



June 4, 2019

Hon. Ruben Gallego, Chairman  
U.S. House of Representatives  
Subcommittee for Indigenous Peoples  
of the United States  
1331 Longworth House Office Building  
Washington, D.C. 20515-6201

Hon. Paul Cook, Ranking Member  
U.S. House of Representatives  
Subcommittee for Indigenous Peoples  
of the United States  
1027 Longworth House Office Building  
Washington, D.C. 20515-6201

Re: *Opposition to H.R. 2961, the "Samish Indian Land Reaffirmation Act"*

Dear Chairman Gallego and Ranking Member Cook:

I write on behalf of the Lummi Nation to voice our strong opposition to H.R. 2961, the "Samish Indian Land Reaffirmation Act", and to urge you to oppose enactment of this legislation.

H.R. 2961 is the fifth time that this proposed legislation has been introduced. Each time, the Lummi Nation and three other federally recognized tribes from Washington State with adjudicated rights under the 1855 Treaty of Point Elliott – have objected to the legislation. This is because the legislation would seriously harm the interests and treaty rights of the four tribes. While H.R. 2961 has been significantly amended since it was originally introduced, but these amendments have not corrected the serious problems with the bill or its underlying premise. We describe some of these objections in greater detail below.

***Background on Indian Treaty Rights.*** Like many tribal nations in Washington, the Lummi Nation is a federally recognized Indian nation with treaty secured fishing rights under the Treaty of Point Elliot. We are located in Whatcom County, Washington and our treaty secured fishing rights have been recognized by the federal court to be secured in all usual and accustomed fishing grounds and stations (U &A), in areas beyond Whatcom County. There are other rights secured in the treaty, including but not limited to hunting and gathering. The area implicated by H.R. 2961 is an area that Lummi has treaty secured rights in.

***The BIA Regional Director's Fee-to-Trust Decision is Subject to an Active Appeal.*** As introduced, Section 2(a) of H.R. 2961 would "ratif[y] and confirm[]" a non-final decision by Bureau of Indian Affairs ("BIA") Northwest Regional Director Bryan Mercier, a subordinate agency official, to take approximately 6.70 acres of land into trust for the benefit of the Samish Indian Nation. Regional Director Mercier's November 9, 2018, decision is premised on the notion that the Samish Indian Nation is a successor to the historic Samish and Nuwaha tribes, which were parties to the 1855 Treaty of Point Elliott. This decision is currently subject to an

administrative appeal brought by the Swinomish Indian Community. Congress should allow this proceeding to run its course.

***Enactment of H.R. 2961 Could Recognize Treaty Rights Rejected by the Federal Courts.*** If H.R. 2961 were enacted, this ratification and confirmation of the Director's decision would reverse 40 years of Federal court precedent and the extensive litigating position of the United States as confirmed less than two years ago in the Administration's testimony before this Subcommittee. It would also lead to renewed assertions of treaty rights by the Samish Indian Nation to the detriment of the Lummi Nation and other area tribes.

The Federal courts have held repeatedly and consistently that the Samish Indian Nation is not a successor to any tribe that participated in the Treaty of Point Elliott, rejecting its claims of successorship to the Samish and Nuwaha that were parties to the treaty. These cases include the following:

- *United States v. Washington*, 476 F. Supp. 1101, 1104 (Samish Indian Nation, then known as the Samish Tribe, is **not a "political successor in interest to any of the tribes or bands of Indians with whom the United States treated in the treaties of Medicine Creek and Point Elliott"**) (emphasis added) & 1106 (Samish Indian Nation was **"not an entity that descended from any of the tribal entities that were signatory to the Treaty of Point Elliott"**) (W.D. Wash. 1979), *aff'd*, 641 F.2d 1369 (9th Cir. 1981);
- *Greene v. Lujan*, Order Granting Federal Defendants' Motion for Partial Summary Judgment at 10 (No. C89-645Z, W.D. Wash. Sept. 19, 1990) (Samish Indian Nation, then known as the Samish Indian Tribe of Washington, is **precluded by *United States v. Washington* from "assert[ing] that it is the political successor in interest to the historic Samish Indian Tribe"**) (emphasis added);
- *Greene v. Lujan*, 1992 U.S. Dist. LEXIS 21727 at \*5, 1992 WL 533059 ("The issue of whether plaintiffs [including the Samish Indian Nation, then known as the Samish Indian Tribe of Washington] are successors in interest to the Treaty of Point Elliot has already been resolved. The Court in *United States v. Washington* affirmed the District Court finding that the Samish lacked the necessary political and cultural cohesion to constitute a successor in interest to the treaty of Point Elliot. 641 F.2d 1368. This Court, in an earlier order, held that plaintiffs are **barred under the doctrine of res judicata from relitigating its status as the political successor to the aboriginal Samish Indian Tribe.**") (emphasis added) and \*9 ("The [*United States v. Washington*] Court ... determined that petitioners were **not the successors in interest of the treaty signatories.** This holding is binding in this case and treaty issues cannot be relitigated.") (emphasis added) (No. C89-645Z, W.D. Wash. Feb. 25, 1992), *aff'd* 64 F.3d 1266 (9th Cir. 1995);
- *Samish Indian Nation v. United States*, 58 Fed. Cl. 114, 120 (2003) ("Although Plaintiff is correct that a tribe known as the Samish were a party to the Treaty of Point Elliott, **the current Samish Tribe is not descended from that tribe; therefore, the Samish have no rights under the Treaty.**") (emphasis added); and

- *United States v. Washington*, 593 F.3d 790, 799-800 (9th Cir. 2009) (en banc) (rejecting Samish Indian Nation's request to re-open the issue of its successorship to a treaty tribe in treaty fishing rights litigation and holding that it previously had a full and fair opportunity to litigate that issue in *United States v. Washington*).

The Department of Interior confirmed these Federal court decisions and the United States' litigating position less than two years ago. On November 15, 2017, in written testimony to the House Subcommittee on Indian, Insular and Alaska Native Affairs on H.R. 2320 at pp. 102, the Principal Deputy Assistant Secretary – Indian Affairs, John Tahsuda III, stated that “the Department has historically indicated **the Samish Indian Nation is not a successor and does not have treaty rights under the 1855 Treaty of Point Elliot**” (emphasis added). Mr. Tahsuda added that, to the extent H.R. 2320 provided otherwise, it “would significantly alter the **extensive litigating position of the United States** on this matter.” *Id.* at 2 (emphasis added).

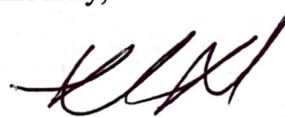
***The Samish Bill is Not Like the Mashpee Bill.*** H.R. 2961 is distinguishable from H.R. 312, the “Mashpee Wampanoag Tribe Reservation Reaffirmation Act,” because the latter ratified and confirmed the “taking into trust” by the United States of certain land for the Mashpee Tribe, not a specific agency decision and its underlying analysis. H.R. 312 also confirmed the applicability of an intergovernmental agreement between the Mashpee Tribe and the town of Mashpee. In contrast, as introduced, H.R. 2961 contains no such mitigating language to address its treaty rights and other implications.

***Lastly, there is no practical need for H.R. 2961 because the Samish Indian Nation already owns the land at issue and is using it for its intended purpose.***

***Conclusion.*** While the Samish Nation is a federally recognized tribe, the Federal courts have repeatedly rejected their claims to possessing treaty rights. Without recognizing the effect of those losses, the Samish Nation has served notice that they intend to claim treaty rights and H.R. 2961 presents a “back door” approach that the Federal courts have rejected.

The United States government has a treaty and trust obligation to protect the treaty rights of the Lummi Nation and our people. For the foregoing reasons, we urge you to oppose enactment of H.R. 2961.

Sincerely,



Jeremiah Julius  
Chairman