

Testimony of Michael Chavarria, Governor of the Pueblo of Santa Clara, New Mexico
Legislative Hearing on H.R. 1246 and H.R. 1532
House Natural Resources Subcommittee on Indian and Insular Affairs
March 24, 2023

Introduction. Thank you, Chairperson Hageman, Ranking Member Leger Fernández, and Subcommittee Members for the opportunity to share our experience with 99 year leasing authority for our lands. My name is J. Michael Chavarria and I am the Governor of the Pueblo of Santa Clara in New Mexico. The ability to negotiate leases with a period that may last up to 99 years better respects our status as a sovereign Tribal Nation and has produced vital benefits to the Pueblo in the forms of economic development and building long-term business relationships with nationally known and diverse companies.

Our Pueblo. The Pueblo is a sovereign Tribal Nation located in north-central New Mexico. The Pueblo and our sister Pueblos have operated as sovereign governments since time immemorial. We have formed political relationships with foreign governments dating back to at least the 16th century, when we negotiated treaties with the Spanish conquistadores during their early explorations of the southwest. Both the Spanish Crown and the United States recognized the Pueblos' right to self-rule and declared that Pueblos be presided over by tribal Governors with ownership of their land. In acknowledgment of our intimate and time-honored connection to our land and nation-to-nation relationship, President Lincoln bestowed each pueblo with a silver-tipped cane, which we proudly carry today. The Pueblo has land sites that can be traced back to our original land grant which we now hold in restricted fee simple status. The Pueblo's land base includes land sites within a major metropolitan area in Northern New Mexico.

The Pueblo actively pursued the expansion of its 99-year leasing authority resulting in the enactment of Public Law 115-227 in 2018. Prior to the enactment of Public Law 115-227, the Pueblo's 99-year leasing authority was limited to lands held in trust by the federal government, but that excluded our restricted fee lands, which encompass the most attractive locations for potential business lessees. The 2018 Act extended 99-year leasing authority to all of our lands.

In coordination with our wholly owned Santa Clara Development Corporation (SCDC), the Pueblo currently utilizes the ability to negotiate 99-year leases to create economic opportunities on our land for the benefit of our citizens and community. In 2019, the Secretary of the Interior approved our 99-year leases between the Pueblo and SCDC. SCDC now uses its approved leases to enter into diverse business arrangements and subleases with other entities to support the essential governmental and community services of the Pueblo. As discussed below, the Pueblo's ability to leverage its 99-year leases has furthered our sovereignty, incentivized investments on our land, and allowed us to attract businesses to build valuable partnerships.

Sovereignty. Our Pueblo's ability to negotiate leases for a duration that best meets our community's needs, as determined by our leaders, is key to our sovereign status. Current restrictions under 25 U.S.C. § 415(a) limit a Tribal Nation's ability to negotiate longer term leases even if Tribal leaders determine that negotiating a longer lease term is appropriate. The current limitation of 25-year leases for those Tribal Nations not listed in the exceptions under

Section 415(a) substantially restricts those Tribal Nations from exercising their sovereignty to determine whether to negotiate a lease with a term that exceeds 25 years. The Pueblo, not subject to the 25-year limit, is able to exercise its sovereignty to determine whether to negotiate leases with a longer term in light of the various considerations in leasing arrangements.

Incentivizing Investments. The Pueblo's ability to enter into leases for a longer duration incentivizes much-needed outside investment in our community. A common challenge for tribal leaders across Indian Country is finding successful business opportunities, particularly from non-Indian companies, that can be leveraged to grow our local economies. The ability to negotiate leases for up to 99 years better reflects current realities within the business world and allows Tribal land to better attract business opportunities that can benefit our citizens and community.

In our experience, businesses generally expect commercial property leases to have a duration that justifies the investments required to operate their business at a profit. Currently, restrictions on Tribal land leases do not reflect current market expectations and, therefore, poses a challenge to economic development. For example, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) only permits business leases for up to 25 years with the potential to renew for up to two additional terms which may not individually exceed 25 years. While the HEARTH Act represents significant legislation for Tribal self governance, it is constrained by applicable lease term limits that prevent the law from reaching its full potential and reflecting current business realities. Therefore, H.R. 1246 is an important step in amending federal law to reflect current business expectations by permitting longer term property leases. The Pueblo hopes that other relevant federal statutes, such as the HEARTH Act, can be amended to permit longer term leases of Tribal land to further promote Tribal sovereignty and economic development.

For example, the Pueblo recently partnered with a national telecommunications provider to lease our land for a cellular tower. As a result of this transaction, the telecommunications provider would pay the costs to build the cell tower which is owned by the Pueblo. In exchange, the Pueblo agreed to allow the telecommunications provider to use the tower for their services without paying a fee for a specified number of years.

The crucial component to this arrangement was the term of the lease which allowed the transaction to be mutually beneficial. As a result of a long-term lease, the telecommunications provider is able to recover its investments in building the tower and is then able to enhance its services through using the Pueblo's tower. The Pueblo benefits from this transaction as it receives a cellular tower without having to pay for its construction. Additionally, the Pueblo can then use this tower to enter into agreements with other telecommunications providers to use the tower for their services at a fee. This is a valuable opportunity to the Pueblo which was made possible by the ability to negotiate leases for a longer term.

Looking forward, the Pueblo and SCDC plan to leverage our 99-year leasing authority to negotiate and attract a regional or national retailer to our land. The flexibility in negotiation from our 99-year lease can incentivize a retailer to invest in a business on our land with the ability to recover that initial investment throughout the term of a lease.

Building Relationships. The Pueblo's ability to negotiate long-term leases supports strong relationships with our business partners and encourages other businesses to partner with the Pueblo. Longer term leases allow the Pueblo to develop trusted partnerships with those businesses that decide to operate on our land. These trusted partnerships improve the Pueblo's standing in the business community and our ability to enter into new profitable relationships.

For example, SCDC has entered into an arrangement by which a Fatburger restaurant franchise has opened up on our land. Longevity in our partnership with Fatburger was core to this arrangement for both SCDC and the Fatburger chain. Fatburger, like all other businesses, is working to grow its brand and expand its business operations in a sustainable manner. A longer term lease not only allows the Fatburger franchise to grow but also demonstrates the Pueblo's commitment to supporting the Fatburger chain as a valued business partner.

The ability to negotiate a longer term lease can enable Tribal Nations to build strong and trusting relationships with their partners. A shorter term lease can be subject to disruption that prevents the partnership from reaching its full potential such as premature lease expiration. The Pueblo has experienced significant interest in entering conversations on economic partnerships when outside companies are aware of potential lease lengths.

Conclusion. Thank you for the opportunity to testify on the Pueblo's experience with its 99-year leases. The Pueblo's ability to leverage its 99-year leases has furthered our sovereignty, incentivized investments on our land, and allowed us to attract businesses to build valuable partnerships. On behalf of the Pueblo of Santa Clara, kuunda and thank you.