



NATIONAL CONGRESS OF AMERICAN INDIANS

**Written Testimony of President Fawn Sharp
National Congress of American Indians
Vice- President of the Quinault Indian Nation
In Support of H.R. 8108, the Advancing Tribal Parity on Public Lands Act
and In Support of H.R. 8109, the Tribal Cultural Areas Protection Act
for the House Committee on Natural Resources
Subcommittee on National Parks, Forests, and Public Lands
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I am Fawn Sharp, Vice-President of the Quinault Indian Nation and President of the National Congress of American Indians (NCAI). On behalf of the National Congress of American Indians (NCAI), thank you for this opportunity to provide testimony on H.R. 8108 – the Advancing Tribal Parity on Public Lands Act and H.R. 8109 – the Tribal Cultural Areas Protection Act. Indian Country supports these pieces of legislation as viable ways to increase the protections and parity for Tribal Nations' sacred and cultural lands.

Founded in 1944, NCAI is the oldest and largest representative organization comprised of Tribal Nations and their citizens. Tribal leaders created NCAI in response to federal policies that threatened to terminate Tribal Nations. Since then, NCAI has fought to preserve the treaty and sovereign rights of tribal governments, advance the government-to-government relationship, and secure our traditional cultures and lifeways for future generations.

Special Relationship with the Federal Government

The land which makes up the United States is carved from the historic territories of our Tribal Nations. Many of the current relationships between the federal government and Tribal Nations are dependent on the treaty rights and trust responsibilities which have come out of the loss of life and land. This unique legal relationship is defined by the U.S. Constitution, statutes, treaties, executive orders, and court decisions. The U.S. Constitution grants exclusive authority to Congress to legislative tribal affairs, while the Supreme Court has long recognized Tribal Nations as distinct political entities¹ that the federal government assumed a fiduciary responsibility to, in exchange for those lands and resources.² This responsibility must include protection of tribal cultural heritages through the preservation of AI/AN sacred places, objects, and cultural landscapes, as provided for in numerous statutes, executive orders, departmental policies, and inter-departmental memoranda.

Special Relationship with the Land

Tribal Nations and their citizens maintain meaningful religious, cultural, and social connections to their ancestral and historical homelands, including their cultural and sacred landscapes regardless of the current status of these lands. Our American Indian and Alaska Native (AI/AN) peoples have place-based communities; much of the way

¹ *Worcester v. Georgia*, 31 U.S. 515 (1832).

² *Cherokee Nation v. Georgia*, 20 U.S. 1 (1831).

our relationships, our stories, and our frameworks are structured are based on our landscapes. While many of them have changed over time, we still remain connected to our homelands. Similar to many other communities, we also have place-based understandings of our traditional acts and religious or cultural ceremonies. It remains extremely important to protect the integrity of these places and is a main priority for all Tribal Nations.

NCAI has two very relevant resolutions which call upon the federal government to increase protections for our cultural heritage by securing our rights to our culturally relevant landscapes and pass legislation like H.R. 8108 and H.R. 8109.

First, NCAI Resolution REN-13-003, *Transferring Federal Lands to Tribal Trust*³ notes the importance of tribal consultation, and the precedent Congress has already set by protecting both AI/AN religious freedoms and nationally historic places. It also calls for all federal land which is considered for disposal or transfer, that a Tribal Nation has a historical relationship with be offered to the Tribal Nation to purchase at the appraised value before the land would enter a competitive bidding process.

Second, NCAI Resolution DEN-18-035, *Supporting Legislation to Improve Protections and Authorize the Restoration of Native Sacred Places on Federal Lands*⁴ asks Congress to fix the gap in federal law which affords State and local governments the ability to exercise control over lands they have vested interest in and voice those interests to the federal government regarding public lands. Further, this resolution focuses on steps Congress can take to enhance the consultation process, increase protections for cultural and sacred sites and landscapes, and to allow Tribal Nations to contribute to the management of these lands.

The recent Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships has made it clear that this Administration's policy is to support tribal sovereignty and self-governance.⁵ This is done so with regular, meaningful, and robust tribal consultations with Tribal Nations. Key to this must be the official inclusion of tribal considerations in all decisions regarding federal lands. Tribal Nations have been the stewards of these lands since time immemorial, and for many tribes across the nations, regardless of the current status of their historical lands, they remain the stewards and protectors of these landscapes. There is rarely a more meaningful way to uphold tribal sovereignty than by ensuring Tribal Nations have a voice in the decisions which affect our cultural, historical, and sacred landscapes.

H.R. 8108 – Advancing Tribal Parity on Public Lands Act

³ NCAI Resolution No. REN-13-003 *Transferring Federal Lands to Tribal Trust* available at: https://www.ncai.org/attachments/Resolution_yFmbABxOSoWDzHAAUodwdNtRWaLTcdPTryidlbDhnKnZqylstkVREN-13-003%20final.pdf, accessed on: September 9, 2022.

⁴ NCAI Resolution No. DEN-18-035 *Supporting Legislation to Improve Protections and Authorize the Restoration of Native Sacred Places on Federal Lands* available at: https://www.ncai.org/attachments/Resolution_PYCnwKpRbfWPiYzLKHPLmgHJMNoHiIZVffWZqBlifEouNkSdFeSDEN-18-035%20Final.pdf, accessed on: September 9, 2022.

⁵ Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, January 26, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/memorandum-on-tribal-consultation-and-strengthening-nation-to-nation-relationships/>.

Federal management laws currently fail to protect the rights and interests of Tribal Nations with historic connections to the lands. As sovereign Nations, tribal governments still are not afforded the same rights as States and local governments. H.R. 81018 – the Advancing Tribal Parity on Public Lands Act would ensure not only that tribes have parity with other governments, but that Tribal Nations are also offered the respect they deserve. Currently, federal law protects State and local governments interests in public lands but not Tribal Nations. Further, the trust and treaty responsibility the federal government has to Tribal Nations should ensure the right of tribal consultation in all federal decisions, however there is not currently a guaranteed mechanism to evaluate tribal interests in public lands which are to be alienated.

Tribal consultation comes not only from the recent Presidential Memorandum, but is rooted in the Nation-to-Nation relationship Tribal Nations maintain with the federal government. This Act would enhance tribal consultation requirements regarding public lands, which are currently lacking. It would also require that public land advisory boards include at least one tribal representative. This offers Tribal Nations a much-needed voice in decisions that affect our cultural lifeways.

H.R. 8108 also would ensure tribal considerations are built into acquisition and alienation processes in two ways. First, federal agencies would be required to include the presence of cultural sites and the fulfillment of treaty obligations when considering land acquisitions. Conversely, this act would also prohibit the sale of public land containing a tribal cultural site.

In that vein, at the beginning of the public land alienation process, this bill requires the U.S. Forest Service and the Bureau of Land Management to review Tribal Nations’ historic connections to the land and then undergo tribal consultation if one is found. Following robust tribal consultation, the Secretary of the Interior or the Secretary of Agriculture would make the final determination if disposal of the parcel of land would impact any Tribal Nations. If the determination is yes, then the relevant Secretary would then be required to notify the impacted Tribal Nation and offer the land at fair market value, ensuring tribes retain the right of first refusal to their lands.

NCAI supports H.R. 8108 not only because it is the fulfillment of a longstanding resolution, but more importantly because the right of land reacquisition is at the heart of NCAI. Tribal leaders across the country created NCAI in response to federal termination policies, which threatened sovereign tribal governments and their territories. This was not simply a matter of securing control or governance, but to protect our sacred and ancestral connections to our land. Without our stewardship, termination policies opened some of our most important landscapes to desecration. This is the reality for many Tribal Nations who lost their lands during this era. We have been fighting to rectify this for almost 80 years and Congress must act now before it is too late.

H.R. 8109 – the Tribal Cultural Areas System Act

Many public lands which retain AI/AN historic, cultural, ceremonial, and religious ties still require additional protections while under federal stewardship. Oftentimes the protection of, or access to, these sites were guaranteed under treaties which were not upheld. For each tribe the rights to pray, practice ceremony, and conduct other traditional activities are rights we have held since time immemorial. Congress has previously recognized the need to formally protect AI/AN religious and cultural activities. For example, the American Indian Religious Freedom Act states, “it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise... traditional religions... and the freedom to worship

through ceremonials and traditional rites.”⁶ Current federal laws, however, do not extend these protections to our sacred and religious places, and regularly fail to recognize tribal interests on public lands. Our tribal citizens often are restricted access to their places of prayer, worship, and ceremony, while others may arrive to find their sacred places desecrated through both government and non-government actions.

By creating a national system for our cultural areas, H.R. 8109 would preserve areas tribes have a vested interest in. Tribal Nations would be able to recommend sections of public lands as Tribal Cultural Areas which the Secretary of the Interior would then send to Congress for official designation. Giving only Congress the ability to add or remove lands to the system.

Further, this Act empowers Tribal Nations to be involved in the management of their own cultural areas. Tribal management would ensure traditional practices could be preserved, religious, cultural, and spiritual values would be protected, and Tribal Nations could become more engaged in the modern processes of land management. We have been protecting and managing our lands for millennia, and H.R. 8109 will honor that and uphold many of the promises which have been left on the floor.

Finally, and most importantly for many Tribal Nations, this Act would prohibit efforts to commercially develop and exploit our sacred places. For years our calls have gone unheard as we have demanded our treaty rights to be upheld, as we have watched our landscapes be mismanaged, facing both natural and man-made disasters. There are a number of federal laws which have laid the groundwork for these protections, but none of them have gone far enough.

Conclusion

The precedent and responsibility to protect Tribal Nations' religious freedoms, treaty rights, and land claims is generally recognized, but is too broad, creating gaps in federal law that currently leave Tribal Nations without a meaningful voice and without a practical path by which to protect and manage our ancestral landscapes. NCAI is deeply in support of these bills as both offer the much needed parity we deserve as sovereign Nations. As Congress works to restore the promises made to Tribal Nations long ago, we urge you to pass H.R. 8018 and H.R. 8019 and secure protections for our lands and our freedoms.

⁶ 46 U.S.C. §1996(1).