H.R. 623, H.R. 740, H.R. 841, H.R. 931, H.R. 1306, AND H.R. 1410

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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Thursday, May 16, 2013

U.S. House of Representatives

Subcommittee on Indian and Alaska Native Affairs

Committee on Natural Resources

Washington, D.C.

The Subcommittee met, pursuant to notice, at 2:55 p.m. in room 1324, Longworth House Office Building, Hon. Don Young [Chairman of the Subcommittee] presiding.

Present: Representatives Young, Gosar, Mullin, LaMalfa, Hanabusa, Ruiz, and Grijalva.

Also Present: Representative Schweikert.

Mr. YOUNG. The Committee will come to order. First, let me apologize to the witnesses and everybody who waited a period of time. We had these unfortunate votes, but we had them anyway.

The Subcommittee on Indian and Alaska Native Affairs is meeting today to hear testimony on six bills concerning Indian Tribes and Alaskan Native organizations.

Under Committee Rule 4(f), the opening statements are limited to the Chairman and the Ranking Member of the Subcommittee so we will hear from our witnesses more quickly. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the clerk by close of business today. Hearing no objection, so ordered.

STATEMENT OF THE HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. YOUNG. The six bills we are hearing today resolve a variety of land related issues affecting tribes in Oregon, Arizona and Alaska, a Native health provider and a Native regional corporation.

The sponsors represent the District of lands affected by their bills, and therefore, the legislation is an important constituent service for them.

H.R. 740, a bill I introduced with Ranking Member Hanabusa——

Ms. HANABUSA. Hanabusa.

Mr. YOUNG. Hanabusa; excuse me. Senator.

[Laughter.]

Mr. YOUNG. Will authorize Sealaska, the regional Native corporation for southeast Alaska to finalize its 40 year old land settlement due under the Alaska Native Claims Settlement Act of 1971 by selecting Native lands from within a designated pool of land in southeast Alaska.

First introduced over 6 years ago, this bill has undergone an extensive vetting process throughout the region and has resulted in meaningful changes such as providing for continued public access to lands and modifying certain land selections among them.

In addition, the legislation allows Sealaska to move away from sensitive watersheds, to select a more balanced inventory of second growth and old growth, and to select most of its remaining ANCSA lands on the existing road system, preserving on balance as much as 40,000 acres of inventoried "roadless old growth."

Furthermore, southeast Alaska communities face dire economic realities. Some of these communities have unemployment nearing 50 percent and many are in double digits. It was not always this way but through the mismanagement of the forest by the Forest Service and a continued siege from environmental groups, industry has suffered, and over the last couple of decades, the population has seen a consistent and steep decline.

By permitting Sealaska to select its remaining entitlement lands from outside the withdrawal boxes, the Sealaska bill will help Sealaska to maintain jobs in rural and predominately Native communities. Sealaska provides hundreds of jobs and is the largest private employer in the entire region.

For nearly 40 years since the passage of ANCSA, Sealaska has still not received conveyance of its full land entitlement. It is critical that Sealaska complete its remaining land entitlement under ANCSA in order to continue to meet the economic, social and cultural needs of its Native shareholders and the Native community throughout Alaska.

The hearing agenda includes several other bills. H.R. 1306 is an interim measure to sustain Sealaska's timber program until H.R. 740 can be enacted into law.

H.R. 623 provides for a small conveyance of land for the Alaska Native Tribal Health Consortium to carry out its valuable medical services for Alaska Native people.

H.R. 841 and H.R. 931 are sponsored by Congressman Schrader of Oregon to provide a smoother process for the Department of the

Interior to process trust land applications filed by two tribes in his District.

Finally, H.R. 1410 is a modified version of a bill passed by an overwhelming majority of the House last year to prohibit additional Indian casinos in the Phoenix area in accordance with the guarantees made by Arizona's Indian Tribes when the tribal-State compact was ratified.

At this time, I will recognize the Ranking Member for her opening statement.

[The prepared statement of Mr. Young follows:]

PREPARED STATEMENT OF THE HONORABLE DON YOUNG, CHAIRMAN, SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

The six bills on the hearing agenda today resolve a variety of land-related issues affecting tribes in Oregon and Arizona, an Alaska Native health provider, and a Native Regional Corporation. The sponsors represent the district of lands affected by their bills and therefore the legislation is an important constituent service for them.

H.R. 740, a bill I introduced with Ranking Member Hanabusa, will authorize Sealaska, the regional Alaska Native Corporation for southeast Alaska, to finalize its 40-year old land settlement due under the Alaska Native Claims Settlement Act (ANCSA) of 1971 by selecting Native lands from within a designated pool of land in southeast Alaska.

First introduced over 6 years ago, this bill has undergone an extensive vetting process throughout the region that has resulted in meaningful changes such as providing for continued public access to lands, and modifying certain land selections, among others.

In addition, the legislation allows Sealaska to move away from sensitive watersheds, to select a more balanced inventory of second growth and old growth, and to select most of its remaining ANCSA lands on the existing road system, preserving on balance as much as 40,000 acres of inventoried "roadless old growth."

Further, southeast Alaska communities face dire economic realities. Some communities have unemployment nearing 50 percent and many more are in the double digits. It was not always this way, but through the mismanagement of the forest by the Forest Service and the continued siege from environmental groups, industry has suffered and, over the last couple decades, the population has seen a consistent and steep decline.

By permitting Sealaska to select its remaining entitlement lands from outside of the withdrawal boxes, the Sealaska bill would help Sealaska maintain jobs in rural and predominately Native communities. Sealaska provides hundreds of jobs and is the largest private employer in the entire region.

After nearly 40 years since the passage of ANCSA, Sealaska has still not received conveyance of its full land entitlement. It is critical that Sealaska complete its remaining land entitlement under ANCSA in order to continue to meet the economic, social and cultural needs of its Native shareholders, and the Native community throughout Alaska.

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And finally, H.R. 1410 is a modified version of a bill passed by an overwhelming majority of the House last year, to prohibit additional Indian casinos in the Phoenix area in accordance with guarantees made by Arizona's Indian tribes when the tribal-state compact was ratified.

STATEMENT OF THE HON. COLLEEN W. HANABUSA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Ms. HANABUSA. Thank you, Chairman Young. The six bills that are the subject of today's legislative hearing address important

issues in Indian country, but today's agenda does not include the bill that provides a legislative fix to the *Carcieri* vs. *Salazar* decision, one of Indian country's top legislative priorities.

Ranking Member Markey and I introduced H.R. 666 in February to address the misguided Supreme Court decision. I am proud to say that H.R. 666 is a bipartisan bill with 29 co-sponsors. We requested that our bill be included in today's agenda, but the Majority denied our request.

For the record, Mr. Chairman, I respectfully renew our request to include H.R. 666 in the next legislative hearing agenda.

Turning to today's agenda, H.R. 841 and 931 would authorize the Secretary of the Interior to use reservation criteria in evaluating land into trust applications by the Confederated Tribes of the Grand Ronde Reservation and the Confederated Tribes of the Siletz Indians of Oregon.

These bills would enable these congressionally terminated tribes to rebuild and restore their original reservations.

We learned in a hearing on identical bills last Congress that both tribes have important reasons to seek this change in secretarial authority, yet it is my understanding that this agreement between the tribes about the exterior boundaries of the Coast or the Siletz Coast Reservation remain, and that progress toward an accommodation of this issue has not been made.

I hope that this Subcommittee can assist the parties in finding a reasonable and agreeable solution to this issue in order to enhance the Grand Ronde and Siletz Tribes' self governance authorities within their territories.

Another important bill that we consider today is Chairman Young's bill, H.R. 740. I supported the previous version of the bill in the 112th Congress and I am an original co-sponsor of the legislation before us today.

I strongly believe that the Sealaska Corporation has the best interest of its shareholders, some 20,000 Alaskan Natives, in mind when it proposed transferring ownership of lands into Tongass National Forest under H.R. 740.

This bill would potentially end years of conflict over Sealaska's remaining land entitlement under the Alaska Native Claims Settlement Act, and bring closure to an issue that has dragged on for three Congress' and two Administrations.

Against this backdrop, I look forward to hearing from Sealaska and the Administration witnesses about compromises that have been made in the 2 years since this Subcommittee held a hearing on the subject.

I believe such discussion will benefit the Subcommittee members in understanding the hard work that has gone into the legislation.

Finally, H.R. 1410 is a bill that would define the Phoenix metropolitan area to impose a geographic limitation on tribes that seek to conduct Class II and Class III gaming activities on land acquired in trust after April 9, 2013. This prohibition would remain in place until the current Tribal State Gaming Compact expires in 2027.

This is an issue that has been litigated with a decision being released just over a week ago, and still has unresolved questions.

I look forward to hearing from Chairman Norris and Chairwoman Enos about how this bill affects their tribes, and from Director Black regarding the Administration's view.

I welcome all our witnesses here today, and I yield back, Mr. Chairman.

[The prepared statement of Ms. Hanabusa follows:]

PREPARED STATEMENT OF THE HONORABLE COLLEEN W. HANABUSA, RANKING MEMBER, SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS

Thank you, Chairman Young.

The six bills that are subject to today's legislative hearing address important interests in Indian country. But today's agenda does not include a bill that provides a legislative fix to the *Carcieri* v. *Salazar* decision, one of Indian country's TOP legislative priorities. Ranking Member Markey and I introduced H.R. 666 in February to address the misguided Supreme Court decision. I am proud to say that H.R. 666 is a bipartisan bill with 29 cosponsors. We requested that our bill be included in today's agenda, but the majority denied our request. For the record, Mr. Chairman, I respectfully renew our request to include H.R. 666 in the next legislative hearing agenda.

Turning to today's agenda, H.R. 841 and H.R. 931 would authorize the Secretary of the Interior to use "on reservation" criteria in evaluating land into trust applications by the Confederated Tribes of the Grand Ronde Reservation and the Confederated Tribes of Siletz Indians of Oregon. These bills would enable those congressionally-terminated tribes to rebuild and restore their original reservations.

We learned in a hearing on identical bills last Congress that both tribes have important reasons to seek this change in Secretarial authority. Yet it is my understanding that disagreement between the tribes about the exterior boundaries of the "Coast" or the "Siletz Coast" Reservation remain, and that progress toward an accommodation on this issue has not been made. I hope that this Subcommittee can assist the parties in finding a reasonable and agreeable solution to this issue in order to enhance Grand Ronde and Siletz tribes' self-government authorities within their territories.

Another important bill that we will consider today is Chairman Young's bill, H.R. 740. I supported the previous version of the bill in the 112th Congress and am an original cosponsor of the legislation before us today. I strongly believe that the Sealaska Corporation has the best interests of its shareholders, some 20,000 Alaska Natives, in mind when it proposed transferring ownership of lands in the Tongass National Forest under H.R. 740. This bill would potentially end years of conflict over Sealaska's remaining land entitlement under the Alaska Native Claims Settlement Act, and bring closure to an issue that has dragged on for three Congresses and two Administrations.

Against this backdrop, I look forward to hearing from Sealaska and the Administration's witnesses about compromises that have been made in the 2 years since this Subcommittee held a hearing on the subject. I believe such discussion will benefit the Subcommittee members in understanding the hard work that has gone into the legislation.

Finally, H.R. 1410 is a bill that would define the Phoenix metropolitan area to impose a geographic limitation on tribes that seek to conduct Class II and Class III gaming activities on land acquired in trust after April 9, 2013. This prohibition would remain in place until the current tribal-state gaming compact expires in 2027. This is an issue that has been litigated with a decision being released just over a week ago and still has unresolved questions.

I look forward to hearing from Chairman Norris and Chairwoman Enos about how this bill affects their tribes and from Director Black regarding the Administration's views.

I welcome all our witnesses here today, and I yield back.

Mr. YOUNG. I thank the good lady, and just one comment on Carcieri. We are going to have a hearing and a markup on that bill, but these are constituent bills here individually. That is why we are doing it. Thank you, ma'am.

Ms. HANABUSA. Thank you.

Mr. YOUNG. I am glad you reminded me.

Ms. HANABUSA. Thank you, I have to remind you about these things.

Mr. YOUNG. Thank you. I am getting mature, so be careful.

I look forward to hearing our witnesses now. Michael Black, Director of Bureau of Indian Affairs. Robert McSwain, Deputy Director for Management Operations, Department of Health and Human Services, and Jim Peña, Associate Deputy Chief, National Forest System, U.S. Forest Service. That is my first panel.

Gentlemen, again, I do apologize for not being here. These things happen in this crazy world we live in.

I believe you all know the rules. Five minutes. The little red lights will go on when you are up on your 5 minutes. Try to keep it short. If you are really enthralling with your testimony, I might let you go longer. If you are not, I will cut you off shorter. Keep that straight.

I guess that is it. We will start out with Mr. Black.

STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

ACCOMPANIED BY: MARIA WISEMAN, ASSOCIATE DEPUTY DIRECTOR, OFFICE OF INDIAN GAMING, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. BLACK. Good afternoon, Chairman Young, Ranking Member Hanabusa, and members of the Subcommittee. My name is Michael Black and I am the Director of the Bureau of Indian Affairs. Accompanying me today is the Associate Deputy Director from the Office of Indian Gaming, Maria Wiseman.

Thank you for the opportunity to present the Department of the Interior's views on three bills, H.R. 931, a bill to provide for the addition of certain real property to the Reservation of the Siletz Tribe, which the Department supports; H.R. 841, a bill to amend the Grand Ronde Reservation Act, to make technical corrections and for other purposes, which the Department also supports; and H.R. 1410, a bill that will prohibit Class II and Class III gaming activities on lands acquired in trust by the Secretary of the Interior for the benefit of an Indian tribe within a defined Phoenix metropolitan area.

The prohibition would last from April 9, 2013 until January 2, 2027. The Department opposed H.R. 1410.

I have previously testified before this Subcommittee in support of the previous versions of H.R. 931 and H.R. 841, and since these bills have not changed significantly, the Department continues to support H.R. 931 and H.R. 841.

In order to stay within my allotted time, I will not restate the details in my testimony on those two bills.

However, since H.R. 1410 is new, I will spend my time on this bill. H.R. 1410 would prohibit Class II and Class III gaming on any lands taken into trust for an Indian tribe by the Secretary of the Interior if those lands are within the defined Phoenix metropolitan area. The Phoenix metropolitan area is defined in Section 3 of the bill.

This gaming prohibition would retroactively begin April 9, 2013 and expire on January 1, 2027.

While H.R. 1410 does not name a specific Tribe nor amend a particular law, the Department concludes, based on the subject matter, that this bill has a similar effect of the bill introduced in the previous 112th Congress involving the Tohono O'odham Nation and its 53.54 acre parcel in Maricopa County, Arizona.

The Tribe has requested that the Secretary acquire this land in trust pursuant to the Gila Bend Indian Reservation Lands Replacement Act of 1986, also known as the Gila Bend Act.

The Gila Bend Act was intended to remedy damage to the tribes' lands caused by flooding and the construction of the Painted Rock Dam.

The United States and the Tohono O'odham Nation agreed to terms of the Gila Bend Act, which included restrictions on where and how the nation could acquire replacement lands. In the accompanying 1987 agreement between the Federal Government and the tribe, the tribe gave up its right and title to 9,880 acres of land and approximately 36,000 acre-feet of Federal Reserve water rights.

The Gila Bend Act authorized the Secretary of the Interior to take up to 9,880 acres of unincorporated land in Pima, Pinal, and Maricopa Counties in the trust for the nation, subject to certain other requirements, and mandated that the land "shall be deemed to be a Federal Indian Reservation for all purposes."

Congress was clear when it originally enacted the Gila Bend Act in which it stated that "Replacement lands shall be deemed to be a Federal Indian Reservation for all purposes."

By this language Congress intended that the nation be permitted to use the replacement lands as any other tribe would use for its own Reservation trust lands for all purposes.

H.R. 1410 would impact the nation's Gila Bend Act by imposing additional restrictions beyond those agreed upon by the United States and the Tohono O'odham Nation nearly 25 years ago.

H.R. 1410 would negatively impact the nation's all purposes use of selected lands under the Gila Bend Act by limiting the nation's ability to conduct Class II and Class III gaming on such selected lands. H.R. 1410 would also alter the Indian Gaming Regulatory Act that prohibits gaming on lands acquired by the Secretary and a trust for the benefit of an Indian tribe after October 17, 1988 except in certain circumstances.

The effect of H.R. 1410 would be to add a tribe specific and area specific limitation to IGRA. The process for determining whether lands qualify for an exception to this prohibition is firmly established.

To wrap up, Mr. Chairman, the Department is aware that the nation's request to acquire land in trust for gaming purposes in Maricopa County has been the subject of significant contention among tribes and local governments in the State of Arizona, and the Assistant Secretary's decision to approve the trust acquisition pursuant to congressional mandate has been the source of litigation which is still pending.

However, IGRA already establishes a process to determine whether lands are eligible for gaming, and that question is currently pending before the Department. The Department respects Congress' authority to legislate in this area. However, we are concerned about establishing a precedent for singling out particular

Tribes through legislation to restrict their access to equal application under the law.

This Administration has consistently held the position that fair and equal application of our laws toward all tribes is essential to upholding the United States' nation-nation relationship with Indian tribes.

Thank you, and I am happy to answer any questions the Subcommittee may have.

[The prepared statement of Mr. Black follows:]

PREPARED STATEMENT OF MICHAEL S. BLACK, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, ON H.R. 841, H.R. 931, AND H.R. 1410

H.R. 841—TO AMEND THE GRAND RONDE RESERVATION ACT

Chairman Young, Ranking Member Hanabusa, and members of the Subcommittee, my name is Michael Black and I am the Director of the Bureau of Indian Affairs. Thank you for the opportunity to present the Administration's views on H.R. 841, a bill to amend the Grand Ronde Reservation Act to make technical corrections, and for other purposes. The Department of the Interior (Department) supports H.R. 841.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety, and welfare of the tribal governments. Thus, the Department has made the restoration of tribal homelands a priority.

H.R. 841 amends an act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, Pub. L. No. 100–425 (Sept. 9, 1988), to authorize the Secretary of the Interior to place in trust approximately 288 acres of real property located within the boundaries of the original 1857 reservation of the Confederated Tribes of the Grand Ronde Community of Oregon if the real property is conveyed or otherwise transferred to the United States by or on behalf of the tribe. Furthermore, the bill provides that the Secretary is to treat all applications to take land into trust within the boundaries of the original 1857 reservation as an on-reservation trust acquisition, and that all real property taken into trust within those boundaries after September 9, 1988, are to be considered part of the tribe's reservation.

Again, the Department supports H.R. 841. Thank you for the opportunity to present testimony on H.R. 841. I will be happy to answer any questions you may have.

H.R. 931—A BILL TO PROVIDE FOR THE ADDITION OF CERTAIN REAL PROPERTY TO THE RESERVATION OF THE SILETZ TRIBE IN THE STATE OF OREGON

Chairman Young, Ranking Member Hanabusa, and members of the Subcommittee, my name is Michael Black and I am the Director for the Bureau of Indian Affairs. Thank you for the opportunity to present the Department of the Interior's (Department) views on H.R. 931, a bill to provide for the addition of certain real property to the reservation of the Siletz Tribe.

Taking land into trust is one of the most important functions that the Department undertakes on behalf of Indian tribes. Homelands are essential to the health, safety, and welfare of the tribal governments. Thus, this Administration has made the restoration of tribal homelands a priority. This Administration is committed to the restoration of tribal homelands, through the Department's acquisition of lands in trust for tribes, where appropriate. While the Department acknowledges that tribes near the Siletz Tribe oppose H.R. 931, the Department supports H.R. 931.

H.R. 931 would amend the Siletz Tribe Indian Restoration Act, 25 U.S.C. § 711e, to authorize the Secretary of the Interior to place land into trust for the Siletz Tribe. The lands lie within the original 1855 Siletz Coast Reservation and are located in the counties of Benton, Douglas, Lane, Lincoln, Tillamook, and Yamhill, which are all located within the State of Oregon. H.R. 931 would also provide that such land would be considered and evaluated as an on-reservation acquisition under 25 CFR § 151.10 and become part of the tribe's reservation. The bill does not make the original Siletz Reservation into a reservation for the Siletz Tribe or create tribal jurisdiction over the original Siletz Reservation.

Thank you for the opportunity to present the Department's views on this legislation. I will be happy to answer any questions you may have.

Good morning, Chairman Young, Ranking Member Hanabusa, and members of the Committee. My name is Michael Black. I am the Director of the Bureau of Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's testimony on H.R. 1410, the Keep the Promise Act of 2013, which is a bill that if enacted would prohibit Class II and Class III gaming activities on lands, within a defined "Phoenix metropolitan area", acquired in trust by the Secretary of the Interior for the benefit of an Indian tribe after April 9, 2013, and such prohibition shall expire on January 1, 2027.

H.R. 1410, the "Keep the Promise Act" would prohibit Class II and III gaming on *any* lands taken into trust for an Indian tribe by the Secretary of the Interior, if those lands are within the "Phoenix metropolitan area," as defined in Section 3 of H.R. 1410, and the prohibition of Class II and Class III gaming on such lands taken into trust for an Indian tribe would retroactively begin April 9, 2013, and expire on January 1, 2027. The Department opposes H.R. 1410.

H.R. 1410 does not specifically identify a tribe or amend a particular law, but because of the subject matter of the bill, the Department concludes that this bill has a similar effect as a bill introduced in the previous 112th Congress involving the Tohono O'odham Nation (Nation) and the Nation's 53.54 acre parcel (Parcel 2) in Maricopa County, Arizona, which the Nation has requested that the Secretary acquire the land in trust pursuant to the Gila Bend Indian Reservation Lands Replacement Act (Public Law 99–503) (Gila Bend Act).

Background

The Tohono O'odham Nation (Nation) is a federally recognized tribe located in southern and central Arizona. The Nation has approximately 30,000 enrolled members, and has one of the largest tribal land bases in the country.

The San Lucy District is a political subdivision of the Nation. It was created by Executive Order in 1882 and originally encompassed 22,400 acres of land. In 1960, the U.S. Army Corps of Engineers (Corps) completed construction of the Painted Rock Dam on the Gila River. Both the Bureau of Indian Affairs (BIA) and the Corps assured the Nation that flooding would not impair agricultural use of lands within the San Lucy District.

Nevertheless, construction of the dam resulted in continuous flooding of nearly 9,880 acres of land within the San Lucy District, rendering them unusable for economic development purposes. Included among the destruction was a 750-acre farm that had previously provided tribal revenues. The loss of these lands forced a number of the Nation's citizens to crowd onto a 40-acre parcel of land.

Gila Bend Indian Reservation Lands Replacement Act Pub. L. 99–503

Congress first moved to remedy the plight of the Nation's San Lucy District in 1982, when it directed the Secretary of the Interior to study the flooding and identify replacement lands within a 100-mile radius. After attempts to find replacement lands failed, Senators Barry Goldwater and Dennis DeConcini, along with then-Congressmen John McCain and Mo Udall, sponsored legislation to resolve the situation. Congress enacted the Gila Bend Indian Reservation Lands Replacement Act (Public Law 99–503) (Gila Bend Act) in 1986 to redress the flooding of the Nation's lands.

The Gila Bend Act authorized the Nation to purchase private lands as replacement reservation lands. In the accompanying 1987 agreement between the Federal Government and the Nation, the Nation gave up its right and title to 9,880 acres of land and approximately 36,000 acre-feet of Federal reserved water rights. The Gila Bend Act authorized the Secretary of the Interior to take up to 9,880 acres of unincorporated land in Pima, Pinal, or Maricopa Counties into trust for the Nation, subject to certain other requirements, and mandated that the land "*shall be deemed to be a Federal Indian Reservation for all purposes.*"

Assistant Secretary's Decision

The Nation purchased a 53.54 acre parcel (Parcel 2) in Maricopa County, Arizona, and requested that the Secretary acquire the land in trust pursuant to the Gila Bend Act. On July 23, 2010, Assistant Secretary Echo Hawk issued a letter to Ned Norris, Jr., Chairman of the Tohono O'odham Nation, stating that the Nation's request for the trust acquisition of Parcel 2 satisfied the legal requirements of the Gila Bend Act and that the Department was obligated to, and therefore would, acquire the land in trust pursuant to congressional mandate. This decision is currently the subject of several related lawsuits, one of which is pending before the United States Court of Appeals for the Ninth Circuit.

H.R. 1410

H.R. 1410, would negatively impact the Nation's "all purposes" use of selected lands under the Gila Bend Act by limiting the Nation's ability to conduct Class II and Class III gaming on such selected lands.

Congress was clear when it originally enacted the Gila Bend Act in 1986, in which it stated that replacement lands "*shall be deemed to be a Federal Indian Reservation* ***for all purposes.''*** By this language, Congress intended that the Nation be permitted to use replacement lands as any other tribe would use its own reservation trust lands ***"for all purposes".***

The Gila Bend Act was intended to remedy damage to the Nation's lands caused by flooding from the construction of the Painted Rock Dam. The United States and the Tohono O'odham Nation agreed to the terms of the Gila Bend Act, which included restrictions on where and how the Nation could acquire replacement lands. H.R. 1410 would specifically impact the Nation's Gila Bend Act by imposing additional restrictions beyond those agreed upon by the United States and the Tohono O'odham Nation 25 years ago. The Department cannot support legislation that specifically impacts an agreement so long after the fact.

While the purpose of H.R. 1410 would be to restrict the Nation from conducting gaming on the 53.54 acre parcel in Maricopa County, Arizona, the effect of H.R. 1410 would reach ***all*** remaining selectable lands under the Gila Bend Act.

H.R. 1410 would also alter established law that prohibits gaming, authorized under the Indian Gaming Regulatory Act (IGRA), on lands acquired by the Secretary into trust for the benefit of an Indian tribe after October 17, 1988, except in certain circumstances. The effect of this legislation would be to add a tribe-specific and area-specific limitation to the IGRA. The process for determining whether lands qualify for an exception to this prohibition is firmly established.

The Department is aware that the Nation's request to acquire land in trust for gaming purposes in Maricopa County has been the subject of significant contention among tribes and local governments in the State of Arizona. As previously noted, the Assistant Secretary's decision on July 23, 2010, to approve the trust acquisition pursuant to congressional mandate has been the source of litigation, which is still pending. However, IGRA already establishes a process to determine whether lands are eligible for gaming, and that question is pending before the Department. The Department's opposition to H.R. 1410 is not based upon any particular analysis of whether the land in Maricopa County would be eligible for gaming, but rather for the other policy concerns expressed in this testimony.

The Department respects Congress's authority to legislate in this area. However, we are concerned about establishing a precedent for singling out particular tribes through legislation to restrict their access to equal application of the law. This Administration has consistently held the position that fair and equal application of our laws toward all tribes is essential to upholding the United States' nation-to-nation relationship with Indian tribes.

For these reasons, the Department opposes H.R. 1410. This concludes my prepared statement. I am happy to answer any questions the Subcommittee may have.

Mr. YOUNG. Thank you, Mr. Black.

Mr. McSwain?

STATEMENT OF ROBERT MCSWAIN, DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS, INDIAN HEALTH SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. MCSWAIN. Good afternoon, Mr. Chairman and members of the Committee. I am Robert McSwain, the Deputy Director for Management Operations, and I had the pleasure of appearing before you before on a land issue.

I am pleased to have the opportunity to testify on H.R. 623, the Alaska Native Tribal Health Consortium Land Transfer Act, providing for the conveyance of certain Indian Health Service real property located in Anchorage, Alaska to ANTHC.

First of all, I want to say that the Indian Health Service supports this bill and views it as the proposed transfer of furthering

the special relationship the Indian Health Service enjoys with Indian tribes, specifically Alaska Native Governments in this case.

Moreover, it actually furthers the President's Memorandum on Administrative Flexibility as it pertains to tribal governments.

Now having said that, we do have some comments on the bill itself, and I just would like to point those out, in the interest of brevity, you have my whole statement.

We believe that H.R. 623 could be improved in four particular areas. One, the conveyance language should be revised to allow no less than 90 days for the property to be transferred. Second, the environmental liability language needs to be clarified so that ANTHC is responsible for any environmental contamination which may have occurred since the control it assumed in 1999 to the date of conveyance.

The reversionary clause language should be clarified to apply in the case of retrocession in any event, although I certainly would believe this is highly unlikely. We only have four throughout the country since 1975.

The legal description needs to be changed to describe accurately the property being conveyed. We have had some later descriptions on that, and I can certainly respond to those.

The whole process is now underway, and I think it would be important for the Committee to know we have been working with ANTHC on a quick claim deed, which is going through all the various processes that are necessary to transfer the land under that authority, and certainly the bill actually would transfer it under a warranty deed, which is one that is rare. We have had some experiences certainly with the previous transfer to the Maniilaq, and we have gone to school on that one, and it is our first experience, and that has occurred very satisfactorily to both the tribe and the Indian Health Service.

With that, I will end my remarks, and be pleased to answer any questions the Committee may have. Thank you.

[The prepared statement of Mr. McSwain follows:]

PREPARED STATEMENT OF ROBERT MCSWAIN, DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

H.R. 623—TO PROVIDE FOR THE CONVEYANCE OF CERTAIN PROPERTY FROM THE UNITED STATES TO THE ALASKA NATIVE TRIBAL HEALTH CONSORTIUM LOCATED IN ANCHORAGE, ALASKA

Mr. Chairman and members of the Committee:

Good afternoon. I am Robert McSwain, Deputy Director for Management Operations of the Indian Health Service (IHS). I am pleased to have the opportunity to testify on H.R. 623, the Alaska Native Tribal Health Consortium (ANTHC) Land Transfer Act, providing for the conveyance of Indian Health Service (IHS) real property located in Anchorage, Alaska to ANTHC.

The Indian Health Service (IHS) plays a unique role in the Department of Health and Human Services (HHS) because it is a health care system that was established to meet the Federal trust responsibility to provide health care to American Indians and Alaska Natives (AI/ANs). The mission of the IHS, in partnership with American Indian and Alaska Native people, is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level. The IHS provides comprehensive health service delivery to approximately 2.1 million AI/ANs through 28 Hospitals, 61 health centers, 33 health stations and 3 school health centers. Tribes also provide healthcare access through an additional 16 hospitals, 235 health centers, 164 Alaska Village Clinics, 75 health stations and 6 school health centers. In support of the IHS

mission, the IHS and tribes provide access to functional, well maintained and accredited health care facilities and staff housing.

H.R. 623 would provide for the conveyance of certain property located in Anchorage, Alaska from the Federal Government to the Alaska Native Tribal Health Consortium (ANTHC) in Anchorage, Alaska. ANTHC assumed responsibility for the provision of the IHS-funded health care services in 1999 under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA). The Federal property described in H.R. 623, which is used in connection with health and related programs in Anchorage, Alaska by the IHS, is currently in the process of being transferred through quitclaim deed to the ANTHC.

On April 26, 2013, IHS executed a Memorandum of Agreement (MOA) with ANTHC, which sets forth terms and conditions under which easements will be established so IHS may transfer ownership of the Anchorage property to ANTHC by quitclaim deed. H.R. 623 provides for the conveyance of the Anchorage property from the United States to the ANTHC and proposes to replace the pending quitclaim deed transfer by authorizing the use of a warranty deed. The easements, which will be established under the MOA, must remain intact if a warranty deed is executed.

The IHS supports this bill because it views the proposed transfer as furthering the special partnership that exists with American Indian and Alaska Native tribal governments, and, moreover, is in keeping with the Presidential Memorandum on Administrative Flexibility as it pertains to tribal governments. It is important to emphasize that, as a normal practice, we do not transfer properties via the warranty deed mechanism. However, we will support an exception in this case because of the ANTHC initiative to expand access to its health care system for IHS beneficiaries from throughout Alaska. This proposal will give the ANTHC flexibility to leverage additional resources because ownership of the property under a warranty deed will give them unencumbered ownership of the property described in H.R. 623.

We believe the language, relating to the following issues needs to be clarified and/or revised:

- Conveyance language should be revised to allow no less than 90 days to convey the property to ANTHC;
- Environmental Liability language needs to be clarified so the ANTHC is responsible for any environmental contamination which may have occurred since its control of the property began in 1999, or for contamination that may occur or arise "as of, or after, the date of the 2013 conveyance"; and,
- "Reversionary Clause" language should be clarified to apply in case of retrocession by ANTHC from their ISDEAA compact.
- Legal Description language needs to be changed to describe accurately the property to be conveyed.

We believe that reasons to use this mechanism in future cases are limited. IHS anticipates no problems with the quitclaim deed currently being processed by IHS for ANTHC. Traditionally, Alaska Native Corporations have preferred to leave the title of their facilities previously operated by the IHS with the Federal Government and the majority of the health care facilities used by the tribes in the other 35 States are located on tribally owned lands. This warranty deed transfer would be the fourth of its kind in Alaska. IHS is currently preparing three warranty deeds authorized by Congress to transfer parcels of land to the Maniilaq Association previously transferred through a quitclaim deed. On other numerous occasions properties were transferred to tribes or tribal organizations through quitclaim deeds.

We think retrocession is unlikely. We can count only four retrocessions since the enactment of ISDEAA in 1975. Three were only small program components which have been re-assumed by the tribes. None of these were in the Alaska Area.

We look forward to working with you, Mr. Chairman, on measures like these to improve the health of the Alaska Native population. Mr. Chairman, this concludes my testimony. I appreciate the opportunity to appear before you to discuss H.R. 623. I will be happy to answer any questions the committee may have. Thank you.

Mr. YOUNG. Thank you, sir.
The next panelist is Mr. Peña.

STATEMENT OF JIM PEÑA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. PEÑA. Thank you, Mr. Chairman, Ranking Member Hanabusa, and members of the Committee. Thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on H.R. 740, the Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act, and H.R. 1306, the Southeast Alaska Native Land Conveyance Act.

H.R. 740 is a comprehensive bill. H.R. 1306 is what might be called a stopgap measure until a comprehensive bill can be completed.

I will first address H.R. 740. The Department of Agriculture supports the principal objectives of this legislation to finalize Sealaska's remaining Alaska Native Claims Settlement Act entitlement, and promptly complete conveyance of it.

Under Secretary Harris Sherman expressed such support nearly 2 years ago during hearings in both Houses on similar legislation in the 112th Congress. The Under Secretary concluded his testimony by saying the Department would continue to work with Sealaska and all interested parties to resolve concerns and find solutions that worked for everyone.

We are grateful that H.R. 740 incorporates many of the provisions that would move us toward that solution. In this way, it is a significant improvement over previous legislation.

However, H.R. 740 leaves out key provisions essential to a balanced solution and adds others that make reaching such a solution more difficult.

Consequently, the Department of Agriculture does not support enactment of H.R. 740 as written. We appreciate the work the Chairman has put in to this legislation and recognize its importance to the State of Alaska. We hope to continue working with Sealaska and the Committee to resolve the remaining concerns and find solutions acceptable to all parties.

Now, I will address H.R. 1306, the Southeast Alaska Native Land Conveyance Act. Under H.R. 1306, two of the parcels contained in H.R. 740, the North Election Creek and the North Cleveland parcels, would be conveyed to Sealaska within 60 days of enactment of the bill.

These two parcels would be conveyed without the carefully negotiated provisions of 740 related to special use authorizations and public access that many stakeholders see as essential.

We believe it is far better to resolve the remaining issues associated with Sealaska's land entitlement selections with a comprehensive settlement such as H.R. 740 than to enact partial measures such as 1306 that does not finalize Sealaska's remaining entitlement.

For these reasons, USDA does not support enactment of H.R. 1306.

This concludes my testimony, and I would be happy to answer any questions that you may have.

[The prepared statement of Mr. Peña follows:]

PREPARED STATEMENT OF JIM PEÑA, ASSOCIATE DEPUTY CHIEF, NATIONAL FOREST SYSTEM, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE, ON H.R. 740 AND H.R. 1306

H.R. 740, THE "SOUTHEAST ALASKA NATIVE LAND ENTITLEMENT FINALIZATION AND JOBS PROTECTION ACT"

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to provide the Department of Agriculture's views on H.R. 740, the "Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act," and, the "Southeast Alaska Native Land Conveyance Act." The former is a comprehensive bill; the latter is what might be called a stopgap measure until a comprehensive bill can be completed. I will now address H.R. 740, the comprehensive measure, with H.R. 1306 addressed in separate written testimony.

H.R. 740 would allow the Sealaska Corporation, a Regional Corporation established under the Alaska Native Claims Settlement Act of 1971 (ANCSA), to obtain its remaining land entitlement under ANCSA from portions of the Tongass National Forest outside of the withdrawal areas to which Sealaska's selections are currently restricted by law.

The Department of Agriculture supports the principal objectives of this legislation, to finalize Sealaska's remaining ANCSA entitlement, and promptly complete conveyance of it. Under Secretary Harris Sherman expressed such support nearly 2 years ago during hearings in both houses on similar legislation of the 112th Congress. The Under Secretary concluded his testimony by saying the Department would continue to work with Sealaska and all interested parties to resolve concerns and find solutions that work for everyone.

Soon after those hearings, at the request of Senators Murkowski and Bingaman, USDA and the Forest Service began working closely with Senate staff, the Department of the Interior, Sealaska, and others to develop a balanced, compromise bill to resolve the long-standing issues that have delayed the completion of Sealaska's ANCSA entitlement. We are grateful that H.R. 740 incorporates many of the provisions developed in those discussions; in this way, it is a significant improvement over previous legislation. However, H.R. 740 leaves out key provisions essential to a balanced solution and adds others that make reaching such a solution more difficult. Consequently, the Department of Agriculture opposes enactment of H.R. 740 unless it is amended as described in this statement.

Under H.R. 740, if the Sealaska board of directors approves the conveyances contemplated by the bill within 90 days of its enactment, the Secretary of the Interior would convey to Sealaska 25 parcels of Federal land on the Tongass National Forest totaling some 69,235 acres within 60 days. Sealaska would also be allowed to apply within 2 years to the Secretary of the Interior for 127 cemetery sites and historical places. This conveyance would be limited to a total of 840 acres. If any of these sites were rejected, Sealaska could apply for additional cemetery sites. These conveyances totaling 70,075 acres of Federal land would be the full and final satisfaction of Sealaska's remaining land entitlement under ANCSA.

USDA has several significant policy concerns with H.R. 740: It excludes a provision to offset the impact of conveying thousands of acres of young growth forest to Sealaska; it also excludes provisions to establish conservation areas to balance the overall impacts of the bill and other provisions that would bolster the protection of three highly productive salmon streams on lands being conveyed to Sealaska; it would allow Sealaska to apply for 127 cemetery sites and historical places, scores of which are in existing Wilderness areas; and it would require expedited conveyance of more parcels of Federal lands that have not been agreed to in the negotiations conducted over the last 2 years.

USDA has serious concerns with the potential effects of the bill on the transition to young growth forest management in southeast Alaska. USDA is making extensive efforts to transition the Tongass timber program, and the timber industry in southeast Alaska, away from a reliance on old-growth timber towards a reliance primarily on the harvest of young growth stands. We believe this transition is essential to the long-term social and economic sustainability of the industry, and of the local economies of the communities in southeast Alaska.

Under H.R. 740, many of the oldest second-growth stands on the Tongass would be conveyed to Sealaska. That would accelerate Sealaska's young growth program, but substantially delay the development of the Forest Service's young growth program on the Tongass unless additional steps are taken. The steps recommended by the Administration relate to the "Culmination of Mean Annual Increment," or CMAI. This is a provision of the National Forest Management Act which, in lay terms, generally limits the harvest of young growth forest stands until they have

reached their maximum rate of growth. In order for the Tongass to continue its transition to harvesting young growth without any delay caused by the transfer of lands to Sealaska, the Administration recommends that a limited amount of young growth timber on the Tongass be expressly exempted from CMAI. This exemption is not precedent-setting; it would apply only to the Tongass National Forest, due to the unique situation presented by this legislation. The existing CMAI provision contained in the NFMA would not be amended. We recognize that this issue is controversial, and negotiations are continuing among several parties. The absence of the provision recommended by the Administration poses a primary obstacle to enactment of H.R. 740.

The conservation areas and stream buffer provisions of the Senate companion bill, S. 340, are also viewed as essential components of a balanced, compromise solution to the long-standing debate over how to resolve Sealaska's remaining ANCSA land entitlement. We urge the Committee to add those provisions to H.R. 740.

Section 6 of H.R. 740 would allow Sealaska to apply for up to 127 additional cemetery sites and historical places. Forty-six of these are within congressionally designated Wilderness areas on the Tongass National Forest. One is on private land and is not listed in the Wilsey and Ham report referenced in the bill. Three more sites are within the 25 parcels of Federal lands that would be conveyed under Section 5 of H.R. 740. Finally, one of the sites has been selected by the State of Alaska and is not available for conveyance to Sealaska. Therefore, we recommend that Section 6 of H.R. 740 be amended to limit the number of sites to 76 and otherwise conform with Section 5 of the Senate bill, S. 340.

Finally, H.R. 740 would convey seven parcels of land not agreed to in the discussions that have taken place over the last 2 years. USDA has consistently recommended limiting the number of small inholdings on the Tongass, to minimize the confusion and inconvenience to the public and management problems that result from them. Each of these sites is believed to have potential for future hydropower development. All were specifically rejected during previous discussions, due partly to pre-existing development interests. Energy development has been proposed and abandoned at two of the sites due to conflicts with their high recreational use. Additionally, one of these sites is designated as a Special Interest Area in the Tongass Forest Plan to protect the area's recreational values. For all these reasons, we urge the Committee to amend H.R. 740 to reflect the compromise package of conveyances contained in S. 340.

There are several other technical amendments that we believe are needed. We hope to continue working with Sealaska and the Committee on these issues.

H.R. 1306, THE "SOUTHEAST ALASKA NATIVE LAND CONVEYANCE ACT"

Under H.R. 1306, two of the parcels contained in H.R. 740, the North Election Creek and North Cleveland parcels, would be conveyed to Sealaska within 60 days of enactment of the bill. These two parcels, which include 3,380 acres of Federal land, would be conveyed without the carefully negotiated provisions of H.R. 740 related to special use authorizations and public access that many stakeholders see as essential. We believe that it is far better to resolve the remaining issues associated with Sealaska's land entitlement selections under ANCSA with a comprehensive settlement such as H.R. 740 with the changes already discussed, than to enact a piece-meal, stopgap measure such as H.R. 1306 that does not finalize Sealaska's remaining entitlement.

For these reasons, USDA opposes enactment of H.R. 1306.

This concludes my testimony; I would be happy to answer any questions you may have.

Mr. YOUNG. Thank you, sir. Questions? Ms. Hanabusa?

Ms. HANABUSA. Thank you, Mr. Chairman. First of all, I would like to begin with Director McSwain. I just want to clarify what your issues are with H.R. 623. You said you do not like the 30 days and you would prefer it to be 90 days, and the other issue I heard was a quick claim versus a warranty deed.

Is there anything else I am missing in your objections or your concerns?

Mr. MCSWAIN. The other issues I raised was simply the legal description, the reversionary clause, and the environmental language, but to answer your question you just raised, the difference between

a quick claim and certainly a warranty deed, the quick claim is one that is authorized under the Indian Self-Determination Act.

It requires us to have a reversionary clause in the event the tribe ever chooses to return the program to us under a retrocession. So, it is a nice little mechanical process, but the warranty deed removes that reversionary clause, and we then transfer the land in total without encumbrances, except for agreed upon easements.

Ms. HANABUSA. You would want the reversionary clause. You would like a quick claim because of the reversionary clause aspects of it so that in the event, for whatever reason, the health corporation no longer does what it is intended to do, those lands will return plus the functions will return to the Government? Am I understanding correctly?

Mr. MCSWAIN. That is correct, because then the Government would be responsible then for carrying out the services and would need a location to do that.

Ms. HANABUSA. Thank you. Director Black, I am going to focus on 1410. You said you do not really have any issues with 841 or 931, but you do have issues with 1410.

You basically are concerned that with the role of Congress, that Congress is playing in the resolution of this particular dispute, in other words, they have come to Congress to ask for a resolution between basically the Plaintiffs and the Defendants in a particular lawsuit that is pending. Is that correct?

Mr. BLACK. I think the nexus of the lawsuits would be what is on 1410; yes.

Ms. HANABUSA. Let me ask you this, because it does trouble me that we are trying to resolve an issue between basically not only one tribe but a group of tribes on one side and one nation on the other side.

Now the problem I have is in reading the recent decision that came down about a couple of weeks ago, it is very clear there are certain issues that the court could not resolve, and because of the fact they are sovereign nations, they would have had to waive their sovereign immunities before certain types of arguments could be heard.

In particular, those in equity versus those in compact or those in contract. Now, what I want to know is does Interior or any part of the Interior, whether it is BIA or whoever, have a mechanism by which they can address these concerns prior to them coming to Congress?

If they are not justiciable, for lack of a better term, and they have no place else to go, it would seem Congress is where the are going to come.

Do you have a mechanism to basically give them an alternative to coming to Congress?

Mr. BLACK. I would probably have to go back and provide you a better answer than I am probably going to give you right now, but on the face of it, I would say, no, we do not. We are largely implementing the Gila Bend Act on behalf of the Tohono O'odham Nation here in their acquisition of this 53.54 acres of land that happens to be in the Glendale area there within the Phoenix area.

Ms. HANABUSA. I understand that, Mr. Black. I am not being specific to the particular dispute that is before us. What I am ask-

ing you about is that issue generally, when two tribes, sovereign in and of themselves, have a dispute such as this where sovereign immunity is not waived for the judicial system to make the decision, do you know of any mechanism within Interior that could assist in that resolution?

To make it comparable, like being able to go to the Hague Tribunal or maybe the United Nations or something like that. Do you have a mechanism like that?

Mr. BLACK. I do not know of anything right offhand, but I will take that back and provide the information if there is anything out there.

Ms. HANABUSA. If you could, I would appreciate it. It seems like in a situation where we are at a stalemate such as this, they have no choice and we would be the final arbiter.

With that, Mr. Chair, I yield back.

Mr. YOUNG. I thank the madam. Mr. Lamalfa?

[No response.]

Mr. YOUNG. Who is next? My good friend, you were here first so I will let you ask the question first.

Mr. GRIJALVA. Thank you. For my edification, does Sealaska's proposed selections include high value old growth timber as part of the selections they made?

Mr. PEÑA. Yes, the parcels that we have negotiated with Sealaska includes some high value old growth timber. It also involves second growth timber, a mix of timber types.

Mr. GRIJALVA. Conservation priority watersheds, are they part of it as well?

Mr. PEÑA. Did you say priority watersheds?

Mr. GRIJALVA. Yes.

Mr. PEÑA. I am not sure what that term means. The Tongass Forest plan does not use the term "priority watersheds," but I know there are important watersheds included in the parcels. We have some concerns about protection for those, particularly three important salmon rivers and protections on those.

Mr. GRIJALVA. Can you define "high grading" for me?

Mr. PEÑA. High grading, in my context, I am a forester so most of my career is in putting up timber sales and dealing with timber sales, and high grading in that context has been going into a particular area and cutting the best trees and leaving the rest.

I am not exactly sure what the context is that you are using, but——

Mr. GRIJALVA. Targeting logging old growth as a priority.

Mr. YOUNG. Will the gentleman yield?

Mr. GRIJALVA. Absolutely.

Mr. YOUNG. I hope you are not misinterpreting, "old growth timber" in Southeast is truly old growth and is dead, it has little value because we eliminated the pulp mills. Those are the facts. Old growth is not naturally good timber. It is the new timber that we are frankly interested in.

Mr. GRIJALVA. The point I am leading to is that the Tongass Timber Reform Act has an explicit ban on that harvesting, if I am not correct. I want to know if that ban would be applicable to the legislation that we are talking about.

Mr. PEÑA. OK.

Mr. GRIJALVA. Given the Chairman's comments.

Mr. PEÑA. Thank you for that clarification. The Tongass Timber Reform Act does reference a prohibition on using the term "high grading," and it is my understanding that the act specifically applied that to two timber sales that at the time were in question, and that beyond those two timber sales, there is no prohibition on using the term "high grading" on the Tongass National Forest.

Mr. GRIJALVA. Thank you. Let me just ask on H.R. 1410 before my time is up. You mentioned the Administration is concerned that H.R. 1410, if enacted, would set a negative precedent for singling out tribes to make them ineligible for legislation that was intended to apply equally to all tribes.

H.R. 1410 is that kind of a slippery slope in that respect, and why would that be bad policy in terms of the precedent it sets or does not set? Sir?

Mr BLACK. H.R. 1410 would directly amend IGRA and make the opportunities available to all tribes, unavailable to one tribe in this case. It is also a slippery slope largely because it sets precedence for disturbing existing settlements that are out there, such as the Gila Bend Act.

Mr. GRIJALVA. The legal complications when this whole issue began, my position and I think at the time most of the delegation's position was to let the court work its will. I think there have been three administrative decisions, eight court decisions, and the most recent one made seven, that summary judgment with two areas to be consulted later, some time at the end of May, that ruled in favor of the O'odham Nation, so this legislation, if it is hurried, past the 29th, would preempt all those court decisions and administrative hearings and decisions of record that have happened up to this point; correct?

Mr. BLACK. If you do not mind, sir, I am going to turn this question over to Maria Wiseman.

Mr. GRIJALVA. Please.

Ms. WISEMAN. Thank you. I am Maria Wiseman, Associate Deputy Director of the Office of Indian Gaming. You are right, there have been several decisions on these matters, one on the Secretary's decision to take the land in trust in 2010, and that has been litigated before the district court and in the 9th Circuit and now it is pending in the 9th Circuit.

Up until this point, the Secretary has prevailed in the litigation, and the courts have determined it could be lawfully taken into trust under the Gila Bend Act.

When you are talking about the decision that came out last week, which was a decision about the compact itself, the district court ruled that on its face, the compact was not violated. There is no prohibition on gaming in the Phoenix metropolitan area, and therefore, the compact is not violated.

We are following these cases and these will determine the outcome really of these issues.

Mr GRIJALVA. I think that was the original intent, Mr. Chairman. I know this is a constituent issue. It is a constituent issue for me as well, and I know how important that is to you, Mr. Chairman. The O'odham Nation is in the district that I happen to

have the privilege to represent, so their interests are important as constituents as well.

I mention that because Ranking Member Markey and I had asked for a continuance on this until the May 29th re-hearing with the judge in terms of the two items to be further discussed and an opinion on, and to allow the full process of the court to work its will. This legislation would not allow that. One of the reasons for the opposition on my part is exactly that, and I yield back.

Mr. YOUNG. Thank you, sir. Mr. Ruiz?

Dr. RUIZ. Thank you very much. The first question, Director Black, is are local counties given a voice to either approve or object to land into trust applications under the current on or off reservation land into trust criteria?

Mr. BLACK. Yes, sir, they are. It varies. An off reservation trust application, the concerns, comments, objections of State and county local governments are given probably a little more weight, a little more analysis than they are on an on reservation application.

Dr. RUIZ. What was their response to this scenario?

Mr. BLACK. From?

Dr. RUIZ. From the county, the local counties. Do they have any concerns on H.R. 1410?

Mr. BLACK. That, I do not know about, sir.

Dr. RUIZ. OK. Does the Secretary take land into trust over the objections of impacted non-Indian communities?

Mr. BLACK. We have in the past, yes, sir. I am sorry. I apologize. I was a little confused with what bill you were referring to exactly. Yes, there were concerns that did come in on the old bill or the Tohono O'odham.

Dr. RUIZ. Can you elaborate on that more?

Mr. BLACK. I do not have the specifics of what the exact objections were. I think a lot of those are some of the cases that have been brought before in litigation.

Dr. RUIZ. Would H.R. 1410 amend the exceptions to gaming on after acquired lands under the Indian Gaming Regulatory Act?

Mr. BLACK. On that question, sir, if you do not mind, I would like to turn that over to Maria.

Dr. RUIZ. OK.

Ms. WISEMAN. Thank you. Well, I think it certainly would affect those exceptions because the bill prohibits all gaming, Class II and Class III inside of that area, and IGRA would allow that, it would allow Class II and Class III inside those areas. It really does effectively limit that, so yes.

Dr. RUIZ. OK. I yield back my time.

Mr. YOUNG. Thank you. On H.R. 1410, Mr. Black, the concern I have, the way I have followed this, and in the last hearing we had, all the tribes signed the compact. The public was sold that compact through advertisement and it was a compact that was agreed there would be no more advanced gambling within the Phoenix area. How do we justify you taking land in the trust and having gambling take place when that compact was passed? It had to be passed by the State, by the way. How do you arbitrarily break the contract?

Mr. BLACK. First, let me answer kind of the first part of the question and then turn it over to Maria, if that is OK, Mr. Chairman.

Mr. YOUNG. Fine.

Mr. BLACK. We brought land into trust under the Gila Bend Act, which specified under that act that the tribes can bring land into trust for all purposes. Beyond that, on the specifics of the compact, I know Maria has a lot more understanding of that and how that worked out and Prop 202 in Arizona. I would ask her to expand on that.

Mr. YOUNG. On the compact signed by the State Governor and signed by all the tribes, including this one the argument is about. How do you break the contract or compact?

Ms. WISEMAN. Thank you. The compact itself in Section 3(j) identifies the areas that can be gamed in, and in that Section 3(j), there is no prohibition on gaming in the Phoenix metropolitan area.

When we look really closely at this, and there are limitations in the compact on the number of machines and the number of casinos, but there is no limitation that pertains to the Phoenix metropolitan area.

Mr. YOUNG. That is not what they sold to the public. That is not what was signed. I have the letters. No more gambling in the Phoenix area. That is in the compact.

Ms. WISEMAN. If I may, if you were to look at Section 3(j), and I know you have, it actually does not have a prohibition. When we are looking at the validity of a compact or a violation of the compact, we have to look to the words of the compact itself.

I know the court, the district court, in their opinion last week, was raising some other issues and they are still looking at that.

In that opinion, the court said the compact itself, the words of the compact do not prohibit gaming in the Phoenix metropolitan area, so there is no violation of the compact.

Mr. YOUNG. Well, do any of the promises to the public have any binding effect?

Ms. WISEMAN. I think that is an issue for the courts, and the court is looking at that. They are looking under the State law. In terms of the compact itself and what was in the compact and what was agreed to by the voters in Prop 2 and what was signed by the State and by the tribe, there is no prohibition.

Mr. YOUNG. Well, again, I would like to yield to my Ranking Member, she is a brighter lawyer than I am. Madam Senator, would you mind addressing that for me?

Ms. HANABUSA. I am interested that the representations that are made here today are accurate and correct because this is a critical issue, and like my colleague, Congressman Grijalva, I also feel that we must wait or we should wait to hear the final briefings on this issue.

I have the Decision and the Order. I disagree with you on a couple of things. One is that the court was very clear that because the sovereign immunity claims were raised on the contract or the compact, promissory estoppel, which would be the basis of the arguments raised that my good colleague here is saying, are barred because of the fact that you did not waive sovereign immunity or they did not waive sovereign immunity.

However, it is also clear from the decision that the court did not completely dispose of this case because there are issues under the restatement of contracts, specifically section 201, subsection (2), I believe it is, because of the facts that the issues that have to be raised, and this is where the further briefing's are going to take place to the court, and if I can read it for the record because of the fact that I think this is very critical for all of us to understand, that the plaintiffs claim "The nation actively encouraged the understanding of the compact while secretly planning to build a casino in the Phoenix metropolitan area. plaintiffs argue that this is enough under 202(2) of the restatement second of contracts for the court to interpret the compact in accordance with the State's understanding.

Additional briefing is required before the court can decide whether this claim can be resolved by summary judgment or whether a trial is required."

This is essential, and that is why my questions of Mr. Black were when the tribes do not waive sovereign immunity on a claim, and we all know promissory estoppel is when an equity as opposed to a contract claim, and because it was not waived, the court clearly said "Because the claim is not based on the compact, it does not fall within section 2710, subsection (d)(7)(a)(ii), waiver of sovereign immunity."

I think it is very critical that when you come before us and you say there are outstanding issues, that we be very clear as to what was decided, what cannot be decided, and the reason why it cannot.

Chairman Young's questions are about really technically that which rises in promissory estoppel, which is an equitable claim and therefore cannot be determined under sovereign immunity.

That is what I think is really unfortunate about this particular situation because I think when you strip everything down, it does come down to were there representations made that not only the other tribes may have relied upon but in addition to that, under Proposition 202, I hope I have that number correct, as well as the voters when they voted and the Governor when signed.

All I am saying is we need to have the accurate description when you come before this Committee and you are telling us what the court said. I think we can all agree many of the issues, yes, were disposed of, notwithstanding it is still not a final decision and this order could result, depending on what the further briefing has, with us continuing or this issue continuing to trial on restatement of contracts, 201, subsection (2).

Do you agree with my reading of this order?

Ms. WISEMAN. No, I do not, and I appreciate the clarification. There is certainly more briefing to be done. There are these questions about what was said and what was agreed to. That is still pending. That is absolutely correct.

I think this case could still go to appellate court and further. You are absolutely right. The district court made its decision and we have that, but we expect further litigation on this point.

Ms. HANABUSA. They did not quite make their full decision because they are expecting further briefing which could determine whether this thing goes further on to trial.

Ms. WISEMAN. You are right.

Ms. HANABUSA. Thank you. Thank you, Mr. Chair.

Mr. YOUNG. I will tell you we had this—what was that?

Mr. MCSWAIN. Maniilaq.

Mr. YOUNG. Maniilaq transfer, and work with my staff and let's see if we can get this done as quickly as possible.

Mr. MCSWAIN. If I can just respond.

Mr. YOUNG. Yes.

Mr. MCSWAIN. I was thinking about why at least 90 days, our experience with Maniilaq is we had asked for 180. We did it in 90. It takes about that long because of some phase two issues we have with the environmental, but we have the experience now having done one. We can do it in 90 if the bill were to change to 90, we can do it in 90 as opposed to what we asked for. I think in the Maniilaq bill, we asked for 180 days.

Because we have done so much of the work already and so fresh with the quick claim that is currently pending, we could wrap this up in 90 days.

Mr. YOUNG. Good. All right. I want to thank the panel. You got off easy, Mr. Black. I got a call from your boss, be easy on him, you know.

[Laughter.]

Mr. YOUNG. I would like to call up the next panel. Andy Teuber, Board Chair and President, Alaska Native Tribal Health Consortium. Reyn Leno, Tribal Council Chair, The Confederated Tribes of Grand Ronde. Delores Pigsley, Tribal Chairman, Confederated Tribes of Siletz Indians of Oregon. Byron Mallott, Member, Board of Directors, Sealaska Corporation, who is accompanied by Jaeleen Kookesh Araujo, General Counsel of Sealaska.

Mr. Teuber, you are up first.

STATEMENT OF ANDY TEUBER, CHAIRMAN AND PRESIDENT, ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

Mr. TEUBER. Good afternoon, Chairman Young, and Ranking Member Hanabusa, members of the Committee. My name is Andy Teuber. I am the Chairman and President of the Alaska Native Tribal Health Consortium.

Thank you for the opportunity to testify in support of H.R. 623. ANTHC, as it is known, is a statewide tribal health organization that serves all 229 federally recognized tribes and over 140,000 Alaskan Natives and American Indians in the State of Alaska.

We are the largest and most comprehensive tribal health organization in the United States. Through a self governance compact, ANTHC provides health services that were previously provided by the Indian Health Service.

ANTHC jointly operates the Alaska Native Medical Center with Southcentral Foundation. Located in Anchorage, this 150 bed hospital is the statewide tertiary care center for over 140,000 Alaskan Natives and American Indians who reside in Alaska.

Annually, we provide over 287,000 outpatient visits; 54,000 emergency department visits; over 8,000 inpatient admissions; 1,500 infant deliveries, and 10,000 surgical procedures.

We believe that ANMC is one of the finest facilities in the Indian health service. As a Level II Trauma Center, ANMC is the highest certified trauma hospital in Alaska. This recognition certifies our

ability to provide quality care to people who suffer traumatic injuries 24 hours a day, 365 days a year.

Today, Alaska Natives are healthier and living longer as a result of the care provided at ANMC and the Alaska Tribal Health System.

However, there is much work to be done. One of our main challenges is meeting the increased demand for health services of an ever increasing population of Alaskan Natives. The population we serve has increased by over 34 percent since ANMC first opened, increasing from about 105,000 in 1997 to nearly 142,000 in 2012.

To meet current and future needs, ANTHC has developed a comprehensive campus facilities master plan. We have identified an immediate need for increased patient housing to increase capacity and throughput at ANMC.

As ANMC serves as the referral hospital for tertiary cases in the entire health system, many of the patients we serve are from villages many hundreds of miles outside of Anchorage. For these individuals, the biggest challenge in accessing specialty care services at ANMC is the lack of housing and an affordable place to stay while in Anchorage.

ANTHC has undertaken extraordinary efforts to accommodate traveling patients as best we can with limited resources. However, the cost of providing housing to patients and escorts under the current system has risen dramatically and will be unsustainable in the future.

In 1999, the cost of providing housing for patients and escorts was $600,000. This cost has increased eight fold, to $4.8 million in 2012. Because we receive only minimal reimbursements for providing patient housing, we expect an estimated net loss of $4.5 million for fiscal year 2012 for providing this patient housing.

This cost is borne solely by ANTHC from ANMC operating funds and our current capacity for patient residential housing is 52 rooms at our "Q House," as it is known, Quyana House, managed by ANMC, and 80 hotel rooms that ANMC contracts for at considerable expense.

In order to provide improved patient care and contain costs for providing this housing to our patients who receive care at ANMC, we need to construct a 170 room residential and outpatient guest room facility. Estimated construction cost of the housing facility is $40 million. Currently, this cost would increase an estimated 7 percent due to inflation for every year of delay.

The construction of the housing facility would save ANTHC an estimated $2 million per year. The patient housing facility will be built on the closest open land to ANMC located directly across the road north of ANMC. The housing facility will be connected to ANMC via a sky bridge maximizing patient care and minimizing transportation expenses.

The title to this land is currently held by the Indian Health Service. There are no buildings on the 2.79 acre parcel ANTHC is seeking to obtain title to and it is currently being used for parking.

To address parking issues that may arise from this displacement, ANTHC is in a design phase of constructing a parking garage on the parcel.

In order to obtain the financing necessary to achieve our long term expansion needs, it is necessary that ANTHC hold an unencumbered title to the land on which the patient housing facility will be located. This can only be accomplished through Federal legislation, thus the need for H.R. 623.

We respectfully request favorable consideration of H.R. 623, which will allow us to successfully continue to fulfill the Federal Government's trust responsibility by providing for the current and future health care needs of Alaskan Natives and American Indians.

This concludes my testimony, Mr. Chair. I would be happy to respond to any questions that may arise from prior testimony, and thank you very much.

[The prepared statement of Mr. Teuber follows:]

PREPARED STATEMENT OF ANDY TEUBER, CHAIRMAN AND PRESIDENT, ALASKA NATIVE TRIBAL HEALTH CONSORTIUM

H.R. 623—ALASKA NATIVE TRIBAL HEALTH CONSORTIUM LAND TRANSFER ACT

Good afternoon Chairman Young and members of the Committee. My name is Andy Teuber. I am the Chairman and President of the Alaska Native Tribal Health Consortium. Thank you for the opportunity to testify in support of H.R. 623.

ANTHC is a statewide tribal health organization that serves all 229 federally-recognized tribes and over 140,000 Alaska Natives and American Indians in Alaska. We are the largest, most comprehensive tribal health organization in the United States. Through a Self-Governance Compact, ANTHC provides health services that were previously provided by the Indian Health Service.

ANTHC jointly operates the Alaska Native Medical Center (ANMC) with Southcentral Foundation. Located in Anchorage, this 150-bed hospital is the statewide tertiary care center for over 140,000 Alaska Natives and American Indians who live in Alaska. Annually, we provide over:

- 287,000 outpatient visits;
- 54,000 emergency department visits;
- 8,000 inpatient admissions;
- 1,500 infant deliveries; and
- 10,000 surgical procedures.

We believe ANMC is one of the finest facilities in the Indian health system. As a Level II Trauma Center, ANMC is the highest certified trauma hospital in Alaska. This recognition certifies our ability to provide quality care to people who suffer traumatic injuries 24 hours a day, 365 days a year. Today, Alaska Natives are healthier and living longer as a result of the care provided at ANMC and by the Alaska Tribal Health System.

However, there is much more work to be done. One of our main challenges is meeting the increased demand for health services of an ever-increasing population of Alaska Natives. The population we serve has increased by over 34 percent since ANMC first opened, increasing from about 105,000 in 1997 to nearly 142,000 in 2012. To meet current and future needs ANTHC has developed a comprehensive campus facilities master plan. We have identified an immediate need for increased patient housing to increase capacity at ANMC.

As ANMC serves as the referral hospital for tertiary cases for the entire Alaska Tribal Health System, many of the patients we serve are from villages many hundreds of miles outside of Anchorage (see Exhibit A, attached). For these individuals, the biggest challenge in accessing specialty services at ANMC is the lack of housing and an affordable place to stay while in Anchorage. ANTHC has undertaken extraordinary efforts to accommodate traveling patients as best we can with limited resources. However, the cost of providing housing to patients and escorts under the current system has risen dramatically and will be unsustainable in the future.

In 1999 the cost of providing housing for patients and escorts was $600,000. This cost has increased 8-fold to $4.8 million in FY 2012. Because we receive only minimal reimbursements for providing patient housing, we expect an estimated net loss of $4.5 million for in FY 2012 for providing patient housing. This cost is borne solely by ANTHC from ANMC operating funds. Our current capacity for patient residential housing is 52 rooms at our Quyana House, managed by ANMC, and 80 hotel rooms that ANMC contracts for at considerable expense.

In order to improve patient care and contain costs for providing housing to patients (and their escorts) who receive care at ANMC, we need to construct a 170-room residential and outpatient guest room facility. Estimated construction cost of the housing facility is $40 million currently (this cost would increase an estimated 7 percent due to inflation for every year of delay). The construction of the housing facility would save ANTHC an estimated $2 million per year upon completion.

The Patient Housing Facility will be built on the closest open land to ANMC, which is located directly across the road, north of ANMC. The housing facility will be connected to ANMC via a sky bridge, maximizing patient care and minimizing transportation expenses.

The title to this land is currently held by the Indian Health Service. There are no buildings on the 2.79 acre parcel ANTHC is seeking to obtain title to and it is currently being used for parking (the 2.79 acre parcel is in the process of being subdivided from a larger 4.19 acre parcel—see Exhibits B and C, attached). To address parking issues that may arise from displacement, ANTHC is also in the design phase of constructing a parking garage on the parcel.

In order to obtain the financing necessary to achieve our long-term expansion needs, it is necessary that ANTHC hold an unencumbered title to the land on which the Patient Housing Facility will be located on. This can only be accomplished through Federal legislation, thus the need for H.R. 623.

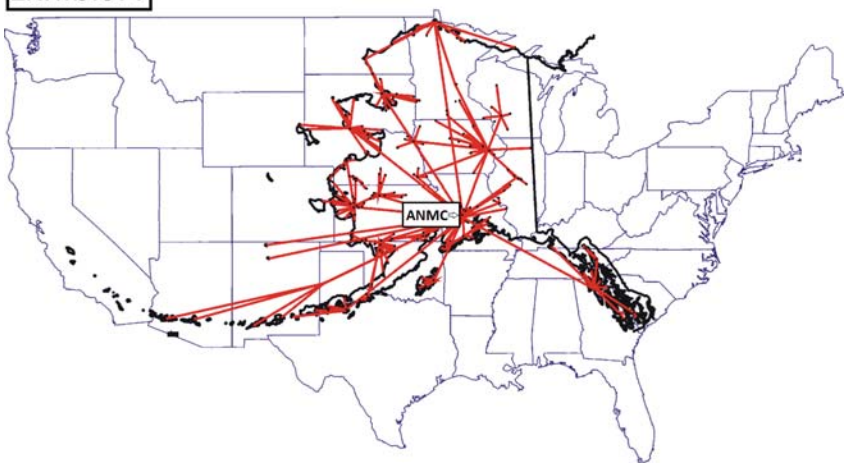
We respectfully request favorable consideration of H.R. 623, which will allow us to successfully continue to fulfill the Federal Government's trust responsibility by providing for the current and future health care needs of Alaska Natives and American Indians throughout Alaska.

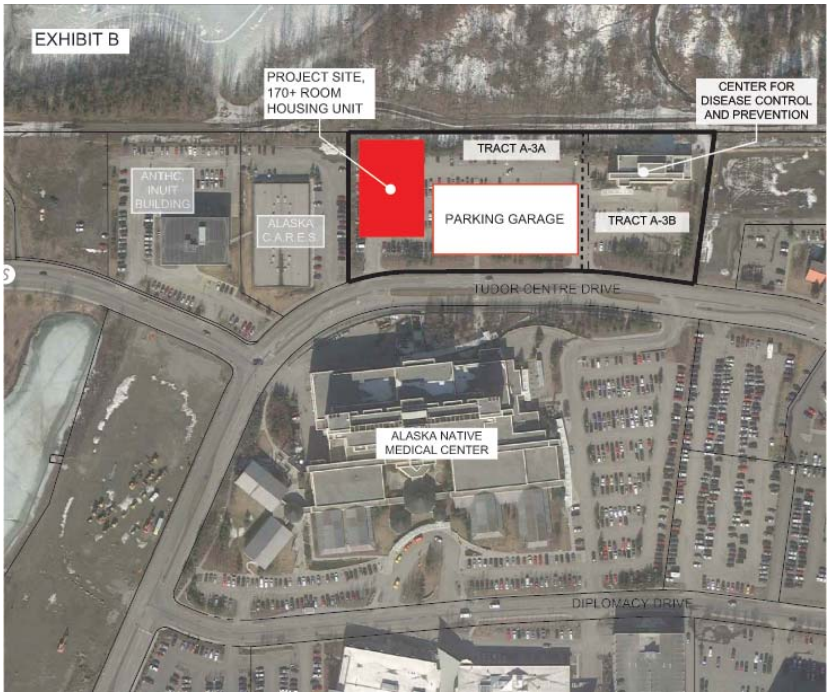
This critical legislation would help to improve the accessibility of much needed health services for Alaska Natives and American Indians whose health care status, despite years of progress, continues to lag far behind other populations in Alaska and the rest of the United States.

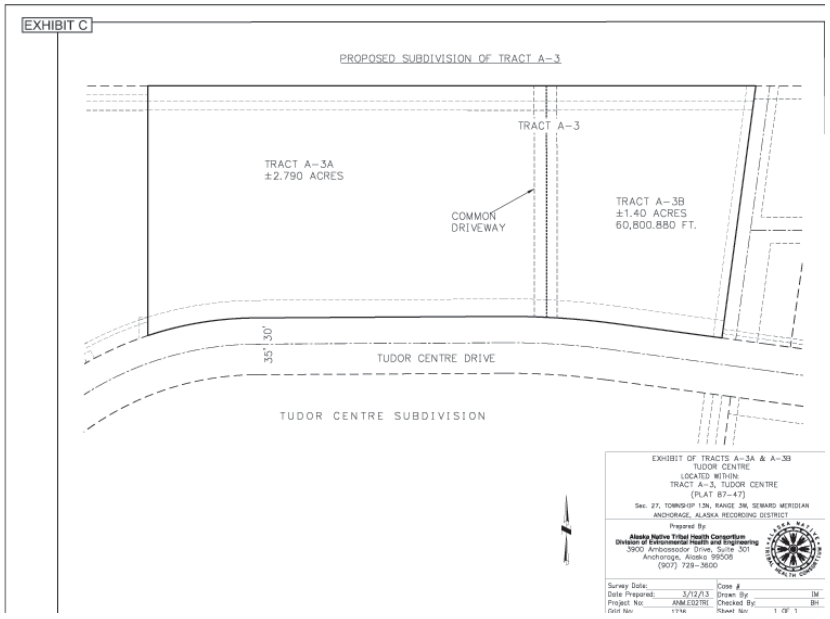
THE ALASKA NATIVE HEALTH CARE SYSTEM REFERRAL PATTERN

Same Scale Comparison - Alaska Area to Lower 48 States

Exhibit A







Mr. YOUNG. Thank you, Andy.
Mr. Leno?

STATEMENT OF REYN LENO, TRIBAL COUNCIL CHAIR, THE CONFEDERATED TRIBES OF GRAND RONDE

Mr. LENO. Thank you. Chairman Young, Ranking Member Hanabusa, members of the Subcommittee, my name is Reyn Leno, and I am the Tribal Council Chairman of the Confederated Tribes of Grand Ronde in Oregon.

Thank you for providing me the opportunity to testify in support of H.R. 841. I want to thank Representative Schrader for introducing H.R. 841 and the entire Oregon Delegation for their support of the legislation.

H.R. 841 has the support of the Bureau of Indian Affairs and the unanimous support of Polk and Yamhill County Commissioners, the two counties affected by this bill.

Except for several updated land descriptions, H.R. 841 is identical to the legislation which received a hearing in the Subcommittee on July 24, 2012.

As a result of the Federal Government's allotment and termination policies, Grand Ronde lost both its Federal recognition and its original Reservation of more than 60,000 acres. The Grand Ronde Restoration Act restored 9,811 acres of the tribe's original Reservation to the Grand Ronde people.

Since 1988, the tribe has pursued the goal of securing its sovereignty by acquiring additional parcels of its original Reservation and providing on-Reservation jobs and services to tribal and community members.

The tribe is hampered in its efforts to restore land within its original Reservation by lengthy and cumbersome Bureau of Indian Affairs' process. After it acquires a parcel in fee, the tribe must prepare a fee to trust application package for BIA. The BIA then processes the application as either an on-Reservation acquisition or an off-Reservation application.

Because the tribe does not have exterior Reservation boundaries, instead has distinct parcels deemed Reservation through legislation, all parcels are processed under the more rigorous off-Reservation acquisition regulations, even if the parcel is located within the boundaries of the original Reservation.

After the land is accepted in the trust, the tribe must take an additional step of amending its Reservation Act through Federal legislation to include the trust parcels in order for the land to be deemed Reservation land.

Grand Ronde has been forced to come to the U.S. Congress three times in the last 20 years to amend its Reservation Act to secure Reservation status for its trust lands. This process is unduly time consuming, expensive, bureaucratic, and often takes years to complete.

H.R. 841 would streamline the Department's land into trust responsibilities to Grand Ronde, saving time and money which could better be utilized serving its membership.

Based on the universal support of H.R. 841 and the importance of the legislation to the tribe, I request the legislation to be included in the Committee's first markup.

I look forward to any questions you may have on H.R. 841.

I would like to take my remaining allotted time to provide views on H.R. 931. Grand Ronde is opposed to H.R. 931 as it would sig-

nificantly infringe on the rights of the Grand Ronde and other tribes in western Oregon.

Grand Ronde would be supportive of legislation if amended to limit the scope of the legislation to Lincoln County, consistent with the Siletz Indian Tribe Restoration Act.

The Coast Reservation has never been designated exclusively for the Siletz, but for many tribes throughout western Oregon, including the antecedent tribes and bands of the Grand Ronde, such as the tribes of the Willamette Valley, Umpqua Valley and Rogue River Valley.

While Grand Ronde, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and others oppose the legislation, they can agree to disagree with the Siletz Tribe regarding its claim of primacy to the Coast Reservation.

Let me provide three simple facts. Number one, it is opposed by at least two Oregon tribes with legitimate cultural and historical claims to the areas involved; two, fails to enjoy the support of each of the six counties affected by the legislation; and number three, does not have the support of the Congress and the Representatives who represent four of the six counties contained in the legislation.

Thank you.

[The prepared statement of Mr. Leno follows:]

PREPARED STATEMENT OF REYN LENO, TRIBAL COUNCIL CHAIR, THE CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

H.R. 841—TO AMEND THE GRAND RONDE RESERVATION ACT TO MAKE TECHNICAL CORRECTIONS, AND FOR OTHER PURPOSES

Chairman Young, Ranking Member Hanabusa, members of the Subcommittee.

My name is Reyn Leno. I am the Tribal Council Chair of the Confederated Tribes of Grand Ronde in Oregon. I am proud to be here today representing over 5,000 tribal members and appreciate the opportunity to provide views on H.R. 841, a bill to amend the Grand Ronde Reservation Act to make technical corrections, and H.R. 931, a bill to provide for the addition of certain real property to the reservation of the Siletz Tribe in the State of Oregon.

I ask that my complete written testimony, which includes *An Administrative History of the Coast Reservation* by Dr. David G. Lewis and Dr. Daniel L. Boxberger, supporting resolutions from Polk and Yamhill County Commissioners, and correspondence pertaining to both bills from Representative Kurt Schrader be included in the record.

First, I want to thank Representative Schrader for introducing H.R. 841, which has the bipartisan support of the entire Oregon Congressional Delegation and the Bureau of Indian Affairs, as well as the unanimous support of the Polk and Yamhill County Commissioners, the two counties affected by this legislation. The legislation is not opposed by any other tribe or affected interests and, except for several updated land descriptions, is identical to legislation which received a hearing in the Subcommittee on July 24, 2012.

I was a child when Congress passed the Western Oregon Indian Termination Act ending Federal recognition of all western Oregon tribes, including Grand Ronde. As a result of the Federal Government's allotment and termination policies, Grand Ronde lost both its Federal recognition and its original reservation of more than 60,000 acres. Following the tribe's termination in 1954, tribal members and the tribal government worked tirelessly to rebuild the Grand Ronde community.

In 1983, these efforts resulted in the Grand Ronde Restoration Act, followed by the Grand Ronde Reservation Act in 1988, which restored 9,811 acres of the tribe's original reservation to the Grand Ronde people. Since 1988, the tribe has pursued the goal of securing its sovereignty by acquiring additional parcels of its original reservation and providing on-reservation jobs and services to tribal members.

The tribe's restored reservation is located in the heart of the original Grand Ronde Indian Reservation. Today, the tribe owns a total of 12,535.70 acres of land, 10,312.66 of which have reservation status. 10,052.38 acres of the reservation land is forested timber land, and the remaining 260.28 acres accommodates the tribe's

headquarters, housing projects, casino complex, Pow Wow Grounds, and supporting infrastructure.

The tribe is hampered in its efforts to restore land within its original reservation by a lengthy and cumbersome Bureau of Indian Affairs ("BIA") process. After it acquires a parcel in fee, the tribe must prepare a fee-to-trust application package for the BIA. The BIA then processes the application as either an "on-reservation acquisition" or an "off-reservation acquisition." Because the tribe does not have exterior reservation boundaries (instead, it has distinct parcels deemed reservation through legislation), all parcels are processed under the more extensive off-reservation acquisition regulations—even if the parcel is located within the boundaries of the original reservation.

After the land is accepted into trust, the tribe must take an additional step of amending its Reservation Act through Federal legislation to include the trust parcels in order for the land to be deemed reservation land. Grand Ronde has been forced to come to the U.S. Congress three times in the last 20 years to amend its Reservation Act to secure reservation status for its trust lands. This process is unduly time consuming, expensive, and often takes years to complete.

In order to make both the fee-to-trust and reservation designation process less burdensome, Representative Kurt Schrader introduced H.R. 841 which would: (1) establish that real property located within the boundaries of the tribe's original reservation shall be (i) treated as on-reservation land by the BIA, for the purpose of processing acquisitions of real property into trust, and (ii) deemed a part of the tribe's reservation, once taken into trust; (2) establish that the tribe's lands held in trust on the date of the legislation will automatically become part of the tribe's reservation; and (3) correct technical errors in the legal descriptions of the parcels included in the Reservation Act.

H.R. 841 would not only save Grand Ronde time and money that could be better utilized serving its membership, but would also streamline the Interior Department's land-into-trust responsibilities to Grand Ronde, thus saving taxpayer money. At a time when Federal financial support for Indian Country is dramatically decreasing, Grand Ronde should be afforded the tools necessary to reduce its costs and maximize savings.

Senate companion legislation, S. 416, was introduced by Senator Merkley and Senator Wyden. Prior to introduction, Grand Ronde was requested to reconfirm the support of the two counties in Oregon affected by this legislation, Polk and Yamhill, which it has done. The Bureau of Indian Affairs detailed its support for the legislation at a February 2, 2012 hearing before the Senate Indian Affairs Committee.

While it has been suggested that the Grand Ronde and Siletz legislation must advance together through the legislative process, I would like to highlight Representative Schrader's March 18, 2013 letter to Ranking Member Hanabusa, in which he states that "H.R. 841 is one of my highest legislative priorities." Representative Schrader also states the following about H.R. 931:

> I have also introduced H.R. 931 on behalf of The Confederated Tribes of Siletz Indians to simplify the fee-to-trust process for them as well. Though H.R. 931 is similar in nature to H.R. 841, I am working with the Siletz Tribe to address concerns raised by other Oregon Indian tribes and county governments to the legislation. Whereas H.R. 841 and H.R. 941 were introduced to address the individual needs of each tribe, I feel it is important that each bill be considered by the Committee on its own merits and support and should not be considered as paired.

Grand Ronde has worked long and hard to develop a consensus-based legislative proposal to assist the tribe in reacquiring lands within its original reservation. Based on the universal support of H.R. 841 and the importance of the legislation to the tribe, I request the legislation be included in the Committee's first markup.

I would like to take my remaining allotted time to provide views on H.R. 931.

While Grand Ronde is opposed to H.R. 931 as currently drafted, we again reiterate our support for the legislation if it is amended to limit its scope to Lincoln County, consistent with the Siletz Indian Tribe Restoration Act.

We support the Siletz's objective of taking land into trust in Lincoln County that has historically been within the exclusive reservation land of the tribe, but we do not support the re-writing of history to expand the Siletz Reservation in a manner that excludes other federally recognized tribes from their hereditary land claims.

Unlike Grand Ronde's bill—which seeks to improve the process of acquiring lands in trust and return to reservation status those lands the Siletz Tribe reacquires within its original reservation—we believe the purpose of the Siletz legislation is to eliminate the historic claims of other tribes to the former Coast Reservation (which was set aside for all tribes in western Oregon) by equating the boundaries of the

Siletz Reservation (established 1875) with the boundaries of the Coast Reservation (established 1855).

The Coast Reservation, as described in the Executive order dated November 9, 1855, was never designated exclusively for the Siletz. It was set aside for Indians throughout western Oregon, including the antecedent tribes and bands of Grand Ronde, such as the tribes of the Willamette Valley, Umpqua Valley, and Rogue River Valley. The Siletz are aware that Grand Ronde has made its own historic claims to the Coast Reservation. Their proposed legislation is nothing more than a veiled attempt to eradicate the claims of Grand Ronde and other western Oregon tribes to the Coast Reservation.

The Federal Government has not supported the Siletz's expansive view of its reservation boundaries, holding that the tribe's 1977 Restoration Act and its 1980 Reservation Act define its reservation boundaries. For example, a 1994 opinion issued by the Assistant Regional Solicitor of the Department of the Interior stated that the 1977 and 1980 Restoration and Reservation Acts for the Siletz constitute the tribe's reservation for the purpose of processing tribal requests for trust land acquisitions.[1] In subsequent litigation by the Siletz, challenging the BIA's interpretation of its land acquisition regulations, the Department of Justice supported the 1994 opinion by the Regional Solicitor. In a response brief filed on behalf of the Federal Government, the Department of Justice stated:

> [The 1994 opinion] analyzed the regulatory provision and concluded that it would not be consistent with the intent behind the regulations to consider all land located within the boundaries of the former Siletz or Coast Reservation to be within the tribe's reservation.[2]

Despite these precedents, the Siletz Tribe is seeking to expand its reach from Lincoln County into five additional counties. For example, Yamhill County, which is included in H.R. 931, is part of the Grand Ronde Indian Reservation, as defined by its Restoration and Reservation Acts. While H.R. 931 allows for the easing of requirements to take land into trust for the Siletz in Yamhill County, no part of the Siletz Tribe's reservation is located in Yamhill County. Additionally, the Siletz Tribe has never attempted to take land into trust in Yamhill County.

Yamhill County does not support legislation to allow the Siletz to acquire land there, as documented by a July 12, 2012 letter expressing unanimous opposition to H.R. 931 by the Yamhill County Commissioners. While opposed to the legislation in its current form, Yamhill County Commissioners, like Grand Ronde, would support the legislation if limited to Lincoln County.

Tillamook County is also included in H.R. 931. Many members of the Tillamook tribes (Nestucca, Nehalem, Salmon River and Tillamook) married into families living at the Grand Ronde Reservation, while continuing to hunt, fish and reside along the Oregon Coast. The entire Tillamook Territory of the Oregon coast is not the sole claim of any one reservation and it would be inappropriate to allow Siletz to assert such a claim today. In addition, Grand Ronde owns land in Tillamook County, one of the counties identified by the Congress in the Grand Ronde Restoration Act as the area where the tribe could acquire trust land to re-establish its Reservation.

H.R. 931 is also opposed by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians ("CTCLUSI") and infringes on their historic lands. Even though the CTCLUSI are separately recognized by the United States as an independent sovereign, the Siletz Tribe takes the position that it is the legal successor in interest to this tribal confederation.[3]

While Grand Ronde, CTCLUSI and others opposed to the legislation can agree to disagree with the Siletz Tribe regarding its claim of primacy to the Coast Reservation, the simple facts are that H.R. 931: (1) is opposed by at least two Oregon tribes with legitimate cultural and historical claims to the areas involved; (2) fails to enjoy the support of each of the six counties affected by the legislation; and (3) does not have the support of the Representatives who represent four out of the six counties contained in the legislation.

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[1] Definition of "On-Reservation" for Land Acquisition Purposes at Siletz Reservation, Memorandum Opinion by the Assistant Regional Solicitor, U.S. Department of the Interior, June 1, 1994 (". . . Congress made clear in the [Siletz] Tribe's 1977 Restoration Act that 'any reservation' for the tribe is that established pursuant to § 711e of the Act. Thus, the reservation established pursuant to the 1980 Act adopting the reservation plan constitutes the tribe's reservation for purposes of the land acquisition regulations in 25 CFR Part 151." (citations omitted)).

[2] Brief of U.S. Department of the Interior at 4, *City of Lincoln* v. *U.S. Dept. of the Interior and Confederated Tribes of Siletz Indians of Oregon,* No. 99–330 (D. Or. June 23, 2000).

[3] *See* Letter from Delores Pigsley, Tribal Chairwoman, Confederated Tribes of Siletz Indians, to The Honorable Ron Wyden, U.S. Senator, at 2, April 17, 2013 ("The Siletz Tribe is the legal successor in interest to the historical Coos, Siuslaw and Lower Umpqua tribes of Indians.").

For these reasons, we urge the Committee not to proceed with further consideration of H.R. 931 in its current form.

Mr. YOUNG. I thank the gentleman.
Ms. Delores Pigsley?

STATEMENT OF DELORES PIGSLEY, CHAIRMAN, CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

Ms. PIGSLEY. Chairman Young, Ranking Member Hanabusa, and members of the Committee, thank you for holding the hearing today on H.R. 931.

My name is Dee Pigsley and I serve as Chairman of the Confederated Tribes of Siletz Indians of Oregon, and have for 28 years.

I want to thank Congressman Schrader, Walden and Blumenauer, Senator Merkley and Widen, and the Bureau of Indian Affairs for support of our legislation.

Our legislation is not opposed by anyone other than our two neighboring tribes. Their contentions have been refuted and resolved by testimony, documentation, letters and responses to this Committee by the Bureau of Indian Affairs.

Our neighbors will never drop their opposition no matter what the real history is.

I ask the Committee to look at the record and the facts and give the Siletz Tribe the same treatment sought by the Grand Ronde Tribe for their tribe.

This legislation is identical to the bill introduced by Congressman Schrader last Congress, which received a hearing in this Subcommittee. Its companion bill in the Senate was heard by the Indian Affairs Committee.

The need for this legislation for Siletz's is the same as for our neighbors. In both cases, the Federal Government robbed us of our land and even our Reservation boundary. When Siletz was restored to Federal recognition in 1977, it did not address the issue of the original Coast Reservation boundary. This creates a problem that most tribes do not have.

Every parcel of ancestral land we seek to place in trust is considered off-reservation by the Bureau of Indian Affairs, even if it lies within our historic reservation. This adds significant time, costs and resources to place the land in trust. It has taken over 8 years for the Siletz's to place a parcel of land into trust.

We have an ongoing critical need to acquire additional lands in trust to meet the needs of the tribe for housing and other purposes. We are not a wealthy tribe and we purchase land as we are able.

Every effort to reduce the cost and time of the process will directly help our membership. This legislation would accomplish this processing fee-to-trust applications within the boundary of our former reservation as on-reservation.

Let me briefly respond to baseless allegations raised by the other two tribes against our legislation. Their claims amount to saying that the Siletz Tribe is not the successor tribe to the Siletz Reservation.

The simple fact is that the Confederated Tribes of Siletz Indians have consistently been recognized by the Federal Government as

the tribe representing the original Siletz Coast Reservation since its creation.

Through determination and restoration, no other tribe can substantiate this claim.

The Siletz's claim to the Siletz Reservation was validated by the Bureau of Indian Affairs in testimony and in questions, for the record, last year. The Siletz's would like to resubmit historic and legal information that resolves this issue beyond any question.

This legislation is critical for our tribe to rebuild a small portion of our historic reservation so that we can house, feed and care for our membership.

We support the Siletz and the Grand Ronde bills which are identical in purpose in moving forward.

In closing, this is the third Congressional hearing on this legislation within a year. We have answered every question and provided substantial documentation to validate our answers, and we ask that the Committee review the record and advance our legislation, and we thank you.

[The prepared statement of Delores Pigsley follows:]

PREPARED STATEMENT OF DELORES PIGSLEY, CHAIRMAN OF THE CONFEDERATED TRIBES OF SILETZ INDIANS OF OREGON

IN SUPPORT OF H.R. 931—TO PROVIDE FOR THE ADDITION OF CERTAIN REAL PROPERTY TO THE RESERVATION OF THE SILETZ TRIBE IN THE STATE OF OREGON.

Need for This Legislation

The Confederated Tribes of Siletz Indians of Oregon ("Siletz Tribe") is seeking Federal legislation to recognize the boundaries of the tribe's original 1855 reservation, established by Executive order of Franklin Pierce on November 9, 1855, as "on-reservation" in order to clarify the Secretary of Interior's authority to take land into trust for the Siletz Tribe under the Interior Department's fee-to-trust regulations at 25 CFR Part 151. Enactment of this legislation will not create a reservation for the Siletz Tribe, and will not affect the jurisdiction or authority of State or local governments. The purpose of the legislation is to allow for more timely processing of the Siletz Tribe's fee-to-trust applications by allowing those applications to be approved at the Bureau of Indian Affairs' regional level. Defining a geographic boundary for a tribe that lacks a recognized exterior reservation boundary provides an historical reference point for the Bureau to process those applications under the Department's on-reservation rather than off-reservation criteria. No land acquired in trust by the Siletz Tribe under the proposed legislation may be used for gaming purposes

The Siletz Tribe's modern situation is a product of a number of Federal policies, laws and history that, working together, adversely affected the tribe over the last 175 years. Most Indian tribes have reservations with well-defined exterior reservation boundaries where the tribe owns all or a large portion of the land within that boundary. While land within that boundary may have transferred to non-Indian ownership because of Federal policies such as the Allotment Act, the reservation boundary remains intact for Federal purposes. The definition of "Indian country" under Federal law, which defines the outer extent of tribal territorial authority, includes all land within the boundaries of an Indian Reservation. *See* 18 U.S.C. § 1151. While this is a criminal statute, the definition has been applied by the U.S. Supreme Court in civil contexts also.

The Siletz Tribe's 1855 original 1.1 million acre reservation was reduced over time by Executive order, statute, the Allotment Act, and finally, was completely extinguished by the tribe's termination in 1954.

When the Siletz Tribe was restored to federally recognized status in 1977 by Federal statute, 25 U.S.C. § 711 et seq., no lands were restored to the tribe although the act called for the future establishment of a reservation. 25 U.S.C. § 711e. Congress created the new Siletz Reservation in 1980 and added to that reservation in 1994. Pub. L. No. 96–340, Sept. 4, 1980, 94 Stat. 1072; Pub. L. No. 103–435, Nov. 2, 1994, 108 Stat. 4566. The Siletz Tribe's reservation consists of approximately 50 separate, scattered parcels of reservation land. Each parcel has its own "exterior" boundary. There is no overall reservation boundary. A map showing the Siletz

Tribe's original 1855 reservation and the tribe's current reservation and other trust lands is attached as Exhibit A.

The Indian Reorganization Act at 25 U.S.C. § 465 authorizes the Secretary of Interior to acquire land in trust for Indian tribes. This provision was enacted to reverse the devastating loss of lands suffered by Indian tribes between 1887 and 1934 (over 90 million acres) and to restore a minimally adequate land base for those tribes. The Siletz Restoration Act applies this section to the Siletz Tribe. 25 U.S.C. § 711a(a). Federal regulations implementing this section appear at 25 CFR part 151. These regulations distinguish between on-reservation and off-reservation trust acquisitions. Because of these Federal regulations and the Siletz Tribe's history, any additional land the Siletz Tribe seeks to have placed in trust status under Federal law is considered to be "off-reservation" because the land is located outside the boundaries of what is recognized as the Siletz Tribe's current reservation.

There are no geographic limitations on the Secretary of Interior's authority to take land into trust for an Indian tribe under Section 465. No regulations implementing this provision of the 1934 IRA were enacted until 1980. *See* 45 Federal Register 62036 (Sept. 18, 1980). No distinction between on and off reservation fee-to-trust requests by tribes was included in the original regulations. It was not until passage of the Indian Gaming Regulatory Act in 1988 and the subsequent requests from some tribes to place off-reservation land in trust for gaming purposes that changes to the regulations were considered. The Department began enforcing an internal on-reservation/off-reservation fee-to-trust policy in 1991, and in 1995 added this distinction into the fee-to-trust regulations. *See* 60 Federal Register 32879 (June 23, 1995). No consideration or discussion of the situation of terminated and restored tribes like the Siletz Tribe's factual situation was included in making these regulatory changes.

The current fee-to-trust regulations distinguish between on-reservation trust acquisitions (25 CFR § 151.10) and off-reservation trust acquisitions (25 CFR § 151.11). The requirements for a Tribe obtaining land in trust off-reservation are more restrictive, more costly and time-consuming, and require additional justification. Because of the Siletz Tribe's unique history, all fee-to-trust requests by the tribe are reviewed under the off-reservation process, even close to the tribe's current reservation lands and even within the boundaries of the tribe's historical reservation. This application of Federal law and regulations discriminates against the Siletz Tribe in relation to treatment of other Indian tribes.

H.R. 931 will place the Siletz Tribe on the same legal footing as all other federally-recognized Indian tribes who did not suffer through the tragedy of termination and the loss of their reservations. It will treat the Siletz Tribe's fee-to-trust requests within its historical reservation the same as fee-to-trust requests from other tribes within their historical reservations. It will facilitate the gradual re-acquisition of a tribal land base for the Siletz Tribe so the tribe can meet the needs of its members. It will reduce cost, time and bureaucratic obstacles to the tribe obtaining approval of its land into trust requests. The legislation is consistent with the definition of on-reservation as set out in the current fee-to-trust regulations at 25 CFR § 151.2(f).

The Siletz Tribe has an ongoing critical need to acquire additional lands in trust to meet the needs of the tribe and its members. The tribe received a modest approximately 3,630 acres in trust as a Reservation in 1980, comprised of 37 scattered parcels. This land was primarily former BLM timber lands, and was calculated at the time to allow the tribe to generate revenue to provide limited services to its members and to support tribal government. The revenue generated from these parcels has been insufficient to meet growing tribal needs. The Reservation Act also returned a tribal cemetery and Pow-Wow grounds to the tribe. Since 1980 the tribe has obtained additional 804 acres of land in trust to meet some of the tribe's needs for housing, health and social services, natural resources, and economic development including a gaming operation. Currently the tribe has a total of 63 separate trust properties, for a total acreage of 4,434.01 acres. Tribal needs have not been met, however, and the tribe has a continuing need to acquire additional lands in trust. This is a long-term objective of the tribe because of the tribe's limited financial resources, which only allow it to purchase land a little at a time.

Legislative History and Administration Position

H.R. 931 is identical to legislation introduced in the 112th Congress by Congressman Kurt Schrader of Oregon. That legislation, and its Senate companion bill, received legislative hearings in the House Subcommittee on Indian & Alaska Native Affairs and the Senate Committee on Indian Affairs.

In the Senate, the Bureau of Indian Affairs objected to language giving counties additional authority in the on-reservation fee-to-trust process, objecting to the precedential nature of such new authority. Siletz agreed to have that language removed,

which was from the House version of the bill. Both the House and Senate bills introduced in the 113th Congress responded to the Bureau's concern on that matter.

The Administration testified in support of the Siletz bill in July 2012. In responses to questions for the record from the Subcommittee on Indian and Alaska Native Affairs, the Bureau of Indian Affairs put to rest allegations against the bill made by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, and the Confederated Tribes of the Grand Ronde Community. The Bureau confirmed that the Siletz Tribe has always been the only recognized tribal governing body over the original 1855 Siletz Coast Reservation.

Attached, for the record, are those responses from BIA as well as Siletz' response to Grand Ronde's criticisms of BIA's response.

Historical and Legal Background

Numerous bands and tribes of Indians resided aboriginally in western Oregon, from the crest of the Cascade Mountains to the Pacific Ocean. Early Federal Indian policy was to enter into treaties with Indian tribes to obtain the cession of their aboriginal lands to clear title for non-Indian settlement. A "reservation policy" evolved to place the Indians who entered into these treaties on small remnants of their aboriginal lands, but to open most of those lands for future development and settlement. In most cases each tribe that entered into a treaty was left with its own reservation somewhere within its aboriginal territory. Entering the 1850s, this Federal policy evolved into a new reservation policy, particularly along the west coast, to place as many tribes as possible on one reservation. This freed up additional land for settlement and simplified administration of the remaining Indians. *See* Charles F. Wilkinson, The People Are Dancing Again: A History of the Siletz Tribe (U. of Washington Press 2010).

Treaties negotiated with western Oregon Indian tribes in the early 1850s by Anson Dart were rejected by the Senate because they did not implement this new policy and instead provided for individual reservations within a tribe's historical territory. The subsequent Indian Superintendent in Oregon in the 1850s, Joel Palmer, was given the task of negotiating treaties with all of the tribes in western Oregon and finding a permanent reservation where they could all be settled. Superintendent Palmer first considered moving all the western Oregon tribes east of the Cascade Mountains to the Klamath Reservation, but none of the western Oregon tribes wanted to go there. In early 1855 he located what became the Siletz or Coast Reservation and communicated its suitability as the permanent reservation for all the western Oregon tribes to his superiors in Washington, D.C. Because of the long time lag in communication between the east and west coasts in the 1850s, Palmer provisionally set aside the Coast Reservation on his own authority on April 17, 1855. This action was subsequently ratified by the Department of the Interior.

There was no one method or procedure by which the tribes and bands that are part of the Confederated Tribes of Siletz Indians entered into treaties or came to the Siletz Reservation. A map showing the ancestral lands and tribes that make up the Siletz Tribe is included in the hearing record as Exhibit B. The Siletz Tribe has a legal relationship to seven ratified treaties (Treaty with the Rogue River, Sept. 10, 1853, 10 Stat. 1018; Treaty with the Umpqua-Cow Creek Band, Sept. 19, 1853, 10 Stat. 1027; Treaty with the Rogue River, Nov. 15, 1854, 10 Stat. 1119; Treaty with the Chasta, Nov. 18, 1854, 10 Stat. 1122; Treaty with the Umpqua and Kalapuya, Nov. 29, 1854, 10 Stat. 1125; Treaty with the Molala, Dec. 21, 1855, 12 Stat. 981; Treaty with the Kalapuya, Jan. 22, 1855, 10 Stat. 1143), and one unratified treaty (Treaty with the Tilamooks and other confederate tribes and bands residing along the coast, Aug. 11, 1855 ("Coast Treaty")). To complicate things further, there are also several additional unratified treaties negotiated in 1851 with the northern Oregon coastal tribes and bands, known as the Anson Dart treaties. Indians from all of these tribes and bands also ended up on the Siletz/Coast Reservation.

In some of these treaties, such as the 1854 Rogue River Treaty and the unratified Coast Treaty, the signatory tribes were "confederated" by the Federal Government into one tribe. The Federal Government treated other tribes that were settled on the Siletz Coast Reservation as confederated with these original confederations. The Confederated Tribe of Siletz Indians is the federally-recognized tribe that is the legal and political successor to these original tribes. *See United States* v. *Oregon,* 29 F.3d 481, 485–86 (9th Cir. 1994) (Yakama Nation comprised of the Indians who moved to the reservation under the Yakama Treaty; Nez Perce Tribe comprised of Nez Perce Bands who signed Nez Perce Treaty and moved to diminished Nez Perce Reservation).

Movement of the tribes, bands and Indians to the Siletz Reservation was also not clean or uniform. Some tribes moved in several waves to the Siletz Reservation, at

different times. In some cases only parts of the tribe, smaller groups or individual families ended up on the Reservation. In other cases individuals or small groups who were moved to the Siletz Reservation left the Reservation and returned to their aboriginal areas; other individuals hid and were never moved. Some of the individuals who left the Siletz Reservation and returned to their aboriginal areas were rounded up and returned to the Siletz Reservation. For example, member of the Coos and Lower Umpqua Tribes who left the Siletz Reservation and returned to their aboriginal area were forcibly returned to the Reservation in round-ups conducted by the Interior Department with military assistance.

In all of these cases and under all of these treaties, both ratified and unratified, the tribes and bands in question were moved to the Siletz Reservation and became part of the Confederated Tribes of Siletz Indians. This early history of the Siletz Tribe and Siletz Reservation is set out in various Federal court decisions, including *Rogue River Tribe* v. *United States,* 64 F.Supp. 339, 341 (Ct.Cl. 1946); *Alcea Band of Tillamooks* v. *United States,* 59 F.Supp. 934, 942 (Ct.Cl. 1945); *Coos, Lower Umpqua, and Siuslaw Indian Tribes* v. *United States,* 87 Ct. Cl. 143 (1938); and *Tillamook Tribe of Indians* v. *United States,* 4 Ind. Cl. Comm'n 31–65 (1955). Copies of these decisions are included in the record as Exhibit C. The Siletz Tribe also submits some of the Interior Department and Oregon Indian Agency correspondence from this period (1855–1875), documenting the settlement of various tribes and bands on the Siletz Reservation pursuant to these treaties, as Exhibit D. Historical summaries chronicling additional Federal policy toward the Siletz Reservation are attached as Exhibit E. The settlement of various tribes on the Siletz Reservation is also documented in various academic publications such as a report prepared by Historian Dr. Stephen Dow Beckham. *See* "The Hatch Tract: A Traditional Siuslaw Village Within the Siletz Reservation, 1855–1875," prepared by Dr. Stephen Dow Beckham for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw, Dec. 4, 2000, pp. 12–14 ("On July 20, 1862, Linus Brooks, Sub-Agent, confirmed that the removal of the Coos, Lower Umpqua, and Siuslaw Indians onto the Siletz Reservation was complete," and "On July 21, 1864, Sub-Agent George W. Collins confirmed the presence of the tribes on the Siletz Reservation".).

The Confederated Tribes of Siletz Indians was recognized as the governing body and tribe representing all of the tribes and bands settled on the Siletz Reservation as early as 1859. *See, e.g. Indian* Traders License issued by the Siletz Indian Agent on June 16, 1859, to trade with "The Confederated Tribes of Indians . . . within the boundary of the Siletz Indian agency district Coast Reservation." (Copy attached as Exhibit E); *Tillamook Tribe of Indians, supra,* 4 Ind. Cl. Comm'n at 31 ("Confederated Tribes of Siletz Indians, . . . a duly confederated and organized group of Indians having a tribal organization and recognized by the Secretary of the Interior of the United States" is the only entity with standing to prosecute claims against the United States involving the Siletz Reservation). Many other instances of Federal recognition of the Confederated Siletz Tribe are included in the historical summaries attached as Exhibit E. It has consistently been recognized by the Interior Department as the only tribe representing the original Siletz or Coast Reservation since that time. As such it is the legal and political successor to all of the tribes and bands of Indians settled on or represented on the Siletz Reservation.

This legal principle was established and has been repeatedly confirmed in the *U.S.* v. *Washington* Puget Sound off-reservation treaty fishing rights litigation. *See, e.g., United States* v. *Washington,* 593 F.3d 790, 800 at n.12 (9th Cir. 2010) ("*Samish*"), citing to *U.S.* v. *Washington,* 384 F.Supp. 312, 360 (W.D. Wash. 1974) (Lummi) and to *U.S.* v. *Washington,* 459 F.Supp. 1020, 1039 (W.D. Wash. 1978) (Swinomish) (Lummi and Swinomish successors in interest to tribes and bands settled on their reservations under Treaty of Point Elliott; both tribes successors in interest to the Samish Indian Tribe); *Evans* v. *Salazar,* 604 F.3d 1120, 1122 n. 3 (9th Cir. 2010), citing *U.S.* v. *Washington,* 459 F.Supp. 1020, 1039 (W.D. Wash. 1978) (Tulalip Tribes recognized governing body and successor to tribes and bands settled on the Tulalip Reservation under the Treaty of Point Elliott); *U.S.* v. *Washington,* 520 F.2d 676, 692 (9th Cir. 1975) (Muckleshoot Tribe, which did not exist at the time of the Treaty of Point Elliott and Treaty of Medicine Creek, recognized as a tribe by the United States and is a successor in interest to its constituent tribes which were settled on the Muckleshoot Reservation under the two treaties).

Two other legal principles, confirmed by Ninth Circuit Court of Appeals decisions, also confirm the Confederated Tribes of Siletz Indians as the only federally-recognized Indian tribe representing the tribes and bands who were settled on the Siletz Reservation, and as the only Indian tribe with a legal interest in and title to the original 1855 Siletz or Coast Reservation. The first legal principle involves groups or bands of Indians who either refused or did not move to the reservation designated for them under a treaty or other Federal action, or who subsequently left

that reservation or refused to move to a reconfigured reservation. In *U.S.* v. *Oregon,* 29 F.3d 481, 484–85 (9th Cir. 1994), the Ninth Circuit rejected the claim of the Colville Confederated Tribes to have treaty and successorship rights under the Yakama and Nez Perce Treaties of 1855 because bands of the tribes that had signed those treaties had refused to move to the reservations established under those treaties, or had subsequently left those reservations, and instead had ended up settling on the Colville Reservation. The Ninth Circuit concluded that those bands, by refusing to move to the treaty reservations or subsequently leaving those reservations, had abandoned their right to treaty status or successorship of the original tribes.

Like the situation of Lummi and Swinomish, whose reservations were set aside for all the Indians who signed the Point Elliott Treaty, both the Siletz and Grand Ronde Reservations were for example expressly set aside for settlement of the Willamette Valley Tribes, and members of those tribes settled on both the Siletz and Grand Ronde Reservations. Under the Ninth Circuit's decisions in *U.S.* v. *Washington,* both the Siletz and Grand Ronde Tribes are successors to the historical Willamette Valley Tribes and the three ratified treaties signed by those tribes.

This legal principle applies to the claims of the modern day Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (comprised of individual Indians from those tribes who either refused to move to the Siletz Reservation or who subsequently left the Siletz Reservation and moved back to the Coos Bay area) to have legal claim to the original Siletz Reservation. It also applies to the claim of the Confederated Tribes of the Grand Ronde Community of Oregon to be a successor to the Rogue River Tribe (a band or small group of Rogue River Indians refused in 1857 to move to the Siletz Reservation, designated as the permanent reservation for that tribe, and stayed instead on the Grand Ronde Reservation; Federal officials confirmed in correspondence that the Rogue River Tribe moved to the Siletz Reservation in 1857), and to have a claim through that tribe to the Siletz Reservation.

The second additional legal principle that applies to the Siletz Tribe's factual situation involves where one tribe is not originally settled on a reservation under a treaty, but individual members of that "unaffiliated" tribe end up on the reservation of another tribe, either by obtaining allotments on that reservation or for other reasons. This was the situation in *United States* v. *Suquamish Indian Tribe,* 901 F.2d 772, 777 (9th Cir. 1990), where the Ninth Circuit rejected the Suquamish Tribe's claim to be the successor to the Duwamish Tribe on the grounds that "individual Duwamish had moved to and settled at" the Suquamish Reservation, obtaining allotments there. The court found that no group or band of Duwamish moved there. *Id.2* This test was clarified in *United States* v. *Oregon, supra,* where the Ninth Circuit concluded that for one tribe to be able to claim successorship to another tribe, the first tribe would have to show "a cohesive communal decision by the Duwamish to unite with the Suqamish," otherwise the Suquamish "could not successfully claim that it was a 'political successor' to the treaty time Duwamish Tribe." 29 F.3d at 484. Movement and settlement of individual Indians does not result in successorship, under settled principles of law.

This legal principle applies to the claims of the Grand Ronde Tribe that it has an interest in the original Siletz Reservation through its asserted successorship to the Nehalum Tribe, for example. Case law to which the Grand Ronde Tribe was a party and is therefore bound concluded that the Nehalum Tribe had moved as a tribe to the Siletz Coast Reservation, and that the Siletz Tribe is the successor the Nehalum Tribe: "Plaintiffs Chinook, Clatsop and the Ne-ha-lum tribes were placed on the Coast Reservation." *Alcea Band of Tillamooks, supra,* 59 F.Supp. at 954. Grand Ronde claims successorship to the Nehalum Tribe only because a few individual Nehalum Indians later moved to and settled on the Grand Ronde Reservation. Under established Federal precedent, the fact that some individual Nehalum Indians moved to the Grand Ronde Reservation did not make the Grand Ronde Tribe a successor to the Nehalum Tribe. Grand Ronde claims that the Nehalums and others were counted under the Grand Ronde Agency's census and therefore must have resided on the Grand Ronde Reservation, but the historical summary included as Attachment E shows conclusively that these Indians actually resided on the Siletz Reservation along the coast, and that the Grand Ronde Indian Agency improperly attempted to assert jurisdiction over them, an assertion that was expressly rejected, several times, by the Commissioner of Indian Affairs.

The Court in *U.S.* v. *Oregon* contrasted the factual situation of the Suquamish and Duwamish Tribes with that of the Muckleshoot and Tulalip Tribes, who were not tribes at the time of the treaty but became tribes recognized by the Federal Government comprised of small neighboring bands of Indians who signed the treaties and moved as bands to the designated reservation. 901 F.2d at 776. Those bands who resided together on the same reservation "became known as the Tulalip and Muckleshoot Indians," *Id.,* and were recognized by the Federal Government as such.

The Siletz Reservation has been referred to by various names in its history, but has been known often as the Siletz or Siletz Coast Reservation since 1857. *See* Attachment E. The Reservation was originally referred to as the Coast Reservation before it was reserved by Oregon Indian Agent Joel Palmer because it was located on the Oregon Coast, because it was set aside for the "Coast, Umpqua, and Willamette Tribes of Indians in Oregon Territory," and because the unratified 1855 Treaty was made between the United States and the "chiefs and headmen of the confederate tribes and bands of Indians residing along the coast. " After official establishment by Executive order on November 9, 1855, it was referred to variously as the Siletz, Siletz or Coast, or Siletz/Coast Reservation. Starting in 1857, use of the term Siletz Reservation became common, see, *e.g.,* letter dated July 20, 1857 (Annual Report of Grand Ronde Indian Agency) ("Early in the month of May the greater portion of the Rogue River and all of the Shasta Indians were removed, with their own consent, to the Siletz Coast Reservation . . . In consequence of the removal of the majority of these tribes to the Siletz Reservation", and Congress formally referred to the reservation as the Siletz Reservation in legislation enacted in 1868 and 1875. Act of July 27, 1868, 15 Stat. 198, 219 ("For Indians upon the Siletz Reservation . . . to compensate them for losses sustained by reason of executive proclamation taking from them that portion of their reservation called Yaquina Bay"); act of March 3, 1875, 18 Stat. 420, 446 ("Secretary of the Interior . . . is authorized to remove all bands of Indians now located upon the Alsea and Siletz Reservation, set apart for them by Executive order dated November 9, 1855"). A summary of all of these references is included as Exhibit E, and copies of these Federal statutes are attached as Exhibit F.

The Siletz Reservation was established by Executive order on November 9, 1855 as a permanent homeland for all the tribes and bands of Indians in western Oregon, who were to be confederated together and settled upon it, and make the remaining ceded land available for settlement. The original Siletz Reservation stretched for over 100 miles along the central Oregon Coast, from the ocean to the western boundary of the 8th Range, Willamette Meridian, around 1.1 million acres. A copy of the original map of this reservation made sometime between 1857 and 1865 is attached as Exhibit G. Treaty tribes such as the Rogue Rivers, Shastas and Umpquas were moved to the Siletz Reservation by May 1857 in fulfillment of the terms of their treaties to settle them on a permanent treaty reservation. The Siletz Reservation, under well-established case law, became a formal treaty reservation at that time. The Siletz Reservation was then reduced over the coming years by various Federal actions—Executive order in 1865, Federal statute in 1875, and an agreement and legislation implementing allotment and surplusing of the remaining reservation in 1892. A map of the original Siletz Reservation showing the various reductions of the Siletz Reservation is attached as Exhibit H. A map showing the original Siletz Reservation in context to the State of Oregon and to modern Oregon cities is attached as Exhibit I.

Various Court of Claims and Indian Claims Commission cases have addressed whether the tribes that were located on the Siletz Reservation were entitled to compensation for the taking of their aboriginal lands, or for the various diminishments of the Siletz Reservation. These cases—*Rogue River, Alcea Band of Tillamooks, Coos, Lower Umpqua and Siuslaw Indian Tribes,* and *Tillamook Tribe of Indians,* are cited above. These cases document the connection of the Siletz Tribe to the original Siletz Reservation. As such, they also show that the original Siletz Reservation meets the definition of on-reservation as set out in the fee-to-trust regulations at 25 CFR § 151.2(f): "[W]here there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe." *See Citizen Band Potawatomi Indians* v. *Collier,* 17 F.3d 1325 (10th Cir. 1998)(processing fee-to-trust request within former reservation of Potawatomi Tribe). Enacting H.R. 6141 will allow the Siletz Tribe to request fee-to-trust transfers on the same basis as other Indian tribes within their original reservations.

Response to Specific Issues:

Some questions have been raised before this hearing about specific aspects of the proposed legislation. I want to address some of those issues here, and can respond to other issues during my oral testimony.

Question. Does this bill make the original Siletz Reservation into a reservation for the Siletz Tribe, or create tribal jurisdiction or authority over the original Siletz Reservation area?

Answer. No. All H.R. 931 does is to designate a geographic area within which the Siletz Tribe's fee-to-trust requests will be processed under the BIA's on-reservation rather than off-reservation fee-to-trust criteria. The jurisdictional status of indi-

vidual fee-to-trust parcels changes once those parcels go into trust status, but that happens whether or not this bill passes, and whether or not the on-reservation or off-reservation criteria are used. The existing jurisdictional status of the original Siletz Coast Reservation is not affected by this legislation. This issue was addressed by the Federal courts in *Yankton Sioux Tribe* v. *Podhradsky,* 606 F.3d 994, 1013 (8th Cir. 2010) ("While it is true that the original 1858 [reservation] boundaries are no longer markers dividing jurisdiction between the tribe and the State, that does not mean they have lost their historical relevance for the Secretary's discretionary acts [of taking land into trust pursuant to 25 U.S.C. § 465])." Under H.R. 6141, the original 1855 Siletz Reservation will become an historical reference point for the BIA in deciding whether to process a Siletz fee-to-trust application as on-reservation or off-reservation under the fee-to-trust regulations at 25 CFR part 151. The bill does nothing more.

Question. Does the Siletz Restoration Act limit the Siletz Tribe to taking land into trust only within Lincoln County?

Answer. No. The original Siletz Reservation extends into six current Oregon counties, although the heart of the original Siletz Reservation became Lincoln County when that portion of the reservation was removed by Congress in 1894. The counties within which the original Siletz Reservation is located are shown on the map attached as Exhibit A. As you can see, two of the counties have barely any land involved. Some parties have asserted that Federal law—the Siletz Restoration Act—limits the Siletz Tribe to taking land into trust only within Lincoln County. The section of the Restoration Act in question, at 25 U.S.C. § 711e(d), is addressed only to the original reservation plan called for by the Restoration Act. It limits any land designated under the reservation plan to Lincoln County. This plan was finalized in 1979.

The question of whether this provision of the Siletz Restoration Act, 25 U.S.C. § 711e(d), limits the BIA permanently from taking land in trust for the Siletz Tribe only to Lincoln County was addressed immediately after passage of the Siletz Restoration Act by the Office of the Solicitor, in 1978 and 1979. Those opinions concluded that the statutory restriction at § 711e(d) applied only to the original Siletz Reservation Plan, and did not limit the authority of the Secretary from taking land in trust for the Siletz Tribe elsewhere. This conclusion was reached in part because the Siletz Restoration Act expressly makes 25 U.S.C. § 465—section 5 of the IRA—applicable to the Siletz Tribe, without restriction. This is not true of any other restored tribe in Oregon. Copies of the two Solicitor Opinions reaching this conclusion are attached as Exhibit J. In its response to questions from the 2012 hearing on this legislation, *supra,* the BIA reaffirmed its position on this issue.

The Siletz Tribe has acquired land in trust outside of Lincoln County since restoration. For example, the tribe has a 20-acre parcel of land in trust in Salem, Marion County, Oregon, within the tribe's historical territory.

Question. Will H.R. 6141 allow the Siletz Tribe to acquire land in trust and use that land for gaming under the Indian Gaming Regulatory Act?

Answer. No. There is an express prohibition in H.R. 6141 on using land acquired in trust under the bill for gaming. The Siletz Tribe already has a successful gaming operation at Chinook Winds Casino Resort on its current reservation. The tribe does not need to acquire land in trust for a gaming operation within its original reservation boundaries.

Mr. YOUNG. Thank you, Delores.

Now, last but not least, Mr. Byron Mallott, a good friend, will speak on H.R. 740 and H.R. 1306.

STATEMENT OF BYRON MALLOTT, MEMBER, BOARD OF DIRECTORS, SEALASKA CORPORATION

ACCOMPANIED BY: JAELEEN KOOKESH ARAUJO, GENERAL COUNSEL FOR SEALASKA CORPORATION

Mr. MALLOTT. Thank you, Mr. Chairman, and Ranking Member Hanabusa. I would just mention very quickly that I have known Congressman Young for nearly 50 years now, and he still butchers my name.

[Laughter.]

Mr. YOUNG. Good thing you are not named LoBiondo. It took me 10 years to pronounce that name.

Mr. MALLOTT. I would also like to mention, members of the Committee, if I could, that I am very proud to have Jaeleen Kookesh Araujo sitting next to me. If I were to introduce her myself, I would call her "Jaeleen Kookesh," which was her maiden name.

I had the honor of speaking at her high school graduation in the small village school of Angoon, and it makes me so incredibly proud to have her sitting next to me as General Counsel during this hearing. She will be available to answer any questions that I am unable to, which will likely be most.

Very quickly, Mr. Chairman, in terms of time, when the Alaska Native Claims Settlement Act first began its germination, it was a time in Alaska when Prudhoe Bay in the late 1960s had just been discovered, the largest oil discovery in North American history, and one of the very largest in the world, the need was to build a pipeline from the North Slope to Tidewater, in order to move that oil.

It was a time during which Alaska had been a State for less than a decade and was very quickly acting to select 103 million acres that it had the right to select from public lands in Alaska under the Alaska Statehood Act.

It was a time in the Tongass Forest when there were two very large public pulp mill contracts, two very large pulp mills just having been built, one in Ketchikan and one in Sitka, harvesting hundreds of millions of board feet of timber and generating an economy in an area of our State where previously there had been none.

The military had been gone for less than a decade, was just beginning to rebuild after the Second World War. It was in this maelstrom that the Alaska Native Claims Settlement Act emerged.

In many ways, the Alaskan Natives collectively were not anywhere near in charge of the events that would shape their lives, as some have characterized before this Committee in the various hearings on this legislation, which by the way, Mr. Chairman, I think as you have already mentioned, has been before this Committee for some 6 years, and notwithstanding your incredible efforts to try to get this bill passed by the full Congress.

H.R. 740 will allow Sealaska to select lands outside of the original withdrawal's established under ANCSA in Southeast, which were very limited withdrawal areas, the consequence of the very large pulp mill contracts that I have already mentioned.

We will, if allowed to select lands as identified in H.R. 740, out of our original withdrawal areas, be impacting far less old growth acreage than we would otherwise be if we stayed within our withdrawal areas.

It would give Sealaska greater flexibility to work with the National Forest Service in bringing about a transition to second growth timber, which will be the long term enterprise on forest lands in the Tongass National Forest. It will allow us some flexibility in selecting sacred sites which are so important to us as Alaska's Native peoples, and the first inhabitants of the Tongass National Forest, which we believe passionately are our and known to be our homelands.

H.R. 740 will allow us to in a very modest way begin identifying new uses for very small parcels of land within the Tongass.

It will allow the Native Corporation, the Native peoples of Southeast, where many of our shareholders still live and where our origi-

nal villagers still have our people, unbroken since as far back in time as we know, and who still live in those villages, the opportunity to create on our lands and in cooperation with the U.S. Forest Service, the State of Alaska and others, a lifestyle, a society, an economic opportunity, that we obviously and all these institutions believe are so important to the future of the Tongass National Forest.

Because we have had at least 6 years of congressional activity on this bill, we have a companion bill which would allow very modest selections of economically harvestable timber closely adjacent to current Sealaska lands, although out of the withdrawal areas, and able to be accessed on a transition basis in the event that the Congress is once again unable to act on the overall settlement.

Directly responding to a question, a general question, earlier by Congresswoman Hanabusa, it is different than it was at the hearing several years ago. I do not think there has been a week or at least a month gone by where there have not been very meaningful meetings in Washington, D.C., in Alaska, having to do with being responsive to the concerns, with the suggestions, with the desires of communities, agencies, institutions, local governments, in order to try to make this bill more responsive, and ultimately a bill that as many folks as possible within our region and elsewhere can support.

We believe that we are very, very close. I would like to close by saying that I was there during those land claims days. I was a very young man. I remember knowing that there were far greater forces at play than we could in any way meaningfully affect, which I have outlined to you, having to do with the nation, having to do with kick starting a brand new economy in a brand new State, and the Native community trying to achieve justice and equity and retain some of our homelands in our own ownership, and acquiring tools that would allow us to be both part of the economic and ultimately the societal development of our State.

But ultimately, there were far greater forces at play, and I think Congress recognized that when it passed the Alaska Native Claims Settlement Act, because it has been very gracious and open, one of the most complex laws ever passed by the United States, to allow changes to that law to also be passed into law, and some of those changes, as you know, Mr. Chairman, have been very, very substantive indeed.

Thank you very much for the opportunity to appear before you.

[The prepared statement of Mr. Mallott follows:]

PREPARED STATEMENT OF BYRON MALLOTT, MEMBER, BOARD OF DIRECTORS, SEALASKA CORPORATION, ON H.R. 740 AND H.R. 1306

Chairman Young and members of the Subcommittee:

Thank you for the opportunity to submit testimony on behalf of Sealaska, the regional Alaska Native Corporation for southeast Alaska, regarding H.R. 740, the "Southeast Alaska Native Land Entitlement Finalization and Jobs Protection Act," a bill that we refer to as *Haa Aaní*. "Haa Aaní" is the Tlingit way of referring to our ancestral and traditional homeland and the foundation of our history and culture. We also appreciate the opportunity to testify on H.R. 1306, the Southeast Alaska Native Land Conveyance Act, which we call our "Bridge timber" bill to address conveyance of a small portion of the lands included in H.R. 740.

My name is Byron Mallott, and I am a Director of Sealaska Corporation, as well as a former President and CEO of Sealaska. I am from Yakutat, an Alaska Native

village, and I am *Shaa-dei-ha-ni* (Clan Leader) of the *Kwaashk'i Kwáan.* My Tlingit name is *K'oo deel taa.a.*

Most of our testimony relates to H.R. 740, but H.R. 1306 is very much related. H.R. 1306 would transfer a small subset of the land in H.R. 740 and does not detract from the purpose of H.R. 740. H.R. 1306 provides an interim solution to preserve jobs vital to the region's delicate economy if Congress does not act on H.R. 740 this year.

Background

Sealaska is one of 12 Native Regional Corporations established pursuant to the Alaska Native Claims Settlement Act ("ANCSA") of 1971. Our shareholders are descendants of the original Native inhabitants of southeast Alaska—the Tlingit, Haida and Tsimshian people. ANCSA authorized a land settlement for the Natives of southeast Alaska. Today, Sealaska seeks legislation that will define the location of the last 70,000 acres of land we will receive under ANCSA. Our people will own these lands in perpetuity. The land will support our villages and will help sustain our people and our culture.

H.R. 740 would convey just 70,000 acres in the southeast Alaska region, a region with almost 23 million acres of land; 85 percent of the region is already in some form of conservation, wilderness or other protected status. Putting the acreage in perspective, Sealaska's remaining land entitlement represents about ⅓ of 1 percent of the total land mass in southeast Alaska.

This legislation also represents a significant opportunity for the public, this Congress, the Obama Administration, the Forest Service, communities, environmental groups and others to get it right in the Tongass. H.R. 740 protects ecologically sensitive areas, sustains jobs and communities, and returns important cultural lands to southeast Alaska's Native people.

This legislation does not give Sealaska one acre of land in addition to that which was originally promised by Congress under ANCSA. Sealaska has worked closely with the timber industry, conservation organizations, tribes and Native institutions, local communities, the State of Alaska, and Federal land management agencies to craft legislation that provides the best possible result—the most balanced solution—for the people, communities and environment of southeast Alaska.

For you, Members of Congress and staff, who must consider this legislation, one thing should be clear by now: Every acre of southeast Alaska is precious to someone. And given the vast array of interests in southeast Alaska, there is simply no way to achieve absolute consensus on where and how Sealaska should select its remaining lands. We believe—and we hope you will agree—that this legislation offers a balanced solution as a result of our congressional delegation's engagement with all regional stakeholders.

Can Sealaska Select its Remaining Land Under Current Law

Under ANCSA, as amended, Sealaska is required to select land from within 10 "withdrawal boxes". Opponents of the legislation say that Sealaska *asked* to select land from within the 10 withdrawal boxes in 1976, and today Sealaska should be forced to select the remaining 70,000 acres to which it is entitled under current law. Let's set the record straight.

ANCSA authorized the distribution of approximately $1 billion and 44,000,000 acres of land to Alaska Natives and provided for the establishment of 12 Regional Native Corporations and more than 200 Village Corporations to receive and manage the funds and land to meet the cultural, social, and economic needs of Native shareholders.

Under section 12 of ANCSA, each Regional Corporation, *except* Sealaska, was authorized to receive a share of land based on the proportion that the number of Alaska Native shareholders residing in the region of the Regional Corporation bore to the total number of Alaska Native shareholders, or the relative size of the area to which the Regional Corporation had an aboriginal land claim bore to the size of the area to which all Regional Corporations had aboriginal land claims.

Sealaska received its land only under section 14(h) of ANCSA. Sealaska did *not* receive land in proportion to the number of Native shareholders or in proportion to the size of the area to which Sealaska had an aboriginal land claim because, in part, in 1968, minimal compensation was paid to the Tlingit and Haida Indians pursuant to a U.S. Court of Claims decision, which held compensation was due for the taking of the 17 million acre Tongass National Forest and the 3.3 million acre Glacier Bay National Park. The 1968 settlement provided by the Court of Claims did not compensate the Tlingit and Haida for 2,628,207 acres of land in southeast Alaska also subject to aboriginal title. The court also determined the value of the lost Indian

fishing rights at $8,388,315, but did not provide compensation for those rights. It's also important to understand that the U.S. Court of Claims did not compensate at anything close to fair market value. The settlement worked out to just 43.8 cents per acre.

The 1968 settlement also should be viewed in context with the universal settlement reached by Congress, just 3 years later, which allowed for the return of 44 million acres and almost $1 billion to Alaska's Native people. Land was always the ultimate goal. With a population that represented more than 20 percent of Alaska's Native population in 1971, southeast Alaska Natives ultimately would receive title to just 1 percent of land returned to Alaska Natives under ANCSA, ostensibly because the taking of Native lands in southeast Alaska had been dealt with by the Court of Claims. *The Tlingit and Haida people thus led the fight for Native land claims, and lost a majority of our land as a consequence.*

As documented in "A New Frontier: Managing the National Forests in Alaska, 1970–1995", discussed below, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest for decades prior to the passage of ANCSA. As late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in southeast Alaska. The logging of "public" lands proceeded over the objection of Alaska Natives, with the 1947 Tongass Timber Act explicitly authorizing the Secretary of Agriculture to sell "timber growing on any vacant, unappropriated, and unpatented lands within the exterior boundaries of the Tongass National Forest in Alaska, *notwithstanding any claim of possessory rights*."

In hearings leading to the passage of ANCSA, the Forest Service opposed most selections near Native villages because the selections would conflict with existing public timber contracts. The Forest Service publicly acknowledged their interest in limiting the extent of Native land selections to protect two 50-year timber supply contracts between the Forest Service and Ketchikan Pulp Company and Alaska Lumber and Pulp Company, agreed to in 1951 and 1957.

In 1969, in a letter submitted for the record to the House Committee on Interior and Insular Affairs, U.S. Forest Service Associate Chief Arthur Greeley made the following argument opposing the conveyance of land to Native people in the Tongass for the specific purpose of supporting economic development in Native villages:

> * * * Such [land] grants would alter the management objectives of valuable commercial forest lands *now committed to the growing pulp industry*. Although provision might be made so that individual [pulp industry] contracts can be adjusted to meet specific contract requirements, these lands would be removed from the National Forests. They would thus be removed from the larger whole that attracted the pulp industry to Alaska. Removing these lands from long-term National Forest management would serve to dilute the base on which this industry has been established.

Alaska Native Land Claims, Part I: Hearing before the H. Comm. on Interior and Insular Affairs, 91st Cong. 333 (1969) (statement of Arthur W. Greeley, Associate Chief of the Forest Service, U.S. Department of Agriculture) (emphasis added).

Sealaska ultimately would be authorized to recover about 365,000 acres of land under ANCSA. However, under the terms of ANCSA, and because the homeland of the Tlingit, Haida and Tsimshian people had been reserved by the U.S. Government as a national forest, the Secretary of the Interior *was not able to withdraw land in the Tongass* for selection by and conveyance to Sealaska. Only the Village Corporations were permitted to select land near the villages, and each Village Corporation in southeastern Alaska was limited to just one township of land. The only lands available for selection by Sealaska in 1971 were slated to become part of the Wrangell-St. Elias National Park or consisted essentially of mountain tops.

Faced with strong opposition from the U.S. Forest Service to Native land ownership in the Tongass, Sealaska had *no choice* but to request that Congress amend ANCSA to permit Sealaska to select lands near its villages. Sealaska made this request with the understanding, based on Bureau of Land Management (BLM) estimates, that its entitlement would be just 200,000 acres and that land available near the villages would be sufficient for Sealaska selections. *See Amendments to Alaska Native Claims Settlement Act, Part I: Hearing before the S. Comm. on Interior and Insular Affairs*, 94th Cong. 184 (1975) (statement of John Borbridge, President, Sealaska Corporation).

Congress concurred, amending ANCSA in 1976 to allow Sealaska to make its selections from within some of the 10 withdrawal boxes established under ANCSA for the 10 southeast Native villages recognized under that act. Today, however, we

know that Sealaska's entitlement under ANCSA is approximately 365,000 acres, not the 200,000 acres BLM had originally estimated. Sealaska has now received just over 290,000 of the acres to which it is entitled from inside the withdrawals authorized by Congress. The remaining selections, as discussed throughout this testimony, are not appropriate for development, and would require Sealaska to select community municipal watersheds, and from areas with exceptional fisheries values.

Sealaska agreed to select land from within the withdrawal boxes because, in 1976, we had no other place to go. With two large pulp mills holding contracts to cut timber throughout the Tongass at the time, and the Forest Service favoring the timber industry over Native land claims, the political reality was such that Sealaska had no true ability to ask for a fair settlement. Did Sealaska ask to select land from within the withdrawal boxes? Yes. *But the suggestion that we, Alaska's Native people, invited our own exclusion from our own Native homeland is an idea that any witness to our history should find both reprehensible and nonsensical.* For us, it was a choice between something limited, or nothing at all. It was hardly a choice.

H.R. 740 addresses problems associated with the unique treatment of Sealaska under ANCSA and the unintended public policy consequences of forcing Sealaska to select its remaining land entitlement from within the existing ANCSA withdrawal boxes. The legislation presents to Congress a legislative package that will result in public policy benefits on many levels.

Observers unfamiliar with ANCSA sometimes suggest that the Sealaska legislation might somehow create a negative "precedent" with respect to Alaska Native land claims. This seems odd in the context of the history of the Tongass and its impact on the Southeast settlement. Clearly, there were different circumstances in Southeast Alaska that resulted in disparate treatment that must be rectified. Congress has, on multiple occasions, deemed it appropriate to amend ANCSA to address in an equitable manner issues that were not anticipated by Congress when ANCSA passed. Congress continues to amend Federal law to include more protected conservation acreage without debate about whether or not it is a negative precedent.

Sealaska's Land Settlement in the Context of Southeast Alaska's History

Two documents attached to this written testimony present an historical perspective on the long struggle to return lands in the Tongass to Native people: (1) the draft document funded by the Forest Service and authored by Dr. Charles W. Smythe and others, "A New Frontier: Managing the National Forests in Alaska, 1970–1995" (1995) ("A New Frontier"); and (2) a paper by Walter R. Echo-Hawk, "A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska ("Indian Policy in Southeast Alaska").

The findings and observations summarized below are to be attributed to the work of Dr. Smythe and Mr. Echo-Hawk. For the sake of brevity, we have summarized or paraphrased these findings and observations.

Dr. Smythe's research, compiled in "A New Frontier", found, among other things:

- By the time the Tongass National Forest was created in 1908, the Tlingit and Haida Indians had been marginalized. As white settlers and commercial interests moved into the Alaska territory, they utilized the resources as they found them, often taking over key areas for cannery sites, fish traps, logging, and mining.
- The Act of 1884, which created civil government in the Alaska territory, also extended the first land laws to the region, and in combination with legislation in 1903, settlers were given the ability to claim exclusively areas for canneries, mining claims, townsites, and homesteads, and to obtain legal title to such tracts. Since the Indians were not recognized as citizens, they did not have corresponding rights (to hold title to land, to vote, etc.) to protect their interests.
- For decades prior to the passage of ANCSA, the Forest Service opposed the recognition of traditional Indian use and aboriginal title in the Tongass National Forest. As late as 1954, the Forest Service formally recommended that all Indian claims to the Tongass be extinguished because of continuing uncertainty affecting the timber industry in southeast Alaska.
- The policy of the Roosevelt Administration was to recognize aboriginal rights to land and fisheries in Alaska. Following hearings on the aboriginal claims related to the protection of fisheries in the communities of Hydaburg, Klawock and Kake, Secretary of the Interior Harold Ickes established an amount of land to be set aside for village reservations. This was troubling to the Forest Service. The Department of Agriculture supported the efforts of the U.S. Senate to substantially repeal the Interior Secretary's authority to establish the proposed reservations in southeast Alaska.

Walter Echo Hawk's paper, "Indian Policy in Southeast Alaska", observes, in part:

- The creation of the Tongass National Forest was done unilaterally, more than likely unbeknownst to the Indian inhabitants.
- The Tongass National Forest was actually established subject to existing property rights, as it stated that nothing shall be construed "to deprive any persons of any valid rights" secured by the Treaty with Russia or by any Federal law pertaining to Alaska. This limitation was essentially ignored.
- A Tlingit leader and attorney William Paul won a short-lived legal victory in the Ninth Circuit Court of Appeals in *Miller* v. *United States,* 159 F. 2d 997 (9th Cir. 1947), which ruled that lands could not be seized by the Government without the consent of the Tlingit landowners and without paying just compensation. To reverse this decision, Federal lawmakers passed a Joint Resolution authorizing the Secretary of Agriculture to sell timber and land within the Tongass, "notwithstanding any claim of possessory rights" based upon "aboriginal occupancy or title." This action ultimately resulted in the *Tee-Hit-Ton Indians* v. *United States* decision, in which the U.S. Supreme Court held that Indian land rights are subject to the doctrines of discovery and conquest, and "conquest gives a title which the Courts of the Conqueror cannot deny." 348 U.S. 272, 280 (1955). The Court concluded that Indians do not have 5th Amendment rights to aboriginal property. The Congress, in its sole discretion, would decide if there was to be any compensation whatsoever for lands stolen.

H.R. 740—A Balanced Solution With Significant Public Policy Benefits

Alaska's congressional delegation has worked hard to ensure that the fair settlement of Sealaska's Native land claims is accomplished in a manner that may have the greatest benefit to all of southeast Alaska while balancing the interests of individuals, communities, Federal and State land management agencies, and other interested stakeholders.

Thanks to the hard work of Alaska's congressional delegation, this legislation largely is in symmetry with the Obama Administration's goals for the Tongass, while also allowing Sealaska to apply to receive cultural sites that are sacred to our people as well as land for sustainable economic development, supporting local jobs and communities.

Sacred Sites

- H.R. 740 would permit Sealaska to select up to 127 cultural sites, totaling 840 acres. In previous version of the legislation, Sealaska would have been permitted to select more than 200 cultural sites, totaling 3,600 acres.
- Sites will be selected and conveyed pursuant to the terms of ANCSA Section 14(h)(1) and Federal regulations.

Small Parcels of Land

- H.R. 740 permits Sealaska to select 16 parcels totaling 2,050 acres, near Native villages. The land offers cultural, recreational, and renewable energy opportunities for the villages.
- More than 50 small parcels sites were considered in previous version of the legislation. Sites heavily used by local communities were removed from H.R. 740.
- Sealaska will seek partnerships with local tribes, clans, businesses and residents to enhance the indigenous and recreational experience on these parcels of land and to share local character and knowledge.

Large Parcels of Land

- Most of Sealaska's entitlement lands will be conveyed as large parcels of land, comprising approximately 67,185 acres.
- These lands were identified in consultation between Alaska's congressional delegation, Sealaska, tribes, the State, local communities, the Forest Service, local conservation groups, and other regional stakeholders, avoiding ecologically sensitive areas, the "backyards" of local communities, conservation areas, and community watersheds.
- These lands are generally roaded, and contain significant second growth stands of timber, supporting Sealaska's efforts to develop a sustainable forestry economy on Native lands in southeastern Alaska.

We believe this legislation is in symmetry with the goals of the Administration. H.R. 740 will:

- Protect roadless areas and accelerate the transition away from forest management that relied on old growth harvesting;

- Help struggling communities in rural Alaska by promoting economic development; and
- Finalize Sealaska's Native entitlement in an equitable manner, including the conveyance of important cultural sites.

Without legislation to amend ANCSA, Sealaska will be forced either, to select and develop roadless old growth areas within the existing withdrawals or, to shut down all Native timber operations, with significant negative impacts to rural communities, the economy of southeast Alaska, and our tribal member shareholders.

The public benefits of this legislation also extend far beyond Sealaska Corporation and its shareholders. Pursuant to a revenue sharing provision in ANCSA, Sealaska distributes 70 percent of all revenues derived from the development of its timber resources among all of the more than 200 Alaska Native Village and Regional Corporations.

Finalizing Sealaska's ANCSA land entitlement conveyances will also benefit the Federal Government. This legislation allows Sealaska to move forward with its selections, which ultimately will give the BLM and the Forest Service some finality and closure with respect to Sealaska's selections in southeast Alaska.

Seeking Sustainable Solutions by Selecting Outside the "Boxes"

Unlike the other 11 Regional Native Corporations, Sealaska was directed to select the entirety of its entitlement lands only from within boxes drawn around a restricted number of Native villages in southeast Alaska. Forty-four percent of the 10 withdrawal areas is comprised of salt water, and multiple other factors limit the ability of Sealaska to select land within the boxes.

To date, Sealaska has selected approximately 290,000 acres of land under ANCSA from within the withdrawal boxes. Based on BLM projections for completion of Sealaska's selections, the remaining entitlement to be conveyed to Sealaska is approximately 70,000 acres. The only remaining issue is where this land will come from. Of the lands available to Sealaska today within the ANCSA withdrawal boxes:

- 270,000 are included in the current U.S. Forest Service inventory of roadless forestland;
- 112,000 acres are comprised of productive old growth;
- 60,000 acres are included in the Forest Service's inventory of old growth reserves; and
- Much of the land is comprised of important community watersheds, high conservation value areas important for sport and commercial fisheries and/or areas important for subsistence uses.

The Sealaska legislation allows Sealaska to move away from sensitive watersheds and roadless areas, to select a balanced inventory of second growth and old growth, and to select most of its remaining ANCSA lands on the existing road system, preserving on balance tens of thousands of acres of old growth, much of which is inventoried "roadless old growth".

Local Impact of H.R. 740—Saving Jobs in Rural Southeast Alaska

While jobs in southeast Alaska are up over the last 30 years, many of those jobs can be attributed to industrial tourism, which creates seasonal jobs in urban centers and does not translate to population growth. In fact, the post-timber economy has not supported populations in traditional Native villages, where unemployment among Alaska Natives ranges above Great Depression levels and populations are shrinking rapidly.

We consider this legislation to be the most important and immediate "economic stimulus package" that Congress can implement for southeast Alaska. Sealaska provides significant economic opportunities for our tribal member shareholders and for residents of all of southeast Alaska through the development of an abundant natural resource—timber.

Our shareholders are Alaska Natives. The profits we make from timber support causes that strengthen Native pride and awareness of who we are as Native people and where we came from, and further our contribution in a positive way to the cultural richness of American society. The proceeds from timber operations allow us to make substantial investments in cultural preservation, educational scholarships, and internships for our shareholders and shareholder descendants. Our scholarships, internships and mentoring efforts have resulted in Native shareholder employment above 80 percent in our corporate headquarters, and significant Native employment in our logging operations.

We are also proud of our collaborative efforts to build and support sustainable and viable communities and cultures in our region. We face continuing economic challenges with commercial electricity rates reaching $0.61/kwh and heating fuel costs sometimes ranging above $6.00 per gallon. To help offset these extraordinary costs, we work with our logging contractors and our local communities to run a community firewood program. We contribute cedar logs for the carving of totems and cedar carving planks to schools and tribal organizations. We are collaborating with our village corporations and villages to develop hydroelectric projects. We do all of these collaborative activities because we are not a typical American corporation. We are a Native institution with a vested interest in the well-being of our communities.

ANCSA authorized the return of land to Alaska Natives and established Native Corporations to receive and manage that land so that Native people would be empowered to meet our own cultural, social, and economic needs. H.R. 740 is critically important to Sealaska, which is charged with meeting these goals in southeast Alaska.

Sealaska's Sustainable Forest Management Program

Sealaska has a responsibility to ensure the cultural and economic survival of our communities, shareholders and future generations of shareholders. Sealaska also remains fully committed to responsible management of the forestlands for their value as part of the larger forest ecosystem. At the core of Sealaska's land management ethic is the perpetuation of a sustainable, well-managed forest, which supports timber production while preserving forest ecological functions. Sealaska re-plants, thins and prunes native spruce and hemlock trees on its lands, thereby maintaining a new-growth environment that better sustains plant and wildlife populations and better serves the subsistence needs of our communities. Significant portions of Sealaska's classified forest lands are set aside for the protection of fish habitat and water quality; entire watersheds are designated for protection to provide municipal drinking water; and we set aside areas for the protection of bald eagle nesting habitat. The decision to cut trees is not taken lightly, and is always based on the best science and best forest practices.

The Forest Service's Plans for the Tongass: Impact of H.R. 740 on Tongass Management

We believe Sealaska's offer to leave behind roadless old growth timber in the Tongass is significant; it is a proposal we believe this Administration should support based on its goals to protect these types of forest lands. We also believe that the lands proposed for conveyance under H.R. 740 conflict minimally with and may ultimately benefit the Forest Service's Transition Framework for the Tongass.

Sealaska and the Forest Service agree that to achieve a successful transition to second growth, the Forest Service needs Sealaska to remain active in the timber industry in the Tongass, because Sealaska's operations support regional infrastructure (including roads and key contractors), development of markets (including second growth markets), and development of efficient and sustainable second growth harvesting techniques.

Sealaska has 30 years of experience developing and distributing southeast Alaska wood to new and existing markets around the world. Sealaska recently has pioneered second growth harvesting techniques in southeast Alaska and is active in this market. By partnering with the Forest Service, harvesting in proximity to each other, and collaborating to build new markets based on second growth, we will all have a better chance of success.

Conservation Considerations and H.R. 740

This legislation is fundamentally about the ancestral and traditional homeland of a people who have lived for 10,000 years in southeast Alaska. For more than 200 years, people from across the western world have traveled to southeast Alaska with an interest in the rich natural resources of the region—an area the size of Indiana. We have endured Russian fur trade, whaling, gold miners and fishing interests over time. We had large fishing industry activity and two large pulp mills with significant access to our resources. In the meantime, Natives were ignored, marginalized or relocated to central locations, in part for federally-mandated schooling.

More recently, some conservation-minded groups, like industrialists before them, introduced new ideas about how best to serve the public interest in the Tongass. The conservation community writ-large has long fought to preserve the Tongass for its wilderness and ecological values, and we have often worked with them to seek appropriate conservation solutions for the forest. Our resource development prac-

tices have evolved over 30 or more years to better ensure the preservation of the Tongass' ecological values.

We support conservation, but there must be a recognition of the human element—that people have to live in this forest, and that people rely on a cash economy to survive. Industrial tourism, ecotourism, and fishing provide limited employment to the residents of our Native villages. But these jobs are scarce and short-term, and have not prevented widespread outmigration from our communities.

We also want those expressing an interest in the Tongass to recognize that *the Tongass is a Native place,* and that Native people have a right to own Native places and to promote economic development on Native lands while seeking to balance the needs of our tribal member shareholders, our neighbors, and the forest itself. We welcome people to our homeland—but we have a right and an innate desire to exist and subsist in the Tongass.

There are groups that consistently agree with us that we should have our land, but wish to decide—to the smallest detail—where that land should be. Native people have always been asked to go second, third or last. Let's not forget that H.R. 740 addresses the *existing* land entitlement of the Native people of southeast Alaska.

Some groups have claimed that "the lands that Sealaska proposes to select . . . are located within watersheds that have extremely important public interest fishery and wildlife habitat values." H.R. 740 will result in net benefits for watersheds, anadromous streams, public hunting and fishing and recreation, the preservation of roadless old growth forests, sensitive species, and the Forest Service's conservation strategy for the Tongass. We agree that *all* lands in our region are valuable, and we believe our Federal lands and our Native lands should be managed responsibly. We acknowledge the need for conservation areas and conservation practices in the Tongass. This bill meets all of those goals.

Technical Amendments to the TFPA and NHPA

Section 7(d)(1) of H.R. 740 would permit Native Corporations to work with the Secretary of Agriculture under the Tribal Forest Protection Act (TFPA) to address forest fire and insect infestation issues on Forest Service lands that threaten the health of the adjacent Native lands. Section 7(d)(2) of H.R. 740 would allow Native Corporations, as owners of Native cemetery sites and historical places in Alaska, to work with the Secretary of the Interior to secure Federal support for the preservation of such lands under the National Historic Preservation Act (NHPA).

Prior to the reintroduction of legislation on Sealaska's behalf in the 112th Congress, these amendments were re-drafted to clarify only that Native Corporations are "eligible" to participate in the respective Federal programs established under the TFPA and NHPA. The amendments also included language that *explicitly* states that they do not create "Indian country" in Alaska.

A New Bill for the 113th Congress

In the 113th Congress, Congressman Don Young introduced new legislation that incorporates a number of changes, all intended to resolve the outstanding concerns of the Obama Administration. H.R. 740 incorporates the following changes, among others:

- *Final entitlement acreage identified*: In the 112th Congress, the Sealaska bill did not finalize Sealaska's entitlement *upon enactment.* Instead, the bill provided for finalization of entitlement by allowing Sealaska to identify its remaining entitlement lands from within a pool of lands. H.R. 740 identifies with finality the land Sealaska will receive.
    - BLM has estimated Sealaska's final entitlement at approximately 70,075 acres. H.R. 740 establishes Sealaska's final entitlement as 70,075 acres.
- *Forest Service concerns addressed*: H.R. 740 "squares up" the boundaries of Sealaska's economic parcels so the boundaries can more easily be managed by the Forest Service, removes some lands that conflicted with the Forest Service's Tongass National Forest conservation plan and/or timber harvesting plan, and removes parcels of land on Prince of Wales Island, Tuxekan Island, and Kosciusko Island that raised local concerns.
- *Cemetery sites and historical places removed*: In the 112th Congress, the bill would have allowed Sealaska to use 3,600 acres of its existing entitlement to select cemetery sites and historical places, consistent with Section 14(h)(1) of ANCSA.
    - H.R. 740 would allow Sealaska to select up to 127 cemetery and historical sites, and will limit the acreage available for those sites to just 840 acres.

- *Small parcel sites removed*: In the 112th Congress, the Sealaska bill would have conveyed 30 small parcels to Sealaska to be used for cultural or economic activities.
    - To address some local concerns, H.R. 740 will reduce the number of small parcel sites to 16—about half of which are located within the original withdrawal boxes.

Time is of the Essence

Timing is critical to the success of the legislative proposal before you today. Without a legislative solution, we are faced with choosing between two scenarios that ultimately will result in dire public policy consequences for our region. If H.R. 740 is stalled during the 113th Congress, either Sealaska will be forced to terminate all of its timber operations within approximately one year for lack of timber availability on existing land holdings, resulting in job losses in a region experiencing severe economic depression, or Sealaska must select lands that are currently available to it in existing withdrawal areas. The timing is the reason for H.R. 1306, which is a vehicle to more quickly transfer two parcels of land currently included in H.R. 740, just in case H.R. 740 is held up and not passed in 2013.

Our Future in Southeast Alaska

Our people have lived in the area that is now the Tongass National Forest since time immemorial. The Tongass is the heart and soul of our history and culture. We agree that areas of the region should be preserved in perpetuity, but we also believe that our people have a right to reasonably pursue economic opportunity so that we can continue to live here. H.R. 740 represents a sincere and open effort to meet the interests of the Alaska Native community, regional communities, and the public at large.

It is important for all of us who live in the Tongass, as well as those who value the Tongass from afar, to recognize that the Tlingit, Haida and Tsimshian are committed to maintaining both the natural ecology of the Tongass and the Tongass as our home. We therefore ask for a reasoned, open, and respectful process as we attempt to finalize the land entitlement promised to our community more than 40 years ago. We ask for your support for H.R. 740.

Gunalchéesh. Thank you.

Mr. YOUNG. Thank you, Byron. Senator?

Ms. HANABUSA. So, Byron, what is the correct pronunciation that he keeps butchering?

Mr. MALLOTT. I will not remark on how he addresses you, Congresswoman.

[Laughter.]

Mr. MALLOTT. He, from time to time, has called me "Brian." He has called me "hey, you." He has called me "his good friend" as he wraps his arms around me. He and I have incredibly close friends and family, whose pictures hang on his wall.

He will say to me sometimes, "hey, you, you know Morris almost as well as I do," talking about his friend as he struggles to capture my name after 40 years of friendship.

Thank you.

[Laughter.]

Ms. HANABUSA. Is it Mallott?

Mr. MALLOTT. Yes, Mallott.

Ms. HANABUSA. Did you hear that? It is Mallott.

[Laughter.]

Ms. HANABUSA. First of all, Mr. Chair, I would like to also share with you that Mr. Mallott and his son are very much a part of Hawaii because he sits on the Board of what we call the Polynesian Voyaging Society, and he and his son, I think his son is going to be on seven of the legs as we take what is traditionally called

"Hokulea," and it is how we believe the Native Hawaiians came, and then "voyage." It is navigation by stars.

They have rebuilt the Hokulea. They are going to go around the world. He is going to be part of that. Do you want to join him?

[Laughter.]

Mr. YOUNG. Well, if you take over the Majority, I might be able to do that.

[Laughter.]

Ms. HANABUSA. Thank you. Thank you very much for being so much a part of our culture as well. It always shows the closeness of Alaska and Hawaii, and we, of course, are trying our best. That is why I have to keep him straight on everything.

Having said that, we have heard much, I believe it was in Mr. Peña's testimony in the other panel, about the fact that they are very close or negotiations have gone on, like the way you said. In his particular case, I think he referenced S. 340, which is the Senate version of this bill.

When you said we have worked on it, and I know you have, are there any provisions in the Senate bill that you feel should be incorporated in this bill, because it explains or shows the amount of negotiations that have gone on, do not worry about offending either of us because we have signed on to the original, or is it the original bill you are here to push for?

Mr. MALLOTT. Because the House of Representatives acted so forthrightly and so quickly and has by the full House passed this bill into what will be law if accepted by the other body, and because the current Federal Administration was relatively new in office during key recent moments of negotiations, most of the negotiations have concentrated on the Senate bill.

There is no question that has been the focus principally of the Administration. It has been the focus principally of the environmental community that has been involved and other interests as well.

Therefore, not necessarily speaking personally but speaking from the realistic perspective that much of the negotiation has taken place on the Senate side, and much agreement has been reached on the Senate legislation.

With particularly the Administration and the environmental community, I think there is a general expectation that would be the principal vehicle.

Speaking personally and not even necessarily as a Sealaska Board member, in my personal judgment, there is more equity and justice in the House bill, but I also know from long, long experience that what the Native community can easily and passionately feel is equity and justice for others as often is very hard to ultimately make possible.

We are dealing with the fundamental reality here. I am not trying to fudge my answer, but I am trying to be as honest as I can be. Thank you.

Ms. HANABUSA. Thank you. Thank you, Mr. Chair. I yield back, my time has expired.

Mr. YOUNG. Any questions?

[No response.]

Mr. YOUNG. I know there has been talk they do not like the Young bill. I am pleased to hear you would like to have that bill. For the audience for anybody else, I am not going to take a Senate bill when it could be further negotiated. The real reason the Senate has been able to do anything is because my bill is out there to put a little prod into them. I want everybody to understand that.

If it goes to conference, we can always figure out what we should do. Justice is something, madam, I have to tell you, the reason they could not select enough lands in Southeast, including the State, it was reserved at that time, and under the Statehood Act, we could not select the lands, it was the communities.

Of course, the Alaska Native Land Claims Act came in, and they did select the land, but they still have not gotten 40,000 acres of their land. That is really what this bill is trying to do. I do appreciate it.

Andy, what are you going to do with this land once it is transferred? You said you were going to build a hotel or residing area?

Mr. TEUBER. Yes, Mr. Chair. Thank you for your question. As you will recall perhaps years ago, 2 years ago, I joined you on a tour of the Alaska Native Medical Center, and you were touring, among other departments, oncology and cardiology.

Some of the information that you had gained from our providers were that they had worked very hard to accomplish a reduction in the backlog for services to our patients when they were able to finally get to Anchorage.

However, for many of our patients, the constraint that exists is housing in Anchorage, affordable housing that will allow them to become patients when their appointments become available.

The request that the Consortium is making through this H.R. 623 is that there is a Federal conveyance by the IHS of land to the Consortium. The reason why we are going through this process is that although the IHS has already conceded to a quick claim deed for the property, which allows us right of entry, which allows the progress to begin, the financing for the construction, short and long term, is only going to be made available by diminishing or eradicating the other constraints or encumbrances that would exist under that quick claim deed, and so we approach you and this body for support in this H.R. 623 for a warranty deed that would allow for the Consortium to leverage the property in the long term financing for the 170 unit housing project that will begin construction this summer.

Mr. YOUNG. You heard the testimony of IHS. Do you dispute any of that? What about the revision clause? Does that bother you?

Mr. TEUBER. Thank you very much, I appreciate the question. First of all, we appreciate Deputy Director McSwain's support of this, and for the first time perhaps in my history, we have asked that the IHS slow down in this process. We have never been in that position before.

They have been very supportive. The process as it exists today, Mr. Chairman, is that we have a process for re-platting the existing parcel in order to ensure the legal description is accurate, both in the quick claim deed, the warranty deed, and in this legislation.

We support the legislation as it is written currently. We support the request by the IHS that the 30 day period be expanded or in-

creased to 90 days. However, we object to the mild suggestion that was expressed by previous testimony around the reversionary clause because it is that very reversionary clause that we are seeking your support through this legislation to get away from.

The reversionary clause exists with the quick claim date and we have already received that from the IHS. The purpose for my testimony and our request in support of this legislation is to get away from that so we can use the parcel for long term financing, it will collateralize the loan.

Finally, Mr. Chair, if I can, there was a request that the Consortium accept responsibility for the environmental aspects of the parcel going back to 1999. We support the language as it is currently written in the legislation, keeping it as it is, that we would accept environmental responsibility from the time the conveyance occurs, rather than from an arbitrary date back to 1999, once that control was not ours.

Thank you.

Mr. YOUNG. Thank you for the clarification. Do you have any questions?

Mr. GRIJALVA. Thank you, Mr. Chairman. Mr. Mallott, you made the case that the Natives of Southeast Alaska were treated differently from the other Native Corporations on how much land was conveyed. I think you pointed that out both in our oral and written testimony.

Although Sealaska got fewer acres than the other regional corporations, it is my understanding the value of those acres were among the highest of any corporation. Because of some of the communications that we received, let me ask you the question.

How do you respond to the argument that in terms of dollar value, Sealaska fared very well under the settlement terms?

Mr. MALLOTT. Thank you. First of all, I would say that again, as a young person out there literally traveling from village to village during those years, seeing community leaders and tribal leaders and village leaders draw on sheets of paper the boundaries of the lands that they claimed and that they used and occupied, it was never about economic development.

It was about retain our homelands, our Native lands, for future generations. Those lands that are precious to us.

We also had as a strong principle in our aspiration and involvement with ANCSA, that we all share and share alike. We know that Alaska is really another country, and that the location of valuable resources are widely spread, but they also exist in known areas.

There was a sense that all of the regions should share collectively in whatever wealth was generated off of our Native lands.

In Southeast, while we had valuable timber, the law, ANCSA itself, required that 70 percent of all profits, to use shorthand, the actual law said revenues, and it took 10 years of litigation and negotiations to ultimately define what that meant, but we share 70 percent of our profits one with the other.

The fact that Sealaska had valuable lands, we shared 70 percent of that revenue with the other corporations, other corporations had ultimately, we found, far more valuable lands, and they shared with us.

Mr. GRIJALVA. I appreciate that answer very much. Thank you for clarifying that. From the outset, in defining boundaries, the issue was territorial homeland as opposed to any other consideration? I think that was your comment.

Mr. MALLOTT. Certainly from the perspective of particularly village leaders, the folks who lived on the land, that was very much the case; yes.

Mr. GRIJALVA. Thank you. Chairman Leno, if I can ask you a question, and thank you for being here, sir, in your written testimony, you indicate that H.R. 841 does not have any opposition from tribes anywhere or counties in Oregon, but it has come to my office's attention that the Cowlitz Indian Tribe, and I hope I am saying that correctly, of Washington State, has issued a letter in opposition to your bill based on Grand Ronde's efforts to stop Cowlitz's land into trust efforts by invoking the Carcieri decision.

Can you comment on this letter or on that situation?

Mr. LENO. Really, sir, I just now got that information. I will say in kind of our litigation with Cowlitz, we actually met with the Cowlitz's about a week and a half ago, that was our request. They in turn when the record of decision came out last week requested a meeting with us. We will accommodate that meeting. Next Friday, we will be meeting with the Cowlitz's.

Mr. GRIJALVA. Thank you, Chairman. I appreciate it, I yield back.

Mr. YOUNG. You can have a follow up question.

Ms. HANABUSA. This is for Mr. Teuber. My colleague here, the Chair, says what great work you do, and I am sure you do. I am interested in the whole reversionary interest. I am just wondering, because that seems to be the hang up that we are having, now, on that particular situation, are the rest of your lands in trusts, that the facility sits on?

Mr. TEUBER. Thank you, Ranking Member Hanabusa, for that question. The Consortium, the Alaska Native Tribal Health Consortium, was formed in 1997. At that time, we took over the delivery of services from the Indian Health Service.

However, the facility, the Alaska Native Medical Center, resides on Federal property to this day. In terms of trust lands, no. The private property that our organization resides on is not a conveyance. It does not derive from Federal conveyance. It was purchased as commercial property like any other commercial purchase.

Ms. HANABUSA. Let me see if I can clear this up. I do not know anything about Alaska law, but I assume you are the equivalent of like a non-profit?

Mr. TEUBER. We are, indeed, yes, a 501(c)(3).

Ms. HANABUSA. I can tell you under Hawaii law, for example, if you are a non-profit under Hawaii law, when and if you terminate, because it seems to be the interest of the reversionary component of it, what happens is you can only transfer those assets to a like type of corporation or like type of non-profit.

Do you know if that also exists in Alaska's laws? For some reason, if you were not to exist any more, it would be similar to reversionary interest because—not to the Federal Government but to another entity that would do like purposes. Is that part of your laws? Do you know?

Mr. TEUBER. Thank you. I am not an attorney or expert in tax law, but I believe, and I could certainly request the assistance of my valued colleague, Ms. Valerie Davidson, to reinforce my response, but I believe that the description that you are providing is one of a Federal nature around 501(c)(3) status——

Ms. HANABUSA. No, this is not 501(c)(3), which would be a tax exempt status. What this is under laws of a State, when you become incorporated as a non-profit, I use that word "incorporated" because it is kind of contrary to what you think of as a non-profit, when that non-profit ceases to exist, some State laws require that the assets of the non-profit can only transfer to a like entity.

That is what I am asking you, and if you do not know, you can provide it to me in writing after you have had the opportunity.

It seems to me it would take care of this concern about reversionary interest.

Mr. TEUBER. Thank you. I appreciate the question and the concern. I am informed that Alaska law does not require that. We will confirm that for your benefit moving forward.

However, I would say the Consortium is in fact a consortium of 229 Tribes that have coalesced their health care delivery system in the tertiary care and specialty arena with the Consortium, that in my estimation, there is little to no likelihood there will ever be a day when that property would be used for purposes other than delivery of health care to Alaskan Natives and American Indian people.

Ms. HANABUSA. I tend to agree with you. I just thought that might take care of this particular issue. Thank you. Mr. Chair, I yield back.

Mr. YOUNG. Thank you. One statement to Byron. When you said they shared, all the tribes, and I agree with that, but I remember one time when my wife and I were upstairs in a Western Hotel with a bunch of like Jake Adams and Ollie Blevett and a few others. Jake was being a little funny. He said are you Athabaskan, do you share and share alike?

He looked him right in the eye and says Jake, I am a savage Athabaskan, what is mine is mine, and what is yours is mine, too.

[Laughter.}

Mr. YOUNG. I never forgot it. Boy, I thought it was the greatest put down in the world.

Mr. MALLOTT. The only observation I would make very quickly, Congressman, is to ask the question whether that was before or after you and Ollie got down on the floor to Eskimo leg wrestle.

Mr. YOUNG. You are not supposed to tell that. That was before.

Anyway, I want to thank the panel for the testimony, and we will work on these bills. I can assure the Members that maybe there will be a shorter period of time when the courts can review the other legislation that we were talking about.

All right. You are excused.

We will have the third panel up, Ms. Diane Enos, Salt River Pima Indian Community; Mr. Ned Norris, Chairman of the Tohono Nation; and Mr. Jimmie Rosenbruch.

Jimmie, I think your chair is right in front of you, is it not?

And we are going to reverse orders here because I understand Mr. Rosenbruch has to catch an airplane, and so you are going to

be first up. I am sure that makes you happy. Push your button on the mic.

STATEMENT OF JIMMIE CANNON ROSENBRUCH, EDNA BAY COMMUNITY, INC. AND TERRITORIAL SPORTSMEN, INC.

Mr. ROSENBRUCH. Without starting the clock, could I please submit? I have five letters I would like to submit to the Committee. Could I do so please?

Mr. YOUNG. Without objection, they are submitted to the Committee.

[The five letters submitted for the record by Mr. Rosenbruch have been retained in the Committee's official files:]

Mr. ROSENBRUCH. There is a March 13 letter, Territorial Sportsman of 2013. There is a letter of 19 different Sportsman groups in Alaska, dated April 22, 2013. There is a letter from three previous Directors of Alaska Department of Fish and Game, dated April 28, 2010. There is the Alaska Outdoor Council, NRA Chapter, dated April 16, 2013, and an Audubon letter, dated April 22, 2013.

Mr. YOUNG. Without objection.

Mr. ROSENBRUCH. Will these be in good custody if I leave them sitting right there?

Mr. YOUNG. Actually leave them there and they will be picked up.

Mr. ROSENBRUCH. OK. Thank you.

I would say the same thing. You and I have been friends about as long as we have with Mr. Mallott, and it is Rosenbruch.

[Laughter.]

Mr. ROSENBRUCH. So——

Mr. YOUNG. OK, Mr. Smith. Go ahead.

[Laugher.]

Mr. ROSENBRUCH. OK. I want you to know I do not hold that against you at all.

Listen, I would introduce myself: Jimmie Rosenbruch. I would just take a moment please and maybe familiarize the group a little bit with what we have done.

We moved to Alaska. We are 1 year short of a half a century we have been in Alaska. I received the SEI Professional Hunter of the Year Award, Weatherby Award. That is kind of the Oscar of hunting.

When I first went to Alaska in 1965, I was a civil engineer for the Bureau of Indian Affairs, and I traveled literally to every single 104 native villages on assignment. So we got a good look at Alaska.

I was also appointed by the Secretary of the Interior as staff civil engineer at the Alaska Land Use Planning Commission to help define rights-of-way through corridors, through the newly selected parks and such.

I have a degree as a civil engineer, but I said I would like a little more time in the bush, and I started guiding. I have guided about as long as I have been in Alaska. In fact, as a master guide I received the very first permit that the Forest Service ever issued to any hunting entity.

My wife received the very first master guide license from the State of Alaska.

I would say that in Alaska it is a group of sportsmen. Most people are sportsmen. There is not one single sportsman group which has endorsed these bills. There are about 12,000 bona fide individuals who are opposed to the bill, comprised of the Alaska Outdoor Council, which is a NRA chapter, and Territorial Sportsmen down in Juneau.

One serious issue or concern we have is the preemption precedent that section 4(e)(1) of the Senate bill has in regards to transferring Federal management onto private lands. It specifies in there, and this was brought up by Territorial Sportsmen and their attorneys, that this provision would, in fact, in this bill provide for Federal management on private lands. That would be a precedent I do not believe we want to set. That we might know could cause a little bit of grief.

As far as my culture goes, I was very well acquainted with Georgian Jesse Dalton of Hoonah, and I and my wife were both introduced, in fact, inducted into the Tlingit Clan. I was as an Eagle, and she was a Raven.

I can tell you that George would not be happy with what we are doing with his timberlands. This clear-cutting, as a culture he respected the forest and cherished it.

Another issue is on Kuiu Island where, as you stated, we had many years of this industrial clear-cutting with the pulp mills, and what remains on Kuiu Island, that little bit of old growth is what in this newest bill proposal Sealaska has selected.

Let me give you a little indication of what I am talking about. With the cutting that has taken place there, and we keep a log on our boat. When we are out every day, we log how many bears we see, the wildlife we see. We have kept that log for half a century. In 1988, it was a little stormy. So I took my wife and my daughter, went up a creek on Kuiu Island, and that day we counted 86 different black bear on one creek.

Twenty years later, there are six. We have hunted there continually, but in that system we have berries of course, but the most we see in there is six bears. What has happened is we have cut this old growth timber off these islands. That is what deer have to survive on in the winter. When they get deep snow, if they do not have good cover, they cannot move around and they cannot forage. Black bears down low use it for hibernating areas, et cetera.

So what is happening, in fact, is we are seeing these largest remaining stands of old growth, and old growth is not dead timber. It is old timber. It is trees that are the size of redwoods, not dead timber. They are all alive, very active. I can show you some pictures, et cetera.

Also, it is kind of Sealaska to offer access for guides to utilize these lands for a 10-year period after their Forest Service permit expires. I do not know that it would be much benefit. Having access to clear-cut areas would not be worth anything. There is no wildlife there. They are d-o-n-e, finished.

If by chance we got access into areas that had not been cut, it only goes for 10 years. I have got five children. Three of them work with us full time. I have got seven grandsons. I think they are going to want to do what I have done, have that opportunity for long after a period of 10 or 12 or 15 years has passed.

Last, as you well know, some of the communities in the north end of Prince of Wales are going to be very significantly impacted by this and, in any case, it will not bode well for us.

I appreciate standing before you.

[The prepared statement of Mr. Rosenbruch follows:]

PREPARED STATEMENT OF JIMMIE CANNON ROSENBRUCH, EDNA BAY COMMUNITY, INC. AND TERRITORIAL SPORTSMEN, INC.

My name is Jimmie Cannon Rosenbruch. I was born and raised in Utah. I was educated as an engineer and in 1966 moved to Alaska where I worked with the BIA. I was appointed by the Secretary of Interior as a Staff Civil Engineer for the Alaska Land Use Planning Commission in 1972–1973.

For close to 50 years I have been a Big Game Guide in SE Alaska, mostly as a Master Guide, the highest license issued by the State of Alaska. I hold the Safari Club International Professional Hunter of the Year Award and the Wheatherby Conservation and Hunting Award, an Oscar in the hunting world.

My wife, who was the first woman Master Guide in Alaska, and I established Alaska Glacier Guides in 1974. Now a family business, AGG takes people from all over the world to islands in the Tongass National Forest where they hunt, kayak, fish, or photograph wildlife.

During my close to 50 years in Alaska, we have cruised all of the waters in the Tongass National Forest stopping and going ashore in all the bays. I have had a chance to meet a cross section of the people in the Tongass and hear how they view the Sealaska Lands bills. These bills died in Congress in 2003, 2006–2007, 2008–2010, 2011–2012.

Because of the few days notice for this hearing and the difficulty of contacting groups when they are hunting or in the bush, I represent only a few organizations that have had time to authorize me to represent them. Today I represent the Territorial Sportsmen, an organization of 1,600 members founded decades ago, and Edna Bay, a small community on an island way off the mainland.

I note there is no sportsman's group in Alaska that has come out in support of H.R. 740 or H.R. 1306.

It is unnecessary for the committee to pass this legislation, H.R. 740 and H.R. 1306.

H.R. 740 Unnecessary

A long list of national and regional hunting, sportsmen's, wildlife, conservation organizations, and scientists believe a new Sealaska bill is not necessary, because ANCSA (1971) should govern what Sealaska should get by requiring BLM to finalize the designations of land Sealaska sent it in 2008. In addition, there are nine towns in Alaska who object to this bill in the strongest terms and have valid reasons why Sealaska should not take its land near their towns.

A partial list includes the 19 national wildlife groups who represent 2 million Sportsmen and Wildlife Managers as listed in the April 22, 2013 letter to Senator Wyden. In Alaska, the NRA chapter of Alaska, called the Alaska Outdoor Council, opposes this bill. They have about 10,000 members. We've mentioned the Territorial Sportsmen's 1,600 members.

I endorse the reasons for opposition found in the Alaska Outdoor Council's recent letter to the Congressional Sportsman's Caucus. Their first two reasons are no action is required to give Sealaska its final entitlement and there is no need, *(http://tongasslowdown.org/TL/docs/Sen.%20John%20Thune%20Chairman%20CSC%20%20R%20SD.pdf).*

The Wildlife Management Institute and the Dallas Safari Club, among the 17 others, think this bill is unnecessary:

"Legislation is not required. Sealaska is presently entitled to receive its full land entitlement under law within areas that the Corporation helped identify and actively supported in testimony before Congress at the time of deliberation. These areas were submitted to the Bureau of Land Management (BLM) in 2008 under the strong legal language of the Alaska Land Transfer Acceleration Act as "final and irrevocable priorities". With the prospect of gaining increased value via this legislation, Sealaska has subsequently asked BLM to halt conveyance. At this point, the Sealaska Corporation itself is the party solely responsible for not having received its full land entitlement under ANCSA." April 22, 2013 letter to Senators Wyden and Murkowski, Pg. 2, *http://tongasslowdown.org/TL/docs/AWCP%20Sealaska%20letter%20final.pdf.*

The Alaska Guides Association also urged BLM to make the final selections under existing law. Feb. 1, 2013, *http://tongasslowdown.org/TL/docs/AGA%20Letter%20to%20BLM%20Sealaska%202013.pdf.*

And the Alaska Chapter of Safari Club International finds further delay in implementing existing law "will only cause disruption". Feb. 3, 2013, *http://tongasslowdown.org/TL/docs/SCI%20Sealaska%20Letter%202013.pdf.*

There has been no independent appraisal completed by an independent party that indicates Sealaska cannot make a profit from the lands they wanted around their villages and agreed to take in 1975. **The status quo imposes no hardship on Sealaska.**

It is only Sealaska's desire to make a bigger profit that drives this bill. There is no reason others should pay the penalty.

Many times over the past years, Sealaska has asserted it will run out of timber if their bill is not passed. There is no need to pass an interim measure like H.R. 1306 to supply Sealaska with some timber to tide them over until H.R. 740 can pass. If H.R. 1306 passes, the precedents will already be in place making the precedent argument raised in opposition moot.

An estimate was done showing Sealaska has tens of thousands of acres still uncut. There is also no proof whether Sealaska has accelerated the pace of their cutting. We do know Sealaska only cut 133,073 acres from its inception to 2006 according to the USFS's Appendix E found on Numbers from Outer Space on this link: *tongasslowdown.org/TL/action.html.* At anytime, Sealaska can ask BLM to finalize a portion of its 2008 request to tide it over.

If Sealaska is cutting at 10,000 acres a year, then in 6½ years, they will be out of timber again—raising the question, are they going to come back to Congress to ask for another 100,000 acres for what they call their landless?

Clarification of Basic Facts

How many acres Sealaska is entitled to under ANCSA?

While Sealaska has obtained title to at least 456.25 square miles (292,000 acres) of timber land in the Tongass National Forest, *how many more acres does Sealaska get?*

The exact acreage was not specified in ANCSA. Instead an ANCSA 14(h) percentage was provided mandating BLM to make final acreage calculations.

H.R. 740 discards this formula Congress devised in 1971, which all sides thought was fair and equitable at the time.

Numbers Keep Changing

Chairman Young has stated Sealaska should get:

- 60,000 (2007), *http://www.youtube.com/watch?v=nOqHITx-uvY* @ 1:24 min and 4:32 min
- 85,000 (2009–10), *http://www.youtube.com/watch?v=Q9Zr0-rI7p8* @ 7:18 min
- 77,000 (2012) floor speech House. *http://www.youtube.com/watch?v=t3rB8IYoKKo* @:22 min. asking for "77 million acres of land that's already been cut, there's no old growth timber involved in this." 1:01
- 70,075 (2013) H.R. 740

Assistant Secretary of Agriculture, Harris Sherman told Congress Sealaska should get:

- 63,000 acres (Senate Testimony—May 25, 2011) http://tongasslowdown.org/TL/docs/ShermanTestimonyonS730052511.pdf.

Senator Murkowski said BLM told her Sealaska should get:

- 70,000 acres (Lands Subcommittee Hearing—April 25, 2013).

But just saying so does not make it so absent correct data in black and white.

BLM has no memo in the Congressional Record analyzing what Sealaska should get in 2013 even though ANCSA makes it the final calculator of the final amount.

If BLM has a memo it has shown Congress behind closed doors, the public deserves to see the final calculations. Before this bill moves any further along, this memo should be revealed.

How much timberland is old growth or second growth?

Mr. Young stated on the floor of the House (June, 2012) that ALL of the timberland Sealaska will get is SECOND GROWTH. His words were "77 million acres of land that's already been cut, there's no old growth timber involved in this." @ 22 seconds *http://www.youtube.com/watch?v=t3rB8IYoKKo.*

Only ***8 percent*** of the acres in the 2012 bill were second growth if there were 85,000 acres actually in one of the two versions of that session's bill; 8 percent equals 6,900 acres of second growth out of the 85,900 acres in the bill. 6,900 acres was cited by the Under Secretary of Agriculture, *http://tongasslowdown.org/TL/testimony.html.*

While there is a larger percentage of second growth in H.R. 740, than in last year's H.R. 1408, a majority of the land is still old growth in 2013.

Old Growth Significance for Wildlife

The majority of lands Sealaska seeks are the very rarest of the biggest old growth trees in the Tongass Forest. These large trees are vital for healthy wildlife populations supporting deer, bear, wolf, and goshawk. The latter two at risk of being listed as endangered.

This legislation would take a significant chunk of old growth stands in places where previous cutting makes the remaining stands vital for these species. This issue has been studied by the biologists at Alaska Audubon who found that the big tree stands in this legislation high grade the big trees far out of proportion to their distribution in the Tongass as a whole. See their April 22, 2013 letter, *http://tongasslowdown.org/TL/docs/Senator%20Wyden%20-%20Sealaska%20S%20340%204-19-13%20final.pdf.*

I keep a ship's log of the bears observed over the years including Kuiu Island. Before the heavy cutting on the north end of the island occurred, I observed a significantly higher number of bears. This bill targets the remaining big tree stands and I am certain the wildlife will continue to decline. I've already observed the results. Today the Kiui the black bears are less than half their historical numbers according to our ship's log and the deer are virtually gone.

In September 1988 on a single creek I counted 86 bear. Twenty years latter the most we have seen there is six.

About 19 wildlife groups, representing millions of outdoor enthusiasts, signed onto a letter which states that 30 percent of the acreage in this legislation will be the largest trees, whereas these trees are now less than 3% of the forest, *http://tongasslowdown.org/TL/docs/AWCP%20Sealaska%20letter%20final.pdf.*

The Members of the House must weigh the consequences of liquidating these stands of giant old growth trees. In the past, Sealaska has taken all the trees on their land and there is little doubt they will do so again in their proposed selections in this legislation.

Congress must take to heart these words of the biologists who collaborated on the drafting of the letter 19 national and regional wildlife organizations wrote about this legislation a month ago:

"Conveying the most productive lands from the Tongass National Forest to Sealaska will risk listing decisions for a number of species under the Endangered Species Act (ESA). Petitions have previously been filed with U.S. Fish and Wildlife Service for listing the Queen Charlotte Goshawk, the Alexander Archipelago Wolf, and the Prince of Wales Flying Squirrel. Loss of old-growth forest from logging is the primary basis for these petitions. Transfer of these important old-growth areas for logging without prior agency assessment of the effect on a potential listing under ESA poses a significant and unwarranted risk." Page 2, *http://tongasslowdown.org/TL/docs/AWCP%20Sealaska%20letter%20final.pdf.*

Given that former Directors of the Alaska Department of Fish and Game originally raised an alarm about this ESA issue, Congress should disregard any back peddling on the issue by the USFS this year after sharing the same concerns last year. With 75 years of collectively managing wildlife on the Tongass, they wrote:

"If these reserves are conveyed to Sealaska by Congress it will almost certainly lead to a new petition to list the goshawk and wolf as endangered species and the distinct possibility that they will be so designated." Page 1

These former ADFG Directors of Wildlife Management called for a **careful** assessment of the impact of the Sealaska selections on the wolf and goshawk. I do not believe the USFS has conducted such a rigorous assessment. Certainly, the USFS has not released a assessment into the record to ally the concerns of these wildlife officials. Page 3, *http://tongasslowdown.org/TL/docs/sealaska%20leg%20MURKOWSKI.pdf.*

Two years ago the Undersecretary of Agriculture for Natural Resources, Harris Sherman, shared the very same concerns as the former officials of the ADFG when he testified:

". . . land selections as proposed in S. 730 will decrease the effectiveness of the Tongass' conservation strategy and could hamper the plan's ability to maintain viable populations of plant and wildlife species. This could lead to the need for USFWS to reconsider its previous determinations regarding the goshawk and gray wolf (not to list)." Page 4, *http://tongasslowdown.org/TL/docs/ShermanTestimonyonS730052511.pdf.*

During the Senate hearing last month, an Associate Director of the USFS asserted that the ESA listing is not a problem. Let the record show that there are no studies the USFS has submitted for the record to back up his assertion.

Were this ESA issue not a problem, organizations representing up to 5 million Americans, as diverse as the Wildlife Management Institute to Audubon to the Dallas Safari Club would not be all telling Congress, take notice. They are stating that the ESA listing for the wolf and goshawk is a problem and don't pass the Sealaska Lands Bill.

Job Losses Would Follow an ESA Listing

With ESA listings, logging on the Tongass will be drastically reduced. Job loss to loggers, saw mill workers, and support persons would result.

This Bill is supposed to protect jobs but it has the clear possibility of destroying them for the year round Alaska residents in the towns around Prince of Wales who depend on a steady supply of logs out of the National Forest, *http://tongasslowdown.org/TL/docs/Senator%20Wyden%20-%20S%20340-Signed.pdf.*

If the ESA listing goes through after this legislation passes, all those Alaskan residents in the towns who passionately oppose this legislation may see reductions in fish and wildlife numbers which they harvest commercially or as sport.

Sealaska says all places are precious to someone, so they are OK with the non native nine towns and many other businesses and others who use the Tongass to bear the lion's share of pain. Equity and fairness favors the status quo requiring Sealaska to take the land they designated in 2008 BLM letter. Equity and fairness will not occur from passage of these bills.

Bad Precedents in This Bill

Senator Murkowski claimed at the hearing last month that this bill is "unique" and all the other corporations told her they would not ask Congress to use this bill as precedent when asking for further modification of ANCSA—the final, last, complete settlement for all claims for their lands.

The statement of a Senator is not legally binding on future Congresses. In fact, year after year for over 40 years, there have been many of the 12 regional corporations coming back to Congress for modifications.

Congress can and does do anything it chooses.

There are several kinds of precedents which arise out of this legislation. As Harris Sherman noted in his testimony May 25, 2011, these are:

- Establishing cultural sites outside of the townships around Native towns;
- Establishing economic sites which do not exist in ANCSA; and
- Moving the logging from the original townships around Native towns.

Territorial Sportsman described another preemption precedent exits in this bill that they believe will remove State of Alaska legal authority to manage wildlife on private land.

BLM's written statement last month in the Senate stated:

"We note that if S. 340 is enacted other corporations might seek similar legislation for the substitution of new lands." Page 2, *http://tongasslowdown.org/TL/docs/BLM%20ConnellFINALS.340SealaskaDOI.pdf.*

Nor did Senator Murkowski's leading questions to BLM dislodge BLM's statement that no one can say absolutely that Congress will not use this legislation as a precedent.

As the Alaska Outdoor Council noted:

"*With hundreds of thousands of acres in ANCSA outstanding claims, and many millions of acres in a status of interim conveyance not yet patented, S. 340 is a nightmare for active sportsmen and guides; a virtual Pandora's Box of new no trespassing signs in cherry picked areas across the state. This is a very real threat to sportsmen." http://tongasslowdown.org/TL/docs/Sen.%20John%20Thune%20Chairman%20CSC%20%20R%20SD.pdf.*

In effect, the small parcel or economic development sites as well as the cultural sites (which gives Sealaska a chance to reopen the 1976 deadline for filing cultural

sites) may select outstanding fishing and hunting sites. The legislation does not tell us the location of the cultural sites. This legislation cannot bind future Congresses from giving Sealaska many more of the 2000 potential cultural sites affecting all other users.

Today it will be nine selections. Ten years from now . . . ?

Because these sites will be at the mouths of salmon streams, sportsmen will be blocked from access. Because the locations are not listed in the bill, the public cannot scrutinize the impact of their locations. Numerous fishing and hunting operations will be severely impacted by this precedent and no one I have spoken to believes this is the final request for more. The history of ANCSA has seen claims of "this is the final unique request" yield to another request years later.

Pandora's Box must remain closed. The framers of ANCSA were wise and just to preclude such an outcome.

Preemption Precedent

I have known Mr. Young a long time and know he bristles at the idea that the Federal Government can preempt State of Alaska Management of wildlife. As the Territorial Sportsmen noted after consulting with several lawyers in Juneau:

"The provision in this bill [in section 4 (e)(1)] which applies the subsistence definition found in Title 8 of ANILCA over private land in Alaska is unprecedented." March 2, 2013 letter, Page 2, *http://tongasslowdown.org/TL/docs/TS_BLM_Letter_03-21-13.pdf.*

For the first time, this legislation would apply ANILCA to the private property of Sealaska in Alaska. While H.R. 740 applies only to Sealaska's selections, precedent is set for all private land to have Federal management of wildlife resources. This conclusion is based I am told on consultation with leading lawyers in Alaska.

Has Mr. Young read this section of H.R. 740 or the Territorial's letter or has he failed to see the far reaching and divisive consequences of this grand-daddy of all precedents?

The preemption provision alone is grounds for Mr. Young to withdraw his sponsorship of this bill. Certainly the 1,600 members of the Territorial Sportsman are ringing the alarm bells on this provision.

Territorial Sportsmen is opposed to the easement provisions as outlined on page 2 of their letter to Senator Wyden this year.

Edna Bay

I received a notice on the eve of my flying back here that Edna Bay held a town meeting and voted to have me represent them before you. This is a town of loggers, lodge owners, fishermen, and retirees who were loggers. I know the postmistress is from a third generation logging family. I am humbled they held a meeting to give me this honor.

The logging on their island was quite intense in the 1940s and 1950s. Giant spruce went out to the world. There are still a few large stands of giant trees there, one of the best growing locations on the Tongass. Sealaska wants to take those remaining large stands and it will all be gone in a few years at the pace of cutting that has gone on in the past.

Under the Forest Service plan, trees would be cut at a sustainable rate. Under a Sealaska ownership based on the pace of past logging, many in the town expect a boom and bust cycle that lasts a few years and illustrates most perfectly how this bill will kill the jobs of hard working woodsmen, saw mill operators, and most likely the nascent tourism operations based on sports fishing and whale watching.

I'd like all of you to ask yourself this question. Do the deeply held grievances about lands claims we hear from Sealaska justify uprooting businesses and jobs not only in the nine towns but also the rest of SE Alaska? What happens in these small town when you lose the school or post office?

This impact on the hard working people in Edna Bay is and the other eight towns and all of the sportsmen and business in SE Alaska who rely on healthy wildlife and access to these areas is unfair and unjust.

Mr. YOUNG. Thank you, Jimmie.

Mr. Ned Norris.

And you are excused if you would like to go. It is up to you.

Mr. ROSENBRUCH. Thank you very much for accommodating me earlier. I would be delighted to sit here. I have got an hour and a half before I have got to be there, and I would stay here.

Mr. YOUNG. OK.

Mr. ROSENBRUCH. I appreciate that. Thank you.

Mr. YOUNG. Mr. Ned Norris.

STATEMENT OF THE HON. NED NORRIS, JR., CHAIRMAN, TOHONO O'ODHAM NATION

Mr. NORRIS. Mr. Chairman, before I start my time, I do not want to sit here and blame you for the misspell of my first name on the name tag over here.

Mr. YOUNG. Bless you, bless you. Some other body made a mistake.

[Laughter.]

Mr. NORRIS. It says Ted Norris here, but you named it correctly, Ned Norris.

Mr. YOUNG. It is Ned, is it not? OK.

Mr. NORRIS. Good afternoon, Chairman Young, Ranking Member Hanabusa, and distinguished members of the Subcommittee on Indian and Alaska Native Affairs.

My name is Ned Norris, Jr., and I am the Chairman of the Tohono O'odham Nation. I thank you for allowing me to testify today on H.R. 1410. I ask that my written statement be entered into the record.

Mr. YOUNG. Without objection, so ordered.

Mr. NORRIS. Thank you, sir.

In the late 1950s, the U.S. Army Corps of Engineers built the dam which flooded nearly the entire remaining 10,000 acres of Nation's Gila Bend Indian Reservation. Our members who live there had to be evacuated and crowded into a small, 40 acre parcel of land known as San Lucy Village, where they still live today.

In 1986, the U.S. Congress enacted Federal legislation to settle the nation's land and water rights claims which stemmed from the Corps' unauthorized flooding and destruction of our land. In this settlement legislation, which is called the Gila Bend Indian Reservation Lands Replacement Act, or Public Law 99–503, the United States made a solemn commitment to compensate the nation for the destruction of our land. The compensation included a solemn promise that the Nation would be able to acquire new land to replace the destroyed land, and a solemn promise that the new land would be treated, and I quote from the statute, "as a Federal Indian reservation for all purposes."

This last promise was important to us since we needed replacement land that would have the same legal status as our destroyed land. In 2003, the State of Arizona also made a promise to the Tohono O'odham Nation when it entered into a tribal State gaming compact with the nation.

The nation negotiated that compact in good faith, and the terms of that compact are clear on their face. The compact allows the nation to conduct gaming on land that meets the requirements of the Indian Gaming Regulatory Act, IGRA. IGRA expressly allows tribes to conduct gaming on lands acquired as part of a settlement of a land claim.

Both the Department of the Interior and the Federal District Court of Arizona have confirmed that the land the nation acquires under its 1986 settlement statute is land acquired as a part of a settlement of land claim, as defined by IGRA.

In 2012, the House of Representatives at the behest of the State of Arizona passed H.R. 2938. Its sole purpose was to prevent the nation from conducting gaming on replacement land located within a certain portion of Maricopa County, even though our 1986 Act allowed us to acquire replacement land in Maricopa County and even though it was allowed under our Tribal State Gaming Compact.

If it had been enacted by the full Congress, H.R. 2938 would have broken both the United States' 1986 Federal Settlement Act promise and the State of Arizona's 2003 State Gaming Compact promise.

In 2013, the sponsors of H.R. 1410 are back with the new version of last year's bill. This bill clothed in new language to make it appear as if it is a law of general applicability, in fact, is solely applicable to the Tohono O'odham Nation. If enacted, H.R. 1410 will break the promises explicitly made by the United States in 1986 and explicitly made by the State of Arizona in 2003.

The proponents of H.R. 1410 insist that it is necessary to force the nation to live up to an alleged promise not to game in the greater Phoenix area, but there was never such a promise.

Let us understand what H.R. 1410 really is: special interest legislation which would create a non-competition zone for the Gila River Indian Community and the Salt River Indian Community, two wealthy tribes which now share a monopoly in one of the largest gaming markets in the United States.

The claims that the proponents of H.R. 1410 have used to justify this bill have been litigated and rejected by the Federal courts on their merits not because the nation asserted sovereign immunity. The district court and Ninth Circuit held on the merits that the land the nation acquired under its settlement statute met the requirements of that statute. The District Court held on the merits that the nation's land was eligible for gaming under the Indian Gaming Regulatory Act, and the District Court held on the merits and not on sovereign immunity grounds that the tribal State gaming compact does not bar the nation from gaming in the Phoenix area.

The court examined every bit of the plaintiffs' evidence, construed it in the light most favorable to the plaintiffs and still concluded that the plaintiffs' interpretation of the compact is entirely unreasonable. None of these conclusions were based in any way on the nation's sovereign immunity.

H.R. 1410 is an ugly black mark on the United States and the State of Arizona's long relationship with the Tohono O'odham Nation. It is a return to the 19th century practice of breaking promises to Indian tribes when it is convenient for a non-Indian interest, but with a new twist. Now the United States is considering breaking the solemn commitments it and the State of Arizona made to my people to protect the monopoly of a couple of wealthy tribes.

The title of the bill, the Keep the Promise Act, is deeply offensive to my nation, as is obvious from every single Federal and State

Court decision, rejecting the arguments of the State and these two tribes. The Tohono O'odham Nation has followed applicable Federal and State law, and there are no loopholes, and yet the title of this proposed legislation suggests that I and my people are liars and cheats.

As the great Supreme Court Justice Hugo Black famously said, "Great nations like great men, should keep their word." With all due respect, I am asking the United States to be a great nation and to keep its word to the people of the Tohono O'odham Nation.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Norris follows:]

PREPARED STATEMENT OF THE HONORABLE NED NORRIS, JR., CHAIRMAN, THE TOHONO O'ODHAM NATION OF ARIZONA, ON H.R. 1410

Chairman Young, Ranking Member Hanabusa, and distinguished members of the Subcommittee on Indian and Alaska Native Affairs, my name is Ned Norris, Jr. I am the Chairman of the Tohono O'odham Nation. I want to thank you for the opportunity to testify today on H.R. 1410, legislation offensively entitled the "Keep the Promise Act of 2013".

Following is the testimony of the Tohono O'odham Nation. I ask that it be entered into the record. We respectfully request that the full text of the following federal court decisions also be entered into the record: *Gila River Indian Community, et al.* v. *United States and Tohono O'odham Nation,* 776 F.Supp.2d 977 (D. Ariz. 2011); *aff'd,* 697 F.3d (9thCir. 2012); *Gila River Indian Community et al.* v. *Tohono O'odham Nation,* No. 11–cv–296–DGC (Order dated May 7, 2013)

Executive Summary—A Long History of Broken Promises to the Nation

In 1986 the United States made a promise to the Tohono O'odham Nation when Congress enacted land and water rights settlement legislation, the Gila Bend Indian Reservation Lands Replacement Act, Pub. L. 99–503 (Lands Replacement Act)—legislation that the Department of the Interior has described as "akin to a treaty." *Tohono O'odham Nation* v. *Acting Phoenix Area Director, Bureau of Indian Affairs,* 22 IBIA 220, 233 (1992). This settlement legislation was intended to compensate the nation for the Army Corps of Engineers' unauthorized destruction of the nation's Gila Bend Indian Reservation. Among other things, the United States promised in that settlement legislation that the nation could acquire new reservation land in Maricopa County to replace its destroyed Gila Bend Reservation land (which also was located in Maricopa County). The United States also promised that the new land would be treated as a reservation for *all* purposes.

In 2003 the State of Arizona made a promise to the Tohono O'odham Nation when it entered into a tribal-state gaming compact with the nation. The nation negotiated that compact in good faith and the terms of that Compact are clear on their face. The Compact allows the nation to conduct gaming on land that meets the requirements of the Indian Gaming Regulatory Act (IGRA). IGRA expressly allows tribes to conduct gaming on land acquired as part of the settlement of a land claim. Both the Department of the Interior and the Federal District Court of Arizona have confirmed that the land the nation acquires under its 1986 settlement statute is land acquired as part of the settlement of a land claim as defined by IGRA.

In 2012, the House of Representatives, at the behest of the State of Arizona and two extraordinarily wealthy Indian tribes, passed H.R. 2938, legislation that, if it had been enacted by the full Congress, would have broken both the United States' 1986 Federal settlement act promise and the State of Arizona's 2003 tribal-State gaming compact promise to the nation because its sole purpose was to prevent the nation from conducting gaming on replacement land located within a certain portion of Maricopa County.

In 2013, the sponsors of H.R. 1410 are back with a new version of H.R. 2938. This bill, clothed in new language to make it appear as if it is a law of general applicability, in fact is effectively applicable only to the Tohono O'odham Nation. H.R. 1410, if enacted, will break the United States' 1986 promise to the nation and break the State's 2003 promise to the nation. Like last year's bill, H.R. 1410 is special interest legislation which would create a no-competition zone for the wealthy tribes, including the Salt River Indian Community, which now have a monopoly on one of the largest gaming markets in the United States.

Every allegation that has been made about my nation, every falsehood and every accusation about the integrity of how the nation has conducted itself in the pursuit of its replacement lands has been soundly rejected by the Federal courts. These courts have considered all the evidence—thousands of pages of deposition testimony and thousands of pages of contemporaneous documents—and they have concluded, over and over and over again, that the nation has at all times acted in accordance with the law. And, most importantly for the purposes for which we are gathered together here today, the Federal district court for the District of Arizona has ruled that the "promise" on which H.R. 1410 is predicated simply did not exist. With these court decisions, the lies and slander about my nation must now stop.

H.R. 1410 is an ugly black mark on the United States' and the State of Arizona's long relationship with the Tohono O'odham Nation. It is a return to the 19th century practice of breaking promises to Indian tribes when it is convenient for a non-Indian interest—but with a new twist. Now the United States is considering breaking the solemn commitments it and the State of Arizona made to my people to protect the monopoly of a couple of wealthy tribes.

As is obvious from every single Federal court decision rejecting the arguments of the State and the wealthy tribes, the Tohono O'odham Nation has followed applicable Federal and State law every step of the way. Yet the sponsors of this legislation have entitled the bill the "Keep the Promise Act". This title suggests that I, and the Tohono O'odham people, are liars and cheats. We are deeply offended by this.

As the great Supreme Court Justice Hugo Black famously said in *Federal Power Commission* v. *Tuscarora Indian Nation,* "Great nations, like great men, should keep their word." With all due respect, I am asking the United States to be a great nation, and to keep its word to the Tohono O'odham. And I am asking the Gila River Indian Community, the Salt River Indian Community, and the State of Arizona to stop, finally, the cruel and dishonorable campaign of lies and misinformation which has caused so much harm to the Tohono O'odham Nation, and so much harm to the people of the West Valley who have waited for so long for the new economic development and the new jobs which the nation has been prevented from creating.

A Federal Court has Confirmed That the Nation's Tribal-State Gaming Compact Allows it To Operate a Gaming Facility in Phoenix

"[N]o reasonable reading of the Compact could lead a person to conclude that it prohibited new casinos in the Phoenix area." *Gila River Indian Community et al.* v. *Tohono O'odham Nation,* No. 11–cv–296–DGC (Order dated May 7, 2013) at 25.

The nation first entered into a gaming compact with the State of Arizona in 1993. The nation's compact confirmed the nation's right to conduct Class III gaming pursuant to IGRA, anywhere on the nation's Indian Lands, including land acquired as part of a settlement of a land claim under IGRA's Section 20 exception to the general prohibition on gaming on after-acquired land, 1993 Tohono O'odham-State of Arizona Gaming Compact, §§ 2(s) and 3(f). This confirmation of the nation's rights was reached after the nation explicitly advised the State's gaming negotiators that it had the right to acquire "up to 9,880 acres of additional trust land" under the Lands Replacement Act, and that "[n]ot all of the land has been purchased yet, so there is a possibility of additional trust land to be acquired." 7/15/92 Tohono/Arizona Reps. Mtg. Tr. at 3. The State was thus fully aware of the nation's rights to game on land to be acquired in Pima, Pinal, or Maricopa Counties under the Lands Replacement Act.

The initial terms of the 1993 tribal-State gaming compacts were set to expire in 2003. Accordingly, in 1999 the tribes began to negotiate among themselves and with the State for a new gaming compact. The resulting 2003 tribal-State gaming compacts (authorized via State Proposition 202 at A.R.S. § 5–601.02(A)) import virtually the same language as in the 1993 compacts concerning the tribes' rights to conduct Class III gaming on Indian lands:

SECTION 3. NATURE, SIZE AND CONDUCT OF CLASS III GAMING

(j) Location of Gaming Facility.

(1) All Gaming Facilities shall be located on the Indian Lands of the tribe. All Gaming Facilities of the tribe shall be located not less than one and one-half (1½) miles apart unless the configuration of the Indian Lands of the tribe makes this requirement impracticable. The tribe shall notify the State Gaming Agency of the physical location of any Gaming Facility a minimum of thirty (30) days prior to commencing Gaming Activities at such location. ***Gaming Activity on lands acquired after the enactment of the***

Act on October 17, 1988 shall be authorized only in accordance with 25 U.S.C. § 2719.

Tribal-State Compact, § 3; A.R.S. § 5–601.02(I)(6)(b)(iii) (emphasis added).

As recently confirmed by the Federal district court for the District of Arizona in litigation brought by H.R. 1410's proponents, land acquired under the Lands Replacement Act qualifies as lands acquired as part of the settlement of a land claim under IGRA's section 20 exception and under Section 3(j)(1) of the Compact. *Gila River Indian Community et al.* v. *Tohono O'odham Nation,* No. 11–cv–296–DGC (Order dated May 7, 2013) at 7. The court further held that the Compact "does not prohibit the nation from building a new casino in the Phoenix area." *Id.* at 2.

Federal and State Courts Have Confirmed That the Nation's Land Meets Both the Requirements of the Gila Bend Indian Reservation Lands Replacement Act and the Indian Gaming Regulatory Act

In July 2010, the Secretary of the Interior determined, despite lengthy arguments submitted in opposition by the City of Glendale and the Gila River Indian Community, that the nation's land meets the requirements of the Lands Replacement Act and that the Secretary has an obligation to take the land in trust. Accordingly the Secretary issued a decision to take the land in trust in August of 2010. 75 Fed. Reg. 52,550 (Aug. 26, 2010). The Gila River Indian Community, the City of Glendale, and other plaintiffs challenged the decision in Federal district court in Arizona, but both the district court and the Ninth Circuit Court of Appeals upheld the Secretary's decision. *Gila River Indian Community, et al.* v. *United States and Tohono O'odham Nation,* 776 F.Supp.2d 977 (D. Ariz. 2011); *aff'd,* 697 F.3d (9thCir. 2012). The plaintiffs continue to press their appeals.

Having failed to convince either the Secretary, the Federal district court, or the Ninth Circuit Court of Appeals that the nation was not entitled to have its West Valley property taken into trust, the City of Glendale and the Gila River Indian Community lobbied the Arizona State legislature for special legislation to allow the City of Glendale to annex the nation's land—without notice and without any of the procedural requirements usually required for annexation under Arizona law—hoping that annexation would make the land ineligible for trust status under the Lands Replacement Act. The nation challenged that State law, and the Federal district court in Arizona ruled for the nation. Despite the fact that the State legislation did not mention the nation, the Lands Replacement Act, or the nation's West Valley property by name, the Court found that the law's "clear purpose and effect would be to block [the Department of the Interior] from taking the land into trust, contrary to the express command of Congress." *Tohono O'odham Nation* v. *City of Glendale and State of Arizona,* No. 11–cv–279–DGC (D. Ariz.) (Order dated June 30, 2011) at 15. The City of Glendale and the State of Arizona also have appealed that decision to the Ninth Circuit and the appeal is pending.

Undaunted, the Gila River Indian Community, joined by the Salt River Pima Maricopa Indian Community and the State of Arizona's Attorney General, again brought suit in district court, this time challenging the eligibility of the nation's West Valley property for gaming. *Gila River Indian Community et al.* v. *Tohono O'odham Nation,* No. 11–cv–296–DGC. Following a lengthy and voluminous discovery process, the nation's opponents were again rebuffed by the district court, which on May 7, 2013 ruled that the nation's West Valley land is indeed eligible for gaming under the nation's Compact as land acquired in trust as part of a land claim settlement under IGRA. *Gila River Indian Community et al.* v. *Tohono O'odham Nation,* No. 11–cv–296–DGC (Order dated May 7, 2013) at 25.

Discovery in this litigation has in fact revealed that, not only was there no agreement concerning a limitation on gaming in the Phoenix area, but the 17 Arizona tribes that negotiated the compacts rejected such a prohibition, leaving the terms of the tribal-State gaming compacts to govern this issue. As explained by witnesses who are not aligned with either side of the litigation, the concept of "no new casinos in Phoenix" was simply never a theme or a deal point in the negotiations over the gaming compacts and Proposition 202:

- W.M. Smith Dep. 32 (*Cocopah Tribe representative*) "Q. Do you recall the concept of no new casinos in Phoenix ever being broached in the negotiations? A. No."
- Clapham Dep. 35–36 (*Navajo Nation representative*) "Q. There was not a single event, to the best of your recollection, that could constitute a request for a tribe to waive its rights to build a casino in the Phoenix area? A. There were discussions about reducing the number of authorized facilities in exchange for transfer

of machine rights. But I don't remember any specific request to deal with not putting another facility in Phoenix.").

- Ochoa Dep. 25 (*Yavapai Prescott Tribe representative*) "Q. So until this lawsuit came about, though, you had never heard anybody talking about how Prop 202 would permit no new casinos in the Phoenix area and only one in Tucson? A. Absolutely not. No. It wasn't discussed at the meetings I attended."

In fact, when presented with proposals by the representatives of the State and the Gila River Indian Community to include a provision in the compacts to prohibit gaming on after-acquired lands, the tribes universally rejected these proposals, allowing the compacts terms to govern.

What is more, discovery has revealed that representatives of the Gila River Indian Community, the Salt River Pima Maricopa Indian Community, and the State each were aware of the nation's rights to conduct gaming on Lands Replacement Act lands, and had expressed no objection to the nation's rights. As noted above, negotiation sessions during the 1993 gaming compact negotiations revealed that the nation explicitly informed the State about its rights under the Act and its ability to acquire new land in Pima, Pinal, and Maricopa Counties. Later, during the mid-1990s, a representative of the nation similarly informed the former president of the Salt River Pima-Maricopa Indian Community (and key 2002 compact negotiator) of the Lands Replacement Act and the nation's right to conduct gaming on land acquired under the Lands Replacement Act and in 2001, one of the Gila River Indian Community's compact negotiators was presented with a copy of a tribal council resolution from the nation describing the nation's rights under the Lands Replacement Act.

In short, the litigation and all related court decisions have fully supported the Department of the Interior's decision to acquire in trust the nation's West Valley land under the Lands Replacement Act, as well as the nation's right to conduct gaming on that land under IGRA and its tribal-State gaming compact, and have rejected the claims of the proponents of H.R. 1410.

Enactment of H.R. 1410 Exposes the United States to New Liabilities

H.R. 1410 deprives the nation of rights it has under its land and water rights settlement act, IGRA and its tribal-state gaming compact—rights that have been confirmed by the courts. Interference with these rights will have real consequences for the United States and ordinary taxpayers in terms of creating substantial liability for the breach of contract, takings claims, and water rights claims that the nation will have against the United States for breaching the settlement agreement entered into under the Lands Replacement Act. Accordingly, there is no question that enactment of H.R. 1410 effectively will put American taxpayers in the position of subsidizing the monopoly achieved by the Gila River Indian Community and the Salt River Indian Community.

Enactment of H.R. 1410 Will Cause Real Harm to the Tohono O'odham Nation

In addition to the injustice of changing the law enacted to compensate the nation and on which the nation has relied in acquiring land for gaming-related economic development, the enactment of H.R. 1410 would have a devastating effect on the Tohono O'odham Nation and its people. More than 32 percent of the nation's households have annual incomes less than $10,000, over 46 percent of the nation's families live below the poverty line, and there is a greater than 21 percent unemployment rate among tribal members on the reservation. The nation has devoted an enormous amount of time and financial resources to its West Valley project in reliance on existing Federal law; if H.R. 1410 is enacted, all the effort and resources the nation has invested to reduce its dependence on Federal monies and to become self-sufficient, as Congress intended in the Lands Replacement Act, would be wasted.

H.R. 1410 Will Cause Real Harm to the West Valley—It is Job-Killer Legislation

Enactment of H.R. 1410 would kill off 9,000 new construction and operation jobs for the West Valley, as well as countless thousands of other jobs that would result from new local spending generated by both the resort and the people who work there. If Congress takes affirmative action to prevent this non-taxpayer funded economic stimulus from becoming a reality, Congress effectively withholds these thousands of jobs from West Valley residents.

CONCLUSION

Mr. Chairman and Subcommittee members, I thank you again for giving me an opportunity to speak to this Subcommittee on this legislation. In sum, I must reiterate that enactment of H.R. 1410 would break the United States' promise, as that promise was set forth in a contract and in settlement legislation, to compensate the nation for the destruction of the Gila Bend Indian Reservation. Enactment of H.R. 1410 also would interfere with the express contract terms to which the nation and the State of Arizona agreed when we entered into our tribal-state gaming compact. And enactment of H.R. 1410 flies in the face of several Federal court decisions which have resolved, in the nation's favor, the allegations that have been wrongly made against the nation.

But it is not just the nation that will be adversely affected by enactment of H.R. 1410. This legislation will prevent the creation of 9,000 new jobs for the West Valley area. Enactment of H.R. 1410 will also create new breach of contract, takings claims, and water rights claims against the United States, thereby exposing American taxpayers to unnecessary financial risk. And finally, enactment of H.R. 1410 would add yet another black mark to the United States' long history of breaking its promises to Native Americans. This Subcommittee should uphold the United States' promise to the nation, reject H.R. 1410, and let the ongoing litigation run its course.

I thank you for your time today, and I would be happy to answer any questions you may have.

APPENDIX—Background on the Flooding and Destruction of the Gila Bend Indian Reservation and the Lands Replacement Act

The Tohono O'odham Nation has approximately 30,000 members. Our reservation lands are located in central and southern Arizona in three counties—Maricopa County, Pinal County, and Pima County. Historically, the nation's lands included four separate areas, one of which was known as the Gila Bend Indian Reservation. Originally comprising 22,400 acres located on the Gila River near the town of Gila Bend in Maricopa County, the Gila Bend Indian Reservation was created for the nation in 1883. Then known as the Papago, the nation's Gila Bend Indian Reservation residents lived along the banks of the Gila River for centuries; extensive ruins located on the reservation date to about 500 A.D.

The sad and shameful history of the United States' treatment of the Gila Bend Indian Reservation and its members is well documented in the House Report accompanying the Lands Replacement Act, H.R. Rep. 99–851 (September 19, 1986). In 1909, by Executive Order, the United States cut the Gila Bend reservation nearly in half and deprived the nation's members of access to much of their fertile agricultural lands in the Gila River basin. *Id.* at 4. Despite these setbacks, the nation's members persevered, maintaining, in the words of a 1949 Department of the Interior report, a "precarious livelihood from subsistence farming, small cattle enterprises, woodcutting, and increasingly from seasonal off-reservation employment at low wages." *Id.* The Department's report, the "Papago Development Program," recommended the development of irrigated agriculture for the nation's members, including 1,200 acres for the nations' Gila Bend Reservation. *Id.* Instead of seeing these plans come to fruition, the Secretary of the Interior signed a letter to the U.S. Corps of Engineers expressing no objection to the Corps' proposal to construct the Painted Rock Dam on the Gila River to provide flood protection for nearby non-Indian agricultural operations. The Secretary's letter failed to make any mention of the Gila Bend Reservation or the dam's potential effect on the reservation. *Id.* Less than a year following the forgotten Papago Development Program report, Congress enacted the Flood Control Act, Pub. L. 81–516, 64 Stat. 176 (1950), authorizing the construction of the Painted Rock dam. *Id.* As Congress and the Department of the Interior later recognized, the Flood Control Act of 1950 *did not* authorize the flooding or condemnation of the nation's lands.

Nevertheless, in the 1950s, the U.S. Army Corps of Engineers began construction of the Painted Rock Dam 10 miles downstream from the Gila Bend Indian Reservation. Construction was completed in 1960. Despite the Bureau of Indian Affairs' and the Corps' repeated promises that periodic flooding caused by the dam would not harm the nation's agricultural use of its reservation lands, and despite a 1963 U.S. Geological Survey report asserting that the long range effects of flooding would be "unimportant," the Gila Bend Indian Reservation sustained almost continual flooding throughout the late 1970s and early 1980s. *Id,* at 5. Most of the nation's members living there had to be relocated to a small 40-acre village known as San Lucy. *Id.* The flooding caused pronounced economic hardship, destroying a 750-acre trib-

ally owned and operated farm that had been developed at tribal expense, and rendering the remaining acreage unusable for economic development. *Id.* at 5–6.

In 1982, pursuant to the Southern Arizona Water Rights Settlement Act (SAWRSA), Pub. L. No. 97–293, 97 Stat. 1274, Congress instructed the Secretary of the Interior to conduct studies to determine which of the nation's lands had been rendered unusable for agriculture. Congress also authorized the Secretary, with the consent of the nation, to exchange public domain lands for those reservation lands that had been ruined. H.R. Rep. No. 99–851 at 6. A study of the reservation lands carried out in 1983 under SAWRSA determined that the flooding had rendered almost the entire Gila Bend Indian Reservation, nearly 10,000 acres, unusable for either agriculture or livestock grazing purposes. *Id.* A later 1986 study to identify replacement lands within a 100-mile radius of the reservation concluded that *none* of the sites identified were suitable replacement lands, from either a lands and water resources or a socio-economic standpoint. *Id.*

The destruction of nearly 10,000 acres of the nation's lands gave rise to a number of land and water rights claims against the United States. The House Report accompanying the Lands Replacement Act detailed some of these claims:

The tribe has pursued a legislative remedy to its urgent dilemma at Gila Bend rather than litigation on a variety of potential legal claims against the United States. Such actions could include claims for the taking of tribal trust lands by condemnation without express authority from Congress; for payment of unjust compensation for the flowage easement; for damages to their land and water resources resulting from construction of both Painted Rock Dam and Gillespie Dam and other dams upstream; and for breach of trust for failure to prosecute claims against third parties for damages to their land and water resources.

H.R. Rep. No 99–851 at 7. Congress also recognized that the nation's water rights claims to the surface and underground flow of the Gila River comprised a significant component of these claims that could amount to more than 30,000 acre-feet with an 1882 priority date, and that damage claims against the United States and third parties could be in excess of $100,000,000 (in 1986 dollars). *Id.* at 6–7. Indeed, the following year, the United States filed a claim in the Gila River Stream Adjudication on behalf of the nation and its destroyed Gila Bend Indian Reservation for nearly 36,000 acre-feet of water. *See Statement of Claimant United States on Behalf of the Gila Bend Indian Reservation, Tohono O'odham Nation,* No. 39–35090 (January 20, 1987).

The United States was unable to redress the harm to the nation by providing replacement lands for agriculture. So, in 1986, more than a quarter century after the dam was built, Congress created an alternative settlement mechanism to address the wrong done to our people and to settle our claims against the Federal Government. That was the origin of the Gila Bend Indian Reservation Lands Replacement Act.

The House Committee considering enactment of the Lands Replacement Act concluded that the nation had a reservation "which for all practical purposes cannot be used to provide any kind of sustaining economy. Significant opportunities for employment or economic development in the town of Gila Bend . . . simply do not exist." H.R. Rep. No. 99–851 at 7. As a result, Congress explicitly directed the Secretary of the Interior in the Lands Replacement Act to accept into trust the same number of acres that had been taken from us, and explicitly contemplated that the lands would be for non-agricultural development. Congress specifically stated in the Act that the intent was to "facilitate replacement of reservation lands with *lands suitable for sustained economic use which is not principally farming.*" Pub. L. 99–503, sec. 2(4); *see also* H.R. Rep. No. 99–851 at 9.

The Lands Replacement Act provides funds for land acquisition, and if certain requirements are met, it directs the Secretary to accept into trust up to 9,880 acres of replacement land within the three counties (Pima, Pinal, and Maricopa) in which our other reservation lands are located. Pub. L. 99–503, sec. 6(c) and (d). The lands may not be incorporated into any city or town. Also, the lands must consist of no more than three areas of contiguous tracts, including one area contiguous to San Lucy Village, unless the Secretary waives this requirement. Pub. L. 99–503, sec. 6(d). If these statutory requirements are met, then, at the request of the nation, the Secretary of the Interior must accept the lands in trust and the lands thereafter will be "deemed to be a Federal Indian Reservation *for all purposes.*" Pub. L. 99–503, sec. 6(d).

Section 4(a) of the Lands Replacement Act required the Secretary to pay the nation $30 million in three installments of $10 million if the nation agreed to assign to the United States "all right, title and interest" to 9,880 acres of its land within the Gila Bend Indian Reservation. The act also required the nation to execute a waiver and release of "any and all claims of water rights or injuries to land or water

rights with respect to all lands of the Gila Bend Indian Reservation from time immemorial to the date of the execution by the nation" of that waiver. Pub. L. 99–503, sec. 9(a). In October 1987, less than a year after enactment of the Lands Replacement Act, the nation executed an agreement that contained this waiver and release, as well as the nation's assignment of all right, title, and interest to the Gila Bend Indian Reservation.

In short, Congress: (i) enacted the Lands Replacement Act to compensate the nation fairly for the nearly 10,000 acres of its lands that were lost due to the flooding caused by the Painted Rock Dam, and to allow the nation to acquire replacement lands for economic development purposes that were not principally farming; and (ii) required in exchange that the nation transfer property and rights to the United States and release the nation's claims against the United States, both of which the nation did years ago.

QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE PAUL A. GOSAR

QUESTIONS SUBMITTED FOR THE RECORD TO THE HONORABLE NED NORRIS, JR.

Question. You testified that the State of Arizona and other tribes were aware that the Tohono O'odham Nation may purchase lands within the "Phoenix Metropolitan Area" (as that term is defined in H.R. 1410) pursuant to the 1986 Gila Bend Act during the negotiations of the model compact and Proposition 202. If that was the case, why did the Tohono O'odham Nation wait approximately seven years before having the Glendale lands transferred to you and informing the other tribes of your acquisition? Why not have the lands transferred to you in 2004 and inform the other tribes at that time? Did Tohono purposefully wait to ensure that the applicable statute of limitations within which to challenge the compact approval would have elapsed?

Answer. The planning and due diligence associated with the filing of an application for trust acquisition are both time-consuming and resource-intensive. The same is true for tribal gaming facility projects. In this case, the nation took great care in conducting due diligence and preparing its application for the trust acquisition of its West Valley property to ensure that the property met the requirements of the nation's land claim settlement act (the Gila Bend Indian Reservation Lands Replacement Act, Pub. L. 99–503), the nation's tribal-State gaming compact with the State of Arizona, and the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* (IGRA). A long string of administrative and Federal court decisions have now rejected opponents' arguments that the nation's West Valley property may not legally be acquired in trust and that gaming on the property would violate the law or the tribal-State compact. These decisions demonstrate the wisdom of the nation's thorough due diligence and preparation.

The nation does not understand what you mean by your reference to the applicable statute of limitations within which to challenge the compact approval, but notes that no claim raised in the legal proceedings to date has been barred by any statute of limitations. Moreover, the timing of the nation's filing of its trust application had nothing to do with any statute of limitations or other time period for challenging the approval of the nation's tribal-State gaming compact.

Question. Has the Tohono O'odham Nation, either directly or indirectly, purchased or set aside funds for the purchase of any additional lands (other than the 54 acre parcel near Glendale) within the Phoenix Metropolitan Area (as that term is defined in H.R. 1410)?

Answer. It is commonplace for tribes in Arizona and across the country to own property outside of their existing reservation boundaries. Indeed, an online search of public real estate records reveals numerous parcels of property in the Phoenix Metropolitan Area (as defined in H.R. 1410) are owned in fee by various tribes (including the Gila River Indian Community and Salt River Pima-Maricopa Indian Community), some of which have existing reservation lands in this area and some of which do not. The nation is no exception. The nation's Economic Development Authority currently owns land in the town of Queen Creek, which is located within the Phoenix Metropolitan Area as defined in H.R. 1410, but that property is not eligible to be acquired in trust under the nation's settlement act and could not be eligible for gaming. The nation's West Valley property is the only real property owned by the nation (directly or indirectly) in the Phoenix Metropolitan Area (as defined in H.R. 1410) that meets the requirements of the nation's settlement act and, therefore, would be eligible for gaming. As the Subcommittee is aware, the nation's West Valley property comprises 134 contiguous acres, 54 of which are referenced in the above question. Other than as noted above, the nation does not own, directly or indi-

rectly, any parcel of real property in the Phoenix Metropolitan Area as defined in H.R. 1410, nor has the nation, directly or indirectly, set aside funds for the purchase of such land.

Question. Is the 54 acre parcel of land within the former reservation boundaries of the Tohono O'odham Nation or any other tribe?

Answer. The nation's West Valley property, like its destroyed Gila Bend Indian Reservation, is located on the historical lands of the Hohokam, the ancestors of the nation, the Gila River Indian Community, the Salt River Pima-Maricopa Indian Community, and the Ak Chin Indian Community. Despite their opposition to the nation's project, both the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community have publicly acknowledged this. Although the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community claim that the nation's West Valley property is within their aboriginal territory, under these circumstances, the concept of "aboriginal lands" is of limited value among tribes with a shared history. For example, the nation's Gila Bend Indian Reservation also was located within what the Gila River Indian Community and the Salt River Pima-Maricopa Indian Community claim are "their" aboriginal lands.

As part of the nation's settlement with the Federal Government under the Gila Bend Indian Reservation Lands Replacement Act, the nation gave up all right, title, and interest to 9,880 acres of its flooded and destroyed reservation land. The nation thus necessarily had to acquire replacement lands outside the boundaries of its former reservation. In accordance with Congress' explicit instructions for replacement lands, the nation acquired its West Valley property in Maricopa County, the same county in which the Nation's destroyed Gila Bend Indian Reservation was located. As to whether the nation's West Valley property is located within the former reservation boundaries of any other tribes, the nation defers to the Department of the Interior, to which the Committee has posed a similar question.

Question. In your testimony, you state "the nation negotiated [the tribal-State gaming compact] in good faith." Why won't the nation waive their "sovereign immunity" so that the internal conversations, during the negotiations of the compact and during your efforts to convince the Arizona voters to support Prop 202, can be considered as part of evidence to resolve this issue either legally or via the legislative process? The failure to do so implies to this body that the nation has something to hide.

Answer. As I have testified, the claims that the nation's opponents have used to justify this bill have been litigated and rejected by the district court on their merits. The nation has never contested that IGRA permits the State to bring suit against the nation to enjoin Class III gaming activity located on Indian lands and conducted in violation of any tribal-State compact that is in effect. The district court considered all of plaintiffs' arguments and evidence and *held on the merits—not on sovereign immunity grounds—that the nation's land was eligible for gaming under IGRA.* And the district court *held, on the merits—not on sovereign immunity grounds—that the tribal-State gaming compact does not bar the nation from gaming in the Phoenix area.*

The nation takes allegations concerning its integrity very seriously. Far from "hiding something," the nation has, as part of the court process, willingly participated in extensive, expensive, and time-consuming discovery lasting well over a year, including producing more than 130,000 pages of documents and permitting plaintiffs to depose every witness they sought—20 in all. The district court examined every bit of plaintiffs' evidence gleaned in discovery, including thousands of pages of the "internal conversations" referenced in the above question, construed this evidence in the light most favorable to plaintiffs, and still concluded that plaintiffs' interpretation of the compact is "entirely unreasonable." And the court also concluded, after reviewing all of that evidence, that there was no way that an agreement not to game in Phoenix would naturally have been omitted from the compact. None of these conclusions were based in any way on the nation's sovereign immunity. The nation's transparency has been amply demonstrated time and time again in this process and time and time again, the nation's actions have been vindicated.

The district court did hold that sovereign immunity barred plaintiffs' claim for promissory estoppel, because IGRA abrogates tribal sovereign immunity only for claims of breach of tribal-State compacts. By definition, promissory estoppel seeks to enforce a promise made *in the absence* of a contract. For that reason, plaintiffs' promissory estoppel claim could not have succeeded on the merits in any event. The district court also dismissed plaintiffs' extracontractual fraudulent inducement and material misrepresentation claims as falling outside the scope of IGRA. But none of those holdings in any way limited the scope of discovery or prevented the court from considering *all* the evidence that plaintiffs sought to introduce, before holding that the parties' agreement did not bar the nation from gaming in Phoenix. Rather,

the district court's decision clearly shows that the motivation behind the plaintiffs' claims is the same as the motivation underlying H.R. 1410—a cynical attempt to protect the interests of a few wealthy tribes.

Mr. YOUNG. Thank you, sir.

And now we will have Ms. Diane Enos, President of Salt River Pima Indian Community.

STATEMENT OF DIANE ENOS, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

Ms. ENOS. Mr. Chairman and members of the Committee, thank you for the opportunity to testify in support of H.R. 1410.

Again, in 1960, Justice Hugo Black reminded us all "Great nations like great, men should keep their word." With that solemn reminder in mind, I ask the Committee to focus on three things today.

First, in 2002, 17 Arizona tribes agreed upon a gaming compact largely built around the demand of the Arizona Governor: no expansion of gaming, no additional casinos in the Phoenix metro area until the compacts expire.

Second, during compact negotiations, Tohono leadership and its representatives repeatedly promised that their fourth unbuilt casino would be in the Tucson market or in a rural location. Tohono hid its efforts to buy land in the City of Glendale until 2009.

Third, the court has not resolved all claims regarding the proper interpretation of the compact, and other claims based on fraud and misrepresentation have been dismissed not on the merits, but because Tohono raised sovereign immunity.

In 2011, this Subcommittee held a hearing on H.R. 2938, a bill that sought to address the same concerns we bring today. While the genesis of both bills is the same, we believe that the bill before you today is improved. This bill simply reaffirms the agreement of all Arizona tribes reached with the voters of our State that there would be no additional casinos in the Phoenix metro area and only one additional casino in the Tucson area. This bill also applies to Salt River.

Each Phoenix metro tribe gave up the rights to one unbuilt casino in order to secure the State's support for all tribes. Tohono would not give up its claim to a fourth casino. After the Governor and all 17 tribes agreed on the compact, we took it to the voters for approval through Proposition 202.

It should be understood that the proposed gaming land is ancestral to the Pima in Maricopa, not Tohono, and is located about 100 miles from Tohono's government center. If you look at your monitors, you will see that the proposed casino would be within a dense residential area and directly across the street from Kellis High School attended by 963 students.

Tohono's proposal twists the law to make the 100-mile journey. Senator John McCain said in response to a question about this proposal that when drafting IGRA he did not envision casinos off reservation. He said, "So now we have case after case of Indian tribes parachuting into metropolitan areas and buying up land in metropolitan areas and setting up casinos. That was not the intent of IGRA."

The 1986 Gila Bend Act did not contemplate the construction of multiple casinos in the Phoenix metro area. Tohono now claims that it can do so without State or local government input, despite widespread opposition. Who would not understand why a city would oppose a casino directly across from a high school?

The uncomfortable truth is that Tohono's actions were intentionally hidden from public view. Documents reveal that Tohono was actively searching for casino land in west Phoenix during the Proposition 202 negotiations using a Delaware shell corporation to hide the true ownership of the land and worked to keep its plan secret from the State and the 16 other tribes until it filed its land inter-trust application in January of 2009.

Chairman Norris would have you believe that the Governor and the 16 tribes knew about Tohono's secret plans for a Phoenix casino and essentially lied to the voters. That is patently false.

Finally, we are here today because we have no other venue to find relief. The courts cannot hear our claims of deception and fraud. Congress is the only entity that can provide justice.

In response to our legal challenge, Tohono continues to shield its conduct from scrutiny by asserting its sovereign immunity. On that basis alone, the court has dismissed our three claims of fraud, misrepresentation, and promissory estoppel. These claims are directed to Tohono's secret conduct, all of which would be addressed by H.R. 1410. In fact, the court recently noted that "the evidence would appear to support a claim for promissory estoppel" but for Tohono's claim of sovereign immunity.

While we respect their political decision to assert sovereign immunity, Congress does not have to sanction the conduct of Tohono and should act to preserve Arizona Indian gaming.

I am not here alone today. Many tribes oppose what Tohono is trying to do with all reservation gaming. With me today are elected leaders of the Cocopah Tribe, the Hualapai Tribe, Fort McDowell Yavapai Nation, Gila River Indian Community, and the Pueblo of Zuni.

Thank you. I look forward to answering any questions that you may have, and I respectfully ask that my statements be put into the record.

[The prepared statement of Ms. Enos follows:]

PREPARED STATEMENT OF DIANE ENOS, PRESIDENT, SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY

H.R. 1410—"THE KEEP THE PROMISE ACT"

In 1960, Justice Hugo Black reminded us all that, "Great nations, like great men, should keep their word".

EXECUTIVE SUMMARY

The Salt River Pima Maricopa Indian Community ("Community") would like to thank the bipartisan coalition of Members, Representative Franks along with Representatives Gosar, Salmon, Schweikert, Kirkpatrick and Kildee for sponsoring this important legislation, H.R. 1410, the "Keep the Promise Act of 2013." We also want to thank Representative Pastor, long a champion of tribal rights in Arizona, for his co- sponsorship of this bill. This bill will protect the promises that the tribes of Arizona made to each other and the State and voters of Arizona and protects the current Indian gaming structure in Arizona. Specifically, the bill will prohibit any tribe from conducting gaming on lands acquired into trust after April 9, 2013 for the duration of the existing gaming compacts which begin to expire in 2026. Thus, the bill

does not target any one tribe and still allows for lands to go into trust status for tribes. But, the bill also ensures that the commitments and statements relied upon during the gaming compact negotiations are protected for the term of the existing compacts.

While the need for this bill is necessitated by the current actions of one tribe, it will prevent any other tribes, including my own tribe, from trying to renege on the commitments and promises relied upon by the voters when they authorized tribes in Arizona to conduct Las Vegas-style gaming in 2002.

In the current instance, the Tohono O'odham Nation ("Tohono O'odham" or "Tohono") is trying to utilize a 1986 law to acquire lands more than 100 miles from its seat of government, outside its aboriginal territory and within my tribe's former reservation boundaries, in our aboriginal lands to develop a casino. This land is located across the street from Kellis high school in the City of Glendale, one of the Phoenix suburbs. This action by the Tohono O'odham directly contradicts commitments and statements it made, and which were relied upon by others, that there would be no additional casinos built in the Phoenix metropolitan area if the voters approved tribes continuing to conduct Las Vegas-style gaming in the State.

The current actions of Tohono O'odham also contradict long-term statements that they and all other tribes have consistently made to the Governor and State Legislature that there could not be off-reservation gaming in Arizona without the Governor's consent. The State of Arizona and Arizona voters have always worried about tribes trying to develop casinos off their existing reservations and in neighborhoods. To allay these concerns, tribes in Arizona have consistently said that they would not develop casinos off their reservations without the State's approval. The initial gaming compacts in Arizona were developed in 1992–1993 based on statements and agreements that the tribes would not seek to conduct off-reservation gaming without first obtaining the consent of the Governor. When the voters re-approved tribes conducting Las Vegas-style gaming in 2002, they did so based on promises and statements by tribal leaders that casinos would be kept out of neighborhoods and that the number of casinos in the metropolitan areas would be limited.

Tohono O'odham is now asking that the Secretary of the Interior take a 53 acre site within the City of Glendale, Arizona into trust status for the purpose of developing a Las Vegas-style casino. Tohono argues that the 1986 law mandates the Secretary to do so, and to do so without any consultation with the local communities, the State, or other American Indian tribes in Arizona despite the promises that it made to the State of Arizona and other tribes. While the Secretary of the Interior has not yet opined on whether these lands would be eligible for gaming, he has issued a decision to take the lands into trust status, although the action has not yet occurred.

On this point, we have met with the Department of Interior ("Department") to discuss our concerns. The Department has indicated its belief that it has a trust responsibility to Tohono O'odham to allow them to take the land into trust. We want to stress the similar trust responsibilities that exist between the Department and all of the other tribes in Arizona who depend on the revenue sharing streams that exist under the current compacts and gaming framework in Arizona. This trust responsibility cannot be trumped by the concerns of a single tribe wanting to build a casino across the street from a public high school. The responsibilities that the Department has to the other tribes and to sound public policy for all citizens of Arizona cannot be dismissed so lightly. While we recognize the Department may have a trust responsibility to take lands into trust for Tohono O'odham, we do not believe the Department has any such responsibility with respect to the use of Glendale lands for gaming, particularly to the detriment of other tribes to whom the Department also has a trust responsibility, consistent with the 2002 Compact.

In addition to seeking to sidestep the limits of the Indian Gaming Regulatory Act, the efforts of Tohono O'odham also jeopardize a well-balanced system of gaming in Arizona. The State of Arizona is unique in that it has a system of gaming that was jointly negotiated amongst the tribes and the State, and then approved by the citizens of Arizona in a State-wide referendum. The Arizona system prohibits any additional casinos in the Phoenix metropolitan area, but allows Tohono O'odham to develop a fourth casino (it currently operates three successful casinos) in the Tucson metropolitan area, where it has historically been located.

Tohono O'odham, along with 16 other tribes, financially and publicly supported the development of the current gaming system in Arizona. However, unbeknownst to the other tribes, the State and the voters of Arizona, Tohono was entering into a confidential agreement with a realtor to buy land in the Phoenix area for a casino at the same time that it was advertising to the voters and other tribes that there would be no new casinos in the Phoenix area.

Eleven American Indian tribes in Arizona and New Mexico oppose the efforts of Tohono O'odham to develop a casino in the Phoenix metropolitan area; as does the Governor of Arizona and the cities of Glendale, Tempe Scottsdale and many others.

The State of Arizona and the voters of Arizona never intended this type of situation to occur when the gaming compacts were written and approved in a State-wide referendum. H.R. 1410 would bring some common sense to this situation and clarify that no tribe may conduct gaming on lands taken into trust after April 9, 2013, as was promised by the Arizona tribes. H.R. 1410 would not make amendments to any Federal law. The bill would not take any lands away from Tohono O'odham, nor will it prevent any lands from going into trust status. The bill will merely prohibit any tribes from breaking the promises made to voters—"no additional casinos in the Phoenix metropolitan area"—and it will protect the Arizona Indian gaming and State revenue structure.

I. Efforts During the 112th Congress To Protect the Structure of Gaming in Arizona

In 2011, the Subcommittee on Indian and Alaska Native Affairs held a hearing on H.R. 2938, a bill that sought to address the same concerns we bring to you today. While the intent of that legislation remains as the basis of the bill before you this year, we believe that the Keep the Promise Act is improved and we hope that it too can be passed with similarly overwhelming bipartisan support.

Where H.R. 2938 imposed limitations on one tribe, the Tohono O'odham Nation, and the underlying law being exploited in support of its request to be able to game in Glendale, this bill simply seeks to reaffirm, through Federal law, the promise of "no additional casinos in the Phoenix metropolitan area." H.R. 1410 does not attempt to amend any existing statute, but rather holds each of the signatory tribes of the 2002 compact to the terms agreed upon at that time.

II. H.R. 1410

As its title makes clear, H.R. 1410 keeps the promises that the tribes of Arizona made to the State of Arizona and the voters of Arizona that there would be no additional casinos for the duration of the negotiated and voter approved tribal-State gaming compacts. H.R. 1410 is a simple bill that merely ratifies the agreement that the State and tribes of Arizona reached when they established a limited structure of Indian gaming in Arizona. This bill does not amend Federal law, target any specific tribe, or prevent Tohono O'odham from placing lands into trust. H.R. 1410 is limited in geographic scope to the Phoenix metropolitan area, is limited in temporal scope and applies only until the expiration of the current compacts, and applies uniformly to all Arizona tribes.

H.R. 1410 recognizes tribal sovereignty by affirming what tribal sovereigns committed to each other and does not create negative precedent for Indian Country. H.R. 1410 merely ensures that the tribes of Arizona keep the promise that we made to the State of Arizona and the voters of Arizona that there would be no additional casinos in the Phoenix area throughout the duration of the existing gaming compacts which begin to expire in 2026. After that time, all interested parties within Arizona can negotiate what gaming scheme should exist in the State. In fact, this type of clarifying legislation is extremely common in Indian Country. Congress routinely includes various restrictions on legislation involving Indian land, particularly gaming. For instance, it is not unusual for Congress to revisit existing statutes to clarify the party's intent, so long as the legislation is narrowly tailored.[1] This is a proper and necessary role for Congress.

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[1] *See e.g.,* the Rhode Island Indian Claims Settlement Act, ratifying an agreement between the State of Rhode Island and the Narrangansett Tribe, and settling the Tribe's land claims, was enacted in 1978 *without* a provision regarding gaming. 25 U.S.C. § 1701 *et seq.* Congress subsequently amended the Rhode Island Indian Claims Settlement in 1996 to explicitly prohibit gaming pursuant to IGRA. *See* 25 U.S.C. § 1708(b) ("For purposes of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), settlement lands shall not be treated as Indian lands"). S*ee also,* the Colorado River Indian Reservation Boundary Correction Act, to clarify or rectify the boundary of the Tribe's reservation while also including a provision prohibiting gaming ("Land taken into trust under this Act shall neither be considered to have been taken into trust for gaming nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.)"), Pub. L. 109–47 (Aug. 2, 2005); Congress passed legislation to waive application of the Indian Self-Determination and Education Assistance Act to a parcel of land that had been deeded to the Siletz Tribe and Grand Ronde Tribe in 2002 but also included a gaming prohibition provision ("Class II gaming and Class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not be conducted on the parcel described in subsection (a)") Pub. L. 110–78 (Aug. 13, 2007); Congress clarified the Mashantucket Pequot Settlement Fund, 25 U.S.C. § 1757a to provide for extension of leases of the Tribe's land but provided that "No entity may conduct any gaming activity (within the meaning of section 4 of the Indian Gam-

This continues to be a consistent practice of Congress. In the 112th Congress, Congressman Grijalva introduced the Cocopah Lands Act (H.R. 1991), a bill to transfer land in trust to the Cocopah Tribe and included a provision restricting gaming. ("Land taken intro trust for the benefit of the tribe under this act shall not be used for gaming under the Indian Gaming Regulatory Act").

Accordingly, any arguments that the H.R. 1410 constitutes dangerous precedent are inconsistent with common Congressional practice.

The Community supports H.R. 1410 because it is narrow in scope, does not impact tribal sovereignty and is the simplest solution to this current threat to Indian gaming in Arizona. This legislation makes express what had been the common understanding of the parties that negotiated the existing gaming compacts in Arizona.

III. H.R. 1410 Recognizes and Supports Tribal Sovereignty

The Salt River Pima-Maricopa Indian Community, along with the 10 other tribes who oppose Tohono O'odham's reservation-shopping efforts, know firsthand the importance of tribal sovereignty. As federally recognized tribes, we fight on a daily basis to protect tribal sovereignty and provide for our people. We would not support a bill that jeopardizes tribal sovereignty. Rather, we pride ourselves on working with our brethren on issues of common concern to Arizona tribes because it strengthens our collective sovereignty and helps us fulfill our responsibilities to our individual tribal communities.

We are here today in support of H.R. 1410 because in our view, H.R. 1410 explicitly recognizes and respects tribal sovereignty by upholding the commitments that we, including Tohono O'odham, all made during the compact process and that were memorialized through passage of Proposition 202.

To be clear, H.R. 1410 simply seeks to reaffirm that no additional casinos may be built in the Phoenix metropolitan area for the duration of the existing gaming compacts. As discussed above, this type of clarifying legislation is not uncommon in Indian Country. It is sometimes necessary for Congress to step in and clarify agreements to preserve the intent of the parties. This is a proper and necessary role for Congress.

Here, H.R. 1410 is narrowly tailored to maintain the status quo and sustain the carefully negotiated gaming structure, voted on by the citizens of Arizona. Without H.R. 1410, Tohono O'odham will proceed on its path to circumvent existing gaming restriction, both under Federal and State law, conduct gaming far from their existing reservation, and most importantly jeopardize the other Arizona tribes' existing rights under Federal law that we all share. As sovereign nations, we cannot simply stand by and watch someone, albeit another Arizona tribe, threaten our gaming rights and unravel the comprehensive and inter-connected gaming structure in Arizona. Accordingly, we urge passage of H.R. 1410 to uphold tribal sovereignty.

IV. The Promise of Limited Gaming in Arizona

We and many other Arizona tribes believe the existing tribal-State gaming compact to be the model in the Indian gaming industry. It is regulated at all levels of government (tribal, State, and Federal), is limited in both the number of gaming devices and locations, benefits both gaming and non-gaming tribes alike, benefits local municipalities and charities throughout the State, and is beneficial to the State of Arizona. But most importantly, the Citizens of Arizona benefit because the tribal-State gaming compacts were the direct result of a voter approved ballot initiative in 2002.

Today, the proposed casino development proposal by Tohono O'odham runs contrary to what the voters approved in 2002 and threatens the existing tribal-State gaming compacts. Prior to the passage of the voter approved ballot initiative (Prop 202) which culminated in the existing tribal-State gaming compacts, tribal leaders held extensive, hard negotiations on an acceptable framework for all tribes. Importantly, 16 tribal leaders, including Tohono O'odham, signed an Agreement in Principle (AIP) to make a good faith effort to maintain a collaborative relationship as to gaming matters and compact renegotiation.

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ing Regulatory Act (25 U.S.C. 2703)) pursuant to a claim of inherent authority or any Federal law (including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq) and any regulations promulgated by the Secretary of the Interior or the National Indian Gaming Commission pursuant to that Act) on any land that is leased with an option to renew the lease in accordance with this section."), Pub. L. 110–228 (May 8, 2008); Congress passed the Indian Pueblo Cultural Center Clarification Act which amended Public Law 95–232 to repeal the restriction on treating certain lands held in trust for the Indian Pueblos as Indian Country with the explicit clarification that although it was Indian Country it could not be used for gaming ("Gaming, as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.), shall be prohibited on land held in trust pursuant to subsection (b).") Pub. L. 111–354 (Jan. 4, 2011).

Specifically, the AIP stated that tribal leaders would make "Good Faith" efforts to share among themselves the details of compact renegotiations with the State of Arizona. Further, tribal leaders agreed to make "Good Faith" efforts to develop and maintain consistent positions and to notify other tribal leaders if they believed they could not abide by the AIP.

We negotiated in good faith with all Arizona tribes and the Governor of Arizona to craft a tribal-State gaming compact that preserved tribal exclusivity for casino gaming, allowed for larger casinos and machine allotments with the ability to expand machine allotments through transfer agreements with rural tribes, and that was intended to limit the number of casinos in the Phoenix metropolitan area. In order to reach a deal with the Governor of Arizona all tribes, including Tohono O'odham, had to agree that no more than seven casinos could be located in the Phoenix metropolitan area.

This meant that the Salt River Pima-Maricopa Indian Community and the three other Phoenix Metro tribes (Ak-Chin, Gila River & Fort McDowell) each had to give up their rights to build one additional casino. Tohono O'odham was aware of this concession on the part of other tribes and fully knew that this was a key deal point for the State of Arizona that needed to be made if negotiations were to move forward.

However, it is clear that Tohono O'odham began actively seeking to purchase land in the Phoenix area for the sole purpose of establishing a casino, prior to the conclusion of compact negotiations and ratification of the tribal-State compacts.

As a result, many Arizona tribes have opposed the actions of Tohono O'odham. Indeed, a chronology of events from the time of enactment of the original land settlement further clarify the intent of Congress, the State of Arizona and Indian tribes throughout the State.

1986 October 20—Congress adopted the Gila Bend Act. The Gila Bend Act authorized Tohono O'odham to purchase, and the Secretary to add Tohono O'odham's reservation, up to 9,880 acres of land in Maricopa, Pinal or Pima counties. Under the Act, purchased land may not be within the corporate limits of any city and may not be purchased in more than three parcels.

1988 October 17—Congress adopted the Indian Gaming Regulatory Act (IGRA). The Act authorized Tribes to conduct gaming, subject to requirements of the Act and the compact with the State. No provision grandfathering the Gila Bend Act was included in this act.

1994 April 25—The Arizona legislature intended to prohibit off-reservation casinos by adopting A.R.S. 5–601.C, which stated that the Governor of Arizona shall not concur in a so-called "two part determination" under IGRA regarding any proposed off-reservation casino. This State statute reflects Arizona's public policy towards off-reservation casinos.

1999—Compact negotiations began. Sixteen tribes, including Tohono O'odham, signed the AIP under which each tribe agreed to "make a good-faith effort to notify other tribal leaders if they believe that they cannot abide by this agreement or that they must take positions or actions inconsistent with those of the other tribal leaders."

2000 January 25—Tohono O'odham asked the Secretary of the Interior to waive the three parcel limit under Gila Bend Act, which was needed in order to seek an off-reservation casino.

2000 May 31—The Secretary approved Tohono O'odham's request, and allowed the Tohono to buy and transfer in trust 9,880 acres in up to five parcels instead of three.

2002 February 20—State and Arizona tribes reach agreement-in-principle on proposed new compact. The new compact would require that each Phoenix metro tribe (Gila River, Fort McDowell, Salt River, and Ak-Chin) give up its right under the then-existing compacts to operate one additional casino, so there would be no more than seven casinos in Phoenix metro area. (In 2002 there were only seven casinos in operation in the Phoenix metro area). After the agreement's announcement, the 17 tribes and the Arizona Indian Gaming Association (AIGA) began efforts to get the Arizona legislature to approve the agreement. Governor Hull issued a News Release stating the "Major points in the [negotiated] agreement include . . . Number of casinos . . . No additional casinos allowed in the Phoenix metropolitan area and one additional casino in the Tucson area."

2002 April 8—David LaSarte, AIGA Executive Director, testified before the Arizona legislature that one of the "most important items within the agreement include[s] the limitation of facilities in the Phoenix-metro area to the current number and allows the possibility for only one additional facility in Tucson."

The legislature failed to adopt the compact. As a result, the 17 tribes and AIGA began their political campaign seeking Arizona voter approval of the negotiated

compact in Prop 202. AIGA published a campaign pamphlet for voters entitled "Answers to Common Questions," with "major funding" provided by Tohono O'odham and three other tribes. Tohono O'odham contributed approximately $1.8 million in support of the campaign and was listed as a supporter of the Prop 202 campaign materials. The voter pamphlet sponsored in part by Tohono O'odham stated:

> "*Question.* Does Prop 202 limit the number of tribal casinos in Arizona? Answer. Yes. In fact, Prop 202 reduces the number of authorized gaming facilities on tribal land, and limits the number and proximity of facilities each tribe may operate. Under Prop 202, there will be no additional facilities authorized in Phoenix, and only one additional facility permitted in Tucson."

The Secretary of State's official Voter Guide for the November 5, 2002 General Election provided arguments for and against adoption of Proposition 202. Governor Hull argued for adoption of Proposition 202, stating:

"Voting 'yes' on Proposition 202 ensures that no new casinos will be built in the Phoenix metropolitan area and only one in the Tucson area for at least 23 years. Proposition 202 keeps gaming on Indian Reservations and does not allow it to move into our neighborhoods."

Attorney General Napolitano argued for adoption of Proposition 202, stating: "Most Arizonans believe casino gaming should be limited to reservations. I agree. . . . [Prop 202] also prevents the introduction of casino gaming, such as slot machines, by private operators into our neighborhoods."

2002 March 11—Tohono O'odham signed a "Confidentiality and Non-Circumvention Agreement" with a realtor (Mr. Amavisca) to buy land for a casino in Maricopa County. In deposition, the realtor testified that Tohono O'odham "did not want outside parties knowing they were interested in land along the interstate . . . for a gas station, cigar store, possible casino. . . . It was my understanding that a casino going in may get negative feedback in the area." Also in deposition, the Business/Finance Manager for a Nation—owned corporation (Mr. Chaston) testified that the purpose of the realtor's Confidentiality Agreement was that Tohono O'odham was "trying to keep the seller from knowing who the ultimate buyer is." He also confirmed that the realtor was retained by Tohono O'odham to find land for a possible "gaming facility" and "that was the original reason to have Mr. Amavisca looking for us."

2002 September 25—According to an Arizona Department of Gaming (ADOG) Memorandum by Mr. Rick Pyper dated October 2, 2002, a Town Hall Meeting was held in Tucson moderated by a representative from Governor Hull's office. The purpose of the Meeting was to discuss the pros and cons of the gaming propositions on the ballot. According to the ADOG Memorandum, Mr. Ned Norris represented the Tohono O'odham Nation and spoke against Prop 201, the competing proposition authored by the Colorado River Indian Tribes: "Mr. Norris said that 201 will open gaming into cities and that the citizens of Arizona have, repeatedly over the years, expressed their desire to keep gaming on the reservation."

2002 November 5—Arizona voters approved ballot initiative Proposition 202. Between November 1999 and December 2002, AIGA and Arizona tribes met privately over 85 times on compact negotiations and the voter campaign. During the same period, AIGA tribes had over 35 meetings with the State regarding compact negotiations and the voter campaign.

2002 November 6—An Article published by the Tucson Citizen reported that Prop 202 was approved by the voters. Tohono O'odham Nation Chairman at the time, Edward Manuel, who signed the 1999 AIP among tribes, was quoted as saying: "To us, this is a major victory. We stayed together. We stayed united. We will try to keep working on that to keep the unity together."

2002 December 4—One month after voters approved Proposition 202 Tohono O'odham signed its Proposition 202 compact.

2003 March 12—Three months later Tohono O'odham created a Delaware corporation in order to secretly buy land for a Phoenix metropolitan casino.

2003 August 21—Tohono O'odham's secret Delaware Corporation bought the Glendale land, located in the Phoenix metro area, for a casino.

2009 January—Tohono O'odham applied to Secretary to have the Glendale land added to Tohono O'odham's land base. In fact, Tohono O'odham told officials at the Department of the Interior that no Arizona tribes objected to this project when it submitted the application. This is not a true statement.

2009—Upon hearing of Tohono O'odham's plan to open a casino in the Phoenix metro area many Arizona tribes passed resolutions opposing the plans. These tribes included the Ak-Chin Indian Community, Fort McDowell Yavapai Nation, Gila

River Indian Community, San Carlos Apache Tribe, Tonto Apache Tribe, White Mountain Apache Tribe and Yavapai-Apache Nation. The reasons given by all these tribes is that Tohono's plans violated the promises made to Arizona voters in Prop 202 and threatened tribes' exclusive right to operate casinos in the State.

2011 April 29—The member tribes of AIGA passed a formal resolution to reaffirm AIGA's Proposition 202 promises.

2011 June 29—Tohono O'odham filed Answer in Federal court to a complaint filed by the State of Arizona in *State of Arizona* v. *Tohhono O'odham Nation.* In its Answer, Tohono O'odham admitted that, in the midst of the Prop 202 campaign conducted by the 17 tribes including Tohono O'odham—a campaign for approval of a compact that would require other tribes to limit casinos in the Phoenix metro area—Tohono O'odham was concurrently trying to buy Phoenix metro land for a casino. Tohono O'odham also admitted that various parties "characterized the provisions of Proposition 202 requiring most tribes to give up the right to one gaming facility as 'no additional facilities authorized in Phoenix, and only one additional facility permitted in Tucson' and that Tohono O'odham did not contradict those statements." Tohono O'odham admitted "that it participated in the negotiations that led to Proposition 202, supported Proposition 202, and entered into a new compact in 2002 after the voters approved Proposition 202." Finally, Tohono O'odham admitted "that in 2002 it was considering the possibility of acquiring property in the Phoenix metropolitan area for gaming purposes; that it did not disclose that it was considering such an acquisition; and that it had no obligation to make such a disclosure" to other tribes, to the State, or to the voters.

Tellingly Chairman Norris has not denied, because he could not, that the 17 tribe coalition had made promises directly to the Arizona voters that there would be no additional casinos in the Phoenix metropolitan area. When confronted, his response to some of these tribes was, "those are just words on a publicity pamphlet."

Arizona tribes overwhelmingly agree that the collaborative approach to crafting the current tribal-State compact has been a great benefit to tribal communities, local communities—such as our neighbors, the Cities of Tempe and Scottsdale, charities for the State, and the people of Arizona.

However, not then and certainly not now, did we expect to be here today to say that one of our sister tribes did not act in "good faith". However, the record is clear there were ongoing efforts by Tohono O'odham government to purchase land, have it taken into trust status and develop a casino.

It is not an easy thing to stand here and talk about a lack of "good faith", and we do so reluctantly. However, we act today so that in future years, we will not have to look back and say to all, that "we should have done something."

V. The Tohono O'odham Nation's Deceit is Calculated To Break Promises Made to the State of Arizona and the Voters of Arizona and Prop Up Their Thriving Gaming Enterprise

Tohono O'odham's actions constitute the deliberate effort of one tribe to use deception and sovereign immunity as political tools to make and break promises for pecuniary benefit. The Tohono O'odham Nation already has very successful gaming enterprise. Tohono O'odham maintains two casinos in the Tucson metropolitan area and an additional casino in why, Arizona. Additionally, under the current gaming Compact, Tohono O'odham is allowed to develop a fourth casino on their existing reservation lands, including in the Tucson metropolitan area. H.R. 1410 would not impact the tribe's existing three casinos or impact its ability to develop a fourth casino on its existing reservation or on its aboriginal lands.

Tohono O'odham's success in gaming goes back to early 1992, when the State of Arizona and certain Arizona tribes, including Tohono O'odham were at a standoff regarding Indian gaming in the State. To overcome legal challenges and political opposition, the tribes repeatedly made statements that no gaming could occur outside of existing reservations without the concurrence of the Governor. During Federal District Court mediation with the State in 1993, Tohono O'odham submitted a document, "Comparison of Compact Proposals," which argued that the State of Arizona's insistence on compact provisions requiring the Governor's concurrence for any off-reservation gaming was unnecessary because "existing Federal law requires the Governor's concurrence. This is adequate protection to the State and local interests." Tohono O'odham Nation's Comparison of Compact Proposals at 11, No 93–0001 PHX (D. Ariz. Jan. 19, 1993). Tohono O'odham now claims that a legal loophole allows it to unilaterally pursue a casino off existing reservation lands without the concurrence of the Governor of Arizona or any input from any of the local communities.

Further, on June 8, 1993, tribal representatives met with staff for the State legislature and provided a handout entitled "After Acquired Lands," which stated that "[a]nother exception to the prohibition of gaming on after acquired lands is when

the lands are taken into trust as part of a settlement of a land claim. This will not effect [sic] Arizona because aboriginal land claims in Arizona have already been settled pursuant to the Indians Claims Commission Act of 1946." The handout was distributed on behalf of all tribes present, including Tohono O'odham. After State officials had received these assurances, the Governor of Arizona entered into gaming compacts with the tribes to allow tribal gaming in Arizona.

A 17-tribe coalition was formed in 1999 to negotiate new gaming agreements with the State. Leaders from each member of the tribal coalition, including then-Chairman Edward Manuel of Tohono O'odham, signed an Agreement in Principle (AIP), which required that each tribe act in "good-faith" and notify the other tribes if it could not abide by the agreement or must take "positions or actions inconsistent" with the other tribes. The tribal coalition ultimately agreed that the four Phoenix-metro tribes (Ak-Chin Indian Community, Fort McDowell Yavapai Nation, Gila River Indian Community and Salt River Pima-Maricopa Indian Community) would each reduce their authorized casinos by one so there would be no more than seven casinos (the existing number at the time) in the Phoenix metro area. One Tucson-metro area tribe (the Pascua Yaqui tribe), agreed to give up a right to an additional casino, while Tohono O'odham refused to reduce its four casino allotment (Tohono O'odham already had three operating casinos, two in Tucson and one in an rural area) claiming it needed to keep its rural facility to provide jobs in that area, and that it would put the unbuilt casino in the Tucson area or the rural part of its reservation. The Governor and other tribes agreed to allow Tohono O'odham to keep its fourth casino allotment based on these commitments. Tohono O'odham is now trying to place its unbuilt facility in the Phoenix metro area and could, if allowed, relocate any of its other existing facilities there.

The tribal coalition spent over $23 million on the campaign to pass Proposition 202, which would authorize the Governor to sign tribal-State gaming compacts. Tohono O'odham provided approximately $1.8 million. The campaign distributed a document entitled "Answers to Common Questions" stating that "[u]nder Proposition 202, there will be no additional facilities authorized in Phoenix, and only one additional facility permitted in Tucson." Although Tohono O'odham has admitted that its funds were used to publicize these promises to the voters of Arizona, it now claims that these were misstatements to which Tohono O'odham had no obligation (legal or otherwise) to correct. Tohono O'odham has also disclosed, despite the promises contained in the AIP and those made to the State and voters, that it was "considering the possibility of acquiring land in the Phoenix area for gaming purposes, that it did not disclose that it was considering such an acquisition, and that it had no obligation to make such a disclosure." It has now come to light that Tohono O'odham was indeed planning to acquire land for gaming in the Phoenix metro area as early as 2001 and eventually did so through a Tohono O'odham-owned Delaware corporation "in part to conceal its ownership" of the property.

Not only has Tohono O'odham manipulated Federal law and administrative policy to shoehorn a casino into a neighborhood against the wishes of local governments and its sister tribes, Tohono O'odham has also asserted, through its attorneys, its right to open all four of its authorized casinos in the Phoenix metropolitan area on land acquired under the Gila Bend Act. These brazen contentions demonstrate that Tohono O'odham intends to repeat its pattern of deception wherever advantageous, and will do so regardless of the promises made or the toll on all other Arizona tribes. This deliberate policy of deceit, which is calculated to avoid court review, leaves Congress as the only forum that can protect the promises made to the people of Arizona.

VI. Congress is the Only Institution That Can Provide Accountability on This Matter

Tohono O'odham's secretive and deceptive actions have resulted in litigation in the Federal courts from the District of Columbia to the State of Arizona and up to the Court of Appeals for the Ninth Circuit. Although these actions are still ongoing, Tohono O'odham made the calculated decision of using sovereign immunity as a shield to preclude review of its deceitful actions during the compact negotiations and Prop 202 campaigns of the early 2000's. While Tohono O'odham tells Members of Congress to let the court address this matter, in court, Tohono O'odham argues that the court does not have the jurisdiction to review its actions. Definitive action by Congress is therefore necessary to resolve, once and for all, the intent of the Arizona gaming compacts and more importantly, preserve the deal that was struck in 2002.

The State of Arizona filed a complaint in Federal court against Tohono O'odham in 2011 alleging that Tohono "had a secret plan at the time it was negotiating the Compact to build a gaming facility in the Phoenix metropolitan area . . ., notwithstanding its contrary representations" to the State and the public. These "represen-

tations induced the State to enter into the Compact, and the State would not have signed the Compact had it known of the Nation's plans." In another claim, the State alleged that the Nation "materially and fraudulently misrepresented that it had no plans . . . to open a gaming facility in the Phoenix metropolitan area," and that the "State's assent to the Compact was induced by the Nation's misrepresentations and intentional failures to disclose material facts." Several tribes support the State's allegations against TON.

The district court dismissed the fraud and misrepresentation claims not on the merits, but because Tohono O'odham asserted that it was protected by the doctrine of tribal sovereign immunity. Since Tohono O'odham has refused to waive its sovereign immunity with respect to these claims, the court was unable to consider them. On May 29, 2013, the court found that the evidence supported a claim for "promissory estoppel" against Tohono O'odham but that "such a claim is barred by [Tohono's] sovereign immunity. In dismissing the fraud in the inducement, material misrepresentation and promissory estoppel claims because of Tohono's sovereign immunity, the court noted that Congress only waived tribal sovereign immunity for claims arising from executed compacts. Therefore, the scope of this waiver does not include statements, commitments, and promises made prior to compact execution, which formed the basis of these deceit based claims against Tohono. While the commitment of the Arizona tribes not to build additional casinos in Phoenix was not written into the compact, that promise was the basis for Arizona's acceptance of the model compact and was an implicit tenet of the State's agreement to permit limited Class III gaming in Arizona. Congress is the appropriate entity to provide redress to the parties who relied on the statements made by the Arizona tribes. Because Tohono O'odham has refused to waive its sovereign immunity and the merits of those claims cannot be heard by a court.

While the Arizona tribal community, the State, and the co-sponsors of the bill would welcome a resolution that ensures that there would be no casino gaming in Glendale, or other attempts to game on lands removed from Tohono O'odham's current reservation in the Tucson area, one cannot simply turn a blind eye to the fact that Tohono O'odham's current proposal to game in Glendale is illegal and violates the agreement that Tohono O'odham made with other Arizona tribes, the State, and with Arizona voters in 2002. It is therefore particularly ironic that Tohono O'odham claims the trust responsibility would be violated by this measure when in reality, the trust responsibility is a further reason to enact H.R. 1410—without it, the self-interested economic desires of one tribe would be advanced to the detriment of every other gaming tribe in Arizona.

There are also important practical considerations that compel Congressional action now. Among them, taxpayers and other tribes in Arizona should not have to wait and continue to have to spend time and money to fight against the unfair and dubious actions by Tohono O'odham. The result is that this bill would clarify what everyone except Tohono O'odham understands, that the current Arizona gaming compacts were intended to prohibit the placement of an additional casino in Glendale Arizona, in an Arizona city, town or off-reservation setting.

While the co-sponsors of H.R. 1410 and the Arizona tribes who support it, must reluctantly be critical of Tohono O'odham's conduct here, it is hard to avoid the fact that Tohono has repeatedly thwarted the normal process for obtaining Federal approval of Indian gaming, and used sovereign immunity as a shield to prevent the review of claims against it for fraud in the inducement, material misrepresentation, and promissory estoppel. It is the merits of these claims that the Keep the Promise Act is seeking to address and Congress is the only institution that can provide accountability in this matter.

VII. Conclusion

The Salt River Pima Maricopa Indian Community urges Congress to pass H.R. 1410. It is needed to reaffirm the promise that the tribes of Arizona made to the State of Arizona and voters that there would be no additional casinos in the Phoenix metropolitan area for the duration of the existing compacts. The clarification does not interfere with Tohono O'odham's desire to have land taken into trust. It maintains the status quo in Arizona and does not adversely affect any tribe. Without this bill, the other Arizona tribes may suffer because the current gaming compact structure will certainly be compromised. We support this legislation.

Mr. YOUNG. I thank you again, Diane.

I ask unanimous consent that Mr. Schweikert be able to sit and participate.

Ms. Hanabusa, I think that is a good idea.

You are up.

Dr. GOSAR. Thank you, Mr. Chairman.

And first I would like to thank you for moving this bill forward, and I would also like to thank my friend, Congressman Franks, who introduced this bill last month, and I strongly believe that swift passage is critical to the future of gaming in my State.

My support for H.R. 1410 is not rooted in the opposition to one casino. I support Indian gaming and gaming as a whole. In fact, I am a member of the House Gaming Caucus and a group of congressional leaders focused on educating members on gaming related issues and working to identify key policy areas that can be advanced at a Federal level to enhance the economic impact of gaming around the country.

I simply believe gaming should be prohibited on the lands in Glendale at least through the life of the Arizona Compact. The key part of that compact was a tribal agreement, including the nation, that no casinos would be permitted in the metropolitan area for at least 23 years. The nation was very clear back when the compact was negotiated that if it operated a fourth casino, that casino would be located in rural Arizona, not metropolitan Phoenix.

H.R. 1410 simply upholds the compact by prohibiting gaming on lands taken into trust by the Secretary within the Phoenix Metropolitan Area until January 1, 2027. It is supported by six of the tribes that took part in the Proposition 202 agreement, the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Hualapai Tribe, the Pueblo Zuni, the Cocopah, and the Fort McDowell Yavapai Tribe.

I would like to submit an op-ed those tribes placed in the Arizona Republic, our State's largest newspaper, entitled "Tribal Leaders' Bill Would Safeguard Casinos Deal," for the record.

Mr. YOUNG. Without objection.

Dr. GOSAR. Additionally, I have letters of support from the Town of Fountain Hills, the City of Glendale, the City of Tempe, the Town of Gilbert, the City of Litchfield Park. These are all municipalities within the Phoenix Metropolitan Area concerned with the violation of the State compact.

Mr. Chairman, I ask that those letters also be included in the record.

Mr. YOUNG. Without objection.

[The article and letters of support submitted for the record by Dr. Gosar have been retained in the Committee's official files:]

Dr. GOSAR. One more comment before I get my questions. A government that is not accountable is no government at all. When we, and I think President Enos alluded to it, that the court's hands were tied when we claimed tribal immunity, and not to be able to fully disclose the underhanded dealings in which the tribe dealt with this, I find it offensive, not just on this level but on the tribal level, and I am one of the leading components of what we are seeing now in the U.S. Government.

I am also aware very truly about what the U.S. House's, a legislative body, jurisdiction and treaty obligation is, and so with that I will start my questions.

President Enos, the bill that does not prohibit the land from being taken into trust, what are your thoughts on that?

Ms. ENOS. My community and the other tribes, as far as I know, do not oppose the Federal Government taking land into trust for economic development purposes.

Dr. GOSAR. Now, I understand that non-gaming rural tribes are concerned about the proposal of off-reservation gaming proposal. What happens to them if this legislation does not pass?

Ms. ENOS. The Arizona Compact that the Governor entered into with all of us as tribes is a standard compact, and it provides for the transfer of machines for those tribes that have no market. For instance, Hualapai, who is here today, has no real market. So they get to transfer their machines to the tribes in the metro areas, Phoenix and Tucson.

Also, you have rural tribes. Because Arizona tribes have exclusivity for gaming in the State of Arizona, they get a share of the market that they would not otherwise have. Currently, the threats to Indian gaming in Arizona continue, and they have for several years with increasing pressure.

There is a bill that sits on the Speaker of the House in the State legislature, Speaker Tobin, which is a racino bill, which would provide slot machines to race tracks and other non-Indian entities. That is the threat that we face. If Tohono is allowed to build a casino in the City of Glendale, those non-Indian interests have already started to say, "Look. You cannot trust the tribes," and they will demand that the exclusivity for tribes be broken and that all the tribes, including the rural tribes and the non-gaming tribes will lose out severely.

Dr. GOSAR. So let me get this straight. So Steve Wynn from Nevada could be in Scottsdale if this compact is broken; is that not true, President Enos?

Ms. ENOS. That is correct.

Dr. GOSAR. And if that so does happen, who loses? Do the tribes have the money to compete with somebody like Steve Wynn?

Ms. ENOS. The tribes do not, in my opinion. And you are looking at tribes that are way out in the rural areas. You are looking at tribes, for instance, the Havasupai that live at the bottom of the Grand Canyon, and this revenue that has come from transfer of machines has been huge for them. They do not have very many other sources for economic development, and tribes across the State of Arizona would be hard hit if the State went statewide gaming because of that provision in our compact. It is referred to as the "poison pill provision," and it basically says that if a non-Indian entity gets Class III machines, technically speaking, the State is open to statewide gaming.

Dr. GOSAR. Well, I have run out of time. I will wait for my additional time.

Thank you.

Mr. MULLIN [presiding]. I will now recognize the Ranking Member for any questions that she may have.

Ms. HANABUSA. I am going to pass my time to Mr. Grijalva.

Mr. GRIJALVA. Thank you. Thank you, Mr. Chairman. Thank you, Ranking Member.

Chairman Norris, it is not even a point of responding. Legal decision, precedents, administrative hearings and decisions seem to be relevant in this discussion, chairman, and so far we are dealing with hyperbole. We are dealing with generalizations, Las Vegas to take over Phoenix being one of them, and your nation and fulfilling the decision by this Congress to replace to some level the land you lost in the flooding.

I had the opportunity near Saint Lucy, and some of the elders there took me to what formerly used to be the community, and there is no amount of time that is ever going to make up that loss, but Congress felt that was not only a gesture, but a necessary, just thing to do, and they did. They put no restrictions on the land, and they called it reservation land.

But you are being categorized, and anybody, I believe, that supports you, whether it is the City of Peoria, whether it is Chicanos por la Causa, whether it is the Glendale City Manager and some of the councilmen, whether it is Phoenix City councilmen, whether it is the City of Tolleson, whether it is the Hopi Tribe, the San Carlos Apache Tribe, the Hopi Tribe, as I mentioned, the mayor and city council of Surprise, that characterization would apply to them that they are part of some plot that is underhanded. What else? Fraudulent.

And so, chairman, this legislation is particular to your nation, period. And the line that is drawn arbitrarily in this legislation is directed to limiting any options that you might have under the law to develop gaming in that reservation land. I am not a lawyer but disparate treatment seems to be the primary word here.

So, is this issue about competition, because the last time that we hear somebody testify that if we did not pass that last piece of legislation, that the whole compact in Arizona would unravel. We are having that same discussion. The judge ruled that the compact is secure and safe, that is no potential to unravel, so, today, if the compact is indeed secure and safe, chairman, your explanation to me and to the members, what is the motivation then to rush this legislation, beat the court to a decision, beat Interior to a decision and therefore toward any effort to do due diligence and let the process work its will, the only way to pass this legislation is to categorize this as fraudulent, underhanded.

Mr. Chairman, any response to what we have heard thus far?

Mr. NORRIS. Mr. Chairman, Ranking Member Hanabusa, members of the Committee, Mr. Grijalva, thank you for that question. You know, my Nation has been litigating this issue with the opposition for close to 3 years, if not 3 years already. There have been volumes and volumes and volumes of deposition and statements that have been made and discovery that has taken place, and we continue to abide by the letter of the law, not only in our compact but also with respect to our land and water settlement, as well as the Indian Gaming Regulatory Act.

Obviously, the courts thus far have agreed with the nation's arguments. The argument was whether or not we are going to violate the compact. The courts ruled no. The argument was whether or not we are going to violate the Indian Gaming Regulatory Act. The courts ruled no. The argument was whether or not this was a land settlement or not. The courts said no. This is in fact the land set-

tlement. The arguments were that we were somehow being deceptive and whatnot, that there was a promise made. The courts realized that and said no. The primary motivation with these two wealthy tribes is the market share issue. Their primary effort here is to protect their market. And to suggest that my nation, the O'odham Nation, has no aboriginal ties to that area is really an insult. It is an insult to me as an O'odham and it is an insult to other O'odham as well. The driving force behind this legislation is two wealthy tribes trying to protect their market share.

Mr. MULLIN. The gentleman's time has expired.

Mr. GRIJALVA. Thank you, Mr. Chairman.

Mr. MULLIN. The Chair will now recognize the gentleman from Arizona. And, David, I am not going to try your last name because everybody keeps messing with the names around here. So, I am just going to leave that alone.

Mr. SCHWEIKERT. Thank you. It is OK. I am quite used to that.

Mr. MULLIN. Thank you.

Mr. SCHWEIKERT. Mr. Chairman and Committee members, thank you for giving me a moment to sit on the Committee. And, Raul, I thought you were a lawyer?

Mr. GRIJALVA. No.

Mr. SCHWEIKERT. And all this time. I am going to stop coming to you for my legal advice. I sit up here, and one of the reasons I had also requested to be part of this panel is I like to think I am one of the few people in this room that may have a somewhat unique view of what is going on here. In 1992, I was co-chair of the Indian Affairs Committee in Arizona. And one of the greatest years of my life because I learned so much I did not know. But in 1993, so we are going back 20 years, I was blessed. I became the Majority Whip in my State house. And I was the lead negotiator for the House in regards to the IGRA compacts with that administration, the Symington Administration, and I literally lost a year of my life bathing in IGRA. And I hoped I would never, ever have to go near this again and somehow it continues to haunt me.

And so here we are back. And what breaks my heart is that I hear some of the fussing, but I sat hour after hour after hour after months after month, almost a year of this very part of this discussion of would gaming be restricted to aboriginal land. And we were assured over and over and over and over, and that is how we slowly moved a State that we came this close to ending Arizona's lottery, getting rid of the lottery so there would be none of this class gaming at all in the State. So I do understand what has gone on. There is a lot of history behind this.

And there are a couple of questions I want to ask. President Enos, you happen to be one of those lawyer type people, aren't you? And my question, and I will ask everyone else also this, when a tribe is in Federal court on one of these issues, can they waive sovereign immunity?

Ms. ENOS. Yes, yes, we can. We are sovereigns.

Mr. SCHWEIKERT. To my Chairman of the Tohono O'odham, would the community be willing to waive their sovereign immunity to actually get a straight up answer?

Mr. NORRIS. The community?

Mr. SCHWEIKERT. Would the Tohono O'odham tribe be willing to waive sovereign immunity in Federal court to get a straight court ruling?

Mr. NORRIS. I am not a lawyer. President Enos is a lawyer. She did not answer you. She just sort of wiggled her hand.

Mr. SCHWEIKERT. Well, this one is not about President Enos——

Mr. NORRIS. I am not in——

Mr. SCHWEIKERT. It is for you as your opinion for your community.

Mr. NORRIS. I would have to yield to my attorney on that.

Mr. SCHWEIKERT. Alright. President Enos, one of the reasons that I have actually stuck my nose into this is because I have the history of the fights with some of the horse tracks and then dog tracks and some of the others. And part of the education for everyone in the room is Arizona is a very easy initiative and referendum State. How long have you been hearing about that when this happens, our friends who want expanded gaming will be out there on the street with their petitions?

Ms. ENOS. For years, for several years, particularly there was, as I mentioned, the bill for the State legislature but also there has been talk of an initiative for the last 2 years or so. The Arizona Indian Gaming Association, of which we are all members here in this tribal representatives here and others, fends off outside non-Indian gaming interests.

Mr. SCHWEIKERT. What happens to the compacts if tomorrow we had "Racinos" or community choice Class III gaming?

Ms. ENOS. The initiative that could be run by non-Indian interests could invoke what I just referred to as the "poison pill." And according to the language of the compact, if a non-Indian entity is eligible for gaming, whether it is by virtue of State legislation or an initiative or referendum type, then the State compact, the State of Arizona is open to Class III gaming.

Mr. SCHWEIKERT. President Enos, at that point, compacts are blown up?

Ms. ENOS. That is exactly a good way to describe it.

Mr. SCHWEIKERT. Remember, Arizona has what, 22 tribes, 21 tribal communities or land-holding communities, correct?

Ms. ENOS. Yes.

Mr. SCHWEIKERT. What happens to our rural tribes that right now have machine transfers in that situation?

Ms. ENOS. The tribes have gaming exclusivity in Arizona. And people like the Cocopah Tribe, which is in Mr. Grijalva's district, enjoys that exclusivity and is able to build a foundation of economic development through the gaming revenues. If the State went statewide gaming, the tribes would no longer have exclusivity. We would have to compete with non-Indian interests, particularly those tribes that have very limited market in rural areas.

Mr. SCHWEIKERT. Madam President. Thank you, for your tolerance, Mr. Chairman.

Mr. YOUNG. Mr. Grijalva.

Mr. GRIJALVA. Let me, I have some more questions for President Enos and for Chairman Norris. We are dealing with a lot with conjecture. And the strength of the legislation before us is that it is conjecture. And so as a piece of legislation to undo another act of

Congress and potential decisions by courts where conjecture, what if, and this will happen, and "Chicken Little will rule the world" and "the sky will fall," and we have to pass this legislation. In the decision, the court concludes that the parties did not reach such an agreement, and that the nations' construction of a casino in the Glendale area will not violate the compact. That is in a decision but it is still not valid enough for this discussion on the legislation.

Mr. Norris, we are talking about tribal sovereign immunity. And the argument that often the nation uses sovereign immunity as a shield in the lawsuit so that Congress now needs to step in and pose its restrictions that says Arizona intended to impose on gaming in Arizona because of the evoking sovereign immunity. Did the State of Arizona insist on preserving its sovereign immunity in the tribal State compact, did any of the tribes involved in the litigation against you insist on retaining that?

Mr. NORRIS. Mr. Chairman, members of the Committee, Mr. Grijalva, sovereign immunity is a right that is afforded to all governments regardless of whether you are a Federal Government, State government, tribal government, whatever. And it is virtually important, an important safeguard for true self-determination. Having said that, the nation gave up its right to sovereign immunity when it entered into a tribal-state gaming compact for the purposes of allowing the enforcement of that compact. However, when it comes to frivolous claims based on non-legal arguments, not based on the plain language of the compact, we will not waive this right.

Mr. GRIJALVA. And in your experience, based on the urging—on the point that was being made about the O'odham Nation, is it your experience that tribal governments routinely evoke sovereign immunity against a suit over contract disputes or other issues?

Mr. NORRIS. Sovereign immunity and the question of whether or not the tribe will waive sovereign immunity is a standard consideration amongst all tribes in contract disputes or contract negotiations.

Mr. GRIJALVA. I think you mentioned the point that the immunity issue, sovereign immunity is the key to the concept of self-determination. So, it is kind of odd, and the precedents that are being set here, should be frightening not just to the decision on this particular case but to the precedents that are being set generally across the board. I am not a member of any nation regrettably, a native nation, but if I was, the issue of tribal immunity would be something that I would be protective of and never waive because in doing so, I am giving up the core driver of my self-determination. And to blatantly say that you have to give it up after the court has ruled against somebody I think begs the question about the kind of precedent and respect that we have for that concept.

The other issue that I wanted to ask you about, Mr. Norris, before my time runs out is if we change the terms of the contract, which I think is being done by this legislation, what prevents water settlements, other tribal-State-Federal agreements land-use issues from being equally open to the interpretations and the limitations as H.R. 1410 is setting?

Mr. NORRIS. Mr. Chairman and members of the Committee and Mr. Grijalva, thank you for that question. It is of grave concern not

only to the Tohono O'odham Nation but it should be of grave concern to all tribes not only in the State of Arizona but all tribes nationally that this particular legislation does in fact set a dangerous precedent. It is a dangerous precedent because if someone out there dislikes certain language within a particular bill, in fact in our case our land and water settlement, and some 25, 30 years later, decides they do not like certain language, and they are going to go change that language against the settling tribe's wishes, that is stuff that goes on in the 19th century.

That is the error of U.S. history when the United States violated treaties, violated agreements, violated agreements between tribal nations. If this bill passes, it would have that level of impact and precedent. And I think that we need to be extremely concerned about that because if the United States Government can change the law, a settlement of land and water, unilaterally against the settlement tribe's wishes, then how protected are other agreements with any other nation throughout the United States?

Mr. GRIJALVA. I yield back, Mr. Chairman. Thank you. I appreciate the indulgence to go over time for the answer.

Mr. YOUNG. Thank you.

Mr. LAMALFA. Thank you, Mr. Chairman.

Mr. YOUNG. You are up. I do not want to slaughter your name too.

Mr. LAMALFA. Do you want me to help you. Italian, LaMalfa.

Mr. YOUNG. OK, LaMalfa.

Mr. LAMALFA. LaMalfa.

Mr. YOUNG. Alright.

Mr. GRIJALVA. Young, you have got to work on the vowels.

Mr. LAMALFA. I just wanted to weigh in on this as I have studied this issue and have had a chance to meet with folks on it. And also we experienced in California my support for H.R. 1410 in that it does keep the agreements and keeps within the spirit of how tribal gaming should be as envisioned by IGRA. And so, being from California, our neighboring State of Arizona, that this measure I think is very key to keep, I think essentially in the long term keep the peace but keep those agreements and not have an outbreak all over that State but also I think other States of what has been called the "off reservation gaming moves." So it is very clear to me that this is the right direction to go.

And I think if we want to have order to things here, that this is indeed a very important measure to keep the agreements that have been made and not have off reservation moves that I think are very detrimental to the tribes, to the agreements, what I think the people, the citizens, have in mind of how the gaming should appear. So I appreciate being able to weigh in.

And, Mr. Chairman, with the back and forth of other committees, et cetera, I want to have an opportunity to pose a thought or a question on H.R. 841, a little bit later or right now.

Mr. YOUNG. Any time you want to.

Mr. LAMALFA. OK, sir. Just more of a thought on this too, what I want to get out there is that on H.R. 841, there are some problems there with the way that one tribe has been kind of dealing with the others in the area as well with the Grand Ronde and up in that direction, but I think the bill could still be supportable if

there was a commitment that the land involved would not be one that would be involved in gaming. Has that been established by this Committee earlier that limiting gaming from that or for its other uses would be a direction this Committee wants to go with H.R. 841?

Mr. YOUNG. We are keeping that under consideration at this time.

Mr. LAMALFA. OK, alright, I just wanted to get that out there. Thank you, Mr. Chairman.

Ms. HANABUSA. Mr. Chairman, when Mr. Grijalva was asking some questions, he mentioned my name along with Chairman Norris, but I did not have a chance to respond. May I do so now?

Mr. YOUNG. We are going to do another round of questions if you are ready to go.

Mr. ROSENBRUCH. But, Mr. Chair, I apologize profusely. I do need to depart but if someone had a question for me, I would be delighted to remain a few more minutes.

Mr. YOUNG. I do not know if anybody has got a question, Jimmie. You made a good presentation. Do you have a question?

Mr. GRIJALVA. Yes, but in the interest of collective time, I will submit them in writing.

Mr. YOUNG. Yes.

Mr. GRIJALVA. And all of us can get an answer.

Mr. YOUNG. OK, good.

Mr. ROSENBRUCH. Thank you.

Mr. YOUNG. OK, thanks, Jim.

Mr. ROSENBRUCH. Thank you very much, glad to be here. We appreciate it.

Mr. HANABUSA. Thank you for being here. Thank you, Mr. Chair. This is actually for both Mr. Norris and Ms. Enos. And what I would like for both of you to do is, if you disagree, to let me know. First of all, the issue that we have before us is really one regarding the Indian Gaming Regulatory Act. And it permits Class III gaming on Indian lands. But do we agree that part of that statute, 25 U.S.C. 2701 to 2721, basically says you can do it in conformance with a tribal-State compact? In other words, there has got to be an agreement between the tribe and the State, do we agree with that?

Ms. ENOS. That is right.

Mr. NORRIS. Yes, Congresswoman.

Ms. HANABUSA. OK. Now, given that, do we also agree since there has been issues of sovereign immunity and its waiver, and that is something that I also brought up with I believe it was the testimony of Mr. Black, that as a function of the Indian Gaming Regulatory Act, or IGRA, that you must also waive sovereign immunity as to the compact. And that is specifically found in 25, section 2710, subsection D, and it goes on. Do we agree with that?

Ms. ENOS. Yes, that is correct.

Mr. NORRIS. Yes, correct.

Ms. HANABUSA. So the issue of sovereign immunity, which I agree with my colleague, I believe is sacred for any native persons and nations. However, in the case when one exercises IGRA, what you have done is you have agreed in that process to waive it as to issues regarding the compact itself. We are in agreement on that, right?

Ms. ENOS. Yes.

Mr. NORRIS. Yes, I agree.

Ms. HANABUSA. And that is why we have so many of your lawsuits because you are suing on those issues which the Federal court has jurisdiction over, is that correct?

Mr. NORRIS. Yes, correct.

Ms. ENOS. That's correct.

Ms. HANABUSA. And I agree with Mr. Norris that what the court has found over the period of time is that the lands, if purchased or traded pursuant to the settlement, would then become or could become Indian country if so designated and if the Secretary of the Interior so accepts? We understand that to be a ruling, is that correct?

Mr. NORRIS. Yes, Ranking Member.

Ms. ENOS. We don't approve.

Ms. HANABUSA. I am not questioning whether you have a right to appeal, I am just saying that we have a preliminary ruling to that effect. And we all know everything that has been said so far has a right to appeal. Now, having said that, do we know whether the Secretary of the Interior has accepted those lands into Indian country.

[Gavel.]

Mr. YOUNG. You know how I feel about cell phones in the room. And that is the second time that has gone off. The next time you are out of the room. Does everybody understand that? Anybody not understand it? Good. Shut it off. Go ahead.

Ms. HANABUSA. He just interrupts whenever he wants. Mine is off. I just want you to know, mine is off. So has it been accepted, the purchase, the proposed property, has it been accepted by Interior as Indian country?

Ms. ENOS. No.

Ms. HANABUSA. It has not?

Ms. ENOS. No.

Ms. HANABUSA. Is that true, Mr. Norris? I am just trying to get the facts.

Mr. NORRIS. Ranking Member Hanabusa, what has happened was back I believe in 2009, after the Department of the Interior was taken to court on their hesitation, reluctance, decision to not move forward and take this land into trust, my nation filed a lawsuit against the Department of the Interior essentially forcing them to do what the Federal law, statute, requires them to do. In the law it says, "At the request of the tribe, the Department of the Interior shall take this land into trust." It is a mandatory acquisition.

And so when they failed to do that, we filed a lawsuit. Just prior to the decision of that court, the Department of the Interior published in the Federal Register their decision to move forward and take that land into trust.

Ms. HANABUSA. OK. Now, let me also understand that is it part of this compact, the consideration of this compact, the fact that only Native tribes will be able to game in Arizona?

Ms. ENOS. That is the status right now.

Ms. HANABUSA. That is the status right now?

Ms. ENOS. Yes.

Ms. HANABUSA. So when Proposition 202 went to the people, it was decided at that time that what would happen is that only the Native tribes would be able to game in Arizona. And, as a result of that, this compact was entered into?

Ms. ENOS. That is correct.

Mr. NORRIS. That is correct.

Ms. HANABUSA. And some tribes gave up another casino, and some tribes went in by having your gaming machines, as I understand it, become part of certain larger casinos so that tribes, smaller tribes, have an economic benefit from all of this, is that true?

Ms. ENOS. Every tribe was allocated after 2 years of negotiation a certain number of facilities, and that is correct. The metro tribes in Phoenix, four metro tribes gave up the rights that we had in the earlier compacts. And the agreement that you are referring to, the transfer eligibility of an allocated amount of machines by the nongaming tribes, actually was part of the resolution.

Ms. HANABUSA. Thank you, and I yield back. My time is up.

Mr. YOUNG. Mr. Gosar.

Dr. GOSAR. Yes, President Enos, you know you did not have a chance to answer my Arizona colleague's question, would you like to answer that question. You brought it up, and I want you to be able to answer a question. Chairman Norris had the opportunity.

Ms. ENOS. Mr. Grijalva was asking about the waiver of sovereign immunity, and it should be noted that tribes routinely waive sovereign immunity, for instance, in contract cases, in bank financing structures, agreements. And that is a limited waiver of sovereign immunity. For instance, we do it for those sorts of agreements. Otherwise, we would not be able to conduct business. No outside businesses would want to deal with us. And we do it through arbitration clauses and subject ourselves under the limited waivers of sovereign immunity to Federal court jurisdiction arbitration.

Dr. GOSAR. And this would definitively have financial implications, would it not?

Ms. ENOS. Absolutely.

Dr. GOSAR. Mr. Norris, are you aware of what happened in the IRS case here in which testimony was utilized in court or can be utilized in court?

Mr. NORRIS. Mr. Chairman and members of the Committee, Congressman Gosar, I am not.

Dr. GOSAR. Things that you say in front of Congress are admissible into court. And my colleague here, David Schweikert, asked a question in regards to would you waive sovereign immunity. And what I would like for the record is I would like you to consult your attorneys, and I would like an answer back.

Let me ask you a question: When we are dealing with this because you said "frivolous lawsuits," I want to address the frivolous lawsuit. You purchased, you acquired this piece of property through a third entity, right?

Mr. NORRIS. Yes, sir.

Dr. GOSAR. OK, and that is typical. I have no problems with that. But given the circumstances with this tribal agreement on the compact, do you think that knowledge of that piece of property being sold, you would actually have been able to purchase that contract or that property without that?

Mr. NORRIS. I am not sure I understand your question.

Dr. GOSAR. So without a third party, and they knew that it was the Tohono O'odham Nation with this contract, that you would actually be able to purchase this contract, this piece of property, you would have caused a little bit more of a problem, wouldn't it?

Mr. NORRIS. Mr. Chairman and members of the Committee, Mr. Gosar, the reason why the nation had a third party do the purchase for us is because it was public knowledge when 99503 law was passed, the nation was also appropriated $30 million to purchase replacement land up to 9,880 acres.

Dr. GOSAR. But they did not know about this piece of property within Glendale, did they?

Mr. NORRIS. Our experience has been that we were never—there was a challenge in trying to obtain fair market value——

Dr. GOSAR. I understand.

Mr. NORRIS [continuing]. For the property. And, in fact, one of the sellers of the piece of property wanted the full $30 million that we were appropriated to do this.

Dr. GOSAR. Well, I am going to speed you up a little bit. I understand that, but it would have been a little harder to get this piece of property is what I am after. Now, let me ask you something in tribal councils, in consultations in the tribe, was there not a cover up in regards in the tribal dictations and in minutes taken by the tribal courts or tribal council in regards to trying to hide this piece of property from the rest of the tribes in regards to this gaming aspect?

Mr. NORRIS. Not to my knowledge.

Dr. GOSAR. That is what sovereign immunity is trying to hide, is it not?

Mr. NORRIS. Not to my knowledge.

Dr. GOSAR. President Enos, are we aware that there is this information in regards to council dictations poignantly?

Ms. ENOS. Yes, that is accurate. In the discovery process, we received documents and evidence that showed that VDI or VDG, a corporation of the Tohono O'odham Nation had discussions along with some council members, and the quotations from those tapes and transcripts indicate that they were discussing amongst themselves to keep this purchase secret from the other tribes, particularly Salt River and Gila River because, as they said, "Don't you think they are going to jump on us?" They also purposely, according to those documents, kept this from the State of Arizona. And those were not available to us until we engaged in the litigation with them.

Dr. GOSAR. There was a comment made, President Enos, that there was a compact between the Tohono O'odham and the U.S. Government. We also have an agreement with all the rest of the tribes, do we not, as Congress and the U.S. Government?

Ms. ENOS. Yes, there is a standard compact that Governor Hull wanted with the tribes in Arizona in about 2000. That is why we had to work together to come up with the standard compact.

Dr. GOSAR. I appreciate the inquiry of questions.

Mr. YOUNG. I want to thank the panel.

Mr. GRIJALVA. Mr. Chairman?

Mr. YOUNG. Go ahead.

Mr. GRIJALVA. One other turn on the merry-go-round, if I may? President Enos, and thank you for being here, one of the things that continues to puzzle me is that this issue of gaming in that metropolitan Phoenix area, it was so important to all the parties involved, the State, as my colleague mentioned, in those negotiations, the Governor, and obviously to the tribes in and around that area, and it was important, as somebody stated, to the successful passage of Proposition 202. In your expertise and knowledge, why was it not specifically spelled out in the compact, why was that such a critical piece of information, one that we keep conjecturing about and going on and on, why was it not spelled out in the compact?

Ms. ENOS. Because of trust that we had amongst each other as tribes and the agreement in principle that we entered into to work together as a coalition based on trust, and that we would rely on each other. And the Tohono O'odham Nation signed this document, along with the 17 other tribes and agreed that if a tribe had to take an action inconsistent with the interests of the coalition, that it would disclose that to us. And we went forward with trust in this coalition. And then we worked with the Governor and established negotiations with the Governor. And there were over 35 meetings. And out of those meetings, the Governor decided to support and endorse what the compact was finally arrived at. And we decided, with the State, and the tribes, to take that to the voters. And there were those meetings where all the tribes were involved in developing that message that we were going to take to the voters for Proposition 202. I have here a document, and I would ask that it be put into the record. It encompasses——

Mr. GRIJALVA. If I may, let me ask Mr. Norris——

Ms. ENOS [continuing]. Many of the statements.

Mr. GRIJALVA. Your subject is going to be in the record, correct? Their item?

Mr. YOUNG. Without objection, the document will be submitted for the record.

[The information submitted for the record by Ms. Enos has been retained in the Committee's official files:]

Mr. GRIJALVA. Thank you.

Ms. ENOS. Thank you.

Mr. GRIJALVA. Chairman Norris, it was not necessary according to esteemed President Enos, it was not necessary to spell it out in the compact because there is a trust factor involved, and H.R. 1410, as I understand the logic, is a reaction to broken trust. This compact, I remember the campaigns around 202, all the advertising that went on, and part of it I think is that there was a leaflet that said, "No gaming in the Phoenix area." I mean it is like some of my colleagues that run, "I will never cut benefits or Social Security," and then 2 weeks later, they are voting for CPI or something else. It is just things that happen.

Mr. YOUNG. Just like the President.

Mr. GRIJALVA. Nobody is immune from that, my friend. So I would say talk about trust, and I think also talk about the fact that as we have tried to define that decision through the courts and administrative hearings, the trust issue, and what role an under-

standing has had in the decisions that the courts have made, if there was an understanding?

Mr. NORRIS. Mr. Chairman and members of the Committee, I would just respond by saying that much of the comments by my colleague in tribal leadership shared not only with Mr. Gosar's response but also to you, Mr. Grijalva, response were items as part of the volumes and volumes of deposition and discovery that occurred over the past 2½, 3 years or so. And those were volumes of documents that were considered by the court in the court's decision.

What I would like to say about the agreement in principle is that the Federal courts ruled that the agreement in principle was not binding on any of the tribal members of the Arizona Indian Gaming Association. And I want to cite specifically that the agreement in principal explicitly states that, "Nothing in this agreement shall be construed to impair the tribal leader's ability to take any action inconsistent with the actions or positions of other tribal leaders."

Salt River and Gila River and other tribal members of the Arizona Indian Gaming Association, and the State of Arizona were aware of the Gila Bend Indian Reservation Lands Replacement Act, and they were also aware that the Nation could acquire gaming eligible lands under that statute.

Now, my final comment on your question, Mr. Grijalva, is that the courts concluded, and I will quote from the decision that, "Plaintiffs could not reasonably have expected that the compact would ban new casinos in the Phoenix area. This is not only from the complete absence of any such ban in the compact language but also from the integration clause and its declaration that no other agreements or promises are valid or binding."

So there cannot be any sub-agreements. There cannot be—IGRA does not authorize any back door agreements by anybody. The compact is the rule of law. IGRA is the rule of law. We have demonstrated time and time again that we have been abiding by not only our land and water settlement of 99503, we have been abiding by our compact. And we will continue to abide by it and the Indian Gaming Regulatory Act.

Thank you, Mr. Chairman. Thank you, Mr. Grijalva.

Mr. YOUNG. I want to thank the panel and thank the Committee.

Ms. HANABUSA. Mr. Chair, I have a housekeeping matter.

Mr. YOUNG. Housekeeping matter?

Ms. HANABUSA. We have provided for the record certain materials that we would like to be included.

Mr. YOUNG. And that is without objection.

[The information submitted for the record by Ms. Hababusa has been retained in the Committee's official files:]

Ms. HANABUSA. Thank you.

Mr. YOUNG. Anybody else have anything for the good of the order? With that, the Committee is adjourned.

[Whereupon, at 5:37 p.m., the Subcommittee was adjourned.]

[Additional Materials Submitted for the Record]

PREPARED STATEMENT OF THE HONORABLE EDWARD J. MARKEY, RANKING MEMBER, COMMITTEE ON NATURAL RESOURCES

H.R. 740—SOUTHEAST ALASKA NATIVE LAND ENTITLEMENT FINALIZATION AND JOBS PROTECTION ACT

H.R. 740 would allow the Sealaska Corporation, a regional corporation established under the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. §§ 1601 *et seq.,* to obtain its remaining land entitlement under ANCSA from portions of the Tongass National Forest outside of the withdrawal areas to which Sealaska's selections are currently restricted by law.

This is the third Congress in which a bill benefiting Sealaska has been introduced and considered by the Natural Resources Committee. While H.R. 740 is an improvement over previous versions, reflecting some changes requested through weigh-in from constituencies in southeast Alaska, the U.S. Forest Service, and the Alaska congressional delegation, it continues to be unnecessary. Nothing but Sealaska is stopping Sealaska from finalizing its entitlement within the areas that the Corporation itself helped identify to satisfy the remainder of its ANCSA entitlement. Indeed, conveyance of those lands has been suspended, at Sealaska's request, while the Corporation pursues legislation allowing it to select lands from entirely new areas of the Tongass National Forest.

H.R. 740 also continues to risk stalling the implementation of the U.S. Forest Service's future management goal of transitioning southeast Alaska's economy from old-growth logging to more sustainable management of the forest based on second-growth timber. Sealaska claims to share this goal, but many of the parcels targeted by Sealaska in H.R. 740 contain a high percentage of the Tongass' rarest large old-growth trees. Conveying these lands to the Corporation for logging will severely limit the Forest Service's ability to complete this critical transition for the remainder of the forest.

Furthermore, even though it is beyond dispute that logging activities near rivers and streams can lead to erosion and flooding that degrade water quality and harm fish populations, H.R. 740 does not provide any protections for salmon streams which support a valuable public resource or contain conservation areas to balance potential clear-cutting that Sealaska has been known to do. The Tongass' 5,500 breeding salmon streams and rivers are a mainstay of the region's economy and its subsistence way of life. For example, Keete Inlet on North Prince of Wales Island, within which Sealaska has targeted over 10,000 acres for conveyance under H.R. 740, is a nearly pristine watershed that has been identified as one of the highest salmon-producing watersheds in the forest and determined to have a high wildlife value by Trout Unlimited, Audubon Alaska and the Nature Conservancy. Should H.R. 740 continue to ignore necessary protections to shield salmon streams from harm and fail to identify conservation areas, the local economy could be devastated, and a good portion of a national treasure lost.

The Administration testified against H.R. 740 at a May 16, 2013 Subcommittee on Indian and Alaska Native Affairs hearing, citing ongoing negotiations on a compromise bill, S. 340, that was introduced by Senators Murkowski and Begich. I understand extensive efforts have been made by the U.S. Forest Service, Sealaska, the environmental community, the Alaska congressional delegation, and impacted local communities to come to a balanced solution that works for all parties on the most controversial remaining issues, including providing for stream buffers and conservation areas under the bill. My hope is that, moving forward, any legislation for the Tongass should ensure that the U.S. Forest Service's transition goals can be met, and should provide long-term protection for the thousands of tourism and fishing jobs that rely on a healthy Tongass.

PREPARED STATEMENT OF THE HONORABLE PAUL A. GOSAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Today I thank the Chairman and Ranking Member of this Subcommittee for giving swift consideration of the *Keep the Promises Act (H.R. 1410).* I was an original cosponsor of this legislation when my friend Congressman Trent Franks introduced it last month, and I strongly believe its swift passage is critical to the future of gaming in my State.

This Committee analyzed this issue in-depth last Congress, so I won't rehash the background of the issue extensively. In 2002, the voters of Arizona approved what

was then known as Proposition 202, or the 17-tribe initiative. True to its name, the 17-tribe initiative reflected a meaningful consensus among the tribal and State governments present in Arizona, and established a balanced approach to gaming activity throughout the State that considers the interests of urban tribes, rural tribes, and Arizona's communities. Many tribes gave up the right to build their own casino in order to share in the revenues from gaming as a whole. In addition, a portion of tribal gaming revenues are now set aside to provide health care, education, and needed services to all tribes, not just the ones in major metropolitan areas. This compact, which was overwhelmingly approved by the people of Arizona, is the foundation of Indian gaming in my State.

In 2003, under the name of a third party, the Tohono O'odham Nation purchased 134 acres of land very near the University of Phoenix Stadium in Glendale, Arizona. The nation has since transferred these lands to its own name and has asked the Secretary of the Interior to take these lands into trust. Tohono O'odham has made it very clear that once placed into trust status, they will seek to establish a Las Vegas style casino on parts of those lands.

There is no doubt about the fact that the Federal Government compensated the Tohono O'odham Nation for the destruction of its land; the original 1986 Gila Bend Law allows not only for monetary compensation, but also for the purchase of additional lands to replace the lands that the Federal Government flooded. I support the nation asserting its very limited legal rights in this area. The controversy is centered around the proposed construction of a Vegas style casino on this land, in downtown Glendale.

My support for H.R. 1410 is not rooted in opposition to one casino. I support Indian gaming, and gaming as a whole. In fact, I am a member of the House Gaming Caucus. The caucus is a group of Congressional leaders focused on educating Members on gaming-related issues and working to identify key policy areas that can be advanced at a Federal level, to enhance the economic impact of gaming around the country. I simply believe gaming should be prohibited on the lands in Glendale, at least through the life of the Arizona compact. The key part of that compact was a tribal agreement, including the nation, that states no casinos would be permitted in metropolitan Phoenix for at least 23 years. The nation was very clear back when the compact was negotiated that if it operated a fourth casino that casino would be located in rural Arizona, not metropolitan Phoenix.

H.R. 1410 simply prohibits gaming on lands taken into trust by the Secretary within the Phoenix metropolitan area, until January 1, 2027. It is supported by six of the tribes that took part in the Prop 202 agreement—the Salt River Pima-Maricopa Indian Community, the Gila River Indian Community, the Hualapai Tribe, the Pueblo Zuni, the Cocopah Indian Tribe, and the Fort McDowell Yavapai Tribe. I would like to submit an op-ed those tribes placed in the Arizona Republic, our State's largest newspaper, entitled "Tribal Leaders: Bill would safeguard casinos deal" for the record.

Additionally, I have letters of support from the Town of Fountain Hills, the City of Glendale, the City of Tempe, the Town of Gilbert, and the City of Litchfield Park. These are all municipalities, within the Phoenix metropolitan area, that are concerned with a violation of the State compact. Mr. Chairman, I ask that those letters also be included in the record.

My support for the *Keep the Promise Act* is about protecting the integrity of my State's gaming compact and ultimately the future of gaming in Arizona. I am also concerned that if our legislation is not signed into law, a dangerous precedent could be set leading to the expansion of off-reservation casinos in Arizona and other States.

I look forward to hearing from our witnesses, and I hope this committee will move H.R. 1410 quickly.

PREPARED STATEMENT OF THE HONORABLE TRENT FRANKS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

H.R. 1410—KEEP THE PROMISE ACT OF 2013

Dear Mr. Chairman and members of the Subcommittee,

I want to thank you for holding this hearing and allowing me to submit testimony on H.R. 1410, the Keep the Promise Act. This straightforward bill prohibits Indian gaming in the Phoenix metropolitan area until the expiration of the current State gaming compact in 2027.

Mr. Chairman, this debate is not about jobs or economic development, or any of the other tangential points that some would like to use to distract from the real problem with the casino.

Some who favor allowing construction to go forward seem to be missing the point: When Arizona's gaming compact was voted into law, both the voters and tribes of Arizona were promised one thing, while ultimately receiving something else entirely. This bill is not about a vendetta. Nor is it about ending gaming in Arizona. It is, very specifically, about ensuring that the limits on casinos specifically promised back in 2002 during debate on Proposition 202 are realized.

Arizona tribes negotiated collectively through the Arizona Indian Gaming Association ("AIGA"). Tribal leaders in AIGA agreed among themselves and with the State that there would not be any additional casinos in the Phoenix metropolitan area beyond the seven that were then in operation by Salt River, Gila River, Ak-Chin, and Fort McDowell.

The four Phoenix-market tribes made it clear in discussions with other tribes and the State that they agreed to a reduction in the number of facilities specifically for the purpose of ensuring that only the existing casinos in the Phoenix market would be allowed under the compacts.

The drafting of the compact occurred in 2002 between the Governor and the AIGA tribes, which eventually became SB 1001 in the Arizona State legislature, and then a ballot initiative, Proposition 202.

During the 2002 election, the Arizona Secretary of State published the Arizona Ballot Proposition Guide, a pamphlet containing arguments for and against Proposition 202. That pamphlet contained a statement of support for Proposition 202 by Governor Jane Dee Hull, in which she stated that "[v]oting 'yes' on Proposition 202 ensures that no new casinos will be built in the Phoenix metropolitan area and only one in the Tucson area for at least 23 years." The pamphlet also contained an argument in favor of Proposition 202 signed by tribal leaders, including Tohono O'odham Chairman Edward Manuel.

Chairman Ned Norris, Jr., the nation's current chairman, publicly supported Proposition 202 in appearances on behalf of AIGA. In urging Arizona voters not to choose competing Propositions 200 or 201, Norris said that Proposition 202 would not open gaming into cities.

Mr. Chairman, assuming for a moment that the casino *weren't* in violation of Proposition 202 and the intent of voters, many of the arguments being brandished by proponents of the casino still remain dishonest. These proponents like to claim the proposed casino would create many jobs for the West Valley. However, when the City of Glendale requested the data and methodology behind the numbers being repeated to the public, the request was denied by the tribe.

On the other hand, when the City of Glendale, per State law, put together a plan in 2002 outlining possible uses for the land, estimates put the number of jobs created under the city's plan at 5,756 high-quality jobs. That's *excluding* the construction jobs that would also be created. Furthermore, the city's plan, at build-out, would have created $10.89 million in construction sales tax and, more importantly, $5.6 million annual recurring revenue. The casino, on the other hand, would result in NO sales tax revenue for the City of Glendale. It becomes easy to see the many reasons why the City of Glendale so strongly opposes the effort to forcibly build this casino in the heart of the City of Glendale.

Mr. Chairman, the fallacious arguments used by casino supporters highlight the disingenuous nature of assertions that building the casino is really just about creating jobs and economic development for the surrounding area.

Mr. Chairman, thank you again for holding this hearing today. It is my hope that at the conclusion of today's hearing, the members of this Subcommittee will appreciate the importance and necessity of this legislation.

LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES

FTR ON H.R. 623 (YOUNG OF AK), "ALASKA NATIVE TRIBAL HEALTH CONSORTIUM LAND TRANSFER ACT"

Submitted by witness, Andy Teuber Board Chair and President, Alaska Native Tribal Health Consortium FTR:

1. Exhibit A.—Map of Alaska illustrating the villages many hundreds of miles outside of Anchorage.
2. Exhibits B and C.—Maps and illustrations of what the ANTHC is seeking to obtain title to (it is currently being used for parking).

FTR ON H.R. 740 (YOUNG OF AK), "SOUTHEAST ALASKA NATIVE LAND ENTITLEMENT FINALIZATION AND JOBS PROTECTION ACT"

Submitted by Ranking Member Colleen W. Hanabusa FTR:

1. David Beebe, Greater Southeast Alaska Conservation Community position paper.
2. Dave Squibb, Chair, Point Baker Community Association.
3. Donald Hernandez, Fisherman, Point Baker, Alaska.
4. Andrew Thoms, letter to the editor.
5. Andrew Thoms, Director, Sitka Conservation Society letter to IANA Subcmte Members.
6. Bruce Baker, retired Deputy Director of AK Dept. Fish and Game's Habitat Division letter.
7. Eric Myers, Policy Director, Audubon Alaska, letter to Chairman Young.
8. Clarice Johnson, Sealaska Shareholder, letter to the editor from the Sitka Sentinel May 15, 2013.

Submitted by witness, Mr. Byron Mallott, Member, Board of Directors, Sealaska Corporation:

1. Draft document funded by the Forest Service and authored by Dr. Charles W. Smythe and others, "A New Frontier: Managing the National Forests in Alaska, 1970–1995" (1995) ("A New Frontier").
2. A paper by Walter R. Echo-Hawk, "A Context for Setting Modern Congressional Indian Policy in Native Southeast Alaska ("Indian Policy in Southeast Alaska").

Submitted by witness, Mr. Jimmie Rosenbruch FTR:

1. Letter from Steven H. Perrins, Alaska Guides Association.
2. Letter from Gary Gearhart, Safari Club International Alaska Chapter.
3. Letter from 3 Alaska residents to Sen. Lisa Murkowski Re: S. 881 (letter dated April 28, 2010).
4. Letter from the Alaska Outdoor Council to Sen. Thune re: S. 340.
5. Letter from multiple Alaska residents to Sen. Wyden Re: S. 340.
6. Letter from Audubon Alaska to Sen. Wyden Re: S. 340.
7. Letter from Territorial Sportsmen to Sen. Wyden Re: S. 340.

Various Submissions FTR:

1. Judy Magnuson, Port Protection Community Association.
2. Tim Bristol, Trout Unlimited.
3. Letter from Phil Rigdon, President of the Intertribal Timber Council.
4. Matthew D. Kirchhoff, Wildlife Biologist.
5. Resolution from the City of Kupreanof, Alaska submitted by Becky Regula, City Clerk.

FTR ON H.R. 841 (SCHRADER), TO AMEND THE GRAND RONDE RESERVATION ACT TO MAKE TECHNICAL CORRECTIONS, AND FOR OTHER PURPOSES

Submitted by witness, Mr. Reyn Leno, Tribal Council Chair, The Confederated Tribes of Grand Ronde FTR:

1. Yamhill City Resolution.
2. An Administrative History of the Coast Reservation.
3. Polk County Resolution re Amendment to Grand Ronde Restoration and Reservation Acts 6–2–10.
4. Letter to Ranking Member Colleen Hanabusa re: GR FTT bill, 031813.

Various Submissions FTR:

1. Letter from William Iyall, Chairman, Cowlitz Indian Tribe.
2. Robert Garcia, Chairman of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians w/multiple attachments.

FTR ON H.R. 931 (SCHRADER), TO PROVIDE FOR THE ADDITION OF CERTAIN REAL PROPERTY TO THE RESERVATION OF THE SILETZ TRIBE IN THE STATE OF OREGON

Submitted by Lone Rock Strategies on behalf of the Siletz Indians Tribe:

1. Letter from the Confederated Tribes of Siletz Indians Tribal Council to Oregon delegation.
2. List of historic references to the Siletz Reservation. Commissioner of Indian Affairs Reports.
3. Chronological Summary of Historical Documentation regarding *Siletz* vs. *Grand Ronde* Agency Jurisdiction over Northern Portion of Siletz Coast Reservation.

and Location and Tribal Affiliation of Salmon River, Clatsop, Nestucca, Tillamook and Nehalem Indians 1857—1890.

4. Craig Dorsay (Siletz Tribal attorney) memo #1: Addresses the argument that Siletz is limited to take land into trust in Lincoln County.

5. Craig Dorsay (Siletz Tribal attorney) memo #2: Addresses the legal and historic distinction between Coos/Lower Umpqua/Siuslaw Indians that confederated at Siletz and those that were later recognized by Congress.

Various Submissions FTR:

1. Letter from William Iyall, Chairman, Cowlitz Indian Tribe.

2. Robert Garcia, Chairman of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians w/multiple attachments.

FTR ON H.R. 1410 (FRANKS), "KEEP THE PROMISE ACT OF 2013"

Submitted by Ranking Member Colleen W. sHanabusa FTR:

1. Written Testimony of the Honorable Adolfo Gámez on behalf of the City of Tolleson, AZ along with a resolution of the City Council.

2. Tohono O'odham National Resolution 2129.

3. Written Testimony of the Honorable Robert Barrett on behalf of the City of Peoria, AZ.

4. City of Peoria, AZ Resolution 2013–41.

5. Letter from the Mayor/City Council Office of Surprise, AZ.

6. Map C of Impact of Proposed Amendment to the Tohono O'odham Nation's Land and Water Rights Settlement Act.

7. Written Testimony of the Honorable Samuel U. Chavira, City of Glendale, AZ Yucca District Councilman.

8. City of Phoenix, Councilmember Nowakowski, District 7 letter.

9. Tribal Council Resolution, Hopi Tribe, H035–2013.

10. Tribal Council Resolution, San Carlos Apache Tribe, No. MY–13–116.

11. Court cases affirming land-in-trust decision under Gila Bend Act.

a. *Gila River Indian Cmty.* v. *U.S.,* 776 F. Supp. 2d. 977 (D. Ariz. 2011).

b. *Gila River Indian Cmty.* v. *U.S.,* 697 F.3d 886 (9th Cir. 2012).

12. Court cases affirming gaming eligibility of land under the tribal-State compact and IGRA.

a. *State of Arizona* v. *Tohono O'odham Nation,* 2:11–cv–00296–DGC (D. Ariz. 2013).

Submitted by Rep. Paul A. Gosar of Arizona FTR:

1. Arizona Republic Op-Ed: Tribal leaders: Bill would safeguard casinos deal.

2. Press release from the City of Glendale, AZ.

3. Letter to Rep. Sinema from the City of Tempe, AZ.

4. Letter from the Town of Fountain Hills, AZ.

5. Letter to Rep. Franks from the City of Litchfield Park.

6. Letter to Rep. Franks from the Maricopa County Board of Supervisors.

7. Letter to Rep. Franks from the Town of Gilbert.

8. Letter to Chairman Young and Ranking Member Hanabusa from the Pueblo of Zuni, NM.

Submitted by Witness, Ms. Diane Enos, President, Salt River Pima-Maricopa Indian Community FTR:

1. Map—proposed location for casino and proximity to a school.

2. A bound series of letters/resolutions/news articles/transcriptions, etc FTR titled *Arizona Gaming Compacts Proposition 202 "No additional casinos in the Phoenix metropolitan area".*

Various Submissions FTR:

1. Statement of the Honorable Sherry Cordova, Chairwoman, Cocoah Indian Tribe.

2. Letter from Reps. Markey and Grijalva to Chairmen Hastings and Young.

3. Governor Arlen Quetawki, Sr., Pueblo of Zuni.

4. Governor Mendoza, Gila River Indian Community.

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