EXAMINING IMPACTS OF FEDERAL NATURAL RESOURCES LAWS GONE ASTRAY

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

Wednesday, May 24, 2017

Serial No. 115–7

Printed for the use of the Committee on Natural Resources

Available via the World Wide Web: http://www.fdsys.gov
or
Committee address: http://naturalresources.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE

25–553 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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OVERSIGHT HEARING ON EXAMINING IMPACTS OF FEDERAL NATURAL RESOURCES LAWS GONE ASTRAY

Wednesday, May 24, 2017
U.S. House of Representatives
Subcommittee on Oversight and Investigations
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 9:03 a.m., in room 1324, Longworth House Office Building, Hon. Raúl Labrador [Chairman of the Subcommittee] presiding.

Present: Representatives Labrador, Gohmert, Johnson, Bishop; McEachin, Gallego, and Soto.

Mr. LABRADOR. The Subcommittee on Oversight and Investigations will come to order. The Subcommittee is meeting today to hear testimony on examining the impacts of Federal natural resources laws gone astray.

Under Committee Rule 4(f), any oral opening statements at a hearing are limited to the Chairman, the Ranking Minority Member, the Vice Chair, and the Vice Ranking Member. Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record, if they are submitted to the Subcommittee Clerk by 5:00 p.m.

Hearing no objections, so ordered.

I will now recognize myself for 5 minutes for an opening statement.

STATEMENT OF THE HON. RAÚL R. LABRADOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. LABRADOR. Today, we will examine the implementation of three Federal natural resource laws: the Indian Reorganization Act, known as IRA; the Wilderness Act; and the Federal Land Policy and Management Act, also referred to as FLPMA.

The Constitution grants responsibility to the legislative branch to enact our Nation's laws, and charges the executive branch with carrying them out in accordance with congressional intent. However, as we will hear today, that is not often the case in how things work out.

For too long, Federal agencies have been permitted to disregard congressional intent, and implement the laws Congress passes, sometimes ignoring the law's original purpose. This affront to the separation of powers must be stopped, and we must look to curbing abuse by the executive branch and reasserting power over the unelected bureaucracy. And that is why we are holding this hearing today.

While our focus this morning is on the implementation specifically of the IRA, the Wilderness Act, and FLPMA, today's hearing

could have examined the wayward implementation of any number of different statutes within the Committee's jurisdiction. This Subcommittee will continue to identify and bring to light other similar bureaucratic abuses.

Ensuring the proper application of the laws Congress passes should be a lot more simple than it has been in the past. However, as we will hear today, that is not how Federal agencies operate.

Take for instance the manner in which the Department of the Interior implements the IRA. In 2009, the U.S. Supreme Court ruled that the IRA limits Interior's ability to accept land into trust on behalf of Native American tribes to only those tribes that were under Federal jurisdiction when it was enacted in 1934. This is clearly stated in the law itself.

Yet, apparently, Interior has considered the Supreme Court's mandate to be a mere advisory opinion, because in 2014, its solicitor issued a memo that effectively allows Interior to define the meaning of "under Federal jurisdiction" however it pleases.

During the previous administration, Interior informed this Committee that it did not maintain a list of tribes that were under Federal jurisdiction when it was enacted, and that it did not intend to prepare one either. To date, this Committee has not been able to identify, nor has Interior been able to provide, a single instance where a land-into-trust application has been denied on account of the tribe's not being under Federal jurisdiction in 1934.

This morning, we will also hear how Federal land management agencies routinely fail to take into account the perspective of local communities that will be most significantly affected by their decisions. Instead, Interior has allowed land management decisions to be influenced by DC bureaucrats and out-of-touch litigation brought by environmental advocacy groups.

This Subcommittee heard these concerns time and time again during the previous administration, and it is my hope that the Federal land management agencies will now refocus their implementation of the laws, such as the Wilderness Act and FLPMA, as they were intended.

FLPMA's mandate for our public lands to be managed on the basis of "multiple use and sustained yield" may seem like a term of art to many, but those who have lived and relied upon the land for generations know that this principle is critical. It is critical not only to their income, their way of life, and their communities, but also to our Nation, ensuring that we will all benefit from a stable food supply, energy supply, and economic security.

However, the over-regulation of administratively designated wilderness study areas, areas of critical environmental concern, and decades-long withdrawals of mineral leases undermine the notion of multiple use, impacting all of us throughout our Nation.

I would like to thank our witnesses for being here today to lend their perspectives as we delve into the impacts of these expanded laws, and I look forward to hearing your testimony.

[The prepared statement of Mr. Labrador follows:]

PREPARED STATEMENT OF THE HON. RAÚL R. LABRADOR, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Today we will examine the implementation of three Federal natural resources laws—the Indian Reorganization Act, known as the IRA, the Wilderness Act, and the Federal Land Policy and Management Act, also referred to as FLPMA.

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While our focus this morning is on the implementation specifically of the IRA, the Wilderness Act, and FLPMA, today's hearing could have examined the wayward implementation of any number of statutes within the Committee's jurisdiction. This Subcommittee will continue to identify and bring to light other similar bureaucratic abuses.

Ensuring the proper application of the laws Congress passes should be more simple.

However, as we will hear today, that's not how Federal agencies operate. Take for instance the manner in which the Department of the Interior implements the IRA. In 2009, the U.S. Supreme Court ruled that the IRA limits Interior's ability to accept land into trust on behalf of Native American tribes to only those tribes that were under Federal jurisdiction when the IRA was enacted in 1934. This is clearly stated in the law itself. Yet, apparently Interior has considered the Supreme Court's mandate to be a mere advisory opinion, because in 2014 its solicitor issued a memo that effectively allows Interior to define the meaning of "under Federal jurisdiction" however it pleases.

During the previous administration, Interior informed this Committee that it did not maintain a list of tribes that were under Federal jurisdiction when the IRA was enacted, and that it didn't intend to prepare one either. To date, this Committee has not been able to identify, nor has Interior been able to provide, a single instance where a land-into-trust application has been denied on account of the tribe's not being under Federal jurisdiction in 1934.

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I would like to thank our witnesses for being here today to lend their perspectives as we delve into the impacts of these expanded laws, and I look forward to hearing your testimony. I now recognize the Ranking Member of the Subcommittee, Mr. McEachin of Virginia, for 5 minutes.

Mr. LABRADOR. I now recognize the Ranking Member of the Subcommittee, Mr. McEachin of Virginia, for 5 minutes.

STATEMENT OF THE HON. A. DONALD MCEACHIN, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. MCEACHIN. Thank you, Mr. Chairman, and thank you to each of our witnesses for making the time to be here today. I would like to give a special thanks to the Minority witness, Kendra Pinto, for having made herself available on such short notice.

Ms. Pinto is a powerful advocate and voice for her community, the Counselor Chapter, Navajo Nation in New Mexico. Her home is also known as the San Juan Basin, which she shares with tens of thousands of oil and gas wells.

A 2016 report by the Center for American Progress found that, "out of the 15 regions with the most methane pollution from oil and gas production, New Mexico's San Juan Basin ranked third in overall emissions at 5.2 million metric tons, and number one in per-well emissions at 227 metric tons per well."

Methane is far from the only airborne contaminant from these fracking operations. Ms. Pinto found levels of hydrogen sulfide between a school and a well that are dangerous, especially to children. A peer-reviewed summary of health concerns with fracking emissions discussed other chemicals of concern. It said, "Nitrogen oxides can irritate the respiratory system, while particulate matter can exacerbate pre-existing respiratory and cardiovascular problems, cause respiratory health effects, and damage lung tissue. Acute exposure to benzene can cause drowsiness, headaches, and eye, skin, and respiratory tract infections, and chronic exposure can cause blood disorders, including aplastic anemia, as well as reproductive effects. Benzene is also a known human carcinogen causing leukemia."

Health effects of these emissions from these fracking wells are not restricted to chemical exposures. A major explosion and fire last year at a fracking site in Nageezi, New Mexico, near where Ms. Pinto lives, burned for 5 days. Some residents reported respiratory and other health problems. It killed pets and livestock in the area, and forced the evacuation of residents. Some refuse to return because they are scared.

This community could benefit from stronger protections for residents, their health, the air they breathe, the water they drink, and the land they farm. The BLM's methane rule aims to provide some relief, but my friends on the other side of the aisle have something different in mind.

They first tried to permanently repeal the protective methane rule and anything resembling it by using the Congressional Review Act. They failed, because it is a popular rule among both parties. Polls show overwhelming support for the rule, with 80 percent of voters in western states supporting requirements for companies to capture and sell methane, instead of merely burning it into the air.

Secretary Zinke has vowed to try to repeal it in any way possible, but because it is so popular, he and his colleagues in Congress have tried to create the appearance of support for their own unpopular positions by shutting out locals and amplifying voices from the oil and gas industry. The Secretary has suspended the Resource Advisory Councils, the mechanism the Department uses to collect input of all political stripes from local communities.

The Secretary talked about the methane rule with more than a dozen CEOs and others from the Domestic Energy Producers Alliance, including Continental Resource's Harold Hamm. He failed to meet with a single environmental group, most of which are local- or state-based, during his first 2 months. The Secretary is setting himself up to get the answer he wants when he requests input on the repeal of the crucial public health protections like the methane rule and the fracking rule.

My colleagues on this Subcommittee are following suit. The Chairman and Vice Chairman sent letters on May 9, 2017 to nearly 50 trade associations and companies soliciting feedback. None were sent to citizen environmental groups or the public health community. Environmental justice is defined as the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Ms. Pinto has brought us textbook environmental injustice. She and her community deserve better. As a co-founder of the United for Climate Environmental Justice Task Force here in Congress, I plan to fight until they get it.

Thank you, Mr. Chairman. I yield back.

[The prepared statement of Mr. McEachin follows:]

PREPARED STATEMENT OF THE HON. A. DONALD MCEACHIN, RANKING MEMBER, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Thank you, Mr. Chairman. And thank you to each of our witnesses for making the time to be here today. I would like to give a special thanks to the Minority witness, Kendra Pinto, for making herself available on short notice.

Ms. Pinto is a powerful advocate and voice for her community—the Counselor Chapter, Navajo Nation in New Mexico. Her home is also known as the San Juan Basin, which she shares with tens of thousands of oil and gas wells.

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Methane is far from the only airborne contaminant from these fracking operations. Ms. Pinto found levels of hydrogen sulfide between a school and a well that are dangerous, especially to kids. A peer-reviewed summary of health concerns with fracking emissions discussed other chemicals of concern. It said: "Nitrogen oxides can irritate the respiratory system, while particulate matter can exacerbate pre-existing respiratory and cardiovascular problems, cause respiratory health effects, and damage lung tissue. Acute exposure to benzene can cause drowsiness, headaches, and eye, skin, and respiratory tract infections and chronic exposure can cause blood disorders, including aplastic anemia, as well as reproductive effects. Benzene is also a known human carcinogen, causing leukemia."

Health effects of fugitive emissions from these fracking wells are not restricted to chemical exposures. A major explosion and fire last year at a fracking site in Nageezi, New Mexico, near where Ms. Pinto lives, burned for 5 days. Some residents reported respiratory and other health problems. It killed pets and livestock in the area and forced the evacuation of residents. Some refuse to return because they are scared.

This community could benefit from stronger protections for residents, their health, the air they breathe, the water they drink, and the land they farm. The BLM's methane rule aims to provide some relief. But my friends on the other side of the aisle have something different in mind.

They first tried to permanently repeal the protective methane rule and anything resembling it by using the Congressional Review Act. They failed because it is a popular rule among both parties, even where you would not expect. Polls show overwhelming support for the rule, with 80 percent of voters in western states supporting requirements for companies to capture and sell methane instead of merely burning it into the air.

Secretary Zinke has vowed to try to repeal it anyway. But because it is so popular he and his colleagues in Congress have tried to create the appearance of support for their own unpopular position by shutting out locals and amplifying voices from the oil and gas industry. Secretary Zinke suspended the Resource Advisory Councils, the mechanism the Department uses to collect input of all political stripes from locals around the country.

Then, while Secretary Zinke talked about the methane rule with more than a dozen CEOs and others from the Domestic Energy Producers Alliance, including Continental Resource's Harold Hamm, he failed to meet with a single environmental group, most of which are local- or state-based, during his first 2 months in office. The Secretary is setting himself up to get the answer he wants when he requests input on the repeal of crucial public health protections like the methane rule and the fracking rule.

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Environmental justice is defined as the *fair treatment* and *meaningful involvement* of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

Ms. Pinto has brought us textbook environmental injustice. She and her community deserve better. As a co-founder of the United for Climate and Environmental Justice Task Force here in Congress, I plan to fight until they get it.

Thank you and I yield back.

Mr. LABRADOR. Thank you. I will now introduce today's witnesses. Diane Dillon is the District 3 Supervisor in Napa County, California. David Cook is the owner of the DC Cattle Company in Globe, Arizona, and also represents Arizona's 8th Legislative District in the Arizona House of Representatives. Kendra Pinto is a Twin Pines resident and Counselor Chapter House Member of the Navajo Nation in Nageezi, Arizona. Did I say that right?

Ms. PINTO. New Mexico.

Mr. LABRADOR. Oh, sorry, New Mexico. I apologize.

Celeste Maloy is a deputy attorney for the Washington County Attorney's Office in St. George, Utah.

Let me remind the witnesses that under our Committee Rules, oral statements must be limited to 5 minutes, but your entire written statement will appear in the hearing record.

In regards to testimony and questions, our microphones are not automatic, so you will need to press the talk button before speaking into the microphone. When you begin, the lights on the witness table will turn green. When you have 1 minute remaining, the yellow light will come on. Your time will have expired when the red light comes on, and I will ask you to please conclude your statement.

I will also allow the entire panel to testify before questioning the witnesses.

The Chair now recognizes Supervisor Dillon for her testimony.

STATEMENT OF THE HON. DIANE DILLON, COUNTY SUPERVISOR, NAPA COUNTY, CALIFORNIA

Ms. DILLON. Thank you very much, Chairman Labrador, Ranking Member McEachin, and members of the Subcommittee, as well as Congressman Bishop, for the opportunity to testify today on this important issue. I am Diane Dillon. I serve on the Napa County Board of Supervisors.

Napa is located north of San Francisco. It is fundamentally an agricultural county known for its exceptional wineries. But you might not be aware that it is a relatively unpopulated county, with about 140,000 residents.

The subject of this hearing is extremely important to all California counties today.

Napa has been deeply concerned with how the Department implements the fee-to-trust process, and we have worked in a number of capacities to seek reform. Our views regarding the process are informed not only by how it has affected us, but many of the counties across California. I have been deeply involved with CSAC, the California State Association of Counties, and counties in other states, including New York, Oregon, Minnesota, and Washington.

The impacts are profound. In California, we have 25 percent of all the Nation's tribes: 109 federally recognized tribes, and there are 78 tribal groups seeking recognition. We have nearly 100 separate reservations or rancherias in the state.

The county supervisors and commissioners we have met with across the Nation all believe what is desperately needed is a fair Federal process with clear standards that will enable tribes and counties to work together as partners, and not as adversaries. What we have now is the opposite.

Congress enacted Section 5 of the Indian Reorganization Act, the fee-to-trust authority, 83 years ago. And 83 years ago, we were looking at different problems, or Congress was looking at different problems. It was in the midst of the Great Depression. Extreme poverty existed on most Indian reservations, and it was exacerbated by Federal policies transferring tribal lands to individual Indians to promote assimilation, known as the allotment process.

So, the purposes for which Section 5 was implemented and adopted bear no resemblance to the conditions we have today. And that disconnect is what is responsible for the tremendous conflict, controversy, and litigation we see all around the Nation.

The Department has expanded its use of Section 5 beyond what was intended. It was not intended to be indiscriminately and extensively used, especially as it has been in the last 20 years.

Section 5 was inherently limited by an annual appropriation limitation of $2 million a year. Many, if not most, Indians were living in extreme poverty and poor health and living conditions. There was simply no expectation that significant amounts of land would ever be acquired in trust, because the Indians that Congress was intending to assist in 1934 were economically unable to acquire land, and that is not the situation we have today with many trust acquisitions.

Today, we have tribes that have developed robust economies, and investors pay many millions to help other tribal groups get acknowledged and obtain trust land. The result has been a steadily increasing amount of conflict and litigation.

What we also didn't have in 1934 was a system of land use planning like we have today. In 1934, zoning was still in its infancy—it existed mostly among the cities.

And today, every city and county in California and most other states is required to adopt something called—in California we call it a general plan. It is a plan we spend millions of dollars for. It

is supposed to govern our land use for 10 to 20 years. And the Department seemingly gives that no weight at all when it takes the trust land acquisition process into consideration. It does not consider our general plan and our land use.

People invest in their homes and in their businesses based on our general plans, based on the land use plan that the local government has. And the fee-to-trust acquisition process does not look at that, because it was started under Section 5, and Section 5 did not envision that.

We would like to see meaningful notice and transparency and meaningful consultation in the process, consistency with local land-use laws, consideration of changes in use to land. We have had situations where land was taken into trust for a medical clinic and, 6 years later, a 29-lane outdoor commercial gun range is proposed on that very same land.

We need enforceable mitigation, and we need the opportunity for repeal of land acquisition decisions before they are final.

Thank you very much, again, for the opportunity to testify today.

[The prepared statement of Ms. Dillon follows:]

PREPARED STATEMENT OF THE HON. DIANE DILLON, SUPERVISOR, NAPA COUNTY, CALIFORNIA

Thank you Chairman Raúl Labrador, Ranking Member A. Donald McEachin, and members of the Subcommittee for the opportunity to testify today on this important issue. My name is Diane Dillon, and I serve on the Napa County Board of Supervisors. The Board of Supervisors is both the legislative and the executive authority in Napa County. In its executive role, the Board of Supervisors sets priorities for the County. We approve budgets; supervise the official conduct of County officers and employees; control all County property; and appropriate and spend money on public safety, human service, health, and other programs that meet the needs of County residents. In its legislative role, our Board's most important function is to make determinations consistent with our County's comprehensive land use plan.

The subject of this hearing is an extremely important one, not just to Napa County, but to counties across the state of California. In my role as County Supervisor, I have worked extensively with the California State Association of Counties (CSAC), which represents county governments before the California Legislature, administrative agencies, and the Federal Government. I am serving in my second year as Chair of the County and Tribal Government Relations Subcommittee of the National Association of Counties (NACO).

While I am here on behalf of Napa County only, my views regarding the problems the current fee-to-trust process creates and how that process should be implemented have been informed by Napa County's experiences and those of other counties in California and across the United States. By working with CSAC to develop legislation and policies intended to reduce the controversy and intergovernmental conflict the Federal fee-to-trust process has caused, I have heard from counties across the Nation about when the fee-to-trust process has worked and when it has not. What we all believe is that what is desperately needed is a fair Federal process with clear standards that will enable tribes and counties to work together as partners—and not as adversaries, which has unfortunately been increasingly the case.

Today's hearing, entitled "Examining Impacts of Federal Natural Resources Laws Gone Astray," is a sound way of considering the fee-to-trust process set forth in Section 5 of the Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §5108. Congress enacted the IRA over *83 years ago* to address a different problem than we have today. The Department of the Interior ("Department") has used Section 5 for purposes other than those Congress was addressing in 1934, and despite the vastly different legal, social, political, and economic conditions we have today. The crux of the problem fundamentally is that Section 5 is outdated. The Subcommittee should consider: (1) how the Department's use of Section 5 has expanded since 1934 and whether that use is consistent with Congress's primary purposes in enacting the IRA in 1934; and (2) whether Section 5, in its current form, can be reconciled with state and local legal frameworks governing land use development and the modern

economy. I would like to address both of those issues and propose some changes for consideration.

A. The Department's gradual expansion of its fee-to-trust authority has undermined intergovernmental relationships

There can be little doubt that the Department has gradually expanded its trust authority beyond what Congress envisioned in 1934. The most obvious evidence of that gradual expansion is the Supreme Court's 2009 decision in *Carcieri v. Salazar*.[1] That case involved a challenge by the state of Rhode Island to the Department's authority to acquire land in trust pursuant to Section 5 of the IRA for the Narragansett Indian Tribe, an eastern tribe that had been placed under formal guardianship by the Colony of Rhode Island and eventually the state. Under Section 5, the Department may acquire trust lands "for the purpose of providing land for Indians." Congress defined "Indian" in Section 19 as:

1. all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction;
2. all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation; and
3. all other persons of one-half or more Indian blood.

The Department argued that the word "now" in the first definition meant at the time the Department acquired land in trust. The state argued that "now" meant 1934, the year Congress enacted the IRA. The Court agreed with the latter and held that the authority of the Secretary of the Interior ("Secretary") to acquire land in trust is unambiguously limited "to those tribes that were under the Federal jurisdiction of the United States when the IRA was enacted in 1934."

It does not appear, however, that the Department has accorded the temporal restrictions the Court addressed in *Carcieri* with much weight. Tribes, states, and local governments, for their part, sought legislation to address the decision. Many tribes, for example, urged Congress to pass narrowly tailored legislation to reverse the Court's decision, with no other limitations. Napa County, along with CSAC and counties from other states, supported broader changes to the IRA to help address myriad conflicts the fee-to-trust process was generating.

But rather than meaningfully engage in that process, the Department instead worked for over a year on a new legal interpretation of the decades-old statute, with input from tribes seeking trust lands. Claiming that Section 19 is ambiguous, the Department announced its new theory in a 2010 decision to acquire land in trust for the Cowlitz Tribe—a tribe that was not acknowledged until 2002, nor under Federal jurisdiction in 1934 in any meaningful sense. In fact, the 2000 acknowledgment decision for the Cowlitz Tribe explicitly states the tribe was not a "reservation tribe under Federal jurisdiction or under direct Federal supervision." The limitations in Section 19 of the IRA must be meaningless if, relying on "ambiguity," the Department can conclude in 2000 that the tribe was not a "reservation tribe under Federal jurisdiction or under direct Federal supervision," but reach the opposite conclusion in 2010.

In another case, the Department acquired land for the Mashpee Tribe, which has a history virtually identical to the Narragansett Tribe in *Carcieri*. The Mashpee Tribe, like the Narragansett Tribe, was a tribe that was first under the guardianship and supervision of the colony of Massachusetts and later under the jurisdiction of the Commonwealth. The Department never acknowledged any responsibility for the Mashpee Tribe, at least prior to acknowledging it in 2007. Rather than rely on the first part of the definition of "Indian" used in the Narragansett and Cowlitz cases, the Department used the second part of the definition in Section 19 to contrive a way to take land into trust. A Federal district court has since rejected the Department's decision, but the land remains in trust and the Department is now evaluating whether the tribe can qualify for trust land under the first part of the definition, despite the Supreme Court's straightforward conclusion in *Carcieri*.[2] There have been a number of other challenges based on the *Carcieri* decision in California and other states.

Coming on the heels of the *Carcieri* decision, the Department's response in the Cowlitz situation was deeply troubling. The Supreme Court held in *Carcieri* that there are temporal limits on the Department's trust authority, and the Department

[1] 555 U.S. 379 (2009).

[2] *See Littlefield v. U.S. Department of Interior*, 199 F.Supp.3d 391, 2016 WL 4098749 (D. Mass. July 28, 2016).

responded by developing an interpretation of Section 19 that reads those limits out of existence.

Members of the *Carcieri* Court also expressed concerns regarding the trust power itself, and the Department responded by establishing a goal for itself of acquiring as much land in trust as possible.[3] In fact, between 2010 and 2016, the Department acquired almost 500,000 acres of land in trust.[4]

When there is such doubt and confusion regarding the scope of the Department's power, it is appropriate to take a step back to consider the history of the statute, whether the purposes for which the statute is being used today are consistent with congressional intent, and whether the manner in which such decisions are being made is appropriate, given changed conditions since 1934. Yet the Department took the opposite approach, with the result of further alienating communities that believe it is not merely indifferent to, but actually dismissive of, their concerns about the impacts of trust acquisition.

B. The trust authority in Section 5 was not designed for use in the modern economy

The problems to which Congress was responding in 1934 are not the same problems that tribes and communities face today. When Congress enacted the IRA, its primary purposes were to (1) stop the allotment of tribal land (the government program of individualizing and privatizing Indian lands) and (2) promote principles of tribal self-determination and self-governance by giving tribes greater authority to manage their lands and resources.[5] The goal of protecting tribal land is obvious from many of the provisions of the Act, which prohibit further allotment of tribal land, extend periods of restricted fee, restore surplus reservation lands to tribes, provide for the consolidation of lands within reservations, and authorize the acquisition of land in trust.

The fact that Congress wanted to protect tribal land, however, does not mean that Congress intended for the trust authority to be used as indiscriminately and extensively as it has been used. It is not even reasonable to assume that Congress was anticipating that the Department would extensively use the fee-to-trust power to acquire trust lands purchased by tribes on the open market. When Congress passed the IRA in 1934, it was in the midst of the Great Depression. The impetus behind the IRA was the Meriam Report, which detailed the extreme poverty, health, and living conditions of most Indians and included statistics showing that 71 percent of Indians reported a total income of less than $200 per year.[6] The IRA was only part of the effort to address the conditions on reservation; special programs under the Civilian Conservation Corps and the Works Progress Administration were also implemented.[7]

Congress protected tribal lands through a variety of mechanisms, but in authorizing the acquisition of additional lands, it appropriated funds for that purpose. It did so almost certainly because, absent Federal funds, there was no way for impoverished Indians to acquire lands. Thus, Section 5 generally authorizes the Secretary, "in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands," but it also limits the moneys available for that purpose. Section 5 states, "For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year." The Department's ability to acquire land in trust was understood to be inherently limited.

Circumstances—tribal and otherwise—have obviously changed since the Great Depression. Over the past 83 years, many tribes have developed robust economies from natural resource development and other economic projects. Tribal gaming, in particular, has changed the economic fortunes for many tribes, and created an opportunity to acquire more trust land in economically attractive locations, resulting in conflict and litigation. When Congress enacted Section 5, it did not envision the economic power of many tribes today and it did not do so against the backdrop of

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[3] The decision to acquire land in trust, however, is—as Chief Justice Roberts has noted— an "extraordinary assertion of power" where the Secretary "gets to take land and give it a whole different jurisdictional status apart from state law." Chief Justice Roberts asked, "Wouldn't you normally regard these types of definitions in a restrictive way to limit that power?"

[4] https://www.doi.gov/pressreleases/obama-administration-exceeds-ambitious-goal-restore-500000-acres-tribal-homelands.

[5] *See County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 255 (1992).

[6] https://www.indian.senate.gov/sites/default/files/upload/files/Frederick-Hoxie-testimony.pdf (discussing history of IRA).

[7] *Id*. at 8.

tribal gaming. This is no longer a system limited to a $2,000,000 annual appropriation; it is a system where investors will pay tens to hundreds of millions of dollars to help a tribal group get acknowledged and/or obtain trust land, if in the "right" location.[8] And yet we still have impoverished tribes; the implementation of a 1934 solution has created two financial classes of tribes.

Not only have economic circumstances changed since 1934, the regulatory framework in which states and local governments operate has changed. Most cities in the United States lacked zoning laws at the turn of the century. In 1916, New York City was the first city in the Nation to adopt a comprehensive zoning ordinance. By the 1920s, hundreds of local governments adopted local zoning. Most Indian reservations, however, were located significant distances from urban areas.

Between the 1920s and 1960s, California cities controlled land use primarily through zoning regulation. In 1972, however, the state of California mandated comprehensive long-term planning and required local controls to be consistent with the plan. Cities were required to develop a general plan that addressed land use, traffic, housing, open space, and public facilities. In addition, California passed the California Environmental Quality Act in 1970, which requires local agencies to follow certain procedures in developing general plans, as well as when considering specific projects. People buy homes, businesses make investments, and counties develop infrastructure based in reliance on those comprehensive land use plans. And to the extent that those plans change, the affected community can play a role in those decisions through democratic and legal avenues.

In 1968, Napa County established the Nation's first agricultural preserve. The legislation, which originally protected 26,000 acres of valley floor, controls minimum parcel sizes (currently 40 acres) and allows agriculture and homes as primary uses. "The crafters of the legislation had the foresight to recognize that we needed not to prevent development but monitor it to make sure we were protecting the natural landscape and utilizing the environment in a way that was beneficial to residents, farmers, and developers alike."[9] In 1990, as further protection against urban growth in a world-renowned agricultural area, Napa County residents by initiative voted to mandate voters' approval for certain land use decisions within agricultural areas of the County.[10] There was simply nothing comparable to these sorts of efforts in 1934 and no sense that Section 5 would or could be used to upend democratically enacted protections, such as Napa's agricultural preserve.

It is the ability (and willingness) of the United States to over-ride these local land use processes by exercising the fee-to-trust authority that generates more conflict and litigation than any other issue. Congress did not address local land use when it enacted Section 5 because local zoning was rudimentary in 1934; Congress could not have been envisioning a day when tribes could purchase lands in urban areas or agricultural preserves such as Napa's. Nor did it consider the possibility that the Department would use Section 5 to completely strip state and local governments of their authority over local land use, with little to no regard for state and local concerns.

Although the Department has implemented regulations requiring it to consider the views of affected states and local governments, trust applications are virtually never denied on the basis that states and local governments oppose them. While the amount of litigation related to trust decisions demonstrates that the Department has not implemented Section 5 with any serious regard for local impacts, there are also studies to confirm this view. In 2013, Kelsey J. Waples reviewed all 111 fee-to-trust decisions by the Pacific Region BIA Office between 2001 and 2011.[11] He found that BIA granted 100 percent of the proposed acquisition requests and in no case did any of the factors BIA is required to consider under its regulations weigh against approval of an application.

The litigation and conflict these decisions have generated have not led the Department to reconsider how it implements its fee-to-trust authority and whether changes are in order to prevent such conflicts from occurring. To the contrary, the Department has revised its regulations to make it harder for affected parties to challenge a decision or to have any remedy available if they succeed. The Department has also

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[8] In 2016, for example, it was reported that Genting Malaysia Bhd had already invested about $250 million in promissory notes issued by the Mashpee Wampanoag Tribal Gaming Authority for gaming development and the fee-to-trust process. https://news.worldcasinodirectory.com/genting-announces-first-investment-management-deal-with-mashpee-first-light-casino-in-massachuetts-25108.

[9] http://wordpress.napahistory.org/wordpress/napa-valley-agricultural-preserve-2/.

[10] The California Supreme Court upheld the ability of a voter initiative to override the local legislative land use process in *Devita vs. County of Napa* (1995) 9 Cal.4th 763.

[11] Kelsey J. Waples, Extreme Rubber Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934, 40 Pepperdine Law Review 250 (2013).

eliminated its policy of staying the transfer of title into trust upon a final decision, effectively stacking the deck against the affected community that might challenge a Federal decision. These are not changes that reflect a Federal agency concerned about objective decision making or minimizing conflicts. These are policies that appear to reflect an agency with contempt for communities adversely affected by its decisions. And it is time for change.

C. Congress should develop a new process for acquiring lands in trust

The process for acquiring land in trust has created significant controversy, serious conflicts between tribes and states, counties and local governments—including decades of litigation—and broad distrust of the fairness of the system. Congress should consider whether the Department should have a role in acquiring land in trust at all or whether trust decisions should be handled through legislation. It should also consider the purposes for which lands will be used, the impacts of the proposed uses (and any subsequent change of use) to surrounding communities, and different standards that might be applied to such decisions. These broader questions are important and ought to be fully considered before moving forward.

If Congress determines that the Department should continue to play a role in the trust acquisition process, it should impose a number of requirements. Those include:

1. Notice and Transparency

The Department should be required to publish notice of an application for land in trust on its website, as well as a copy of all application materials, maps, legal descriptions, and related documents. Under the current regulations, it is very difficult for affected parties (local and state governments, and the public) to determine the nature of the tribal proposal, evaluate the impacts, and provide meaningful comments.

Notice should be provided to and comment sought from not just the jurisdictional governments, but those governments from the communities that are likely to be impacted by the proposed activities. The impacts of trust decisions, particularly for gaming purposes, do not end at city or county borders. They can be felt across entire regions. The public services provided by neighboring states, counties, and cities may be impacted and those impacts must be considered. Neighboring tribes, including those with ancestral ties to the region, can be affected; 25 miles is usually an inadequate measure for outreach.

The Department must do better and more to ascertain the impacts of its decision making.

2. Consistency with the General Plan, Local Land Use, and other Applicable Laws

The Department should not be permitted to acquire land in trust for a tribe if the proposed use is inconsistent with local land use. If local government is supportive of an inconsistent project, amendments to the local land use law should be required to ensure that the state and local processes enacted to give citizens a voice in the process are not silenced. Tribes are able to seek land on the open market, which includes the ability to purchase lands in areas where a proposed use will be compatible with existing law. They are also able to seek amendments that will enable a project to be consistent with local land use law. The Federal law should be structured in a manner that minimizes community conflict, and the Department should not be permitted to upend state and local long-term planning through the trust process.

This change alone will go far in reducing the community conflict we see across the Nation.

3. Streamlined Process

The Department should make intergovernmental agreements a priority. One way to do that is to develop an expedited fee-to-trust process for projects where the applicant tribe has negotiated an agreement with the jurisdictional governments addressing a variety of issues, including environmental, socio-economic, and other impacts. Again, the goal is to encourage tribes to partner with the affected community, to avoid an adversarial situation.

A process that encourages cooperation and communication provides a basis to expedite decisions and reduce costs and frustration for all involved.

4. Meaningful Consultation

Under the current regulations, the Department limits the parties from which it seeks information and does not conduct meaningful outreach. The Department should be statutorily required to consult with states, counties, and local governments and to consider comments provided by private parties. Under the current regulations, the Department does not invite comment by third parties even though

they may experience major negative impacts, although it will accept and review such comments. Although the Department accepts comments from any party, it does not necessarily give those comments any weight; the law instead should mandate meaningful opportunity for consultation with local governments to address the impacts of the project.

5. Limits on Acquisition

Congress should carefully consider whether there should be limits on the amount of land that can be acquired in trust for a particular tribe by defining "need" for land. The current approach does not provide guidance as to what constitutes legitimate tribal need for a trust land acquisition. To the contrary, the Department generally considers "need" for land to be satisfied by the fact that a tribe has purchased it. There are no standards other than the stipulation that the land is necessary to facilitate tribal self-determination, economic development or Indian housing. There are numerous examples of the Department taking land into trust for economically and governmentally self-sufficient tribes with large land bases.

It is incongruous, at best, for the Department to use a Great Depression statute intended to help alleviate the conditions of Indians living under Federal jurisdiction to benefit wealthy, economically sophisticated tribes. The Shakopee Mdewakanton Tribe is reported to pay its members over $1 million per year in gaming per capita payments, yet the Department still acquires land in trust on their behalf.[12] The Seminole Tribe is reported to worth billions.[13] Other cases seem to defy common sense. In 2002, the St. Augustine Tribe opened a casino in Coachella, California, despite the tribe consisting of only one adult member.[14] The last member of the tribe died in 1986, but that member's granddaughter, who was raised by another grandmother, moved back to the reservation with her three children after learning of her heritage.

Congress should also consider whether to apply different standards for "need" depending on whether an application is for off-reservation land. Under the Department's current interpretation of its authority, every time the Department acquires land in trust, state and local laws are generally eliminated and tribal law applies. As the amount of trust land increases, the jurisdictional and legal complexity becomes untenable. In particular, people may not be aware of which laws apply where; tribes are not required to publish their laws or judicial decisions. This problem is exacerbated when non-contiguous lands are acquired in trust.

6. Changes in Use of Land

Congress should consider how and when tribes may change the purposes for which trust lands will be used. There have been a number of cases where tribes have changed the proposed use for trust land after the land was taken into trust. As an example, a California tribe sought and obtained approval for a medical facility on newly acquired trust land near two elementary schools, a church, residences, and a major state highway. The tribe later built the medical facility on another parcel of trust land that had been placed in trust years before. The tribe then decided to build a 29-lane outdoor commercial gun range on the land taken into trust by the Department for the medical facility.[15] The public outcry was dramatic. Although the tribe ultimately reduced the scope of its project, it can increase it at any time.

Indeed, in 1934, Congress did not understand tribal sovereign immunity in the manner it is understood today. The notion that tribes enjoyed sovereign immunity was inchoate in 1934. Since then, however, the Supreme Court has held that tribes enjoyed sovereign immunity for off-reservation commercial conduct until 1998.[16]

Given these problems, it is important that Congress address this issue in legislation.

Approved applications should require specific representations of intended uses, and changes to those uses should not be permitted without further reviews, including environmental impacts, and application of relevant procedures and limitations. Such further review should have the same notice, comment, and consultation as the initial application. The law also should be changed to explicitly authorize restric-

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[12] https://www.casino.org/news/lavish-living-for-the-richest-tribe-owning-indian-casinos-in-america.

[13] http://www.publicgaming.com/index.php/racinocasino-/21380-how-the-seminole-tribe-of-florida-went-from-being-a-band-of-outcasts-living-in-the-everglades-to-the-multibillionaire-owners-of-an-iconic-global-brand.

[14] https://indiancountrymedianetwork.com/news/eight-member-augustine-tribe-opens-casino/.

[15] *See* http://www.gunrangeinfo.com/archived-site/; http://www.startribune.com/prior-lake-city-council-opposes-shakopee-tribe-s-land-plans/363092071/.

[16] *See Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751 (1998).

tions and conditions to be placed on land going into trust that furthers the interests of both affected tribes and other affected governments.

7. Enforceable Mitigation

In many environmental impact statements and records of decision, the Department has concluded that a trust application will not adversely impact the community because the impacts can be mitigated. It does not, however, require there to actually be enforceable mitigation. Other agencies condition permits on compliance with mitigation requirements. The Department does not.

To the extent that a decision relies on a finding that impacts can be mitigated, the Department should be required to identify an enforceable intergovernmental agreement that provides the mitigation cited or require, as a condition of acquisition, that the applicant waive its immunity to allow the affected community to enforce the mitigation.

8. Appeals of Land Acquisition Decisions

In November 2013, the Department finalized a rule eliminating the Department's own "self-stay" policy, which had required the Secretary to publish notice of a final trust decision 30 days before actually transferring title.[17] The waiting period was intended to ensure that interested parties had the opportunity to seek judicial review before the Secretary acquired title to the land. The new policy now directs the Secretary or other BIA official to "immediately acquire the land in trust" after a decision becomes final. The Department justified the new rule by stating that the Department could remove land from trust, if a decision was deemed arbitrary and capricious.

The rule, however, has been abused. The Department has cut off state rights by transferring land into trust and has refused reasonable requests that it either stay the effect of a final decision or provide even a day of notice to allow a potentially affected party to seek an emergency injunction. The Department has transferred title to lands before decisions were final, ignoring requests that the illegal transfer be undone, and it has resisted removing land from trust after a Federal court has held a trust decision to be arbitrary and capricious. The Department has not lived up to its commitment to remove land from trust when it has violated the law and it should not be permitted to take title prior to judicial review.

The Department has also encouraged tribes to begin development immediately upon acceptance of land into trust. If the beneficiary of the trust decision does not intervene in a judicial proceeding, the aggrieved party cannot seek emergency relief because of tribal sovereign immunity. Thus, development can be completed before the aggrieved party has been able to have their claims heard.

CONCLUSION

I appreciate the opportunity to testify on the Department's fee-to-trust authority. The legal, political, and economic landscape bears little resemblance to what existed in 1934, and it is inappropriate, at least, for the Department to implement Section 5 as if nothing has changed over the last 83 years. It is long past time for Congress to tackle this controversial issue.

QUESTIONS SUBMITTED FOR THE RECORD BY REP. JOHNSON TO DIANE DILLON, SUPERVISOR, NAPA COUNTY, CALIFORNIA

Question 1. In your written testimony you mentioned that through regulations, the Department of the Interior has actually made it harder for affected parties to challenge a fee-to-trust decision, could you expand upon that?

Answer. Through the regulatory process, the Department of the Interior (Department) has made it harder for affected parties to challenge a fee-to-trust decision as follows:

> After the *Patchak* decision in 2012, the Department abandoned its self-stay policy. Immediately after the record of decision is made in a fee-to-trust decision, the land is immediately transferred to the tribe, which could start construction activities right away. This change of regulatory process causes more hardship for interested parties.

[17] 25 CFR Part 151, BIA–2013–0005, RIN 1076–AF15.

Question 2. I have heard that local governments have actually had to resort to filing Freedom of Information Act requests just to find out if a land-to-trust application has been filed with the Department of the Interior for lands in their jurisdiction. Have you also heard of local governments being forced to pursue this course of action, and if so, what Federal policy is responsible for this?

Answer. Local governments have had to resort to filing Freedom of Information Act requests follows:

The initial notice that a local government will receive is a letter announcing the intent of a tribe to take land into trust and a description of the property. The affected governments are then provided the opportunity to send back information on taxes and law enforcement jurisdiction. However, local governments (and even the state of California) must send a request to the Bureau of Indian Affairs (BIA) for a copy of the Fee to Trust Application. While the BIA provides copies of the Scoping Hearing comments, the Draft EIS, and the FEIS to interested parties, it does not provide the fee to trust application. The Application provides important additional information.

Question 3. At the hearing's conclusion, Ranking Member McEachin stated the following in regards to the Supreme Court's decision in *Carcieri v. Salazar*, ". . . I would ask for unanimous consent to introduce into the record the decision known as *Carcieri*, which allowed the Interior Department to recognize tribes that were not officially recognized in 1934." Is Ranking Member McEachin's representation of the Court's holding correct, and if not, why not?

Answer. I did not understand Ranking Member McEachin's request, so decline to respond to this question.

Mr. LABRADOR. Thank you very much.

The Chair now recognizes Representative Cook for his testimony.

STATEMENT OF THE HON. DAVID COOK, OWNER, DC CATTLE COMPANY, LLC, GLOBE, ARIZONA

Mr. COOK. Thank you, Chairman Labrador, Ranking Member McEachin and also Representative Bishop and other members of the Committee for being able to testify before you today. My name is David Cook; I am a rancher from Globe, Arizona, and serve the people of Legislative District Number 8 at the Arizona House of Representatives. My wife, Diana, and I own and operate DC Cattle Company.

Gila County, where we live, is 97 percent public and Federal land. Like most ranches in the West, we rely on our Federal grazing allotments.

Laws like the Federal Land Policy and Management Act, FLPMA, have a large impact on our communities and businesses. FLPMA governs nearly all of our interactions with the Federal land agencies, and often serves to limit our voice as the primary impacted stakeholder. Failure of responsible management often leads to dire consequences of our lands and rural economies. I do not believe it was the intent of Congress to disenfranchise communities like mine when laws like FLPMA and the Wilderness Act were originally enacted, but that is certainly where we have ended up today.

Under FLPMA, the Secretary has the ability to issue 10-year grazing permits. Personally, our permit has been in review by the Tonto National Forest for over 15 years, leaving my business and family in a perpetual state of uncertainty. This burden has prevented us from making necessary improvements to the land—benefits that could not be realized by my family, as well as my community.

If not for the relief provided by portions of the Grazing Improvement Act passed by this body in 2014, our ranch and many others would be pushed to the breaking point of uncertainty.

The original intent of FLPMA was to provide direction for the management of our public lands which would emphasize and protect the mandate for multiple use and sustained yield. Unfortunately, the delegation of authority from Congress to the land management agencies and their unchecked authority over land use planning has resulted in abuse by administrators and by radical environmental groups through relentless, offensive litigation.

One example was the so-called Salt River Six, which was comprised of six Forest Service allotments along the Salt River that needed permit renewals. The Forest Service consulted with several other Federal agencies during a 4-year process, but would not consult with Gila County about potential impacts. After more than 4 years, the Forest Service scrapped the project. The situation remains unresolved, and the six separate ranching operations remain in limbo. The economic impacts of this uncertainty are devastating to rural economies, while millions of tax dollars were wasted.

When wilderness areas are designated, it limits the use of all natural resources within that area, which further reduces the economic potential. In Gila County, our local ranchers have been trying to prevent the closure of a 10-mile segment of Forest Road 203. This roadway provides the only motorized access to several privately owned and occupied homesteads.

While the Forest Service acknowledges the severe impacts that proposed closure would create, they say they are unable to stop the closure from taking place because the road is within the wilderness area. They say they must comply with the Wilderness Act and close the road since they just discovered it after 50 years.

Wilderness designations have severely limited the ability to properly maintain and enhance the ranching improvements. In the Superstition Wilderness Area, the Rafter Cross Ranch was in the process of constructing a fence just 20 feet off the road next to the wilderness area. They planned to use an air compressor and a post driver, but they were denied to use that because it was mechanical, so the Forest Service made it much more expensive and harder for them to do their work.

In conclusion, overly burdensome regulations continue to be detrimental to the management and health of our public lands. It is imperative that Congress act to remove the layers of red tape that continue to bind ranchers and rural communities.

Thank you for this opportunity, and I look forward to working with you to find a solution to this problem. I am happy to answer any questions at any time.

[The prepared statement of Mr. Cook follows:]

PREPARED STATEMENT OF THE HON. DAVID COOK, ON BEHALF OF PUBLIC LANDS COUNCIL, NATIONAL CATTLEMEN'S BEEF ASSOCIATION, ARIZONA CATTLE GROWERS ASSOCIATION

Chairman Labrador, Ranking Member McEachin, members of the Committee; thank you for the invitation to testify before your Committee today.

My name is David Cook I am a rancher from Globe, Arizona and serve the people of Legislative District 8 in the Arizona House of Representatives. My wife Diana

and I own and operate DC Cattle Company along with our two children, and we are partners in several other ranches in Gila County. Gila County covers approximately 4,800 square miles and contains less than 5 percent private deeded land. Over 55 percent is county is managed by the Tonto National Forest, with the remainder made up of two Indian reservations at 37 percent and the Bureau of Land Management at 7.5 percent. All of the ranches we operate must utilize a Federal grazing permit with the Tonto National forest to remain economically viable.

I provide these facts to give you an idea of why Federal laws like the Federal Land Policy and Management Act (FLPMA) and the Wilderness Act have such a large impact on our community. The first, FLPMA, governs nearly all of our interactions with the Federal land use planning process and often serves to limit our voice as a primary impacted stakeholder. Further, special land designations on lands that are already federally owned and subject to management decisions by the Federal Government, like Wilderness designations, only create more burdens for Federal agencies and typically serve to erode true multiple use in favor of a "hands off" approach. This failure of responsible management often leads to dire consequences for our region—economically, ecologically, and culturally.

Gila County is rural Arizona, and more specifically, is representative of the rural West, where local government and economic drivers like ranching often have their voices and input diminished in Federal planning processes. I do not believe it was the intent of Congress to disenfranchise communities like mine when laws like FLPMA and the Wilderness Act were originally enacted, but that is certainly where we have ended up. The burden of compliance with these processes—not to mention the struggle to have our voice as a stakeholder heard and respected—has become the dominate consumer of time and resources for anyone or any entity interacting with federally managed lands. These Federal lands stifle the ability to have taxable income which hurts our economy and our schools. So while I am going to give specifics about my ranching operations I must stress that the decisions made here in DC are hindering my community from moving forward and force us to plead with the Federal Government for money for schools, infrastructure, and other basic needs we could provide ourselves if our local lands were productive and vibrant.

Under FLPMA, the Secretary has the ability to issue 10-year grazing permits if agency personnel finds it satisfactory and appropriate for said lands. Livestock grazing has been around for centuries and over that time ranching families have invested a great deal of time and financial resources to become more efficient and productive while enhancing the landscapes they live and work on. At the same time the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) have failed to recognize these achievements as we have seen a steady decline in animal units on public lands since the inception of polices like the Federal Lands Policy and Management Act. Personally, our permit has been in review by the Tonto National Forest and awaiting a standard renewal for over 15 years. This is evidence of a broken system that leaves my business and family in a perpetual state of uncertainty. Additionally, this burden has prevented me from making necessary improvements and investments in these lands to become more efficient and have the opportunity to create a more lucrative business—benefits that could be realized by my family, as well as the community and our Federal Government landlords.

As already mentioned, for 15 years I have been held hostage by the Federal process to renew a permit for over 1,129 head of cattle, and I am only one of the thousands of permittees across the West that face similar issues. If not for the relief provided by portions of the Grazing Improvement Act passed as part of the FY 2015 NDAA, which provides for continuous operation of our permit while we wait in limbo hoping for an eventual renewal, our ranch and many others would be pushed to the breaking point by uncertainty. I can assure you that the hold up on our renewal is not due to lack of time or resources. Other permits have moved through the process and while USFS still has made time to monitor where I have placed my salt blocks for the cattle and issue notices of violation for feeding hay inside a corral, they cannot find the time to complete the necessary work to renew my permit.

The original intent of this legislation was to provide direction for the management of our public lands which would emphasize and protect the mandate for multiple use and sustained yield. Unfortunately and unintentionally, the delegation of authority from Congress to the land management agencies and the unchecked authority over land use planning that has resulted has been abused by administrators and capitalized on by radical environmental groups through relentless offensive litigation. This has led to further restrictions on public lands, specifically for permitted activities, thereby eroding the intent of multiple use. Furthermore, the intent to cooperate and consult with local governments has not been properly used and has

instead served to de-prioritize crucial local government input and consideration in the planning process.

One example was the so-called "Salt River Six," which was comprised of six forest service allotments along the Salt River that needed permit renewals. USFS consulted with several other Federal agencies during a 4-year process but would not consult with Gila County about potential impacts to their general plan. After more than 4 years of meetings, time, and resources USFS scrapped the project and started asking permittees to disregard any of the previous years. At present, the situation remains unresolved and six separate ranching operations remain in limbo about the future of their business and no certainty that they will continue to operate. The economic impacts of this uncertainty on a rural economy are devastating.

When wilderness areas are designated, it limits the use of all natural resources within that area, which further reduces the economic potential of rural areas and counties. Industries such as cattle grazing see a significant reduction in their ability to maintain the infrastructure in which they need to operate their ranching businesses.

In Gila County, our local ranchers have been trying to work with the U.S. Forest Service (USFS) to prevent the closure of a 10-mile segment of Forest Road 203. This roadway provides the only motorized access to several privately owned and occupied homesteads. It is also a public roadway used by law enforcement, hunters, hikers, as well as livestock grazing permittees and families who reside in the surrounding Young and Globe communities. The closure of any stretch of this road would be devastating. While the Forest Service acknowledges the severe impacts that the proposed closure would create for this area, they are unable to stop the closure from taking place. Unfortunately, it has been discovered that the previously designated Sierra Ancha Wilderness Area encompasses the 10-mile stretch of Forest Road 203 and they are legally required to decommission the road to comply with the Wilderness Act.

Wilderness designations have severely limited the ability to properly maintain and enhance any ranch improvements despite the original intentions of the legislation to not interfere with these activities. In the Superstition wilderness area, the Rafter Cross Ranch was in the process of constructing a pasture division fence on the boundary of the wilderness adjacent to a USFS road. The plan was to use an air driven T-post driver and have the air compressor unit on the road 20 feet from the wilderness. Because this was a mechanical tool, the USFS would not allow its use. This decision cost the ranch money in labor and additional time to construct the fence. These types of decisions continue to make it more difficult to operate in or near wilderness designations. There are several allotments in the Tonto National Forest that are vacant because the hardships, additional cost, and regulation of a wilderness area cause the land to be unusable by a productive use.

In conclusion, overly burdensome regulations continue to be detrimental to the management and health of our public lands. It is imperative that Congress act to remove the layers of red tape that continue to bind ranchers and the rural communities they live in. The planning and management of our Federal lands for multiple use and sustained yield should be a collaborative one—with local communities and stakeholders like Federal grazing permittees playing a key role, rather than simply being subject to the whims of an overwhelmed bureaucracy. Additionally, as an elected Representative to the Arizona State Legislature, I can attest that these burdensome laws extend far beyond the local businesses and communities I'm representing here today. In fact they impact everything we do in a state like Arizona, from industry, to tourism, to simply bringing necessary services like electricity to our rural citizens.

Thank you for this opportunity, and I look forward to working with you to find a solution to this problem.

QUESTIONS SUBMITTED FOR THE RECORD BY REP. LABRADOR TO DAVID COOK, OWNER, DC CATTLE COMPANY, LLC

Question 1a. In your testimony you highlighted that a 10-mile segment of Forest Road 203 in Gila County was slated to be closed in order to comply with the Wilderness Act. Could you elaborate more on this?

Answer. The Tonto National Forest (TNF), that comprises approximately 55 percent of Gila County, is in the process of Travel Management Planning—an activity implementing a land management plan and subject to the objection process described in 36 CFR 218 Subparts A and B. The TNF website states, "The key to making these decisions, and ensuring they are sustainable over the long term, will

be working together at the local level." However, I find that this is not the case for FS road 203 or our own permit. It is my understanding that there are at least three current roads that are going to be closed because of the travel management plan in relationship to the Wilderness Act: FS 203 road mentioned here, and I have just learned about the road (FS 487) going to Aztec peak, which hosts a FS fire lookout tower and loops within a wilderness area, would be closed along with an Arizona Public Service power transmission line maintenance road that is used for the transmission line for the same reason. I am currently trying to get that road number from the agency.

Here is what we requested be added to our FS permit concerning travel management in 2015 and we have not received any written response, to date:

Travel Management Guidelines and/or restrictions

Under USDA regulation (36 CFR Part 212—Travel Management), the Tonto National Forest will be developing and implementing the Forest's Travel Management Plan (TMP) within the near future. The TMP and subsequent implementation decision will prohibit the general public from use of motor vehicles for cross-country travel, as well as on roads closed to motor vehicle use. Under the terms and conditions of your term grazing permit you are authorized to conduct livestock grazing activities on National Forest lands within the TNF as authorized within your term grazing permit. Motor vehicle use that is specifically needed, authorized, and/or directly related to the terms and conditions of your grazing permit are exempted from the prohibitions applied to the general public. This includes motor vehicle use in order to conduct the following types of activities associated with your term grazing permit:

- Normal vehicular use needed to maintain all range improvements assigned under your term permit as your responsibility for maintenance.
- Normal vehicular use as needed to properly check on and care for your livestock authorized under your term grazing permit.
- Normal vehicular use as needed to check on forage, water, and general range conditions within your permitted grazing allotment.
- Any other vehicular use needed to properly care for your livestock and/or to redeem your responsibilities under the term and conditions of your term grazing permit.

All motor vehicular use in conjunction with carrying out permitted grazing activities shall be conducted in a responsible manner so as to not cause and/or accelerate resource damage and/or cause degradation to the soil or vegetation related resources. Special caution must be taken so that vehicular use occurs only when soils are sufficiently dry and/or frozen so as to avoid resource degradation or any long-lasting negative impacts.

—Quoted from Chapter 10 Regional Office

We think this is the type of action that the agency should take to help producers who are engaged in business on FS lands, not to ask them each time needed to come to a Federal office during Federal hours and days and plead and beg for permission each time something that is already permitted needs to be done.

Question 1b. How would the private landowners who rely upon the road be impacted? What would happen if an emergency would occur and the road was inaccessible? Has the Forest Service taken these concerns into account?

Answer. One of the ranching families would only have one access in or out of their property when conditions permit. This year, they were stuck for 2 months without any ingress or egress from their property because FS 203 is now blocked and the water made the only other way impossible to cross. The county government used to blade FS road 203 once a year but it is my understanding that the FS stopped funding the county for such work and was going to do it themselves. It is my understanding that they have never maintained the road since. The closure of the road makes it a 12-hour horseback ride to that end of the ranch and the corrals, making improvements and repair impossible along with the transportation of cattle. If there was an emergency of the medical nature, life would easily be lost because of the lack of availability to medical services.

Question 2. The poverty and unemployment rates in Gila County are significantly higher than the national average, with 21.3 percent of residents living in poverty in 2015. Given that 96 percent of the land in Gila County is federally owned, to what extent are burdensome Federal regulations and land-use restrictions to blame for these economic statistics?

Answer. I believe the burdensome Federal regulations are largely to blame. For instance, our rural area and its economic wealth is derived from natural resource jobs such as timber, grazing and minerals. Timber has all been eliminated, and grazing has greatly been reduced and/or eliminated in several areas because Federal regulations such as these we have discussed have made it financially impossible to operate under such restrictive conditions. That leaves mineral leases which are constantly under attack from further Federal regulations such as air quality standards or Federal lands are needed to expand the existing mineral extractions. The cost of millions of dollars to get through the required regulations such as Environmental Impact Statements, land acquisitions, etc. drive these companies to other countries where these regulations and requirements do not exist.

This equates to less financial opportunity for jobs and continued education for rural citizens of my county and state. Many of our small towns are land-locked by Federal lands and have no chance of expansion for business or housing for our communities to grow, thus keeping our rural areas in a state of depression as the Federal Government has a strangle hold on them.

SUPPLEMENTAL TESTIMONY SUBMITTED FOR THE RECORD

DC CATTLE COMPANY, L.L.C.
GLOBE, ARIZONA

June 5, 2017

Hon. RAÚL LABRADOR, *Chairman*,
House Subcommittee on Oversight and Investigations,
Committee on Natural Resources,
Washington, DC 20513.

Re: Additional information for the record

Dear Chairman Labrador:

In my testimony, with limited time and with respect for you and the committee, I provided detail that was fitting under the circumstances that was and is true and correct. The FS (United States Forest Service) took action and there was a redrawn line and pastures were "exchanged," lines redrawn and improvements installed making the allotment better suited for management. Also, at a later date, the two allotments were combined by a single owner which created greater flexibility and opportunity (Coolidge-Parker Allotments).

One-third of the ranch that we have not been able to use is an additional permit that we partially own and have been unable to use in its entirety since it was purchased. For years, we were told by the agency (FS) that there was a court agreement that did not allow us to. We continued to request to graze those pastures and were denied in writing by the FS on each occasion (one-third of the grazing allotment). Years later the FS gave us the documents surrounding the agreement. The document did not prohibit grazing but that if grazing took place then the FS would monitor. Soon thereafter, the FS modified the permit taking those pastures out of our permit telling us that they would be addressed in NEPA. Which has been going on for 9 years now and we calculated that over $1,000,000.00 (one million) has been lost in gross revenue at this time and that number continues to grow. This is just another example how limited but productive lands in rural places like Gila County are being snatched from producing jobs and income by agencies like the Forest Service. Their first fallback is to take the land out of production until, at some unknown date and time, it may be returned instead of keeping it in production until they find time to complete their needed paperwork.

I would like to point out that when using a slang term "midnight agreement" to reference a court proceeding and not an official docket name or number, that it was easily identified to which one I was speaking. Once again, my understanding is that overnight, without the meeting of all the parties listed in the claim, the FS met and made an agreement by themselves that proved to be harmful to permittees for the betterment of not the land or definitely any species or people living in these areas, but for themselves.

One of the items that needs to be corrected and has gone astray is the people's ability to defend themselves against government actions and reports. The FS has now changed their internal policy that now does not allow permittees the ability to appeal their Annual Operating Instructions issued by the FS. America is based off

a system that allows "due process" and through the rulemaking process the FS took that from permittees. So here, where salt blocks are again debated, I will explain as to show the simplicity, but yet the ability, of one rogue staff member within the FS and what they are able to accomplish with the Federal FS shield protecting them.

A range staff from Wyoming came to Arizona with no real-time experience in the Southwest grazing system of year round grazing and found a salt block that a deer hunter had placed by a spring and their hunting stand. Since we, the ranchers, were the only "permitted" activity, it was the FS's responsibility to write me a letter concerning the violation and how it was our responsibility because we had the grazing permit. Another well-documented example is that my wife and children went to a corral and fed two flakes of hay to two cows and a baby calf we were holding in a corral to be moved. For the next 45 minutes, they picked up trash left by weekenders and recreationists while two forest service employees sat in a pick up 100 yards away watching them. Not once did they approach them to help or ask what was going on. We later got a letter for our file for "feeding on the forest." I would like to point out that, if we were recreationists with horses pleasure riding and were feeding our horses, that would have been ok. One last example: I received a letter for our file that we had painted a cabin that is one of 13 on FS lands that we use with our permit on the mountain because we failed to paint it an approved FS government color (we had done maintenance on it over the summer). After receiving the letter, I took pictures and paint swatches into the office and met with FS officials. It was then I learned after showing pictures of the color of the other cabins, the color we had used to be similar, it was then that I learned that in fact there were "approved" colors to be in compliance with. However, the letter remains in our file and, like normal, no apology or rule appeal avenue to have the letter removed. All examples of how the FS operates outside of what I believe are Congress' intent.

The FS has not coordinating with Gila County government. On 8/24/2011 during a FS meeting, our county supervisor stated (because the agency would not allow us to review the document) "the coordination process it allows us that opportunity to review that material" and the forest official replied, "We don't have coordination status with counties." Since that meeting, the FS has scrapped years' worth of work and just started over. Meanwhile, we are in limbo and have wasted hundreds of man hours going to meetings and reviewing documents that now has been for naught.

Lastly I have spent hundreds of thousands of dollars and cost shared with the Federal Government to improve the land and enhance conservations. Once the projects were completed and inspected, the FS, no matter that they had paid nothing, claim to own the property and improvements once completed. The Bureau of Land Management rule making says that the agency would own 50 percent and the permittee would own 50 percent. I wish that was the case on FS allotments as well.

Once again, thank you for providing me with the opportunity to appear as a witness and I hope this supplement to my testimony proves valuable to the Subcommittee.

Best Regards,

DAVID COOK

Mr. LABRADOR. Thank you.

The Chair now recognizes Ms. Pinto for her testimony.

STATEMENT OF KENDRA PINTO, COUNSELOR CHAPTER HOUSE MEMBER, NAGEEZI, NEW MEXICO

Ms. PINTO. [Speaking native language.] Thank you, Mr. Chairman and Ranking Member, for the opportunity to testify before you today. My name is Kendra Pinto, and I am from Twin Pines, located in the Eastern Agency of the Navajo Nation in northern New Mexico. I live near Chaco Canyon in the San Juan Basin, often called the "American Cradle of Civilization," where the Anasazi flourished between 900 A.D. and 1300 A.D.

The laws of the Navajo Nation and the United States of America should protect people, our lands, and our health. I am here today to tell you how important Federal regulations are to my community.

I was born in Shiprock, New Mexico, and raised in Twin Pines. I have always known New Mexico as my home, so it is appropriate that I share with you how I feel about the land. Growing up, there was no such thing as boundaries. We were free to roam the valleys and mountains, so long as we did not cause harm. The scenery is breathtaking and vast. On particular peaks in the area, I can spot Colorado, Utah, and Arizona, all in one quick sweep.

My family did not just come upon Chaco, nor are we new to the land. My grandma was born less than half-a-mile away from where she currently resides. She is 92 years old.

The oil and gas extraction in my community has caused a host of problems, from air pollution to truck traffic damaging our roads. The light pollution is increasing near and around Chaco Cultural National Historic Park with each well site that is created.

In July of 2016, there was a massive explosion in a nearby community. The WPX well site fire in Nageezi, New Mexico, forced the evacuation of 55 residents. Some have yet to return. Thirty-six storage units holding oil and fracking fluid caught fire and exploded. The closest home sits less than 350 feet away. I can still hear those explosions, each sounding like a pop as the fire grew and became visible over the mountains. A young boy near the explosion site continues to be traumatized by the experience today.

As is clear from the air testing we have done, and the latest scientific data clearly shows, oil and gas air pollution impacts people's health. Results from the air monitoring near Lybrook Elementary School revealed something rather alarming: elevated hydrogen sulfide levels at 7.6 micrograms per cubic meter. Hydrogen sulfide is commonly emitted by natural gas wells. Long-term exposure is associated with incidents of respiratory infections, irritation of the eyes and nose, coughing, breathlessness, nausea, headache, and mental symptoms, including depression.

Federal standards like the BLM methane waste rule can lessen these harms and help protect our air and health. By capturing methane, oil and gas companies can also capture other air pollutants, reducing the amount of toxic volatile organic compounds that currently vent, flare, or leak into our air.

This rule has a side benefit of preserving the resource operator's wish to sell to market, while protecting royalty revenues owed to taxpayers. Without a rule to curb methane emissions on public lands, we allow the industry to burn our money and our health away.

I hope the explosion that devastated my community and the air pollution that is currently harming us illustrate why we must protect our sacred lands, water, and air resources. American and Navajo law must reinforce this support, not undermine it.

Accordingly, Congress and the BLM should strengthen Federal protections like the BLM's fracking and methane rules. There is nothing wrong with demanding clean air and clean water. Everyone here needs those two things.

Thank you for your time.

[The prepared statement of Ms. Pinto follows:]

PREPARED STATEMENT OF KENDRA PINTO, COUNSELOR CHAPTER HOUSE MEMBER, NAVAJO NATION

Mr. Chairman and Ranking Member, thank you for the opportunity to testify before you.

My name is Kendra Pinto, and I'm from Counselor Chapter, Navajo Nation, in northern New Mexico. I live near Chaco Canyon, in the San Juan Basin, often called the American Cradle of Civilization, where the Anasazi flourished between 900 A.D. and 1300 A.D.

The hub of the Chacoan society is a series of well-designed villages housing some 6,000 people who navigated the countryside using perfectly straight roadways etched into the landscape. The descendants of the Chaco culture are some of the modern Southwest tribal nations. The Chaco ruins are sacred to the Navajo, Hopi and Pueblo peoples.

Today, the Greater Chaco Canyon area spans over 30,000 square miles and remains a sacred source of our cultural heritage. The laws of the Navajo Nation and the United States of America should offer protections for my people and our lands, not take them away.

FEDERAL PROTECTIONS FOR GREATER CHACO

President Theodore Roosevelt first designated 20,629 acres of Chaco Canyon as a National Monument in 1907. Chaco's boundaries were later expanded in the 1920s.

During the 1950s and 1960s, energy and mineral development in the San Juan Basin lead to additional archeological discoveries. In response, Congress in 1980 added an additional 33 sites totaling approximately 8,800 acres.

These "Chaco Culture Archeological Protection Sites" are managed primarily by the Navajo Nation, Bureau of Land Management (BLM), and the Bureau of Indian Affairs (BIA). Today, the National Park Service (NPS) manages the core area of Chacoan ruins—known as Chaco Culture National Historic Park (Chaco NHP).

Chaco NHP is also a UNESCO World Heritage Site.

HOW OIL AND GAS HAS IMPACTED MY COMMUNITY

I was born in Shiprock, NM and raised in Twin Pines, NM. I have always known New Mexico as my home so it is appropriate that I share with you how I see this land. Growing up there was no such thing as boundaries. We were free to roam the valleys and mountains so long as we did not cause harm. This is what I find difficult to talk about in an audience such as this. Not all in this room will feel with their heart the moments I share with you. The moments rooted so deep in feelings there are no words. The love for the land must be felt. It is not only my story that should compel you; it can be heard in areas throughout the country from others who know the importance of life.

I have a tendency to take long hikes. During these hikes there is no time clock to worry about. It is just nature and me. The scenery is breathtaking and vast. On particular peaks in the area I can spot Colorado, Utah, and Arizona all in one quick sweep. Where else can you do that in one glance? The placement of my family in the Chaco region is no mistake and we are not new to the land. Living on and with the land is also something we have not just discovered. There are numerous plants used for medicinal properties by our people and are currently being torn down to make way for steel barrels and a vast network of pipes. The effects of the activity taking place right now in my community is not only causing physical damage to the land but it is also causing mental strain to the people.

I have spoken with Elders who tell me of how plants used to grow here and there but now don't grow at all. The plants they speak of grow wildly among the landscape and cannot simply be replaced by going to a convenience store. Among the wildly growing plants of our area are also beds of gardens. There is a collective concern within our small communities and it is food and water. Our closest grocery store is nearly an hour away. Those who do not have running water must haul their water from either of two water stations made available to residents. Grocery trips must be planned for the month ahead. This is one of the many reasons gardens have begun to find themselves multiplying. But it also must fight like us—fight the gases that settle on its skin and fight to breathe.

My grandmother was born less than half a mile away from where she currently resides. She is now 92 years old. I listen to her stories and try to imagine what life was like in the 1920s and 1930s. I've often asked my Grandma of the past. She tells

me stories of her younger days; seeing her first automobile when she was 11, hearing of JFK's assassination on the radio while weaving at the local chapter house. I always look at my grandmother in amazement. Her stories are here. Here in this valley next to a World Heritage Site, so hidden that the homes of people in the Chaco area were not marked on the BLM State map until for the first time in 2015.

In July of 2016, there was a massive explosion in a nearby community. The WPX well site fire in Nageezi, NM started just after 10 p.m. and forced the evacuation of 55 residents. Thirty-six storage units, holding oil and fracking fluid, caught fire and exploded. I can still hear those explosions, each sounding like a pop as the fire grew and became visible over the mountain. I was not on site for the initial explosion so I cannot imagine what it was like. The families who live in the area do not have that luxury. As the fire grew and continued to burn that night, residents were parked along Highway 550 watching the fire because they did not have a place to go. There was no public evacuation or emergency plan. How can this be when well sites are located next to houses, one in particular less than 350 ft. away from the explosion site. The family living closest to the explosion have not returned. The house sits empty. I do not know of any plans of their return, should they decide to move back in. One of the young children located near the explosion site still has moments of stress when he hears loud, banging noises. How does this not count as a negative impact of fracking? How is this not being talked about more, of locals risking their lives by simply being near a pipeline or well site? Locals who have been here for decades, some even before oil pumps were tragically peppered in the Greater Chaco region.

I hear stories of relatives buried within the lands. Unmarked graves scattered throughout the region but somehow unimportant to outside industries who are there for one purpose only. How are the Indigenous people of this land, Our Land, still being treated with little or no respect and made to look like stereotypical, savage "Indians" when all we talk of is for fair and just treatment of Mother Earth, The Earth which provides for us. We have begun to lose sight of who we are. We believe we are immortal. We believe there will be no repercussions to our actions. We believe we live in a world hosting unlimited resources and extraction is the best possible way to improve life. That's not sustainability, it is dependability.

The area where I live is commonly known as "The Checkerboard Area" because placed on a map, the land is fragmented between Federal, state, private, allotment, and tribal trust lands. It is because of this checkerboard issue that well sites can be relatively close to houses. There are no visible boundaries among this checkerboard area. There is no distinct border to separate BLM public land and allotment lands. But you would not know this if you're not from the area. Looking at a map does not show you the people who have lived there for generations. Looking at a map falsely projects the idea that a fence surrounds the different sections of land.

AIR POLLUTION IN MY COMMUNITY

The air monitoring I have done showed something rather alarming. At the well site located across the highway from Lybrook Elementary School showed elevated levels of hydrogen sulfide. Disturbingly close to children yet continues to operate as if nothing is wrong.

Hydrogen sulfide was detected in the sample collected along Highway 550 at mile marker 100 north of the Lybrook School at a level of 7.6 μg/m3.

Hydrogen sulfide is commonly emitted by natural gas wells because raw natural gas is commonly contaminated by hydrogen sulfide.

Hydrogen sulfide is a gas that possesses a potently offensive odor of rotten eggs. Long-term exposure to hydrogen sulfide is associated with an elevated incidence of respiratory infections, irritation of the eye and nose, cough, breathlessness, nausea, headache, and mental symptoms, including depression. The California OEHHA has established a chronic reference exposure level for hydrogen sulfide of 10 μg/m3 (for preventing effects on the respiratory system) and an acute reference exposure level for hydrogen sulfide of 42 μg/m3 (for preventing headache, nausea, and physiological responses to odors). The U.S. EPA reference concentration for hydrogen sulfide is 2 μg/m3 (for preventing nasal lesions of the olfactory mucosa).

The level of hydrogen sulfide detected in the sample collected north of the Lybrook School exceeds the U.S. EPA reference concentration for hydrogen sulfide, but is below the California OEHHA has established a chronic reference exposure level for hydrogen sulfide. If hydrogen sulfide levels of 7.6 μg/m3 north of Lybrook school generally prevail, then these levels may pose some risk to human health.

BLM METHANE WASTE RULE

As is clear from the air testing we've done, and the latest scientific data, that oil and gas air pollution impacts people's health. The toxic gasses from oil wells and processing facilities waft about the air we breathe. Much of this pollution is invisible, but we know from optical gas imaging cameras that help us see the pollution firsthand that it is there.

Federal standards like the BLM methane waste rule can lessen the harm to people living with oil and gas facilities in their communities. Nationally, there are more than 750,000 summertime asthma attacks in children under the age of 18 due to ozone smog resulting from oil and gas pollution, including over 12,000 in New Mexico.

Each summer, there are more than 2,000 asthma-related emergency room visits and over 600 respiratory related hospital admissions nationally due to ozone smog resulting from oil and gas pollution. Children miss 500,000 days of school nationally each year due to ozone smog resulting from oil and gas pollution.

The BLM's methane waste reduction rule protects our air and health. By capturing methane, oil and gas companies also capture other air pollutants, reducing the amount of toxic volatile organic compounds that currently vent, flare, or leak into our air.

These types of Federal protections not only protect our health, they also preserve the resource operators wish to sell to market and protects royalty revenues that are owed to taxpayers.

Without a rule to curb methane emissions on public lands, we allow the industry to burn our money—and our health—away.

BLM HYDRAULIC FRACTURING RULE

Regulation matters because water is life. The BLM's hydraulic fracturing rule protects our dwindling water resources and reduces the chances of groundwater contamination. The rule improves standards for well casings, mechanical integrity, waste disposal, and chemical disclosure.

Importantly, it creates a minimum standard, a basic level of protection for our tribal lands, the water flowing through them, and the people and wildlife who drink it. Rolling back this rule leaves my community more vulnerable.

FEDERAL LAND POLICY MANAGEMENT ACT (FLPMA) BLM RESOURCE MANAGEMENT PLAN

The Federal Land Policy Management Act (FLPMA) requires the Government to manage our lands "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values."

Yet, BLM's current Resource Management Plan (RMP) for my region predates the arrival of hydraulic fracturing to the San Juan Basin by about 5 years. Nevertheless, BLM has extensively leased lands for oil and gas drilling around the Chaco NHP, and operators have hydraulically fractured hundreds of new wells.

An updated RMP should balance energy development with other uses of our lands. The RMP should respect tribal wishes and preserve dozens of our Chaco Great House ruins including our vast network of ancient sacred roads.

CONCLUSION

I hope the explosions that devastated my community illustrate why we must protect our sacred lands, water, and air resources. American and Navajo law must reinforce this support, not undermine it. Accordingly, Congress and the BLM should strengthen Federal protections like the BLM's fracking and methane rules.

There is nothing wrong with demanding clean air and clean water. Everyone here needs those two things. It should not be the deciding factor on how a human will treat another human

Thank you for your time.

Mr. LABRADOR. Thank you.

The Chair now recognizes Ms. Maloy for her testimony.

STATEMENT OF CELESTE MALOY, DEPUTY ATTORNEY, WASHINGTON COUNTY, UTAH

Ms. MALOY. Chairman Labrador, Ranking Member McEachin, Chairman Bishop, and members of the Subcommittee, thank you for inviting me to testify today. My name is Celeste Maloy; I am a deputy county attorney for Washington County, Utah. My primary focus in the county attorney's office is public lands law and policy.

I regularly interact with Federal agencies on the challenges that face a rapidly growing county, where half of our land is managed by the Department of the Interior, and only 16 percent is privately owned. My experience in interacting with land management agencies, particularly the BLM, is that administrative processes overshadow the agency mission given by Congress.

We routinely see Federal agency employees treat their manuals and handbooks as if they are the ultimate law. When those manuals don't align with directly relevant statutory guidance, the manuals still prevail. I will focus on this problem with the Wilderness Act and FLPMA.

First, the Wilderness Act. The Omnibus Public Lands Management Act of 2009 contains a section we refer to as the Washington County Lands Bill. It was the result of years of stakeholder negotiation and compromise. One of the county's motivations for participating was to settle the wilderness question. As a result of Wilderness Act inventories, Utah is full of wilderness study areas, or WSAs, that are managed for non-impairment of wilderness characteristics, but have never been declared wilderness by Congress.

For the county, the lands bill was a way to end that uncertainty. In exchange for roughly a quarter of a million acres of declared wilderness within the county, we got an end to the endless inventory process, and a congressional release of WSAs. We were surprised and upset when the new resource management plans (RMPs) still required wilderness inventory. Our local BLM office insisted that they were following their manuals.

I did some research, and I was even more surprised to find that BLM's wilderness manual does say that when Congress releases land from wilderness study, the BLM will take into serious consideration the congressional action. When Congress speaks, agencies should act, not consider.

Now I will address FLPMA. In the same Washington County Lands bill, Congress clearly instructed the Secretary of the Interior to consider alternatives for a planned roadway that the county and local municipalities have known for years would be necessary to meet future transportation needs. That road was a major part of the balancing quid pro quo that led us to support the bill.

After the bill was enacted, however, the BLM's draft RMP eliminated the possibility of any road with an exclusion area, which prohibits new rights-of-way. Knowing that the travel management plan could not contradict the RMP, the county went to BLM to correct the error. Local BLM employees told us that Congress screwed up in writing the bill. The statute says to consider route alternatives in the travel management plan, but that isn't how BLM considers new routes, and they couldn't allow a road in that area.

Even with directly relevant statutory language, the agency used their administrative process to ignore the intent of the law. I am still amazed that an agency which derives its authority from congressional delegation dares to use administrative manuals to refuse to faithfully implement the laws Congress passes.

Additionally, FLPMA and other statutes require land management agencies to cooperate with local governments and consider local land use plans in developing RMPs. This statutory language is good, but it is meaningless if it does not create actual partnership.

Our experience has been that the BLM planners hold very few public meetings, where information is given but not exchanged. We are briefed, but not invited to participate. Although we are supposed to be cooperating agencies, local governments can comment after the alternatives are developed. Instead of cooperatively developing alternatives to be evaluated, we get canned language in the plans about the requirement to coordinate—no discussion of local plans and no explanation of inconsistencies with locally developed plans.

Last, the multiple use mandate from FLPMA is being eclipsed by the exceptions. FLPMA says that lands are to be managed for multiple use, unless otherwise specified by law. Despite that language, WSAs, lands with wilderness characteristics, mineral withdrawals, exclusion areas, visual resource management areas, buffers around rock outcrops, and other restrictions on multiple-use activities are more common than multiple-use management.

The elimination of uses seems to stem from a philosophy that all human impacts are negative impacts. Congress, by including multiple-use management in the BLM's Organic Act, clearly did not espouse the idea that humans should be forced off of public land. Multiple use was intended to be the rule, not the exception.

Between the broadening of statutory authority through administrative processes, and the deference Federal courts give to agency decision making, local governments have few effective options for eliminating agency over-reach. We cannot vote them out of office. We cannot fire them.

I am here because we need Congress to stop the expansion of agency authority.

[The prepared statement of Ms. Maloy follows:]

PREPARED STATEMENT OF CELESTE MALOY, DEPUTY COUNTY ATTORNEY, WASHINGTON COUNTY, UTAH

Chairman Labrador, Ranking Member McEachin and members of the Subcommittee—thank you for inviting me to testify today. My name is Celeste Maloy. I am a deputy county attorney for Washington County, Utah. My primary focus in the county attorney's office is public lands law and policy. I regularly interact with Federal agencies on the challenges that face a rapidly growing county where half of our land is managed by the Department of the Interior and only 16 percent is privately owned.

My experience in interacting with land management agencies, particularly the Bureau of Land Management, is that administrative processes overshadow the agency mission given by Congress. We routinely see Federal agency employees treat their manuals and handbooks as if they are the ultimate law. When those manuals don't align with directly relevant statutory guidance, the manuals still prevail. I'll focus on this problem with the Wilderness Act and the Federal Lands Policy and Management Act, or FLPMA.

First the Wilderness Act.

The Omnibus Public Lands Management Act of 2009 contains a section we refer to as the Washington County Lands Bill.[1] It was the result of years of stakeholder negotiation and compromise. One of the county's motivations for participating was to settle the wilderness question. As a result of Wilderness Act inventories, Utah is full of wilderness study areas, or WSAs, that are managed for non-impairment of wilderness characteristics, but have never been declared wilderness by Congress. For the county, the lands bill was a way to end that uncertainty. In exchange for roughly a quarter of a million acres of declared wilderness within the county,[2] we got an end to the endless inventory process and a congressional release of WSAs.

We were surprised and upset when the new resource management plans (RMPs) still required inventory for wilderness. Our local BLM office insisted that they were following their manuals. I did some research and was even more surprised to find that BLM's wilderness manual says that when Congress releases land from wilderness study, the BLM will "take into serious consideration the congressional action."[3] When Congress speaks, the agencies should act accordingly . . . not just take it into serious consideration.

Now I'll address FLPMA.

In the same Washington County Lands bill, Congress clearly instructed the Secretary of Interior to consider alternatives for a planned roadway that the county and local municipalities have known for years would be necessary to meet future transportation needs. That road was a major part of the "balancing" quid pro quo that led us to support the bill.

After the bill was enacted however, the BLM's draft RMP[4] eliminated the possibility of any road with an "exclusion area," which prohibits new rights-of-way. Knowing that the travel management plan couldn't contradict the RMP, the county went to BLM to correct the error. Local BLM employees told us that "Congress screwed up"[5] in writing the bill. The statute says to consider route alternatives in the travel management plan, but that isn't how BLM does things, and they couldn't allow a road in that area. Even with directly relevant statutory language, the agency used their administrative processes to ignore the intent of the law. I am still amazed that an agency, which derives its authority from congressional delegation, dares to use administrative manuals to refuse to faithfully implement the laws Congress passes.

Additionally, FLPMA and other statutes[6] require land management agencies to cooperate with local governments and consider local land use plans in developing RMPs. The statutory language is good, but it is meaningless if it doesn't create actual partnership. Our experience has been that the BLM planners hold a very few public meetings where information is *given*, but not exchanged. We are briefed, but not invited to participate. Although we are supposed to be "cooperating agencies," local governments can comment after the alternatives are developed. Instead of cooperatively developing alternatives to be evaluated, we get canned language in the plans about the requirement to coordinate—no discussion of the local plans and no explanation of inconsistencies with locally developed plans.[7]

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[1] Public Law 111–11, Subtitle O, Washington County, Utah.

[2] The exact total is 256,337 acres of wilderness within Washington County.

[3] Manual 6320 Considering Lands With Wilderness Characteristics in the BLM Land Use Planning Process(A)(1)(c).

[4] This reference is to the draft RMP. In the face of extreme political pressure, the final decision created an avoidance area (meaning roads should be avoided, but they aren't absolutely prohibited) where the road is planned through BLM managed lands. Layered on the avoidance area are several obstacles that still make a road all but impossible. The first layer is a plan to acquire private lands that are also part of the roadway and classifying them as exclusion areas) and prohibiting any take of desert tortoises (which includes picking tortoises up and moving them) or modification of tortoise habitat. The county has an incidental take permit and could mitigate for tortoise take, but the plan forbids rights of way that would result in any take.

[5] The phrase "Congress screwed up" was used several times, but in one meeting with state, city, county, and delegation staffers, both the NCA manager and the District Manager for BLM said they could not consider a road because Congress screwed up when they drafted the language.

[6] NEPA requires that EISs describe inconsistencies with local plans and how it will reconcile differences. FLPMA requires BLM to stay apprised of local plans, consider plans that are germane, resolve inconsistencies to the extent practicable (defined as legal), and provide meaningful involvement for local governments. NFMA requires coordination with land planning efforts of state and local governments.

[7] The Draft RMPs that came out in 2015 had this canned language: "FLPMA Section 202(b)(9) directs that the BLM provide for involvement of state and local government officials in the land use planning and consider the provisions of tribal, state, and local plans that are relevant to the planning areas. BLM should attempt to resolve inconsistencies between Federal and non-

Last, the multiple use mandate from FLPMA is being eclipsed by the exceptions. FLPMA says that lands are to be managed for multiple use unless otherwise specified by law. Despite that language, WSAs, lands with wilderness characteristics, mineral withdrawals, exclusion areas, visual resource management areas, buffers around rock outcrops, and other restrictions on multiple use activities are more common than multiple use management. The elimination of uses seems to stem from a philosophy that all human impacts are negative impacts. Congress, by including multiple use management in the BLM's organic act, clearly did not espouse the idea that humans should be forced off of public land. Multiple use was intended to be the rule, not the exception.

Between the broadening of statutory authority through administrative processes and the deference Federal courts give to agency decision making, local governments have few effective options for limiting agency over-reach. We cannot vote them out of office. We cannot fire them. I am here because we need Congress to stop the expansion of agency authority.

QUESTIONS SUBMITTED FOR THE RECORD BY REP. BISHOP TO CELESTE MALOY, DEPUTY ATTORNEY, WASHINGTON COUNTY, UTAH

Question 1. Ranking Member McEachin entered into the hearing record an opinion that was issued by the Ninth Circuit Court of Appeals in the case, *Oregon Natural Desert Association v. Bureau of Land Management* which was decided on July 14, 2008. Are BLM's actions in this case distinguishable from the actions it has taken in Washington County, and if so, how?

Answer. Washington County's situation is distinguishable from the Oregon case, *ONDA v. BLM*, because the area in Oregon that was being planned for didn't have congressional release language for wilderness planning. Congress, in the 2009 lands bill, said that: "Congress finds that for the purposes of Section 603 of the Federal Lands Policy and Management Act of 1976 (43 U.S.C. 1782), the public land in the County administered by the Bureau of Land Management has been adequately studied for wilderness designation." OPLMA, Subtitle O, Sec. 1972(c).

By contrast, in the *ONDA* case, the Ninth Circuit court found that the National Environmental Policy Act required BLM to at least consider the wilderness concerns posed by the ONDA group. BLM had argued that because of a lawsuit settlement over continuing inventory, they were no longer required to consider wilderness characteristics in land use planning. The court rejected that argument partly because of legal reasoning about whether the Attorney General had the authority to enter into the settlement.

Federal government plans, in the development of plans for public lands, to the extent those plans are consistent with the purposes, policies, and programs of the Federal laws and regulations applicable to public lands and the purposes of FLPMA." Then two county plans and two state park plans are listed without any discussion at all about how this draft plan was consistent with them. (Draft RMPs p. 899) The language about consistency is there, but no attempt was made to either explain how local plans were implemented or in what way local plans were inconsistent with Federal law. After intense political backlash to the draft plans, the final record of decision contains the same language quoted above, but with some additional language about coordination. "As noted in Section 3.2, the cooperating Agencies (Washington County, Mohave County (AZ), and the State of Utah) were provided opportunities to provide input throughout the planning process. Consistency with agency and local and state government plans was primarily accomplished through communications and cooperative efforts (meetings and communications) between the BLM Planning Team and these Cooperating Agencies. The BLM is aware that there are specific county and state plan decisions relevant to aspects of public land management that are discrete from and independent of Federal law. FLPMA requires that the development of an RMP for public lands be coordinated and consistent with county plans to the extent possible by law and that inconsistencies between Federal and non-Federal Government plans be resolved to the extent practical (FLPMA, Title II, Section 202(c)(9)). However, the BLM is bound by Federal law and, as a consequence, there will be an inconsistency that cannot be resolved or reconciled where state and local plans conflict with Federal law. Thus while county and Federal planning processes under FLPMA are required to be as integrated and as consistent as practical, the Federal agency planning process is not bound by or subject to county plans, planning processes, or planning stipulations. In addition, the relevant goals, objectives, or policies of a county are often equivalent to an activity or implementation-level decision and not an RMP-level decision. The very specific county goals would be addressed in any subsequent BLM activity or implementation-level decision." In short, they are trying to use the exception to swallow the rule. Local plans are being dismissed as too specific for a plan or somehow, vaguely not consistent with Federal law. The language in FLPMA requiring consistency has been rendered all but meaningless by agency interpretation.

In Washington County, Congress released land that was not designated as wilderness form further wilderness study. BLM has already studied the wilderness characteristics of the land within the county, Congress has determined which areas to designate, and Congress has declared that the remaining land has been adequately studied for wilderness characteristics. Once Congress releases land from wilderness study, an administrative agency does not have the authority to act contrary to that release.

ONDA v. BLM did not address a congressional release like the one in Washington County's lands bill. ONDA applies only to land use planning when Congress has not made wilderness decisions. Additionally, ONDA is not binding precedent outside of the Ninth Circuit; Utah is in the Tenth Circuit. For these reasons, the holding in *ONDA v. BLM* has no bearing on the BLMs duties in writing land use plans in Washington County.

Question 2. In your written testimony you noted that in the Omnibus Public Lands Management Act of 2009, "[c]ongress clearly instructed the Secretary of the Interior to consider alternatives for a planned road that the county and local municipalities have known for years would be necessary to meet future transportation needs." Could you provide your basis for making this assertion?

Answer. My assertion that Congress was clear in instructing the Secretary to consider the road is based on the plain language of the statute and the press release from Senator Bob Bennett, who sponsored the bill.

OPLMA, in Section 1977, which deals with travel management planning says: "In developing the travel management plan, the Secretary shall in consultation with appropriate Federal agencies, state, tribal, and local governmental entities (including the County and St. George City, Utah), and the public, identify one or more alternatives for the northern transportation route in the county." The language is not ambiguous. Congress instructs the secretary to identify one of more alternatives for the route.

Then-Senator Bob Bennett, who sponsored the bill, in his press release when OPLMA passed the senate said that "as part of the comprehensive plan, BLM will . . . identify alternatives for a northern transportation route in Washington County." Therefore, I feel comfortable asserting that both the statutory language and the intent of Congress clearly called for the Secretary of the Interior to identify alternatives for a northern transportation route in the county.

Mr. LABRADOR. Thank you. I thank all the witnesses for their testimony. And I would like to remind the Members that Committee Rule 3(d) imposes a 5-minute limit on questions.

To begin questioning, I recognize myself for 5 minutes.

Representative Cook, it is my understanding that environmental groups routinely use litigation during the resource management planning process as a means to prevent the issuance of grazing permits, or permit renewals.

For the record, can you tell us what land use planning and environmental groups are most actively opposed to ranching operations in your community?

Mr. COOK. Thank you for the question, Mr. Chairman, I would be glad to. I could give you some personal accountability in this. Western Watersheds, Center for Biological Diversity, Forest Guardians, those are some of the organizations that do this.

Personally, how this has affected us is that we have a 72,000-acre Forest Service allotment that is ran with 1,000 head of cattle permitted off of 22 acres. We were unable to use, and still are unable to use, one-third of that ranch because of a lawsuit filed by one of those organizations, in which the cattle industry sided with the U.S. Forest Service. And the next day, when we showed up in court, the Forest Service, the agency, was sitting over there with the plaintiffs, and we didn't understand it. We called that the midnight agreement.

For years, we were kept off of one-third of our allotment because the Forest Service said that was the agreement that was made in court. After years of asking for that agreement, finally receiving it, what we found out was not at all was that the agreement, there was just some monitoring to take place. Since then, the Forest Service has modified our permit and has removed those pastures, one-third of 72,000 acres of grazing, from our permit.

Mr. LABRADOR. So, upon what basis do they claim to oppose such use of public lands?

Mr. COOK. Well, they claim that the basis is to protect species when, in fact, that, to me, is the farthest thing from the truth. Their claim is that they are benefiting the threatened and endangered species by using acts like the Endangered Species Act.

Mr. LABRADOR. Ms. Maloy, would you like to offer your perspective on how litigation is used to influence land management decisions, or perhaps provide insight as to how outside groups have abused the Equal Access to Justice Act?

Ms. MALOY. Sure. In my experience dealing with Federal agencies, it feels like litigation and the fear of litigation seem to influence decision making more than the statutes that enable Federal agencies to have authority to act in the first place.

In fact, with the lands bill that I mentioned in my testimony, the BLM got sued and a Federal judge set a deadline for the RMPs to come out, and that was followed. But the statute had set a deadline for the RMPs to come out 3 years after the Omnibus Public Lands Management Act, and they blew right past that deadline by 3 years.

Mr. LABRADOR. Thank you, Ms. Maloy. I think we should change the title of this hearing to a line from your testimony: "When Congress speaks, agencies should act, not consider." That was amazing, to think that we would pass something as legislation, and that the agency and their manual thinks that they can just consider the acts of Congress. I think that is something that needs to change, and I thank you for your testimony.

Mr. Cook, states like Idaho and Arizona were settled because the Federal Government wanted people to use the land to secure our food supply and boost our economy through resource development and the founding of towns and communities throughout the western United States. However, now, as you and our other witnesses have testified, they are actively discouraged from using the land upon which the communities in our Nation rely.

We are not doing the multiple use that—Congress intended all these laws to allow multiple use on these lands, and the agencies continue to put resources and other issues ahead of the people that live in those communities. Can you explain a bit about how your family and your community have depended upon the land throughout the years, and how their failure to ensure multiple use in recent decades has impacted your community?

Mr. COOK. Absolutely, Mr. Chairman. Thank you for the question.

For instance, in grazing, the agency, the Forest Service, will try to push down your allotted numbers in your community. So, if you remember, 97 percent of the land in our entire county is Federal, and so we rely on 1.5 percent of private land, and the mining

companies own the other 1.5 percent—so our tax base is limited. Twenty-five percent of our grazing fees goes to our local school districts, so by not allowing us to fully stock our allotments properly, we are taking money away from our local school districts which would receive the benefit from that. That is just a small example of how we are being impacted in western states.

Mr. LABRADOR. Thank you. You mentioned that your grazing permit has been mired in the bureaucracy for 15 years. What excuse has the Federal Government given you for dragging out the standard for that long?

Mr. COOK. Mr. Chairman, the excuse that we constantly get is they don't have time and resources, and then they are gone for fires, and things like that. But in my particular situation, these agency staff have time to go out and GPS salt blocks in pastures that are thousands of acres, and come back and do work like that, but they don't have the time to do the actual work that is required of them, such as their NEPA and their documentation work.

Mr. LABRADOR. Thank you. I now recognize the Ranking Member, Mr. McEachin.

Mr. MCEACHIN. Thank you, Mr. Chairman.

Ms. Pinto, in your testimony, you mentioned you found elevated levels of hydrogen sulfide near Lybrook Elementary School. Hydrogen sulfide can occur with methane. Can you talk a little bit about the health effects of exposure to hydrogen sulfide at 7.6 milligrams per cubic meter?

Ms. PINTO. Thank you for that question. Well, with hydrogen sulfide, I think what we should be talking about are the effects on health, and it is commonly respiratory infections that happen—irritations of the eyes and nose, coughing, and breathlessness. This is—short of breath is not fun, nausea and headache—these are symptoms that are serious because they affect you, personally.

Mr. MCEACHIN. Thank you. When I look at the issues that come up in this community, like the methane rule, some seem like such common-sense solutions to me that I wonder why we are arguing about them. And I wonder how Americans outside of the DC bubble feel about them, especially those that identify as being with the other party.

Ms. Pinto, I want to ask you about some polls that seem to support this notion that my colleagues on the other side of the aisle are not in step with this country, including their own supporters.

In January of this year, Colorado College published their seventh annual survey of voters across seven western states. The poll found that in your home state of New Mexico, 74 percent of respondents support continuing to require oil and gas producers to use equipment to prevent methane leaks.

Surprisingly, an even higher percentage of New Mexican Republican voters support continuing to prevent methane levels, 84 percent—the Democrats, which are at 74 percent, as we saw when the Republican Senate blocked the repeal of the BLM methane rule preventing methane leaks from oil and gas seemed to have bipartisan support.

Can you share with us why you think this is?

Ms. PINTO. Yes, thank you. Well, I believe it is because of the idea that it is a win-win situation. With the catching of methane,

that will produce more—it will be economically beneficial, and it will protect the communities who are surrounded by these well sites by protecting their health.

So, it is a win-win for public health, for the environment, and for taxpayers.

Mr. MCEACHIN. Thank you. I want to talk a little bit about the Nageezi fire last year. Can you share with us what happened that night?

Ms. PINTO. Yes. The explosion happened around 10:00 at night. I received a message from a local community member about a fire. This was very surprising to me, because a fire, sure, that is dangerous; but at the time I did not know it was on a well site.

As I tried to figure out what was happening, and tried not to panic, the smoke began to enclose my house. I can't explain to you what this smelled like, because it was not normal, I guess, would be the word. So, as I am sitting there trying to figure out what was happening, there was the care and concern for people who live in the immediate area.

I drove to the site, and as I am driving there with my father and my sister, the explosions—the fire began to grow and grow. There was an orange pillar with this black smoke that was just stretching into the sky, to the east. That is a big deal. The east is very important to the Navajo people.

How to explain in my words? It was very scary, because there was no emergency or evacuation plan in place at the time. The residents who were evacuated were sitting on the side of the highway for hours, trying to figure out where to go because they were told to go to Nageezi Chapter. It was locked at the time because there was no plan. And I believe there still is no plan, and we have requested that WPX provide a public emergency and evacuation plan for the local chapter houses.

Mr. MCEACHIN. What has been the effect on the community?

Ms. PINTO. The effect, I think, is mostly fear. There is a fear that it will happen again. Because before, it was a what-if scenario. Now it is when, again. There is fear and there is——

Mr. MCEACHIN. Can you talk a little bit about health impacts, if any?

Ms. PINTO. Health impacts? Yes. About a week after the explosion, they were allowed to return to their houses. And one of the residents, who slept in his house that night, had to go to ER the next morning because he was having breathing problems. And he was in the hospital for a little bit. So, this had immediate effects. And as time continues to go on, we are going to start to see the health effects of what happened and what is still sitting there in the community.

Mr. MCEACHIN. I appreciate your testimony. I yield back.

Mr. LABRADOR. Thank you. I now recognize Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, and thanks, all of you, for your time today and your valuable testimony.

Today, a lot has been said already about Federal land management laws. And before we get too far down the road, I just wanted to raise an issue that looks to be fairly common sense, and which seems to me to present a critical issue.

In 2011, an official report by the Government Accountability Office found that Border Patrol's access to some Federal lands around the southwestern border has been limited of certain land management laws, one of them being the Wilderness Act. And this report followed a previous report with similar findings identifying that Customs and Border Patrol agents in charge of 14 of the 17 stations along the southern border reported that they had been unable to obtain a permit or permission to even access certain areas in a timely manner on account of regulatory red tape.

I think this is a major public safety concern, and it seems clear to me the system is broken and that the Wilderness Act is in need of reform in this area.

I wanted to ask Representative Cook, are you aware of anything that has been done or is currently being done to fix this problem?

Mr. COOK. Thank you, sir. I appreciate the question. I am not aware of anything that is being done at this time, at this level. In Arizona, it is a huge problem. We have even lost some of our ranchers down there because of that, that have been murdered out in their pasture.

The Pinal County sheriff is a good friend of mine, and he is constantly telling me about what restrictions are placed down there on the border, and that you cannot go through there because of exactly what you said, the wilderness.

We think there should be some kind of a buffer zone on that national border. Law enforcement should not be hindered or handicapped or any way handcuffed and not be allowed to protect the citizens of this country.

Mr. JOHNSON. I appreciate that. This question is for Supervisor Dillon.

I would like to read a portion of a written response this Committee received from the Interior Department following a 2011 hearing. It said, "The Department has not determined which tribes on the list of recognized tribes published in the Federal Register may not have been under Federal jurisdiction on June 18, 1934. The Department has consistently stated that it will review tribal fee-to-trust applications on a case-by-case basis."

So, the question is are you aware of a tribe ever being denied an application to put land into trust on the basis that the Department of the Interior determined that it was not under Federal jurisdiction in 1934?

Ms. DILLON. I don't have any knowledge of that, sir.

Mr. JOHNSON. According to a 2016 report done by the Oregon Office of Economic Analysis, a casino that was recently open on land placed into trust on behalf of the Cowlitz Tribe will cost the state $110 million per year in video lottery sales alone.

Could you briefly describe some ways that localities may be adversely affected by land that is placed into trust by the Federal Government under Section 5 of the IRA?

Ms. DILLON. I don't know if I have enough time to do that, but I will make an attempt.

When land is taken into trust in the fee-to-trust process, the very first thing is it comes off the tax rolls. So, there is an immediate economic impact there. Tribes are able, because of their status, to engage in activities without regard to the impact on other

businesses of a similar nature, without regard to unintended consequences that can occur.

For instance, it is not uncommon to see an increase in certain kinds of criminal activity when casinos are established. It is not always the case, but it can happen. There can be impacts to highway systems, which the local government has to absorb.

Every single aspect of what happens when you establish any kind of new business—when it happens in the fee-to-trust process, all of those impacts should be analyzed, the mitigation should be established. The Department should have a process for making sure that the mitigations are enforced. But that is not the process that we have in place right now.

Mr. JOHNSON. In your estimation, are the viewpoints of state and local governments adequately taken into account in the fee-to-trust application process?

Ms. DILLON. No, sir, they are not.

Mr. JOHNSON. Why do you think that is?

Ms. DILLON. I think that the Bureau of Indian Affairs, in its status as a trustee, is intent on taking land into trust for the benefit of Indians, and there is an inherent conflict there, if you will, between that trustee status and its responsibility to Native Americans, and its responsibility to engage in an oversight process, if you will, to consider the impacts on local government and other surrounding communities—can be tribal communities that are nearby—and to balance those interests and arrive at a process that addresses all the mitigations.

Mr. JOHNSON. Thank you very much.

I am out of time, I yield back.

Mr. LABRADOR. Thank you, and I recognize the gentleman from Arizona, Mr. Gallego.

Mr. GALLEGO. Thank you, Mr. Chair.

Mr. Cook, good to see you. Welcome back from Arizona. I just wanted to correct some things for the record, because what we say here does go into the record. You said two things, and I want to make sure that everyone quite understands what actually happened, being an Arizonan, particularly the murder of Robert Krentz. That did not happen on Federal land, that is correct.

Mr. COOK. I am not sure exactly what the land ownership was, I just know it was in one of his pastures.

Mr. GALLEGO. But it was not on any Federal land. It happened on his ranch, according to all stories and reports from the sheriff at that time. It was a horrible situation for those that are in the farming and cattle community. And for all Arizonans, it was a bad situation. I just want to make sure that we clarify that that did not occur on actual Federal land.

Number two, you mentioned the Pinal County sheriff. I would like to also clarify that the Pinal County sheriff does not border the actual border. It is 100 miles north of the border. Is that correct?

Mr. COOK. Yes, sir, that is correct, and they still have problems with the border, though.

Mr. GALLEGO. Well, absolutely. And the whole country has problems with the borders. But just to clarify, he is not an actual border sheriff. But moving on—thank you, Mr. Cook, on that.

Moving on, I would like to ask questions in the following manner. For Kendra, one of the Interior Department's primary mechanisms for intake of local input on issues within the jurisdictions, the Resource Advisory Councils, or RACs—these councils usually consist of 10 to 15 members of relevant stakeholders, and they have been great at finding consensus in bringing difficult problems, creating bottom-up solutions, and giving local voices to the Interior Department.

Secretary Zinke recently made a decision to suspend 30 of these RACs until at least September. At the beginning of the month, 22 current and former members of Montana's RACs submitted a letter to Secretary Zinke, urging him to consider his actions that could result in less local input and less public land. I ask unanimous consent to enter that into the record.

Mr. LABRADOR. Without objection.

[The information follows:]

BUREAU OF LAND MANAGEMENT

May 11, 2017

Hon. Secretary Ryan Zinke
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Zinke:

We write to you today with grave misgivings concerning recent actions by the U.S. Department of Interior (DOI) to remove public input and discussion from public lands management.

As former and current members who served on the Bureau of Land Management's Western, Central, and Eastern Montana Resource Advisory Councils (RAC) the unprecedented suspension of these crucial citizen-advisory groups has caught us by surprise.

Resource Advisory Councils are a time-tested citizen engagement tool intended to help guide the Bureau of Land Management in the management of public resources issues. They are an important tool that helps ensure transparency and local input in many land-use decisions. RACs are made up of hard-working folks who volunteer their time to help guide land management decisions at the local level.

By itself, this decision to suspend citizen-input seems ill-advised at best. However the action is even more suspicious when measured alongside another high-profile DOI decision to reconsider historic wildlife habitat and cultural protection accomplished through the Antiquities Act. With the current suspension in place, the 120-day review of past national monuments designations, including Montana's Missouri River Breaks, would be completed without the participation of local Resource Advisory Councils. The DOI, under your leadership, is now moving toward less public land and less public input which threatens the very fabric of the West.

Citizen input via Resource Advisory Councils was crucial to the designation process that led to the Missouri River Breaks National Monument in Montana. In 1999, before the Monument was designated, the Central Montana Resource Advisory Council provided recommendations to Interior Secretary Bruce Babbitt. These consensus-based recommendations expressed the sincerest intent of its members to preserve the natural, wild, and historic values of the Missouri River Breaks. This was further reinforced by the well-documented participation of thousands of Americans and Montanans in support of Monument designation.

Secretary Zinke, the robust public-participation that led to the creation of the Missouri River Breaks Monument runs counter to the current process the DOI has laid out. It seems your intended purpose is to use taxpayer money to reopen a public process with one hand while handicapping public participation with the other. Any findings or decisions that may arise from this top-down model would lack integrity and transparency. We fear it could even have the end-result of erasing the robust public process which led to the designation of the Missouri River Breaks in 2001.

The Upper Missouri River Breaks National Monument is a special place and many of us collectively volunteered on a citizen advisory council to help see its future secured through a transparent and open public process.

We take it personally when we see the federal government using taxpayer dollars to both negate the robust public input we provided while also silencing the valuable citizens advisory councils. We urge you to reconsider these bold actions that could result in less local input and less public land.

Best Regards,

Randy Gray (former Central MT RAC member)
Stan Meyer (former Central MT RAC member)
Tony Bynum (former Central MT RAC member)
Mary Sexton (former Central MT RAC member)
Mary Fay (former Central MT RAC member)
Mary Frieze (current Central MT RAC member)
Larry Epstein (former Central MT RAC member)
Hugo Tureck (current Central MT RAC member)
Ralph Knapp (current Central MT RAC member
Bill Cunningham (former Central MT RAC member)
Aart Dolman (former Central MT RAC member)
Jeff Sheldon (former Central MT RAC member)
Rita Harding (current Eastern MT RAC member)
Bernie Rose (former Eastern MT RAC member)
Cal Cumin (current Eastern MT RAC member)
Mike Aderhold (former Central MT RAC member)
Pat Johnson (former Western MT RAC member)
Mary Jones (former Central MT RAC member)
Arlo Skari (former Central MT RAC member)
Ron Moody (former Central MT RAC member)
Jean Belangie-Nye (current Western MT RAC member)
Margaret Gorski (current Western MT RAC member)

Mr. GALLEGO. At the same time, Secretary Zinke is meeting with industry left and right, including a full hour with oil and gas industry, based on the methane rule just alone. It makes it abundantly clear who this Administration is trying to serve.

Ms. Pinto, based on the actions of this Administration so far, do you think the oil and gas industry needs more help making their desires known to Secretary Zinke and the Administration, or do you think they are reaching the corners of power easily, more so than in the past?

Ms. PINTO. Do I have the light off? I am sorry. Can you please repeat the last part of that question?

Mr. GALLEGO. Sure. Ms. Pinto, based on the actions of this Administration so far, such as neutering many of these RACs, and giving more time to industry, such as the oil and gas industry, particularly when it comes to the methane gas rule, do you think that they have enough access to power or not?

Ms. PINTO. Did you say "access"?

Mr. GALLEGO. Yes, access.

Ms. PINTO. Do they have more access to power?

Mr. GALLEGO. Yes. I have a limited amount of time. Could you answer? Do they have more access, do you believe, than the normal citizen?

Ms. PINTO. Yes, I do.

Mr. GALLEGO. Thank you. So, based on your experience, should the Interior Department get less or more direct input from locals?

Ms. PINTO. They should get more.

Mr. GALLEGO. Thank you.

Mr. Cook, in your testimony you say special land designations on lands that are already federally owned and subject to management decisions by the Federal Government, like wilderness designations, only create more burdens for Federal agencies, and typically serve to erode true multiple use in favor of a hands-off approach.

Your testimony seems to indicate that you think land being federally owned, no matter what the state of the land is, means it is sufficiently protected, and that no more wilderness designation of Federal land is necessary at all. Presumably, that would include the protections conferred by the national monuments. That seemed like a very extreme view, to me, so I looked it up a little.

A January 2017 poll of western states found that 86 percent of voters in Arizona supported keeping existing national monuments in Arizona, including 68 percent of Republican voters. Do you agree that existing national monuments in Arizona should be left in place? Existing, not expanding.

Mr. COOK. Thank you very much for the question. I love the Grand Canyon, I think it is one of the Seven Wonders of the World. But——

Mr. GALLEGO. Mr. Cook, I am not asking about the Grand Canyon, I am asking about all the existing national monuments in Arizona. Please answer yes or no.

Mr. COOK. I think that they should be reviewed, sir.

Mr. GALLEGO. They should be reviewed. Good.

Celeste—pardon me, Ms. Maloy—there has been some dispute about the interpretation of Section 5 of the Indian Reorganization Act and the occasions of the existing case law from the lower DC courts. In your testimony, you favor a temporal—pardon my language today—restriction that would require a tribe's formal Federal recognition as of 1934 in order to take the land into trust.

Can you elaborate as to why you think this restriction is prudent?

Ms. MALOY. I cannot. I think you are mixing my testimony up with somebody else. I did not address the Indian Reorganization Act.

Mr. GALLEGO. I apologize. My notes are off. And actually, I am out of time, anyway. I yield back my time. Thank you.

Mr. JOHNSON [presiding]. Thank you. The Chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you. I appreciate you all being here. I certainly sympathize with the problems of an explosion and the problems that it brought, Ms. Pinto. I come from East Texas, where, during the Depression, the largest known oil reserve in the world at that time was discovered. And it lifted hundreds of thousands of people out of poverty. People flooded into our area; it gave them jobs, it gave them hope, it gave them the ability to pay for health care.

And, I think Churchill said that the allies flowed into victory in their defeat of the Nazis and all the hate that represented on the East Texas oil field, or oil.

So, I know there are positives and I know there are negatives, but having personally seen how many people had been provided jobs, self-respect, the ability to take care of themselves, the ability to lift themselves out of poverty when there was really nothing else that seemed to do it, having seen the poverty return, the joblessness during the Obama administration in East Texas, people scrambling, trying to find jobs, but the oil and gas industry being particularly hard hit, I watched it around our area, people begging for jobs, but the government regulation, the government pressures making it just difficult, seeing self-respect plummet, seeing the ability to take care of one's health care needs plummet, I see that there are two sides to that issue.

But, we learn by asking questions. I was wondering—you are from Counselor Chapter, Navajo Nation, northern New Mexico, and I love hearing and reading of your long hikes. What a nourishing thing when you can take long hikes, though understanding some plant life is not there. But how do you make a living?

Ms. PINTO. Well, fortunately, I live in an area where I can grow my own food, and I don't have to leave my house. So, there is no high, high priority for me to be able to have access to gas and oil. Making a living out there, for me, is a little simple, and I think that has a lot to do with my upbringing.

Mr. GOHMERT. Have you had any Federal Government agencies come in and tell you how you had to grow your food, or where you could, or where you couldn't grow food? Or do you get to make those choices on your own?

Ms. PINTO. Not personally. And I think it has a lot to do with there are still frequent visits from departments and government-related bodies, so there is currently no push to keep gardens or any type of plans like that in——

Mr. GOHMERT. Yes, so is the Navajo Nation pretty well allowed to govern their own local territory?

Ms. PINTO. Yes, I believe so.

Mr. GOHMERT. OK. So, Representative Cook, it sounds like that is what you are asking for, just the opportunity that the Navajo Nation has to have some say in your own governance of your own property. Am I getting that right?

Mr. COOK. Yes, sir. When you spend years in a NEPA process for your grazing allotment, and you have a line officer for the Forest Service look at you, all of your partners, and family and take his hands and raise them above his head and say, "I am up here, I make the decisions, here is what I do, and you all are down here, you are supposed to bring me ideas and to do the work," it is a life-changing event for you and your business in the state of Arizona.

Mr. GOHMERT. We also have a lot of farms or ranches in East Texas raising cattle. We have some people that raise crops, some that raise cattle. It is a nice, simple life. I worked on the farms a good bit myself, growing up.

In raising those cattle, you are pretty much free—am I getting that—to choose where you let the cattle graze, without interference from the government?

Mr. COOK. No, sir, that is not true. We go to the Forest Service, and we give them what we would like to do. Then they decide where and when and approve where we can put our cattle.

In fact, the agency has even gone as far as wanting to GPS where we are allowed to put salt blocks for our cattle out on the range, which I did not agree with.

Mr. GOHMERT. Well, thank you. My time has expired. And I just hope and pray that maybe one of the results of this hearing will be that people in Arizona will have the same choice as the Navajo Nation has been able to have.

Thank you, I yield back.

Mr. JOHNSON. Thank you, Mr. Gohmert. The Chair recognizes the gentleman from Florida, Mr. Soto, for 5 minutes.

Mr. SOTO. Thank you, Mr. Chairman. And you will have to forgive me if I ask a question or two that may have already been asked. I just got here.

So first, I wanted to ask about the thoughts on the methane rule. There is some push by the Department of the Interior to eliminate or weaken the rule, releasing more air pollution from hydrogen sulfide and volatile organic compounds into our communities. What is sort of the opinion on keeping the methane rule or not?

[Pause.]

Mr. SOTO. Oh, to Ms. Maloy, please.

Ms. MALOY. I am not prepared to comment on the methane rule today. That was also not in my testimony.

Mr. SOTO. Sorry. To Ms. Kendra Pinto.

Ms. PINTO. Can you please repeat the last part of the question?

Mr. SOTO. Yes, I was asking about—there has been a push to maybe remove the methane rule, and was wondering how that may affect your community.

Ms. PINTO. Well, if it is removed, then there is less protection for the people. I often have to remind people that this is not a Monday-through-Friday job. It is an activity that takes place 24/7.

Mr. SOTO. Also, we see some moves to potentially change fracking rules, which would eliminate basic standards for keeping wells from breaking, or discourage waste dumping into unlined pits. If we wanted to help safeguard dwindling water supplies, what would you recommend, as far as keeping or removing the fracking rule?

Ms. PINTO. I am not prepared to answer that question right now.

Mr. SOTO. OK. I will yield back.

Mr. JOHNSON. Thank you, Mr. Soto. The Chair recognizes the esteemed Chair of our Full Committee on Natural Resources, Representative Bishop, for 5 minutes.

Mr. BISHOP. Thank you. I want that engraved, "esteemed," in the future here.

[Laughter.]

Mr. BISHOP. Representative Cook and Ms. Maloy, thank you for being here. Just very quickly, tell me what is the impact on your counties' efforts to try to provide for education purposes, as well as things like transportation, with the Federal land restrictions that are put on those areas?

If you could just quickly go through that—starting with you, Mr. Cook.

Mr. COOK. Thank you, Chairman Bishop. First of all, like I said earlier, the grazing fees—we used to have 50,000 to 55,000 head of cattle in Gila County. And of those grazing fees, 25 percent would go back to our rural school districts. As a State Representative, we are fighting for every fund that we possibly can to give to those school systems. Well, we don't have those with those grazing fees.

As for the road construction, this road has been in existence for 80 or 100 years. Then all of a sudden, the Forest Service just found that this wilderness that was created 50 years ago—they just found out that the boundary of that went over the 10 miles of road, so they are going to close it?

Mr. BISHOP. All right——

Mr. COOK. So, it has had a tremendous impact.

Mr. BISHOP. Ms. Maloy, what happens in Washington County?

Ms. MALOY. Well, I am not just an employee of Washington County, I am also a resident. I vote for people at the city, county, state, and Federal level to make decisions and do planning for things like transportation. And their hands are tied, because they do not manage the land within the county.

Mr. BISHOP. Has the county ever voiced their concerns with Federal land managers?

Ms. MALOY. Yes. I——

Mr. BISHOP. And in Arizona, does the county voice their concerns with Federal land managers?

Mr. COOK. Mr. Bishop, I would like to say that the Forest Service specifically told us in a meeting that they do not consult with county governments.

Mr. BISHOP. Don't get ahead of me. That was the next question. All right?

[Laughter.]

Mr. BISHOP. You tried to consult, they told you that is not their job.

Mr. COOK. Yes. They said they don't have to consult with county governments, according to FLPMA. They don't really recognize it, in my opinion.

Mr. BISHOP. I would like them to read the coordination clause.

Anyway, yes, Ms. Maloy, what was the response you all got?

Ms. MALOY. We have spent hundreds of hours over the last couple of years meeting with our Federal land management agencies to try to make sure they understand what our local plans are. And it has resulted in me being here today, giving this testimony.

Mr. BISHOP. See, that is one of the problems that we have, and we need to address in some particular way, because consultation is required of local governments. But what we have found out over and over again is consultation is not taking place, or at least they have strange definitions of what qualifies for consultation. That needs to be clarified, specifically by this Committee in some way, shape, or form.

Ms. Maloy, if I can go back to you as well, you talked about the Omnibus Public Lands Management Act of 2009—great, great piece of legislation. According to that, it released wilderness study areas.

Ms. MALOY. Yes.

Mr. BISHOP. But the BLM then told you their RMPs would count this as still going through the identifying lands with wilderness characteristics, even though that was not the intent of the legislation?

Ms. MALOY. Yes.

Mr. BISHOP. So, why did the land agencies tell you that they weren't actually going to do what the intent of the legislation was?

Ms. MALOY. Because of a lawsuit in Oregon, where BLM lost when they did not consider lands with wilderness characteristics in a very different fact pattern. They feel like they now are required to consider lands with wilderness characteristics, regardless of a congressional release.

Mr. BISHOP. So that, in essence, they did not want to do what the law told them to do, because it did not meet their handbook policies.

Ms. MALOY. Yes.

Mr. BISHOP. Is that kind of a backwards approach to things?

Ms. MALOY. It seems backwards to me.

Mr. BISHOP. In reality, as well, too. I appreciate the time, and I realize that we have a difficult time here going on, that you all have restraints with other elements.

One of the things you have all reached upon are some difficulties that we have to deal with; and we have to deal on this Committee. So, I appreciate the question about trust, because lands to trust—everyone has the right, including tribes, to buy property, but what kind of input should local government have is a question. And, in my mind, I am not necessarily clear of where it should be, but we have to delineate what kind of input should take place in the future. What we had in the last administration did not necessarily facilitate that.

What you said in both Arizona and in Utah is we have to be able to have that kind of coordination and consultation that was supposed to be in FLPMA. It was supposed to be part of the law, it is mentioned in the law, but we have never clarified what that is.

I also have this feeling that the Department of the Interior is going to be dealt with much differently as we go forward. But the question is, what happens with the next Department of the Interior after that? And will we flip back and forth, swinging between land agencies that do care about the input from local governments versus those that do not? And is there some way in statute that we could actually quantify that, and provide a process that will go on beyond this particular administration into the next to guarantee that voices are going to be heard at the local level, which has not happened in the past?

I apologize for going over, but I am also done. Mr. Chairman—Mr. Vice Chairman, the esteemed Vice Chairman?

[Laughter.]

Mr. JOHNSON. I want that in writing. Thank you, Mr. Chairman.

And for what purpose does Mr. McEachin seek recognition?

Mr. MCEACHIN. Mr. Chairman, I would like to put a couple things in the record.

I would ask for unanimous consent to enter the following documents into the record: a transcript from the Senate Subcommittee on Public Lands and Forests hearing that took place

on April 22, 2008; the 2008 Ninth Circuit Court opinion in *Oregon Natural Desert Association v. Bureau of Land Management*; the April 28, 2017 order from the Interior Board of Land Appeals dismissing the appeal of Washington County, Utah; Subtitle O of Public Law 111–11; Section 201 of the FLPMA, which requires, not suggests, that the Interior Department maintain wilderness inventory.

And I would ask for unanimous consent to introduce into the record the decision known as *Carcieri*, which allowed the Interior Department to recognize tribes that were not officially recognized in 1934.

Mr. JOHNSON. Without objection, those documents will be entered into the record.

[The information on Section 201 of the FLPMA follows:]

Federal Land Policy and Management Act of 1976

TITLE II

LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

INVENTORY AND IDENTIFICATION

Sec. 201. [43 U.S.C. 1711] (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

Mr. JOHNSON. We thank the witnesses for their valuable testimony today as all of us seek to improve effectiveness and efficiency in our Federal laws and agencies, and I thank the Members for their questions.

The members of the Committee may have some additional questions for the witnesses, and we ask that you respond to these in writing.

Under Committee Rule 3.0 [sic], sorry, members of the Committee must submit witness questions within three business days following the hearing, and the hearing record will be held open for 10 business days for all these responses.

If there is no further business, without objection, the Committee stands adjourned. Thank you again.

[Whereupon, at 10:10 a.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

LEELANAU COUNTY BOARD OF COMMISSIONERS,
SUTTONS BAY, MICHIGAN

June 1, 2017

Hon. JOHN W. "JACK" BERGMAN,
House Subcommittee on Oversight and Investigations,
Washington, DC 20515.

Dear Congressman Bergman:

My name is Ty Wessell and I am the District 4 Commissioner of Leelanau County. My district contains tribal trust land of the Grand Traverse Band of Ottawa and Chippewa Indians upon which several tribal families reside, and those families have resided on that land since the federal treaty allotment period in the 1855–1880s. I write to express my opinion on the recent oversight hearing on Indian trust land held on May 24 by the Investigative Oversight subcommittee of the House Natural Resources Committee.

It has been brought to my attention that a California county commissioner witness alleged that land taken into trust under the Indian Reorganization Act (IRA) is an abuse of federal administrative discretion and detrimental to State county interests. While I cannot speak for California counties, I can freely speak as a Michigander and current county commissioner of Leelanau County that we have in general a large Indian population in the county, and in particular, I have several Indian families in my district; therefore, as both a county commissioner and a former superintendent of a public school system in Leelanau county, I can assure you that the presence of tribal trust land is not detrimental to our county, nor is it administratively abusive for the federal government to put land into trust for the benefit of tribal governments and tribal members.

Leelanau County is situated squarely within a treaty-established reservation for the Grand Traverse Band of Ottawa and Chippewa Indians (GTB). Under the treaties of 1836 and 1855 a significant proportion of GTB land was ceded to the federal government; the treaties reserved land for GTB and several other bands. The 1855 treaty intended to established individual tribal trust allotments, a process that had its own deprivations that ultimately resulted in significant loss of Indian land. That Indian land loss had consequential effects of severe poverty for GTB Indians, dislocation, disease, loss of Indian families' members to adoption, death and loss of their cultural heritage and treaty recognized rights.

The federal recognition of GTB in 1980, based on the long term federal-tribal relationship between the United States and GTB, and the subsequent positive federal trust land developments for housing, jobs, governmental structures under the IRA, have benefited both the county and tribal government and represent the best example of this nation's continuing commitment to Indian Tribes and the self-determination of Indian Tribes.

Thank you for your time and consideration. I look forward to hearing back from you.

Sincerely,

TY WESSELL,
County Commissioner, District 4.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Rep. McEachin Submissions

- Hearing Transcript from the Senate Subcommittee on Public Lands and Forests dated April 22, 2008.
- Ninth Circuit Court opinion from "*Oregon Natural Desert Association v. Bureau of Land Management*" filed July 14, 2008.
- Order from the Department of the Interior Board of Land Appeals dated April 28, 2017.
- Subtitle O of Public Law 111–11.
- United States Supreme Court opinion from "*Carcieri v. Salazar*" decided on February 24, 2009.
- Letter addressed to the House Natural Resources Committee, Subcommittee on Oversight and Investigations from Greta Anderson, Deputy Director of the Western Watersheds Project dated May 26, 2017.
- Statement to the House Natural Resources Committee, Subcommittee on Oversight and Investigations from Ernest Stevens Jr., Chairman of the National Indian Gaming Association dated May 24, 2017.
- Letter to Chairman Labrador and Rep. McEachin from the Hon. William Iyall, Chairman of the Cowlitz Indian Tribe dated June 7, 2017.
- Letter to Chairman Labrador and Rep. McEachin from Cedric Cromwell, Chairman of the Mashpee Wampanoag Tribe dated June 7, 2017.
- Testimony to the House Natural Resources Committee, Subcommittee on Oversight and Investigations from United South and Eastern Tribes Sovereignty Protection Fund dated June 7, 2017.
- Testimony to the House Natural Resources Committee, Subcommittee on Oversight and Investigations from the Ute Indian Tribe of the Uintah and Ouray Reservation, dated June 8, 2017.

Rep. Gallego Submission

- Letter addressed to Department of the Interior Secretary Ryan Zinke from members of Department of the Interior's Resource Advisory Committees dated May 11, 2017.

Rep. Bergman Submission

- Letter to Chairman Labrador and Ranking Member McEachin from Mr. Thurlow "Sam" McClellan, Tribal Chairman of the Grand Traverse Band of Ottowa and Chippewa Indians dated June 6, 2017.

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