

Testimony of Thora Padilla, President, Mescalero Apache Tribe

Before the Senate Committee on Indian Affairs: Legislative Hearing on S.4370, Tribal Forest Protection Act Amendments Act of 2024

July 25, 2024

Good afternoon Chairman Schatz, Vice Chair Murkowski, and Members of the Committee. My name is Thora Padilla and I am honored to serve as President of the Mescalero Apache Tribe (“Mescalero” or “Tribe”). Thank you for this opportunity to testify about S.4370, the Tribal Forest Protection Act Amendments Act of 2024.

The Tribal Forest Protection Act of 2004 (“TFPA”) has proven itself for two decades now. We fully support the proposed changes to the TFPA included in S.4370. In addition, we urge the Committee to support proposals to make the TFPA 638 Forestry program permanent and to extend a funding mechanism to that program. We also support proposals to expand TFPA to authorize Tribal Governments to conduct prescribed burn and other projects. And finally, we urge the Committee to examine and support passage of proposals to bring parity to the Small Tracts Act.

Background: the Mescalero Apache Tribe

The Mescalero, Lipan and Chiricahua Apache, make up the Mescalero Apache Tribe. Long before the first European settlers came to this land, our Apache ancestors roamed the Southwestern region, from Texas to central Arizona and from as far south as Mexico to the peaks of Colorado. We were protected by our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/Three Sisters Mountains, and Oscura Peak. We traveled the rough Apacheria through mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our lands, the Apaches entered into a treaty with the United States on July 1, 1852. The Treaty with the Apaches promised the Tribe a permanent homeland in our aboriginal territory. The Mescalero Apache Reservation (“Reservation”), located in the White and Sacramento Mountains of rural south-central New Mexico, was established through a succession of Executive Orders in the 1870's and 1880's. The Reservation spans approximately 720 square miles (460,405 acres). Our Reservation is home to 5,500 tribal citizens and approximately 200 non-Indian residents.

The original Reservation boundaries and our ancestral homelands encompass lands that are currently held in federal ownership, including the Lincoln National Forest (“LNF”) and Bureau of Land Management (“BLM”) lands surrounding the Fort Stanton State Monument. These federal lands were carved out of our ancestral homelands. Evidence of our connections to LNF is found throughout the Forest, from rock art to mescal pits to the Apache Trail, which was a prime route for water in the Sacramento Mountains. These Mountains are home to the Mountain Spirit Dancers—holy beings that ensure our well-being. The Mescalero Apache people have maintained strong cultural ties to these lands. To this day, we continue to gather plants important to our traditions and conduct ceremonies on these federal lands. To strengthen our ties to these lands and to have input into their management, the Tribe has entered into Memoranda of Understanding (“MOUs”) with the U.S. military and LNF. In addition, the Tribe has invested significant resources in Ski Apache, a resort owned and operated by the Tribe pursuant to a special use permit. Ski Apache is located on LNF lands bordering our Reservation.

Mescalero Apache Forest Management

We are the people of the Mountain Forests. The Mescalero Apache have managed our forests holistically for centuries. Sustainable forest management is part of our way of life. In addition to promoting the health of our forests, our forest management practices promote the growth of food and medicinal plants, healthy wildlife, and historically served to protect our lands from invaders.

This tradition of forestry was put into formal practice when the Bureau of Indian Affairs (“BIA”) Mescalero Agency opened its Branch of Forestry in 1910. Mescalero's first major commercial timber sale was in 1919. With the opening of the tribally owned Mescalero Forest Products’ (“MFP”) sawmill in 1987, the Tribe entered a new era of forest management. Today, the Mescalero forest remains one of the best-managed, healthiest forests in the Southwest.

For more than a century, the BIA Mescalero Agency and the Tribe worked to develop a premier forestry program on the Reservation. During the 1990’s and early 2000’s, the BIA Branch of Forestry employed three professional foresters and two forestry technicians in the Timber Sale section. This small staff was responsible for preparing and offering for sale lumber at 16.8 million board feet annually and completing all sale planning, environmental compliance work, timber sale layout and administration. Due to the amount of timber harvested, the BIA identifies the Reservation as a Category 1-Major Forested Reservation. Additionally, the Fire Management and Fuels Management Programs are each rated as High Complexity. These ratings describe not only the intricacy of addressing fire concerns across a large landscape but also the need for coordinated efforts among programs and agencies.

Operating on a shoestring budget, the Tribe's Division of Resource Management and Protection has been able to provide high quality forestry services on the Reservation, assisting the BIA in timber sales and performing fuels management projects. The strong working relationship with BIA Forestry and the implementation of contracts under the Indian Self-Determination and Education Assistance Act (P.L. 93-638) helped the Tribe build a strong forest management system.

Before the Tribal sawmill, Mescalero Forest Products (“MFP”), closed in 2012, the Tribe treated one full rotation of the commercial forest, totaling 183,876 out of a total Reservation land base of 460,405 acres. All 183,876 acres were considered for logging. Areas that were not treated contained arch sites, threatened and endangered species, or homesites.

Despite the importance of this mission, the Mescalero BIA Branch of Forestry experienced a 43 percent reduction in staffing levels since 2016. As a result, in FY2022 the Tribal Council passed a Resolution to contract for and take over the BIA Branch of Forestry and Branch of Natural Resources activities through Public Law 93-638 Self-Determination contracts. This has allowed us to focus on Tribal priorities and objectives to manage our forest. Through 638 contracts, the Tribe has taken on silvicultural evaluations and prescriptions; timber sale planning and harvest; forest development thinning and planting; woodland management; forest protection from insect, disease, and trespass; and fuels management.

However, the Mescalero Apache Tribe views the federal government’s most fundamental treaty and trust obligations to provide for public and fire safety on Indian lands as non-negotiable. For that reason, our community relies on the BIA’s Mescalero Agency (the “Agency”) to provide direct services for the critical public safety functions of law enforcement and firefighting services on our Reservation.

When the Tribe first began commercially harvesting timber, many opposed the concept. This resistance to proactive forest management began to dissipate in 1996 when the Tribe experienced its first large fire in recent history, the Chino Well Fire. This fire began on a windy spring day in April. Within one day, the fire threatened 42 homes, forcing evacuations, and burning a seven-mile strip of forest of more than 8,000 acres. Due to the rapid-fire response of Tribal fire crews, no homes were damaged. Soon after the fire, homeowners wanted to learn how they could protect their homes from future wildfires.

With the advent of the National Fire Plan in the late 1990's, the BIA Branch of Forestry worked with the Tribe to develop strategic ridgetop fuel breaks and implemented wildland urban interface treatments around residential and recreational areas across the Reservation. Through this program, the Tribe has treated an additional 63,968 acres through hazardous fuels reduction projects. These projects were coordinated with harvest operations, recognizing that understory thinning alone would not reduce the potential for destructive crown fires. As a result of implementing wildfire mitigation measures to reduce fire danger, the Tribe earned Firewise Communities/USA recognition in 2003 – the first tribe in New Mexico to earn such recognition.

Hazardous fuel reduction projects are vital to our forest management practices. Forests are living organisms. With reductions in density, trees and ground cover are better able to thrive. Southwestern forests grow with very little precipitation. On the Reservation and in LNF, 26 inches of annual precipitation is considered a “wet” year. By reducing tree densities to ensure the crowns are not touching, we greatly enhance the available water, light and nutrients each individual tree receives. With open forest conditions, pine seedlings have a better environment to germinate, resulting in increased forest regeneration.

In addition to our hazardous fuels management program, the Tribe used to operate the MFP sawmill. However, the decline in the lumber market, combined with process inefficiencies and a lack of by-product markets, resulted in the closure of MFP twice, once in December 2008 and again in July 2012. The closure of the sawmill resulted in the loss of 55 jobs for mill workers and 150 supporting staff (including marking, harvesting, hauling, and administrative staff). The Tribe was also forced to close a second mill that it owned in Alamogordo, which employed 82 workers.

The MFP sawmill was a vital first-line forest management tool that enabled the Tribe to treat the larger trees of the forest overstory through selective harvests that were followed up with hazardous fuels reduction projects in the smaller size classes. Closure of these sawmills has significantly limited our ability to manage our forest and assist in the management of LNF.

In addition, congressional funding cuts, implemented over the past two decades, have further strained our forestry practices. Prior to these cuts, the Tribe was able to manage our forest better than the LNF on a fraction of the federal agency’s budget. Failure to restore this modest funding threatens the future success of our program.

Need to Expand the Tribal Forest Protection Act

Congress enacted the Tribal Forest Protection Act of 2004 in response to devastating wildfires that crossed onto tribal land from federal lands in the summer of 2003. TFPA has provided a tool for Tribes to propose work and enter into stewardship contracts and other agreements with the Forest Service or Bureau of Land Management (“BLM”) to reduce threats on federal lands adjacent to Indian lands. The Forest Service alone shares approximately 2,100 miles of contiguous boundaries

with Indian tribes. The TFPA authorizes the Secretaries of Agriculture and Interior to give special consideration to tribally-proposed projects on federal land bordering Indian trust land.

The Act was largely underutilized for years. From 2004-2008, only 10 TFPA contracts and agreements were awarded. These contracts and agreements covered 23,230 acres and 51.5 miles of boundary. USFS-tribal TFPA stewardship contracts have been limited in scope, focusing on hazardous fuels reduction and invasive species treatment. This disappointingly slow implementation of the TFPA continues to thwart the Act's potential, leaving tribal forests more vulnerable to catastrophic wildfire, disease and infestation from adjacent federal public lands. TFPA partnerships should be aggressively expanded.

A case in point of the positive but limited impact of the TFPA is the stewardship contract that the Mescalero Apache Tribe entered into with the LNF. Through the "Sixteen Springs Stewardship Contract" in 2006 with LNF, the Tribe conducted fuels reduction, urban interface, and ecosystem restoration projects that covered more than 6,300 acres and 3.4 miles of roads along the shared boundary between our Reservation and LNF.

These treatments greatly improved the health of adjacent LNF lands. Added benefits of the stewardship contract included strengthening connections with our ancestral homelands, the resulting improved relationship between Mescalero forest personnel and LNF staff and gaining a better understanding of the management constraints placed on the LNF.

However, the stewardship contract ended far too early. Many thousands of additional acres of dense forest within LNF remain untreated and continue to threaten the lives and property of Tribal members and the public.

Lessons Learned from the Little Bear Fire

Mescalero leadership had longstanding concerns about the dense forest conditions in LNF. We have seen the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and have watched as large swaths of USFS lands die around us.

Nature provided a preview of what will happen if the Mescalero forestry program is allowed to fail. The Little Bear Fire started modestly on Monday, June 4, 2012. The initial small fire was caused by lightning in the White Mountain wilderness in LNF. Over the first five days, LNF deployed relatively few assets to contain what it thought was a non-threatening forest fire. Firefighters worked only on day shifts, air tanker resources were not utilized, and helicopter water drops were minimal. On the fifth day, the fire jumped the fire line and high winds turned the fire into a devastating inferno. By that night, the fire had blazed through the Tribal ski area, Ski Apache Resort ("Ski Apache"), and crossed onto Tribal lands. Within two weeks, the Little Bear Fire burned 35,339 acres in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire also destroyed more than 255 buildings and homes in the region and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages, exceeded \$100 million. This number includes more than \$1.5 million to tribal assets at Ski Apache.¹

¹ Since 1960, the Tribe has leased approximately 860 acres of LNF lands under two special use permits to establish, manage, and operate Ski Apache. Ski Apache is located on the northern border of the Reservation. The land is part of the Tribe's aboriginal homelands and is located within the Sierra Blanca Mountain Range, which is sacred to the Mescalero Apache people. (*Continued*).

The Little Bear Fire crossed the Reservation line at a key topographic area. There are two major canyons, Upper Canyon and the Eagle Creek area, that start on the Reservation and then lead off the Reservation. Both areas are heavily populated off-Reservation. Because of the volume of trees that were burnt, there was a real danger that resulting flooding would have destroyed buildings, access roads, and existing ski runs. However, due to additional investments and hazardous fuels projects conducted by the Tribe, major flooding was avoided. In 2008, the Tribe completed an important, cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Little Bear Fire away from the steep, densely forested terrain of the North Fork of the Rio Ruidoso and prevented complete devastation of the Village of Ruidoso and its source waters.

The Little Bear Fire is proof positive that hazardous fuels reduction projects and the TFPA work. The fire's impacts provided a clear contrast between the healthy Mescalero forest and dense LNF and a clear justification to increase funding for TFPA projects and for the Tribal Forestry Management program.

S.4370, TFPA Amendments Act of 2024

As noted above, the Mescalero Apache fully supports S.4370, the Tribal Forest Protection Act Amendments Act of 2024. The bill expands the definition of Indian lands to include lands held by Alaska Native Corporations. Importantly, S.4370 eliminates the requirement that federal land is "bordering or adjacent to" Indian land. Removing this barrier will permit Tribal Governments to conduct landscape-scale management projects throughout federal lands where the Tribe has historic or cultural connections to the land.

The LNF and other nearby federal lands are part of our ancestral homelands. S.4370 will enable our Tribe to offer meaningful input into the management of these lands that goes before and beyond NEPA. It holds potential to give the Mescalero Apache Tribe a greater voice in the development of forest management strategies on our former homelands that will serve to protect our Reservation and nearby communities.

S.4370 also expands TFPA projects to include treatments on Indian lands, which will help offset the significant and longstanding funding shortfalls for tribal forest management. And finally, the bill adds a funding provision to the TFPA, which will provide a steady funding stream for TFPA implementation will help the Act reach its true potential.

In addition to the improvements to the TFPA proposed in S.4370, we ask the Committee to expand on the 2018 Farm Bill's establishment of the 638 Forestry program. Mescalero testified before this Committee in support of the 638 Forestry program. However, last summer, when I reached out to work with the Lincoln on a 638 Forestry contract, I was told that the project didn't meet the TFPA

Over the past 64 years, the Tribe has made significant improvements to the Resort. In 2012, the Tribe invested \$15 million to triple the ski lift capacity at Ski Apache. In addition, the Tribe invested \$2.6 million for non-ski / year-round recreation at Ski Apache. Ski Apache employs 350 people during the ski season and contributes millions of dollars to the local economy.

Under the current arrangement, the USFS administers these lands, and LNF has the legal responsibility to respond to emergencies, such as the June 2012 Little Bear Fire. However, it has been the Tribe that has acted as the primary first responder in emergency situations. If the Tribe had not taken the initiative, our assets at Ski Apache would have been lost in the Little Bear Fire.

requirements, and even if it did there was no funding to support the proposed 638 contract. The Committee should address these and other barriers to full implementation of the TFFPA 638 Forestry program.

First, we urge the Committee to support existing proposals to remove the “demonstration” designation from this program and make it permanent. To ensure implementation of the program, we ask that you add a funding mechanism to the 638 Forestry program that also covers contract support costs. We ask that you amend the program to limit an agency’s ability to reject valid tribal requests to engage in 638 forestry contracts or compacts. And finally, we ask that you extend Federal Tort Claims Act protection to the tribe and tribal employees engaged in TFFPA 638 Forestry contracts.

These additional improvements to the TFFPA will enable Tribes to consistently enter into contracts and compacts with the Forest Service and BLM. Once this takes place, Tribes and Tribal priorities will become part of the agency decision-making process, making positive impacts on the exercise of tribal treaty rights, protection of Native sacred places, and protection of tribal investments on federal lands.

Finally, federal land management laws, like the Small Tracts Act, 16 U.S.C. §§ 521c-521i, authorize USDA to transfer federal lands to state and local governments, but fail to permit similar administrative transfers to Tribal governments. To achieve parity and respect for the governmental status of Indian Tribes, we urge the Committee to examine and advance proposals to amend the Small Tracts Act to provide the Forest Service with legal authority to administratively transfer federally managed forest lands back to Tribal governments in situations where such lands are former reservations or encompass ancestral lands.

Conclusion

The Tribal Forest Protection Act holds great potential to protect Indian lands, improve the health of federal lands, and limit the impacts of wildfires. S.4370, the Tribal Forest Protection Act Amendments Act, proposes significant improvements to the TFFPA. We urge the Committee to advance this bill and consider advancing other needed improvements to the TFFPA that will help reach the Act’s full potential.