SUPPLEMENTAL TESTIMONY
OF
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Chief of the Miami Tribe of Oklahoma
Before the
House Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States

May 10, 2022

Chair Leger Fernandez and Honorable Members of the Subcommittee for Indigenous Peoples of the United States:

I write to supplement the testimony I submitted to the Subcommittee on April 27, 2022 specifically to respond to the two questions for the record (QFRs) submitted by Congressman Grijalva regarding **H.R. 6063 (McCollum, MN)**, a bill to provide for the equitable resolution of certain Indian land disputes regarding land in Illinois, and for other purposes. I want to thank Representative Grijalva for his questions and the Subcommittee for the opportunity to respond to them.

Congressman Grijalva posed two questions, which I will address in order:

1. **Why has the Miami Tribe of Oklahoma been unable to pursue its claims in the U.S. Court of Federal Claims before this legislation?**

The Tribe has not been able to pursue its claims in the U.S. Court of Federal Claims because of the statute of limitations applied to such claims as a result of the establishment and operation of the Indian Claims Commission. This limitation works a further injustice on the Tribe from whom the federal government took 2.6 million acres of land to which the

Tribe held recognized or treaty title, without compensation and in violation of the 5th Amendment (Figure 1).

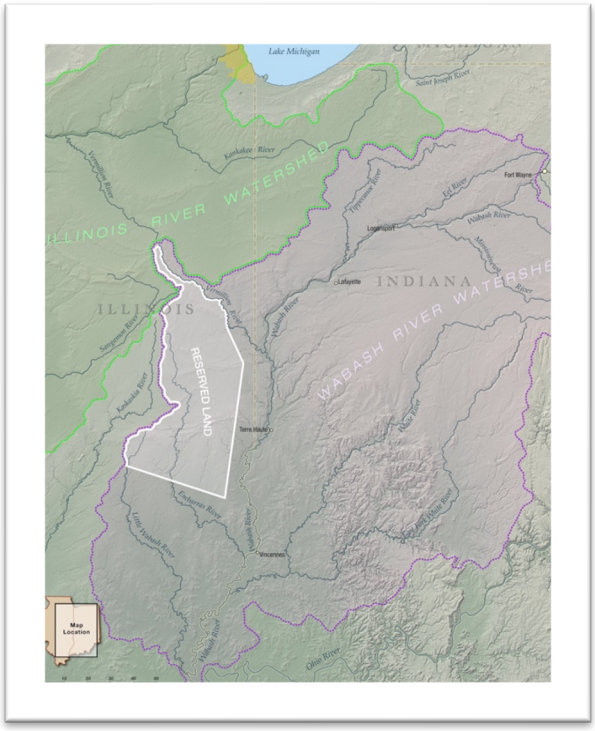

Figure 1

Operation of the ICC limitations on claims is particularly inapt for a claim like the Tribe's. The Tribe did not pursue any remedy for the Grouseland Treaty reserve before the Indian Claims Commission because that Commission awarded money damages in payment for inadequate compensation. The Tribe never ceded the land, was never compensated for any cessation. The Tribe therefore held a claim to title, for which it intended to seek confirmation. Such a claim was not within the jurisdiction of the ICC and the Tribe would have sold the land for the first time if it had brought its claim within the jurisdictional confines of that body.

The Tribe only ever participated in one ICC case involving Illinois lands, specifically Royce Area 98, and that is only because a sliver of Illinois land was included in an otherwise Indiana-based claim (See Figure 2).

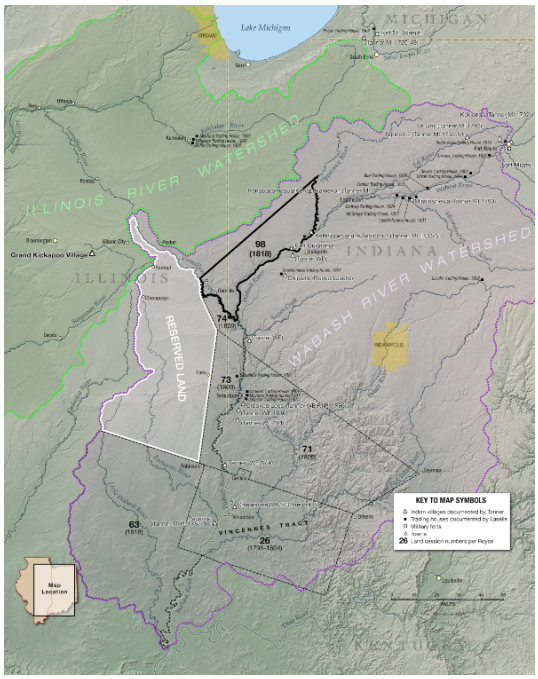

Figure 2

Specifically, that the Miami declined to participate in the ICC proceedings involving the Kickapoo Treaty of 1819 and Royce Area 110 (Figure 3) because the Tribe did not sign the 1819 Treaty and the Kickapoo quit claim of its interests in Illinois had no effect on the Treaty title held by the Miami Tribe under Article 4 of the Grouseland Treaty. The United States was apparently willing to take quit claim treaty cessions from tribes with no claim to the land ceded, and did it so quite often in the Southern Great Lakes Area. That practice, however, was a risk the United States, and not the Miami, assumed.

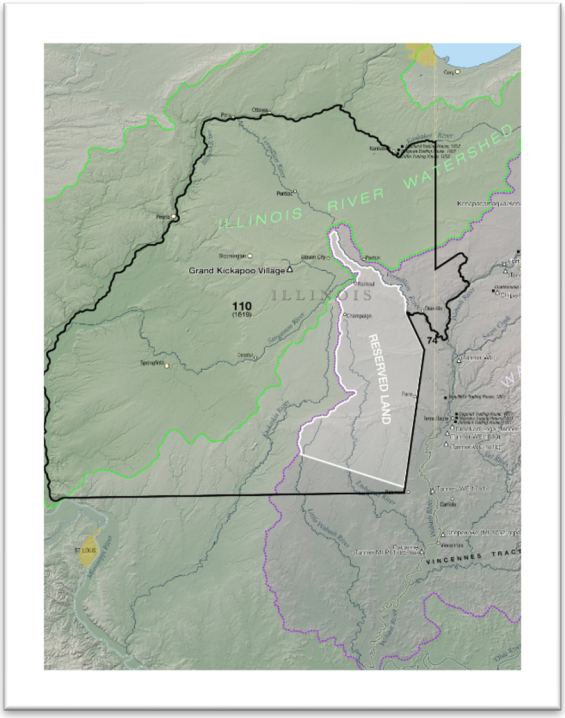

Figure 3

In 2000 the Tribe initiated a claim to title,[1] making a matter of public record the cloud that the Treaty itself created on title to the unceded land. That litigation remains unresolved. The Tribe considered the potential impact on the innocent land owners of east central Illinois and determined that 1) it did not wish to visit on them the kind of dispossession that occurred to the Tribe throughout the 19th Century; and 2) the real party in interest – the one who passed off title to land it had not purchased – was the United States.

This alternate solution was the subject of HR 791 (Johnson, IL), and S 533 (Durbin, IL), introduced by the Illinois delegation in the 107th Congress, and upon which HR 6063 is based. H.R. 791 garnered strong bipartisan support from members of the Committee on Resources. Specifically, Congressman Phelps stated:

[1] Doc. 1 (6/02/2000) *Miami Tribe of Oklahoma v. Walden, et al.*, Case No. 4:00-cv-041420-JPG.

> I am in support of Congressman Johnson's legislation, H.R. 791, and I commend him for his leadership on this issue, *which will place this issue's accountability where it belongs, with the Federal Government*. This is not a question of who is right and who is wrong, the Miami Tribe or the landowners. This is a question of who is going to take responsibility.[2]

Many others echoed Congressman Phelps' support, acknowledging that the Tribe should be given the opportunity to right serious historic wrongs, the responsibility for which, if proven, would fall on the United States and not the landowners of Illinois. For example, Congressman Timothy Johnson, the sponsor of H.R. 791, clarified that the legislation "enjoyed widespread support" and expressed that, while H.R. 791 (like H.R. 396) *did not* render a judgment on the merits of the Tribe's claim, "there is no question there have certainly been examples throughout history of wrongs committed on Native Americans."[3] Similarly, Speaker Dennis Hastert referred to H.R. 791 as "commonsense legislation" and stressed that the merits of the Tribe's claim based on the Treaty of Grouseland "can and should be made by experts."[4] Likewise, Congressman John Shimkus, whose district currently includes the lands subject to the Tribe's claim, described H.R. 791 as "straightforward and fair to both sides."[5]

As I have indicated in past testimony, and in meetings with many members of Congress, the Tribe has remained committed to working with

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[2] *Legislative Hearing on H.R. 521 and H.R. 791 Before the Committee on Resources, U.S. House of Representatives*, 107th Cong. 7 (2002), *available at*: https://www.govinfo.gov/content/pkg/CHRG-107hhrg79494/pdf/CHRG-107hhrg79494.pdf (prepared statement of Congressman David Phelps) (emphasis added).

[3] *Id.* at 3 (testimony of Congressman Timothy V. Johnson).

[4] *Id.* at 79 (prepared statement of Congressman J. Dennis Hastert, Speaker of the U.S. House of Representatives).

[5] *Id.* at 5 (prepared statement of Congressman John Shimkus).

Congress to secure a legislative solution to the title issue, notwithstanding the fact that H.R. 791 did not become law and was not reintroduced in subsequent Congresses for a variety of reasons.[6] The Tribe proposed the language of H.R. 6063 out of respect for the same commonsense, equitable, and just approach of H.R. 791, and in light of the broad support that it enjoyed in the House. And H.R. 6063, like H.R. 791, leaves the decision on merits of the Tribe's claim where it belongs: with the experts at the CFC. And, to be clear, HR 6063 would provide relief to the landowners of east central Illinois by extinguishing the tribe's title claim and the extinguishment of the cloud on title resulting from the Tribe's unresolve claim would occur upon passage of the legislation, and does not depend on the Tribe's success in that litigation. The Tribe would remain responsible for proving its claim before the Court.

2. Are you able to elaborate on the local non-tribal support for this legislation?

Legislation done the right should be based on a ground up effort, which is what the Tribe has done with respect to HR 6063. First, the Tribe began at the local level, visiting local and state officials to discuss the approach that the Tribe was considering to determine if it addressed their needs and concerns.

After that effort, the Tribe looked at the past legislation (HR 791 and S 533), worked with legislative staff, local officials and other interested parties to develop draft legislation that worked for everyone. We then reached out to Congressman Shimkus, the Congressman whose district nearly overlaps the Treaty-reserved area[7] to determine what further steps

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[6] *Id.* at 127 (prepared statement of Chief Floyd E. Leonard of the Miami Tribe of Oklahoma) (stating that "fair and reasonable" federal legislation is the most appropriate vehicle for an expeditious resolution of the recognized treaty title claims of the Miami Tribe of Oklahoma to land, and related rights and interests, in the State of Illinois). Chief Leonard became ill and passed several years later, not having seen his goal of a legislative resolution of the Illinois land claim achieved.

[7] Now Congresswoman Miller's District.

would be appropriate. As a result of that consultation, the Tribe reached out to the Illinois Farm Bureau and as a result of those discussions, the Tribe and the IFB issued a joint statement (Appendix 2) regarding the legislation that became HR 396, now HR 6063.

As a result of these efforts, H.R. 6063 is common sense, straight forward, mutually beneficial legislation that has enjoyed broad bipartisan support. While Congress has passed numerous jurisdictional bills over the prior decades,[8] H.R. 6063 is unique because of its mutuality, which

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[8] **H.R. 197**, 112th Cong. (2011) (introduced) (non-Indian bill) (To confer upon the U.S. Court of Federal Claims jurisdiction to hear, determine, and render final judgment on any legal or equitable claim against the United States to receive just compensation for the taking of certain lands in the state of Missouri by reason of the decision and notice of interim trail use or abandonment authorized by the National Trails System Act and decided by the Interstate Commerce Commission (ICC) on March 25, 1992); **H.R. 3122**, 111th Cong. (2009) (introduced) (non-Indian bill) (To confer upon the United States Court of Federal Claims jurisdiction to hear, determine, and render final judgment on any legal or equitable claim against the United States to receive just compensation for the taking of certain lands in the State of Missouri, and for other purposes); **S. 2711**, 107th Cong. (2002) (passed Senate) (Native American Omnibus Act of 2002. *See* Zuni Indian Tribe Water Rights Settlement of 2002 § 2108); **S. 2723**, 100th Cong. (1998) (enacted as Pub. L. 100-580) (Hoopa-Yurok Settlement Act. *See* § 14, Limitations of actions; Waiver of claims); **H.R. 2399**, 103rd Cong. (1993) (enacted as Pub. L. 103-116) (Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993. Waived immunity of the United States and South Carolina to bring an action in Court of Claims to recover settlement payment if unpaid). *See* § 6(i)-(j). *Companion bill:* **S. 1156**, 103rd Cong. (1993) (passed Senate); **H.R. 3533**, 98th Cong. (1983) (introduced)(To confer jurisdiction upon the U.S. Court of Claims to hear and judge specified claims of the Navajo Indian Tribe against the United States. Requires such claims to be filed within six months after enactment of this Act). *Companion bill*: **S. 1196**, 98th Cong. (1983) (passed Senate). *See also* **H.R. 4445**, 97th Cong. (1981) (introduced) (To confer jurisdiction on the Court of Claims to hear, determine, and render judgment on specified claims of the Navajo Indian Tribe against the United

States.); **S. 1613**, 97th Cong. (1981) (introduced) (same); **S. 2994**, 96th Cong. (1980) (introduced) (same); **H.R. 2329**, 97th Cong. (1982) (enacted Pub. L. 97-385)(To confer jurisdiction on certain courts of the United States to hear and render judgement in connection with certain claims of the Cherokee Nation of Oklahoma). *Companion bill*: **S. 1914**, 97th Cong. (1981) (introduced); *See also* **S. 2072**, 96th Cong. (1979) (introduced) (To confer jurisdiction on certain courts of the United States to hear and render judgment in connection with certain claims of the Cherokee Nation of Oklahoma.); **H.R. 7567**, 96th Cong. (1980) (introduced) (same); **S. 1397**, 97th Cong. (1981) (introduced) (To confer jurisdiction on the Court of Claims to hear, determine, and render judgment on a claim of the Seminole Nation of Oklahoma). *Companion bill*: **H.R. 3935**, 97th Cong. (1983) (introduced); **S. 2778**, 96th Cong. (1980) (introduced) (To confer jurisdiction on the Court of Claims to hear, determine, and render judgement on a claim of the Seminole Nation of Oklahoma.); **H.R. 7720**, 96th Cong. (1980) (introduced) (same); **S. 668**, 96th Cong. (1980) (enacted as Pub. L. 96-251) (To permit the Cow Creek Band of the Umpqua Tribe of Indians to file with the United States Court of Claims any claim such band could have filed with the Indian Claims Commission under the Act of August 13, 1946 (60 Stat. 1049)). *Companion bill*: **H.R. 2822**, 96th Cong. (1979) (introduced); **S. 1796**, 96th Cong. (1980) (enacted Pub. L. 96-434) (To authorize the Assiniboine Tribe and the Blackfeet Tribe to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes). *See also* **H.R. 7827**, 96th Cong. (1980) (introduced) (To authorize the Assiniboine Tribe to file in the Court any claim against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes); **S. 1795**, 96th Cong. (1980) (enacted as Pub. L. 96-405) (To authorize the Blackfeet and Gros Ventre Tribes to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes). *See also* **H.R. 7828**, 96th Cong. (1980) (introduced) (To confer jurisdiction upon the United States Court of Claims to hear all claims which the Blackfeet and Gros Ventre Tribes may have against the United States with respect to certain lands defined in the Treaty of October 17, 1855. Makes certain stipulations with regard to any award that may be entered in such claim); **S. 341**, 96th Cong. (1980) (enacted as Pub. L 96-404) (To

provides Congressional relief to the current and historic landowners at the same time.

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authorize the Three Affiliated Tribes of the Fort Berthold Reservation to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes). *See also* **H.R. 2101**, 96th Cong. (1979) (introduced) (To authorize the Three Affiliated Tribes of the Fort Berthold Reservation to file in the Court of Claims any claims against the United States for damages for delay in payment for lands claimed to be taken in violation of the United States Constitution, and for other purposes); **H.R. 797**, 96th Cong. (1979) (introduced)(To permit the Tigua Indian Tribe of Texas to file with the United States Court of Claims any claim of such tribe for compensation for lands allegedly taken from such tribe by the United States without the payment of adequate compensation); **H.R. 6188**, 96th Cong. (1979) (introduced) (Deems any conveyance of Indian land in Seneca or Cayuga Counties, New York, as extinguishing any aboriginal title to such land, in spite of any other Federal law relating to Indian conveyances. Requires any claim arising out of alleged wrongs involving any aboriginal title to lands in such counties to be asserted directly against the U.S. Government. Limits relief to monetary damages. Gives the U.S. Court of Claims exclusive original jurisdiction over such claims); **Pre-1946** ("Before establishment of the Indian Claims Commission in 1946, tribes had no forum for pursuing claims against the federal government absent congressional action authorizing litigation on behalf of individual tribes. . . . During this period, tribes petitioned Congress to obtain special jurisdictional statutes granting the Court of Claims jurisdiction, waiving sovereign immunity, and often also waiving otherwise applicable statutes of limitation for specific claims. Between 1836 and 1946, Congress enacted 142 such acts." *See Creation of Indian Claims Comm'n: Hearings Before the H. Comm. on Indian Affairs*, 79th Cong. 163-66 (1945) (tables on tribal claims). *See generally* Glen A. Wilkinson, *Indian Tribal Claims Before the Court of Claims*, 55 Geo. L.J. 511 (1966). Cohen's Handbook of Federal Indian Law § 5.06[2], at 438 (2012).

When one thinks about a claim that has lingered for nearly 215 years, the progress that the Tribe and its partners have made in the past several years looks incredibly efficient. This progress was possible because of the commitment and diligence of our partners here and in Illinois to create legislation that resolved this issue fairly and transparently.