

UNLOCKING INDIAN COUNTRY'S ECONOMIC POTENTIAL

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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OVERSIGHT HEARING ON UNLOCKING INDIAN COUNTRY'S ECONOMIC POTENTIAL

Wednesday, March 1, 2023
U.S. House of Representatives
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 9:03 a.m., in Room 1324 Longworth House Office Building, Hon. Harriet Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, LaMalfa, González-Colón; and Leger Fernández.

Also present: Representative Stansbury.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order. Without objection, the Chair is authorized to declare recess of the Subcommittee at any time. The Subcommittee is meeting today to hear testimony on “Unlocking Indian Country’s Economic Potential”.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I, therefore, ask unanimous consent that all other Members’ opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o). Without objection, so ordered.

I ask unanimous consent that the gentlewoman from New Mexico, Ms. Stansbury, be allowed to sit and participate in today’s hearing. Without objection, so ordered.

I will now recognize myself for an opening statement.

STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. HAGEMAN. Today, there are 574 federally recognized Indian tribes with a population of approximately 2.8 million American Indian and Alaskan Natives living in the United States. There are approximately 56 million acres of Indian land, and of that, 46 million acres belong to Indian tribes.

And an additional approximately 44 million acres of land in Alaska are owned in fee simple by Alaska Native corporations under unique terms established by Congress to settle Aboriginal land claims in Alaska.

Although tribes are sovereign governments, some suffer health, social, and economic disparities, as well as higher poverty rates in comparison to other non-Native communities. These disparities contribute to higher rates of unemployment in Indian Country, and an underdeveloped business and entrepreneur environment.

For many Indian tribes and Alaskan Natives, real property holdings are the basis for social, cultural, and religious life and

often their single most important economic resource. Typically, Indian lands primarily fall into one of three categories: trust, fee, and restricted fee.

Trust land is owned and managed by the United States through the Department of the Interior, and these lands are held in trust for the benefit of an Indian tribe or individual Indians. It is inalienable and nontaxable.

Restricted fee land is fee simple land that an Indian tribe or individual Indian may own and hold title but is subject to a restriction against alienation and taxation. An Indian tribe or individual Indians also own fee simple land that can be freely alienated or encumbered without Federal approval.

The current paradigm of the trust responsibility as conceived and implemented by the government has, in the view of some, wreaked all manner of harm on tribal communities. When Federal Indian land is held in trust by the Department of the Interior, legal title for that land is effectively owned by the Federal Government.

This distinction means that no decisions about these trust lands can occur without the approval of Washington bureaucrats. And this can slow or, in some cases, halt development for years. It also drives up costs.

While some statutes like the Long-Term Leasing Act have enabled some tribes to lease their land for longer terms, many tribes still face the effects of the Non-Intercourse Act which limits their ability to buy, lease, or sell land for economic development purposes.

We are going to hear some of those stories today from our witnesses and what these individual exemptions allowed the represented tribes to accomplish. Expanding the ability of tribes to use their land in ways without needing to come to the government for approval is crucial for furthering self-determination and economic security.

It is in this spirit that yesterday I introduced a bill that would allow all federally recognized tribes to authorize leases of up to 99 years for lands held in trust. This would get rid of the piecemeal approach Congress has taken on these requests for the past 67 years.

Congress should continue to provide additional tools to all federally recognized Indian tribes to conduct the activities that they choose. Tribal governments already seek to make the best decisions for their members, for their social, cultural, and economic security.

We should ensure that Indian lands whether owned in fee, owned written restricted fee, or held in trust for the benefit of the tribes are able to be used as the tribes want to use them.

I look forward to today's discussion and how Congress can remove onerous restrictions on Indian lands, including trusts lands, so that the tribes can unlock economic potential and diversify their business and economic interests.

The Chair now recognizes the Ranking Minority Member for her statement.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. Good morning, all. And thank you to the witnesses for joining us here today. I would also like to extend my warm welcome to the Chairwoman, who is now heading up the Committee. And I look forward to ongoing bipartisan support on the issues affecting Native American tribes and our Indigenous peoples as well as the insular areas.

And I think that that is one of the wonderful parts of this Committee, the Subcommittee. It has always acted in a way that puts the interests of our Indigenous peoples, our Native Americans first. And for that, I am very, very pleased and proud of the great work we have done.

Economic sovereignty is how I often think of these issues, right? Tribes need economic sovereignty. And today's topic of Unlocking Indian Tribes Economic Potential is especially timely after the great bipartisan economic development work we accomplished last session. We did get a lot done and there is always more to do. The journey is a journey, right? We constantly have an obligation to move ourselves forward.

So, last Congress, we passed 26 tribal bills out of the House of Representatives, 18 of which were signed into law. And this noted the bipartisanship work we did. And, indeed, the two bills that we passed last Congress, which we will be hearing more about today, S. 3773, authorized the leases of land for the Confederated Tribes of the Chehalis Reservation, and S. 108 to authorize the Seminole Tribe of Florida to transfer lease certain lands.

And when we brought those bills, and as we talked about those bills, we pointed out the importance of making sure that we did not continue to do this on a piecemeal basis, but that we would create a fix that would apply to all tribes. So, thank you very much, Madam Chairwoman, for introducing the legislation. And we look forward to working with you as we move forward on it.

We laid the groundwork back there for the broader fix because we know that there are indeed obstacles, especially in terms of being able to move quickly on issues around developing tribal land.

I did that work for about 30 years, so I was grinding my teeth more than once over the difficulties we were having getting the BIA to move quickly on leases or rights-of-way. I worked hard to have the BIA change its rights-of-way and leasing statutes so that it would be easier for tribes to move, because what we are dealing with is not a silver bullet, but is one of the important pieces as we move forward.

The Bipartisan Infrastructure Law, for example, we spent \$13 billion for tribal communities. But if we cannot get those \$13 billion into the ground because rights-of-ways or leases are taking too long, that is going to be a problem, which is why we actually did appropriate additional monies for the BIA to address the studies they need to do.

My bill last year dealing with tribal historic preservation officers, and the whole Section 106 study to provide more funding for that, to permanently authorize it, would be another step that we need so those processes move faster.

I need to tell you about one example of a great economic development engine in New Mexico because I think it is telling about one way you could do this. So, the 19 pueblos owned, jointly, former boarding school land in Albuquerque, and they operate it jointly through a Section 17 corporation.

What they have chosen to do is to provide leases of that land in a master lease concept, right? So, they get all the approvals upfront. And then they, themselves, direct the development of that land so that retailers are renting from them, so that the BIA is renting office space from the tribes it serves themselves, generating significant resources.

And one of the things I love about this is, as they are generating those resources, they are making sure that they are controlling both the land, the use of the land, and providing the cultural resources that are so important. So, on that land is the Indian Pueblo Cultural Center, the center that is one of the third most visited sites in New Mexico, and we have a lot of tourism.

That is why I think it is such a beautiful example of, how do we help tribes do what the Indian Pueblo marketing did in New Mexico, which is develop their lands, continue to control the economic destiny, as well as protecting their cultural heritage.

So, I look forward to hearing the testimony of the witnesses today as we move to promote tribal economic sovereignty. Thank you so very much.

Ms. HAGEMAN. Thank you. And I will now introduce our witnesses. The Honorable Dustin Klatush, Chairman, Confederated Tribes of the Chehalis Reservation, Oakville, Washington; the Honorable Joseph Rupnick, Chairman, Prairie Band Potawatomi Nation, Mayetta, Kansas; the Honorable Wavalene Saunders, Vice Chairwoman, Tohono O'odham Nation, Sells, Arizona; and Mr. Jason Robison, Land and Resources Officer, Cow Creek Band of Umpqua Tribe of Indians, Roseburg, Oregon.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record. To begin your testimony, please press the talk button on the microphone, which I often forget.

And we must use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. And at the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement. I will also allow all witnesses on the panel to testify before Member questioning.

The Chair now recognizes the Honorable Dustin Klatush for 5 minutes.

**STATEMENT OF THE HON. DUSTIN KLATUSH, CHAIRMAN,
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION
FROM THE STATE OF WASHINGTON**

Mr. KLATUSH. Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Committee. My name is Dustin Klatush, and I am the Chairman of the Confederated Tribes of the Chehalis Reservation. I appreciate the opportunity to testify today on the Chehalis Tribes' recommendations to promote and eliminate barriers to tribal economic development.

The Chehalis Reservation is located halfway between Seattle and Portland off Interstate 5 in Southwest Washington State. Southwest Washington has long been an economically depressed area, lacking in businesses and jobs for both Tribal members and non-Natives alike.

Most of the Tribes' 4,800-acre land base is in a flood plain and the Tribe has very little land suitable for economic development. For this reason, the Tribe has had to be innovative with land that it has to maximize our ability to generate revenue and to provide for our citizens.

The Chehalis Tribe is proud to have accomplished two firsts in Indian Country. In 2008, the Tribe constructed the first Great Wolf Lodge Waterpark on Indian lands. The Tribe also opened the first legal distillery in Indian Country.

Congress helped in an effort by repealing an 1834 law that prohibited construction of distilleries on Indian lands. The law was part of the 1834 Non-Intercourse Act and required Indian agents to destroy and break up distilleries within the areas. The law even stated that in breaking up distilleries, it shall be lawful to employ the use of the military force of the United States.

The Tribes' Talking Cedars brewery and distillery was the first ever legal distillery in Indian Country. It is also the largest craft distillery west of the Mississippi River. This success could not have occurred if Congress had not repealed the 1834 law. Like the now-repealed distillery law, there are laws within the Committee's jurisdiction that should be repealed or be amended to make them more accessible to tribes.

Late last year, Congress added the Chehalis Tribe to the list of Indian tribes for which the Bureau of Indian Affairs can approve 99-year leases. The Tribe had received two letters of intent from outside the companies to develop warehouse facilities on reservation land that the Tribe owns along major highways.

Both proposals required leases with terms longer than the 25-initial term, and the single 25-year extension allowed under the Long-Term Leasing Act. So, we went to work on a bill that added the Chehalis Tribe to the statute and allowed the Chehalis Tribe to enter into 99-year leases.

These bills have always been noncontroversial because they simply allowed the Secretary to approve leases of up to 99 years but did not require it. We were hopeful that the bill could steadily progress due to legislative process.

What occurred, however, was a drawn-out situation where all Indian-related bills were being held in the Senate for a reason unrelated to the merits of the bills themselves. Months dragged on with no Senate floor movement on nearly all Indian-related stand-alone bills, including our bill.

The Tribe was fortunate to finally have its bill approved by the Senate on December 20, 2022. The House passed the bill on December 22, 2022, and sent it to the President.

Since the Tribe's bill was signed into law, the Tribe has re-engaged with third-party developers and hopes to find or to have deals in place soon and begin construction during the building season this year.

While working to secure passage of the Chehalis Tribes' 99-year lease bill, the Tribe advocated for an amendment to the Long-Term Leasing Act that would allow all Indian tribes to obtain 99-year leases.

We do not believe that individual bills to add tribes to the statute is a good use of the tribes' or Congress' time and resources. Given our experience, we urge Congress to amend the Long-Term Leasing Act to allow all federally recognized Indian tribes the option to enter into leases with terms of up to 99 years.

Thank you for allowing me to testify today. I look forward to answering any questions that the Committee may have.

[The prepared statement of Mr. Klatush follows:]

PREPARED STATEMENT OF THE HONORABLE DUSTIN KLATUSH, CHAIRMAN,
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION

Thank you, Chair Hageman, Ranking Member Leger-Fernandez, and members of the Committee for holding this oversight hearing. My name is Dustin Klatush and I am the Chairman of the Confederated Tribes of the Chehalis Reservation (the "Tribe"). My testimony will focus on the Chehalis Tribe's recommendations to promote and eliminate barriers to tribal economic development.

The Chehalis Reservation was created by Executive Order in 1864 and is located between the confluence of the Chehalis River and the Black River. Geographically, the Tribe is located approximately halfway between Seattle and Portland off Interstate 5. Southwest Washington has long been an economically depressed area lacking in businesses and jobs for Tribal members and non-Indians alike.

The Tribe was, and is, a fishing tribe, and diminished fish runs have made fishing more difficult every year. In the 1970s before economic development became possible, Chehalis tribal fishermen earned, on average, \$1900 a year. This required many tribal members to work off-reservation for the state government or for non-Indian businesses to provide for their families.

The Tribe operates a casino but is always looking for ways to diversify its economic base to continue to support education, health, housing, safety, and other services for its members. Approximately 40 percent of Chehalis tribal members are under the age of 18 and will need jobs in the future.

Most of the Tribe's 4,800-acre land base is in a flood plain and the Tribe has very little land suitable for economic development. For this reason, the Tribe has had to be innovative with the land that it has to maximize its ability to generate revenue and to provide for our citizens. In this regard, the Chehalis Tribe is proud to have constructed the first Great Wolf Lodge waterpark in Indian country in 2008.

The Tribe has the following recommendations for the Committee to consider:

I. ALLOW ALL INDIAN TRIBES TO ENTER INTO 99-YEAR LEASES

In the final days of the 117th Congress, the House approved S. 3773, a bill that amended the Long-Term Leasing Act of 1955 to add the Chehalis Tribe to the list of Indian tribes for which the Secretary of the Interior is authorized to approve leases with terms of up to 99 years. House passage sent the bill to the President, who signed S. 3773 into law on January 5, 2023.

The Tribe was, and remains, interested in developing warehouse facilities on two parcels of its reservation trust land. The warehouses would serve supply chain needs between the cities of Seattle, Tacoma, Olympia, and Portland. The Tribe had received two letters of intent for developing the facilities from outside developers, but both proposals would have required leases with terms longer than the 25 initial term and the single 25-year extension allowed under the Long-Term Leasing Act.

The Tribe promptly began working with the Washington state congressional delegation to get House and Senate bills introduced as quickly as possible to add the Chehalis Tribe to the statute. The Tribe's goal was to secure the amendment into law by the end of the 117th Congress not only to maintain the interest of the outside developers, but also to enable the Tribe to secure a lease and begin construction during the Pacific Northwest construction season.

Historically, for an Indian tribe to enter 99-year leases, Congress has legislatively added the tribe's name at the end of the pertinent clause in the Long-Term Leasing Act. These have always been treated as ministerial, non-controversial bills, because they simply allow the Secretary to approve leases of up to 99 years, but do not

require it. The Chehalis Tribe was hopeful that its bill could steadily progress through the legislative process.

What ended up occurring, however, was a protracted situation where all Indian-related bills were being held in the Senate for reasons unrelated to the merits of the bills themselves. Months dragged on with no Senate floor movement on nearly all Indian-related standalone bills, including S. 3773. Finally, the logjam began to break the second week of December 2022 and individual bills were able to be considered on the Senate floor. The Chehalis Tribe was fortunate to have been able to have its bill approved by the Senate on December 20, 2022, and the House passed the bill on December 22, 2022. The clock could have easily run out, however, and the Tribe would have had to start anew in the 118th Congress.

Since the Tribe's bill was signed into law in early January, the Tribe has re-engaged with the third-party developers it was communicating with previously and hopes to have a deal in place soon and begin construction this year.

During its efforts to secure enactment of its 99-year lease bill, the Tribe advocated for a going-forward amendment to the Long-Term Leasing Act to ensure that any Indian tribes that needed longer term leases would not need to pursue individual bills that are subject to the vagaries of Congress.

While the Chehalis Tribe was ultimately successful, it does not believe that individual bills to add tribes to the statute is a good use of the tribes' or Congress's time and resources. Given our experience, we urge Congress to amend the Long-Term Leasing Act to allow all federally recognized Indian tribes the option to enter into leases with terms of up to 99 years.

II. OTHER FEDERAL LAWS EITHER REMAIN OBSTACLES TO TRIBAL ECONOMIC DEVELOPMENT OR CAN BE IMPROVED

Various laws in the U.S. Code that are in this Committee's jurisdiction are either impediments to tribal economic development or could be amended to make them more useful to tribes. The Chehalis Tribe has firsthand experience in this regard when, in January 2018, it was informed that an 1834 law that prohibited construction of distilleries in Indian country likely prohibited the Tribe's plans to begin construction on its long-awaited distillery project.

The law in question, which had never been enforced, was part of the 1834 Non-Intercourse Act and prohibited construction of distilleries in Indian country. The law charged Indian agents with responsibility to "destroy and break up" such distilleries in their respective Indian agencies. The law even provided that in breaking up distilleries, "it shall be lawful to employ the use of the military force of the United States."

Not desiring war, the Chehalis Tribe instead turned to the Washington state delegation and this Committee for assistance in repealing the law. From introduction to enactment, the process took only nine months, which is a testament to the bipartisan recognition that these types of outdated laws should not be allowed to impede progress. In 2020, the Tribe opened the Talking Cedars brewery and distillery, which is the first ever legal distillery in Indian country and the largest craft distillery west of the Mississippi River. This success could not have happened had the 1834 law not been repealed by Congress.

There are other laws that could and should be repealed or updated. As the Committee is aware, a separate provision of the Non-Intercourse Act requires Congress's consent to alienate Indian land. The provision has been interpreted by some courts as applying to fee land that an Indian tribe purchases on the open market, which has caused some tribes delays or difficulties in obtaining financing for economic development projects. This is another example of an antiquated law that could be amended to eliminate unintended impacts.

A separate law that can be updated to make it more effective is the Buy Indian Act, which is within this Committee's jurisdiction. The Buy Indian Act provides the Department of the Interior and certain agencies within the Department of Health and Human Services ("HHS") with the authority to set aside certain contracts for Indian-owned and controlled businesses. The Act does not extend to other federal agencies, however.

The Chehalis Tribe is in the early stages of seeking to supply neighboring military installations with products from its Talking Cedars distillery. Currently, the Buy Indian Act does not apply to departments outside of Interior or HHS, which is a potential complicating factor in working with Department of Defense procurement officials. Expanding the Buy Indian Act to other federal agencies would benefit Indian country and promote tribal economic development.

I thank the Committee for allowing me to provide testimony today and look forward to answering any questions.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. DUSTIN KLATUSH, CHAIRMAN,
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION

The Honorable Dustin Klatush did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. Please further expand on your written testimony and highlight further examples of where your tribal government has been able to successfully utilize tribal lands for economic benefit.

Question 2. Please further expand from your oral testimony on how the lack of staffing at the regional Bureau of Indian Affairs headquarters has affected economic development plans.

2a) What would be your recommendation to Congress or to the Bureau to improve these issues?

Question 3. Please further expand on your written testimony and provide an update on the warehouse facilities developmental project.

3a) Will you be pursuing any other projects with the tribe's new leasing authority?

Question 4. Is there any further information you think the Committee needs to make good policy regarding land use restrictions for tribal lands?

Ms. HAGEMAN. I thank the witness for his testimony.

The Chair now recognizes the Honorable Joseph Rupnick for 5 minutes.

**STATEMENT OF THE HON. JOSEPH RUPNICK, CHAIRMAN,
PRAIRIE BAND POTAWATOMI NATION, MAYETTA, KANSAS**

Mr. RUPNICK. Good morning, Madam Chair Hageman, Ranking Member Leger Fernández, and distinguished members of the Subcommittee. My name is Joseph Rupnick, and I serve as Chairman for Prairie Band Potawatomi Nation. I am a Veteran in the United States Calvary, and I represent about 4,500 Prairie Band Potawatomi people, most of whom live on the reservation in Kansas, which is defined by our 1846 treaty with the U.S. Government.

I am honored to be with you here today to share my thoughts of Unlocking Indian Country's Economic Potential, particularly as it relates to the ownership and use of tribal lands.

Originally, our people owned and resided in lands in Northern Illinois, but we were subject to removal treaties in 1829 and 1833, that relinquished all but 1,280 acres of land. Our 1846 treaty established a 900-square-mile reservation for us in Kansas, but development pressures, the Federal Government's land allotment policies, and outright theft resulted in most of our lands being lost to non-Indians.

Just a few decades ago, our Nation owned less than 5 percent of the land originally promised us. Today, lands within our reservation are heavily checkerboarded, meaning that there are mixed parcels of land within the reservation owned by our Nation, individual Nation citizens, and non-Indians. And because this status of land differs based on ownership, so too does the jurisdiction and taxing authority of the tribal, federal, state, and county governments.

Frankly, what the government has done to us and our lands, has been nothing more than to create a mess. And this mess is

compounded by the fact that these lands that we have retained are considered to be trust, that is lands owned by and under the jurisdiction of the Federal Government.

In my view, the idea of trust land is not normal and should be fixed to recognize that our Nation is the owner of our lands within our treaty-defined reservations and subject to our primary jurisdiction. The Federal Government should be able to protect our lands against sale, external taxation, and regulation, not management or interference with our Tribal government's land use decisions.

Perhaps the most glaring defect of land trust status is how it interferes with economic development activities that we wish to pursue to support our people.

For example, in recent years, we have sought to expand a retail shopping plaza with a convenience store to support our Class III gaming facility. We acquired the land in fee from non-Indian sellers. And we had to apply to the Bureau of Indian Affairs to have the land taken into trust. That took 14 years, and it is still not done today.

We had to undergo extensive environmental review because the land is now considered to be in trust status. The utility service takes us time to hook up because the Federal Government has regulations governing rights-of-way and trust lands. We started this project 22 years ago and it is still not finished. Nowhere in America, other than Indian Country, does this kind of bureaucratic stranglehold occur.

To remedy this situation, I recommend that the Subcommittee considers acting on three different areas to improve the use of Tribal lands. First, Congress should enact legislation to allow for any Tribal Nation, at its own choosing, to acquire lands under the jurisdiction in restricted fee status. Restricted fee is a long-established form of tribal landownership similar to trust status, but the land is considered owned by the Indian Nation, not the Federal Government.

The late Don Young, the former Dean of the House, supported tribal sovereignty for tribal governments to own their own land and exercise jurisdiction over them within our reservations. He developed legislation, the Native American Land Impairment Act, that he introduced in the 112th Congress and subsequent Congresses to allow for Indian Nations to acquire restricted fee lands within our existing reservations.

He proposed a 90-day process that land acquired by the tribe in fee within the reservation would automatically be converted to restricted fee status under its ownership and jurisdiction. Enactment of this legislation would create an alternative process to the current fee-to-trust application. All Tribal Nations could save time, money, and strengthen our ability to engage in economic development within our reservations.

Some tribes may not like the idea, but would prefer to have their lands held in trust. That is their right. But for these Nations that want greater control over our land use from the Federal Government, we should have the opportunity as well.

Right now, Indian Nations are limited in our ability to lease our lands without Federal Government approval. And Congress took the step to enact the HEARTH Act which we have been using to

our advantage. We should simply fix this situation by enacting legislation that allows any Indians that want the authority to lease the lands with a 99-year lease.

And we want to thank you, Madam Chairwoman, for introducing that bill as well. At this time, I would like to thank you again, Madam Chairwoman, and the Subcommittee members, for this opportunity to testify today.

For 50 years, the official policy of Congress has been to support tribal sovereignty and self-determination. More must be done to make this a reality, and I support tribal economic self-sufficiency. I am glad to take any questions that you may have. Thank you.

[The prepared statement of Mr. Rupnick follows:]

PREPARED STATEMENT OF JOSEPH RUPNICK, CHAIRMAN, PRAIRIE BAND
POTAWATOMI NATION

Good morning, Chair Hageman, Ranking Member Leger-Fernandez, and distinguished members of the Subcommittee. My name is Joseph Rupnick and I serve as the Chairman of the Prairie Band Potawatomi Nation. I am a veteran of the United States Calvary and I represent approximately 4,500 Potawatomi people most of whom live on our reservation in Kansas defined by our 1846 Treaty with the United States government.

I am honored to be with you today to share my thoughts on “Unlocking Indian Country’s Economic Potential,” particularly as it relates to the ownership and use of tribal lands for economic development. Originally, our people owned and resided on lands in northern Illinois, but we were subject to removal treaties in 1829 and 1833 that relinquished all but 1,280 acres of that land. Our 1846 treaty established a 900 square mile reservation for us in Kansas, but development pressure, the federal government’s land allotment policies and outright theft resulted in most of our land being lost to non-Indians. Just a few decades ago, our Nation owned less than 5% of the land originally promised to us.

Today, lands within our Reservation are heavily “checkerboarded”—meaning that there are mixed parcels of land within the Reservation owned by our Nation, individual Nation citizens, and non-Indians. And because the status of the land differs based on ownership, so too does the jurisdiction and taxing authority of the tribal, federal, state, and county governments. Frankly, what the government has done to us and our lands has been to create a mess.

This mess is compounded by the fact that that the lands that we have retained are considered to be “trust lands”—that, is—lands owned by and under the jurisdiction of the federal government. In my view, the idea of “trust land” is not normal and should be fixed to recognize that our Nation is the owner of our lands within our treaty-defined reservations and subject to our primary jurisdiction. The federal government’s role should be to protect our lands against sale and external taxation and regulation, not management and interference with our tribal government’s land use decisions.

Perhaps the most glaring defect of trust land status is how it interferes with economic development activities that we wish to pursue to support our people. For example, in recent years we have sought to expand a retail shopping plaza with a convenience store to support our Class III gaming facility. We acquired the land in fee from non-Indian sellers. We had to apply to the Bureau of Indian Affairs to have the land taken into trust, which took 14 years. We had to undergo excessive environmental review because of the land is now considered to be in trust status. The utility service takes time to hook up because of the federal regulations governing rights of way on trust land. We started this project 22 years ago and it is still not finished. Nowhere in America other than Indian Country does this kind of bureaucratic stranglehold occur.

To remedy this situation, I recommend that the Subcommittee consider acting in three different areas to improve use of tribal lands.

First, the Congress should enact legislation to allow for any Indian nation at its own choosing to acquire lands under its jurisdiction in restricted fee status. Restricted fee status is a long-established form of tribal landownership similar to trust status, but the land is considered owned by the Indian nation not the federal government.

The late Don Young, the former Dean of the House, supported tribal sovereignty for tribal governments to own our own lands and exercise jurisdiction over them within our reservations. He developed legislation—the “Native American Land Empowerment Act”—that he introduced in the 112th and subsequent Congresses to allow for Indian nations to acquire restricted fee lands within our existing reservations. He proposed a 90-day process that land acquired by a tribe in fee within its reservation would automatically be converted to restricted fee status under its ownership and jurisdiction.

Enactment of this legislation would create an alternative process to the current fee-to-trust process. All tribal nations could save time, money, and strengthen our ability to engage in economic development within our reservations if we had this tool at our disposal. Some tribes may not like the idea and would prefer to have their lands held in trust. That is their right. But for those nations that want greater control over our land use from the federal government, we should have that opportunity as well.

In addition, I would like to suggest two other important changes to expand tribal government authority over our own lands.

Right now, Indian nations are limited in our ability to lease our lands without federal approval. In 2012, the Congress took a major step forward when it enacted the HEARTH Act to amend the Indian Long-Term Leasing Act of 1955 (25 USC 415) to allow for the leasing of trust or restricted lands of up to 75 years. But, to regain that inherent authority, a tribe must first ask permission and secure approval from the federal government to exercise that authority. And to get that approval, a tribe’s laws must have a variety of restrictions and controls governing land use that are nearly as burdensome as the federal government’s own regulations.

In true fashion, the federal government acted in a manner that looks like it is respecting tribal sovereignty but loads up the process with so many other restrictions that you have to wonder whether it’s really worth it.

The Congress should simply fix this situation by enacting legislation that allows any Indian that wants the authority to lease its trust lands for 99-years to do so. Again, if a tribe wants to utilize the existing legal regime, that is their choice. But if other tribes like ours want a streamlined process, the federal government should just get out of the way.

Lastly, Congress should amend the Nonintercourse Act to clarify that it does not apply to the purchase and sale of fee lands. This Act, one of the first pieces of legislation enacted by the Congress in 1790, serves an important function to protect the sale and alienation of Indian lands. But it should not apply to land transactions involving the purchase and sale of fee lands. Many tribal governments, including ours, are interested in expanding our economic opportunities into real estate development, but any future sale could be stopped because of a restrictive interpretation of the Nonintercourse Act.

In conclusion, I want to thank you again Madam Chair and Subcommittee members for the opportunity to testify today. For 50 years, the official policy of the Congress has been to support tribal sovereignty and self-determination. More must be done to make this a reality to support tribal economic self-sufficiency.

I am glad to take any questions that you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO HON. JOSEPH RUPNICK, CHAIRMAN,
PRAIRIE BAND POTAWATOMI NATION

Questions Submitted by Representative Westerman

Question 1. Please further expand on your testimony and highlight further examples of where your tribal government has been able to successfully utilize tribal lands for economic benefit.

Answer. Our Nation’s primary economic activity and source of government revenue is our Class II and Class III gaming facilities. To the extent that these facilities are located on our Reservation trust lands, it can be said that that we have successfully utilized our tribal lands for economic benefit. However, the primary reason for our economic success in this area is due to our favorable market location, our regulatory advantage, and the stability of the federal regulatory framework.

In addition, we have established two convenience store businesses for the retail sale of motor fuel and tobacco products under our state tax compact. However,

beyond these ventures, our lands have not generated much government revenue at all.

We have established a diversified holding company—Prairie Band LLC—that operates several subsidiaries focused on 8(a) contracting and other off-territory investments. Only our convenience store and golf course operations have a component related to operation on our trust lands. We have also established a hemp farm and a bison ranch, but neither of these enterprises have generated a profit currently.

As reiterated from my testimony, one primary reason why there has not been more development of our land is because it is heavily “checkerboarded”. Agricultural and grazing use is limited because no one landowner—including the Nation itself—owns enough land to establish a commercially viable business.

If the Nation were to have the benefit of the tools outlined in my written testimony—restricted fee land, extended leasing authority, and liberty to buy and sell fee lands—I believe that the Nation could achieve more economic success.

Question 2. Is there any further information you think the Committee needs to make good policy regarding land use restrictions for tribal lands?

Answer. In addition to the recommendations contained in my written testimony, there are other changes in federal law and regulation that must occur before Tribal nations can be more self-sufficient.

First, Congress needs to address the race-based taxation imposed on non-Indians doing business on Tribal lands. In 1989, the U.S. Supreme Court authorized state and local governments to tax non-Indian economic activity occurring on Tribal lands. See *Cotton Petroleum v. New Mexico*, 490 U.S. 163 (1989). Congress never authorized this activity and it has served to cripple the ability of Tribal nations to pursue economic activities within our reservations. This case followed the decision in *Merriam v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982) which upheld the ability of Tribal governments to impose taxes on non-Indian economic activity. The clash of these two lines of cases is to create a situation of “dual taxation” that inhibits non-Indian investment within our nations. It is intolerable and as long as this situation is allowed to exist, Tribal economies will never truly be free to generate economic self-sufficiency.

Second, Federal regulations in other areas unrelated to lands should be reformed to support Tribal economic growth. In 2000, the Congress directed the Commerce Department to establish a “Regulatory Reform and Business Development on Indian Lands Authority” to “facilitate the identification and subsequent removal of obstacles to investment, business development, and the creation of wealth” within Tribal nations. See Pub. L. 106-447, 114 Stat. 1936, Nov. 6, 2000. This law was never implemented.

The Findings set forth in this law are as relevant as ever and should be addressed without further delay:

“Congress finds that—

- (1) despite the availability of abundant natural resources on Indian lands and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills which are greater than the rates for any other group in the United States;
- (2) the capacity of Indian tribes to build strong Indian tribal governments and vigorous economies is hindered by the inability of Indian tribes to engage communities that surround Indian lands and outside investors in economic activities conducted on Indian lands;
- (3) beginning in 1970, with the issuance by the Nixon Administration of a special message to Congress on Indian Affairs, each President has reaffirmed the special government-to-government relationship between Indian tribes and the United States; and
- (4) the United States has an obligation to assist Indian tribes with the creation of appropriate economic and political conditions with respect to Indian lands to—
 - (A) encourage investment from outside sources that do not originate with the Indian tribes; and
 - (B) facilitate economic development on Indian lands.

Conclusion. If you have further questions, please do not hesitate to contact me.

Ms. HAGEMAN. Thank you very much. And your entire statement is in the record. Thank you for your testimony.

And the Chair now recognizes the Honorable Wavalene Saunders for 5 minutes.

**STATEMENT OF WAVALENE SAUNDERS, VICE CHAIRWOMAN,
TOHONO O'ODHAM NATION FROM THE STATE OF ARIZONA**

Ms. SAUNDERS. (Speaks Native language.) Good day. My name is Wavalene Saunders. I am the Tohono O'odham Nation Vice Chairwoman. Good morning Chair Hageman, Ranking Member Leger Fernández, and distinguished members of the Subcommittee.

The Nation is a federally recognized tribe with more than 34,000 members. Our reservation is one of the largest in the United States, roughly the size of Connecticut. The Nation appreciates the Subcommittee's focus on economic development, as this is an issue critically important to the Tohono O'odham Nation.

We are particularly concerned about how inadequate and outdated infrastructure thwarts the development of healthy, diverse tribal economies, including the impact it has on our small business owners. So, we appreciate this opportunity to testify.

First, more serious Federal investment in the repair and maintenance of BIA roads is very, very critical on the Tohono O'odham Nation, as I am sure it is throughout Indian Country. Reservation-based businesses must be given the opportunity to get their products and their customers to market.

The remoteness of our reservation and the extremely poor conditions of our roads are significant barriers for both Tribal members and internal partners who otherwise want to develop businesses in our communities. Chronic underfunding of the BIA Road Maintenance program leaves our roads severely compromised by sinkholes, potholes, broken and cracked pavement, and washed-out bridges. These roads are dangerous for our members as well as our visitors.

During monsoon seasons, flooding completely washes out our roads and makes them impassible. According to a December 2018 U.S. Commission on Civil Rights report, deficiencies in transportation system infrastructure in Indian Country diminishes opportunities for development, which further impairs the ability of tribal communities to thrive.

Second, we need better utility infrastructure. Rural communities such as ours in Indian Country suffer from profound deficiencies in the availability of basic utilities to provide adequate drinking water, sanitation, and electricity to a majority of our communities.

On the Nation, utility hookup is extremely expensive, creating serious barriers to the development of new businesses. Lack of utility access impacts not just the operation of a new business but also its potential workforce. More than 12 percent of tribal homes lack access to safe drinking water and basic sanitation which is a rate more than 20 times higher than the national average.

This fundamental deficiency in the quality of life undermines the availability and retention of a ready workforce and poses a significant barrier to creating reservation-based economic and employment opportunities.

I also want to underscore the importance of telecommunication and Internet access. Lack of access to broadband inhibits our ability to spur economic development and to train a technically skilled workforce as well as continuing education for all of our students in schools within the boundaries of the Tohono O'odham Nation.

The state of Arizona found that 95 percent of people living on tribal lands either have unserved or underserved telecommunication access. The Nation appreciates Congress' recent attention to these issues, but continued efforts and funding are absolutely critical.

Our citizens are challenged by difficulty in securing capital to develop businesses on trust lands, inadequate access to banking services generally, and inadequate access to business and technical training. The Nation would like to see greater investment in helping potential small business owners start and grow their own.

Lastly, review and approval by BIA is required for a host of infrastructure and other development on Indian lands. The challenges we face as the Tohono O'odham Nation illustrate the dismal condition of physical infrastructure in rural Indian Country and the importance of investment in our communities. We welcome the opportunity to work with the Committee to find ways to address the challenges. And we thank you for your time in addressing all of our concerns on behalf of the Tohono O'odham Nation in Indian Country.

Thank you.

[The prepared statement of Ms. Saunders follows:]

PREPARED STATEMENT OF THE HONORABLE WAVALENE SAUNDERS, VICE
CHAIRWOMAN, THE TOHONO O'ODHAM NATION OF ARIZONA

Thank you Chair Hageman, Ranking Member Leger Fernandez, and distinguished members of the Subcommittee for this opportunity to provide the Tohono O'odham Nation's (Nation's) testimony. My name is Wavaleene Saunders, and I am the elected Vice Chairwoman of the Nation. The Nation is a federally recognized tribe with more than 34,000 members. Our Reservation is one of the largest in the United States, roughly the size of the State of Connecticut, with the bulk of being rural and remote. This rural, remote character of the Nation's Reservation, and our lack of access to fully developed infrastructure, presents very significant challenges to economic development and job creation on our lands. For this reason, the Nation sincerely appreciates the Subcommittee's focus on questions related to the opportunities and challenges for economic development in Indian Country. Following below we have identified several areas in which inadequate and outdated infrastructure materially obstructs the Nation's ability to develop a healthy, diverse tribal economy and generate a varied employment base.

Roads and Transportation

It is hard to underscore strongly enough how significant an issue this is for rural tribal communities. There is no way around the fact that a tribe needs a strong infrastructure foundation in order to be able to develop a strong economic base. Reservation-based businesses must be given the opportunity to get their products—and their customers—to the market. Where a tribe's transportation system and general infrastructure are not adequate, entrepreneurs are discouraged from developing businesses and those that do have a difficult time succeeding. For the Tohono O'odham Nation and other rural tribal communities, the remoteness of our Reservation and the extremely poor condition of our roads are significant factors preventing both tribal members and external business partners from developing businesses in our communities. We are particularly concerned about the impact on the development of small businesses, which are a priority for the Nation. We feel strongly that only when the transportation infrastructure problem is addressed can tribal communities begin to establish a healthy economic base that will support

small tribal member-owned businesses and provide meaningful employment opportunities for tribal members.

Using the Nation's Reservation as an example, we have hundreds of miles of severely damaged roads, including 734.8 miles of BIA-managed roads. Due to the lack of funding for the Bureau of Indian Affairs' (BIA's) Road Maintenance Program, many of our roads are severely compromised by sink holes, pot holes, broken and cracked pavement, and washed-out bridges, making them dangerous for our members and visitors alike. During monsoon season, flooding completely washes out roads and makes them impassable, stranding our members, and isolating communities. These conditions present a real impediment to attracting business and stimulating the Reservation economy. According to the December 2018 U.S. Commission on Civil Rights report evaluating the budgets and spending of federal agencies that administer Native programs, deficiencies in transportation system infrastructure in Indian Country diminishes opportunities for development, which further impairs the ability of tribal communities to thrive. The most recent data of which we are aware confirms that BIA's Road Maintenance Program deferred maintenance backlog is still very significant, in Fiscal Year (FY) 2018 it totaled \$498 million and it continues to rise.¹

Housing and Utilities (Water, Sewer, and Electricity)

Similar to the transportation infrastructure deficiencies, rural Indian Country suffers from profound deficits in the availability of basic utilities to provide adequate drinking water, sanitation, and electricity. On the Nation, utility hookup in rural communities is extremely expensive, creating an often insurmountable barrier to the construction of the buildings from which economic development can take place. This impacts not just a potential business's operation, but also its potential workforce. More than 12 percent of tribal homes lack access to safe drinking water and basic sanitation, which is a rate more than 20 times higher than the national average.² This fundamental deficit in the quality of life undermines the availability and retention of a ready workforce, and also poses a significant barrier to creating Reservation-based economic and employment opportunities. Similarly, without an adequate housing base for tribal employees, it is nearly impossible to address staffing issues and shortages.

Telecommunications and Internet Access

Lack of broadband access inhibits our ability to spur economic and business development, and train a technically skilled workforce for 21st-century jobs. According to the U.S. Census Bureau Community Survey Report (Sept. 2017), the Tohono O'odham Nation (TON) is facing a "digital divide" compared to nearby communities, with a large proportion of residents lacking *any* access to broadband internet. The State of Arizona's 2018 Broadband Strategic Plan found that "162,382 people living on tribal lands (*95 percent*) have either unserved or underserved telecommunication infrastructure needs. They do not have access to fixed advanced telecommunications capabilities, and often resort to local "community anchor institutions" (libraries, schools and such) for their only connection to the rest of the digital world."³ (Emphasis added.) The Nation appreciates Congress' recent attention to these telecommunications, internet, and broadband issues, and urges that continued efforts in this area are critical.

Small Business Development and Support

The Nation is particularly concerned about lack of support for small businesses. We underscore the importance of empowering tribal members to develop businesses to strengthen our local economy and provide locally-sourced employment to tribal members. Not only do our potential entrepreneurs suffer from the infrastructure deficits described above, they are held back by lack of access to capital and affordable financial products and banking services and lack of access to business and legal advice. We would like to see more attention paid to the difficulties that are specific to on-reservation business development, such as the difficulties attendant to securing debt for activities on trust lands and lack of investment overall in tribal member-owned businesses. Further, the workforce available to tribal-member-owned businesses often lacks the technical and financial training needed by these potential

¹ NCAI FY 2022 Budget Request at 131-132, available at https://www.ncai.org/resources/ncai-publications/NCAI_IndianCountry_FY2022_BudgetRequest.pdf.

² NCAI FY 2022 Budget Request at 131-132, available at https://www.ncai.org/resources/ncai-publications/NCAI_IndianCountry_FY2022_BudgetRequest.pdf.

³ Arizona Statewide Broadband Strategic Plan at 16, available at https://azlibrary.gov/sites/default/files/erate_2018_az_broadbandstrategicplan_final.PDF.

employers. Investment in work training programs for employees inherently helps to promote and stabilize tribal member small businesses.

In sum, the Nation would like to see a greater emphasis and investment in helping potential small business owners get their businesses up and running, with an equal emphasis on getting them the capital support, business training, and employee retention support they need to successfully grow those businesses.

Bureau of Indian Affairs Review Processes

Review and approval by BIA is required for a host of infrastructure development on Indian lands. While these approvals are meant to be protective of tribes, in reality the length of time it takes to navigate those processes and obtain those approvals can create significant barriers to investment and economic development in Indian Country. For example, according to the U.S. Government Accountability Office (GAO), BIA's lengthy processes for review of land use instruments like easements, rights-of-way agreements, and valuations have hindered tribes from pursuing energy resource development opportunities that could provide significant benefits to tribes and their members.⁴ Further, leases of tribal trust land requiring BIA approval triggers the need to comply with the requirements of the National Environmental Policy Act, which can be very expensive and the costs are born by the tribe. Additionally, establishing related easements or rights of way also require compliance with BIA regulations. While BIA revised its leasing and right-of-way regulations within the last ten years to make them less cumbersome, to include specific leasing provisions for wind and solar leases, and to include deadlines for BIA approval, those deadlines lack effective enforcement mechanisms and the BIA approval process is still lengthy. GAO recently recommended that BIA develop a process to monitor and assess agency review and response times to help ensure that BIA's process and review is more transparent and efficient, and to ensure that it is not unnecessarily hindering tribes' economic development opportunities.

We note that while Congress has worked to address this issue with the enactment of the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, which allows tribal governments to enact their own leasing regulations for tribal trust lands, the BIA approval process for the HEARTH Act ordinance itself can be fairly lengthy and delay tribal economic development efforts. And, regardless of whether a Tribe has an approved HEARTH Act leasing ordinance, roads and other access agreements needed for development may still require approval under BIA's right-of-way regulations, which again results in BIA approval delays.

In sum, BIA's lengthy review processes can have negative effects on tribal economic development in a host of areas where leases, rights of way, and appraisals on tribal trust lands are needed. Potential development partners often are unwilling to wait for what seem like never-ending delays in the BIA regulatory approval process, including paying for NEPA reviews because BIA does not have funding to complete them.

Conclusion

The profound infrastructure challenges we face at the Tohono O'odham Nation illustrate the dismal condition of physical infrastructure in rural Indian Country generally, and the critical importance of investment in basic utilities and broadband to seed economic prosperity in tribal communities. We also underscore the need for greater focus and investment on tribal member small business owners. We welcome the opportunity to work with the Committee to find ways to lessen these challenges and to promote economic development in Indian Country.

Thank you for your time today. I am happy to answer any questions.

⁴U.S. Government Accountability Office Priority Open Recommendations: Department of Interior (June 2, 2022) at 2, 7, available at <https://www.gao.gov/assets/gao-22-105603.pdf>.

QUESTIONS SUBMITTED FOR THE RECORD TO WAVALENE SAUNDERS, VICE
CHAIRWOMAN, TOHONO O'ODHAM NATION

Ms. Saunders did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Grijalva

Question 1. Could you share a few examples of how the Nation's economic development projects have supported your tribal community?

1a) Additionally, can you share how the Nation's business ventures have supported the broader Arizona economy?

Question 2. Thank you for sharing the Nation's small business concerns in your testimony.

2a) Can you elaborate on the federal work training programs that you would like to see created?

Question 3. Your testimony highlights the importance of adequate transportation systems. We included funding in the Infrastructure Investment and Jobs Act for BIA road maintenance and construction.

3a) Can you speak to the importance of receiving full funding for BIA's Road Maintenance Program in relation to economic growth?

Ms. HAGEMAN. I thank the witness for your testimony.
The Chair now recognizes Mr. Jason Robison for 5 minutes.

**STATEMENT OF JASON ROBISON, LAND AND RESOURCES
OFFICER, COW CREEK BAND OF UMPQUA TRIBE OF
INDIANS, FROM THE STATE OF OREGON**

Mr. ROBISON. Good morning, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Jason Robison. I am the Land and Resources Officer for the Cow Creek Band of Umpqua Tribe of Indians. On behalf of Tribal Chair Carla Keene, and Vice Chair Gary Jackson, I want to thank you for this opportunity to testify today regarding Unlocking Indian Country's Economic Potential.

I want to first commend the efforts of this Subcommittee, the Administration, and tribal leaders across the country for seeking innovative approaches to promoting tribal self-governance, and providing more opportunities to tribes to manage tribal lands and resources according to tribal values, goals, and objectives. It is a goal we all share, and the Tribe welcomes this opportunity to participate in discussions which could help shape new opportunities for tribes throughout the country.

Cow Creek is one of nine federally recognized tribes in the state of Oregon. Our Tribe has just over 1,900 tribal members. And Cow Creek has a rich history in southern Oregon that reflects its hard work, perseverance, and desire to be self-reliant.

Cow Creek owns and manages approximately 30,000 acres of land within Oregon, comprised of approximately 15,000 acres of fee land, 23,000 acres of trust, and approximately 30,000 acres are forest lands managed throughout the social, ecological, and economic goals and objectives laid out in the Tribe's approved forest management plan.

The Tribe is the second largest employer in Douglas County, employing approximately 1,000 tribal and non-tribal people. The

Umpqua Indian Development Corporation is the Tribe's primary economic development engine. UIDC businesses and tribal resource management provide much of the needed revenues for tribal government operations which provides social services, housing, education, health care, and elders care to the membership.

The Tribe is a strong advocate for Indian self-determination and self-governance. We operate our governmental programs under a self-governance compact approved by the Tribe and the Secretary of the Interior.

Under the compact, the Tribe has been able to redesign programs and carry out activities under tribal policies and procedures rather than burdensome processes contained in Federal manuals and handbooks. This has allowed more efficient operations which better serves the interests of our Tribal membership and our environment.

On June 1, 2018, the President signed the Oregon Tribal Economic Development Act which clarified that transactions involving land owned in fee by Cow Creek and other Oregon tribes were not subject to the Non-Intercourse Act.

The Oregon Tribal Economic Development Act makes it crystal clear that Cow Creek may sell or otherwise develop its fee lands free from Federal interference, improving its ability to create economic opportunities while protecting the environment at or above Federal environmental standards.

In 2010, Congress passed a bill to amend the Act of August 9, 1955, to also authorize the Cow Creek and other tribes in Oregon to obtain 99-year lease authority. This lease authority has provided the Tribe with an opportunity to package longer-term business arrangements on tribal land.

The HEARTH Act of 2012 has also provided opportunities for expanded lease authorities on tribal lands, in addition to allowing the Tribe to develop its own regulations and policies approved by the Secretary of the Interior.

These types of authorities and actions provide tribes with the ability to conduct business in a more competitive and attractive environment. They also create certainty for tribes which is a must if we are to eventually achieve self-determination and self-governance. Without these types of authorities and actions, tribes are being punished and held at a substantial disadvantage.

Restricted fee title is one classification of Indian lands. However, very few tribes have the opportunity to use this status to their advantage. We recommend this Committee pursue opportunities to expand this land use designation across Indian Country.

The Cow Creek were one of the first tribes in the country to enter into a demonstration project established under Section II of the Indian Trust Asset Reform Act, ITARA. Under the ITARA demonstration project, the Tribe prepared an Indian Trust Asset Management Plan, or an ITAMP, for forest management. The approved ITAMP allows the Tribe to perform forest management activities under tribal law and tribal forestry regulations rather than Federal rules.

Numerous forest management actions which previously required Federal agency approval, and could take a year or more to implement, are now approved solely by the Tribe and implemented in a

manner of a few months or less while still meeting applicable Federal law.

ITARA has allowed advancement along a pathway to achieve the Tribe's vision of the forest. This is another example of our success in strengthening tribal sovereignty. We would like to see this authority become permanent.

The Tribe has also taken steps to utilize authorities under the Tribal Forest Protection Act, the Agricultural Improvement Act, to develop co-management agreements with adjacent Federal land managers.

These authorities and agreements add to the list of tools that have been made available to tribes for managing and protecting tribal members and tribal resources. We request this Committee assess new authorities that complement or expand these types of opportunities to tribes.

It is our hope that we can continue to work together across Indian Country on a bipartisan basis to fix lingering legislative issues like the Non-Intercourse Act, 99-year lease authority, the use of restricted fee status, and others in order to provide all of Indian Country the same opportunity.

It is also our hope that by working together, we promote new legislation that empowers tribal governments, increases business opportunities for tribes, promotes tribal sovereignty and self-governance, and reduces the cost of administrative burdens of Federal oversight on all designations of tribal land.

We recommend that the Subcommittee look into legislation like the HEARTH Act and the Indian Trust Asset Reform Act as good examples of what works well in Indian Country.

In closing, I would like to thank you for the time and opportunity to present testimony today regarding Unlocking Indian Country's Economic Potential. Cow Creek is at the forefront of many of these new laws. And we would welcome the opportunity to work with this committee and to you to draft new legislation. Again, thank you, and I would be happy to answer any questions.

[The prepared statement of Mr. Robison follows:]

PREPARED STATEMENT OF JASON A. ROBISON, LAND AND RESOURCES OFFICER,
COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

I. Introduction

Good Morning, Chair, Ranking Member, and members of the subcommittee. My name is Jason Robison, I am the Lands and Resources Officer for the Cow Creek Band of Umpqua Tribe of Indians (Tribe). On behalf of Tribal Chairman Carla Keene, and Vice Chair Gary Jackson, I want to thank you for the opportunity to testify today regarding unlocking Indian country's economic potential.

I want to first commend the efforts by this subcommittee, the administration, and Tribal leaders across the country for seeking innovative approaches to promoting Tribal self-governance, and providing more opportunities to Tribes to manage tribal lands and resources according to Tribal values, goals, and objectives. It is a goal we all share and the Tribe welcomes this opportunity to participate in discussions which could help shape new opportunities for Tribes throughout the country.

II. Background

Cow Creek is one of nine federally recognized Tribes in the State of Oregon. The Tribes has just over 1900 tribal members, and it's governed by an elected eleven-member council known as the Tribal Board of Directors. Cow Creek has a rich history in southern Oregon that reflects hard work, perseverance and the desire to be self-reliant.

Cow Creek owns and manages approximately 38,000 acres of land within Oregon, comprised of approximately 15,000 acres of fee land and 23,000 acres of trust land. Approximately 30,000 acres are managed for timber production and other important cultural, and forest values. In January 2018, the Western Oregon Tribal Fairness Act (WOTFA) conveyed approximately 17,800 acres of forest land previously managed by the Bureau of Land Management (BLM) to the Tribe to fulfill their promise of a reservation.

The Tribe is the second largest employer in Douglas County, employing approximately 1,000 tribal and non-tribal people. The Umpqua Indian Development Corporation (UIDC) is the Tribe's primary economic development engine. Under its auspices, the Tribe operates several businesses for the benefit of tribal members, local residents, and the surrounding community. These businesses provide much needed revenues for Tribal government operations that support the following services: social services, housing, education, health care, and elders care. These business also help fund resource management activities.

III. Self Determination

The Tribe is a strong advocate for Indian self-determination and self-governance. We operate our governmental programs under a self-governance compact approved by the Tribe and Secretary of the Interior. Under the compact, the Tribe has been able to redesign programs and carryout activities under tribal policies and procedures rather than burdensome processes contained in federal manuals and handbooks. This has allowed more efficient operations which better serve the interests of our tribal membership and our environment.

IV. Non-Intercourse Act, Leasing Authority, and the Hearth Act

On June 1, 2018, the President signed the Oregon Tribal Economic Development Act, Pub.L. 115-179, which clarified that transactions involving land owned in fee by Cow Creek and other Oregon Tribes were not subject to the Non-Intercourse Act, 25 U.S.C. § 177, which generally prohibits tribal conveyances of tribal trust land without congressional approval. While the Non-Intercourse Act does not apply to fee lands, individuals without a solid understanding of Indian law sometimes apply it to fee lands, limiting a tribe's ability to use real estate for economic development purposes. In these situations, Congress must step in to clarify that lands may be sold. The Oregon Tribal Economic Development Act makes it crystal clear that Cow Creek may sell or otherwise develop its fee lands free from federal interference, improving its ability to create economic opportunities while protecting the environment at or above Federal environmental standards.

In 2010, Congress passed a bill to amend the Act of August 9, 1955, to authorize the Cow Creek Band of Umpqua Indians of Oregon, the Coquille Tribe of Oregon, and the Confederated Tribes of the Siletz Reservation, Oregon, to obtain 99-year lease authority for trust land.

Ninety-nine year lease authority has provided the Tribe with the opportunity to package longer-term business arrangements on Tribal lands. Additionally, the HEARTH Act has also provided opportunities for expanded lease authorities on Tribal lands in addition to allowing the Tribe to develop its own regulations and policies approved by the Secretary of the Interior. These policies will help streamline future business leasing opportunities for the Tribe. It also creates certainty for Tribes which is a must, if we are to eventually achieve self-determination and self-governance.

These types of authorities and actions provide Tribes with the ability to conduct business in a more competitive and attractive environment. Without these types of authorities and actions Tribes are being punished and held at a substantial disadvantage.

V. Potential benefits of Restricted Fee Land

Restricted fee title is one classification of Indian lands; however, very few tribes have the opportunity to use this status to their advantage. We recommend this committee pursue opportunities to expand the use of this land designation across Indian country by creating an administrative process for this land designation. This could significantly reduce barriers to Tribal business development on fee lands while allowing the Tribe to hold title to the land and protect the land against alienation.

VI. Land Management/ITARA Demonstration Project

The Cow Creek were one of the first tribes in the country to enter into the Demonstration Project established under Section II of the Indian Trust Asset Reform Act (ITARA). This act, which passed Congress and was signed into law in June 2016, allows Tribes to take another step in self-determination in management

of their Tribal trust forestlands. Under the ITARA Demonstration Project, the Tribe prepared an Indian Trust Asset Management Plan (ITAMP) for forest management.

The ITAMP was approved by the Secretary of the Interior in December 2018. Under the approved ITAMP, the Tribe performs forest management activities under Tribal law and Tribal forestry regulations rather than the federal rules contained in 25 CFR Part 163. Numerous forest management actions which previously required federal agency approval and could take a year or more to implement are now approved solely by the Tribe and implemented in a matter of a few months or less while still meeting Federal standards.

Our forest management under ITARA has been a resounding success resulting in a high level of sustainable timber production generating revenue to the Tribe for its governmental programs and providing jobs to local and state industries, as well as log supply to the local timber industry. The streamlined processes accomplished under tribal authority have also resulted in implementation of actions to reduce wildfire risk, improve forest health and enhance cultural values of our Tribal forestlands. Rather than federal control, ITARA has allowed advancement along a pathway to achieve the Tribal vision for our forest. This is another example of our success in strengthening tribal sovereignty. We would like to see this authority become permanent.

The Tribe has also taken steps to utilize authorities under the Tribal Forest Protection Act (TFPA), and the Agricultural Improvement Act (FARM BILL), to develop Co-management agreements with adjacent federal land managers. The Tribe was recognized during the White House Tribal Nations Summit has having one of the largest Tribal Forest Protection Act proposals, and the largest Forest Service self-determination agreement to date. We are currently working to secure similar agreements with the Department of Interior, and the Oregon/Washington BLM. These authorities and agreements add to the list of tools that have been made available to tribes for managing and protecting Tribal members and Tribal resources. We would request this subcommittee assess new authorities that compliment or expand these types of opportunities for Tribes.

VII. Fixing Long-term Issues in Indian Country and Promoting Self-governance

It is our hope that we can continue to work together across Indian country to fix lingering legislative issues like the non-intercourse act , 99 year lease authority, the use of restrictive fee status, and others in order to provide all of Indian country the same opportunities. It also our hope that by working together we can promote new legislation that empowers Tribal governments; increases business opportunity for Tribes; promotes Tribal sovereignty and self-governance; and, reduces the costs and administrative burdens of federal oversight on all designations of Tribal lands (Fee, Restricted Fee, and Trust).

We recommend that this sub-committee look to legislation like the HEARTH Act, and the Indian Trust Asset Reform Act as good examples of what works well in Indian Country.

VIII. Closing

In closing, I would like to thank you for the time and opportunity to present testimony today regarding unlocking Indian country's economic potential because the Cow Creek Tribe is at the forefront of many of these new laws and would welcome the opportunity to work with this committee and you to draft new legislation. Again, thank you and I will be happy to answer any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO JASON ROBISON, LAND AND RESOURCES OFFICER, COW CREEK BAND OF UMPQUA TRIBE OF INDIANS

Questions Submitted by Representative Westerman

Question 1. Please further expand on your testimony and highlight further examples of where your tribal government has been able to successfully utilize tribal lands/or economic benefit.

Answer. Part of the Cow Creek Band of Umpqua Tribe of Indian's (Tribe) mission is to provide for the long-term economic needs of the Tribe and its members through the economic development of Tribal lands. The Umpqua Indian Development Cooperation (UIDC) is a federally chartered corporation and the business division of the Tribe. The Tribe operates several businesses which create jobs and job train-

ing opportunities for tribal members and the communities in which they serve. Businesses include: Seven Feathers Casino and Resort; Seven Feather's Truck and Travel; Seven Feathers RV Resort; Creekside Inn; Anvil Northwest; Takelma Roasting Company; K-Bar Ranches; and, Seven Generations Farms. These businesses are mostly located on Tribal trust lands within the Tribe's restoration act area. The Tribe also manages more than 30,000 acres of forest lands, which provides revenue to the Tribe through the sale of forest products. Together, these business provided funding to support Tribal member services such as: social services, health care, elders care, housing, and education.

The Tribe is currently evaluating larger scale leasing projects on Tribal lands utilizing its authority under the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act). The Tribe is also looking at ways to utilize its existing cooperative management agreements with the Umpqua National Forest, and new agreements with the Oregon/Washington Bureau of Land Management (BLM) to create new economic opportunities for the Tribe and local community by utilizing forest residuals from forest management projects.

Question 2. Please further expand on your testimony of how your tribe complies with all Federal laws including those for environmental protections.

Answer. The Tribe follows all federal laws of general applicability including but not limited to the Endangered Species Act (ESA), Clean Water Act (CWA), and Clean Air Act (CAA). The Tribe also follows the National Environmental Policy Act (NEPA) to the extent that it applies to federal decisions and actions on Tribal trust land.

Congress has provided Indian Tribes with opportunities to enact environmental regulations that are tailored to the unique needs of the Tribal communities. For example, under the HEARTH Act, Tribes have the ability to develop Tribal leasing regulations which are submitted to and approved by the Secretary of the Interior (SOI). Once authorized, Tribes can negotiate and enter into surface leases under their approved HEARTH Act regulations without further approval from the Department of the Interior (DOI). The Tribe's HEARTH Act regulations were approved by the SOI. These regulations included a Tribal environmental review process that is consistent with applicable federal law. The Tribe's regulations layout the frame work for evaluating potential effects of any proposed leasing action while allowing opportunity for input.

Cow Creek is one of two Tribe's in the country that has been accepted into the Indian Trust Asset Reform Act (ITARA) Demonstration Project. Under the authority provided by the ITARA statute, the Tribe prepared and the SOI approved an Indian Trust Asset Management Plan (ITAMP) which contains Tribal forestry regulations replacing the 25 CFR 163 federal regulations. Under the Tribal forestry regulations, most all forestry actions (timber sales, timber permits, prescribed burn plans, forestry enterprise agreements, etc.) previously approved by the Bureau of Indian Affairs (BIA), often with long delays, are now approved by the Tribal Chairman under Tribal law. The Tribe has developed a Tribal Environmental Review Report (TERR) process under its regulations to evaluate environmental impacts. In addition, the Tribe utilizes a take avoidance strategy under section 9 of the ESA to minimize the risk of take to species listed as threatened or endangered. This strategy includes an evaluation of biological and ecological data based on site specific conditions and surveys. Section 7 of the ESA no longer applies to Tribal forest management since there is no federal decision. Section 9 of ESA is much simpler and avoids long delays (a year or longer) which often happens under Section 7 consultation.

The Tribe has built up its capacity to include a variety of resource specialists within the following areas: fisheries, wildlife, forestry, water and environmental, geographic information systems, and heritage/cultural). The Tribe has also developed additional internal process and procedures for reviewing and evaluating tribal projects to maintain compliance with all applicable federal and Tribal laws.

2a) Are there areas of the compliance process that are burdensome or duplicative beyond what is needed?

Answer. The standard federal process for compliance with federal environmental laws are often very burdensome and time consuming. The process often involves multiple federal agencies and multiple personnel. In many cases, the responsiveness of the federal agencies involved is lacking due to limited resources resulting in critical delays to Tribal projects. Furthermore, federal agency staff often lack local site-specific knowledge and experience with Tribal lands and activities.

Carrying out Tribal activities under the HEARTH ACT and ITARA has enabled the Tribe to use streamlined processes which are more cost effective than following federal rules, manuals and handbooks. Further, implementation of projects under Tribal approval can be accomplished in a matter of weeks compared to a year of more under federal processes and approval.

2b) If so, how could Congress improve that process for tribes?

Answer. Congress should continue to look for ways to streamline the federal environmental review process for Tribes by incorporating language in future legislation that allows Tribal governments to develop and implement their own Tribal environmental compliance rules and regulations for economic development and other management activities on Tribal lands. The HEARTH ACT and ITARA are good examples of how this process can work better. Congress should expand on these authorities to allow tribe's more autonomy over all trust resources in order to promote tribal sovereignty and self-governance.

Congress should also examine ways to utilize Tribal environmental review processes on federal lands in order to streamline process and procedures for co-management and co-stewardship projects. Much like adopting another agencies NEPA documents, Congress should allow federal agencies to adopt Tribal environmental review process and procedures for projects covered under Tribal Forest Protection Act (TFPA) agreements or other cooperative agreements. Congress should also look to Tribe's with appropriate environmental capacity to assist federal agencies with their environmental review and compliance process. This can be accomplished through the contracting of Tribal resources or by passing funds through the Tribe to procure additional third-party resources to perform this work. The 638 agreement works well for this type of work.

Question 3. Please further expand on your testimony and highlight what can be done to reduce wildfire risk and increase forest resiliency when specifically working with adjacent partners, like improvements to the Good Neighbor program at USDA.

Answer. In order to reduce wildfire risk and increase forest resiliency, federal agencies must have the ability to plan and implement preventive measures at a meaningful landscape scale. Federal agencies must also be provided the human resources and financial resources to be able to accomplish preventative forest management activities. Congress should examine ways to increase federal appropriations to fire-preparedness activities for Tribes and federal agencies.

Project planning and environmental review process needs to be streamlined to allow for a more rapid response to climate change and other threats which have created conditions that support catastrophic wildfires. This can be accomplished by developing new Categorical Exclusions (CE), under NEPA, for fuels reduction projects and other forest management activities. CEs should not just be limited to linear fuels treatments. Agencies must be allowed to take holistic approach to managing the entire stand if they are to be successful at reducing wildfire risk. Fuels reduction should be broaden to include other stand management activities, and fuels reduction projects should be allowed across the landscape to create continuity regardless of land use allocation. In addition, the size of these projects should be meaningful enough to reduce wildfire risk at a watershed scale.

Congress should direct federal agencies to re-evaluate forest management plans to reflect current day threats and conditions and incorporate tribal goals, values, and objectives. Existing plans are based on an outdated system of reserves which set limits on the federal government's ability to actively managed forest stands and habitat. These management plans often associate active management with negative impacts; however, lack of management has often led to a complete loss of the habitats and beneficial ecological conditions which these plans were initially set out to protect/reserve. There needs to be a better balance between protection and management of biological and ecological resources, and management of stand conditions which create overstocking and high fuel levels. In addition, due to conflicting resource values, agencies aren't able to implement larger landscape scale projects. Individual resource restrictions or limitations have resulted in very small scale projects which tend to be very vulnerable to wildfire. As a result of existing planning goals and objectives, and federal environmental protections, agency staff often focus on advocating for resource protections over the long-term health and vitality of the resources.

The lack of federal land management has also resulted in a loss of infrastructure that has adversely impacted Tribal and rural communities. The lack of infrastructure has limited forest restoration work because it makes meaningful landscape restoration economically infeasible. Investment in infrastructure requires security and assurance of supply in order to have the confidence to recapture the large

investments required to develop processing facilities. To address this issue, Congress should authorize tribes through TFPA contracts and/or other collaborative agreements, to enter into long-term agreements (20+ years) with the Forest Service and BLM to guarantee supply arrangements to anchor future infrastructure development. There is also a need to create new authorities for Tribal co-management and stewardship across the landscape or expand the use of the TFPA to include much larger landscapes.

Local initial attack capacity on most federal lands is lacking and fire suppression resources are often limited during fires season. Congress should direct the Secretary of Agriculture to enter into contracts or cooperative protective agreements with a State(s), Tribe(s), and/or local fire protection districts or associations for conducting initial attack and wildfire suppression activities on federal lands that are nearby and adjacent to Tribal Forest or agricultural lands. Every attempt should be made to suppress wildfires as quickly as possible.

Prescribed fire needs to be used as a tool to put fire back on the landscape to help manage forest fuels, promote forest health, and further reduce the risk of catastrophic wildfire. Congress should provide authorities for Tribe's and Federal land management agencies to conduct prescribed burning demonstration projects across federal ownerships. Fire needs to be reintroduce and used frequently across the landscape.

The Agricultural Improvement Act of 2018 (Farm Bill) included Tribes in the Good Neighbor Authority (GNA) but failed to provide for the same treatment of revenues received from the sale of timber or other forest products. Congress should fix this issue in the next farm bill to allow tribes to retain receipts under good neighbor. I have inserted some proposed legislative language below:

Funds received from the sale of timber or other commercial forest products by a Tribe under a good neighbor agreement shall be retained and used by the Tribe—“(I) to carry out authorized restoration services on Federal land under the good neighbor agreement; and “(II) if there are funds remaining after carrying out subclause (I), to carry out authorized restoration services on nearby or adjacent Federal land under good neighbor agreements, 638 agreements, and / or other applicable agreements.

The Farm bill also provided authority for the Forest Service to utilize 638 agreements with Tribal governments to accomplish forest management activities under the TFPA. This has proven to be valuable tool for the Tribe's work with the Umpqua National Forest. The use of 638 authority should be expanded beyond TFPA, and its use should be allowed within all USDA agencies in a manner similar to that of the DOI. All 638 agreements should be allowed up to 20 years for consistency with Good Neighbor and Stewardship agreements rather than the arbitrary five year administrative time limit.

Tribal culture facilitates innovative and integrated forestry practices. As noted in the Indian Forest Management Assessment Team (IFMAT) Reports (I, II, and III), Indian forestry has the potential to provide models for sustainable forestry and resource management that can be applied on the federal forest estate. IFMAT IV is nearing completion and Congress should evaluate the findings and recommendations in this assessment to adopt new approaches to managing Indian forest lands and adjacent federal forest lands.

Question 4. Is there any further information you think the Committee needs to make good policy regarding land use restrictions for tribal lands?

Answer. Congress should develop procedures for Tribes to place fee land into restricted fee status to allow tribes the opportunity to manage tribal fee lands subject to tribal laws and regulations, and applicable federal laws and regulations rather than State laws.

As more tribes pivot toward tribal self-governance and self-determination, Congress should evaluate new opportunities and authorities for Tribes to assume more responsibility over Tribal lands and resources. Congress should also explore new authorities that expand the use of Co-management and Co-stewardship across federal lands.

Congress should evaluate ways to streamline opportunities for tribes to lease, transfer, or purchase federal administrative facilities. The Tribe is currently working on a potential acquisition of the Tiller Ranger District Offices; however, the current administrative process may take 10 years or more to work through. Congress should amend Title V—Forest Service Facility Realignment and Enhancement Act to expand the size of transferable acreage up to 100 acres; authorize the

Secretary of Agriculture to transfer administrative facilities directly to Tribal governments; and, extend authorization authority for an additional 5–10 years.

Ms. HAGEMAN. I thank the witness for your testimony.

The Chair will now recognize Members for 5 minutes for questions, and I will be going first.

I am going to direct my first question to Mr. Dustin Klatush. You stated, and you mentioned in your statement, that your Tribe felt fortunate to have been able to secure enactment of a bill in the 117th Congress to allow the Tribe to enter into leases up to 99 years. Was time of the essence in getting that bill passed, and why did the Tribe need to get it done during the last Congress?

Mr. KLATUSH. First and foremost, we wanted to keep the interest of the two outside entities that had approached us about warehouse projects. The more time that passed, the more likely that outside businesses will lose interest or look elsewhere.

Also, we wanted to keep the option open to begin construction during the construction season in our area which is April to October.

Ms. HAGEMAN. Wonderful. Thank you for that. I would like to also question Mr. Rupnick. You testified in favor of establishing a new process for acquiring lands under tribal jurisdiction in restricted fee status. Do you believe that restricted fee land status would be more efficient for the Federal Government as well as for the tribal governments?

Mr. RUPNICK. Yes. I do. And part of that is that tribes can assume jurisdiction over those lands immediately, and thereby reducing resources needed from the Federal Government to manage and apply those lands there.

Right now, as I stated in my testimony, we had fee status application for a trust status that took over 14 years to be able to get that done for us to try to enhance our operation, our Class III gaming operation.

With the Federal Government, BIA, Department of the Interior going through all the different assessments and everything else and just essentially stonewalling a lot of this stuff. That is what really hinders tribes when they are trying to build economic development within a reservation.

So, being able to reduce a lot of that paperwork, being able to reduce those areas that are required by oversight from regulations or unneeded regulations, would definitely benefit the Tribe and help reduce those costs. Thank you.

Ms. HAGEMAN. Well, that makes sense. And I am surprised at the amount of time that you have referenced in your testimony as to what it took to be able to develop and move forward with those projects.

Mr. Robison, in 2016, Congress enacted the Indian Trust Asset Reform Act which you referred to. And among several things, it authorized a demonstration project in which Indian tribes may be authorized to negotiate to assume management and control of its non-mineral trust assets under a plan approved by the Secretary of the Interior.

And under the ITARA Demonstration Project, your Tribe took over some forest management activities, I understand. Can you tell the Committee specifically what activities this includes and how ITARA works?

Mr. ROBISON. Yes. Thank you for the question. So, the forest management activities that the Tribe assumed are those same forest management activities that are listed under the National Indian Forest Resource Management Act.

So, these include things like timber sales, timber permits, prescribed burn plans, forestry enterprise agreements, and other authorities that would generally be approved under the BIA through the National Indian Forest Resource Management Act.

And the way that ITARA works is that as tribes assume responsibility under the Demonstration Project, they are able to take on those authorities that the Bureau of Indian Affairs had been performing on behalf of the tribe. So, now those decisions are being made by the tribal government, under tribal rules and regulation, as opposed to Federal rules and regulations.

Ms. HAGEMAN. OK. Wonderful. Thank you for that. And, finally, Ms. Wavalene, you commented and testified about the need for infrastructure and the impact that a lack of roads has for the rural community that you represent, the rural tribes. Is the Federal Government involved in all of the decisions related to road building on your reservation?

Ms. WAVALENE. Yes. On behalf of the Tohono O'odham Nation, the Roads Program is a BIA Roads Program. So, not only the state but the federal roads that exist on the Tohono O'odham Nation. So, the bureaucracy that does create, for getting approvals and partnerships.

I know that the Nation has stepped up to try to remedy some of the impacts on the roads. But because of liability issues, we are prohibited from pursuing any of those endeavors in addressing the potholes, the cracks in the road, and our bridges, and whatnot. So, it becomes a liability issue if the Nation is to continue to address those needs.

So, it is the BIA at the Federal level that is technically responsible for the roads on the Tohono O'odham Nation.

Ms. HAGEMAN. OK. Well, thank you for that. Thank you all for your testimony in responding. The Chair now recognizes the Ranking Minority Member for her questioning.

Ms. LEGER FERNÁNDEZ. Thank you, Chairwoman Hageman, and thank you to the witnesses for your testimony. Vice Chairwoman Saunders, thank you very much for your testimony that laid out the multiple obstacles that tribes face, especially in rural areas.

Can you talk a little bit more about financing, and access to capital, and workforce development? What do you think are the biggest financing obstacles for tribal small businesses on rural reservations?

Ms. SAUNDERS. So, for businesses on the Tohono O'odham Nation, for whether it be tribal members or anyone wanting to partner in providing services to the Tohono O'odham Nation, we are about a good hour, maybe a 50-mile drive from the nearest city.

So, having to travel the roads and looking at the investment in regards to their products of services has been a challenge because

of the technical availability of services and education and for them to invest in our community based on the distance between the nearest city.

The challenge is that not only our members face for products that are readily available, but for those individuals and businesses that do have these products and investing and traveling to our community and what it all entails.

And more so today with the economy and the prices of all the products, it hits us on our reservation because of the delivery of services, and the fees, and how expensive it is. So, it is really important to invest in small businesses at the community level, but also for those businesses off the Nation to really look at their investments and not push it off onto our tribal members. So, more funding availability to all businesses at all levels would benefit. It is a win-win situation. Thank you.

Ms. LEGER FERNÁNDEZ. Thank you. And Chairman Rupnick, in the discussions about a restricted fee status, I want to just clarify. The intent is to ensure that the land remains subject to tribal jurisdiction, not to state jurisdiction, no state taxation. So, what you are trying to do, is it correct, is to make a process that is more streamlined for it to come into restricted status, but that you retain full jurisdiction over the land? Is that correct?

Mr. RUPNICK. That is correct. When you go through the trust application process, and some of the experiences that we have had or realized over the last few years, it kind of depends on the local jurisdiction and who is elected into there. So, when we apply for land into trust, that goes through the state, then the county, and all those different agencies can offer up objections to that whether that land goes into trust.

One of the biggest reasons why is because they realize that land comes off of their tax rolls. So, they do everything that they can to make sure that those lands that are held in fee status are still taxable for the longest amount of period of time.

That causes a lot of delay because then you are fighting with county and state governments to be able to move that process forward. Then you have all of the other regulations that are coming down from the Department of the Interior, environmental assessments, so on and so forth, that really limits the tribe's ability to do anything on that land.

Where if a streamlined process were 90 days, that land is purchased and moved into a restricted fee status, then the tribes could immediately start developing lands or whatever businesses that they wish to pursue on that piece of property.

Ms. LEGER FERNÁNDEZ. Thank you. And, Chairman Klatush, in your written testimony, you did mention the idea of expanding the Buy Indian Act. Would you also recommend that we expand the ability of tribes to compact and contract outside of the two agencies that are limited to?

I think everybody on this panel has either compacts or contracts. And would you all agree you would love to have those expanded to the other agencies? Maybe, we will start with Chairman Klatush.

Mr. KLATUSH. The Buy Indian Act, as currently drafted, only applies to the Bureau of Indian Affairs and the Indian Health Service. The Department of Defense is not included in the Buy

Indian Act. And I believe that expanding the Act to include the Defense Department would benefit all tribes.

Ms. LEGER FERNÁNDEZ. OK. Thank you. And maybe I will go straight over to Mr. Robison. What do you think about expanding Buy Indian and compacting, contracting?

Mr. ROBISON. I can't speak to the Buy Indian. But I can say that anytime we have an opportunity to expand the compact authorities for tribes, it allows tribes to have a lot more opportunity for self-governance and a streamlining of processes and procedures.

Ms. LEGER FERNÁNDEZ. Thank you very much. And I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Mr. LaMalfa from California.

Mr. LAMALFA. Thank you, Madam Chair, and congratulations on your role here. We are looking forward to it, so thank you. I appreciate the panel for your time and travel to be here and be part of this here today, and express your firsthand concerns with the processes here we have with them.

I share your frustration as well on getting permitting done to do some of the other things we need to do, in my rural Northern California district such as timber harvest, salvage after fire, water storage, many, many years involved.

So, we are all right in the same boat on that. And we are looking to find relief for you all and other tribes around the country on being able to do basic things, economic things that are good for your membership, and such.

And it was expressed a couple of times too, the amount of time it takes and also the effort. Now, we are here to legislate, so it is our job. We have nothing to complain about, but individual tribes do, for example, we have cases where there are surplus lands being held by a Federal entity and a tribe nearby is interested in that, taking it off their books and put it into play. We have had those. We have more prospects up in my district too for tribes interested in that.

But it requires an entire piece of legislation to move at whatever pace it moves through, hopefully, within a 2-year cycle in Congress, and that has to be frustrating. Because it is year after year after year or recognition for tribes here that have had their recognition taken away in the past. So, I get how frustrating that is and there needs to be a lot more streamlining to get where you need to go.

So, Vice Chairwoman Saunders, you were talking about your lands there in Arizona a little bit, and you have, in your purview, 734 miles of roads that are under BIA jurisdiction to keep spiffed up. And, obviously, from your testimony, they are not spiffy.

So, what kind of progress do they make year in, year out, and is there an entity within the Tribe, for example? Does the Tribe have its own construction company that it could be doing that on its own with the right kind of funding?

Ms. SAUNDERS. Thank you for the question. On behalf of the Tohono O'odham Nation, we have a BIA Roads Program. We have a Department of Planning and Economic Development that works hand in hand with the BIA Roads Program. So, looking to address that, the bureaucracy that it does create for the funding, channeling the funding through the BIA and getting the approvals, the time that that in itself takes.

But, definitely, our planning program has really improved in regards to addressing all of the grants that are available, all of the funding cycles that come through year in, year out, the time that it takes to actually get that funding, and a contract in place to address the roads. And the O'odham Nation is years behind, so I know that—

Mr. LAMALFA. How many miles of road have been done, let's say, in the last 3 years, do you think? Just a rough guess.

Ms. SAUNDERS. Less than 100 miles.

Mr. LAMALFA. Less than 100?

Ms. SAUNDERS. Yes.

Mr. LAMALFA. Is that upgrading from perhaps dirt roads and—

Ms. SAUNDERS. Maintenance and upgrades, and it is also in collaboration with some funding that came through CBP. Because we do have Border Patrol that utilize this on our roads as well. So, partnering with them to address and seek funding, but also having to still go through the whole BIA process.

Mr. LAMALFA. Quickly, on your water situation, are you on well water or do you draw, I am not quite sure where you are in proximity. Do you use Colorado River water for any purpose or are you all well water? What's your source?

Ms. SAUNDERS. We are a part of the Colorado River, but we do have a well source on the Tohono O'odham Nation that delivers water to all of the majority of our communities.

Mr. LAMALFA. OK. Thank you. Let me shift to Mr. Robison from Cow Creek here. We talked about the three different styles of how land can be in fee, or trust, or a restricted fee. What do you find is going to be the most workable for you long term? You are just up the road from me a little bit. And in the various things that you are trying to accomplish economically, what's going to be the best tool for you?

Mr. ROBISON. Great. Thank you for that question. Really, I think, having a variety of options on the table for the Tribe to select from is important. So, I think, as I said in my testimony today, having restricted fee available for us as an option, which we don't currently have as an option, is something we are very interested in.

And one of the challenges is obviously the taxation with the state but also having additional authorities for us to manage those fee lands and provide potential business opportunities. It is extremely important.

Trust lands, as we continue to work through the things like the Indian Trust Asset Reform Act, the HEARTH Act, we are able to bring on more regulations and things within the tribal government which makes things more streamlined. But trust lands continue to be a challenge for us as well, especially getting through the fee to trust process.

Mr. LAMALFA. It is so hard, so hard. For the other three panelists, real fast; yes, or no? Are all three options really important to you, for the other three here? Yes?

Mr. KLATUSH. Yes.

Mr. RUPNICK. Yes.

Ms. SAUNDERS. Yes.

Mr. LAMALFA. Yes. OK. Thank you. I am sorry there is not more time. Thank you, Madam Chair. I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Ms. González-Colón from Puerto Rico.

Mrs. GONZÁLEZ-COLÓN. Thank you, Madam Chair, and congratulations on chairing this Committee. I am happy to be here. And thank you, all the witnesses, for being here today.

I was reading all the information regarding this hearing, and I was very surprised at the multiple levels of restrictions you have to use your own land.

And in that sense, even as a trust land, fee land, or restricted fee land, at the end, I believe that land is the most important resource you have for economic development, for social, cultural issues. And when you have all those restrictions, there is no way you can succeed.

So, I am happy this Committee is doing this hearing to see how we can expedite and allow all the tribes to use their land, and we are talking about American Indians, and, of course, Alaskan Natives as well.

So, when I was reading the testimonies, Chairman Klatush, you said that your Tribe led efforts to repeal the provision on alcohol manufacturing on Indian lands. Coming from Puerto Rico, we produce a lot of alcohol and rum, so I know how important that is. In your testimony, you mentioned that the Tribe opened its Talking Cedar brewery and distillery in 2020, during the pandemic.

And my question will be, how are you dealing with that at this time, and is there something regarding the Buy Indian Act that you are interested in selling products from this distillery to the nearby military base?

Mr. KLATUSH. Yes. So, the distillery and the restaurant have been doing pretty good since we have opened them. During the pandemic, the restaurant was one of the few restaurants open in the area, and we received a significant amount, but I guess we, Joint Base Lewis McChord, yes.

Mrs. GONZÁLEZ-COLÓN. And you are working to that end with a military base to sell your products using the Buy Indian Act to get all those products coming from the distillery to that place, right?

Mr. KLATUSH. Yes.

Mrs. GONZÁLEZ-COLÓN. OK. What other challenges do you have to create economic development in your lands?

Mr. KLATUSH. For Chehalis, one of the biggest issues is staffing at the Bureau of Indian Affairs. Before, during, and especially after the pandemic, there just are not enough people in the Northwest Regional Office to process routine approvals and tasks.

Most of the staff continues to telework, which for a long period of time, the Northwest Regional Office did not have a contracting officer. So, we could not get our 638 contracts approved. The same goes for approval of business leases, right-of-ways, and other routine matters.

Mrs. GONZÁLEZ-COLÓN. Thank you. Mr. Robison, in your written testimony, you called on this Committee to pursue opportunities to expand the use of restricted fee lands across Indian Country, including creating an administrative process for this land designation.

What should be the proposal, and how expanding the use of those restricted fee lands will help spur economic activity in your

areas? What specific things can we do here to allow that growth from happening?

Mr. ROBISON. Great. I appreciate that question. I think one of the things that we need to look at is how do we give access to this restricted fee classification to all tribes as a tool in their toolbox to manage fee lands subject to or limited, without having the tax burden and without alienation, right?

So, I think the restricted fee status, what that provides for Cow Creek is another option for us to look at those fee lands, hold that title for the Tribe, and use additional regulations and opportunities through tribal laws and regulations, working with Congress to provide more efficient opportunities for economic development.

It is an option we don't have in our toolbox right now, and I think is an option that we need to be able to look at different opportunities for economic development.

Mrs. GONZÁLEZ-COLÓN. Thank you. And my last question will be to Mr. Rupnick. You said in your testimony that it has been almost 22 years since your Tribe's retail shopping plaza project has been in the works and has not been completed yet.

If you could look back and see on the planning stage, what are the things you have changed in terms of those planning to accommodate the longtime wait for that retail plaza to open or the use of the land?

Mr. RUPNICK. I think part of that is just the strict interpretation on some of the regulations that are put in place that tribes are forced to work with. That would also include the Non-Intercourse Act, which I think needs to be revised as well too, because there is a strict interpretation on that.

So, if tribes go out and purchase fee simple land, and they can develop it, or they can't do anything with it, then you almost have to have a piece of legislation to allow tribes to be able to sell that to recoup whatever dollars they have already invested into that as well.

But some of that process that we have right now is, of course, it is just a huge bureaucracy when it comes to land into trust. And being able to streamline that process through the Department of the Interior would help tribes tremendously when they are moving either into restricted fee or even that trust process that gives them that option of how they want to handle those lands.

Mrs. GONZÁLEZ-COLÓN. Thank you, sir. My time expired. I yield back.

Ms. HAGEMAN. Thank you. The Chair now recognizes Ms. Stansbury from New Mexico.

Ms. STANSBURY. All right. Well, good morning, everyone. And thank you, Madam Chairwoman. I also want to congratulate you on your chairmanship and welcome you to the Committee, and also to the Ranking Member, and my sister from New Mexico.

And, also, I want to welcome all of our tribal leaders who are here, not only on the panel, but in the audience, and also tuning in today. Thank you for traveling and thank you for being here with us today.

I am Melanie Stansbury, and I represent New Mexico's 1st Congressional District, which is proudly home to a number of tribes

and pueblos in New Mexico. New Mexico, of course, is home to 23 federally recognized tribes and pueblos.

And the first thing that I want to just acknowledge is that while we are here to talk about economic development opportunities, our tribes and pueblos are already economic powerhouses in New Mexico and are, in fact, among some of the largest employers and generators of income in the state.

In fact, amongst our tribes and pueblos, 19 pueblos generate over half a billion dollars in revenue alone every year in our state and employ over 11,000 people statewide.

These enterprises are vital not only to our tribal communities, but also to our local, and regional, and state economies, and our primary sources of funding for tribal government, as our tribal leaders know here, to fund vital services, including emergency services, roads, elder support, and so much more.

I also want to just take a moment to highlight a couple of the pueblos and tribes that are in our district in the 1st Congressional District. In particular, Sandia Pueblo which is just north of Albuquerque, which is my hometown, employs thousands of residents living in the Albuquerque area and has quite a diversified economic portfolio.

And Mescalero Apache, in the southern portion of my district, operates an amazing set of enterprises around the hospitality and ski businesses, as well as a number of other major enterprises in southern New Mexico.

But as I was listening to the testimony this morning, and also reading your testimony, I was struck by the number of barriers that still obviously are presented to so many of our Tribal Nations in terms of self-determination and nation-building that extend far beyond even the conversation that we have had here today.

So, Madam Chairwoman, while we have made a number of huge, huge steps forward in passing the Bipartisan Infrastructure Law, which made massive investments, hundreds of millions of dollars of investments, that have not yet hit many of our communities, in terms of roads, water, broadband and as well as the Inflation Reduction Act, which will bring a lot of money for energy infrastructure, water infrastructure.

And we know that Secretary Deb Haaland and our President have made a strong commitment to tribal consultation, nation-building, and economic investment. I was particularly struck by Chairwoman Saunders' testimony about the many and multivariate barriers, whether it is infrastructure, broadband, all of these things.

So, I want to just do a quick lightning round for all of our panelists because we do have a limited time. You have presented testimony to us today, and I am going to put you each on the spot. This is the opportunity to present to all of us and to the country.

If there was one thing that you could do in Congress that you personally think would have a major impact on economic development in your communities or across our Tribal Nations, what would it be? And I will start with Mr. Klatush.

Mr. KLATUSH. The Buy Indian Act.

Ms. STANSBURY. OK. And Mr. Rupnick?

Mr. RUPNICK. There are a couple of things. One of them is dual taxation. I know that that is not an area for this Committee here. But, yes, restricted fee, allowing Nations more tools in their toolbox to be able to use the land as they best see fit.

Ms. STANSBURY. Thank you. And Vice Chairwoman?

Ms. SAUNDERS. I would say the additional funding for resources for technical assistance, and providing education, and really looking at the different ways of the bureaucracy, such as BIA. And just the process in itself to try to streamline those time frames and the processes in itself for the benefit of all.

Ms. STANSBURY. Thank you. And Mr. Robison?

Mr. ROBISON. Great. Thank you for the question. I really think continuing to promote self-governance and tribal sovereignty by allowing tribes to manage their lands and resources according to tribal laws and regulations and tribal policies to meet tribal goals and objectives.

Ms. STANSBURY. All right. Well, I am amazed that we got through everyone. Obviously, this is just the first chapter of hopefully many conversations about hopefully bipartisan legislation we could advance to help support our Tribal Nations. So, we appreciate you being here today. And thank you, Madam Chairwoman.

Ms. HAGEMAN. Thank you. And I want to thank the witnesses for your incredibly valuable testimony, and the Members for their questions. Thank you for being here today.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Friday, March 3, 2023.

The hearing record will be held open for 10 business days for those responses. If there is no further business—Mr. LaMalfa from California does have a follow-up question.

Mr. LAMALFA. Thank you. Thanks for the indulgence on that. We have you here so I would like the opportunity for follow-up. Mr. Robison from Cow Creek, I want to touch a little more on the issues of dealing with the Endangered Species Act, and timber management, and such as that.

So, what has your Tribe encountered with trying to deal with timber harvest? And I understand you had a Demonstration Project that you are looking at on demonstrating better forestry practices. So, what has the spotted owl species, for example, brought as part of inhibiting your process there?

Mr. ROBISON. Thanks for the great question. Under ITARA, we have taken over all the authorities from the Bureau of Indian Affairs. So, as far as the spotted owl, we actually do on-site monitoring and management of spotted owls under our tribal authorities.

We have a tribal environmental review process that we follow now, as opposed to the National Environmental Policy Act. And for our ESA compliance, because we have assumed the Federal responsibility, we no longer follow Section 7 in Endangered Species Act. We actually fall under Section 9, the take avoidance.

So, we use a very comprehensive take avoidance strategy. We also have the opportunity to develop a species conservation plan

working with the services on tribal lands. So, really, as we look at tribal land management under ITARA for the tribe, things have actually gotten quite easier.

To the question though, on working with our adjacent Federal land partners, that continues to be a challenge for us as we look at ways to reduce wildfire risk, increase forest resiliency, and forest health.

We have to find a way to work around the Endangered Species Act and other environmental laws that are set in place for obviously good reasons but can be challenging and cumbersome to actually get good work done on the ground to enhance those resources.

Mr. LAMALFA. We have had massive wildfires in Northern California and Southern Oregon. I had a 1 million-acre Dixie Fire which affected my district. You had large fires in Oregon last year, or was that 2 years ago? It doesn't matter for right now. Did it come from Federal land onto tribal land in your particular situation? And how many acres did it devastate?

Mr. ROBISON. Yes. So, we actually lost—we had a couple of fires on tribal lands. Immediately after the Western Oregon Tribal Fairness Act was passed, where we received 17,800 acres of BLM lands back to the Tribe, we had about a 3,600-acre fire that took about 20 percent of that new ownership out. That actually came on from the state lands onto tribal lands and resulted in impact.

But here recently, in the last few years, we have had several fires threatening tribal lands. And we have worked very diligently with the Umpqua National Forest to try to figure out how we alleviate the potential threat from those adjacent lands on the tribal lands.

Just a few years ago, we had the Smith Fire which was a small fire. It started out 10 to 12 acres. It sat unattended for about 10 days and then blew up into about a 70,000-acre fire threatening tribal fee lands and trust lands. So, we have to find a way to reduce that wildfire risk.

Mr. LAMALFA. Please submit some of your thoughts and watch what we are going to do in the Subcommittee on Forestry and the Ag. Committee if you would, and we will be looking at that.

Mr. LAMALFA. Thank you, Madam Chair. I appreciate the indulgence. I will yield back.

Ms. HAGEMAN. Thank you. Excellent questions and appreciate the testimony and additional information.

Again, if there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 10:10 a.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Supplemental Statement for the Record**Joseph Rupnick, Chairman
Prairie Band Potawatomi Nation**

Dear Chair Hageman, Ranking Member Leger-Fernandez, and Subcommittee Members:

Thank you for the opportunity to testify before the Subcommittee on March 1, 2023. I was honored to share my thoughts with the Subcommittee on “Unlocking Indian Country’s Economic Potential,” particularly as it relates to the ownership and use of tribal lands for economic development. This supplemental statement expands upon my remarks for inclusion in the hearing record.

As the Chairman of the Prairie Band Potawatomi Nation, I represent approximately 4,500 Potawatomi people, most of whom live on our reservation in Kansas, defined by our 1846 Treaty with the U.S. Government. Originally, our people owned and resided on lands in northern Illinois, but we were subject to removal treaties in 1829 and 1833 that relinquished all but 1,280 acres of that land. Our 1846 treaty established a 900-square-mile reservation for us in Kansas, but development pressure, the federal government’s land allotment policies, and outright theft resulted in most of our land being lost to non-Indians. Just a few decades ago, our Nation owned less than 5% of the land originally promised to us.

Today, lands within our reservation are heavily “checkerboarded,” meaning that there are mixed parcels of land within the reservation owned by our Nation, individual Nation citizens, and non-Indians. And because the status of the land differs based on ownership, so too does the jurisdiction and taxing authority of the tribal, federal, state, and county governments. Frankly, what the government has done to us and our lands has created a mess.

This mess is compounded by the fact that the lands we have retained are considered “trust lands”—owned by and under the federal government’s jurisdiction. In my view, the idea of “trust land” is not normal and should be fixed to recognize that our Nation owns our lands within our treaty-defined reservations and is subject to our primary jurisdiction. The federal government’s role should be to protect our lands against the sale and external taxation and regulation, not management and interference with our Tribal government’s land use decisions.

Perhaps the most glaring defect of trust land status is how it interferes with economic development activities we wish to pursue in support of our people. For example, in recent years, we have sought to expand a retail shopping plaza with a convenience store to support our Class III gaming facility. We acquired the land in fee from non-Indian sellers. We had to apply to the Bureau of Indian Affairs to have the land taken into trust, which took 14 years. We had to undergo excessive environmental review because the land is now considered to be in trust status. The utility service takes time to hook up because of the federal regulations governing rights of way on trust land. We started this project 22 years ago, but it is still unfinished. Nowhere in America other than Indian Country does this kind of bureaucratic stranglehold occur.

To remedy this situation, I recommend that the Subcommittee consider three different legislative actions to improve the use of tribal lands.

First, Congress should enact legislation to allow for any Indian nation at its own choosing to acquire lands under its jurisdiction in restricted fee status. Restricted fee status is a long-established form of tribal landownership similar to trust status, but the land is considered owned by and under the jurisdiction of the Indian nation, not the federal government.

The late Don Young, the former Dean of the House, supported sovereignty for tribal governments to own our lands and exercise jurisdiction over them within our reservations. He developed legislation, the “Native American Land Empowerment Act,” that he introduced in the 112th and subsequent Congresses to allow for Indian nations to acquire restricted fee lands within our existing reservations.¹ He proposed a 90-day process that land acquired by a tribe in fee within its reservation

¹See e.g., H.R. 8931, 115th Cong. At <https://www.congress.gov/116/bills/hr8951/BILLS-116hr8951ih.pdf>.

would automatically be converted to restricted fee status under its ownership and jurisdiction.

Enactment of this legislation would create an alternative process to the current fee-to-trust process. All tribal nations could save time and money and strengthen our ability to engage in economic development within our reservations if we had this tool at our disposal. Some tribes may not like the idea and would prefer to have their lands held in trust, which is their right. But for nations that want greater control over our land use from the federal government, we should have that opportunity.

What is restricted fee land status? Trust lands are considered owned by the United States government for the benefit and occupancy of a particular Indian tribe. Restricted fee lands are recognized as owned by the Tribal nation itself, subject to a restriction against alienation and taxation imposed by federal law.² Restricted fee lands are managed by a Tribal nation, not the federal government.

What would the Land Empowerment Act do if enacted? The Act would allow any federally-recognized Indian nation or tribe, at its choice, to convert any or all of their trust lands or tribally-owned fee lands within its reservation to restricted fee status by giving notice to the Secretary of the Interior. If the Secretary failed to act on the tribe's request within 90 days, the land would automatically convert to restricted fee status.

Do restricted fee lands have Indian Country status? Yes. Both trust land and restricted fee lands are "Indian Country."³ are subject to tribal and federal jurisdiction,⁴ and are immune from state regulation and taxation.⁵

Is restricted fee land more at risk of state jurisdiction or taxation? No. Restricted fee land is Indian Country under federal law and is the equivalent of trust land for jurisdictional purposes.⁶

If the Land Empowerment Act is enacted, would it reflect a major change in federal law? No. The Act is consistent with recent Congressional action to respect tribal sovereignty over land use to maximize economic development potential. In 2012, Congress enacted the HEARTH Act to amend the Long-Term Leasing Act of 1955 to establish a procedure for tribal governments to gain greater control over leasing trust lands for a 75-year period.⁷ Congress has also regularly enacted piecemeal legislation to allow tribes to lease land for 99 years, as discussed further below. And the Indian Trust Asset Reform Act of 2016 allows for tribes to fully manage their trust land resources.⁸ The Land Empowerment Act would streamline this process even further.

What would be the effect of the Land Empowerment Act on tribal self-government and economic growth? The Act would restore tribal landownership to lease and regulate our own lands to promote tribal economic development without federal government management. It would not change any existing federal law relating to gaming development. But it would be an important step toward streamlining tribal land use for economic development and thereby strengthening tribal sovereignty by providing more flexibility and more options for economic growth.

Would the Land Empowerment Act affect the federal government's funding obligation to Tribes? No. The federal trust responsibility and federal funding are independent of whether a Tribal nation occupies trust land or owns restricted fee land. The Act expressly preserves the federal government's trust obligation to protect the Tribe and its lands.

Would the Land Empowerment Act affect the status of trust allotments? No, not without the consent of the allottee.

²See 25 U.S.C. § 177; 25 C.F.R. § 151.2(e).

³"Indian Country" includes "reservations," "dependent Indian communities," and "allotments." See 18 U.S.C. § 1151. Tribal nations owning lands in restricted fee status are Indian Country. See *U.S. v. Sandoval*, 231 U.S. 28 (1913) (Pueblos); *Indian Country U.S.A., Inc. v. State of Oklahoma*, 829 F.2d 937 (10th Cir. 1987) (Creek Nation).

⁴fee lands that pass into trust status or restricted fee status are subject to tribal jurisdiction. See *Citizens Against Casino Gambling in Erie County v. Chaudhuri*, (2nd Cir. 2014), at 55–57.

⁵See *Citizens Against Casino Gambling in Erie County v. Hogen*, (W.D.N.Y., Jul. 8, 2008) at 69 ("Congress has treated trust land and restricted fee land as jurisdictional equivalents in a number of Indian statutes of general applicability.")

⁶See CACGEC, *supra* at 70 ("[W]here land is held in trust or is subject to a restriction against alienation imposed by law, a state is without jurisdiction over the land except as permitted by the federal government.")

⁷See 25 U.S.C. § 415.

⁸See 25 U.S.C. § 5601 *et seq.*

Could restricted fee lands revert to trust status under the Act if originally converted to restricted fee status? Yes, however, the federal government would not be held responsible for any implications of land use while it was owned by the Tribe in restricted fee status.

Is there a precedent for restricted fee landownership in Indian Country? Yes, the federal government and federal law has recognized restricted fee land status since 1790 under the Nonintercourse Act. The Six Nations of the *Haudenosaunee* (Iroquois) located in New York State retain aboriginal title to their lands, which are considered owned in restricted fee status. Restricted fee land exists in other parts of Indian Country as well (e.g. Oklahoma, New Mexico).

Has Congress previously acted to allow for the creation of restricted fee lands? Yes, on two recent occasions Congress has established a process for Tribal nations to acquire restricted fee lands.

In 1990, Congress enacted the Seneca Nation Settlement Act, which allows the Seneca Nation of Indians to utilize settlement funds appropriated under the Act to acquire restricted fee land within its aboriginal territory in Western New York State.⁹ Upon the use of Settlement Act funds to acquire land in fee simple status, the Act allows the Seneca Nation to give notice to the Secretary of the Interior and affected local governments of its acquisition. Within 60 days of said notice, the land is automatically converted to restricted fee status and is considered Indian Country under the Nation's jurisdiction.

In 2016, Congress enacted the "Return of Certain Lands at Fort Wingate to The Original Inhabitants Act" for the benefit of the Zuni Tribe and Navajo Nation.¹⁰ This law transferred former Fort Wingate military land back to these two Tribal nations in trust status but allowed them to convert the lands to restricted fee status at their discretion.

If the Land Empowerment Act is enacted, will it be mandatory for Tribal governments? No. The decision to convert trust lands into restricted fee status is a choice. The National Congress of American Indians, Affiliated Tribes of Northwest Indians, and the United South and Eastern Tribes have each adopted resolutions supporting the right of tribal governments to have the choice to acquire lands in restricted fee status (attached).

In addition to establishing a new legal process for acquiring lands in restricted fee status, I recommend two other critical legislative changes to expand Tribal government authority to better utilize our lands for economic development purposes.

Congress should recognize that all Tribal governments have authority to lease trust lands for up to 99 years. Right now, Indian nations are limited in our ability to lease our lands without federal approval. In 2012, Congress took a major step forward when it enacted the HEARTH Act to amend the Indian Long-Term Leasing Act of 1955 to allow for the leasing of trust or restricted lands of up to 75 years. But, to regain that inherent authority, a tribe must first ask permission and secure approval from the federal government to exercise that authority. And to get that approval, a Tribe's laws must have a variety of restrictions and controls governing land use that are nearly as burdensome as the federal government's own regulations.

In true fashion, the Federal Government acted in a manner that looks like it is respecting tribal sovereignty but loads up the process with so many other restrictions that you have to wonder whether it's really worth it.

Congress should simply fix this situation by enacting legislation that allows any Indian nation that wants the authority to lease its trust lands for 99 years to do so. Again, if a Tribe wants to utilize the existing legal regime, that is their choice. But if other Tribal nations like ours want a streamlined process, the federal government should just get out of the way.

⁹See Pub. L. 101-503, 104 Stat. 1292, Nov. 3, 1990 (<https://www.govinfo.gov/content/pkg/STATUTE-104/pdf/STATUTE-104-Pg1292.pdf>).

¹⁰See Cong. Rec. H2735-H2737, May 18, 2016 (attached).

Lastly, Congress should clarify that the Nonintercourse Act does not apply to the purchase and sale of Tribally-owned fee lands. This Act, one of the first pieces of legislation enacted by Congress in 1790, serves an important function in protecting the sale and alienation of Indian trust or restricted fee lands. But it should not apply to land transactions involving the purchase and sale of fee lands. Many Tribal governments, including ours, are interested in expanding our economic opportunities into real estate development, but any future sale of such land could be stopped because of a restrictive interpretation of the Nonintercourse Act. The Nonintercourse Act is important legislation that should remain in place. However, it should not be interpreted to interfere with the sale of Tribally-owned fee land within our outside of reservation boundaries.

In conclusion, I want to thank you again, Madam Chair and Subcommittee members, for the opportunity to submit this supplemental testimony. For 50 years, the official policy of Congress has been to support tribal sovereignty and self-determination. More must be done to make this a reality regarding the use of tribal lands to support the economic self-sufficiency of sovereign Tribal nations.

This Statement along with attachments is part of the hearing record and is being retained in the Committee's official files.

The Statement with attachments is available for viewing at:

<https://docs.house.gov/meetings/II/II24/20230301/115374/HMTG-118-II24-20230301-SD003.pdf>

Submission for the Record by Rep. Grijalva

Statement for the Record

United South and Eastern Tribes (USET) Sovereignty Protection Fund

The United South and Eastern Tribes Sovereignty Protection Fund (USET SPF) is pleased to provide the House Subcommittee on Indian and Insular Affairs (SIIA) with the following testimony for the record of the March 1, 2023 oversight hearing, “Unlocking Indian Country’s Economic Potential.” The inaugural hearing of SIIA in the 118th Congress focused on the challenges Indian Country faces in pursuing economic opportunities due to the complex status and restrictions imposed on Tribal Lands. However, this is just one example of the barriers that exist as a direct result of shameful federal policies that sought to terminate Tribal Nations, assimilate Native people, and to erode Tribal territories, learning, cultures, and economies. Today, many federal programs’ management and funding systems operate under an archaic model of paternalism that does not support Tribal Nation sovereignty and self-determination.

In addition to addressing land use and restrictions, USET SPF offers several additional priorities that must also receive the same consideration from Congress and the Subcommittee to empower Tribal Nations to pursue efforts in Nation rebuilding. These include support for the restoration of Tribal homelands, tax parity, and the expansion of self-governance contracting and compacting across the federal government.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Economic Development in Indian Country and the USET SPF Region

Prior to European contact, Tribal Nations, including USET SPF members, had a long history of dynamic economies and governance structures. Robust trade networks connected Tribal Nations and the goods we produced. As with other aspects of Tribal governance and infrastructure, the removal, termination, and assimilation policies of the United States government negatively impacted our traditional economic trade. Over the course of centuries, Tribal Nations ceded millions of acres of land and extensive resources to the U.S.—oftentimes by force—in exchange for which it is legally and morally obligated to provide benefits and services in perpetuity. Because of this historic and ongoing diplomatic relationship, the federal government has trust and treaty obligations to support Tribal self-governance and self-determination, along with rebuilding Tribal Nations and economies. Unfortunately, at no point has the federal government fully delivered upon and upheld these obligations.

In addition to being relegated to fractions of our original homelands, which can be in remote areas, Tribal Nations lack governmental parity in economic development opportunities and treatment under the U.S. tax code. All Tribal Nations, especially USET SPF member Tribal Nations, vary in levels of economic activity, capacity, and development. Some Tribal Nations have decades of experience and familiarity with economic development initiatives, while some are just starting to pursue these initiatives. This diversity demands that federal policy not adopt a one-size-fits all approach in supporting Tribal Nations and businesses to pursue

¹USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi’kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

economic development initiatives to support our communities and engage in Nation rebuilding. With nearly every aspect of economic development regulated by the federal government, economic progress in Indian Country is often stymied by burdens on Tribal Nations and businesses. These burdens have contributed to a perpetual cycle of social and economic hardship in our communities, and are a remnant of paternalism that continues to exist today, despite an evolution away from past policies of termination and assimilation toward greater Tribal self-determination and self-governance.

In 2012, the Federal Reserve Board of Governors issued a report on, *Growing Economies in Indian Country*, that outlined eight issues as fundamental challenges to realizing economic growth in Indian Country. USET SPF's member Tribal Nations, with few exceptions, still disproportionately contend with these same challenges, such as:

1. Insufficient access to capital;
2. Capacity and capital constraints of small business;
3. Insufficient workforce development, financial management training, and business education;
4. Tribal governance constraints;
5. Regulatory constraints on land held in trust and land designated as restricted use;
6. Underdeveloped physical infrastructure;
7. Insufficient research and data; and
8. Lack of regional collaboration.

Though this report is over a decade old, its relevancy today on the current state of economic challenges in Indian Country highlights the failures of the federal government in upholding its trust and treaty obligations to Tribal Nations. Congress and the Administration must work to free Tribal Nations from over-burdensome laws and regulations that impede our social and economic success. This is especially important in an environment of the federal government's failures to uphold trust and treaty obligations to fully fund programs and services for Indian Country. Similar to other governments, Tribal Nations provide vital economic, social, health, and public safety services to our people. As it is for any other sovereign, economic sovereignty is essential to our ability to be self-determining and self-sufficient. While economic success in no way diminishes the United States' moral and legal obligations to Tribal Nations, it remains critical to our continued nation rebuilding. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive. And when Tribal Nations and our citizens have economic success, surrounding communities and their citizens share in the benefits. This results in stronger Tribal Nations and a stronger America.

Ensure Tribal Nation Economic Parity

The federal government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our sovereign governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties, and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside our borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. This largely prevents Tribal Nations from achieving an economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. The failure of the federal government to recognize Tribal Nations in a manner consistent with our sovereign governmental status has hindered our efforts to rebuild and grow our economies.

USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations. These efforts included support in previous Congresses for the Tribal Tax and Investment Reform Act. This bill specified the treatment of Tribal Nations as states with respect to bond issuance and modified the treatment of pension and employee benefit plans maintained by a Tribal Government. It also aimed to modify the treatment of Tribal foundations and charities, improve the effectiveness of Tribal child support enforcement agencies, and recognize Tribal governments for purposes of determining whether a child has special needs eligible for the adoption tax credit.

USET SPF urges the Subcommittee to support similar legislative efforts in the 118th Congress to increase Tribal Nation economic parity.

Address Dual Taxation in Indian Country

Dual taxation hinders Tribal Nations from achieving our own revenue generating potential. Although Tribal Nations have authority to tax noncitizens doing business in Indian Country, when other jurisdictions can tax those same noncitizens for the same transactions, Tribal Nations must lower their taxes to keep overall pricing at rates the market can bear or forgo levying a tax at all. The application of an outside government's tax often makes the Tribal tax economically unfeasible.

Dual taxation undercuts the ability of Tribal Nations to offer tax incentives to encourage non-Indian business entities onto our lands to create jobs and stimulate Tribal economies. As long as outside governments tax non-Indian businesses on our lands—even if a Tribal government offers complete Tribal tax immunity to attract a new non-Indian business—that business is subject to the same state tax rate that is applicable outside our jurisdictional boundaries. As a matter of economic fairness, we ask SIIA to work with us to support and advance initiatives that would bring certainty in tax jurisdiction to Tribal Lands by confirming the exclusive, sovereign authority of Tribal governments to assess taxes on all economic activities occurring within our jurisdictional boundaries.

Support Responsible Development in the Energy Sector

USET SPF member Tribal Nations, and our respective Tribal Lands and energy resources, are located within a large region that presents diverse geographical environments and opportunities for both conventional and renewable energy development. Our member Tribal Nations could benefit from the unlocked potential of those energy resources and realize energy development goals, through appropriate Congressional action and investment in Indian Country; and further actions by the Administration, particularly to promote balanced geographical representation and inclusion of USET SPF member Tribal Nations in energy programs.

USET SPF has established its energy priorities, as follows:

- **Tribal self-determination** and control of natural resources and energy assets, to make conservation and development decisions to preserve Tribal sovereignty, protect Tribal assets, and to achieve economic independence, creation of jobs, and improvement of Tribal citizens' standard of living.
- **Tribal capacity building** effort involving multiple federal agencies, universities, and the private sector.
- **Reform core federal programs**, expertise, and funding to support Tribal energy resource development and market access.
- **Remove barriers to the deployment of Tribal energy resources**, such as bureaucratic processes, insufficient access to financial incentives, and interconnection and transmission on power grid.

We remain concerned, however, with efforts to streamline energy development by bypassing requirements under the National Environmental Policy Act (NEPA). USET SPF is aware of legislative proposals that would scale back environmental protections and review processes mandated under NEPA to streamline the approval of domestic energy development. We do not oppose conventional or renewable energy development, and many of USET SPF's member Tribal Nations pursue these activities. However, such development occurring outside of Tribal Nation jurisdictional boundaries must not come at the expense of our cultural resources and natural environments or Tribal consultation. Tribal Nations have already experienced immense land loss, theft, and the destruction and desecration of our cultural and environmental resources and aboriginal homelands. We should not be subjected to such actions again in to further a domestic energy policy agenda.

In addition to our concerns with scaling back NEPA provisions, several USET SPF member Tribal Nations have had to contend with federal agencies failing to properly consult with Tribal Nations on proposed energy projects. This includes wind energy development projects under the oversight of the Bureau of Ocean Management that have been proposed for construction, and some of which are currently undergoing construction, on the Outer Continental Shelf. Several of our member Tribal Nations were not properly consulted about the permitting of these wind energy project sites and have not received the resources and technical assistance required to properly and adequately review environmental, geological, and other assessments related to these projects. Funding remains stagnant and inadequate for Tribal Historic Preservation Officers (THPOs) to conduct reviews of proposed projects in order to appropriately ascertain the potential cultural and environmental

impacts. We urge the Subcommittee to support increased funding for THPOs and ensure that efforts to streamline environmental review process are not implemented at the expense of the destruction of our cultural resources, sites, and natural environments.

Support the Restoration of Tribal Homelands and Enact a ‘Carcieri Fix’

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government’s economy. This is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. The federal government’s objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally recognized Tribal Nations, as well as the legal defense of these land acquisitions. USET SPF continues to call upon Congress to enact a fix to the 2009 Supreme Court decision in *Carcieri v. Salazar*. For too long, this decision has impeded our ability to rightfully restore our land bases and pursue Nation rebuilding efforts. Congress must enact legislation that: (1) reaffirms the status of current trust lands; and (2) confirms that the Secretary of the Interior has authority to take land into trust for all federally recognized Tribal Nations.

Support the Expansion of ISDEAA Contracting and Compacting Across the Federal Government for Tribal Nations

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples that pre-dates the founding of the United States. The U.S. Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decision-making in the management of our own affairs and governmental services. Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon the principles of self-governance and self-determination. An expansion of ISDEAA authorities to all programs across the federal government would be the next evolutionary step in the federal government’s recognition of Tribal sovereignty and reflect its full commitment to Tribal Nation sovereignty and self-determination. The expansion of self-governance contracting and compacting will not only empower us to better serve our citizens and communities, but it will enhance our abilities to manage our lands. It would empower Tribal Nations to administer federal programs in co-management, stewardship, agriculture, deployment and maintenance of critical infrastructures, and pursue economic development on our lands. It is time for Congress to enact legislation that expands our self-governance capabilities across the federal government so that we may fully exercise our inherent sovereign rights to manage our affairs and resources.

Invest in and Rebuild Tribal Infrastructure—A Marshall Plan for Tribal Nations

For generations, the federal government—despite abiding trust and treaty obligations—has substantially under-invested in Indian Country’s infrastructure and engaged in hostile actions against Tribal Nations. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the U.S. In the same way the Marshall Plan acknowledged America’s debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the U.S. should make this strategic investment domestically.

Conclusion

Unlocking the economic potential of Indian Country must take into consideration several issues and priorities to support Tribal Nation rebuilding efforts. The historic and ongoing injustices that have contributed to economic insecurity in Indian Country are symptomatic of the larger issues we face as Tribal Nations. In large

part, this is due to the failure of the U.S. government to live up to the terms of our diplomatic, Nation-to-Nation relationship. Development and implementation of policies and programs that recognize and uphold our inherent sovereignty and fulfill trust and treaty obligations are necessary to alleviate economic hardship, rebuild Tribal Nations, and improve the quality of life for our citizens and communities. Congress must continue to support and fully fund federal programs that encourage economic sovereignty through the restoration of Tribal homelands, self-governance contracting and compacting across all federal programs, tax parity, and responsible energy development. We welcome the opportunity to collaborate with the Subcommittee on economic policies that better honor federal trust and treaty obligations and uphold our inherent sovereignty to pursue our Nation rebuilding priorities, including unlocking the potential of international trade via our unique status.

