

S. 1364, H.R. 1975, H.R. 2088, AND H.R. 4881

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SEVENTEENTH CONGRESS

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WEDNESDAY, NOVEMBER 17, 2021

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

The Committee met, pursuant to notice, at 2:38 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon.

During today's legislative hearing, we will consider four bills, S. 1364, the Lumbee Tribe of North Carolina Recognition Act, H.R. 1975, the Pala Band of Mission Indians Land Transfer Act of 2021, H.R. 2088, the Eastern Band of Cherokee Historic Lands Reacquisition Act, and H.R. 4881, the Old Pascua Community land Acquisition Act.

These bills represent two very important ways Congress and honor and strengthen tribal sovereignty and self-governance, extending Federal recognition, that is granting all rights, privileges and protections the United States currently affords to 574 recognized tribes, and taking land into trust to restore tribal homelands. Both acts carry profound weight, and so should not be undertaken lightly or without the full consideration by this Committee.

We begin with S. 1364, a bill to extend Federal recognition to the Lumbee Tribe of North Carolina, and clarify that the tribe and its citizens are eligible for all services and benefits the United States provides to federally recognized Indian tribes. This legislation will also authorize the Secretary of the Interior to take land into trust for the tribe.

The Lumbee Tribe has long sought Federal recognition and is one step closer to having secured House passages of H.R. 2758, the identical companion bill to S. 1364.

Turning to the House-passed bills, H.R. 1975 would authorize the Secretary of the Interior to take approximately 721 acres of land in San Diego County, California, into trust for the benefit of the Pala Band of Mission Indians, empowering the tribe to better steward their sacred sites and honor their cultural history.

H.R. 2088 would place approximately 76 acres of Federal land and 20 acres of permanent easements into trust for the benefit of the Eastern Band of Cherokee Indians. The primary use of these

properties would support the tribe's ongoing cultural, historic, and recreational activities.

Finally, H.R. 4881 would direct the Secretary of the Interior to take approximately 30 acres of land known as Old Pascua into trust for the benefit of the Pascua Yaqui Indian Tribe.

Old Pascua is the oldest formally established area where the Yaqui community lived before their formal reservation was established. This land would allow the tribe to expand governmental operations, create jobs, and further support tribal housing, health care, and education.

Before I turn to Vice Chair Murkowski, I would like to extend my welcome and thanks to the witnesses who also happen to be members of the House and the Senate, for joining us today. I look forward to your testimony and our discussion.

Vice Chair Murkowski?

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

Senator MURKOWSKI. Thank you, Mr. Chairman.

You have introduced all four of these bills very thoroughly, so I won't repeat. I will state that all of these bills have something in common: they acknowledge and affirm the importance of the government-to-government relationship between the United States and Indian tribes. It is through Federal recognition of an Indian tribe that the government-to-government relationship is acknowledged. That relationship establishes the foundation for taking land into trust.

These kinds of actions by Congress have far-reaching impacts, not just on the tribe and its membership, which can be life-changing in terms of benefits and services, but also on other Indian tribes, surrounding communities, and Federal, State and local governments.

So I thank you. I want to say [phrase in Native tongue] for holding today's hearing and providing the opportunity to hear from Indian Country and our colleagues on these important bills.

The CHAIRMAN. Joining us today, our first testifier is the senior Senator from North Carolina, Senator Richard Burr.

**STATEMENT OF HON. RICHARD BURR,
U.S. SENATOR FROM NORTH CAROLINA**

Senator BURR. Chairman Schatz and Vice Chairman Murkowski, Senator Hoeven, thank you on behalf of Senator Tillis and I for the opportunity to come in and introduce our legislation to take a wrong and make a right out of it.

To say the tribe has been here before would be an understatement. The Lumbee people have been seeking Federal recognition from Congress for over 130 years. This Committee has been holding hearings on the Lumbee status since 1912.

Time and time again, the Lumbee have proven their case to Congress. This Committee's files are full of testimony, letters, reports, and other records which demonstrate beyond any shadow of a doubt that the Lumbee Tribe is worthy of full Federal recognition.

Over the last 33 years, 29 Lumbee recognition bills have been introduced in the Congress, 15 by Democrats, 14 by Republicans,

showing just how bipartisan this effort has always been. Today is the fifteenth Congressional hearing on Lumbee recognition since 1988, and the seventh in this Committee. Over that time, Congressional committees have approved Lumbee recognition bills 13 times, including 7 by this Committee. The House has passed Lumbee recognition bills six times, including two overwhelming votes in the last 12 months.

I believe no other tribe in the Country has been subjected to as much Congressional scrutiny over such an extended period of time, or received as many repeated expressions of bipartisan Congressional support as the Lumbee Tribe. Having said that, I recognize some in the audience may not be as familiar with Lumbee and their history as we are.

Since time immemorial, the Lumbee have called the present day counties of Robeson, Scotland, Hoke, and Cumberland their home. They have been a cohesive community in North Carolina for centuries and they have developed unique tribal institutions that have served their membership well in the face of extraordinary adversity.

They have been teachers, farmers, doctors, small business owners. Some have served as sheriff, clerks of court, State legislators or judges. Many have protected our Nation in the armed forces. Their contribution to their community, to the State of North Carolina, to the Country, are innumerable.

Their commitment to education is unparalleled. In the late 1800s, the State authorized the tribe to round the State school district for Lumbee children. The State also authorized an advanced Indian school to train teachers for the Lumbee schools. Although the State provided no money for construction, the Lumbee built the school on their own. It has been in operation continuously since then, and today it is the University of North Carolina at Pembroke.

The State of North Carolina recognized the Lumbee Tribe in 1885. Three years later, the tribe began its quest for Federal recognition. Over the next 50 years, they repeatedly petitioned the Federal Government for assistance, but to no avail.

During the height of the shameful termination era, Congress passed the Lumbee Act of 1956. This partial recognition designated the Indians residing in Robeson and adjoining counties of North Carolina as the Lumbee Indians of North Carolina. But it blocked them from accessing Federal benefits available to other federally recognized tribes. Nothing short of discrimination.

To put this in context, four other tribes were terminated by Congress in 1956. All have had their Federal recognition status restored. Only the Lumbee have yet to receive the full recognition that they deserve.

The Lumbee Tribe is incredibly resilient. But decades of discrimination have caused severe economic consequences. Robeson County is one of the poorest counties in the State. While the other 574 federally recognized tribes can use the rights and services offered by the Federal Government to improve their economic situations, because of the 1956 law, the Lumbee cannot.

They are the only tribe in the Country in this situation, and it is unjust and it is immoral. This is ample precedent for correcting the injustice, but not the least of which is legislation Congress

passed in 1987 to fully recognize the Tiawah Indians in Texas. Nineteen years prior, Congress had passed a law modeled after the 1956 Lumbee Act which recognized the Tiawah but prohibited them from accessing Federal services. In the Tiawah's case, Congress corrected the inequity of the initial decision. It is way past time for us to do the same for the Lumbee.

Support for this action is broad and bipartisan. The House version was introduced by Democrat colleagues, G.K. Butterfield, David Price, Republican colleagues Dan Bishop and Richard Hudson. The bill passed the House earlier this month with 85 percent of members voting in favor. It also passed the House overwhelmingly last Congress.

It is time for the Senate to do the same. North Carolina Governor Roy Cooper, a Democrat, has written a letter urging Congressional leaders to pass Lumbee recognition without delay. I would ask the Committee to include a copy of that letter in the record.

Similarly, both President Biden and President Trump have publicly pledged their support for this legislation. I would like to thank in advance Assistant Secretary Newland who clearly and unequivocally reaffirms the Administration's support of this in his testimony today.

Mr. Chairman, I pause here for a second because I think some would say, with all the Lumbees have been through, that they would just crawl in a hole and not play a role in the communities they lived in. They did exactly the opposite.

Without the abilities, without the benefits of Federal recognition, this is a tribe under Chairman Godwin's leadership now that didn't let the lack of Federal recognition set them back. They made sure their books were audited and transparent. They went to HUD and they got more money than probably any tribe in the Country ever has from HUD, even with recognition, because they were a trusted partner.

When North Carolina was plagued with hurricane after hurricane, flood after flood, and many of you remember that several years ago, it was Chairman Godwin and the Lumbee Indians that stood up and said to FEMA and to the American Red Cross, you won't find a better partner than us. Starting with the first tragedy through the end, now they are the first call that the American Red Cross makes in southeastern North Carolina, to the Lumbees, to preposition, because they know they are the best source, logistically, to handle the challenges that they are going to face at that end of the State.

In summary, the time for excuses is over. The time for action is now. It is time to finally do what should have been done over 130 years ago. It is time for the Federal Government to fully recognize the Lumbee Tribe.

I respectfully request the support of each one of you in helping make this a reality.

I thank the Chair.

The CHAIRMAN. Thank you, Senator Burr.

We are now pleased to have our colleague, Senator Thom Tillis of North Carolina, to provide his testimony. Please proceed.

**STATEMENT OF HON. THOM TILLIS,
U.S. SENATOR FROM NORTH CAROLINA**

Senator TILLIS. Chairman Schatz, Ranking Member Murkowski, and Governor Hoveen and Senator, thank you for having me here. One of the beautiful things of following my senior Senator and friend after comments like this is that I will just simply associate myself with those comments rather than repeat them.

But I want to give you an idea of my involvement in those. Back when I was Speaker of the House is when I first found, really, I was aware of the Lumbee Tribe, but wasn't really familiar with them in the way I became familiar. I went down there. I saw a cultural center, I saw the work that they were doing in the community. I learned their history. I learned that they had been recognized in 1985 by the State, and they started working on recognition in 1988.

I learned that they took it on themselves to educate their children and make sure that their cultural heritage was preserved. I learned that by Congressional action, decades later, they denied them that privilege. They were not allowed to teach their children anymore. I learned that their academic performances suffered mightily as a result of that. I think you will hear that in Chairman Godwin's comments a little bit later on.

I learned that for 133 years, there was an odd thing going on with the Lumbee that is unparalleled by any other tribe that has tried to see recognition. I also learned that their continued investment is what has produced one of the great teaching institutions in our premier university system at the University of North Carolina at Pembroke.

I think in the testimony you are going to hear from Chairman Godwin today and from Dr. Hoxie, and previous testimony from Professor Campisi, you are going to hear the same thing. They have been in our State for hundreds of years. They have maintained their cultural identity. They have lived in lands that may have shrunk as others took property from them, retreating to some of the swamps in Robeson County. But they stayed there. They maintained their culture. They made the investments, and they deserve to be recognized.

I should have to say, for the first three years of my tenure here as a Senator, I did not sign onto the Lumbee recognition bill. When I was called on by the chairman to say, why are you doing that, I said, because I don't like making promises that I can't keep. Until I can understand how we create an environment where we can finally seek recognition, I am not going to give you false hope.

What changed? President Trump supported their recognition. President Biden supports their recognition. The Administration is going to make a statement today to that effect. The Democrat Governor of North Carolina supports their recognition. The Republican-led House and Senate legislature supports their recognition. The vast majority of people in North Carolina support their recognition.

So I hope as we go through this process that you all will understand the importance of this to the Lumbee people, to me personally, and help us get their recognition done in this Congress. Thank you.

The CHAIRMAN. Thank you very much, Senator Tillis.

Next, we have Congressman Butterfield from the First District of North Carolina.

**STATEMENT OF HON. G.K. BUTTERFIELD,
U.S. REPRESENTATIVE FROM NORTH CAROLINA**

Mr. BUTTERFIELD. Chairman Schatz, Vice Chair Murkowski, thank you so much for the opportunity to address the Committee today. It is a real honor for me to do so.

I would like to offer my unconditional support for the Lumbee Recognition Act, which is S. 1364. Today's hearing builds upon the tremendous momentum behind Congress finally extending full Federal recognition to the Lumbee Tribe of North Carolina. I think Senator Burr and Senator Tillis have very ably explained to you the history of this matter, and explained to you why it is so long overdue.

Two weeks ago, the House voted overwhelmingly, 357 to 59, on a bipartisan basis to pass my bill that is identical to the version of Senator Burr's bill which is before the Committee today. Senators, the Congress has an opportunity to do the right thing and fix an historic wrong by passing the Lumbee Recognition Act. Our home State of North Carolina has recognized the Lumbee since 1885. Congress recognized the Lumbee in the 1950s, but refused to allow the tribe access to federally funded services and benefits. What a tragedy. We are so long overdue in delivering justice to the tribe.

The bill before you has tremendous bipartisan support. Isn't that good? It has tremendous bipartisan support inside and outside North Carolina, as demonstrated by the recent vote in the House and President Biden's support for full Federal recognition of the Lumbee. Now is the time to do the right thing and to get this done.

Senators, the merits of the Lumbee claim for full Federal recognition have long been accepted by our State. It has been accepted by academia and even by the Federal Government. It is long past time for Congress to give the Lumbee the respect they deserve and to treat them, each of them, with the fundamental fairness that has been withheld for so many years.

I urge you to support the Lumbee Recognition Act and stand on the right side of history. I want to thank the Chair, I want to thank the Vice Chair, thanks Senator Burr, Senator Tillis. We are all great friends. We work together whenever we can. This is an example of us working together.

Please pass this Act. I yield back.

The CHAIRMAN. Thank you very much, Congressman, for your leadership on this issue and your brevity.

Next, we have Congressman Issa from the 50th District of the State of California. Congressman Issa?

**STATEMENT OF HON. DARRELL ISSA,
U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. ISSA. Thank you, Mr. Chairman, Ranking Member Murkowski, Governor.

H.R. 1975 is an interesting piece of legislation, because like so many land in trust requests, it represents a rebirth of a tribe who was denied all of its land centuries ago, and only restored in the

previous century. I want to thank tribal Chairman Smith of being so understanding of the time it takes to do this as we have gone through multiple Congresses, and Congressman Ron Vargas who championed this previously.

The land in trust history for the Pala Tribe is an amazing one. This land, this 721 acres, was taken from the tribe many years ago. It was used and exploited as a quarry. For more than two decades, it was intended to become a landfill on the edge of the reservation.

In no small part because of the sensitivity of the environment and the watershed, that never came to be. It fell into bankruptcy and of course, had no support for the needed repair and maintenance.

The tribe made the purchase with its own funds, and now wants to gift this land in trust, effectively, to the Federal Government. I always say it that way because we often misunderstand that this land is already theirs. They have already purchased it. And they purchased it with money that was not a gift from the Federal Government, but from the hard-earned work of the tribal members.

This bill has already passed the House overwhelmingly, and comes to you as a bipartisan piece of legislation. But I think more importantly, it is part of a process. This is the fifth land in trust bill that I have brought through the process in my 20 years. It is one of dozens that will be needed.

I represent, second only to the Vice Chairman, probably the most number of tribes. I have 18 separate reservations within my district. So just like the people of Alaska, the people of Oklahoma, we have a large number of wrongs to make right. And this is one of them.

Lastly, if we do not place this in trust, if this were to fall back into other use, it would from an environmental standpoint likely not be nearly as good for the people of San Diego, for the watershed development that it is part of, and the like. So it has both environmental and fairness issues.

So since you complimented the previous person on brevity, I will seek to get the same compliment. I want to thank you for your understanding and hopefully your quick approval. I yield back, Mr. Chairman.

The CHAIRMAN. Thank you very much, Congressman Issa, for your leadership and your brevity.

[Laughter.]

The CHAIRMAN. We will now move to our second panel of witnesses. We will give everybody a minute to get situated.

Turning to our second panel, we have five panelists: the Honorable Bryan Newland, Assistant Secretary, Indian Affairs, Department of Interior; the Honorable Harvey Godwin, Jr., Chairman, Lumbee Tribe, Pembroke, North Carolina; the Honorable Robert Smith, Chairman, Pala Band of Mission Indians, Pala, California; the Honorable Richard Sneed, Principal Chief, Eastern Band of Cherokee Indians, Cherokee, North Carolina; and the Honorable Peter Yucupicio, Chairman of the Pascua Yaqui Tribe in Tucson, Arizona.

I want to remind our witnesses that your full written testimony will be made part of the official hearing record. Please keep your

statement to no more than five minutes, so that members have time for questions.

We turn to Mr. Newland, in person, for your testimony.

STATEMENT OF HON. BRYAN TODD NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. NEWLAND. Aanii, mino gigizheb. Good afternoon, Chairman Schatz, Vice Chairman Murkowski, Senator Hoeven. Thank you for having me back in front of the Committee. My name is Bryan Newland, I serve as Assistant Secretary for Indian Affairs at the Department of the Interior. While I also would love to be complimented for brevity, I have the privilege of speaking to four bills. So I want to do them all justice.

I appreciate the opportunity to speak on those four pieces of legislation, S. 1364, the Lumbee Tribe of North Carolina Recognition Act, H.R. 1975, the Pala Band of Mission Bands Lands Transfer Act, H.R. 2088, the Eastern Band of Cherokee Historic Lands Reacquisition Act, and H.R. 4881, the Old Pascua Community land Acquisition Act. I am here to express the Department's support for all four of these bills.

When the United States recognizes a tribe as a sovereign government, it establishes a formal government-to-government relationship with that tribe. Acknowledgement of a tribe is a solemn act. Through our Nation's history, both Congress and the Executive Branch have exercised their powers under the Constitution to recognize tribes and affirm the nation-to-nation relationship.

Through the Lumbee Tribe Recognition Act, Congress and the Executive Branch would act together to recognize the sovereign status of the Lumbee Tribe. Given the unique course of dealings between the United States and the Lumbee Tribe, this legislation is an appropriate way to recognize the Lumbee Tribe. For that reason, we support S. 1364.

As several members have explained, the Lumbee Tribe has worked toward Federal recognition since 1888. While North Carolina recognized the Lumbee people in 1885, the tribe faced hurdles at the Federal level, complicated by their unique history.

Congressional and departmental actions toward the Lumbee have created confusion and caused the Lumbee's request for Federal acknowledgement to languish for more than a century. The department supports S. 1364, which will finally extend Federal recognition to the Lumbee Tribe and make its members eligible for services and benefits provided to all members of federally recognized tribes.

The bill also authorizes Interior to take land into trust for the tribe and temporarily grants the State of North Carolina both civil and criminal jurisdiction on the tribe's lands. This Administration understands the importance of Federal acknowledgement, and we support the bill to codify the government-to-government relationship between the United States and the Lumbee people.

Additionally, the Biden Administration recognizes that tribal trust lands provide the foundation for the exercise of tribal sovereignty and self-determination. H.R. 1975, 2088, and 4881 align with the Department's goal to restore tribal homelands by transfer-

ring land into trust for the Pala Band of Mission Indians, the Eastern Band of Cherokee Indians, and the Pascua Yaqui Tribe.

H.R. 1975 directs the Department to take 721 acres of land located in San Diego County, California, into trust for the Pala Band of Mission Indians and makes it part of their reservation. This land includes Chokla, a mountain of great cultural significance to the Pala Band and many tribes throughout Southern California. Once in trust, the Pala Band intends to preserve this land in its natural state.

The Eastern Band of Cherokee Historic Lands Reacquisition Act would take certain Tennessee Valley Authority lands into trust for the benefit of the Eastern Band of Cherokee. H.R. 2088 would place approximately 76 acres of land and 20 acres of permanent easements into trust for the Eastern Band. These lands are part of the ancestral homelands of the Cherokee people. Once in trust, these lands will be used primarily for memorializing and interpreting the history and culture of Cherokee people, as well as for recreational activities.

Finally, with respect to H.R. 4881, the Department approved earlier this year again a compact between the Pascua Yaqui Tribe and the State of Arizona. The compact identifies areas within Arizona where the tribe may conduct gaming activities and those activities are authorized under IGRA. The tribe and the State agreed to them under their gaming compact.

In the context of H.R. 4881, the area where gaming is authorized is referred to as the Compact Designated Area. It includes a small area within the city of Tucson, Arizona. The bill directs Interior to take land into trust within the Compact Designated Area upon the tribe's request.

The Department supports each of these land into trust bills, and our Administration under President Biden is committed to restoring ancestral homelands to tribes, ensuring tribe exercise economic self-determination on their homelands, and assisting tribes in protecting and preserving sacred places.

I want to say megwich, thank you, for the opportunity to appear today before the Committee and provide the Department's views on these bills. I am happy to answer any questions you may have.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN TODD NEWLAND, ASSISTANT SECRETARY—
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (hello) and good afternoon Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I serve as Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony in support of S. 1364—the Lumbee Tribe of North Carolina Recognition Act, H.R. 1975—the Pala Band of Mission Indians Land Transfer Act of 2021, H.R. 2088—the Eastern Band of Cherokee Historic Lands Reacquisition Act, and H.R. 4881—the Old Pascua Community Land Acquisition Act.

Introduction

Federal acknowledgment of an Indian tribe is the United States' recognition of sovereignty in an American Indian or Alaska Native tribal government. Tribal sovereignty is the right of self-governance and self-determination as a political entity that pre-dates the founding of the United States. Federal acknowledgment of tribal sovereignty is the bedrock of the nation-to-nation relationship the United States

shares with the indigenous tribes, pueblos and villages that have inhabited this country since time immemorial.

In the context of today's hearing, the Department appreciates the opportunity to express support for and provide comment on S. 1364, which provides federal acknowledgment for the Lumbee Tribe of North Carolina.

Another important obligation of the Department is to assist tribes with protecting and restoring their homelands by taking land into trust. The Biden Administration recognizes that tribal trust lands provide the foundation for the exercise of tribal sovereignty and self-determination, and are essential to the ability of tribal governments to provide for the health, safety, and welfare of their communities. To that end, this Administration is fully committed to the restoration and protection of tribal homelands. H.R. 1975, H.R. 2088, and H.R. 4881 align with the Department's goal to restore tribal homelands by transferring land into trust for the Pala Band of Mission Indians, the Eastern Band of Cherokee Indians, and the Pascua Yaqui Tribe.

S. 1364, the Lumbee Tribe of North Carolina Recognition Act

The Lumbee Tribe of North Carolina (Lumbee, Lumbee Tribe or Tribe) has worked to obtain federal recognition since 1888. While the Lumbee have been recognized by the State of North Carolina since 1885, they have faced hurdles at the federal level with both legislation and the administrative process. This has been complicated by the complex history of the Lumbee; even the Department itself in the early 1930s characterized the Lumbee with many different origins and names, including the Croatan Indians, Siouan Indians, Cherokee Indians, and Cheraw Indians. The one constant, however, has been that the Lumbee have been known as Indians, namely the Indians of Robeson County.

By 1956, Congress officially designated the Indians then "residing in Robeson and adjoining counties of North Carolina" as the "Lumbee Indians of North Carolina" in the Act of June 7, 1956 (70 Stat. 254). In doing so, Congress explicitly stated that the Act did not make the Lumbee "eligible for any services performed by the United States for Indians because of their status as Indians, and none of the statutes of the United States which affect Indians because of their status as Indians shall be applicable to the Lumbee Indians." This language not only made the Lumbee ineligible for certain services, but the language was later interpreted by the Department to preclude the Lumbee from being considered for federal acknowledgement under the administrative process. While this position has since been reversed in recent years, the Lumbee are certainly in a unique situation and have worked toward federal acknowledgement for over 130 years.

The Administration supports this legislation. S. 1364 will once and for all extend Federal recognition to the Lumbee Tribe of North Carolina and make its members eligible for the same services and benefits provided to all members of Federally recognized tribes. It also allows any group of Indians in Robeson and adjoining counties in North Carolina whose members are not enrolled in the Tribe to petition for recognition under the administrative process. The bill authorizes the Department to take land into trust for the benefit of the Tribe, treating lands located within Robeson County as on reservation trust acquisitions. Finally, S. 1364 grants the State of North Carolina jurisdiction over all criminal offenses committed, and all civil actions that arise, on North Carolina lands owned by, or held in trust for, the Lumbee Tribe or any dependent Indian community of the Tribe unless jurisdiction is transferred to the United States pursuant to an agreement between the Tribe and the State.

H.R. 1975, the Pala Band of Mission Indians Land Transfer Act of 2021

H.R. 1975 directs the Secretary of the Interior to take approximately 721 acres of land located in San Diego County, California into trust for the benefit of the Pala Band of Mission Indians (Pala Band) and makes the land part of the Pala Band's reservation. The land is currently owned in fee by the Pala Band and is contiguous to their reservation. H.R. 1975 prohibits gaming on the land under the Indian Gaming Regulatory Act or any other federal law.

Importantly, the land includes Chokla, a mountain that is of great sacred and cultural significance to the Pala Band and many tribes throughout Southern California. The Pala Band purchased the land in 2016 in an effort to stop the construction of a landfill at the foot of Chokla in Gregory Canyon. The land also includes the site of an ancestral village, rock art paintings, cultural artifacts, and is home to culturally important plants and animals. Once the land is in trust, the Pala Band intends to preserve this sacred land in its natural state.

The Department supports H.R. 1975. During our recent consultations on the restoration of tribal homelands and the protection of sacred sites and treaty rights, we

continually heard from tribes regarding the importance of restoring tribal homelands to protect sacred sites located on those lands. This Administration recognizes the vital importance of protecting and preserving tribal sacred sites for future generations and we are committed to working with tribes on sacred sites issues.

H.R. 2088, the Eastern Band of Cherokee Historic Lands Reacquisition Act

The Eastern Band of Cherokee Historic Lands Reacquisition Act would take certain federal lands managed by the Tennessee Valley Authority (TVA) into trust for the benefit of the Eastern Band of Cherokee Indians (Eastern Band). H.R. 2088 would place approximately 76.1 acres of land, and 19.9 acres of permanent easements, into trust for the Eastern Band.

The Eastern Band is one of three federally recognized Cherokee tribes. The ancestral homeland of all three Cherokee tribes includes substantial parts of seven eastern states, including Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia. In 1979, the construction of the Tellico Dam by the TVA caused large areas of Cherokee ancestral lands along the Little Tennessee River to be flooded. Although the Eastern Band opposed the construction of the Tellico Dam, the Eastern Band and the TVA were able to work together to cooperatively manage impacted areas that were of historic significance to the Cherokee people.

Today, the Eastern Band manages most of the properties subject to this bill under permanent easements granted in the mid-1980s. H.R. 2088 would formalize the Eastern Band's stewardship of this property by permanently transferring these parcels to be held in trust by the Department on behalf of the Eastern Band.

If enacted, the lands subject to this bill will be used principally for memorializing and interpreting the history and culture of Cherokee Indians and recreational activities, to include: a birthplace memorial and museum for the eminent Cherokee leader, Sequoyah; memorials to Chota and Tanasi as former capitals of the Cherokees; and a memorial and place of reinterment for the remains of Eastern Band Cherokee and other Cherokee Indians.

The Department supports H.R. 2088 which aligns with the Biden Administration's commitment to restoration of homelands to federally recognized tribes. The Eastern Band will have greater ability to honor and cherish their history and traditions in Monroe County, Tennessee and the property transferred under this bill would honor the historic and cultural significance of this area to Cherokee citizens nationwide.

H.R. 4881, the Old Pascua Community Land Acquisition Act

The Pascua Yaqui Tribe (Tribe) is located in Pima County, Arizona. The Tribe currently possesses a combination of lands held in trust by the United States and lands it purchased in fee. On May 24, 2021, the Department approved the Pascua Yaqui Tribe-State of Arizona Amended and Restated Compact (Compact). One of the core functions of the Compact is to identify the specific areas and regions within the State wherein the Tribe may conduct gaming activities. Such activities are authorized under the Indian Gaming Regulatory Act and, as part of the Compact negotiation, agreed to by both the Tribe and the State of Arizona. In the context of H.R. 4881, the specific areas where gaming is authorized is referred to as the "Compact Designated Area" which includes the area south of West Grant Road, east of Interstate 10, north of West Calle Adelanto, and west of North 15th Avenue in the City of Tucson, Arizona.

H.R. 4881 directs the Secretary of the Interior to take land into trust within the "Compact-Designated Area" at the request of the Pascua Yaqui Tribe. The Compact Designated Area includes Old Pascua, an ancestral community of the Pascua Yaqui Tribe at which the Tribe conducts many sacred rituals. Under H.R. 4881, any of the lands placed into trust shall be a part of the Pascua Yaqui Reservation, shall be deemed to have been acquired into trust on September 18, 1978, and shall be administered in accordance with the laws and regulations generally applicable to lands held in trust by the United States for an Indian tribe.

The Department supports H.R. 4881. A critical component of the Biden Administration's commitment to restoring tribal homelands is ensuring that tribes may pursue economic self-determination on their lands. H.R. 4881 is squarely in line with this commitment as it provides the Pascua Yaqui Tribe the opportunity to grow its tribal economy and to contribute to community and regional economic development within the greater Tucson region.

Conclusion

Restoring tribal homelands is a top priority for the Biden Administration and the Department is committed to ensuring all federally recognized tribes have a land base over which they can exercise their sovereign authority and provide for their citizens. We also recognize the importance of Federal acknowledgement for tribes

and appreciate the opportunity for this Administration to publicly state its full support for the Federal recognition of the Lumbee Tribe of North Carolina.

Thank you again for the opportunity to appear before this Committee to provide the Department's views on and support for S. 1364, H.R. 1975, H.R. 2088, and H.R. 4881. We look forward to continuing to work with the Committee in support of federal recognition and land into trust efforts.

The CHAIRMAN. Thank you very much, Mr. Newland.

Next, we have the Honorable Harvey Godwin, Jr., the Chairman of the Lumbee Tribe of North Carolina.

**STATEMENT OF HON. HARVEY GODWIN, JR., CHAIRMAN,
LUMBEE TRIBE OF NORTH CAROLINA**

Mr. GODWIN. Chairman Schatz and Vice Chair Murkowski, and members of the Committee, I am Harvey Godwin, Jr., Chairman of the Lumbee Tribe. We are deeply grateful today from the Lumbee people, and thank you and this Committee for hearing our bill today.

It is also with deepest gratitude and respect for my good friends, Senator Richard Burr and Senator Thom Tillis, for all the great work they have done in supporting our recognition efforts over the last few years.

The Lumbee Tribe is also blessed to have the support of North Carolina's Congressional delegation. I would also like to thank our good friend, Representative G.K. Butterfield, for introducing our bill twice in less than 12 months and getting passage through the House.

I would also like to thank cosponsors Representative Dan Bishop and Richard Burr who represent our tribal territory, and the other members of the North Carolina delegation.

I would also like to say that you have our written support, we have written support of federally recognized tribes and local communities. I would ask your permission to place these letters of endorsement into the record today.

The CHAIRMAN. Without objection.

Mr. GODWIN. Thank you.

I know that you have our lengthy, comprehensive written document and 70 supporting documents in hand. I want to thank you for allowing me to come in person today, or virtually, as in-person as we can be in these times. I am sitting here in the Lumbee Tribal Complex in Pembroke, North Carolina, on a beautiful autumn day that God has given us.

I would like to thank Assistant Secretary Newland for this historic support from the DOI for our legislation today. Very historic, thank you.

I love my Lumbee people, and I am finishing my second term and I am terming out, by the Lumbee Constitution. I presented over the last six years to four different committees on full recognition for the Lumbee people. It is any Lumbee tribal chairman's duty to preserve and protect the Lumbee way of life.

The Lumbee way of life is exemplified by traditional core values. Four of these core values are our belief in God, value of an education, as you have already heard, our protection of our identity and culture, and our connection to the land. My grandparents, like my parents, went to schools and churches in the communities that

they lived in, communities like Union Chapel, Saddletree, Prospect, and also Deep Branch, among many others. This has always been and still is Indian Country. It is Lumbee Country.

We also are well-known across the State of North Carolina, as you have already heard. We also would like to thank Governor Roy Cooper and the leadership of the North Carolina General Assembly for their support of full and fair recognition of the Lumbee people over the years.

We have a strong government-to-government relationship with the State of North Carolina. We are a distinct Indian community and we are unique, we are a very unique people. We observe and protect our own history and our own heritage.

Our ancestors, including my great-grandfathers, Winnie [phonetically] Godwin and William Carville Jacobs, were 2 of 44 men who petitioned Congress for full and fair recognition in 1888. The reason they did this was to strengthen their ability to protect and preserve the communities in which they lived, both socially and culturally.

Although we have been seeking fair recognition since 1888, Congress actually caused an additional harm in 1956 when it passed the Lumbee Act. In that bill, the Lumbee were both recognized and terminated in the same language on the same day. The termination era was a significant time in our history, when the U.S. had bad dealings with tribal governments. Most tribes terminated during that era have been recognized since then. There are only two other tribes that have suffered the simultaneous recognition and termination at the same time, and they both have achieved full and fair recognition through legislation since that time.

Yet the Lumbee remain afflicted by this termination era policy. As a direct result of the 1956 Act, we continue to be treated by the Federal Government as Indians who just somehow don't count. There is a saying that I have heard for years, there are federally recognized tribes and State recognized tribes, and then there is the Lumbee. But we know who we are. The State of North Carolina has known for 130 years who we are. It is time for the Federal Government to acknowledge who we are. It is time for Congress to undo the harm that it did in 1956.

So I am here today as the 19th tribal leader of the Lumbee Tribe, and I am before you petitioning once again to urge Congress to finally put an end to this injustice and to pass Lumbee Bill 1364. The Lumbee Tribe is a sovereign nation, and we ask Congress to treat us with the dignity and respect that we have earned, not that has been given to us, but that we have earned. Today is the day, and now is the time when we can make it right for all times coming forward.

I thank you for listening to my words today, and I will accept any questions that you may have.

[The prepared statement of Mr. Godwin follows:]

PREPARED STATEMENT OF HON. HARVEY GODWIN, JR., CHAIRMAN, LUMBEE TRIBE OF
NORTH CAROLINA

Introduction

Chairman Schatz and Vice-Chairman Murkowski, and members of the Committee, thank you for the opportunity to appear before you today in support of the Lumbee Recognition Act (S.1364).

I am the twice-elected Chairman of the Lumbee Tribe of North Carolina. I am the descendant of Quinny Godwin and William Corvel Jacobs, two of the forty-four tribal leaders who signed a petition to the Congress first seeking federal recognition of our people in 1888. I am sorry to say that 133 years later, I am the nineteenth Lumbee tribal leader to come before Congress, asking yet again for justice and equal treatment for our people.

I would like to express my people's deep appreciation to our long-time champions on this bill, Senator Burr and Senator Tillis of North Carolina. Both Senators have labored tirelessly on our behalf and we are humbled and grateful for their efforts. Indeed, Senator Burr has sponsored or cosponsored Lumbee recognition legislation in every Congress since the 108th Congress.

I would be remiss if I did not also express our deep gratitude to other members of the North Carolina delegation as well. The House of Representatives passed the Lumbee Recognition Act (H.R.2758) on a bipartisan vote of 357 to 59. This would not have been possible without our long-time champion Congressman G.K. Butterfield, cosponsor Congressman Dan Bishop, and six other members of the North Carolina congressional delegation, including Congressmen Richard Hudson, David Price, Deborah Ross, Ted Budd, David Rouzer, and Gregory Murphy. We are also deeply honored to have the support of our Governor, the Honorable Roy Cooper, and the North Carolina State Legislature. Lumbee history will record all of these good people and champions of finally bringing justice to the Lumbee people. An identical bill was passed by the House last year, and we are proud that Congressman Don Young—the Dean of the House—and veteran Congresswoman Betty McCollum were cosponsors of that bill.

Most importantly, I want to underscore today our gratitude to the Senate Committee on Indian Affairs. Over the last twenty years, this Committee has favorably reported Lumbee recognition legislation to the Senate Floor no less than five times. See S. Rep. 112–200 (on S.1218), Aug. 2, 2012; S. Rep. 111–116 (on S.1735), Jan. 20, 2010; S. Rep. 110–409 (on H.R.65), Jul. 8, 2008; S. Rep. 109–334 (on S.660), Sept. 13, 2006; and S. Rep. 108–213 (on S.420), Nov. 25, 2003. In doing so, this Committee has also shown its commitment to bringing justice to our Tribe, and we thank you for the taking up our cause once again today. The time has come for the Congress to bring this long history to an end by enacting our bill and, finally, bringing the Lumbee Tribe into the family of federally-recognized tribes where it belongs.

About the Lumbee People

Home for the Lumbee is Robeson County, North Carolina, and the three counties surrounding it—Scotland, Hoke and Cumberland Counties. This area has been our homeland since time immemorial. As non-Indians began to settle and overtake our traditional homelands, we took refuge in the swamps of Robeson County to find protection, and we have been there ever since. No matter where a Lumbee goes or moves, home will always be in our Tribal Territory.

Our kinship ties to each other define our people. We have just over 60,000 enrolled tribal members. We maintain close ties and tend to live in communities, what you might call neighborhoods, that are made up almost entirely of Lumbee people. Because of the geographic concentration of our people, we attend schools and churches that are mostly Lumbee and usually marry other Lumbees. We have historic Lumbee institutions in our community that reinforce these community ties. For example, we have church conferences that consist solely of Lumbee churches, such as the Burnt Swamp Baptist Association, which was formed around the turn of the twentieth century. There is also a separate Methodist conference for our Indian churches. These uniquely Lumbee institutions are well known throughout southeastern North Carolina and, indeed, throughout Indian country.

We also survived despite the federal government's failure to extend the full measure of recognition to us by focusing on education as a core value of the Lumbee people. Shortly after the Tribe was recognized by the State of North Carolina in 1885, the State authorized the Tribe to run the State's school district for our Lumbee children. Tribal leaders controlled it completely and enrollment was limited to Lumbee children only. Two years later, we opened a special advanced Indian school known as a "normal school" to train teachers for our Indian school. Although the State provided no money for construction of facilities, our people managed to pull together

and construct an Indian normal school. That Indian normal school has been continuously in operation—and we are proud to say today it is the University of North Carolina at Pembroke.

Full Federal Recognition is Long Overdue, and Should Be Granted by Congress

The Lumbee people have been petitioning Congress for full federal recognition since 1888 when we first requested that the federal government—consistent with its federal trust obligation to Indian tribes—provide us with federal assistance for our Indian schools. Congress referred the request to the Department of the Interior, which refused to help because it said there were “too many” of us and too little money available, so no services would be provided to the Lumbee. This would not be the last time that the Department of the Interior would place protection of its budget above the welfare of the Lumbee people.

Between 1888 and 1956, as many as a dozen bills were introduced in Congress to extend full federal recognition to our Tribe following on the heels of the State of North Carolina’s own laws to recognize the Tribe. In 1956—unfortunately for the Lumbee people—in the middle of the termination era, Congress again took up and enacted one of these bills, but at the insistence of the Department of the Interior, Congress adopted an amended version that terminated the Tribe’s eligibility for federal services for no better reason than to excuse Interior from having to use its budget to serve an additional Indian population. As a result, Congress essentially terminated the Tribe just as it recognized it.

When the House Natural Resources Committee held a hearing in the 116th Congress on H.R. 1964, a bill that is identical to the bill being considered by the Senate Indian Affairs Committee today, it received written testimony from Dr. Fred Hoxie relating to our Tribe’s history and the imperative of congressional action to confirm Lumbee’s recognition. I am attaching that testimony to my written statement here and ask that it be included in this hearing’s record.

Major Provisions of the Bill

The recognition bill before you, S.1364, would amend the 1956 Lumbee Act by repealing the offensive termination of services language and extending full federal recognition to the Tribe. It also defines the service area of the Tribe as Robeson, Cumberland, Hoke, and Scotland Counties, North Carolina, our traditional territory and where the overwhelming majority of our members reside today. For the purpose of delivering those services, S.1364 directs the Secretaries of Interior and Health and Human Services to develop a budget to meet the Tribe’s needs, in consultation with the Tribe. This will be done following the verification of the Tribe’s roll by the Secretary of the Interior; S.1364 imposes a two-year deadline on the process, which is triggered by the Tribe’s submission of a digitized roll.

The bill also addresses two issues that are important to the Tribe. First, the Secretary is authorized to place land into trust for the Tribe under the Indian Reorganization Act. This will allow the Tribe to finally acquire a land base, one on which the Tribe can fully exercise its selfgoverning authority under federal law and provide for its people. This provision is necessary to avoid the uncertainty created by the Supreme Court’s decision in *Carcieri v. Salazar*. Second, the bill authorizes the State of North Carolina to exercise criminal and civil jurisdiction over the Tribe’s territory, just as other states have done under Public Law 280. Importantly for the Tribe, it also authorizes the transfer of this jurisdiction back to the United States, following an agreement between the State and the Tribe to do so. These two provisions are essential to allow the Tribe to fully exercise its inherent powers of self-government.

Thus, passage of S. 1364 will rectify the injustice Congress created in 1956 when it made the Lumbee people second class Indians. It will put us on an equal footing with tribes that enjoy full federal recognition. Congress has already done this for the only two other tribes it put this position of being “partly recognized and partly terminated.” Congress rightfully corrected its error and has fully recognized these two other tribes, the Pascua Yaqui Tribe of Arizona in 1978 and the Ysleta del Sur Pueblo of Texas in 1987. Congress is overdue in doing the same for the Lumbee Tribe.

Continued Delay is Causing Continuing Harm

How many generations of Lumbee elders must we lose before the federal government ceases to treat us as a second-class tribe? How many generations of our children must grow up without enjoying the benefits of a federally-protected homeland over which the Lumbee Tribe can exercise true sovereignty and self-determination? How much longer will we be deprived of the ability to engage in government-to-government consultation of federal agency policies and decisionmaking that may impact

natural resources and cultural sites that require protection? How much longer will our non-federal status hinder our ability to access federal resources and to respond swiftly and comprehensively to natural disasters like the storms that have devastated our tribal community in the last three years? The long delay in extending full federal recognition has real life consequences.

Without full federal recognition, we are unable to benefit from a federally-protected reservation. We have no land on which to exercise our fundamental right of self-determination and self-government, no land on which we can exert our own jurisdiction, no land on which we may exercise our sovereignty as a government. These limitations profoundly impact our government's ability to improve the quality of life for the Lumbee people, and to make decisions to determine our own future.

Without full federal recognition, we cannot operate our own schools and make our own determination of how to best provide for our children. The Tribe operated its own school system for its children for nearly one hundred years, until a federal judge told us we could not do so because we are not federally recognized. Our children have since not reached the levels of achievement they had when we had control of our own schools. We want to have that control returned to our people.

Without full federal recognition, we cannot plan for and protect ourselves from natural disasters. Southeastern North Carolina is subject to ever increasingly violent hurricanes. During my first term as Chairman, two hurricanes overwhelmed our Tribal Territory—Hurricane Matthew in 2016 and Hurricane Florence in 2018. Both devastated our community, flooding homes, schools, churches, and work places. Unfortunately, because of our current status, we are not eligible for federal “Imminent Threat Grant Funding” for natural disaster preparation—this aid is reserved only for fully federally recognized tribes.

Conclusion

We are a proud sovereign people who have held on to our culture, our traditions, and our community. We have maintained our integrity through war and peace, through the brutal federal policies of removal, assimilation and termination, through state segregation and through federal neglect. We have won the friendship and respect of the non-Indian community around us, of our nearby local governments, and of the great State of North Carolina. The Lumbee Tribe and its members have served in the United States military services with valor and distinction. The Lumbee Tribe's long and proud history of self-sufficiency and independence is too often discounted and disrespected because we lack the stamp of approval of the United States as a fully federally-recognized tribe.

It is high time that the United States exercise its responsibility to put an end to the treatment of the Lumbee as a second-class tribe. The pending legislation is the last of a long line of federal bills over the course of more than a century that would extend full recognition to the Lumbee Tribe. We have full faith in the Members of this Committee to once again appreciate the importance of full federal recognition for our Tribe and the role you can play in correcting this historical injustice.

I thank you for your time today and look forward to answering any questions you may have.

The testimony of Frederick E. Hoxie before U.S. House of Representatives Natural Resources Committee Sub-Committee on Indigenous Peoples of the United States on H.R. 1964, the Lumbee Recognition Act of 2019 (December 4, 2019) has been retained in the Committee files and can be found at:

https://naturalresources.house.gov/imo/media/doc/Dr.%20Frederick%20Hoxie%20Testimony%2012.4.19%20IPS%20hearing_Campisi%20Statement.pdf

The CHAIRMAN. Thank you, Mr. Chairman.

Next, we have the Honorable Robert Smith, the Chairman of the Pala Band of Mission Indians in Pala, California.

STATEMENT OF HON. ROBERT SMITH, CHAIRMAN, PALA BAND OF MISSION INDIANS

Mr. SMITH. Good afternoon, Chairman Schatz and Vice Chair Murkowski, honorable members of the Committee. My name is Robert Smith, Chairman of the Pala Band of Mission Indians, located in San Diego County. I have been elected chairman since

1989, and have been proud to serve the Cupeño and Luiseño people of Pala for many years.

It is an honor to sit before you today on behalf of my Pala people and ask for support of House Resolution 1975, sponsored by Representative Darrell Issa. For nearly 30 years, since before I became Pala's chairman, we fought to stop a proposed landfill from being built in Gregory Canyon, immediately adjacent to the Pala Reservation. The landfill would have covered the slopes of one of our sacred mountains with garbage. The mountain, Chokla, is the home of one of the First People, the spirit Takwish.

To prevent this desecration, Pala ended up buying approximately 700-plus acres of the proposed landfill property in 2016. This was a great victory not just for Pala, but for Indian people throughout Southern California who honor Takwish and his many homes.

Because the land is so important to us, we want to bring it into trust as a part of the Pala Reservation. It is part of the Luiseño traditional landscape, and it is land that has been occupied by Native peoples since time immemorial. The property is contiguous to the Pala Reservation, and in addition to being one of Takwish's sacred homes, it is also an ancestral village, rock art paintings, and artifacts, as well as culturally important plants and animals.

While Pala has taken preliminary steps towards pursuing the fee to trust process through the Bureau of Indian Affairs, that process that can take several years, which is why we asked Congressman Issa to assist us via the legislative process. The sooner our sacred land is in trust, the sooner we can protect and preserve the site.

Pala has no desire nor intention to develop this land in any way. Pala has a successful gaming operation already, so there is no need for more land for this purpose. Even if there were, the property is very steep and rugged and would be very difficult to develop. And even more important, as already stated: it is sacred to us. We will manage the land in its natural state, and provide the traditional stewardship to the sacred landscapes that Indian people have always maintained.

Putting the land into trust and making it a part of the Pala Reservation will allow us to provide the protection that the sacred Chokla deserves. Passing this bill is the most efficient and reasonable way for us to achieve this result.

What we are asking for is very simple. This land needs the protection that Federal trust status provides. H.R. 1975 passed the House on a bipartisan vote of 397 to 25. Again, I ask for your support so that the bill can advance to the Senate for passage and help us protect our sacred lands.

Thank you.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF HON. ROBERT SMITH, CHAIRMAN, PALA BAND OF MISSION INDIANS

Chairman Schatz, Vice-Chairman Murkowski, and honorable members of the Committee: My name is Robert Smith. I am the Chairman of the Pala Band of Mission Indians, located in San Diego County, California. I have been Pala's elected Chairman since 1989, and I am proud to have represented the Cupeño and Luiseño people of Pala for these many years. It is an honor to sit before you today on behalf of the Pala people and ask for your support of House Resolution 1975, sponsored by Representative Darrell Issa.

For nearly 30 years, since before I became Pala's chairman, we fought to stop a proposed landfill from being built in Gregory Canyon, immediately adjacent to the Pala Reservation. The landfill would have covered the slopes of one of our sacred mountains with garbage. This mountain, Chokla, is the home of one of the First People, the spirit Takwish. To prevent this desecration, Pala ended up buying approximately 700 acres of the proposed landfill property in 2016. This was a great victory not just for Pala, but for Indian peoples throughout Southern California who honor Takwish and his many homes.

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What we are asking for is very simple. This land needs the protection that federal trust status provides. HR 1975 passed the House on a bipartisan vote of 397 to 25. I ask for your support so that the bill can advance to the Senate for passage and help us protect our sacred landscapes. Thank you.

The CHAIRMAN. Thank you very much.

Next, we have the Honorable Richard Sneed, Principal Chief, Eastern Band of Cherokee Indians, Cherokee, North Carolina.

**STATEMENT OF HON. RICHARD SNEED, PRINCIPAL CHIEF,
EASTERN BAND OF CHEROKEE INDIANS**

Mr. SNEED. [Greeting in Native tongue.] Chairman Schatz, Vice Chair Murkowski, thank you for the opportunity to provide this testimony on behalf of the Eastern Band of Cherokee Indians on H.R. 2088, the Eastern Band of Cherokee Historic Lands Reacquisition Act. It is an honor for me to appear before this Committee.

Since before the coming of Europeans to this continent, the Cherokee have lived in the southeastern part of what is now the United States, in the States of North Carolina, Tennessee, South Carolina, Alabama, Georgia, Kentucky, and Virginia. In the same time since this Country was founded, the Cherokee have faced unending threats to our very existence. The Cherokee endured the Trail of Tears where more than 15,000 Cherokee Indians were forcibly removed by the U.S. Army from their ancestral homelands to the Indian Territory as part of the Federal Government's American Indian Removal Policy. Thousands died. The Cherokee came to call the event Nunahi-Duna-Dlo-Hilu-I or Trail Where They Cried.

The Eastern Band of Cherokee Indians are the descendants of those Cherokees who resisted removal in the Great Smoky Mountains and escaped the Trail of Tears or who were able to return to their homeland in the Great Smoky Mountains after the Trail of Tears. The Eastern Band today is a tribal nation recognized by the United States as a sovereign with inherent rights of self-govern-

ment, like the several States and foreign nations. We have a separate language and culture that makes us different than any people group in the world.

Leadership of the Cherokee and the Cherokee people themselves, with tenacity and determination, have fought to ensure that our way of life, our beliefs, and our sovereignty will survive. And we are still here today. We continue to fight to protect our way of life, our sovereignty and our Cherokee identity from any who would try to wrongfully claim it as their own.

The Eastern Band Cherokee Historic Lands Reacquisition Act would return about 76 acres of land back to us, key historic sites that fell out of our ownership in tougher days. The legislation also would grant two permanent easements over TVA property to be held in trust for the Tribe for creating recreational trails between the sites.

These properties commemorate and interpret historic people like Sequoyah, towns such as the historic Cherokee capital at Chota, and the culture of the Cherokee during the period from the early 1700s through 1840, and are also associated with and interpret the Trail of Tears. The properties are located in Monroe County, Tennessee, near the town of Vonore and are adjacent to Tellico Lake, the reservoir behind TVA's Tellico Dam.

This bill celebrates not only a time in Cherokee history when we lived in Tennessee, but also the return of the Cherokee People as a modern, living people, with a living culture and language, and traditions that have survived from ancient times, back to Tennessee.

Like our relationship with the United States, relations between the Cherokee People and the State of Tennessee have not always been congenial. Our historic relationship with Tennessee has been a troubled one, marked by Cherokee governance, conflict, broken promises, and accommodation for Cherokee survival.

When President Andrew Jackson, who fought side-by-side Cherokees in the War of 1812, decided that we should not have rights to our lands in the Southeast, we moved our base of government from what is now Georgia right across the State line into what is now Red Clay, Tennessee. Soon after, the historic Cherokee Nation was forced to give up our lands.

The Eastern Band Cherokees found refuge in our aboriginal territory in the State of North Carolina and the Great Smoky Mountains from forced removal, and we remain in a small portion of our original homelands. Through all of this, the Cherokee people have persevered and even prospered.

Our Tribe has been committed to improving these lands through the development of the Sequoyah Birthplace Museum. The Friends of Sequoyah, which provides sponsorship of the museum, has also worked to install historic markers adjacent to the Tellico Reservoir and the museum staff provides continuing maintenance of this property through the current TVA easement.

We have had an ongoing partnership with the TVA since the construction of the Tellico Dam. It was the intention of the original agreement to place this land into trust status. Unfortunately, complications with the land into trust processes at the time of the

agreement made an easement the better option for completing the Tellico project.

This legislation marks a new era of respect and appreciation between the Cherokee People, the United States, and the State of Tennessee. We welcome this new era and our Tribe is committed to continuing to work toward improving our respective sovereigns as friends and neighbors.

I believe these lands should be returned to our people for the continued protection of important Cherokee historic sites. Our tribe is committed to improving the educational resources of the Sequoyah Birthplace Museum and to providing a means for economic development for the local community. We will continue our long-valued relationship with the TVA in order to maintain the integrity of the Tellico Reservoir and to preserve the resources of this area for our mutual benefit.

I thank you for the honor of the opportunity to testify in support of this important bill.

[The prepared statement of Mr. Sneed follows:]

PREPARED STATEMENT OF HON. RICHARD SNEED, PRINCIPAL CHIEF, EASTERN BAND OF CHEROKEE INDIANS

Chairman Schatz and Vice Chairman Murkowski, thank you for the opportunity to provide this testimony of behalf of the Eastern Band of Cherokee Indians on H.R. 2088, the "Eastern Band of Cherokee Historic Lands Reacquisition Act." It is an honor for me to appear before this Committee.

Since before the coming of Europeans to this continent, the Cherokee have lived in the southeastern part of what is now the United States, in the states of North Carolina, Tennessee, South Carolina, Alabama, Georgia, Kentucky, and Virginia. In the time since this country was founded, the Cherokee have faced unending threats to our very existence. The Cherokee endured the Trail of Tears where more than 15,000 Cherokee Indians were forcibly removed by the U.S. Army from their ancestral homelands to the Indian Territory as part of the federal government's American Indian Removal Policy. Thousands died. The Cherokee came to call the event *Nunahi-Duna-Dlo-Hilu-I* or Trail Where They Cried.

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The "Eastern Band Cherokee Historic Lands Reacquisition Act" would return about 76 acres of land back to us, key historic sites that fell out of our ownership in tougher days. The legislation also would grant two permanent easements over TVA property to be held in trust for the Tribe for creating recreational trails between the sites. These properties commemorate and interpret historic people like Sequoyah, towns such as the historic Cherokee capital at Chota, and the culture of the Cherokee during the period from the early 1700s through 1840, and are also associated with and interpret the Trail of Tears. The properties are located in Monroe County, Tennessee, near the town of Vonore and are adjacent to Tellico Lake, the reservoir behind TVA's Tellico Dam. This bill celebrates not only a time in Cherokee history when we lived in Tennessee but also the return of the Cherokee People—as a modern, living People, with a living culture and language, and traditions that have survived from ancient times—back to Tennessee.

Like our relationship with the United States, relations between the Cherokee People and the State of Tennessee have not always been congenial. Our historic relationship with Tennessee has been a troubled one, marked by Cherokee governance, conflict, broken promises, and accommodation for Cherokee survival. When Presi-

dent Andrew Jackson, who fought side-by-side Cherokees in the War of 1812, decided that we should not have rights to our lands in the Southeast, we moved our base of government from what is now Georgia right across the state line into what is now Red Clay, Tennessee. Soon after, the historic Cherokee Nation was forced to give up our lands. The Eastern Band Cherokees found refuge in our aboriginal territory in the state of North Carolina and the Great Smoky Mountains from forced removal, and we remain in a small portion of our original home lands. Through all of this, the Cherokee people have persevered and even prospered.

Our Tribe has been committed to improving these lands through the development of the Sequoyah Birthplace Museum. The Friends of Sequoyah, which provides sponsorship of the Museum, has also worked to install historic markers adjacent to the Tellico Reservoir and the Museum staff provides continuing maintenance of this property through the current TVA easement. We have had an ongoing partnership with the TVA since the construction of the Tellico Dam. It was the intention of the original agreement to place this land into trust status. Unfortunately, complications with the land into trust processes at the time of the agreement made an easement the better option for completing the Tellico project.

This legislation marks a new era of respect and appreciation between the Cherokee People, the United States, and the State of Tennessee. We welcome this new era and our Tribe is committed to continuing to work toward improving our respective sovereigns as friends and neighbors.

I believe these lands should be returned to our people for the continued protection of important Cherokee historic sites. Our Tribe is committed to improving the educational resources of the Sequoyah Birthplace Museum and to providing a means for economic development for the local community. We will continue our long-valued relationship with the TVA in order to maintain the integrity of the Tellico Reservoir and to preserve the resources of this area for our mutual benefit.

Thank you for the honor of the opportunity to testify in support of this important bill.

The CHAIRMAN. Thank you very much. Next, we have the Honorable Peter Yucupicio, Chairman of the Pascua Yaqui Tribe in Tucson, Arizona.

STATEMENT OF HON. PETER YUCUPICIO, CHAIRMAN, PASCUA YAQUI TRIBE

Mr. YUCUPICIO. [Greeting in Native tongue.] Thank you. Chairman and members of the Committee, permission of our ancestors, permission of our Creator, permission of our tribal council, our people, and the tribal leaders that are there today.

My name is Peter Yucupicio, I am the Chairman of the Pascua Yaqui Tribe. I am here today to ask you for your support to pass H.R. 4881, the Old Pascua Community Land Acquisition Act, which passed the House in an overwhelming vote, a testament to the merits of the bipartisan bill. I am happy to report that Senator Sinema also has introduced a companion bill in the Senate for which we are appreciative.

With this Committee's support, we are hoping that the Old Pascua Community Land Acquisition Act can be moved through the Senate quickly. Under H.R. 4881, the Department of Interior would take certain parcels of tribally owned fee land located in the historic tribal community of Old Pascua into trust for the benefit of the tribe. This legislation would protect one of the most important cultural sites while also providing great economic benefit for the tribe and for the surrounding community in the form of millions of dollars of investment and the creation of hundreds, if not thousands, of new jobs.

The legislation also permits a provision in our federally approved compact with the State of Arizona, and is consistent with our inter-governmental agreement with the City of Tucson. Finally, it begins

the fulfillment of Congressional promises to support the expansion of the tribe's land base.

In the late 19th and early 20th century, numerous Yaqui communities were established in and around Old Pascua. Since 1921, the Old Pascua cultural plaza and church, which has served as the oldest formally established Yaqui community in Tucson. For generations, the Yaquis have gathered at the Old Pascua cultural plaza to hold ceremonies, including processions. The cultural plaza is owned by the Pascua Yaqui Tribe and is on the National Register of Historic Places as a traditional cultural property.

Protecting this land for all time by putting it into trust status is of the utmost importance to the tribe. The tribe has spent the last several years in extraordinarily successful discussions with the State regarding a gaming compact that expressly provided for the land at Old Pascua to be the five-acre gaming facility.

The compact, which was entered into by the State and 20 Arizona tribes, then approved by the Federal Government, expressly provides for the compact designated area, essentially the land in Old Pascua, where the tribe can establish a gaming property after Congress approves taking the land into trust. In parallel with the negotiation of the compact, the tribe and the city of Tucson executed an intergovernmental agreement for this land that expressly covers taxation, jurisdiction, municipal services, like trash, water, electricity, and tribal payments in lieu of taxes.

The project's operation will create a possibly 500 total direct jobs that also will generate approximately about \$17 million in direct wages in the city and county and spending in the range of \$12 million to \$12.5 million in vendor spending in the city and the county in southern Arizona.

Another net positive economic impact will be an increase in wages in the region, an increase in tax revenues to the State and local governments, and additional revenues to the city of Tucson through our IGA. The new property will pay annual taxes of approximately \$8.3 million, including distributions to the State payroll taxes and sales taxes. Recognizing that the tribe's withholdings were insufficient for its needs, in 1994, Congress, this Committee, directed the Secretary of the Interior to conduct a land study for the tribe. A land study would determine that the existing land base of our 22,000-member tribe is inadequate. For that establishment of a diverse economic base and basic housing needs, the acquisition of Old Pascua lands into trust would partially fulfill this Congressional initiative, while facilitating tribal self-determination, economic development, and housing.

On behalf of my nation, I want to thank you for your time. We have a long and positive relationship with this Committee that we pray continues to grow and remain prosperous. As we say back home, here in my home, Enchy mampo tawak, "It's in your hands." Lios aapo enchim. May God be with you, all of you always. May the good Lord bless all of our tribes throughout the Country and our Congressional people who are trying to do a good job. Blessings. Thank you very much on behalf of the Pascua Yaqui Tribe.

[The prepared statement of Mr. Yucupicio follows:]

PREPARED STATEMENT OF HON. PETER YUCUPICIO, CHAIRMAN, PASCUA YAQUI TRIBE

I. Introduction

Lios enchim aniavu, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Peter Yucupicio, and I am the Chairman of the Pascua Yaqui Tribe of Arizona (“the Tribe”). I am here today to ask for your support to pass H.R. 4881, the Old Pascua Community Land Acquisition Act. This legislation would implement a provision in our recently federally approved compact with the State of Arizona. It is also consistent with our inter-governmental agreement with the City of Tucson and is in line with the established congressional understanding that the Pascua Yaqui Tribe needs to develop a larger land base—in this case, land that is of great cultural and historic importance to the Tribe, while also suitable for economic development that would greatly benefit both the Tribe and the surrounding community in the form of millions of dollars of investment and the creation of thousands of new jobs.

First and foremost, I would like to acknowledge and express our appreciation. Our tribe has a long and substantial history of working with Congressmen and Senators like yourselves, here in Washington D.C., past and present, who have been champions for the Yaqui people. As you know, Congressmen Mo Udall, Ed Pastor, and of course, the late, great, Senator John McCain all sponsored legislation on our behalf, and for that we will always be grateful. These gentlemen worked tirelessly to support our efforts to secure a small land base for our people, obtain federal recognition, and re-affirm our status as a historic tribe with all the attributes of a sovereign nation. We owe a debt of gratitude to these elder statesmen who treated our government-to-government relationship with respect and who have helped our tribe prosper over many decades to where we are today.

I am also happy to report, as you know, that H.R. 4881 passed the House on November 2, 2021, on an overwhelming bipartisan vote of 375–45–1—a testament to the merits of the bill, which will both protect cultural sites of great importance to our people, as well as create hundreds of jobs to benefit not only the Pascua Yaqui, but also the surrounding communities.

(A) Purpose of the bill/law

We are here today seeking to have land put into trust for our tribe in our historic community of Old Pascua in accordance with agreements that we have reached with both the State of Arizona and the City of Tucson. In total, this includes approximately 31 acres of land the tribe currently owns in fee. We have two purposes for placing this land into trust: first, to preserve our cultural grounds where we have held religious ceremonies for over one hundred years; and second, to develop economic opportunities for our tribal members and provide the benefits of economic development to the surrounding community. Under the bill, Congress would direct the Department of the Interior to take certain parcels of tribally owned fee land, located in the community of Old Pascua, in Tucson, Pima County, Arizona, into trust for the benefit of the Tribe, for cultural purposes, economic development, and gaming.

Transferring these lands into trust will protect and promote our sacred cultural spaces for our people and support our participation in Yaqui cultural events, and tribal affairs, while also fostering the ongoing transmission of Yaqui knowledge, culture, history and traditions, and the continuity between our past and our future. Equally as important, the trust acquisition will help raise the standard of living in the Old Pascua Community, helping our families to live modestly through economic development, and the promotion of self-sufficiency by extending opportunities for our children, grandchildren, neighbors, and future generations.

The land should be made part of the Tribe’s current reservation and Congress should make findings that the proposed fee to trust transfer at Old Pascua would be in the best interest of the Tribe, and that the Tribe has historic, ethnographic, and cultural ties to the land.

(B) Background on the Pascua Yaqui Tribe

The Pascua Yaqui Tribe is a federally recognized tribe with a reservation southwest of Tucson, Arizona, recognized pursuant to the Act of September 18, 1978, P.L. 95–375 (92 Stat. 712), as amended, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA). The Tribe is an historic tribe with a small, 2,216-acre Reservation established for the use and benefit of the tribe’s 22,000 members. The Pascua Yaqui are of an ancient and enduring people, indigenous to this land. The Tribe recognizes cultural affiliation with the Ancestral Sonoran Desert People and with our related cultural communities throughout the Greater Southwest region, including the areas that now make up the United States Southwest and Northwest Mexico. Evidence of the affiliation among Yaqui ancestors and those of other contemporary cultural

communities in the region can be found in cultural, ritual, cosmological, linguistic, and other threads of continuity in ancestral places and within our communities today. As the late community leader Anselmo Valencia Tori stated to the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Indian Affairs in 1993, “The aboriginal boundaries of the Yoemem (presently known as Yaqui Indians) stretched from north as far as Durango, Colorado; west as far as Yuma, Arizona, and some parts of California; east through New Mexico and Arizona and south as far as the southern tip of Sonora, Mexico.” We have lived in the area, including what is now the southwestern United States and northern Mexico, since time immemorial. As early as the 1690s, the Tumacacori area became the earliest recorded settlement of Yaquis in what later became Arizona.

Holders of Hiaki (Yaqui) cultural knowledge tell of ancient Yaqui settlements along the river now known as the Santa Cruz, and of trade between Yaqui ancestors and their neighbors. Material evidence of this interaction among the people of the region, including Yaqui ancestors, can be found in the immediate vicinity of Old Pascua Village, and even within the boundaries of the lands proposed for transfer into trust for the Tribe. Ancestors’ communities in the Tucson basin and elsewhere in the Arizona Sonoran Desert region, labeled by archaeologists as “Early Agriculture,” “Early Ceramic,” and “Hohokam” provide evidence of the movement of people and goods throughout the region, including areas now known as Sonora and Arizona. Specifically confirming the associations between the coast of the Gulf of California, where the historically identified Yaqui homeland is found, and the ancient residents of the Old Pascua vicinity, are significant quantities of marine shell from Gulf species found at the Santa Cruz Bend, Square Hearth, and Stone Pipe sites.¹ These sites date primarily to the Early Agriculture and Early Ceramic periods, spanning the years 1200 B.C. to 475 A.D. The Stone Pipe site partly overlaps the western boundary of the lands proposed for transfer into trust for the Tribe. The movement of people and marine shells and other objects of value between the Gulf region and the northern Sonoran Desert region continued throughout the following “Hohokam Millennium,” as the ancestors of today’s O’odham, Yaqui, and other communities continued to live, move, trade, and interact amongst each other.

Yaqui elders in Old Pascua who were interviewed by Edward H. Spicer starting in the 1930s told the anthropologist that “Their forebearers had roamed the country even before the coming of the Spanish.”² Knowledge of pre-colonial Yaqui trading and military camps in and around the Tucson area continues to be shared in Yaqui oral tradition. In his 1993 testimony to Congress, Anselmo Valencia Tori reported pre-Spanish Yaqui settlements along the Santa Cruz River where the Tumacacori mission would be located; at a location just north of Old Pascua that was called Val-Gojoria, then Alagua, and is now known as Jaynes Station; and further downstream to the north at the site of the present town of Toltec.³ When the Spanish invaders made their way north through the Sonoran Desert, they enlisted the aid of knowledgeable Yaqui people who helped to guide them into the northern country that they knew well.

It is no wonder that during eighteenth and early nineteenth centuries, Yaqui people were the second most recorded indigenous people, after the O’odham, in the records of the Spanish colonial missions in what is now southern Arizona and northern Sonora. Yaqui people appear in the mission records as early as the 1720s. In a 1796 census, Yaquis represented approximately 12 percent of the population both at Tumacacori, in what is now Arizona, and at Cocospera, about 60 miles southwest of present-day Nogales.

In 1775 the Presidio de San Agustin de Tucson was built in present-day downtown Tucson, Arizona. As a buffer zone, the eleven-acre presidio housed many residents, including the auxiliary soldiers enlisted to protect and serve the surrounding areas. In 1817, Alvino Ocoboa, identified as a Yaqui soldier, resided in the presidio with his wife and children.⁴ Other individuals and families at the presidio are likely to have been of Yaqui heritage. Inconsistent record-keeping mislabeled or omitted individuals and families’ ethnic markers, and frequently people would hide their indigenous heritage in exchange for higher social status.⁵ The Ocoboa family in early 1800s Tucson Presidio connect to other Yaquis families with the same last name in

¹ AZ AA:12:746 [ASM], AZ AA:12:745 [ASM], and AZ BB:13:425 [ASM] (Vokes 1998).

² Spicer, Edward H. 1988 *People of Pascua*. University of Arizona Press, Tucson.

³ Statement of Anselmo Valencia. Part of Pascua Yaqui Status Clarification Act hearing before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, 103 U.S. Congress. April 30, 1993. Accessed at <https://www.govinfo.gov/content/pkg/CHRG-103hhrg69904/pdf/CHRG-103hhrg69904.pdf>

⁴ Officer, James E. 2015 *Hispanic Arizona, 1536–1856*. University of Arizona Press, Tucson, AZ.

⁵ Jackson 1995; McCaa 1984; Miranda 1988.

the Tumacacori area recorded during the 1790s to the early 1800s.⁶ Yaquis continued to trek northward to areas already recognized in oral traditional knowledge. Tucson was no exception. The Tucson Presidio was a multicultural hub where Yaqui, O'odham, Spanish, Mexican, and other groups resided and moved throughout following the Santa Cruz River.

During the period of Mexican control of Southern Arizona and during the first decades of United States governance, the documentary record of Yaqui people in Arizona becomes more difficult to locate. As Anselmo Valencia Tori noted, "The Yaquis were a strong fierce People who were being warred upon and persecuted for no reason. It was the strategy of the Yaqui People to disguise their heritage to avoid further persecution by these invading forces."⁷ But there remains evidence of the Yaqui people continuing to live in and around Arizona.

One example comes from Tucson's Court Street Cemetery. During the excavation to construct the Justice Court Complex in downtown Tucson, the SRI's Archaeological Data Recovery Project discovered a nineteenth century site that included human remains from O'odham, Yaqui, and other groups. The remains date between 1860–1890.⁸ The tribal communities were contacted to coordinate a repatriation for the remains to be reburied in 2010. The census information and the discovery of Yaqui burials in 2006 provide additional confirmation that Yaquis have continuously inhabited the Tucson area for centuries with histories of an interconnected landscape, kinship, and social networks. The Tucson Presidio site and the Justice Court Complex are both less than 2 miles from the Barrio Anita area, which was an early recognized Yaqui barrio,⁹ and 3.4 miles from the properties proposed for transfer to trust status.

In the late nineteenth and early twentieth century, numerous Yaqui communities were documented within the vicinity of what is now called "Old Pascua" or "Pascua Village." The village of Bwiḡa Bwalko (translating in the Yaqui language to "soft earth") or Tierra Floja (translating in the Spanish language to "loose earth"), was located along the I-10 and Miracle Mile, east of the Santa Cruz River, in approximately the same location where the present University of Arizona West Campus Agricultural Center property is located. Yaquis from surrounding areas gathered at Old Pascua to hold Lenten ceremonies, much as they do today. These ceremonies include specific processions throughout Old Pascua that arrive and depart the grounds of the 1.7-acre Old Pascua Cultural Plaza which would be transferred to the United States under the current bill. The Cultural Plaza is owned by the Tribe and listed on the National Register of Historic Places as a traditional cultural property (TCP). Because of the importance of Old Pascua to our people, in 1921, the joint efforts of Yaqui leaders, local politicians and others secured the initial 40-acre parcel that formalized Pascua Village and within two years, Thamar Richey helped progress the establishment of Richey Elementary School in Pascua Village.

While the community of Old Pascua is not held in trust by the United States, it is recognized by the BIA as "near-reservation" lands under 25 C.F.R. Part 20, for purposes of extending BIA financial assistance and/or social services.¹⁰ Over the years, the Tribe has purchased commercial properties and Tribal residences within or adjacent to Old Pascua to support our Tribal members and tribal self-determination goals. In addition to the 1.7-acre Old Pascua Church and Cultural Plaza, as of this writing, the Tribe owns approximately 30 acres of commercial property for Tribal economic development purposes in or around Old Pascua that would be trans-

⁶*Id.*

⁷Historic displacement, widespread injustices, and the dispossession of land, territories, and resources are key elements in recent Yaqui history. For example, between 1882 and 1911, the Mexican Government under Porfirio Diaz enacted a policy of Yaqui extermination, military occupation, genocide, and slavery on plantations in the Yucatan and Oaxaca. Thousands of Yaquis were sold into slavery and thousands more died during the military campaign, displacing and compelling other Yaquis to migrate. Up until, 1918 in the United States, and 1929 in Mexico, our ancestors never hesitated to defend or give their lives for the protection of the Yaqui way of life. January 9, 1918 was the last time the United States Army and Native Americans engaged in combat at the Battle of Bear Valley, an engagement fought between a band of Yaquis and a detachment of United States Army soldiers of the American 10th Cavalry Regiment (Buffalo Soldiers), near Arivaca, Arizona. It was the final official battle of the American Indian Wars. However, the Yaqui were still engaged in defense of their people in war with Mexico, in the last major engagements of the Yaqui-Mexican Wars.

⁸Hall, John D., O'Mack, Scott, Heilen, Michael P., Swope, Karen, Hefner, Joseph T., Sewell, Kristin, and Gray, Marlesa, 2010 End of Fieldwork Report for the Joint Courts Complex Archaeological Data Recovery Project. Strategical Research Inc.

⁹Warnock, John 2016 "Tucson: A Place -Making," *Journal of the Southwest*, Vol 58, No. 3, pp. 361–616.

¹⁰*See* 48 Fed. Reg. 40442, September 7, 1983.

ferred into trust under the current bill.¹¹ Overall, there are over 500 residences, tribal and non-tribal, in Old Pascua. The Tribe own approximately 43 Tribal residences in fee in the Old Pascua community.

In 1960, Yaquis in Old Pascua initiated a request for land primarily to protect their culture and seek a permanent home. In 1963, the Pascua Yaqui Association was formed. In 1964, the U.S. Government deeded 202.76 acres to the Pascua Yaqui Association. In 1975, the Pascua Yaqui Association sought federal recognition from Congress, and on September 18, 1978, the Pascua Yaqui Tribe was officially recognized by Congress.¹² It is of great importance to note that we have landless non-Reservation communities throughout Southern Arizona, California, and even Texas. The largest concentrated population of Yaqui people on the U.S. side of the border live on the Pascua Yaqui Reservation and in our several Tribally Recognized Communities,¹³ both in and around the greater Tucson/Pima County region and in the Maricopa/Pinal County regions.

Members of the Tribe have lived in these Tribally Recognized Communities since before the Tribe was Federally Recognized in 1978, but these communities were not made a part of the Tribe's reservation. At the time of recognition, a small parcel of land was made reservation, and Congress later acknowledged that a study was needed to determine whether the Tribe would need more land.¹⁴

II. Reasons for Congress to Authorize the Taking of this Land into Trust

As described below, the land at issue has been the subject of detailed agreements with both the State of Arizona, in the form of a federally approved compact, and the City of Tucson, in the form of an inter-governmental agreement. Further, the location is one of historic and cultural importance to the Pascua Yaqui and its acquisition would be consistent with past Congressional actions recognizing the need of the Pascua Yaqui for additional lands given the Tribe's relatively small reservation.

(A) *The Pascua Yaqui Tribe has worked with the State of Arizona, City of Tucson, and tribal governments, and executed agreements supporting the placement of this land into trust.*

1.) Placing this land into trust would be in accordance with our 2021 Amended Gaming Compact.

The Pascua Yaqui Tribe recently finalized negotiations and approved amendments to its gaming compact with the State of Arizona. A 2021 Amended and Restated Gaming Compact was approved by the Department of Interior on May 24, 2021 (the Compact). Of utmost importance to the Tribe, the Compact has a provision which allows the Tribe to develop a gaming facility in the community of Old Pascua if H.R. 4881 becomes law.

After nearly 5 years of negotiation, the statewide Arizona Compact was finalized to include provisions that ensure strict limitations on the location of gaming facilities, number of gaming facilities, numbers of gaming devices, and the types and numbers of games allowable for each tribe. The Compact gives each tribe the opportunity to improve its economic circumstances.

The Compact achieves a balance for all parties and creates a positive and predictable business environment for every tribe. In addition to creating a competitive balance among gaming tribes, the compact also creates a new revenue stream for non-gaming tribes through a Compact Trust Fund, and continued the machine rights transfer mechanism, through which gaming tribes in large markets can put more gaming devices into play by purchasing the rights to operate those devices from tribes located in small or non-existent gaming markets. The Compact also provides for tribal revenue-sharing with the State and local governments in exchange for enhanced tribal exclusivity for casino gaming.

Our amended Compact authorizes our Tribe to seek to place this land into trust for the purpose of gaming. It contains a specific and limited area in the 2021

¹¹ See Attached Exhibit A.

¹² 25 U.S.C. § 1300f-2.

¹³ "Tribally Recognized Communities" represent specifically delineated geographic areas where our Tribal members have historically congregated and where they have a continuing presence today. These Tribally Recognized Communities, including Old Pascua, are formally recognized by the Tribe for purposes of Tribal enrollment and Tribal services. See, e.g., Resolution of the Pascua Yaqui Tribe Approving Extension of Boundaries for Recognized Yaqui Communities for Purposes of Enrollment Demographics and for Defining Community Boundaries and Service Areas, Resolution No. C03-38-08. In addition, the Tribally Recognized Communities of Old Pascua is recognized by the Bureau of Indian Affairs (BIA) as "near-reservation" lands under 25 C.F.R., Part 20, for purposes of extending BIA financial assistance and/or social services. See 48 Fed. Reg. 40442, September 7, 1983.

¹⁴ P.L. 103-357 (October 14, 1994).

Amended Compact itself. This particular area of land is located within and adjacent to the Old Pascua Community and is called the “Compact Designated Area” on the map submitted with this testimony.

It is important to note that Governor Doug Ducey of Arizona supports this legislation (HR 4881).¹⁵ It is equally important to note that the Arizona legislature overwhelmingly approved on a bipartisan basis, Arizona’s 2021 Gaming Act, (HB 2772) which was a companion to our Amended 2021 Compact with the State. We are also proud that other Arizona tribes agreed to this legislation and have given letters of support to the Pascua Yaqui Tribe.¹⁶

The 2021 Amended Compact represents the will of the State of Arizona and Arizona Tribes. The Compact also has the support of the Department of Interior through rigorous review of tribal gaming compacts required under the Indian Gaming Regulatory Act.¹⁷

2.) Our Tribe and the City of Tucson have executed an intergovernmental agreement that addresses this land being placed into trust for gaming purposes.

The City of Tucson also supports this legislation.¹⁸ This is evidenced by both an intergovernmental agreement (“IGA”) between our two governments and a recent letter of support submitted by Mayor Regina Romero on behalf of the City.¹⁹ After years of negotiations, the IGA was signed at the end of 2019, and amended this year. The economic benefits to the Tribe and the City of Tucson if the bill is enacted will be very significant. It will benefit its members by increasing tribal revenue for tribal government services, enable the Tribe to build new tribal housing, and creating new jobs for tribal members and the city/county during both the construction and operation phases of the proposed project.

The Project will increase economic output and employment in the City of Tucson, and in Pima County. It will result in direct economic output from construction spending and annual operating revenue from the casino and retail space.

Construction is estimated to create hundreds of direct jobs and generate millions of dollars in construction payroll. The project’s operation will create approximately 500 total direct jobs. It also will generate approximately \$17,000,000 in direct wages in the City/County, and annual spending in the range of \$12,000,000 to \$12,500,000 in vendor spending in the City/County.

Another net positive economic impact will be an increase in wages in the region, an increase in tax revenues to the state and local governments, and additional revenues to City of Tucson through our IGA. The new property will pay annual taxes of approximately \$8,300,000 including gaming distributions to the State, payroll taxes, and sales taxes.

In addition, the IGA covers a multitude of issues that come with placing land into trust within a municipality: taxes, jurisdiction, municipal services like trash, water, and electricity. The City’s tax base will not be eroded as the Tribe has agreed to make payments to the city in lieu of taxes. The Tribe has also agreed to provide funding to mitigate the costs associated with the development. Our governments have also pledged to work closely on dealing with any criminal jurisdictional issues. The City’s leadership has recognized the economic benefits and value of a gaming facility near Old Pascua and has thrown their full support behind our efforts to put this land into trust.

(B) Congress has already recognized the PYT’s need for more land.

Land is sacred to the Pascua Yaqui Tribe. Land is what ensures continuity because it is not only where our ancestors once lived, but also where future generations will be born; it constitutes a fundamental component of life. Land is also a means to preserve our cultural identity separate and apart from mainstream society. In addition to its spiritual and cultural significance, tribal land plays an important practical role. Many tribal nations rely on their land for their livelihood, which may be based on hunting, fishing, or agriculture. Unfortunately, our tribe does not have a large land base that is rich in natural resources and so we have had to use it as efficiently as possible to provide for our members. Our land base helps us exercise tribal self-governance and self-determination. As a government, we’ve created our own tax structures, passed laws to provide for public safety, regulate business and industry, and perform other functions identical to those typically provided by a combination of the state, county, city, or town.

¹⁵ See Attached Exhibit B.

¹⁶ See Attached Exhibit C.

¹⁷ See Attached Exhibit D.

¹⁸ See Attached Exhibit E.

¹⁹ See Attached Exhibit F.

Given the location of our reservation and the size of our membership, we are in dire need of additional land. Congress transferred 202 acres of land southwest of Tucson to the Pascua Yaqui Association in 1964.²⁰ The Reservation was formally established in 1978 and the members of Pascua Yaqui Association were federally recognized as the Pascua Yaqui Tribe. In 1982, with the enactment of H.R. 4364, the Reservation was expanded by 690 acres with the intent of improving the socio-economic environment of tribal members.²¹ In 2014, H.R. 507 was enacted which placed two 10-acre parcels into trust for the Tribe.²² Pursuant to H.R. 1404, the Tribe acquired 40 acres of land for flood control development in 2019. In addition, the Tribe has purchased land in fee and has placed land into trust via the administrative process that is delineated in 25 C.F.R. 151.

We started with 202 acres and 500 tribal members when we became federally recognized in 1978. Thankfully, our reservation has slowly grown to 2,216 acres and we now have approximately 22,000 members enrolled with our tribe. This expected growth means that our government has to respond to a corresponding need for land and services. As discussed below, our current reservation simply is not large enough to accommodate for our growing population or the land needs for ancillary government and economic development required for a healthy community. Additionally, the reservation is now approaching a point where expansion will no longer be possible.

Recognizing this situation, Congress directed the Secretary of the Interior to conduct a land study for the Tribe in 1994.²³ The Secretary of Interior was instructed to conduct a study to determine (1) whether the lands held in trust on October 14, 1994, by the United States for the Pascua Yaqui Tribe were adequate for the needs of the Tribe for the foreseeable future; and (2) if such lands were not adequate—(A) whether suitable additional lands are available for acquisition by exchange or purchase; and (B) the cost and location of the suitable additional lands. As part of this study, the Secretary was directed to “provide for the participation of members of the Pascua Yaqui Tribe” in the study.

- 1.) The Tribe conducted a land study in 2013 which concluded that the Tribe is in need of more land—a follow-up study in 2021 confirms these findings.

In accordance with the 1994 law, the Tribe received funding from the Bureau of Indian Affairs to conduct a land study in 2013. In it, the study concluded that the current land base is entirely insufficient for the Tribe and its members. The Tribe currently has 2,216 acres of Reservation land. The reservation lies in and around the Black Wash, a 100-year Federal Emergency Management Agency designated floodplain, with numerous culverts and drainage ditches crossing the community.

The reservation was placed in a remote location in 1978. The Reservation has no access to local surface water, and groundwater pumping is impracticable. Just below the earth’s surface, is a thick layer of bedrock. Since 1978, the City of Tucson and surrounding communities have expanded, and the increase in the number of homes and businesses has essentially land locked the Tribe. The current reservation land use is almost at capacity. The Tribe has primarily used its land for housing purposes. There are also various governmental buildings and two gaming properties on the reservation. Due to the encroachment of the city, and the existing uses on the reservation, the Tribe will have difficulty expanding its existing reservation land base.

The land study, assessed the Tribe’s population needs and growth patterns to determine the need for additional land to provide the necessary land base for the Pascua Yaqui Tribe in the foreseeable future and to manage growth in an efficient and sustainable manner. The land study also includes Pascua Yaqui tribally recognized communities in the Greater Tucson/Pima County and Maricopa/Pinal County regions. Some of these tribally recognized communities include lands held in fee by the Tribe. None of these tribally recognized communities include Reservation lands.

²⁰ Private Law 88–350, 78 Stat. 1196.

²¹ Public Law 97–386; S. Rpt. 97–657.

²² Public Law 113–134, the Pascua Yaqui Tribe Trust Act.

²³ P.L. 103–357 (October 14, 1994), which amended P.L. 95–375 (September 18, 1978), as codified at 25 U.S.C. § 1300f-3. The study amendment was submitted by Senator John McCain to address issues raised about the Tribe’s limited land holdings during the time Congress was considering amended legislation in 1994. Congress understood that the Tribe would need additional lands, but that such lands could not be identified without further study. For this reason, the Tribe’s newly acquired lands adjacent to their traditional territory should be placed in trust, especially since the State and Interior have approved the use of this land for gaming in the gaming compact and where the acquisition of this land addresses wrongs that arose in how the Tribe was treated by Interior between 1978 and 1994, with regard to land acquisitions, funding, and services.

Yaqui communities in the Greater Tucson/Pima County region include the Tribe's Reservation, which is known as Pascua Pueblo, as well as Pascua Yaqui tribally recognized communities including: Yoem Pueblo (Marana); Old Pascua; and Barrio Libre/16th & 44th (South Tucson). The Tribe's Tortuga Ranch is also included in this region. Pascua Yaqui tribally recognized communities in the Maricopa County and Pinal County regions include communities in Guadalupe, Penjamo (Scottsdale), High Town, Eloy and Coolidge.

The existing land base of the Tribe has been determined to be inadequate for the establishment of a diverse economic base and basic housing needs. The acquisition of additional land is necessary to facilitate self-determination, economic development and housing. The Tribe anticipates continuing advancement through infrastructure development, including, but not limited, to the following: housing, education, employment, government administration, economic development, recreation, open space, medical, and health.

Combining both residential and nonresidential land uses, approximately 18,168.4 additional acres will be needed to house the projected population and all the functions needed to economically sustain the Pascua Yaqui Tribe.²⁴ A total of 4,355 acres of residential land will be needed in 2115 to house the Pascua Yaqui Tribe population. Assuming the ratio of residential (21 percent) and nonresidential (79 percent) land uses remains constant throughout the planning horizon 2015 to 2115, approximately 14,353 additional acres of nonresidential land will be needed to support all nonresidential land uses.

The projected housing needs for the Pascua Yaqui Tribe for 2115 is 17,299 housing units. Based on the traditional settlement pattern of the Yaqui people at a density of four homes per acre, or an average lot size of 0.25 acres, a total of 4,355 residential acres will be needed by 2115 to provide housing for the projected population.

The small amount of Reservation land acreage available for development (791.4 acres) is not enough land to include the current and projected Tribe's housing needs. As previously mentioned, there are currently 675 people on the current housing waiting list. If acreage available for development is dedicated to housing only, the economic viability of the Tribe will be seriously compromised. A healthy balance of residential and non-residential land uses is needed to support the projected population in a sustainable manner. All the uses mentioned above require additional lands.

The majority of Pascua Yaqui tribal members reside outside the exterior boundaries of the reservation but within the seven tribally recognized communities in Arizona. As such, the trust lands are inadequate and insufficient for its members. The reservation lands established for the Tribe in 1978²⁵ and subsequent years are located in a floodplain area. This complicates and increases the cost of land development. Further, the Tribe is significantly land-locked with very limited opportunities to acquire land adjacent to or in close proximity to the Reservation. These unique circumstances and the comprehensive long-range development plans for creation of a diverse and self-sustaining Tribal community support this request.

The Tribe administers its programs and services from the reservation but provides services to all of its recognized communities. This situation has presented many difficulties. For example, some members may have to travel hundreds of miles to reach the closest tribal government office or health facility. A thriving, self-sufficient, healthy and sustainable community involves much more than having the acreage needed to support its future residential land use needs. It also requires acreage to fulfill its government and administrative functions, economic development functions (commerce, employment, industry, tourism, technology and innovation), for community services (education, libraries, police and fire protection, emergency management), cultural, health services, infrastructure (roads, water, sewer, drainage, waste, utilities), and amenities such as parks, recreation, trails and open space land needs. The Pascua Yaqui Tribe is no exception and has diligently been working in that direction since its recognition.

(C) Old Pascua is a logical place for more land to be placed into trust on behalf of the Pascua Yaqui Tribe.

1.) A brief history of Old Pascua

The Pascua Yaqui Tribe considers this bill a restoration of a portion of our homeland. To be perfectly clear, Old Pascua is one of our recognized ancestral communities. Tribal members have resided there for countless generations. Many tribal members were relocated from Old Pascua to New Pascua in 1964. New Pascua has

²⁴ 2013 Pascua Yaqui Land Study.

²⁵ Act of Oct. 8, 1964, Private Law 88-350, 78 Stat. 1196.

become the official tribal headquarters. Nevertheless, tribal members continue to reside in the Old Pascua community. Since the relocation, the Tribe has continued to provide various services to tribal members in Old Pascua. It is important to note that Old Pascua was given a "Near-Reservation Designation" by the Department of Interior on August 3, 1983. This allows the Tribe to provide financial assistance and/or social services via BIA funding to the community. The Tribe has also purchased residential and commercial land in the community. Presently, 500 members of our Tribe reside in Old Pascua.

Old Pascua is one of the longest continually inhabited Yaqui villages of what is now Southern Arizona. Non-Yaquis took notice of the village in the early 1900s. In 1920, a Tucson developer, A.M. Franklin, donated 40 acres for the stated purpose of establishing a "Yaqui Nation" in Arizona.²⁶ Since 1921, the Old Pascua Cultural Plaza and church has served as the oldest formally established Yaqui community in Tucson. The plaza consists of a 1.7-acre lot, with a chapel, the Capilla San Ignacio de Loyola.²⁷ The Plaza has served as a Yaqui cultural center and the site of our community activities and ceremonies.²⁸

Old Pascua Village was annexed into the City of Tucson, Arizona in 1952. Beginning in the 1960s, Yaquis in Old Pascua initiated requests for additional land, primarily to protect our culture from outside groups. Many challenges existed to our ability to maintain our cultural and traditional practices with the City of Tucson growing around us. Challenges included regulation, taxation, access and ownership of our sacred, cultural, traditional, and religious grounds, and limited access to sites of symbolic importance, such as the Santa Cruz River²⁹ for gathering ceremonial materials.³⁰ Encroachment created obstacles to maintaining cultural and linguistic ties to our families and culturally connected relatives. Other problems included the protection of cultural items and traditional cultural regalia, such as ceremonial gourds and rattles because of the lack of cultural understanding and protective laws.

To address these challenges, the tribe formed the Pascua Yaqui Association (PYA) in 1963. As mentioned above, Congressman Morris K. Udall (D-AZ) introduced a bill to transfer 202 acres of desert land southwest of Tucson to our Yaqui elders in 1964.³¹ The bill was later signed into law and the deed to the land was transferred to the PYA. In 1967, the first families moved into "New Pascua." Some tribal members relocated to land set aside for them in rural Pima County by the United States that would become our Tribe's future and current reservation, while others refused to leave their ancestral homelands of Old Pascua.

2.) The Cultural Significance of Old Pascua

It is nearly impossible to describe in full our Tribe's relationship to Old Pascua. I suppose I should begin with explaining what Pascua means. For those who do not speak Spanish, Pascua means Easter. Our Tribe conducts sacred rituals during Lent that have been witnessed by thousands and that have been documented by historians and scholars. The people who observed these ceremonies associated our tribe with Easter and began to refer to our community as Pascua.

Hundreds, if not thousands, of our tribal members have literally poured their blood, sweat, and tears onto the land of Old Pascua for the purpose of fulfilling their cultural duties. Our cultural plaza is a source of hope. It is a center for our members to come together and perform rituals that have been passed down for hundreds of years. Our devotion to these traditions is unquestionable and is a source of great pride for our tribe. Beyond the four corners of our plaza, we carry on processions in accordance with our beliefs and these processions occur throughout the rest of Old Pascua. For these reasons, the land is and will remain sacred to us.

As stated above, the plaza has been the focus of Yaqui traditional religious, cultural, and social events. The dances, processions, and other ceremonial activities that occur there are a critical part of Yaqui life and tradition. These rituals keep Yaqui heritage alive; they serve to teach young tribal members of their unique past

²⁶ Tucson Citizen 1971

²⁷ Chapel of St. Ignatius of Loyola.

²⁸ See Exhibit G.

²⁹ The Santa Cruz River used to run perennially and supported Cottonwood, Willow forests, and Mesquite bosques. It provided food security, and health. The Santa Cruz River allowed for indigenous subsistence farming, the collection of edible plant materials and medicines, and helped fulfill dietary requirements, ensuring food security, good health, and environmental diversity.

³⁰ Cottonwood, Carizzo (bamboo), flowers, Mesquite, willow, palm, cocoons (E. Calleta R. Sincta moth).

³¹ "New Pascua," H.R. 6233: Public Law 88-350, 78 Stat. 1196, (Morris K. Udall (D-AZ)).

and their traditional way of life. In addition, they enrich the lives of all who view the ceremonies and in so doing learn about the Yaqui culture.

For the Tribe, the practice of religion, the furtherance of social lifeways, and the education of the young in cultural traditions are intertwined, and it is within the plaza that the majority of the activities occur that promote these components of our culture. The paramount function of the plaza is as a religious/ceremonial location. The ceremonies that take place on the plaza are both pre-Christian and Christian in origin and are conducted to honor or bless events and/or persons, who may be Yaqui or non-Yaqui.

Cultural and Ceremonial Overview

Yaqui culture plays an integral role in the sustainment of our people, our development, our communities, and our tribal governance. The Christian ceremonies stem from the teachings of the Jesuit Andres Perez de Ribas who entered Yaqui country in what is now southern Sonora in 1618. He and the missionaries who followed him taught Christianity by dramatizing events, including those of the Easter season. Over time these Christian dramatizations were combined with ancient traditions that centered on the connection of the Yaqui to the plant and animal world and to the spirit of the Earth. In that world man could communicate with animals, and special powers were inherent in the forest, in animals, and in dreams.

Ceremonial fiestas occur throughout the year but the most complex event, which is generally referred to as the Easter Ceremony, is initiated on Ash Wednesday and continues through Easter Sunday. The Easter Ceremony, which in essence is an extraordinarily complicated pantomime of the death and resurrection of Jesus, includes both pre-Christian and Christian themes melded together in a way that is uniquely Yaqui. For example, two types of dancers, the Deer Dancers and the Pascolas (literally "old men of the fiesta") exemplify the pre-Christian traditions while others, such as Caballeros and Fariseos, represent Christian components of the Easter pageant. It is this ceremony by which the Yaqui are best defined to the non-Yaqui world that surrounds them, and it is within the plaza that most Easter Ceremony events occur, as well as those of the other ceremonial fiestas.

Although the plaza may appear as an undistinguished dirt lot to the uninitiated observer, to the Yaqui it is a location of paramount importance, containing objects and areas of special significance. Thus, the plaza is both culturally significant and sacred ground in an all-encompassing sense. It is the location at the heart of Yaqui life in Old Pascua Village where events occur that are integral components of centuries-old Yaqui cultural traditions.

3.) The Tribe has continuously provided support to its tribal members living in Old Pascua

The Tribe operates and maintains community centers in Old Pascua that provide medical, social, and recreational services. Throughout time, the Tribe has purchased both residential and commercial lots in and adjacent to Old Pascua. The Tribe established a museum within the neighborhood that highlights tribal history and contains precious artifacts. The tribe has developed a strong partnership with the City of Tucson regarding this community and even took the extraordinary step to enter into an intergovernmental agreement ("IGA") that outlines current and future responsibilities that address the needs of the area.

Unfortunately, Old Pascua faces several economic and social challenges. Unemployment, poor health, and inner-city violence is a reality our tribal members must deal with on a daily basis. In response to these difficulties, the Tribe has established a meal program for our elders, an afterschool recreational program for our children, and behavioral health services at our community center. The Tribe plans to develop job training programs, a GED program and even more programs aimed at improving the lives of our youth.

Housing has remained a central concern for the tribal members living in Old Pascua. As such, the Tribe does provide maintenance services to homes owned by tribal members. Many homes are in need of repair and rehabilitation. The Tribe continues to spend funds for this purpose, with particular attention to homes where elders reside. Recently, the tribe installed air conditioning units in homes to help improve the quality of life for its tribal members.

Through this legislation, the Tribe aims to restore a portion of our original ancestral land. Although we already own some of it in fee, placing the parcels into trust will allow us to have more direction and control over the land. Old Pascua is sacred to the tribe and will continue to be treated as such. With great pride and sense of purpose, our rituals will continue to be performed there. Without question, the goal of the Pascua Yaqui Tribe is to help support and serve the Pascua Yaqui people.

The Tribe will continue to protect this land and preserve it as a place for tribal ceremonies.

(D) The Department of Interior is Authorized to Take Land into Trust on Behalf of the Pascua Yaqui Tribe.

The Pascua Yaqui Tribe was recognized by Congress in 1978, through Public Law 95-375.³² However, at the time, the Bureau of Indian Affairs, established a distinction among tribes asserting that some tribes were historical and possess all sovereign rights, and some tribes were created, with certain limitations on their sovereign rights. This issue arose for us when our Tribe submitted amendments to our tribal constitution under the IRA, and the B.I.A., while reviewing the amendments, determined that the Pascua Yaqui Tribe was not a historic tribe, but was a “created” tribe.³³ The B.I.A., labeled the Tribe created, and between 1978 and 1994, denied the Pascua Yaqui people the full benefits of sovereignty. The Tribe suffered years of injustice and unequal treatment by the administrative decision to diminish our sovereign authority, including impeding our authority concerning land, property, taxation, and law and order. Our Tribal leaders at the time sought legislative assistance in 1993 from Congress to right the wrongs we were experiencing. Congress soundly rejected the Department of Interior’s opinion that our Tribe was a “created” tribe, and enacted P.L. 103-357 to clarify that we were indeed a historic tribe, that possessed all the attributes of inherent tribal sovereignty.³⁴

The 1994 Amendment to our federal Recognition statute clarified the Pascua Yaqui Tribe’s status as a historic Indian tribe to end years of unfairness to which the Pascua Yaqui people had been subjected, and acknowledged the tribe was a “federally recognized Indian tribe possessing all the attributes of inherent sovereignty which have not been specifically taken away by Acts of Congress and which are not inconsistent with such tribal status.”³⁵ Moreover, an amendment submitted by Senator McCain, codified Section 4, titled, “Study.” As mentioned above, Section 4 mandated that the Secretary of the Interior conduct a study to determine “whether the lands held in trust for the Pascua Yaqui Tribe are adequate for the needs of the tribe for the foreseeable future and if such lands are not adequate, whether suitable additional lands are available for acquisition by exchange or purchase.”³⁶ In 1994, the Secretary of the Interior, no later than 2 years after the date on which funds were made available for the study, was directed to submit a report to Congress that contained the results of such a study. Funding was authorized to be appropriated as necessary to carry out the provision of this law.³⁷ Therefore, not only was the Secretary authorized to take land into trust for the Pascua Yaqui Tribe in 1978 through Public Law 95-375, in 1994, the Secretary of the Interior was given additional authority pursuant to Public Law 103-357, to take lands into trust and to conduct a Land Study for the benefit of our Tribe.³⁸ As explained, the Tribe did not receive funding to obtain a Land Study until 2013, and to date, a Congressional report has not been submitted to Congress by the Department of Interior.

The acquisition of additional land is necessary to facilitate self-determination, economic development, and to support the housing needs of the Tribe.

³² P.L. 103-357 (October 14, 1994), which amended P.L. 95-375 (92 Stat. 712) (September 18, 1978), codified at 25 U.S.C. § 1300f-3, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA).

³³ See page 12 of the April 30, 1993 Hearing Record of the House Subcommittee on Native American Affairs on H.R. 734, to amend the act entitled “An Act to Provide for the Extension of Certain Federal Benefits, Services, and Assistance to the Pascua Yaqui Indians of Arizona, and for Other Purposes”—Written statement of Carol A. Bacon, Director, Office of Tribal Services, Bureau of Indian Affairs.

³⁴ 25 U.S.C. § 1300f(a).

³⁵ 25 U.S.C. § 1300f-1(a); “The Pascua Yaqui Tribe is a federally recognized sovereign entity that has existed as a formal tribal government since time immemorial and yet an arbitrary classification by the Bureau of Indian Affairs would seek to limit their sovereign authority. By reaffirming the Pascua Yaqui Tribe’s status as a historic tribe, H.R. 734 would dispel the misconception perpetuated by the BIA that the Pascua Yaqui Tribe has limited powers of self-government delegated by the Federal Government. The notion of delegated authority is inconsistent with settled principles of basic Indian law; namely that federally recognized tribes retain any inherent sovereign authority which has not specifically been divested by Federal law. There is no legal support for the BIA’s created versus historic tribe distinction and the distinction must not be tolerated. The Pascua Yaqui Tribe is either sovereign or not sovereign; there is no middle ground.” Congresswoman Karan English (D-AZ) (House of Representatives—August 2, 1993).

³⁶ 25 U.S.C. § 1300f-4(a).

³⁷ 25 U.S.C. § 1300f-4(c)(d).

³⁸ Status of Pascua Yaqui Indian People, P. L. No. 103-357, Oct. 14, 1994, 108 Stat. 3418, 25 U.S.C. §§ 1300f-1300f-3.

Primarily because of our historic struggles with the B.I.A., Congress also saw fit in 1994 to amend Section 16 of the Indian Reorganization Act³⁹ to add subsections (f) and (g) to the Act.⁴⁰ Subsection (f) prohibits the Secretary of the Interior from creating any regulation which “classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.”⁴¹ Subsection (g) provides that “[a]ny regulation, administrative decision, or determination of a Department or agency of the United States that classifies, enhances, or diminishes the privileges and immunities” of an Indian tribe relative to the privileges and immunities of other federally recognized Indian tribes shall have no force or effect.⁴² These provisions were added as a Senate floor amendment to S. 1654, the Technical Corrections Act of 1993, which became Public Law 103–263.⁴³

(E) The Department of Interior Supports H.R. 4881.

In written testimony presented on October 5, 2021, Bureau of Indian Affairs Director, Darryl LaCounte, on behalf of the Department of Interior, testified that the “Department of the Interior supports H.R. 4881. This bill provides greater opportunity for the Pascua Yaqui Tribe to make investments in the tribal economy, promotes community and regional economic development within the greater Tucson region, and is in keeping with the Biden Administration’s commitment to support tribal self-determination—including economic self-determination.”⁴⁴

III. Conclusion

In short, we are asking Congress to approve what we consider a promise, akin to a treaty, among the State, the City, and our neighboring tribes regarding this issue. It would be the final step in what has been a decade long process. We have taken great care to reach out to and establish partnerships with our regional governmental counterparts. As set out above, our transparent dreams have wide support throughout Arizona, and our Congressional delegation.⁴⁵ The plan involves a massive investment on our part, calling for tens of millions of dollars that will help create close to a thousand direct and indirect jobs for our Tribe and for the residents of the City of Tucson.

We are a fast growing tribe and our membership is increasing. We have more tribal members, children, and elders, who require services-services like housing, health and medical, social services, and education. We don’t wish to be a burden because Yaquis are self-sufficient hard-working people. Our reservation has become land locked; we can’t expand much further. Passing this law would be a restoration of part of our homeland, a place where many of our stories have taken place, where traditions have been passed down in songs and dances so that each generation can learn about its culture and traditions.

Thank you again for your consideration. On behalf of my nation, I want to share our gratitude to this Congress for upholding its trust responsibilities to us. I hope and pray our relationship continues to grow and remains prosperous.

As we say back home, Enchy mampo tawak, “it’s in your hands.” Lios aapo enchim “may God be with you.”

The attachments to this testimony have been retained in the Committee files.

The CHAIRMAN. Thank you very much, Mr. Chairman.
Vice Chair Murkowski.

³⁹ 25 U.S.C. § 461 et seq.

⁴⁰ 25 U.S.C. § 476 (f) &(g), Public Law 103–263.

⁴¹ 25 U.S.C. § 476(f).

⁴² 25 U.S.C. § 476(g); “The Congress has never acknowledged distinctions in or classifications on inherent sovereignty possessed by federally recognized Indian tribes. Tribal sovereignty must be preserved and protected by the executive branch and not limited or divided into levels which are measured by the Bureau of Indian Affairs and the Department of the Interior. We must not revisit the darkest period of Federal Indian policy by allowing the termination of tribal sovereign authority through the implementation of the Bureau of Indian Affairs policy distinction between historic and created Indian tribes.” Statement of Congressman Richardson on the consideration of S. 1654, Cong. Rec. H3803, May 23, 1994.

⁴³ “The recognition of an Indian tribe by the Federal Government is just that—the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations. Regardless of the method by which recognition was extended, all Indian tribes enjoy the same relationship with the United States and exercise the same inherent authority.” -Statement of Senator John McCain on the consideration of S. 1654, 140 Cong. Rec. S6146, May 19, 1994.

⁴⁴ See Exhibit H.

⁴⁵ See Exhibit I.

Senator MURKOWSKI. Thank you, Mr. Chairman. And thank you to all who have provided testimony today. I greatly appreciate it.

I am going to turn first to you, Assistant Secretary Newland. Welcome back to the Committee.

Not only in your testimony but in the comments that we have heard from our Congressional leaders, we have gotten a pretty fair outline of the history of Congressional action that has been taken with regard to the Lumbee. When you referenced the 1956 Act, you acknowledged, recognized the Lumbee but explicitly denies them access to Federal services. Later, as you point out, this statute was also interpreted to preclude the Lumbee from being considered for Federal acknowledgement through the administrative process. Then Interior has since reversed the position on that.

So the question to you today, and from my understanding, the Department has taken the position that the Lumbee are not precluded under the 1956 statute from utilizing the administrative process. You have said that you are supportive of this legislation.

Can you tell the Committee whether the Lumbee would be able to achieve full Federal acknowledgement through that administrative process? In other words, could Interior extend Federal acknowledgement to the Lumbee? Then walk me through, if you will, some of the different outcomes or the results that might impact a tribe that is seeking Congressional recognition versus administrative recognition.

Mr. NEWLAND. Thank you, Vice Chair. I appreciate the question. I appreciate the chance to be back here in person as well.

You are right that in 2016, the Solicitor for the Department of the Interior issued an opinion that stated the Lumbee Tribe would be eligible to seek administrative acknowledgement but didn't speak to any outcome of how the Department would evaluate their application. In that opinion, the Solicitor walked through the Department's inconsistent views over the last 65 years on the impact of the 1956 Lumbee Act. So as it stands today, the Lumbee Tribe would be eligible to seek Federal acknowledgement through the Part 83 process at the Department of the Interior. They don't have an active petition before the Department, so I can't speak to the merits of it here today.

In terms of the different outcomes, Congressional recognition versus administrative recognition, in 1994 Congress amended the Indian Reorganization Act in a way to ensure that all federally recognized tribes would be entitled to the privileges and immunities of all other federally recognized tribes, no matter how they were recognized or when. So the legal consequence of Congressional recognition versus administrative recognition is essentially the same; once the political branches of the Federal Government recognize the sovereign status of a tribe, they are a federally recognized tribe, treated the same as all other federally recognized tribes in the United States.

Senator MURKOWSKI. So the outcomes or results are the same, if you will, regardless of whether it is Congressional recognition or administrative recognition?

Mr. NEWLAND. Correct.

Senator MURKOWSKI. So let me ask this question to Chairman Godwin, then. You are seeking Congressional action to affirm the

status versus the process of going through administrative recognition. I guess the question is, why Congressional action versus administrative?

Mr. GODWIN. As others have stated, we have been pursuing this for 133 years through Congressional action. We believe that since Congress terminated the Lumbee Tribe as a matter of law, that only Congress can reinstate full recognition to the Lumbee Tribe. As you can tell, Interior has flip-flopped on this issue many times over in the last 133 years. We don't feel over the past years that we could get favorable response through the Part 83 acknowledgement process.

So our stance on this is just a matter of dignity and the work that we put into this, even up until today, a lot of work has been put into this to go through the Congressional process. That is the stance that we take, and it is certainly the stance of the last six years of my life as chairman of the Lumbee Tribe. That is the position we have taken.

Senator MURKOWSKI. Thank you, Mr. Chairman.

I have one more question on the next round, but that is helpful.

The CHAIRMAN. Thank you, Vice Chair. Before moving on to Senator Tillis, I would like to respond to the Vice Chair. I think it is a smart question about whether to pursue an administrative process or a Congressional action. We are the ones in possession of the Constitutional plenary authority of tribal acknowledgement, tribal recognition. That authority is also sort of, you know better than I do, Mr. Newland, but sort of in an attenuated way delegated to the departments. But we have a perfect right to do what we are doing. In fact, it is the more common way historically of achieving recognition.

Senator Tillis.

Senator TILLIS. Thank you, Senator Schatz. I will be brief. First, to Harvey Godwin, Chairman Godwin, I should say. Thank you for your leadership, and your tenure. I know you are going to continue to work on this, although you will be transitioning out after the elections a couple of weeks ago.

I would commend to all members to read the written testimony, particularly the testimony of Dr. Hoxie and the prior testimony a couple of years ago of Professor Campisi. Because they clearly document what you would have used as a basis for an administrative approval.

To the point that Chairman Godwin has made, they have been there, they have done that, they have several tee-shirts. They have not been successful.

This provides Congressional clarity, which also avoids the inevitable lawsuit from anyone who may actually oppose it. So you could actually find yourself with an administrative approval and then years of costly litigation before this wrong is righted. Would you agree with that, Secretary Newland?

Mr. NEWLAND. Yes, Senator, I would.

Senator TILLIS. Thank you.

Again, Chairman Schatz, thank you for your indulgence. You and I have had several discussions over it, and Ranking Member Murkowski, thank you all. I really do believe that this is not an outlier. The only thing that is an outlier in this process is the treatment

of the Lumbee for the last 133 years. I believe that there is a path to get it done. That is why I have got on the bill, and that is why I am going to work 24/7 to get it out of this Congress.

Thank you.

The CHAIRMAN. Thank you, Senator Tillis.

Mr. Newland, a lot of my questions were covered both by your testimony and by the questions asked by members. But in terms of building a record, I want to ask you a couple of specific questions. How does each bill support Federal Indian law and policy? Specifically, I am interested in how these bills will strengthen the government-to-government relationship and advance tribal self-determination and sovereignty.

Mr. NEWLAND. Thank you, Chairman. I appreciate that.

With respect to S. 1364, the Lumbee Recognition Act, it would advance the government-to-government relationship by establishing and clarifying the sovereign status of the Lumbee Tribe and affirming the government-to-government relationship between the tribe and the United States.

With respect to the three land bills, one of the core components of tribal sovereignty is to have a land base in which to continue your tribal life ways and existence, whether that is living together as a tribal people or having access and protecting places that are integral to your religious and cultural practices. It is a trust responsibility of the United States to ensure that that happens.

So these bills, all three of these land bills would do just that.

The CHAIRMAN. Thank you. Before turning finally to Vice Chair Murkowski, I am going to ask for consent to permit Senator Tillis and Senator Burr to provide additional materials for the record from local officials in North Carolina on the Lumbee matter.

The CHAIRMAN. Vice Chair Murkowski?

Senator MURKOWSKI. Thank you.

Just one more question for you, Assistant Secretary Newland. This relates to H.R. 2088. In your testimony, the Department indicates it supports the bill because it would restore tribal homelands. So the question is whether it is possible, perhaps even common, for multiple tribes to claim ancestral ties to the same lands, and if so, how does the Department work through that?

Mr. NEWLAND. Thank you, Vice Chairman Murkowski. We prefer to not have to work through conflicts over land use, but it is actually, as I am sure you are well aware in your home State, quite common for many tribes to share ties certain areas because they exercise treaty or subsistence rights, or it is a sacred place to many tribes. It is not uncommon that you would have more than one tribe claim an interest or cultural importance for a particular site.

The idea way that we work through that at the Department of the Interior is to sit down and speak with the leadership from the tribes that have, I don't want to say competing claims and interests in lands, but to work through that, and hope that we can reach some kind of agreement on that. In cases where there is disagreement, oftentimes the acquisition doesn't go forward.

In some cases, the particular merits of the tribe seeking to have the land placed into trust are just stronger on the facts. So the land might be within their reservation or adjacent to their existing reservation.

But it is not an ideal situation when two or more tribes are competing to have ownership over the same lands.

Senator MURKOWSKI. I thank you for that. I raise the question because I have been made aware that when it comes to the legislation that I just referenced that there may be additional ancestral claims to this particular land.

I would like to now direct a question to Chief Sneed from the Eastern Band of Cherokee Indians, following this response from Assistant Secretary Newland. The direct question is, are you aware of other ancestral tribal claims to the land? First question is to ask you if you are aware of additional claims, ancestral claims to the land.

Mr. SNEED. Thank you for your question, Senator. Not at this time. Historically Cherokee Nation weighed in, in the late 1970s, or I believe it was 1980, under Chief Ross Swimmer of the Cherokee Nation, that the lands, while they were historic Cherokee lands, that the lands in question did not have any significance to the Cherokee Nation for religious, any sort of religious connotation, which was what the lawsuit was about back in the early 1980s.

Senator MURKOWSKI. Thank you for that. I guess what I would ask, and this is following your comments, Assistant Secretary, is if there is a situation where this legislation would inadvertently place land into trust that may be historically tied to another tribe that there is that commitment to work things out through the Department, that that is the process can best navigate this.

I don't want to presuppose, but again, as I have looked at this particular bill, it has been brought to my attention that there may be additional claims to ancestral lands. So how you navigate that, how you work through that, one would hope that it would be on a cooperative basis, working with the tribes and through the Department.

Mr. SNEED. Thank you, Vice Chairman. We would be happy to speak with anybody from Indian Country who has interests in these lands. I often say that some of the best diplomats in the world are found in Indian Country, from having to manage situations where people disagree over things like land use.

Senator MURKOWSKI. Always complicated. Thank you, Mr. Chairman.

The CHAIRMAN. It is a lot of nations.

If there are no further questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for two weeks. I want to thank all the witnesses for their time and their testimony today. Thanks to the staff.

This hearing is adjourned.

[Whereupon, at 3:40 p.m., the hearing was adjourned.]

A P P E N D I X

STATE OF NORTH CAROLINA OFFICE OF THE GOVERNOR
June 23, 2021

Hon. Charles E. Schumer,
Majority Leader;
Hon. Mitch McConnell,
Minority Leader,
U.S. Senate,
Washington, DC.

Dear Majority Leader Schumer & Minority Leader McConnell:

I am writing to convey my strong support of full federal recognition of the Lumbee Tribe. For far too long, the Lumbee Tribe has been in pursuit of this recognition, and I am pleased that they enjoy bipartisan support from leaders in North Carolina and our congressional delegation in this endeavor.

In 1885, the Lumbee Tribe was officially recognized by the State of North Carolina and began seeking federal recognition shortly thereafter. However, they have been hindered by the Lumbee Act, signed into law by President Eisenhower in 1956. This bill specifically denied the Lumbee the services and benefits that every other federally recognized tribe receives. It is past time that this injustice is righted. Full federal recognition would allow members access to the health care, education, housing, and childcare benefits they deserve, and would create economic opportunities for the tribe and the surrounding community.

The Lumbee Tribe has deep cultural roots in North Carolina. Its contributions to the fabric of our state are vast and our fates are inextricably linked. It is time for the Lumbee to enjoy the full recognition of the United States Government, and the Senate has an important opportunity to right this wrong.

With kind regards, I am very truly yours,

HON. ROY COOPER, *Governor*.

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