TESTIMONY OF

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FOR THE
U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON NATURAL RESOURCES, SUBCOMMITTEE ON FEDERAL LANDS
AT ITS
HEARING ON H.R. ___, THE "FOSTERING OPPORTUNITIES TO RESTORE ECOSYSTEMS THROUGH SOUND TRIBAL STEWARDSHIP ACT" OR THE "FORESTS ACT"
ON
MAY 20, 2025

Chairman Tiffany, Ranking Member Neguse, and Members of the Subcommittee on Federal Lands:

We offer the following written testimony for the record of your May 20, 2025, hearing on the "Fostering Opportunities to Restore Ecosystems through Sound Tribal Stewardship Act" or the "FORESTS Act," introduced by Representative Hurd. The FORESTS Act seeks to promote greater tribal co-management of federal public lands, more specifically public forest lands managed by the United States Forest Service (USFS). Other recently introduced legislation, such as Representative Huffman's "Tribal Self-Determination and Co-Management in Forestry Act," proposes similar objectives. This hearing and its subject legislation offer important opportunities to consider the nature of federal-tribal relations in the management of public lands. Therefore, we hope our testimony can support your understanding of the broader legal and policy context in which these opportunities arise.

We also hope our testimony can offer a unique and helpful perspective. Importantly, neither of us is a tribal member nor do we have Indigenous heritage and we do not and should not be considered to speak for or on behalf of any tribe or tribal organizations. Rather, as professionals and academics trained in law (Mills) and policy (Nie), our perspectives on tribal co-management are based on years of experience working with both tribal and federal partners in support of a greater tribal role in decision making regarding the management of federal lands, waters, resources, and wildlife. Through our work, we endeavor to support meaningful and informed dialogue between tribes and federal land managers in hopes of enhancing the performance of the federal government's trust duties to tribal nations and promoting effective co-management arrangements; objectives consistent with those of the FORESTS Act and related legislation. We do that through extensive work with tribes, tribal organizations, and federal land agencies facilitating the development and implementation of co-stewardship agreements and, through scholarship focused on the legal and policy details of and recommendations for effective tribal

co-management.[1] In addition, consistent with the directives of Joint Secretarial Order 3403, entitled "Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters," adopted by the Secretaries of Interior, Agriculture, and Commerce, we helped lead workshops for nearly 400 Senior Executive Service members across the bureaus and agencies of those Departments in the history, law, and policy of tribal co-management and co-stewardship.[2]

At its core, tribal co-management substantively honors the nation's treaty and trust obligations to Native Nations through the shared management of landscapes in a manner consistent with the purposes and letter of federal public lands law. This bridging of tribal perspectives and responsive federal authority builds on decades of tribal leadership and collaboration, which has sought to create a more pro-active and sovereignty-affirming model in which Indian tribes envision their own approach and plans for managing their rights and interests on federal lands.[3] From the earliest cases of tribal co-management in the Pacific Northwest, Great Lakes Region and Alaska, this history demonstrates that tribes are best positioned and most capable of co-creating new models of decision-making and management. Thus, full and broad engagement with tribal leadership and the numerous tribal commissions and consortia with tribal co-management experience is essential to the next chapter of co-management's bright future.

Importantly, tribal co-management is neither a partisan issue nor should it be viewed through an ideological lens. True co-management draws on longstanding and foundational principles of federal Indian law recognizing the inherent sovereignty of Native Nations and the duty owed to them by the United States. As matters of constitutional importance that implicate structural features of our nation's governance, these principles and the practice of co-management relate to the exercise of and relationship between federal, tribal, and state authorities. In this regard, tribal co-management provides a means through which the "cooperative federalism" model of federal public lands law that reserves or extends legal authorities, and often federal revenue, to state governments expands to consider the nation's original sovereigns. In its most effective implementation, this cooperative and decentralized approach runs the gamut of interests relevant to public lands, including the preservation and conservation of lands and resources as well as

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[1] *See e.g.,* Monte Mills & Martin Nie, "Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands," 44 *Public Land & Resources Law Review* 49 (2021); "Bridges to a New Era Part 2: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Lands in Alaska," 47 *Columbia Journal of Environmental Law* 176(2022); and "Planning a New Paradigm: Tribal Co-Stewardship and Federal Public Lands Planning," 36 *Colorado Environmental Law Journal* (2025).

[2] There is often some confusion about this terminology and the distinction between "co-management" and "co-stewardship." The Departments of Interior, Agriculture and Commerce view co-stewardship as a broad, umbrella term that captures a wide scope of collaborative relationships and models of shared decision making. Co-management, however, is viewed more narrowly referring to cooperative stewardship arrangements that are undertaken pursuant to federal authority that requires the delegation of some aspect of federal decision-making. Some agencies, such as the Bureau of Land Management, view co-stewardship broadly enough to include co-management and other forms of tribal led-stewardship. For more background *see Sovereign-to-Sovereign Cooperative Agreements Repository: Frequently Asked Questions, Co-Stewardship vs. Co-Management,* Univ. of Wash., https://lib.law.uw.edu/cooperative/FAQs#s-lg-box-31758542 (select co-stewardship vs.co-management to expand).

[3] *See e.g.,* the Stewarding Native Lands Program and Webinars hosted by the First Nations Development Institute, available at https://www.firstnations.org/webinars/stewarding-native-lands-webinars/

their active management and resource development. In light of these foundations and diverse interests supported by its use, some of the most used tools to implement tribal co-management—such as the Tribal Forest Protection Act (TFPA), Good Neighbor Authority (GNA), 638 compacting, and others—have generated broad bi-partisan support, a theme continuing with the more recent passage of the EXPLORE Act and its tribal provisions as well as the introduction of the FORESTS Act and complimentary co-management legislation by both majority and minority members of this Subcommittee. Such broad-based support reflects the importance and potential of tribal co-management to help guide the future of public lands for all Americans and we urge the Subcommittee to continue this approach.

Moving forward, Congress can take important actions to catalyze further progress in pursuit of tribal co-management. First, as it has many times already in other contexts, Congress can recognize and affirm the United States' trust and treaty obligations are an integral part of each Department's responsibilities when managing federal public lands, waters, and resources. In the 2016 Indian Trust Asset Reform Act (ITARA), for example, Congress made explicit findings in this regard and reaffirmed its policy in support of the federal government's trust duty. *See* 25 U.S.C. §§ 5601-02. In doing so, Congress specifically recognized that:

> The fiduciary responsibilities of the United States to Indians also are founded in part on specific commitments made through written treaties and agreements securing peace, in exchange for which Indians have surrendered claims to vast tracts of land, which provided legal consideration for permanent, ongoing performance of Federal trust duties … 25 U.S.C. § 5601(4).

Many of the "vast tracts of land," ceded by Native Nations are now federal public lands managed by various agencies, all of which are charged with and should be guided in their work by these same fiduciary duties. Formally recognizing that responsibility would help emphasize that message for all federal agencies carrying out this important work.

Second, though agencies already enjoy a range of legal authorities in which to engage in tribal co-management, Congress could clarify and enhance these powers through clear statutory authority to make agreements with Indian Tribes to co-manage and co-steward federal public lands and resources. There is, already, "significant latitude" afforded to federal agencies "to use agreements with outside partners to support their governmental operations without inappropriate transfers of agency authority."[4] But all too often agencies and bureaus are reluctant to share management and decision-making with Tribes based on their own narrow readings of their statutory authority as well as overblown concerns with the sub-delegation doctrine and what constitutes an "inherently federal function." While those legal doctrines occasionally present legitimate considerations, federal officials regularly rely on them as an over-simplified and ill-considered excuse to avoid engaging and co-creating new models of shared management. New

[4] DEPT. OF THE INTERIOR, OFFICE OF THE SOLICITOR., FINAL REPORT: CURRENT LAND, WATER, AND WILDLIFE AUTHORITIES THAT CAN SUPPORT TRIBAL STEWARDSHIP AND CO-STEWARDSHIP (2022), at 17. The USDA Office of General Counsel similarly states that there is "*significant latitude*…in the types of co-stewardship agreements or other arrangement that may appropriately support USDA operations without an inappropriate transfer of federal authority." USDA, OFFICE OF THE GEN. COUNSEL, LEGAL REVIEW OF JOINT SECRETARIAL ORDER 3403, 6 (2022)

legislation could ensure clear authority for tribal co-management across the range of programs and resources managed by the U.S. Forest Service and all federal public land agencies.

Like the proposals currently before this Subcommittee, that legislation need not start from a blank slate. The most used co-management authorities for work on the National Forests came about, in large part, from incremental steps building on efforts focused on healthy forests, timber, fire and restoration. The expansion of co-management potential through the TFPA and GNA has been essential, and the resultant successes showcase what is possible by working together across shared landscapes. But tribal co-management and stewardship cannot and should not be unnecessarily restricted to project-based timber management, which is just one of the five prescribed uses of the NFS as codified in the Multiple Use Sustained Yield Act (MUSYA) of 1960 ("The national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.") Any additional statutory authorities should ensure co-management opportunities can be developed across the USFS's integrated renewable resources program and, rather than only focusing on project-level work, make clear that tribes are to be engaged at the earliest stages of planning and project development.

One of the simplest but most effective ways to broaden the reach of co-management across the National Forest System would be to extend the self-governance compacting authority available to all agencies within the Department of the Interior across all programs administered by the USFS and perhaps all other agencies within the Department of Agriculture. *See* 25 U.S.C. § 5363(b)(2). That approach relies on the well-established authority and familiar practice of self-governance compacting, opens up existing federal programs, functions, services, and activities for assumption by tribal governments, and provides funding for that assumption through the negotiated compact and annual funding agreement. This authority has been utilized by tribes and federal partners within the Department of the Interior to empower tribal management of a variety of federal lands, including across National Parks, Bureau of Land Management (BLM) lands, and National Wildlife Refuges managed by the United States Fish and Wildlife Service (USFWS). *See* Kevin Washburn, *Facilitating Tribal Co-Management of Federal Public Lands*, 2022 WISC. L. REV. 263 (2022).

But, while this approach offers significant promise, it is not a perfect or comprehensive solution for all tribal co-management interests or relationships. The discretion afforded to the Secretaries in implementing these compacting authorities has limited their full potential. Whether because they view working with Native Nations as ancillary or in conflict with their public land management duties, are generally reluctant to empower greater tribal authority, or are unsure or unaware of these authorities, agencies have entered into relatively few such agreements and, for the most part, the agreements have been limited to project-level activities. *See*, *e.g.*, Washburn, *supra* at 311-25. One remedy for these challenges would be to narrow the grounds on which agencies may refuse to enter such compacts and, perhaps like the approval process for demonstration projects adopted in ITARA, *see* 25 U.S.C. § 5613, mandate a presumption for approval unless an agency can demonstrate that a tribal proposal fails to meet specific requirements.

While enhancing and meaningfully expanding existing self-governance compacting authorities would be an important step toward greater tribal co-management, flexibility is key to ensuring Native Nations and their federal agency partners can develop effective partnerships. Therefore, these measures should be considered alongside a range of additional options for enhancing the

bases on which agencies and Native Nations can partner. When doing so, Congress and this Subcommittee should keep in mind the diversity of perspectives and positions of Native Nation across the nation, including how opportunities for co-management (or the lack thereof) may impact Alaska Natives and the Native Hawaiian Community. Failure to do so can significantly if unintentionally, limit some Native Nations. The TFPA, for example, authorized greater partnerships between tribes and the USFS but only on USFS lands adjacent to tribal lands. That requirement functionally excluded tribes in Alaska from utilizing that authority, despite its significant positive potential, especially across the Tongass National Forest in Southeast Alaska. Thus, though treaty and other reserved rights across shared boundaries are powerful legal anchor points for tribal co-management in the continental United States, many other legal foundations, from Title VIII (Subsistence) of ANILCA in Alaska to the overarching trust obligation and "government-to-sovereign" relationship with the Native Hawaiian Community, support co-management and should also be considered as legislative efforts move forward.

In addition to expanding the strength and breadth of existing authorities for partnership, Congress could also consider supporting an expanded vision of various agency activities that could support co-management. For example, planning is a core feature of the National Forest System and federal public lands and resources management, required by the various Congressional mandates applicable to management agencies. The planning process provides additional opportunities for ensuring coordination with tribal land and resource management plans as well as respect for and deference to tribal priorities and proposals.[5] Federal land management agencies should be required to more actively engage with Native Nations in order to incorporate tribal land and resource management plans into federal land management planning efforts. Like some of the language in the FORESTS Act, this could be accomplished in several ways, including statutory mandates that would build on or tier to tribal plans prepared pursuant to the National Indian Forest Resources Management Act (25 U.S.C. § 3104) and the Indian Trust Asset Reform Act (25 U.S.C. § 5613). Both statutes provide powerful potential avenues for co-management along with important accountability mechanisms that can be integrated into the management of federal public lands.

Beyond planning, new legislation should also clarify that in some instances, federal approvals may be conditioned upon consent from Native Nations and that it is acceptable to make a decision to approve an action contingent on the concurrence of a tribal government where tribal rights and interests at stake and may be affected by federal land management activity or decision. This requirement would reflect well-established standards of international law established in the United Nations Declaration on the Rights of Indigenous Peoples and is already found in agency step-down and legal guidance.[6] Congressional clarification would confirm those standards and

[5] The coordination provision for the USFS: "In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs." 43 U.S.C. § 1712(b). The USFS's Planning Rule also requires "coordination with other planning efforts," 36 C.F.R. § 219.4(b)(1) (2025).
[6] The USDA Office of General Counsel similarly states that "if co-stewardship activities are not permitted under applicable law, the USDA agencies should give consideration and deference to Tribal proposals, recommendations, and knowledge that affect management decisions on USDA-managed lands." USDA, OFFICE OF THE GENERAL COUNSEL, LEGAL REVIEW OF JOINT SECRETARIAL ORDER 3403, 5 (2022)

serve to limit the ways in which agencies may limit tribal co-management through their own interpretation, implementation, or narrow models of tribal engagement and consultation.

Finally, tribes need the support and capacity necessary to ensure co-management can succeed on-the-ground. The amount of federal funding and burdens associated with technical support for tribal co-management regularly leave Native Nations frustrated with bureaucratic processes, complicated agreements or cost-sharing requirements, and sometimes insurmountable indirect and contract support costs. The most surefire way to doom tribal co-management, or any effective management of public lands for that matter, is through inadequate funding. Tribes and their partner federal land agencies need to be working at full capacity to meet applicable statutory requirements and ensure that the nation's treaty and trust obligations are fulfilled. In addition to providing such support, Congressional oversight can also be an important way to ensure that agencies prioritize their engagement with Tribes and institutionalize incentives through performance measures and metrics.

In conclusion, thank you for the opportunity to provide this testimony and for your work in considering the importance of and opportunities for expanding tribal co-management of federal public lands and resources. We are encouraged by the letter and spirit of the FORESTS Act and that the members of this Subcommittee and your Congressional colleagues are interested in and dedicated to exploring how to move this critical work forward. For far too long, the management of federal public lands and waters has been treated as separate from the interests of and federal relationships with Native Nations. Tribal co-management is one meaningful avenue for restoring those interests while ensuring the United States can meet its trust and treaty-based obligations to manage those lands and waters in partnership with Native Nations. Please do not hesitate to call on us if we can be of additional assistance as you move forward with these important efforts.