



**Subcommittee on Indian and Insular Affairs  
1324 Longworth House Office Building  
Washington, D.C.  
Hearing on H.R. 2461, San Juan Southern Paiute Tribal Homelands Act of 2023  
Written Testimony of Johnny Lehi Jr., President  
San Juan Southern Paiute Tribe  
Tuba City, Arizona  
June 7, 2023, 10:00AM EDT**

**I. Introduction**

Good morning and thank you Chairwoman Hageman, Ranking Member Leger Fernandez and Members of the Subcommittee. I would also like to thank Committee Cosponsors, Congressman Grijalva and Congressman Gallego. Thank you for the opportunity to come here and speak today. My name is Johnny Lehi Jr., and I am President of the San Juan Southern Paiute Tribe. I am here today to ask for your support to pass H.R. 2461, the San Juan Southern Paiute Tribal Homelands Act of 2023.

The San Juan Southern Paiute Tribe is a small tribe located in Northern Arizona and Southern Utah, within the exterior boundaries of the Navajo Reservation. Our Tribe is an ancient tribe but did not receive federal recognition until 1989.<sup>1</sup> Most people do not even know that a large part of the “Navajo Reservation,” as it is named, was actually set aside by Congress for the Navajo, Hopi, and the San Juan Southern Paiute Tribe in 1934. And while the Paiute Tribe has shared this territory with the Navajo Nation for more than 160 years, our Tribe was in this area long before the relocation or encroachment by other tribes and before the establishment of any reservations.

In 1974, Congress passed legislation permitting the federal district court to partition lands between the Navajo and the Hopi, and to hear the claims of other Indians to rights and interests in the lands reserved in 1934. This litigation became known as the *Masayesva v. Zah* proceeding.

In 1992, the Court in *Masayesva* determined that the San Juan Southern Paiute Tribe held a property interest in approximately 26,000 acres of the Navajo Reservation.<sup>2</sup> Our Tribe alone appealed the *Masayesva* determination, and that appeal has been pending since 1993. Together, the San Juan Southern Paiute Tribe and the Navajo Nation agreed to stay prosecution of that appeal while our two tribes worked in tandem on a Treaty that would resolve this contentious litigation.

---

<sup>1</sup> See Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 Fed. Reg. 34,863, 34,866 (July 23, 2018); Notice of Final Determination that the San Juan Southern Paiute Tribe Exists as an Indian Tribe, 54 Fed. Reg. 51,502 (Dec. 15, 1989); see also, U.S. DEPT. OF THE INTERIOR, OFFICE OF FED. ACKNOWLEDGMENT, No. SJP-V001-D004, SUMMARY UNDER THE CRITERIA AND EVIDENCE FOR PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGMENT OF THE SAN JUAN SOUTHERN PAIUTE TRIBE (1987) [hereinafter PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGEMENT] (available upon request).

<sup>2</sup> *Masayesva v. Zah*, 794 F. Supp. 899, 929 (D. Ariz. 1992), appeal filed, Sept. 3, 1993 (No. 93-15216).

Ultimately, we negotiated a treaty to partition the land between our two tribes. The Navajo Nation agreed to partition 5,400 acres as the San Juan Southern Paiute Tribe's exclusive reservation. In exchange, our Tribe agreed to dismiss the *Masayesva* appeal as soon as the Treaty was ratified.

My grandmother, Mabel Lehi, is an elder and a leader in our community. She negotiated this Treaty with the Navajo Nation decades ago. My father, former President Johnny Lehi, Sr., together with former Navajo Nation President Kelsey Begaye executed the Treaty on March 18, 2000.

I have told my grandmother that I am here, in Washington D.C., pushing for the Treaty to be ratified. She told me that she hopes to see our people living on our own reservation homeland before she leaves this place. I also hope she is here to see this dream become a reality.

I am asking for Congress to support H.R. 2461 ratifying the Land Treaty between the San Juan Southern Paiute Tribe and the Navajo Nation. This bill will create an exclusive reservation for the San Juan Southern Paiute Tribe on lands located entirely within the boundaries of the Navajo Reservation. Both the Navajo Nation and my Tribe continue to stand by the Land Treaty and fully support H.R. 2461.

Generations of San Juan Southern Paiutes have come and gone without ever seeing the creation of our exclusive homeland. Without an exclusive reservation, most of our Tribal Members continue to lack access to adequate housing, running water and electricity. Far worse, we are treated like strangers in our ancestral homeland, being denied access to essential services and utilities. H.R. 2461 will help alleviate many of the issues plaguing our Tribal Members and allow us to better our lives and strengthen our Tribe.

I would like to express my sincere appreciation that this legislation is finally before Congress. A tribe without land is a tribe without a future. Land is what allows tribes to develop economic opportunities, generate revenue, and continue to pass down our way of life to our children and our children's children.

As you know, Congressman Eli Crane and before him Congressman Tom O'Halloran sponsored this legislation on behalf of our two tribes. For their assistance and support, we are grateful.

Congressman Crane spent a great deal of time and effort to ensure this treaty legislation did not fall by the wayside as it has time and time again. Congressman Crane, we will forever appreciate your efforts to secure a small, but exclusive piece of land for our people to call their own.

With your help, this Treaty—this promise—that the Navajo Nation and the San Juan Southern Paiute Tribe made to each other 23 years ago, can finally be ratified. Please support H.R. 2461 and help my people claim our small place in this world.

## **II. Purpose of H.R. 2461**

The San Juan Southern Paiute Tribe ("Paiute Tribe") is a federally recognized Indian Tribe with a documented history pre-dating colonization. The Paiute Tribe currently lives in northern Arizona and southern Utah, on lands entirely encompassed within the external boundaries of the Navajo Reservation, meaning it is the only federally recognized Tribe in Arizona without its own land. Due to the Paiute Tribe's relatively small size and the remoteness of its territory, the Tribe has often been forgotten or pushed aside by both the federal government and other tribal nations.

As a result, for generations, our people have endured a life full of "without." The absence of an exclusive reservation means the Paiute Tribe is without a homeland. Without a homeland, the Paiute Tribe lacks economic growth and opportunity. Without economic growth and opportunity, the Paiute Tribe operates under deficient funds, far less than what is necessary to provide governmental services. Without the

ability to provide governmental services, homelessness is rampant and most Paiute Tribal Members do not have running water and electricity. Without an exclusive reservation, our Tribe is deprived of the full benefit of healthcare assistance and services. We miss out on housing assistance that is only available to those with an exclusive reservation. Even our roads go without maintenance and are practically unusable. On and on, the pattern continues, and while the rest of the United States continues to progress, our people struggle daily without basic human needs that Americans and tribes have taken for granted for decades. This bill will be the first real step toward breaking that cycle.

By passing H.R. 2461, Congress will have an immediate impact on the lives of hundreds of Paiute Tribal Members. Decades ago, the Paiute Tribe and the Navajo Nation made a promise, memorialized in a land treaty, that would finally give the Paiute Tribe an exclusive homeland. At long last, ratifying this Land Treaty between these two tribes will allow the Paiute Tribe to access critical resources, provide its Tribal Members with proper housing, utilize public utilities, and develop additional infrastructure.

The effects of H.R. 2461 will be seen—in the water flowing and lights shining in Tribal Members' homes—and they will also be deeply felt. For generations, Tribal Members have been treated like unwanted visitors in their aboriginal territory. The mental and emotional toll that systemic disregard has on a group of people cannot be adequately articulated. H.R. 2461 will begin a healing process for all our Tribal Members, especially our elders, who have waited decades to see the Paiute Tribe receive its exclusive homeland and the basic assistance and services that are sure to flow from it.

Not only will H.R. 2461 create a reservation for the last remaining landless tribe in Arizona, but the legislation will also be a significant show of support for tribal sovereignty. H.R. 2461 is the result of two tribal nations working in tandem to successfully negotiate a settlement via a historic land treaty for and located entirely in an existing Indian Reservation. This bill is an example of the United States actively honoring its promise to all tribal nations that tribal sovereignty is at the forefront of our government-to-government relationship.

Today, Congress can provide a path forward for those who were left behind. Ratifying the Land Treaty is unopposed, costs nothing, and harms no one. Yet, the tremendous impact that honoring this promise will have on the lives of so many is indescribable. To understand the historic impact that H.R. 2461 will have, we must understand how we got here.

#### **A. History of the San Juan Southern Paiute Tribe**

The Paiute Tribe is a culturally and politically autonomous tribe of Native Americans who live in two distinct areas in northern Arizona and southern Utah. The Paiute Tribe's original territory was annexed into the Navajo Reservation pursuant to two Executive Orders in 1884 and 1933. The annexations were driven by the steady and substantial increase of Navajo Tribal Members and the resulting territorial expansion into the southwest. These annexations had serious consequences for the Paiute Tribe. Not only did the Paiute Tribe slowly lose its aboriginal territory, but the legislation also legitimized the ever-increasing Navajo encroachment. Today, the Paiute Tribe is surrounded by the Navajo Nation, yet it is still considered to be part of the Southern Paiute Nation by the Navajo and the other Southern Paiute Tribes in Arizona, southern Utah, and southeastern Nevada.

The two areas currently inhabited by Paiute Tribal Members are approximately 90 miles apart. Paiutes refer to the more southern of the two settlements as Atatsiv. Atatsiv, or “Sands” in English, refers to the sandy, spring-fed, farmland plateau northwest of Tuba City, along the Echo Cliffs at Willow Springs and Hidden Springs.<sup>3</sup>

The northern settlement is known as Kaivyaxarur— “the Mountain Place” in English—after the Paiute name for Navajo Mountain. The Paiute Tribe’s homes and grazing areas are primarily north and northeast of Navajo Mountain, while farming predominantly occurs in Upper Paiute Canyon, southeast of Navajo Mountain.<sup>4</sup>

The Paiute Tribe speaks a dialect of the Southern Paiute/Ute language derived from the Uto-Aztecan family of languages.<sup>5</sup> The Paiute Tribe shares its language, traditional religion, kinship system, and many other cultural characteristics with the other Southern Paiute Nation tribes.

The Paiute Tribe’s circumstances are nearly unrecognizable from when the first white settlers began farming at various Paiute springs in the latter part of the 19th century. Even with the continuous changes in their surroundings, the Paiute Tribe has endured, remaining cohesive and autonomous both in terms of kinship and political authority over its membership.

The first Paiute Tribal villages were recorded near Navajo Mountain in 1776 by Spanish explorer Father Escalante and later by Mexican Officials in 1823 and 1829.<sup>6</sup> Father Escalante was traveling with interpreters from the Ute Tribe when they met a group of Paiutes living on the eastern mesa rim of Navajo Canyon.<sup>7</sup> This spot is not far from where the Paiute Tribal Members of Navajo Mountain and Upper Paiute Canyon live today.

The Paiute territory’s extreme isolation and the small number of non-Indians passing through the area meant that encounters with the Paiute Tribe before the 1850s were few. However, as traffic in the area increased, so did written records of the Paiute Tribe’s presence in the same general areas of northern Arizona and southern Utah.

Due to the increase in traffic during the 1860s and 1870s, the Paiute Tribe began to feel the effects of encroachment on the Paiute territory by the Mormons from the west and the Navajo Nation from the east. For example, between 1859 and 1879, Mormon Missionary Jacob Hamblin made seven expeditions through the Paiute Territory to visit the Hopi Tribe. In the early 1870s, Mr. Hamblin and his fellow pioneers officially marked a trail through the Paiute Territory and founded Mormon colonies at Tuba City and Moenkopi.<sup>8</sup> These settlements had a direct effect on both the Hopi and Paiute Tribes, who had lived in these areas for hundreds of years.

---

<sup>3</sup> PAMELA BUNTE, ATATSIVWU UMANAKWAT KAIVYAXARURUVATUXW, FROM THE SANDS TO THE MOUNTAIN: ETHNOHISTORY AND ETHNOGRAPHY OF THE SAN JUAN SOUTHERN PAIUTE TRIBE 284 (1987).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 171.

<sup>6</sup> Herbert E. Bolton, *Pageant in the Wilderness: The Story of the Escalante Expedition to the Interior Basin, 1776*, 18 UTAH HIST. Q., nos. 1, 2, 1950.

<sup>7</sup> *Id.* at 227-28.

<sup>8</sup> Juanita Brooks, *Journal of Thales H. Haskell*, 12 UTAH HIST. Q., nos. 1 & 2, 1944; see also JAMES A. LITTLE, JACOB HAMBLIN, A NARRATIVE OF HIS PERSONAL EXPERIENCE AS A FRONTIERSMAN, MISSIONARY TO THE INDIANS AND EXPLORER 1 (reprt. 1971) (1909).

The Navajo Wars in the 1860s caused members of the Navajo Nation to filter into the Paiute Tribe's traditional lands.<sup>9</sup> The number of Navajo Nation Members entering the Paiute Tribe's territory steadily increased following the Navajo "long walk" and their release from Fort Sumner in 1868.

During the 1870s and 1880s, the population of white settlers, Hopi Tribal Members, and Navajo Nation Members in the Tuba City/Moenkopi area grew rapidly. The settlers, the Paiute Tribal Members, and the Hopi Tribal Members farmed peacefully side-by-side in the Moenkopi area, while the Navajo Nation Members lived about 18 miles north of the Moenkopi Wash.<sup>10</sup>

Trade between the Paiute Tribe and the Navajo Nation in the Tuba City/Moenkopi area built a vital economic foundation for the Paiute Tribe. While Paiute Tribal settlements were being raided by some Navajo Groups, the Paiutes were simultaneously making pitch water jugs woven from sumac to trade with friendlier Navajo groups.<sup>11</sup> This sparked the basketry trade that would become an important source of income—often the sole source of income—for the Paiute Tribe in the proceeding decades.

Despite the number of white settlers in the Moenkopi area, the Paiutes' relationship with the Mormons was generally peaceful. By the mid-1880s, however, the dramatically increasing number of white settlers pressured local Paiutes, Hopis, and Navajos into competing for natural resources, especially water, arable land, and minerals.<sup>12</sup>

Once the conflicts over natural resources rose to a level that caught the attention of the federal government, agents were sent to the Moenkopi area to investigate the competition between the various tribes, the Mormons, and the Anglo miners. In 1888, Special Indian Agent H.S. Welton recommended that the Paiute Tribe be given title to the land they were cultivating around two springs. Unfortunately, these recommended allotments were never approved. As a result, the Paiute Tribe eventually lost one of the springs, likely to the white settlers.

While many accounts of the Paiute Tribe describe them as sedentary farmers, by the end of the nineteenth century they had begun herding livestock.<sup>13</sup> During the 1880s, Joe Lee, the grandson of Mormon Settlor John D. Lee, reported that a large group of Paiutes made a yearly move with their livestock from Tuba City to pasturage west of Navajo Mountain: "each fall, Paiute families around Tuba City gathered up their horses, cattle and sheep moving north into Utah to Winter at Navajo Mountain. This meant a trip of more than 100 miles across the wildest canyon country imaginable... herds and flocks and family units strung out several miles."<sup>14</sup>

By the mid-1890s, outsider encroachment and increased competition led several Paiute Tribal Members who had been farming in the Tuba City/Moenkopi area to give up and move permanently to the northern settlement. These Paiutes joined other Paiute Tribal Members who were already farming in Upper Paiute Canyon, leaving the Paiutes at Willow Springs to continue farming in the immediate Tuba City area.<sup>15</sup>

---

<sup>9</sup> See PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGMENT, *supra* note 1.

<sup>10</sup> A MORMON CHRONICLE: THE DIARIES OF JOHN D. LEE 1848–1876 314 (Robert Glass Cleland & Juanita Brooks, eds., 1955, vols. 1 & 2).

<sup>11</sup> *Id.* at 229.

<sup>12</sup> See PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGMENT, *supra* note 1, at 30.

<sup>13</sup> Joe Lee, *My Wonderful Life* (Gladwell Richardson, ed.), FRONTIER TIMES, Feb.–Mar. 1974, at 6-64.

<sup>14</sup> *Id.* at 9.

<sup>15</sup> *Id.* at 29.

In addition to farming and herding, the southernmost settlement of Paiute Tribal Members derived some income from the continued basketry trade with the Navajo Nation. The baskets produced by the Paiute Tribe included the utilitarian jugs traded with the Navajo since the 1870s and the so-called “Navajo wedding basket” that served important religious functions in Navajo ceremonies.<sup>16</sup>

Attempting to improve the situation for various Indian groups in the Tuba City area, the federal government removed the land near Tuba City and Moenkopi from the public domain in 1900. In 1903, Tuba City became the administrative center for the Western Navajo Agency. The lands in the nearby Moenkopi wash were parceled out among Hopis and Navajos. Meanwhile, the Paiute Tribe was forced to abandon its farmlands and would never again have access to their aboriginal farming sites nor farm south of Willow Springs.<sup>17</sup> By 1904, the Mormons living near Tuba City were gone after receiving payment from the federal government for indemnification of their property.<sup>18</sup>

The United States Congress identified the Paiutes in 1906, 1907, and 1908 in three separate appropriations bills.<sup>19</sup> In 1907, the Assistant Secretary of the Interior, Thomas Ryan, established an exclusive reservation for the Paiutes known as the “Paiute Strip.”<sup>20</sup> The Paiute Strip stretched from the 110<sup>th</sup> parallel in the middle of Monument Valley west to the Colorado River.<sup>21</sup> The northern border was the San Juan River, and the southern border was the Arizona/Utah state line.

At this time, the federal government knew very little about the Paiutes. For this reason, Superintendent Janus of the Western Navajo Agency traveled to the different local settlements in 1908 to determine their needs.<sup>22</sup> At that time, the Paiutes were living and farming at Willow Springs, Cedar Ridge, Paiute Canyon, and Oljeto, near Monument Valley.<sup>23</sup> They also grazed their sheep and goats in the area as well as on top of the plateau east of Gap Trading Post. According to Superintendent Janus, the “accredited chief of all three divisions,” “Pakai”—or David Lehi—lived at Cedar Ridge.<sup>24</sup> Despite the Paiute Tribe’s successful basket trading, farming, and herding, Superintendent Janus found the Paiutes to be quite poor—as poor as the “poorer Navajos.”<sup>25</sup>

Unfortunately, the flurry of federal attention was not long-lived. By 1920, the Paiutes in the Oljeto area had moved north of the San Juan River in response to continued encroachment on their lands by the Navajo Nation.<sup>26</sup>

---

<sup>16</sup> FRANCISCAN FATHERS ST. MICHAELS, ARIZONA, AN ETHNOGRAPHIC DICTIONARY OF THE NAVAJO LANGUAGE 291-94 (1910).

<sup>17</sup> BUNTE, *supra* note 3, at 35-36.

<sup>18</sup> Lee, *supra* note 10, at 55.

<sup>19</sup> PROPOSED FINDINGS OF FACT FOR FEDERAL ACKNOWLEDGMENT, *supra* note 1, at 2, 5.

<sup>20</sup> *Id.* at 8.

<sup>21</sup> BUNTE, *supra* note 3, at 96.

<sup>22</sup> Letter from S. Janus, Superintendent of the W. Navajo Agency, to Comm’r of Indian Affairs (Jan. 23, 1909) (on file with Los Angeles Federal Archives and Records Center).

<sup>23</sup> *Id.* at 1.

<sup>24</sup> *Id.*; see also BUNTE, *supra* note 3, at 111, 112.

<sup>25</sup> BUNTE, *supra* note 3, at 173.

<sup>26</sup> A.W. Leech, Report to Commissioner of Indian Affairs (May 18) (on file with the National Archives, Record Group 75, Central Classified Files, Western Navajo Agency, File 17605-1922); R. Van Valkenburgh & R. Dine Bikeyah, Window Rock, Arizona: Navajo Agency (1941).

In 1922, the federal government returned the Paiute Strip to the public domain due to pressure from white lobbyists who were interested in mineral exploration of the land.<sup>27</sup> In March 1933, after no oil or minerals were found, the land was annexed to the Navajo Nation, even though Paiute Tribal Members were still living in the western part of the former Paiute Strip around Navajo Mountain. Throughout these constant reversals, the Paiutes continued to live and farm at Willow Springs in the south and at Navajo Mountain and Paiute Canyon in the north.

The period from the 1930s to the 1960s is one of official federal government inattention. Since the southern and northern Paiute Tribal settlements were in relatively inaccessible places, it was easy for distant officials to forget about the Paiute Tribe's existence. Moreover, few, if any, Paiutes spoke English or knew the processes necessary to call attention to their plight.

Although this inattention contributed demonstrably to the hardships and poverty experienced by our Tribe, it may have also inadvertently contributed to a significant retention of the Paiute language and cultural traditions than is found elsewhere among other southern Paiute groups.<sup>28</sup> Today, the Paiute Tribe proudly retains the largest proportion of Paiute language speakers of any Paiute tribe.

During this period, the Paiute Tribal Members continued to support themselves primarily through subsistence farming and herding. Although herding replaced hunting to a large extent, some members of the Paiute Tribe still hunt annually north of the San Juan River and south of the Grand Canyon. For hundreds of years, summer farming provided occasions for Paiutes to gather together. Tribal Members also came together to collect pine nuts in the fall of each year, while in the winter months, life consisted of visiting, storytelling, dancing, and playing games.<sup>29</sup>

As for the basket trade with the Navajos, it appears that in the 1930s, the Paiutes were the major—or potentially only—suppliers of the Navajo wedding basket in the Tuba City area.<sup>30</sup>

The 1940s, 1950s, and 1960s were economically difficult for the Tribe. The land we traditionally occupied was now insufficient to support all of our Paiute Tribal Members. Some were forced to leave the reservation to look for work. Others were sent away to boarding schools, electing not to return after graduation because of the lack of economic opportunity. By the 1950s, many Paiute Tribal Members were employed seasonally as farm laborers in central Utah. Our neighbors, the Kaibab-Paiutes, were particularly generous in providing these jobs, acting as a go-between for the Paiute Tribe and the white farmers, and making all the arrangements, including transportation.<sup>31</sup> Occasionally, entire families would move up to Utah for a few months, but most often the men would go alone and return to Willow Springs at the end of the harvest season.

In the 1970s and 1980s, the Paiute Tribe dealt with serious policy concerns, including a lack of attention from the federal government, and the resultant lack of services.<sup>32</sup> Additionally, the Paiute Tribe learned that much of their remaining land, unbeknownst to them, was being fought over and slowly annexed to the Navajo Nation and the Hopi Tribe. To remedy this unacceptable situation, the Paiute Tribe had to become a federally recognized tribe. As a result, the Paiute Tribe petitioned the federal government for

---

<sup>27</sup> See ALBERT FALL, THE SECRETARY OF INTERIOR'S APPROVAL OF THE RETURN OF THE PAIUTE RESERVATION TO PUBLIC DOMAIN, 304 (July 17, 1922) (on file with the National Archives, Record Group 75, Central Classified Files, Western Navajo Agency, File 17605-1922); see also Letter to Paradise Oil (June 4) (on file with the National Archives, Record Group 75, Central Classified Files, Western Navajo Agency, File 42622-192.1).

<sup>28</sup> See PROPOSED FINDINGS FOR FEDERAL ACKNOWLEDGMENT, *supra* note 1, at 32-33.

<sup>29</sup> BUNTE, *supra* note 3, at 118.

<sup>30</sup> Omer C. Stewart, *The Navajo Wedding Basket*, 10 PLATEAU 25 (1938); see also BUNTE, *supra* note 3, at 316.

<sup>31</sup> BUNTE, *supra* note 3, at 118.

<sup>32</sup> *Id.* at 228.

official recognition as an Indian Tribe in 1986. Three years later, in December of 1989, the Paiute Tribe received federal recognition and intervened in the land claims litigation. The Paiute Tribe has been fighting for their exclusive land base ever since.

## **B. Background of the Treaty Legislation, H.R. 2461**

H.R. 2461 is the result of decades of uncertainty, litigation, and negotiations over the rights and interests in lands reserved by Congress pursuant to the Act of June 14, 1934 (the “1934 Act”).<sup>33</sup> The 1934 Act set aside certain lands in Arizona as a reservation “for the Navajo and such other Indians as may already be located thereon” (the “1934 Act Lands”).<sup>34</sup> This statute gave an equitable interest in portions of the 1934 Act Lands to the Navajo Nation, the Paiute Tribe, and the Hopi Tribe.<sup>35</sup> “The 1934 Act was not intended to disturb then-existing land tenure patterns.”<sup>36</sup> It was intended to “preserve a status quo and not to disturb existing arrangements.”<sup>37</sup> Congress necessarily intended the 1934 Act to protect the Paiute Tribe and our traditional ways of life.<sup>38</sup>

In 1974, Congress passed the Navajo-Hopi Settlement Act (the “1974 Act”)<sup>39</sup> to settle a longstanding dispute between the Hopi and the Navajo over lands within northern Arizona. Upon passage of the 1974 Act, the Hopi Tribe sued the Navajo Nation seeking a declaration of title and a partition of the jointly held 1934 Act Lands, in what is known as the *Masayesva v. Zah* litigation. The Paiute Tribe, which was nearly extinguished by foreign illnesses and encroachment by outsiders, moved to intervene in the case in August 1982. At the time we moved to intervene, the Paiute Tribe was not yet federally recognized. However, federal recognition was crucial to the Paiute Tribe’s claims in the 1934 Act Lands. On December 15, 1989, the Assistant Secretary of Indian Affairs published a “Notice of Final Determination that the San Juan Southern Paiute Tribe Exists as an Indian Tribe,”<sup>40</sup> officially recognizing the Paiute Tribe.

The Navajo Nation filed a complaint under the Administrative Procedures Act challenging the determination of our Tribe’s existence. The Navajo Nation’s challenge was dismissed by the federal court, and the dismissal was not appealed. As a result of the Paiute Tribe’s federal recognition, the district court in the *Masayesva v. Zah* litigation held that it had jurisdiction pursuant to 25 U.S.C. § 640D-7(a) to “determine the rights of the Paiute Tribe in the 1934 Reservation and quiet title thereto.”<sup>41</sup>

From October 1989 to February 1990, the Paiute Tribe participated in a trial on the merits of the *Masayesva v. Zah* litigation involving the Hopi and Paiute Tribe’s land claims. In 1992, Findings of Fact and Conclusions of Law were issued regarding the Paiute Tribe’s claims under the 1934 Act.<sup>42</sup> The court found that approximately 26,000 acres of land were held jointly by the Paiute Tribe and the Navajo Nation. Critically, the court retreated from its prior ruling that it would quiet title interests in land to the Paiute Tribe and instead simply declared where the Paiutes and Navajo share a joint and undivided

---

<sup>33</sup> See Act of June 14, 1934, 48 Stat. 960 [hereinafter 1934 Act].

<sup>34</sup> *Id.* at 961.

<sup>35</sup> *Masayesva v. Zah*, 794 F. Supp. 899, 928 (D. Ariz. 1992) (The 1934 Act “established the external boundaries of the Navajo Reservation and conveyed an equitable interest in certain of these lands to the Navajo Nation and ‘such other Indians as may already be located thereon’, **including the Paiute Indians.**” (emphasis added)).

<sup>36</sup> *Sekaquaptewa v. Macdonald*, 619 F.2d 801, 808 (9th Cir. 1980), *cert. denied*, 449 U.S. 1010 (1980).

<sup>37</sup> *Id.*

<sup>38</sup> See 1934 Act, 48 Stat. 960, 961; See also Act of March 1, 1933, Pub. L. No. 72-403, 47 Stat. 1418 (setting aside the Reservation lands in Utah near Navajo Mountain “for the benefit of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon...”).

<sup>39</sup> See Act of December 22, 1974, P.L. 93-531, 88 Stat. 1712.

<sup>40</sup> See sources cited *supra* note 1.

<sup>41</sup> See *Masayesva v. Zah* 792 F.Supp. 1165, 1168-1169 (D. Ariz.1992).

<sup>42</sup> See *Masayesva v. Zah* 794 F.Supp. 899, 929 (D. Ariz. 1992).



interest in certain portions of the 1934 Act Lands.<sup>43</sup> The Paiute Tribe appealed the district court's decision.<sup>44</sup> Litigation of the appeal has been postponed since that time while the Paiute Tribe and the Navajo Nation pursued a settlement of their dispute via a land treaty.<sup>45</sup>

### **1. The San Juan Southern Paiute Tribe and Navajo Nation Land Treaty of 2000**

To resolve the land dispute and dismiss the appeal, the Paiute Tribe and the Navajo Nation negotiated a land treaty, finalized and executed in 2000. The Treaty set aside two parcels of land within the Navajo Reservation to be held by the United States in trust exclusively for the Paiute Tribe (the "Treaty Lands").<sup>46</sup> The Treaty provides for a homeland for the Paiute Tribe and resolves the long-standing *Masayesva v. Zah* litigation between the Paiute Tribe and the Navajo Nation, regarding the extent of the Paiute Tribe's interest in the 1934 Act Lands. Through the Treaty, the Paiute Tribe and the Navajo Nation "desire to establish harmony between the two nations for all future generations."<sup>47</sup>

Although signed in 2000, and affirmed in 2004, the Treaty will not take effect until it is signed by the Secretary of the Interior and ratified by Congress. Neither of those requirements has been met in the last 23 years. As a result, the Paiute Tribe remains without an exclusive homeland and the *Masayesva v. Zah* litigation remains pending in the Ninth Circuit Court of Appeals. But the passage of H.R. 2461 will change that.

### **2. H.R. 2461 positive effect on the health and safety of Paiute Tribal Members**

H.R. 2461 sets aside two parcels of land for the new San Juan Southern Paiute Tribe Reservation, which reflects the Paiute Tribe and Navajo Nation's agreement under the Treaty. These areas are referred to as the Southern Area, approximately 5,100 acres around Willow Springs (west of Tuba City), and the Northern Area, approximately 300 acres in Utah (near Navajo Mountain).<sup>48</sup>

An exclusive reservation is critical for the health, safety, and livelihood of the Paiute Tribe. We currently have no control over whether Paiute Tribal Members have access to basic utilities like water and electricity. The Paiute Tribe's inability to guarantee the most fundamental services exacerbates homelessness and public health issues and contributes to the absence of economic development. A reservation will give the Paiute Tribe jurisdiction over its land and enable the Paiute Tribe to provide services related to public health, safety, and infrastructure development.

Presently, the Paiute Tribe is the only landless tribe in Arizona. Paiute Tribal Members continue to live alongside their Navajo neighbors and families within the Navajo Reservation pursuant to the 1934 Act and the 1974 Act. These federal laws confirmed that Congress reserved the 1934 Act Lands to benefit the Paiute Tribe as well as the Navajo Nation, jointly.

Despite the existence of these critical laws, however, when Paiute Tribal Members seek to obtain basic human needs like water and electricity, they are met with systemic roadblocks like laws requiring Navajo tribal membership as a prerequisite to obtaining utilities on their jointly held lands.

---

<sup>43</sup> *Id.* at 928-929.

<sup>44</sup> The Hopi Tribe's Land Claims in the 1934 Act Reservation have since been resolved. *See, e.g., Masayesva ex rel. Hopi Indian Tribe v. Hale*, 118 F.3d 1371, 1376-77 (9th Cir. 1997).

<sup>45</sup> *Masayesva v. Zah*, No. 93-15216 (9th Cir. Feb. 10, 1993).

<sup>46</sup> *See* Treaty, Navajo Nation-San Juan Southern Paiute Tribe, Mar. 18, 2000; Addendum to Treaty, Navajo Nation-San Juan Southern Paiute Tribe, May 7, 2004.

<sup>47</sup> Treaty, *supra* note 46, at Article I.

<sup>48</sup> Treaty, *supra* note 46, at attached maps A-F (available upon request).

These jurisdictional issues prevent the Paiute Tribe from accessing or applying for funding opportunities only available to tribes with an exclusive designated land base. As a result of the absence of Congressional ratification of the Treaty, it has been nearly impossible to generate the funds necessary to provide for the most basic needs of Tribal Members. The practical reality is that Paiute Tribal Members have faced pervasive homelessness due largely to the lack of an established homeland that stems from the Treaty not yet being ratified.

H.R. 2461 will resolve the most substantial jurisdictional issues between the Paiute Tribe and the Navajo Nation, while honoring the intent of the 1934 and 1974 Acts. The Paiute Tribe will be able to work with the United States and the Navajo Nation to provide electricity and water to Tribal Members where the status of the land is currently a hindrance. Basic human rights will be fulfilled simply by resolving these property interests, and honoring the agreement negotiated between the Navajo Nation and the Paiute Tribe over 23 years ago.

### **3. H.R. 2461 and the Little Colorado River Adjudication**

The Paiute Tribe and the Navajo Nation are currently involved in the adjudication of the Navajo Nation's water rights claims within the Arizona portion of the Little Colorado River Basin (the "Adjudication"). The Navajo Nation is claiming rights to the water located beneath the Treaty Lands it agreed to partition to the Paiute Tribe, as well as water in areas in which the Paiute Tribe shares a joint interest with the Navajo Nation. In other words, the Navajo Nation is claiming water rights for water in which it does not have an exclusive property interest. Therefore, the Paiute Tribe is forced to object to the Navajo Nation's water claims and litigate water rights for the 26,000 acres of 1934 Act Lands where the district court found the Paiute Tribe has a shared equitable interest with the Navajo Nation. H.R. 2461 will eliminate the majority, if not all, of the current Adjudication litigation between the Navajo Nation and the Paiute Tribe.

H.R. 2461 will establish distinct property interests for each tribe and help resolve the Paiute Tribe's underlying objection to the Navajo Nation's water claims. Without Congressional ratification of the Treaty, the Paiute Tribe and the Navajo Nation's Adjudication litigation will continue unnecessarily (potentially for many years) over issues that would be resolved if the Treaty were ratified. The lasting harmony that the Paiute Tribe and the Navajo Nation wish to achieve requires Congressional ratification.

The Paiute Tribe's status as an active objector in the Adjudication is also causing delays in the proceedings, which inevitably complicates the ability of other stakeholders to adjudicate their water rights claims. Ratification of the Treaty will allow the cities, irrigators, farmers, businesses, and companies within the Little Colorado River Basin to make progress toward obtaining their own water rights decrees.

### **III. Conclusion**

The Paiute Tribe is a federally recognized Indian Tribe that has occupied its ancestral homeland since before colonization. Today the Tribe continues to live in northern Arizona and southern Utah, on lands entirely encompassed within the external boundaries of the Navajo Reservation. Due to the Paiute Tribe's relatively small size and the remoteness of its homelands, the Tribe has often been forgotten or pushed aside. The Paiute Tribe has been fighting to keep a small part of its aboriginal territory since its traditional lands were encroached upon by settlers and the Navajo Nation. This effort to reclaim a part of their homeland through an exclusive reservation has only intensified since the Tribe's federal recognition in 1989.

In 1934, Congress established the Navajo Reservation for the Navajo Nation and the other Indians located thereon, principally the Hopi Tribe and the Paiute Tribe. In 1974 following years of unsuccessful negotiations, Congress allowed the Navajo Nation and the Hopi Tribe to sue each other and any other tribe claiming rights to the 1934 Act Reservation (the *Masayesva v. Zah* litigation). After gaining federal recognition in 1989 the Paiute Tribe intervened in *Masayesva v. Zah* as one of the other tribes claiming an interest in the 1934 Act Lands.

The *Masayesva v. Zah* litigation resulted in a determination that the Navajo Nation and the Paiute Tribe held a joint and equitable interest in approximately 26,000 acres of the 1934 Act Lands. The Paiute Tribe alone appealed. To settle the appeal in 2000 the Navajo Nation and the Paiute Tribe drafted and signed the Treaty that gave the Paiute Tribe an exclusive reservation of 5,400 acres of the 1934 Act Lands. Unfortunately, the Treaty has not taken effect because it requires Congress's ratification and a signature from the Secretary of the Interior. This has left the Paiute Tribe in limbo for 23 years, without a designated homeland.

The lack of an exclusive reservation has had detrimental effects on the Paiute Tribal Members. Without land, the Paiute Tribe cannot access critical funding resources, provide its Tribal Members with proper housing, utilize public utility networks, or develop additional infrastructure. This has resulted in increased homelessness, and the homes that do exist are without fundamental necessities like running water and electricity.

H.R. 2461 empowers Congress to change the lives of hundreds of Tribal Members for the better. Ratification of the Treaty will resolve jurisdictional issues between the Paiute Tribe and the Navajo Nation, allowing them to progress on issues concerning public health and safety and economic growth. The Paiute Tribe would finally be able to provide its Tribal Members with clean and safe water, electricity, and essential infrastructure repairs, instead of being entangled in unnecessary litigation for the foreseeable future.

Ratification of the Treaty would also relieve an unwavering emotional burden on the Tribal Members, most significantly the elders, most of whom have moved on to the next world without ever seeing the Treaty come to fruition.

We are asking Congress to approve what we consider to be a valid treaty negotiated and entered into by two sovereign tribes. H.R. 2461 will be the final step in settling a decades long land dispute and will allow for the creation of the San Juan Southern Paiute Tribe Reservation. I respectfully request your support and passage of HR 2461.