



*San Juan Southern Paiute Tribe
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June 27, 2023

VIA EMAIL ONLY

Harriet Hageman, Chair of the Subcommittee of Indian and Insular Affairs
c/o Ransom Fox, Clerk of the Subcommittee of Indian and Insular Affairs
ransom.fox@mail.house.gov

RE: H.R. 2461 (Rep. Crane), "San Juan Southern Paiute Tribal Homelands Act of 2023"

Dear Chair Hageman,

Thank you to the Subcommittee on Indian and Insular Affairs for allowing me to come speak at the legislative hearing on June 7, 2023. This letter serves as my response, on behalf of the San Juan Southern Paiute Tribe ("Paiute Tribe"), to the following questions received from Representative Westerman on June 13, 2023, concerning H.R. 2461 (Rep. Crane), "San Juan Southern Paiute Tribal Homelands Act of 2023."

- 1. Can you further expand on if the San Juan Southern Paiute Tribe is aware of any concerns from Navajo or Hopi tribal members about access to sacred sites or shared lands that may be affected by creating a reservation for the San Juan Southern Paiute Tribe?***

The Paiute Tribe is unaware of any concerns related to accessing sacred sites or shared lands that would result from creation of a reservation for the Paiute Tribe. Land access is covered in the language of the Treaty which is incorporated in Section 7 of H.R. 2461, Rights of Access Easements. Neither the Hopi Tribe nor the Navajo Nation have indicated that the access language in the Treaty is inadequate to protect access to shared lands or sacred sites.

The Paiute Tribe remains in close contact with both the Navajo Nation and the Hopi Tribe. There have been ample opportunities over the last 23 years for the tribes to address any access concerns. Today, for example, the Paiute Tribe, the Navajo Nation, and the Hopi Tribe are in the middle of the Little Colorado River Adjudication. The three tribes are together 4 days a week and have had the opportunity to discuss the legislation frequently. During several status hearings in the water adjudication, where the court has asked for an update on the status of the Treaty, the Navajo Nation has openly and plainly stated on the record that the Navajo Nation continues to support of the legislation, which the Navajo Nation refers to as "the law of the land."

In 2022, to ensure there were no issues regarding access or otherwise, the Navajo Nation conducted public community meetings throughout the Navajo Reservation, including the areas most likely to be impacted by H.R. 2461. During those community meetings the Navajo Department of Justice discussed the history of the Treaty, identified the lands included in the legislation and requested public comment and discussion. The purpose of these community meetings was to ensure all community members, regardless of tribal affiliation, were afforded the opportunity to identify concerns and issues with the legislation. No objections were reported to the Paiute Tribe and the Navajo Nation continues to fully support the legislation.

The lands included in H.B 2461 are not shared lands amongst the Hopi Tribe and the Navajo Nation or the Hopi Tribe and the Paiute Tribe. The Hopi Tribe has no interest in the lands included in the legislation, which are located entirely on the Navajo Reservation. Paiute leadership and Hopi leadership have met multiple times in the last year and have had opportunities to discuss the Treaty and H.R. 2461. The Hopi Tribe supports the legislation and have offered whatever support they can to ensure H.R. 2461 is ratified.

As referenced above, Section 7 of H.R. 2461 provides that Navajo and Paiute access and easement rights shall be subject to the rights of access and easement as identified in the Treaty, dated March 18, 2000. Article XI of the Treaty provides for ingress and egress rights for both tribes. Article XII preserves access for traditional gathering of basketmaking materials, medicinal plants, and other plant materials. Article XIII preserves the access and use rights of the tribal members to burial and sacred sites. Article XIV preserves the tribe's existing rights to use certain water sources located in and around the lands included in H.R. 2461. Article XVI provides for utility easements to the Paiute Tribe for the extension of utilities across proposed land.

The Hopi Tribe's existing access rights, if any, are not affected by the creation of the Paiute Tribe's reservation. No known agreements between the Navajo Nation and the Hopi Tribe are affected by creation of a reservation on the lands identified in the legislation. Neither the Hopi nor the Navajo have indicated that any previous agreement or settlement between them will be affected when H.R. 2461 is ratified.

The Treaty was drafted to preserve the tribes' existing access and use rights, while conferring jurisdiction to the Paiute Tribe so it can exercise self-determination over its own land and provide infrastructure to its people. The Treaty Lands were identified to have little to no impact on the Paiute Tribe's neighboring tribes. For these reasons, there have been no concerns about access rights at any time in the last 23 years, and all three tribes continue to wholly support H.R. 2461.

a. Can you also provide the committee with information on how those concerns would be raised and resolved under this bill and the 2000 treaty?

Although the Paiute Tribe is unaware of any existing concerns regarding access, those that may arise in the future would be addressed pursuant to Article XIX of the Treaty. As detailed above, the Treaty provides for access and easements to burial and sacred sites, traditional gathering areas, access roads and water sources for farming. Pursuant to Article XIX

of the Treaty, the Navajo Nation or any of its members or the Paiute Tribe or any of its members may commence an action for declaratory or injunctive relief only, provided that the action is not barred by sovereign immunity.

Prior to taking legal action, the tribes would address any concerns regarding access amongst their respective governing bodies and work to alleviate any issues and are likely to grant reasonable access. These three tribes have lived together for hundreds of years. The Paiute Tribe is extremely close with both the Hopi Tribe and the Navajo Nation. Any concerns resulting from the passage of H.R. 2461 would be addressed both traditionally and if necessary, there is a legal remedy built into the language of the Treaty and incorporated into H.R. 2461.

2. *Could you further expand on your tribe’s relationship with the Navajo Nation, the Hopi tribe, and any other neighboring tribes historically in the context of this legislation?*

The Paiute Tribe has lived in the northern Arizona and southern Utah area since time immemorial. Prior to the Navajo being relocated to the area the Paiute Tribe and the Hopi Tribe were neighbors and allies for hundreds of years. During the period of the Navajo Long Walk, Paiutes in the area hid Navajo Tribal Members from the United States Army, saving their lives and helping to ensure the survival of the Navajo people. Since then, the Navajo Nation has expanded time and time again, eventually encompassing the aboriginal territory of the Paiute Tribe. Within a few decades the Paiute Tribe found itself surrounded by the Navajo Nation on all sides. Still, the Paiute Tribe remained friendly and supportive of its neighboring tribes, even when that support inevitably worked against the Paiute Tribe’s interest.

For instance, the Paiute Tribe has been largely uninvolved in the majority of historical land disputes amongst the Hopi Tribe and the Navajo Nation. Even with its historical presence, use and occupation of the same lands, the Paiute Tribe remained objective and preferred not to involve itself in the conflicts of its sister tribes. In the mid-1970s however, it became clear that the Navajo Nation and the Hopi Tribe were litigating between themselves claims to all reservation lands in northeastern Arizona, including the lands on which the Paiute Tribe had lived for generations.

Congress passed the Act of June 14, 1934, which defined the boundaries of the Navajo Reservation and permanently withdrew such lands from all forms of entry or disposal “for the Navajo and such other Indians as may already located thereon” (the “1934 Act Lands”). Pursuant to this Act, Congress confirmed and thereby protected the Paiute Tribe’s rights to lands within the Navajo Reservation. In 1974, Congress enacted 25 U.S.C. §640d-7. Section 640d-7 authorizes the Hopi and Navajo Tribes “to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934...” In 1974 the Hopi sued the Navajo Nation for quiet title to the areas the Hopi Tribe claimed in the 1934 Act Lands. Neither tribe joined the Paiute Tribe, so the Paiute intervened in 1988 only after learning about the lawsuit several years after it commenced. This litigation is known as the *Masayesva v. Zah* litigation.

The three tribes spent the next several years litigating where each had a property interest in the 1934 Act Lands. The Paiute Tribe and the Hopi Tribe did not have competing claims for land, each therefore litigated their separate claims against the Navajo Nation which was claiming all of the land as belonging to the Navajo Nation. After several years of trial, the District Court determined that the Paiute Tribe had joint and exclusive interests in approximately 26,000 acres of land created under the Act of 1934. The Paiute Tribe appealed the ruling arguing, in part, the joint and exclusive use area should be larger. The Navajo Nation did not appeal.

To avoid further litigation the Paiute Tribe and the Navajo Nation entered settlement negotiations. As a result of these discussions, the Navajo Nation and the Paiute Tribe negotiated the current Treaty which was executed in 2000. Pursuant to the Treaty, in exchange for 5,400 acres of land to be an exclusive Paiute Reservation, the Paiute Tribe's appeal would be dismissed with prejudice, as of the date the Treaty is effective, *i.e.*, when the Treaty is signed by the Secretary of Interior and ratified by Congress.

The only remaining shared lands reserved pursuant to the 1934 Act are those jointly held for the equal benefit of the Paiute Tribe and the Navajo Nation. At one point the Navajo and Hopi had shared areas of the 1934 Act Lands, but those joint use areas were partitioned by the District Court over 20 years ago. The Hopi Tribe is not directly affected by the Treaty or the resulting legislation. The lands included in H.R. 2461 do not include any shared lands or sacred sites with the Hopi Tribe. Although H.R. 2461 will have nominal effect on the Hopi, the Hopi Tribe has long supported the Treaty between the Paiute Tribe and the Navajo Nation. There are not now, nor have there ever been, any land disputes between the Paiute Tribe and the Hopi Tribe.

Decades after the Treaty was signed, the Navajo Nation and the Paiute Tribe drafted the current legislation together and both continue to stand by the language of H.R.2461. Although the tribes are independent sovereign nations, the three tribes recognize the importance of cooperation in the context of this legislation and on related issues. We see the Treaty and its legislation as a meaningful example of the intertribal cooperation between the Hopi, Paiute and Navajo tribes. The Paiute Tribe hopes to continue its friendly relationship with its sister tribes and support their future efforts and rights to assert their sovereignty and strengthen their tribal nations.

On behalf of the Paiute Tribe, we once again thank the Subcommittee for its attention and interest in this legislation. We remain available to answer any questions or concerns that may arise.

Sincerely,

Johnny Lehi, Jr. 
President of the San Juan Southern Paiute Tribe