Indians, I am pleased to submit testimony to the record of the Senate Committee on Indian Affairs in relation to recent field hearing on Economic and Social Issues Affecting Northwest Tribes. We are pleased to have this opportunity to present our issues and concerns.

The Confederated Tribes of Siletz Indians is a confederation of many Tribes and bands whose aboriginal homelands extend from NW California to SW Washington, including all of Oregon west of the summit of the Cascades. The CTSI ceded most of its 20 million acres by Treaties in the 1850's and were settled on the 1.1 million acre Coast Reservation. Drastic reductions to the reservation in 1865, 1875, 1894 and subsequently, left us nearly destitute of lands and resources. The CTSI was terminated in 1956, but is again a federally recognized Tribe with a 3,987 acre restored lands reservation located in Lincoln County, of which 250 acres were newly acquired in 1994 through legislation. In November 1977 the Confederated Tribes of Siletz became the second Tribe in the United States and the first in Oregon to be restored. The Tribe is proud to be one of the twenty-three Tribes in the United States to have become part of the Self-Governance Demonstration Project. Committed to the improvement of the Tribal as a whole, the nine-member governing Tribal Council has been innovative in exploring options to produce revenue and provide services.

Expanding Self-Determination and Self-Governance opportunities. Self-Governance is a cornerstone of Tribal Government and our Administrative organization that provides key services to Tribal members and the communities in which we serve. We ask that the federal government actively pursue with us our lead role under the directives of the Indian Self Determination Act (PL 93–638). This would include making the policy of self-determination a proactive element of the Congress and the Federal Government, not just a consequence of the Tribes' insistence.

Energy development and climate change. The Siletz Tribe has been exploring methods to develop projects that will leverage Tribal resources and expertise for energy efficiency and generation. The Tribe has considered wind, biomass, solar, wave, natural gas turbine, and hydroelectric energy opportunities, among others. We feel that the Departments of Energy and Interior could enhance Tribal project evaluation and project funding with government sponsored or backed bonds.

Streamlining the fee-to-trust process. As a restored Tribe, it is absolutely crucial that the lands reacquired by our Tribe can become productive for us more quickly. This includes breaking down unnecessary barriers and expenses that the Bureau of Indian Affairs requires of Tribes to put even on-reservation land into trust status.

The enactment of a Carcieri "fix". In order to ensure that all federally recognized Tribes can avail them of the opportunity to have land taken into trust for economic development or other purposes; this clarification is a critical issue.

Federal and state taxation. The taxation of Indian lands, property, and enterprises is another area of concern and interest to the Siletz Tribes. Tribal governments should receive the same benefits with respect to taxation that all other units of Federal, state, and local governments enjoy. For example, we should be allowed to issue municipal bonds without the additional barrier and cost of SEC filings that no other local unit of government is required to do, utilize tax credits available to other public bodies for certain types of economic development (such as energy projects), and rely on the same types of "governmental" activities used by other municipal entities to receive favorable tax treatment.

Housing. Safe, healthy and affordable housing is crucial for family stability. The Siletz Tribe provides housing services to tribal families through an Indian Housing Block Grant (IHBG) authorized under the Native American Housing and Self-Determination Act. Since 1989 the Tribe has constructed and now manages 80 low rent apartment and 83 homeownership units. At present another 27 low rent apartment units are under construction. In addition, the Tribe provides rent subsidies for 78 low income tribal families. Despite providing these services there remains 123 low income families on our housing waiting lists. The IHBG funding level supports existing unit management and rental subsidies, but it does not allow developing additional housing to meet the needs of tribal families beyond providing one home for a tribal elder household. The Tribe urges fully funding the IHBG at $875 million ($700 enacted for 2010) and the Indian Community Development Block Grant at $100 million ($65 million enacted for 2010). Since the IHBG supports little development, Tribes must access other housing resources such as the Low Income Housing Tax Credit (LIHTC) program. However, these credits go to the states to distribute and tribes have had a difficult time accessing this resource. In Oregon, we are aware of only one tribe being awarded tax credits and that was several years ago. A Tribal set-aside for the LIHTC program is needed to ensure tribal access to this program. The Tribe also wants to see the Senate act on SCIA's recommendation for passage of H.R. 3553, the Indian Veteran's Housing Opportunity Act which would exclude income that is service-related disability received by a veteran or his family from the definition of "income" under NAHASDA.

Natural Resources. The restoration of the Siletz Tribe, as with many Oregon restored Tribes, had a component of scattered timber tracts forming the initial land base for us. We have developed sustained yield harvest management on these and other more recently acquired tracts. These resources are essential for our spiritual, economic and cultural survival as Indian people. Habitat destruction, pollution, unregulated water withdrawals, poor land-use planning, and many other environmental issues today threaten to make meaningless our reserved rights. The Siletz Tribe asks for adequate and efficient funding of federal reserved obligations through Tribal natural resources management programs, projects, and agreements. Areas in critical need of funds are water resources management, hatcheries, habitat restoration, timber and wildlife management. Healthy environments lead to healthy communities and healthy economies.

Small Business. The Siletz Tribe provides technical assistance and limited funding to Tribal member-owned businesses. Through our experience, we are seeing excessive barriers to minority certifications for individuals and Tribal enterprises, as well as limited, enforceable requirements to ensure we have opportunity to provide services or products to Federal agencies. The Small Business Administration could also expand its resources—financing and technical assistance—to support these ends.

Specific Agency Support. The Siletz Tribe has received very valuable support and resources from the Department of Commerce's Economic Development Administration, the USDA Rural Development, and the HHS Administration for Native Americans. We would urge that Congress continues these vital programs that build our capacity and important projects. We would likewise encourage the expansion of the Bureau of Indian Affairs programs at least back to the funding levels established in the 1974 Indian Financing Act.

I appreciate the opportunity to provide this testimony before the Committee. Please let me know if we can provide further background or detail on these issues or other questions that the Committee may have.

PREPARED STATEMENT OF THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

The Confederated Tribes of the Warm Springs Reservation of Oregon respectfully submit this statement for inclusion in the record of the U.S. Senate Indian Affairs Committee field hearing held on August 12, 2010 at Chief Leschi School on the Puyallup Indian Reservation, Tacoma, Washington regarding "Economic and Social Issues Affecting Northwest Tribes."

Warm Springs Background

The Warm Springs Indian Reservation was established by the Treaty with the Tribes of Middle Oregon of June 25, 1855. Our Treaty-signing ancestors lived along with Columbia River and its major Oregon tributaries, the Hood, Deschutes and John Day rivers. Our political domain at Treaty time included 10 million acres of north central Oregon from the Cascade Falls on the Columbia River east to the Blue Mountains and south from the Falls along the crest of the Cascade Range to the 44th parallel south of Bend, Oregon. We ceded our title to most of this land in the 1855 Treaty in exchange for exclusive use of the 640,000 acre Warm Springs Reservation and for an express reservation of off-reservation rights to fish at all of our usual and accustomed fishing stations on the Columbia and elsewhere and the rights to hunt, gather roots and berries and graze cattle on unclaimed lands.

Warm Springs Today

Today, the Warm Springs Reservation is home to 80 percent of the nearly 5,000 Warm Springs tribal members who live on land that is over 98 percent owned by the Tribe. It is a very beautiful but remote reservation that includes 300,000 acres of forested lands, as well as open grazing land, small farms, rural residences and several small communities. There are no non-Indians living on non-Indian owned fee land on our reservation, which means that our Tribal government has full regulatory jurisdiction over the lands and inhabitants of our reservation. Our government's power and authority—and our responsibilities—have also grown as a result of our exemption from Public Law 280's grant to the State of Oregon of jurisdiction over Indian Country in Oregon, except for the Warm Springs Reservation. The result is that Warm Springs is the only government providing all essential governmental services for the 5,000 residents and 1,000 square miles of the Warm Springs Reservation.

Our Dire Economic Situation

Despite the fact that Warm Springs is a large land based tribe with a significant timber resource base, our economic situation has become increasingly dire in recent years. Like many communities in the Northwest, Warm Springs traditionally has relied on its timber resource to generate revenues to fund government services and provide jobs for local residents. And, like almost all Northwest timber communities, we have experienced the extreme economic pain of the collapse of the Northwest timber industry. To illustrate that point, in 1994 the Tribe took in over $24 million in timber revenues to fund our growing tribal government. Our police department, courts, jail, fire department and ambulance crews, just to name a few of our many governmental services, were all funded with this Tribal timber money. By contrast, last year, tribal timber revenues to fund tribal government were less than $2 million. This is a $22 million shortfall in just over a decade and a half, at a time when the tribal membership grew rapidly due to a high birthrate and the demand for tribal governmental services expanded greatly.

We have searched diligently for alternative revenue sources to fill the gap caused by the collapse of the timber industry. We have had some success with hydropower by acquiring a stake in a private utility hydroproject that is partly located on the Reservation. We are also looking at expanding from hydro to other renewable energy opportunities, such as solar and wind power. While promising, none of these potential economic development projects offer the promise to fully make up for the dramatic and rapid decline in timber revenues. In addition, unlike the timber industry, which used to provide hundreds of jobs for our tribal members working in the woods and at our tribal sawmill, the energy projects are not labor intensive. In other words, they offer the promise of new revenue streams but without the job creation impact we are looking for.

Gaming

The one real opportunity we see for restoring our financial and economic base and heading off the looming fiscal crisis for our Tribal government is a proposed gaming project to be located 37 miles north of the Reservation on our ancestral lands at Cascade Locks, Oregon. The area in and around what is today Cascade Locks has

been the homeland of our people since time immemorial. It is clearly within our 1855 Treaty description of our ceded territory, a fact confirmed by the U.S. Indian Claims Commission in its rigorous judicial examination and "aboriginal title" judgement (ICC Docket 198) regarding our territory, which holds the area was ours *exclusively*. This fact is further confirmed by the many Warm Springs tribal members who continue to live and exercise our 1855 Treaty fishing rights in Cascade Locks today.

We have been pursuing this project for nearly a decade, since the tribal membership voted overwhelmingly in a 2001 tribal referendum to direct Tribal leadership to pursue a gaming project in the Columbia Gorge. While we believe this project is close to final approval, it has faced numerous bureaucratic hurdles and delays imposed by the last Administration at Interior, and also by the current Administration. So far, it has taken twice as long and cost two to three times more than we projected when we started. Nonetheless, since we just had the Final Environmental Impact Statement for the project published in the *Federal Register* on Friday, August 6th, our membership and our leadership are united in believing that we are in the final steps of having this project approved by the Secretary of Interior. If final approval is obtained, we believe that our long term economic outlook is much brighter, although it will take many months and even years to clear any possible legal challenges, finalize financing, and build the project before we can begin to see the financial rewards of this project flow to the Tribal government.

The Committee should disregard the Grand Ronde Tribe's request in their August 12 testimony before the Committee to advocate for some protracted re-review of Interior gaming policy. The Grand Ronde's single purpose with that request is to try to delay and defeat potential gaming competitors such as Warm Springs. Indeed, any Committee communication with the Department of Interior on this issue should be to urge prompt and fair processing of the Warm Springs application, which has been subject to numerous unjustified delays, rather than supporting Grand Ronde's efforts to postpone once again final action on our project.

Education

Regarding social issues, many of our issues involve the youth of our Tribe, especially in the area of education. The Warm Springs Reservation, with its 1,000 square mile expanse and 5,000 residents, may be the largest geo-political area in the Northwest without a high school and middle school serving its school age population. Our young people, after finishing the 5th grade at an outmoded former BIA boarding school that now attempts to function as a public elementary school, are bussed off reservation to public middle school and high school at the border town of Madras, Oregon. For some students who live at the north, or opposite, end of the Reservation from Madras, the school bus ride is three hours round trip each day. Obviously, there is a critical need for not only a new public elementary school at Warm Springs but also a middle and high school located on our reservation to serve our young and fast growing population. It is no wonder that dozens and dozens of Warm Springs high school age students choose to attend BIA boarding schools in California, Oklahoma, South Dakota and Salem, Oregon rather than stay home and make the long daily bus ride to public school in Madras.

Unfortunately, Indian students in Oregon are served by local public schools, and at least in our vicinity, the local public school district is unable to pass a bond measure to build the elementary, middle, or high school needed to serve our children. Despite our efforts to bring what we can to potential joint efforts with the school district, and to scour the slim prospects at the B.I.A. and the U.S. Department of Education, including the American Recovery and Reinvestment Act, the means by which any of these new facilities might be built on our reservation remain elusive. This is both frustrating and heartbreaking for us, and for our children, because on our reservation, with unemployment at nearly 60 percent and scarce job opportunities, education is just about the only path toward improved circumstances.

Mr. Chairman, that concludes the Warm Springs testimony. We appreciate the opportunity provided by this Committee to express our views on the economic and social issues that confront Northwest Tribes.

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