

S. 1898 AND H.R. 1560

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

ON

**S. 1898, A BILL TO PROVIDE FOR THE CONVEYANCE OF CERTAIN
PROPERTY FROM THE UNITED STATES TO THE MANILAQ
ASSOCIATION LOCATED IN KOTZEBUE, ALASKA**

**H.R. 1560, A BILL TO AMEND THE YSLETA DEL SUR PUEBLO
AND ALABAMA AND COUSHATTA INDIAN TRIBES OF TEXAS
RESTORATION ACT TO ALLOW THE YSLETA DEL SUR PUEBLO
TRIBE TO DETERMINE BLOOD QUANTUM REQUIREMENTS FOR
MEMBERSHIP IN THAT TRIBE**

MARCH 22, 2012

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S. 1898 AND H.R. 1560

THURSDAY, MARCH 22, 2012

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:15 p.m. in room 628, Dirksen Senate Office Building, Hon. Daniel K. Akaka, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. The Committee will come to order.

Aloha and welcome to all of you here to this hearing. Today, the Committee will be considering two pieces of legislation that have been referred to this Committee for action.

The first one that we will be considering is S. 1898, which was introduced by my good friend and colleague Senator Murkowski and provides for the conveyance of property from the United States to the Maniilaq Association in Alaska. The House companion bill, H.R. 443, has been passed by the House.

The second bill we will be considering is H.R. 1560, which amends the Ysleta del Sur Pueblo settlement to allow the Tribe to determine its own membership requirements. This bill also has been passed by the House.

Today, we will be hearing from the Department of the Interior and the Indian Health Service to receive the Administration's views on these bills. We will also hear from the affected Tribes to learn how these bills will impact our members back home and, of course, are delighted to hear from our member from Alaska.

I am pleased to hold this hearing so that we can begin the process of moving both bills through the Senate. The record for today's hearing for will remain open for two weeks. So, I encourage any interested parties to submit written testimony for the record.

And now I would like to call on Senator Murkowski for any opening statement she may have.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman, and thank you for scheduling this hearing today and for an opportunity to bring up a bill that I have introduced, S. 1898. I appreciate the Committee considering this issue before us and thank the Administration witnesses that are here to not only speak to the merits of this

bill, but also thank you for what you do in working with us on the issues that affect so many of our Alaska Native constituents, not only with the healthcare issues that we deal with but so many of the other concerns that we have. I appreciate that.

The bill that I have introduced, Mr. Chairman, is a critical tool that I believe will help improve the delivery of health services to the residents of rural northwest Alaska. It is a pretty straightforward approach to assist Maniilaq in expanding and improving their current healthcare services. As you know, the House has already passed an equivalent version of the bill. I note that it passed by a pretty remarkable margin, 407 to 4. So I do not know what the objections of the four were but it is important that it did receive considerable support there.

I do agree with Congressman Young when he said that this bill will do more than just transfer land. He was spot on in pinpointing the significance of this bill as one that will allow Maniilaq the opportunity to expand and essentially to improve the health and well-being of all Alaska Natives who live up in that northwestern region.

The Maniilaq Association, for those who are not familiar with it, provides health, social and Tribal services to residents of 12 villages that are located in the Northwest Arctic Borough, and this bill will promote the much needed growth and expansion of a well-established and a successful, a very successful, rural Native healthcare provider.

The witness who is joining us today will be the first up on Panel II, Mr. Paul Hansen, who is the Special Projects Coordinator and I will welcome and acknowledge Paul's presence here before the Committee. I am going to be dashing downstairs and going and testifying on another energy bill that I have and then I will try to come back up here. But if I do not get back up before the Second Panel, I would like to just briefly, again, welcome Paul, thank him for his testimony.

Many who know him know that he is not only the Deputy Administrator for Maniilaq Health Center but he is also a long-term competitive dog musher. And for those who follow the great races in Alaska, whether it is the Yukon Quest or the Iditarod, which we just completed, we take great pride in those who are engaged in this incredible sport and activity. He and his wife, Margaret, routinely win sprint races and his wife is a long-time school board member and elected Tribal council member of the Kotzebue IRA. They are both very active community members and we appreciate a great deal that Paul has traveled all the way from Kotzebue to be here today and taking time from his duties to testify before the Committee.

So with that, Mr. Chairman, I will turn it back to you and again I am going to pop downstairs and try to get back up. But if I do not have an opportunity, I appreciate, again, the chance to welcome our witness and thank you for moving these bills.

Senator AKAKA. Thank you very much, Senator Murkowski. It is good to hear from you on this bill.

Let me at this time introduce our first panel, Ms. Jodi Gillette, Deputy Assistant Secretary of Indian Affairs at the Department of the Interior, and Mr. Robert McSwain, Deputy Director for Man-

agement Operations at the Indian Health Service in the Department of Health and Human Services.

Ms. Gillette, will you please proceed with your testimony.

STATEMENT OF JODI GILLETTE, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Ms. GILLETTE. Thank you, Chairman Akaka and thank you, Members of the Committee, Honorable Murkowski, for the opportunity to provide the Department's position on H.R. 1560, a bill that will amend the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act.

The Department of Interior supports H.R. 1560 which will allow the Ysleta del Sur Pueblo to determine the membership of their Tribe. Back in 1987, Congress passed the Restoration Act which restored the Federal trust relationship between the Federal Government and the Ysleta del Sur Pueblo. This Restoration Act, as passed, prescribed the membership for the Tribe to only those individuals on the Tribe's 1984 membership roll and to their descendants with at least one-eighth or more Tigua-Ysleta del Sur Pueblo Indian blood and who are enrolled by the Tribe.

H.R. 1560 would amend the Restoration Act to enable the Tribe to determine for themselves the blood quantum requirements, if any, for membership into the Tribe. The proposed amendment would delete the one-eighth blood quantum requirement and replace this requirement with "any person of Tigua-Ysleta del Sur Pueblo Indian blood enrolled by the Tribe." This amendment would allow the Tribe to determine their own enrollment criteria, as any other federally-recognized Tribe has the right to do.

The Department is in receipt of copies of Tribal resolutions from the Ysleta del Sur Pueblo Tribal Council in support of this change to the blood quantum requirements stated within this legislation. Also, the Department supports the Tribe's request to determine its criteria for membership which is consistent with the Administration's support for the policies of self-governance and self-determination for all federally-recognized Tribes.

Currently, the Tribal enrollment for the Ysleta del Sur Pueblo is 1,691 members and the Department does not expect an additional Tribal priority allocation-based funding amount to be awarded to the Tribe regardless of the changes in the size of the Tribe.

I will be happy to answer any questions the Committee may have.

Thank you.

[The prepared statement of Ms. Gillette follows:]

PREPARED STATEMENT OF JODI GILLETTE, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman, Vice Chairman, and Members of the Committee. My name is Jodi Gillette. I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirements for membership in their Tribe. The Department supports H.R. 1560.

Background

In 1987 Congress passed the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Restoration Act), which restored the federal trust relationship between the Federal Government and the Ysleta del Sur Pueblo (Tribe).

The Restoration Act, 25 U.S.C. § 1300G-7(a)(2)(i), prescribes membership for the Tribe to only those individuals on the Tribe's 1984 Membership Roll, and to their descendants with at least $\frac{1}{8}$ or more Tigua-Ysleta del Sur Pueblo Indian blood and who are enrolled by the Tribe. This codified criterion has been adopted into Article 3, Section 3.01, of the Ysleta del Sur Pueblo Code of Laws. Currently the tribal enrollment for the Ysleta Del Sur Pueblo is 1,691 members. Indian Affairs cannot find any other instances where a Tribe's membership is bound by a blood quantum requirement under Federal statute.

H.R. 1560

H.R. 1560 would amend the Restoration Act to enable the Tribe to determine for themselves the blood-quantum requirements, if any, for membership into the Tribe. The proposed amendment would delete the $\frac{1}{8}$ blood quantum requirement and replace the current requirement with "any person of Tigua-Ysleta del Sur Pueblo Indian blood enrolled by the tribe." This amendment would allow the Tribe to determine their own enrollment criteria, as any other federally-recognized tribe has the right to do.

While the legislation would allow the Tribe to determine the size of its own membership, the Department does not expect an additional Tribal Priority Allocation base funding amount to be awarded to the Tribe.

Indian tribes have the inherent authority to determine their membership. The Supreme Court has noted, "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). The Department is in receipt of copies of tribal resolutions from the Ysleta del Sur Pueblo Tribal Council in support of the change to the blood quantum requirements stated within the legislation. The Department supports the Tribe's request to determine its criteria for membership, which is consistent with the Administration's support for the policies of Self-Governance and Self-Determination for all federally recognized tribes.

Conclusion

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

Senator AKAKA. Thank you very much, Ms. Gillette.

Mr. MCSWAIN. will you please proceed with your testimony.

STATEMENT OF ROBERT MCSWAIN, DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. MCSWAIN. Thank you, Mr. Chairman and Members of the Committee. Good afternoon.

I am Robert McSwain, as announced, the Deputy Director of Management Operations of the Indian Health Service, and I am pleased to have the opportunity to testify on S. 1898 for the Maniilaq Association, providing for the conveyance of Indian Health Service real property located in Kotzebue, Alaska.

In 1995, the, I think it is important to kind of point out some really important points that build to where we are. In 1995, the Maniilaq Association in Kotzebue, Alaska assumed responsibility for provision of IHS-funded services under the authority of the Indian Self-Determination and Education Act. They took over operating a program that the Indian Health Services had previously operated.

On March 31, 2009, IHS transferred the ownership of the Maniilaq Health Center and Hospital by the use of quitclaim deed.

So, after completing an environmental review and certification on November 18, 2009, two additional parcels of property named in this bill, including staff quarters, were transferred. Important point. We, the last environmental assessment assurance was made in 2009, three years ago.

S. 1898 provides for the conveyance of Kotzebue property from the United States to the Maniilaq Association and proposes to modify the existing quitclaim by transferring, requiring the use of a warranty deed. A warranty deed is a fee simple, free, clear title to the property.

IHS supports this bill because it views the proposed transfer as furthering the special partnership that exists between American Indian and Alaska Native Tribal governments, and moreover is in keeping with a Presidential Memorandum on administrative flexibility as it pertains to Tribal governments.

It is important to emphasize as a normal practice we do not transfer properties via the warranty deed process mechanism. However, we will support the exception in this case because of the Tribe's initiative to expand access to its healthcare system for its community members.

We do believe the language in S. 1898 relating to environmental liability needs to be clarified so that the Maniilaq Association is responsible for any environmental contamination which may occur or arise as of or after the date of the 2009 conveyance. And the reversionary clause language should be clarified to apply should the Association cease to use the property for health purposes.

It is important to point out that since 2009 there have been no existing problems with the current quitclaim deed signed in 2009 with the Maniilaq Association.

So, we look forward to working with you, Mr. Chairman, on measures like these to improve the health of the Alaska Native population.

Mr. Chairman, this concludes my testimony. I appreciate the opportunity to appear before you in support of S. 1898 and will be happy to answer any questions that you might have.

Thank you.

[The prepared statement of Mr. McSwain follows:]

PREPARED STATEMENT OF ROBERT MCSWAIN, DEPUTY DIRECTOR FOR MANAGEMENT OPERATIONS, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman and Members of the Committee:

Good afternoon. I am Robert McSwain, Deputy Director for Management Operations of the Indian Health Service (IHS). I am pleased to have the opportunity to testify on the S. 1898 for the Maniilaq Association, providing for the conveyance of Indian Health Service (IHS) real property located in Kotzebue, Alaska.

The Indian Health Service plays a unique role in the Department of Health and Human Services (HHS) because it is a health care system that was established to meet the federal trust responsibility to provide health care to American Indians and Alaska Natives (AI/ANs). The mission of the IHS, in partnership with American Indian and Alaska Native people, is to raise the physical, mental, social, and spiritual health of AI/ANs to the highest level. The IHS provides comprehensive health service delivery to approximately 2.1 million AI/ANs through 31 Hospitals, 50 health centers, 31 health stations and 2 school health centers. Tribes also provide healthcare access through an additional 15 hospitals, 254 health centers, 166 Alaska Village Clinics, 112 health stations and 18 school health centers. In support of the

IHS mission, the IHS and Tribes provide access to functional, well maintained and accredited health care facilities and staff housing.

S. 1898 deals with the conveyance of lands located in Kotzebue, Alaska which were used by the Federal Government for the delivery of IHS services. In 1995 the Maniilaq Association in Kotzebue, Alaska assumed responsibility for the provision of the IHS-funded health care services under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA). Some of the federal property, which had been used in connection with health and related programs in Kotzebue, Alaska by the IHS, was transferred through quit claim deeds to the Maniilaq Association.

S. 1898 provides for the conveyance of the Kotzebue property from the United States to the Maniilaq Association and proposes to modify the existing quit claim deed transfer by requiring the use of a warranty deed. On March 31, 2009, IHS transferred ownership of the Maniilaq Health Center/Hospital. After completing an environmental review and certification on November 18, 2009, the two additional parcels of property, named in this bill, including staff quarters, were transferred.

The IHS supports this bill because it views the proposed transfer as furthering the special partnership that exists with American Indian and Alaska Native tribal governments, and, moreover, is in keeping with the Presidential Memorandum on Administrative Flexibility as it pertains to tribal governments. It is important to emphasize that, as a normal practice, we do not transfer properties via the warranty deed mechanism. However, we will support an exception in this case, because of the Tribe's initiative to expand access to its health care system for community members. This proposal will give the Maniilaq Association flexibility to leverage additional resources because ownership of the property under a warranty deed will give them unencumbered ownership of the property described in S. 1898.

We do believe the language, relating to environmental liability, needs to be clarified so the Maniilaq Association is responsible for any environmental contamination which may occur or arise "as of or after the date of the 2009 conveyance"; and, the "reversionary clause" language should be clarified to apply, should the Association cease to use the property for health purposes.

We do not believe there will be reasons to use this mechanism in future cases. There are no existing problems with the current quit claim deed signed in 2009 with the Maniilaq Association. Traditionally, the Alaska Native Corporations have preferred to leave the title of their facilities previously operated by the IHS with the Federal Government. It is highly unlikely there will be similar requests from Tribes in the other 35 states to have warranty deeds since they are currently on tribally owned lands and the government leases property from them for the health care facilities. This warranty deed transfer would be the first of its kind in Alaska, since only one other property was transferred to the Southeast Alaska Regional Health Corporation through a quit claim deed.

Concerning retrocession, we think it unlikely. We can count only four retrocessions since the enactment of ISDEAA in 1975 and these were only small program components and three have been re-assumed by the Tribes. None of these were in the Alaska Area.

We look forward to working with you, Mr. Chairman, on measures like these to improve the health of the Alaska Native population. Mr. Chairman, this concludes my testimony. I appreciate the opportunity to appear before you to discuss S. 1898. I will be happy to answer any questions the committee may have. Thank you.

Senator AKAKA. Well, thank you very much and we look forward to working with you also. Thank you so much for your statements.

Ms. Gillette, can you elaborate on how the right of Tribes to determine their own membership furthers the Administration's support for self-governance and self-determination.

Ms. GILLETTE. I think that, consistent with the many, many years of history related to the ways that the Federal Government has worked with Indian Tribes, we are very, very supportive of the Tribe's right to determine their own membership. And that is based upon how Tribes have made it through the different eras of history.

The Supreme Court in *Santa Clara versus Martinez* affirmed the Tribes' right, inherent right, to determine its own membership and this is something that we feel very strongly about as it relates to how a Tribe governs itself and its members. And when there are

statutory provisions in place that limits a Tribe's ability to determine their own membership, that is actually going against the line of reasoning that you would have a Tribe determine, be self-determining, and self-governing.

Senator AKAKA. Well, this of course has been a goal of many of our indigenous peoples and we are fortunate to have an Administration that has indicated support for the indigenous people. And of course we want, in this case, the Tribes that we are talking about, to be able to use whatever the laws and policies or regulations are in place to help bring this about. So, thanks for the elaboration of the rights of the Tribes to determine their own membership.

Mr. McSwain, can you describe the next steps in the process of transferring the property of this legislation if it is passed and tell us what the time frame would be for conveying the property?

Mr. MCSWAIN. Thanks for the question, Mr. Chairman. The first step we are going to do, obviously, is go back and make sure that the land is free of any environmental concerns before we move to a warranty conveyance. We estimate 60 to 90 days on the conveyance depending on how many places we have got to go.

I am sure that this is new for us. I should point out in the history of the Indian Health Service we have never done a warranty transfer. So, I am being optimistic when I say 90 days, but we are going to have to involve some other people, obviously in administration, to review what we are doing to make sure we are doing it correctly.

But, there is no experience within the Indian Health Service of actually doing this. So we will be certainly looking at the department for their help and other departments as necessary. But that is sort of a gauge right now that I am looking at. It could take a little bit longer but should not take that much longer and we will certainly keep the Maniilaq Association apprised as we move forward.

Senator AKAKA. I am so glad that you mention about looking at other departments and agencies because this is a rather new process for you and I want to commend you on that, tell you that I hope you can develop that partnership of working together with other agencies and departments to move some of these things along.

And I must tell you at this point in time that I applaud the President's style of moving things quickly. You know, instead of, for instance, having a commission, which is a formal group, to deal with an issue and then to put the group together and to get a chairman, it can take easily six months plus to bring that around. And by the time the commission gets to work, it is a year gone. Well, anyway, there goes the time.

It takes a lot of time and it is more formal in organization. Whereas the President is the type that will say well, it is an issue that we need to do right now, get a team together of experts in that area and have them come together and work on whatever the issue is and when an answer is then recommended, that is it for the team. But it moves, as you can see, quickly. Your intent to include discussions with other agencies and departments is really a good thing to do and can help to move this. And you are honest to say you think 60 to 90 but you are not sure about what is going to hap-

pen. But from what you have said, I think that you will try your best to move as quickly as you can. Yes.

Let me give you, and ask you, and give you an opportunity to make any further remarks, both of you, about this issue because, I do not know the exact number but there are about more than 500 Tribes that you have to deal with on a continent that is considered American Indian Tribes, not counting the Alaskan, and so many things are coming along and we are trying to push these Tribes to be more vocal. This is why, as you know, at every hearing I am saying please, if you want to, you know, tell us something, do that, please. You have two weeks to do it.

But the whole idea is to try to get the people out there, the indigenous people, in this case the Tribes, to voice their opinions. And so for them to be able to self-govern and determination, you know, use that more wisely and more often, you know, may be good. And I just wanted to have any further comments from either of you along those issues.

Ms. Gillette?

Ms. GILLETTE. In terms of what the Assistant Secretary and the Secretary have talked about a lot of the time is really giving tools to the Tribes to further their ability to self-govern and self-determine and I think that it has been tremendous to be able to work with your Committee and the Members of the Committee on how we can advance doing that.

And I think that there is always a balance between funding considerations and how the Government is going to be able to provide tools when sometimes the tools cost money. And things like this, this bill, H.R. 1560, this is something that is going to allow for the Tribe to empower itself in a way that was limited by statute and we do not feel like it costs anything to the Federal taxpayers to do that.

Each Tribe has a Tribal priority allocation-based funding, and that is pretty set, and whether a Tribe grows, whether it is through birth or through new members being identified in other cities or something like that, like, you know, when people are relocated and then a big family comes in through Indian Child Welfare Act or something like that, Tribes grow and through natural processes and the TPA does not usually, is not usually impacted by those kind of changes.

And so, this is something that will not cost anything and it is a really good thing, I think. The more that we can remove some of those statutory or regulatory things that hinder Tribes to govern themselves, everybody wins in those cases.

Thank you.

Chairman AKAKA. Thank you very much.

Mr. McSwain.

Mr. MCSWAIN. Mr. Chairman, I was just reflecting on your question and I would say that if Dr. Roubideaux were sitting here today addressing this issue she would say what this does is further something very important to her, which is further the Tribal-Government relationship. And this is another way.

And for purposes of our mission of delivering healthcare, whatever we can do to help the Tribes do that and to self-determine, in the case of Maniilaq, this is, and I will say that we say that with

a lot of concerns about making sure this one is right, that no one fails and that there is no problem with it.

But there is a lot of trust involved. We trust that they will do what they are committed to do and we will trust that we will follow their lead. That is what I believe Dr. Roubideaux would say if she were here.

Senator AKAKA. Well, thank you very much. Thank you for your responses.

And now we are delighted to have our Senator Udall here and I would like to call on you for any opening statement or questions you may have.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Chairman Akaka, thank you very much. And thank you for holding this very important hearing.

The two bills you have today coming before the Committee I think are of great importance to many communities of Native Americans and Alaska Natives. And I would like to take a minute to focus especially on the second bill, which is H.R. 1560, a bill that would amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act.

The Ysleta del Sur Pueblo is a member of the All Indian Pueblo Council, headquartered in New Mexico. The All Indian Pueblo Council has 19 members. I believe the Ysleta del Sur is the 20th member. So these are all pueblos in New Mexico or nearby New Mexico and, in fact, the Tribe is originally from New Mexico and maintains relationships with other pueblos in New Mexico.

H.R. 1560 already passed this Committee the last Congress and has passed in the full House in three consecutive Congresses. So, we have had a bill that has some real life and has shown that it can get through three different Congresses and we need to get the job done on this one.

H.R. 1560 would simply allow the Ysleta del Sur Tribe the same right that other Tribes justifiably enjoy, the right to determine who can be enrolled in the Tribe. Specifically, the bill would release the Tribe from the current one-eighth degree requirement and allow the Tribe to determine blood quantum requirements for Tribal membership. It is a simple bill. It is a good bill. I look forward to hearing related testimony and urge my colleagues to support H.R. 1560 and the efforts of the Ysleta del Sur Pueblo to exercise self-determination.

I would also say that the All Indian Pueblo Council supports H.R. 1560. They have advised me of this, they have passed a resolution, and they want it to be known that they are very supportive of H.R. 1560.

[The information referred to follows:]



ALL INDIAN PUEBLO COUNCIL Office of the Chairman

Chairman: Chandler Sanchez Vice Chairman: Chazfle Douane Secretary/Treasurer: Leroy Arguero

ALL INDIAN PUEBLO COUNCIL
RESOLUTION 2011-07

**RESOLUTION SUPPORTING YSLETA DEL SUR PUEBLO'S PROPOSED
LEGISLATION TO AMEND ITS RESTORATION ACT TO DETERMINE BLOOD
QUANTUM REQUIREMENT FOR TRIBAL MEMBERSHIP AND REQUESTING THE
FEDERAL TRUSTEE ASSIST THE YSLETA DEL SUR PUEBLO IN ITS EFFORTS**

WHEREAS, the All Indian Pueblo Council ("AIPC") is comprised of the Pueblos of Acoma, Coshiti, Jemez, Isleta, Laguna, Santa Ana, Sandia, San Felipe, Santo Domingo, Zia, Zuni, Nambe, Picuris, Pojoaque, Santa Clara, San Ildefonso, San Juan, Tesuque, Taos and 1 Sovereign Pueblo in the State of Texas (Ysleta Del Sur); each possessing inherent government authority to govern their own affairs; and

WHEREAS, the federal government has a government-to-government relationship with our sister pueblo, the Ysleta del Sur Pueblo, as confirmed in the Restoration Act, 25 U.S.C. § 1300g et seq.; and

WHEREAS, Congress imposed a 1/8 Tigua blood requirement for tribal membership in the Restoration Act that restricts the Ysleta del Sur Pueblo from exercising authority to govern its internal affairs; and

WHEREAS, the authority to make laws concerning internal relations of a tribe is one of the greatest attributes of tribal sovereignty; and

WHEREAS, the practical effect of restricting the Ysleta del Sur Pueblo from determining its tribal membership criteria is ultimate termination; and

WHEREAS, except for one termination enactment, Congress has subjected no other tribe or Pueblo in the U.S., including those recognized or restored to a trust relationship subsequent to the Restoration Act, to such a blood quantum limitation; and

WHEREAS, the Ysleta del Sur Pueblo has proposed legislation in Congress to amend the Restoration Act to allow the Pueblo to determine its blood quantum requirements for tribal membership, which is an authority that all other tribes and Pueblos enjoy; and

NOW THEREFORE BE IT RESOLVED, the All Indian Pueblo Council supports the Ysleta del Sur Pueblo's efforts to introduce legislation and ensure passage that will amend the Restoration Act to allow the Ysleta del Sur Pueblo to determine its blood quantum requirements for membership in that tribe; and

BE IT FURTHER RESOLVED THAT, the All Indian Pueblo Council urges congressional representatives to support and work with the Ysleta del Sur Pueblo to pass legislation amending the Restoration Act to allow the Ysleta del Sur Pueblo to determine its blood quantum requirements for tribal membership; and

BE IT FURTHER RESOLVED THAT, the All Indian Pueblo Council requests the assistance of New Mexico's United States Senators and Congressional Representatives to help their sister Pueblo to be afforded the opportunity to exercise its sovereign right to govern its own affairs by supporting the proposed legislation to amend the Restoration Act to allow the Ysleta del Sur Pueblo to determine its blood quantum requirements for tribal membership; and

BE IT FURTHER RESOLVED THAT, the All Indian Pueblo Council does hereby advocate for federal support of the Ysleta del Sur Pueblo to amend its Restoration Act; and

BE IT FINALLY RESOLVED THAT, the officers of the All Indian Pueblos Council are expressly authorized to take any and all steps necessary to effectuate the intent of this resolution.

CERTIFICATION

I, Chairman of the All Indian Pueblo Council hereby certify that the foregoing resolution 2011-07 was considered and adopted at a duly called council meeting held on the 13th day of July 2011, and at which time a quorum was present and the same was approved by a vote of 144 in favor, 0 opposed, 0 abstained and ___ absent.

ALL INDIAN PUEBLO COUNCIL


Chandler Sanchez, Chairman

ATTEST:


Secretary/Treasurer, Leroy Arquero

So with that, Chairman Akaka, I thank this panel of witnesses and look forward to the Second Panel.

Senator AKAKA. Thank you. Thank you very much, Senator Udall. And I want to thank our first panel. Thank you for being here and supporting our bill. Thank you.

I would like to invite the second panel to the witness table, Mr. Paul Hansen, who is the Deputy Administrator at the Maniilaq Health Center in Kotzebue, Alaska, and Honorable Carlos Hisa, Lieutenant Governor of the Ysleta del Sur Pueblo in El Paso, Texas. Accompanying Lieutenant Governor Hisa is Ms. Janette Hernandez, a Tribal member with the Ysleta del Sur Pueblo.

Mr. Hansen, please proceed with your testimony.

**STATEMENT OF PAUL HANSEN, DEPUTY ADMINISTRATOR,
MANIILAQ HEALTH CENTER**

Mr. HANSEN. Thank you, Chairman, Mr. Senator.

My name is Paul Hansen. I am the Deputy Administrator at Maniilaq Health Center in Kotzebue. I am here on behalf of the Maniilaq Association.

Maniilaq is an Association of 12 Tribal governments in northwest Alaska. The association is a regional non-profit health corporation and we provide services under the self-governance provisions of the Indian Self-Determination and Education Assistance Act.

I have worked for the Association now for more than 30 years and have seen a lot of advancement in the provision of services and the way that we have been able to provide those services as the Self-Determination Act has been amended. I think the self-governance provisions of the ISDEAA have resulted in very good things.

The Association started contracting with the Indian Health Service back in the late 1970s and in the early 1980s. In 1988, the Association contracted for the hospital operations in Kotzebue and assumed all of the Indian Health Service responsibilities for provision of services to the service area. In 1995, we were one of the original signers of the Alaska Tribal Health Compact and started providing those services under self-governance.

Today, we are here in support of Senate Bill 1898. As you have mentioned, there is a companion bill that was passed by the House, H.R. 443. Because of where we are in the legislative session, I would ask that this Committee approve the House version of that bill. Those two bills differ a little bit in the way they were drafted but the content is substantially the same. That way, that would keep us from going back and either having the House re-approve the bill or a conference being needed to work out the details of that.

The bill provides for conversion from a quitclaim deed to a warranty deed of three parcels of property in Kotzebue. One parcel is the property that the hospital sits on and the two other parcels hold quarters for the folks who work at the hospital and in the new long-term care center.

Some of the impetus for this action came as a result of our recent completion of a long-term care center that was co-located to the Maniilaq Health Center in Kotzebue. We are very proud of that facility. It was a long-time dream of the board to be able to provide long-term care services in the region. Until now, when elders needed that level of medical care they had to move down to Anchorage, which is over 500 air miles away, which separated them from their families during their last days. It was really a sad situation that now has been alleviated. So we are very proud and excited about the new program.

We would like to convert these quitclaim deeds to warranty deeds because of some inadequacies that are in the provisions of the quitclaim deeds. The quitclaim deed imposes some conditions and obligations that are beyond those that are required in the Indian Self-Determination Act. We would like the deeds to reflect only those conditions that the Act also imposes. Additionally, the quitclaim deed contains some reversionary clauses again that go beyond what are required by the Indian Self-Determination Act.

We would like a warranty deed that would eliminate both those inadequacies of the quitclaim deeds and help us have more security in that property and more fully use the property for its true value.

With that, I would like to thank the Committee for allowing me to represent our Tribes here and provide the testimony. Thank you.
[The prepared statement of Mr. Hansen follows:]

PREPARED STATEMENT OF PAUL HANSEN, DEPUTY ADMINISTRATOR, MANIILAQ
HEALTH CENTER

My name is Paul Hansen and I am the Deputy Administrator for the Maniilaq Health Center and I am pleased to testify before this Committee on behalf of the Maniilaq Association. The Maniilaq Association is an Alaska Native regional non-profit organization representing twelve tribes in Northwest Alaska. We strongly support S. 1898, legislation that would convey certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska. We thank the Alaska congressional delegation for introducing and moving this legislation.

The Maniilaq Association has for many years carried out a range of health and social services programs in the Northwest Arctic Borough on behalf of its member Alaska Native villages under the Self-Governance provisions of the Indian Self-Determination and Education Assistance Act (ISDEAA). Maniilaq Association carries out these programs in accordance with the Alaska Tribal Health Compact with the United States and Funding Agreements with the Indian Health Service.

As you know, the House has passed companion legislation to S. 1898 (H.R. 443 introduced by Representative Don Young). While the bills have some minor drafting differences they are substantively the same and would accomplish the same things. *In the interest of not having to have a conference on this legislation or the House being required to re-pass it, we recommend that the Senate approve the House-passed bill.* We know there is little floor time left in this session, and are concerned that requiring the House to act again would endanger enactment of this legislation. The bills would require the Secretary of Health and Human Services to convey to the Maniilaq Association property located in Kotzebue, Alaska, for use in connection with these health and social service programs. The property to be conveyed consists of three parcels of land including buildings and appurtenances on the land.

The first parcel is an 8.10 acre tract on which the Maniilaq Health Center is located and on which the Maniilaq Association recently completed the construction of a long term care facility adjacent to the Health Center. Completion of this project has been a long term goal of Maniilaq Association and was the product of many years of work. In connection with this project Maniilaq Association unsuccessfully sought authorization from Indian Health Service to build the long term care facility as an addition to the Health Center which was owned by the Indian Health Service. Finally, after several years of discussion, Maniilaq Association realized that to keep the project moving it had no option but to agree with the Indian Health Service's suggestion that it accept title to the property. The parcel was transferred by the Indian Health Service to the Maniilaq Association through a Quitclaim Deed issued by the Indian Health Service to the Maniilaq Association on March 31, 2009. Final construction of the 18 bed facility was completed last year. The facility was dedicated in October, 2011 and its first residents moved in that same month.

The second and third parcels described in S. 1898/H.R. 443 are land on which housing for employees of the Health Center and long term care facility is located. The Indian Health Service transferred these parcels to Maniilaq Association approximately six months after the first parcel was transferred.

The conveyance required by S. 1898/H.R. 443 will be through a warranty deed without consideration and without imposing any obligation, term, or condition on the Maniilaq Association, or reversionary interest in the United States, other than required by S. 1898/H.R. 443 itself or by section 51 2(c)(2)(B) of the ISDEAA. This makes the conveyance required by S. 1898/H.R. 443 consistent with the ISDEAA, which allows reversion of title back to the United States, at the option of the Secretary, only upon retrocession or withdrawal by the Maniilaq Association from the Alaska Tribal Health Compact or re-assumption of the compacted programs by the Indian Health Service.

The warranty deed required by S. 1898/H.R. 443 will supersede the Quitclaim Deed issued by the Secretary to the Maniilaq Association on March 31, 2009. The quitclaim deed includes provisions for Indian Health Service control of the Maniilaq Association's use of the property which are inconsistent with conveyance of title under the ISDEAA. For example, the quitclaim deed requires Indian Health Service

approval for any mortgage or encumbrance of the property as security for construction or other loans for improvements on the property. Indian Health Service approval is also required for any contract which would impact the value of the property. This gives the Indian Health Service continuing control over the Maniilaq Association's use of the property. Breach of these requirements, which are made covenants running with the land, results in an immediate reversion of title back to the Indian Health Service. This goes far beyond the conditions for reversion of title back to the United States in section 51 2(c)(2)(B) of the ISDEAA.

While a quitclaim deed transfers the grantor's interest in the property, it does not warrant that the title is valid. Transfer by warranty deed, which requires special legislation, expressly guarantees the grantor's good and clear title and contains covenants concerning the quality of title, freedom from encumbrances, and defense of title against other claims. This gives the Maniilaq Association more security in its title and more flexibility in use of the property in carrying out health and social services programs for its member villages.

S. 1898/H.R. 443 exempts the Maniilaq Association from liability for environmental contamination or hazards, as defined in Federal law, present on the property as of the date of conveyance, notwithstanding any provision of Federal law. S. 1898/H.R. 443 does not pre-empt state environmental laws and the Secretary is granted any easement or access to the property which may be necessary for the Secretary to satisfy any retained environmental obligations and liability prior to conveyance. The Secretary must also comply with the notice and warranty provisions of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) applicable to transfer of property owned by the United States on which any hazardous substance was stored for one year or more, known to be released, or disposed of on the property.

Enactment of S. 1898/H.R. 443 will enable the Maniilaq Association to exercise its rights of ownership in the transferred property consistent with the ISDEAA and the principles of self-governance.

On behalf of the Maniilaq Association, including our twelve constituent villages and their members, we thank the Committee for holding this hearing on S. 1898.

Senator AKAKA. Thank you very much.

And now, Lieutenant Governor Hisa, you proceed with your testimony.

**STATEMENT OF HON. CARLOS HISA, LIEUTENANT GOVERNOR,
YSLETA DEL SUR PUEBLO; ACCOMPANIED BY JANETTE
HERNANDEZ, TRIBAL MEMBER**

Mr. HISA. Thank you. Good afternoon Chairman, Senator Udall.

First of all, thank you for giving the Pueblo the opportunity to come and testify in support of H.R. 1560.

Quick introductions. My name is Carlos Hisa. I am the Lieutenant Governor for the Ysleta del Sur Pueblo-Tigua Nation located in El Paso, Texas. I have served in this capacity for 11 terms, which is 11 years. With me today is our Governor, Frank Paiz, our Legislative Assistant, Jessica Cordova and Janette Hernandez, a Tribal member, a student, an intern in our Social Services Department and a mother. She also provided written testimony that is attached to my packet in which she gives examples of what she faces because of this limitation on a constant basis at home.

Senator AKAKA. Well, welcome to all of you.

Mr. HISA. Thank you.

We are here to ask the Committee to favorably support H.R. 1560 and get it out of Committee and into the Senate for a vote, hopefully by this spring. There is a sense of urgency. We have identified a couple of descendants that need our assistance with their ICWA cases and educational services that we want to provide.

The amendment in this bill just gives the Tribe the opportunity to determine its own membership. It is something that every Tribe

in the nation practices and we are limited. This is interfering in our sovereignty, self-determination and self-governance. So, we are strongly pushing this and hopefully we can get it passed.

As mentioned by Senator Udall, this is not the first time this bill has been introduced to the Congress. A year and a half ago we managed to get it out of the House successfully with no opposition. When it came to the Senate, there was a CBO report that was introduced which stated that the Federal Government would be responsible financially for the increase in the population. That was an incorrect statement. As much as we tried to correct that, we ran out of time and it failed to pass the Senate.

This year, we again managed to get it out of the House successfully with no opposition and it is in the Senate. Since then, we have corrected that CBO report. The CBO now states that our funding is not based on population. It is on formulas that were put into place back in 1987 when we were recognized. And again, it is not based on population. Our population will increase, but again, the Federal Government will not be responsible for giving us any additional dollars for this.

The bill is something that the Tribe has prioritized. We really want to stress that and wish that we can get it out by this spring, if possible.

I am here to answer any questions. So is Janette Hernandez. She is a prime example of what the bill has created. It has created identity crises in situations amongst our youth in our Tribal community and she experiences this every day. As you can see from the picture here, that is her daughter who is a descendant. I would like, if you could give her some time so she can explain the types of things that she faces at home.

I am at your disposal to answer any questions that you may have.

Thank you for the opportunity.

[The prepared statement of Mr. Hisa follows:]

PREPARED STATEMENT OF HON. CARLOS HISA, LIEUTENANT GOVERNOR, YSLETA DEL SUR PUEBLO; ACCOMPANIED BY JANETTE HERNANDEZ, TRIBAL MEMBER

Good afternoon Mr. Chairman, honorable members of the Senate Committee on Indian Affairs. My name is Carlos Hisa and I am accompanied by Janette Hernandez, an enrolled member of Ysleta del Sur Pueblo whose children are directly impacted by the blood quantum limit requirements for tribal membership. Her statement is attached hereto as Exhibit A. I am a member of Ysleta del Sur Pueblo located in El Paso County, Texas. For the past 11 years I have served as the Lt. Governor of the Pueblo. My term of office is one year. The matter under consideration has been a priority for the Pueblo since before my first term.

H.R. 1560 is about freedom—freedom from intrusive federal control. Beginning in the 1970s, this Congress embarked on a new federal Indian policy. You rejected the destructive policies of termination of Indian tribes, assimilation of Indian people and their culture, and the dispossession and despoiling of Indian lands. Instead, you created the present self-determination era of Indian law to free Indian tribes from an overreaching Federal Government. This Congress has encouraged Indian tribes to take up the mantle of self-government as distinct and independent political entities. Critical to that task is the ability of an Indian tribe to determine its own membership. The Supreme Court has noted, “A tribe’s right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.” See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Community determination of its own membership is inherently the most internal of all tribal matters.

The Pueblo has occupied its present location since the Spaniards removed it from New Mexico during the Pueblo Revolt of 1680. The Pueblo has existed at its present location twice as long as the State of Texas has been in existence. It is the longest continually occupied community in Texas. It is the only Indian Pueblo still existing in Texas. It recently rejoined the All Indian Pueblo Council after being absent for over 330 years. The Council now comprises twenty Pueblos.

In 1968, toward the end of the termination era, Congress recognized the Pueblo as an Indian tribe and transferred federal trust responsibilities for the Pueblo to the State of Texas. On August 18, 1987, the United States Congress restored the Federal trust relationship between the United States and the Pueblo. In the Restoration Act, Congress imposed a $\frac{1}{8}$ Tigua blood quantum requirement for membership.

No other Indian tribe in Texas is subject to a congressionally mandated blood quantum limitation on its membership. No other Pueblo is subject to such a blood quantum limitation. Except for one early termination era enactment, Congress has subjected no other tribe in the United States to such a blood quantum limitation for membership. In fact Congress has declined to include such a blood quantum limitation on those Indian tribes which Congress has recognized (five tribes) or restored to trust relationship (two tribes) subsequent to the Pueblo's Restoration Act. With the exception of Ysleta del Sur Pueblo, Congress has not imposed a blood quantum limitation on any tribe in over half a century.

Ysleta del Sur Pueblo is a tribe of Tigua Indians. To be Tigua is to believe in the power of our drum, the heartbeat of our community; to respect the authority of our Cacique; and to revere our traditions. Unfortunately, the blood quantum limitation has had the effect of preventing Tiguas from being members. At present, sixty-six percent of tribal members lack a $\frac{1}{4}$ blood quantum. Absent the other parent having sufficient Tigua blood quantum, the children of sixty-six percent of tribal members cannot be members of the Pueblo despite being Tigua. This includes my three daughters.

Our young men and women are vibrant Pueblo people who are part of our community. Many aspire to serve our Pueblo, but do not meet the blood quantum limitation to be a member. They participate in our cultural events, they study our history, they engage in community service, they learn and speak the Tiwa language, and they understand the importance of carrying the traditions of our Pueblo forward. These "descendants" are a part of our community and our people recognize them as legitimate members. They are Tigua. They are our future, our hope, but they will not be able to serve as Tribal Councilmen and Councilwomen or in other tribal offices. They will not be eligible for federally funded services from the Pueblo.

They live on our reservation and interact with our members who are their mothers, fathers, grandfathers, grandmothers, cousins, uncles, aunts, and neighbors and influence the entire community for good or for bad. They must be treated like citizens of our Pueblo, but if not included as members they will not be subject to the jurisdiction of the Pueblo. The inability to exert jurisdiction over people who are the children of many of our members has a negative social impact on our Pueblo.

Passage of H.R. 1560 frees the Pueblo to make all Tigua members rather than accepting only those who meet the requisite blood quantum but who may otherwise be anything but "Tigua." Passage of H.R. 1560 assures the future of the Pueblo and the continued security of its people and neighbors without cost to the Federal Government.

The legislative history of the Pueblo's Restoration Act records the Department of the Interior's belief that the Congress should place some limit on the potential service population of tribes being made eligible for federal benefits, the first time that the Department expressed this concern—a concern, as previously noted, that has been applied only to this Pueblo. Congress has never seen fit to do so since the Pueblo's Restoration Act, perhaps due to the sentiments expressed in a House Committee Report accompanying the bill—

The Committee has strong reservations about the constitutionality of a law which would determine eligibility for such Federal services based on a racial criterium such as the degree of Indian blood instead of a political criterium such as the membership in an Indian tribe.

The language of H.R. 1560 is the same as that H.R. 5811 introduced by Congressman Reyes in the last Congress. On a motion to suspend the rules, the House agreed to and passed the bill by voice vote on September 22, 2010. This committee reported the bill favorably by unanimous voice vote on November 18, 2010. The bill was placed on the Senate Legislative Calendar under General Orders where it languished, possibly due to an erroneous CBO cost estimate.

Given the unique manner in which the Federal Government funds Native American services, enactment of H.R. 1560 will have no federal fiscal impact. In support of this statement I am providing the committee with copies of the Congressional Budget Office Cost Estimate (Exhibit B) that confirms:

“CBO estimates that implementing H.R. 1560 would have no significant impact on the federal budget.”

The Cost Estimate also maintains that:

“H.R. 1560 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Federal programs which fund tribal services, including those of the Pueblo, are not entitlement programs. Agencies distribute appropriated funds among Indian tribes in their service area according to set percentages which are independent of any increase or decrease in a tribe's population. The Pueblo's 1989 budget serves as base funding for BIA allocations, and its 2002 budget serves as base funding for IHS allocations—as is true of all other tribes in the same service areas.

Expedient passage of H.R. 1560 frees the Pueblo to determine its own future, is consistent with recent Congressional action, and has no impact on the federal coffers. I respectfully request your support for and passage of H.R. 1560.

EXHIBIT A—PREPARED STATEMENT OF JANETTE HERNANDEZ, TRIBAL MEMBER,
YSLETA DEL SUR PUEBLO

Good afternoon Chairman and honorable members of the Senate Committee on Indian Affairs. My name is Janette Hernandez and I am a member of Ysleta Del Sur Pueblo. I am currently a student at the University of Texas at El Paso and serve as an intern at the Ysleta del Sur Pueblo's Social Services Department. I am also a mother of three little girls and step-mother to eight children. It is my duty as a Tigua woman to teach the next generation about the Tigua who have come before us and teach them about our roles and responsibilities to carry on our traditions and customs. It is also my duty to be there not only for my children, but for every child of the Pueblo.

However, we are facing a crisis at Ysleta del Sur Pueblo. For over 300 years the Pueblo has struggled to preserve its culture and community. We are proud of our ancestors who, captured by the Spanish during the Pueblo Revolt of 1680 and forced away from their homelands, established and defended what is now Ysleta del Sur Pueblo. As Tigua women, my mother and grandmother taught the other women in my family the importance of carrying on traditions and passing on the Tigua way of life. For centuries the Pueblo has endured the loss of its lands, the loss of use of other natural resources, and the loss of rights to determine how the community will care and provide for our children and future generations. It has been a 300 year struggle to survive as a community established and looked after by our Tigua ancestors. For as long as Tiguas have survived in Ysleta, tribal members have sought to live a life free of poverty, discrimination, and uncertainty. This is not yet a reality. Despite such obstacles we have taught our children to hold on, persevere, and stand up for our identity as an Indian community. In the 1960s, when the Tigua were finally recognized as a tribe, members had lost almost everything, but we had each other. No one told us who could and could not be Tigua.

As Tigua parents, we want to create a safe, healthy and nurturing environment for our children. However, as Tigua parents we face the insecurity of knowing that our culture, spirituality, and community are threatened. As a parent, it is overwhelming to know that your children and their children could be deprived of their heritage and traditions. As an Indian community we are forced to not only deal with the pressure of raising our children during complex and dangerous times, but we also must cope with cultural anxiety and uncertainty that is unknown to other ethnic communities. That anxiety and insecurity is passed on to our children. The will and tenacity to survive as a people may now be defeated by a sentence in our Restoration Act, an Act meant to restore and preserve a community but now operates to deny the next generations of Tigua youth their place in the community. Our children are deprived of federal services such as education and other service opportunities in their own community.

My two youngest daughters are considered tribal members because my husband is also a tribal member. However, my oldest daughter from my first marriage to a non-Indian does not meet the 1987 Restoration Act definition of a Tigua. She is considered a descendant because she is below the minimum blood quantum. My husband's other children are tribal members because my husband has a higher blood

quantum than I do. So, my oldest daughter is the only one in our family who is not recognized by the government as a tribal member.

She is only eight years old but understands that because she is not Indian "enough," she does not qualify for federal programs or services. She will not receive the trust protections and benefits she would have as a tribal member. She will not be able to live as an equal with her people. My child feels excluded from her own community. Yet, she still carries the responsibility of guarding and working to protect the Tigua way of life through her active participation in traditional ceremonies. She is wise for her age and recognizes that she needs to take care of what matters most, protecting and continuing the Tigua culture so that the Tigua will not cease to exist. She participates in all traditional events and everyone in our small community knows that she is my daughter and comes from a long line of Tigua leaders, elders, and ancestors. To the Pueblo, she is a Tigua. She is a tribal member.

I fear that the mixed messages my daughter receives will be detrimental to her realizing her dreams as a Tigua adult. The burden of an eight year old being acknowledged by her family and community as a Tigua, but our government telling her she cannot be a member of our tribe is unfair and detrimental to her health, welfare and security. It is a "label" that is detrimental to all Tigua children in this situation, the stigma that they don't really belong. Throughout our community there are mothers and children who share my story.

The blood quantum requirement raises countless issues. It divides us as a people and is just another way that we as Native Americans are discriminated against, in general and this time among ourselves. There is no other race where individuals are asked how pure their blood is. So as a mother, a Tigua, and also a descendant of those Tiguas that came before, I ask that you understand and acknowledge our sovereignty, our legacy, and the devastation the blood quantum limitation is inflicting on our community. But, most importantly I ask you to help to preserve a culture and a community.

EXHIBIT B

September 9, 2011

Hon. DOC HASTINGS,
Chairman,
Committee on Natural Resources,
U.S. House of Representatives,
Washington, DC.

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirement for membership in that tribe.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Martin von Gnechten (for programs of the Bureau of Indian Affairs) and Robert Stewart (for programs of the Indian Health Service).

Sincerely,

DOUGLAS W. ELMENDORF.

Attachment

Congressional Budget Office Cost Estimate

H.R. 1560 would amend the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act to eliminate the requirement that individuals have a blood quantum level of at least one-eighth to qualify for tribal membership. This legislation would allow the Ysleta del Sur Pueblo tribe to establish its own blood quantum requirement for determining membership.

Based on information from the Department of the Interior, the Indian Health Service, and members of the Ysleta del Sur Pueblo tribe, CBO estimates that implementing H.R. 1560 would have no significant impact on the federal budget. Federal agencies currently provide services to all of the Ysleta del Sur Pueblo Indians who would become tribal members under H.R. 1560 because those agencies do not restrict services based on tribal membership established under the Ysleta del Sur Pueblo and Alabama and Coshatta Indian Tribes of Texas Restoration Act. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 1560 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or

tribal governments. Enacting this legislation would benefit the Ysleta del Sur Pueblo tribe.

The CBO staff contacts for this estimate are Martin von Gnechten (for Bureau of Indian Affairs programs) and Robert Stewart (for Indian Health Service programs). This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

Senator AKAKA. Thank you very much, Lieutenant Governor, for your testimony.

Mr. Hansen, how will transferring of this property in this bill allow the Association more security and flexibility at your facility and improve services of Tribal members?

Mr. HANSEN. As I mentioned, there are a couple of inadequacies. One of the things that we are facing now, we moved into the new Maniilaq Health Center in 1995, so 17 years later a lot of the equipment is nearing the end of its useful life. We are having to do some major equipment replacements. Also, the facility is needing to be renovated and some changes made to the facility.

We would like to be able to finance some of those equipment purchases, which is standard in the industry. But with the rever- sionary clauses that exist, it frankly raises eyebrows from the fi- nancial institutions in terms of allowing us to use that asset to bor- row money against.

Additionally, we are working on and looking at some tax credit programs to expand some of our facilities and again, having more security for that property through a warranty deed, that would allow us to do that.

Senator AKAKA. Lieutenant Governor Hisa, can you describe what impact the passage of H.R. 1560 would have on the Tribal membership of the Ysleta del Sur Pueblo?

Mr. HISA. It would be a positive impact for our community. We have a large number of descendants and it continues to grow. And we do provide services for our community, both federally funded and services that are funded by the Tribal Council from revenues that we generate from our business or whatever.

But we cannot extend those services, like we do to the Tribal members have full services, so the impact would be just tremen- dous in helping everybody in parity with the same services that are available.

Senator AKAKA. Ms. Hernandez, we have a photo here of your daughter who is now eight.

Ms. HERNANDEZ. Yes.

Senator AKAKA. And in your testimony you note that this beau- tiful young girl is not able to be enrolled as a member in the Pueb- lo because of the restrictions in the settlement agreement. This has led her to believe she is not Indian enough.

Ms. HERNANDEZ. Correct.

Senator AKAKA. Can you describe the impact that has had on your daughter? But, before you do that, if you have any comments you would like to make before you answer the question, we cer- tainly would want to hear you.

Ms. HERNANDEZ. First of all, good afternoon Chairman and Hon- orable Members of the Senate Committee on Indian Affairs. I really appreciate the opportunity to tell the story of my daughter and of our family and of our Pueblo and how this Restoration Act blood

quantum limitations has had an effect, especially on my daughter. The rest of our family are considered Tribal members and my daughter is the only one who is excluded. She does not meet the minimum blood quantum of one-eighth. So she is not a registered member of the Tribe. But she is a member of our Tribe. She participates in every way. She is always there but she is not sure of who she is because she gets two messages. She knows she is a Tribal member because our community lets her know that she is a part of us and yet she cannot receive the same benefits as a Tribal member.

And that is where, my daughter has come home crying because she does not understand. She knows it is not fair. Other kids make fun of her because they say she should not be with us and the community because she is not a Tribal member, she is a descendant. And they make that distinction.

Senator AKAKA. As you tell me she feels that way, what determines that she is not a Tribal member?

Ms. HERNANDEZ. My blood quantum is three-sixteenths. So when I was in my first marriage, her father is not a Tribal member. So, she is three-thirty-seconds, which is less than one-eighth.

Senator AKAKA. Oh, I see.

Ms. HERNANDEZ. My two younger daughters, my current husband is a Tribal member, so my two younger daughters are considered one-fourth. So, they meet the minimum blood quantum. And my husband's children are also considered Tribal members. So, she is the only one from our family who is not a Tribal member because she does not meet the minimum one-eighth.

Senator AKAKA. Well, now coming back to the question, can you describe and you did, can you further describe the impact that this has made on your daughter.

Ms. HERNANDEZ. Other instances that my daughter has questioned her identity is, we have a library in our Tribe and on our reservation, and when she goes in she must sign in. And there are two different sign-in sheets. There is one for descendants and there is one for Tribal members. This is for funding purposes. Carlos can elaborate on that. But, there is that separation and she feels that separation and where she is distinguished that she is not a Tribal member and she is a descendant and she carries that with her. But she also carries the responsibility of being a Tribal member and participating and carrying on our traditions and our ways of life.

Senator AKAKA. Thank you. I would like to call now on Senator Tom Udall for his questions.

Senator UDALL. Chairman Akaka, thank you very much. And she really, Janette, she really looks like a lovely young lady and I am sure that you are very proud of her.

First of all, let me just welcome the Governor, other Tribal officials and Lieutenant Governor on our panel today. It is good to have you here.

I thought, I would ask about, to start with Janette and ask about this division this has caused within the family and within the Tribe. You know, we do not, in the United States, if you are an American nobody says you are this percentage American, that percentage of American. I imagine that that is, the best word is divisive. It sets up so that she signs in and she has to sign in dif-

ferently. Could you describe the impact on her and the impact that you know of of any Tribal member? And I will also ask the Lieutenant Governor to comment on this after you finish.

Ms. HERNANDEZ. Our descendants feel very divided and separated from Tribal members because they are not considered Tribal members through the Federal regulations, the minimum of one-eighth. And my daughter, constantly knows that she is a Tribal member, that she carries that. She is my daughter. And she sees her sisters and her sisters who also participate. But yet her sisters can go in and sign in on a different sheet but she has to sign in on the other one.

And that is detrimental to her. To her identity; she does not know who she is. She is only eight years old and that is a burden that an eight year old should not have. It does not matter her ethnicity. She is a Tribal member and she knows that in her heart, but she does not know that in her brain, in her head. She is only eight years old.

Senator UDALL. Yes, very damaging, I am sure. Lieutenant Governor, if you would like to comment on that question?

Ms. HISA. I sure will. Let me just elaborate on why there is a different sign in sheet. Again, because of Federal funding, we have reporting requirements and when our Tribal members visit our education center, whether it is to use a computer lab, for tutoring, they need to sign in on one sheet because that is the funding that we need to report on.

We also ask descendants to sign in because, again, we want to keep track of our descendants. And, at the same time, when it comes to funding a program, Tribal Council goes through a budgeting process and we want to see the number of descendants taking advantage of these services so we can fund accordingly. So, that is the purpose. It is not with bad intent but it is something that is in place not only in our education center but in our wellness center and everywhere else because that is how we need to govern ourselves and operate to be able to keep count of what is going on.

As Janette mentioned, there is a sense of separation between the youth. I also have three daughters and they are considered descendants and they are also asked to sign in on different sheets. But when it comes to our ceremonies or our way of life, nobody there questions their ethnicity, their blood, where they come from. And her daughter is always there. We accept her as part of the family, part of the community, as well as my daughters. But when they have to go to receive services, they do feel a little hesitant, in going, because of that sense of being less Indian than their relatives.

So it is detrimental to the youth. My children are much older. Well, I have an eight year old as well. But I also have an 18 year old and a 14 year old, and they struggled through this to where, in our summer program, they decided not to participate because of that. They would not participate and they limited themselves in that way.

And we do not want her daughter to go through that same thing and not be part of the community like the way we want them to be, the way we accept them. It is something that is not coming from us. It is just a label that has been put upon our youth by the

Federal Government and nothing else. So, we are asking for that to be changed.

Senator UDALL. Lieutenant Governor, basically what you are saying is that this is very isolating to this young individual or others in the community.

Mr. HISA. Yes.

Senator UDALL. Now, are there, there is obviously her daughter and others in the community who do not meet the one-eighth blood quantum requirement. Do you have an estimate of how many?

Mr. HISA. It is approximately over 500.

Senator UDALL. Okay.

Mr. HISA. We are still getting, since the bill started moving, we have asked parents to bring their children, the information, so we can start, just about a year ago we started issuing out descendant cards so we can start just getting a true number. So it has over 500 members right now.

Senator UDALL. And how does the Pueblo handle providing services for members of your Tribe who do not officially, are not officially enrolled because of the one-eighth blood quantum requirement? How do you handle that?

Mr. HISA. We, through revenues that the Pueblo generates through its operations and businesses, find a way to go ahead and try to provide the same level of service to descendants. It is just a funding issue that really separates it.

So, we are not asking the Federal Government for additional money. We have managed to operate our programs successfully. So, we are just asking for this identity of non-Tribal descendants to be taken away and eliminated.

Senator UDALL. Can you describe for the Committee what H.R. 1560 would mean for the Ysleta del Sur Pueblo's capacity for self-governance and self-determination?

Mr. HISA. Yes. We are a sovereign nation. We consider ourselves a sovereign nation. We do have government relationships with the State of Texas, the City of El Paso, the County of El Paso, the Federal Government as well. So, this is just something in addition to what we believe in. We need to be able to govern our people, provide a safe environment and welfare for our community, no matter if they are descendants, one-eighth, full-blooded, we all look at our Tribal membership as being equal and we want to be able to treat everybody the same.

Senator UDALL. Now, would you expect that H.R. 1560 would result in any major additional costs? I know the issue you raised in your testimony. In my understanding, the Congressional Budget Office, as far as the cost to the agency, has issued a zero finding now.

Mr. HISA. It will not be an additional cost to the Federal Government and if it is an increase in cost to the Pueblo it is going to be a minimal one because we do provide for our descendants as well. So once I have a feeling that once this passes and that limitation is taken away, we will have more people come and register their children freely. It might be an increase in the cost but it is not going to be much because, like I said, we do provide services to our descendants as we speak.

Senator UDALL. Thank you. And I thank the whole panel today for your testimony and I would yield back to the Chairman. Thank you.

Senator AKAKA. Thank you very much, Senator Udall. We, the Committee, will certainly consider these bills. But I want to again thank you so much for your being here and your responses. It will help us in dealing with these bills.

I know the Tribal witnesses traveled far to be with us today. Your testimony makes it clear how important those pieces of legislation are for your Tribes and your members.

I look forward to working with my colleagues on the Committee to move these bills through the Committee and to this Senate and so we will be, as a Committee, working on this now that we have had the hearing and we have heard from you.

So, mahalo, thank you very much for your participation in this hearing.

This hearing is adjourned.

[Whereupon, at 3:21 p.m., the Committee was adjourned.]

