



**To:** House Committee on Natural Resources Republican Members  
**From:** House Committee on Natural Resources Republican Staff; Aniela Butler ([Aniela@mail.house.gov](mailto:Aniela@mail.house.gov)), Terry Camp ([Terry.Camp@mail.house.gov](mailto:Terry.Camp@mail.house.gov)), and Brandon Miller ([Brandon.Miller@mail.house.gov](mailto:Brandon.Miller@mail.house.gov)).  
**Date:** September 12, 2022  
**Subject:** Hybrid Legislative Hearing on Three Bills

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The Subcommittee on National Parks, Forests, and Public Lands will hold a hybrid legislative hearing on H.R. 8108 (Grijalva), the *Advancing Tribal Parity on Public Land Act*; H.R. 8109 (Grijalva), the *Tribal Cultural Areas Protection Act*; and H.R. 8719 (Grijalva), the *Great Bend of the Gila Conservation Act* on **Wednesday, September 14, 2022, at 10:00 a.m., EDT** in 1334 Longworth House Office Building and via Cisco WebEx.

Republican Members are encouraged to take advantage of the opportunity to participate in person from the hearing room.

Member offices are requested to notify Terry Camp ([Terry.Camp@mail.house.gov](mailto:Terry.Camp@mail.house.gov)) **no later than Wednesday, July 13, at 4:30 p.m., EDT** if their Member intends to participate in person in the hearing room or remotely via his/her laptop from another location. Submissions for the hearing record must be submitted through the Committee's electronic repository at [HNRCDocs@mail.house.gov](mailto:HNRCDocs@mail.house.gov). Please contact David DeMarco ([David.DeMarco@mail.house.gov](mailto:David.DeMarco@mail.house.gov)) should any technical difficulties arise.

## I. KEY MESSAGES

- The federal government owns too much land and is failing to properly manage it. Tribal governments (along with State and local governments) are important partners that can help reduce the burden of the federal estate by cooperating and coordinating on land and resource management.
- However, locking up millions of acres of federal land in the name of protecting tribal resources not only fails to actually protect these sacred areas, but it also contradicts the multiple use mandate of many federal land management agencies who are charged with balancing various uses such as conservation, outdoor recreation, responsible energy development, timber production, and grazing.

- While Republicans have offered numerous solutions that would elevate the role of tribes in land management decisions, such as Ranking Member Fulcher’s *Treating Tribes and Counties as Good Neighbors Act*, Ranking Member Westerman’s *Resilient Federal Forests Act*, and Representative LaMalfa’s *Tribal Biochar Promotion Act of 2021*, none were included on the hearing agenda.

## II. WITNESSES

### Panel I:

- **Representative Raúl Grijalva**, Arizona, 3<sup>rd</sup> Congressional District

### Panel II:

- **The Honorable Janie Hipp**, General Counsel, U.S. Department of Agriculture
- **Mr. Bryan Newland**, Assistant Secretary for Indian Affairs, U.S. Department of the Interior

### Panel III:

- **Ms. Stefanie Smallhouse**, President, Arizona Farm Bureau [*Republican Witness*]
- **Ms. Tina Marie Osceola**, Director, Tribal Historic Preservation Office, Seminole Tribe of Florida
- **The Honorable Fawn Sharp**, President, National Congress of American Indians
- **The Honorable Stephen Roe Lewis**, Governor, Gila River Indian Community

## III. BACKGROUND

The Majority is messaging each of the three bills on the hearing as examples of “tribal co-management.”<sup>1</sup> This follows an oversight hearing the full committee held in March of this year on “Examining the History of Federal Lands and the Development of Tribal Co-Management.”<sup>2</sup> For a more in-depth discussion of tribal co-management, please refer to the previous committee memo, which can be found [here](#).

### [H.R. 8108 \(Grijalva\)](#)

Despite consultation requirements being formalized through Executive Orders, Presidential Memoranda, and Secretarial Orders, the term “tribal consultation” is subject to varied interpretations and applications. Under federal law, there is no general standard for determining when tribal consultation has been adequately performed by a federal agency. However, tribal consultation obligations were formalized administratively through Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (November 6, 2000), which contained instructions for agencies to establish procedures to ensure “meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with

<sup>1</sup> Majority Press, “Chair Grijalva Leads Letter to President Biden, Makes GAO Request on Tribal Co-Management, Announces Hearing on Related Bills,” September 7, 2022, <https://naturalresources.house.gov/media/press-releases/chair-grijalva-leads-letter-to-president-biden-makes-gao-request-on-tribal-co-management-announces-hearing-on-related-bills>.

<sup>2</sup> <https://republicans-naturalresources.house.gov/calendar/eventsingle.aspx?EventID=410781>.

Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes.”<sup>3</sup> In addition to formal and informal consultations, tribes may also participate in any public process undertaken by the federal government under statutes such as the *National Environmental Policy Act of 1970 (NEPA)*, the *Administrative Procedure Act (APA)*, and the *National Historic Preservation Act (NHPA)*.<sup>4</sup>

This combination of laws and regulations has granted land management agencies significant authority to consult with tribes and protect sacred sites and resources. According to a report from the Advisory Council on Historic Preservation,

Multiple laws and executive orders, taken together, create a national policy of ‘stop, look, and listen’ before the U.S. government can make a decision that might affect tribal or Native Hawaiian sacred places. It was found that, when combined, Section 106 [of the NHPA] and the NEPA provide perhaps the greatest protection for sacred places under current U.S. federal law through their procedural review requirements.<sup>5</sup>

The report also highlighted laws at the state and local level that protect these sacred sites.<sup>6</sup> A letter sent just last week by Chair Grijalva, and 42 other Democratic members, concurred with these existing protections, stating,

The Executive Branch has considerable authority to advance co-stewardship of federal lands and waters with Indian Tribes. Congress granted all federal agencies, including the Department of the Interior (DOI) and the Department of Health and Human Services (HHS), broad authority to enter into agreements with tribal governments under The Indian Self-Determination and Education Assistance Act ... The Department of Agriculture (USDA) also has various authorities that allow the Forest Service to enter into tribal co-management of its resources.<sup>7</sup>

H.R. 8108 seeks to elevate the role of tribes in federal land management decisions, add additional tribal focused restrictions on the sale and disposal of federal lands, and increase tribal consultation requirements for public land use planning. Specifically, the bill would prohibit the sale of federal land if the land contains tribal cultural, sacred, or historical sites, impacts the rights and interests of a tribe, or contains former reservation land. If a federal agency determines that the disposal of a tract of federal land would not impact tribal rights, the bill would require agencies to notify an interested tribe of availability of the land and provide the tribe with a right of first refusal. The bill would also require land management agencies to provide tribes with more involvement opportunities in land use planning efforts and would require public land use plans to be consistent with tribal plans where feasible. In addition, the bill would provide tribal governments with the same level of consultation and notification requirements that are specifically afforded to states and local governments in a number of major federal lands laws,

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<sup>3</sup> Executive Order 13175, November 6, 2000, <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>.

<sup>4</sup> 42 U.S.C. 4321 et seq.; 5 U.S.C. 500 et seq.; 54 U.S.C. 300101 et seq.

<sup>5</sup> Advisory Council on Historic Preservation, “The National Historic Preservation Act as a Model for the Protection of Indigenous Sacred Places in Other Nations”, December 2021, <https://www.achp.gov/sites/default/files/2022-01/NHPAasAModel.pdf>

<sup>6</sup> *Id.*

<sup>7</sup> Grijalva et al., Letter to President Joe Biden, September 7, 2022, <https://naturalresources.house.gov/imo/media/doc/2022-09-07%20HNRC%20Letter%20to%20President%20Biden%20on%20Tribal%20Co-Management.pdf>.

such as the *Federal Land Policy and Management Act (FLPMA)*, which includes a similar requirement to notify state and local governments before offering lands for sale or auction.<sup>8</sup> Other major statutes amended by the bill include the *Federal Land Transfer Facilitation Act*, the *Recreation and Public Purposes Act*, the *Small Tracts Act*, the *Townsites Act*, the *Multiple Use and Sustained Yield Act*, the *Forest Rangeland and Renewable Resources Planning Act*, and the *Education Land Grant Act*.<sup>9</sup>

Republicans have offered solutions for tribal consultation, such as H.R. 8115, the *Recreation and Public Purposes Tribal Parity Act*, which would add tribes to the *Recreation and Public Purposes Act*.<sup>10</sup>

While tribal parity is a laudable goal, there are concerns this legislation could lead to even slower disposals of unnecessary federal lands. The fact remains that the federal government owns too much land, which has led to poor management and crumbling infrastructure. The federal government currently owns roughly 640 million acres, which is roughly 28 percent of the 2.27 billion acres of land in the U.S.<sup>11</sup> In addition to overgrown, diseased and infested lands prone to wildfire and drought, the federal land management agencies currently have a combined maintenance backlog of roughly \$35.8 billion.<sup>12</sup> Tribal governments (along with State and local governments) are important partners that can help reduce the burden of the federal estate by cooperating and coordinating on land and resource management. Instead of creating additional hurdles to managing the massive federal estate, Congress should focus on solutions that will lead to better land management and better outcomes for tribes, states, and the nation as a whole.

A Senate companion to H.R. 8108 was introduced as S. 4421 by Senator Marin Heinrich (D-NM) and referred to the Senate Committee on Indian Affairs.

**Staff contact: Brandon Miller (x5-7611)**

### [H.R. 8109 \(Grijalva\)](#)

H.R. 8109 would establish a new “Tribal Cultural Areas System” of historic properties, landforms, landscapes, or locations with significant historical, cultural, or spiritual significance to a specific tribe or tribes. Under the parameters of the legislation, Congress could designate any public lands as a Tribal Cultural Area without any acreage limitations, potentially creating designations that span millions of acres. Along with establishing extensive tribal consultation requirements, the new system would contain extensive management restrictions that mirror some of the most restrictive land designations, such as wilderness areas or national monuments. In particular, the bill would prohibit road construction, limit motorized vehicles, significantly curtail vegetation management, and mandate mineral withdrawals in all Tribal Cultural Areas. While previously established grazing is would be allowed in Tribal Cultural Areas under the

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<sup>8</sup> 43 U.S.C. 1701-1785.

<sup>9</sup> 43 U.S.C. 41; 43 U.S.C. 869 et seq.; 16 U.S.C. 521c-521i; 16 U.S.C. § 478a; Public Law 86–517; Public Law 93–378; 16 U.S.C. 479a(a).

<sup>10</sup> H.R. 8115, introduced on June 16 by Rep. Doug LaMalfa (R-CA-01). Interestingly, a separate subcommittee will be holding a hearing on this legislation on the same day as this hearing.

<sup>11</sup> Congressional Research Service, “Federal Land Ownership: Overview and Data,” Carol Hardy Vincent and Laura Hanson, February 21, 2020, <https://www.crs.gov/Reports/R42346?source=search&guid=0c9c7e5a921b473d922a66fb9bf6b39f&index=0>

<sup>12</sup> Information provided by DOI and USDA and based on the following estimates: BIE—\$925.6 million, BLM—\$4.9 billion, USFWS—\$1.8 billion, NPS—\$21.8 billion, USFS—\$6.3 billion, as of FY 2021.

legislation, the bill does allow for the termination of grazing permits or leases by the Secretary and sets up a voluntary grazing permit or lease donation program. To further tribal consultation, the bill outlines parameters for establishing tribal commissions for individual Tribal Cultural Areas and contains provisions encouraging tribal consultation and contracting.

Although the bill specifies that only Congress could designate a Tribal Cultural Area, the bill would create a significant loophole by establishing an alternate process for “Recommended Tribal Cultural Areas.” Under this process, any tribe can recommend the designation of a Tribal Cultural Area to the Secretaries of Agriculture or the Interior which, if approved, would then be managed as a “Recommended Tribal Cultural Area,” essentially creating a de-facto Tribal Cultural Area. In their own internal committee memo, Committee Democrats explicitly acknowledged the goal of this provision is to further lock up large swaths of land, stating: “This system, *modelled off the Wilderness Preservation System*, ensures irreplaceable cultural resources will not be threatened by Congressional inaction” (emphasis added).<sup>13</sup> Similar to wilderness study areas, these recommended areas would be managed indefinitely by the agencies unless specifically designated or released by Congress.

While the bill aims to protect areas defined as “tribal cultural sites,” there are already several federal statutes that provide for the conservation and appropriate disposition of Native American human remains, objects of cultural patrimony, and culturally or historically significant sites on public lands and Indian lands.<sup>14</sup> Some of the major statutes created to protect archeological resources, including tribal resources, include:

- *Antiquities Act (1906)* – allows the President to unilaterally designate “historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest” and was originally intended to stop the looting of sacred Native American burial grounds and archeological sites throughout the territories in the Southwest.
- *Historic Sites Act (1935)* – established the National Historic Landmarks Program.
- *National Stolen Property Act (1948)* – established fines and penalties for transporting or transferring stolen property.
- *Reservoir Salvage Act (1960)* – required study and protection of archeological objects that may be destroyed during the construction of a dam or reservoir.
- *National Historic Preservation Act (1966)* – established the National Register of Historic Places and State Historic Preservation Offices.
- *Archeological and Historic Preservation Act (1974)* – preserved archeological objects that might otherwise be destroyed during any federally licensed activity or program (such as a federal construction project).
- *American Indian Religious Freedom Act (1978)* – protects tribal religious rights by ensuring access to traditional sites, continued use and possession of sacred objects, and guaranteeing the freedom to worship through ceremonials and traditional rites.
- *Archeological Resources Protection Act (1979)* – strengthened fines and penalties for unauthorized excavation of archeological sites on federal land.

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<sup>13</sup> Majority Staff, Committee Memo, September 8, 2022.

<sup>14</sup> See Graves Protection and Repatriation Act. 25 U.S.C. 3001 et seq.; Archaeological Resources Protection Act. 16 U.S.C. 470aa et seq.

- *Native American Graves Protection and Repatriation Act (1990)* – required consultation with Native American groups before archeological excavation of culturally sensitive sites.<sup>15</sup>

In reality, the destruction of sensitive cultural sites is not usually a result of a lack of land designation, but rather *because* of such designation. Land use designations in sensitive areas are often not accompanied by additional funding or enhanced law enforcement presence. Increased visitation and attention, combined with a lack of adequate resources, can make multi-million-acre land designations particularly susceptible to resource degradation. For example, a 2014 Manager’s Report for the Grand Staircase-Escalante National Monument in Utah stated that “increased backcountry visitor impacts include increased graffiti, human waste issues, water quality concerns and parking congestion.”<sup>16</sup> According to BLM, over a 10 year period, Grand Staircase-Escalante experienced 78 separate incidents of vandalism, theft, or damage and destruction of archeological and natural resources.<sup>17</sup> In 2015 alone, rangers removed more than 1,234 square feet of graffiti.<sup>18</sup> In comparison, before its designation as a National Monument, Bears Ears only experienced 1 incident of vandalism over 5 years.<sup>19</sup> Since its designation, the Bears Ears Inter-Tribal Coalition has said that “[d]esecration and vandalism are serious problems that have been a regular occurrence in Bears Ears. According to archaeologists and law enforcement officers who patrol the area, these types of destructive incidents have been on the rise.”<sup>20</sup>

Finally, while the protection of sacred sites is extremely important, the unlimited scope of proposed Tribal Cultural Areas and Recommended Tribal Cultural Areas could create highly restrictive designations on lands that do not contain such sacred sites or resources. At the oversight hearing on tribal co-management earlier this year, the Committee heard testimony from representatives of the Southern Ute Indian Tribe and Inter-Tribal Timber Council. Both witnesses testified about the importance of enhancing tribal co-management of federal lands to produce more, not fewer, resources.<sup>21</sup> In his testimony, Southern Ute Chairman Melvin Baker testified that “[t]he Southern Ute Indian Tribe is well known and respected for its expertise in exercising its self-determination in managing its natural resources, including its energy interests. However, it also has a long history of coordinating with federal, state and local governments in the management of land and cultural resources in which governmental interests may overlap.”<sup>22</sup> This exemplifies how successful relationships between the federal government and tribal governments can balance both resource development and protection of sacred sites for the benefit of tribes.

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<sup>15</sup> NPS, “Federal Historic Preservation Laws, Regulations, and Orders”, <https://www.nps.gov/subjects/historicpreservation/laws.htm>.

<sup>16</sup> BLM, Grand Staircase-Escalante Manager’s Annual Report, 2014, [https://www.blm.gov/nlcs\\_web/sites/style/medialib/blm/ut/grand\\_staircase-escalante/nlcs\\_mgrs\\_report.Par.61629.File.dat/GSENM\\_Manager\\_Report\\_FY2014\\_draft1-25-2015.pdf](https://www.blm.gov/nlcs_web/sites/style/medialib/blm/ut/grand_staircase-escalante/nlcs_mgrs_report.Par.61629.File.dat/GSENM_Manager_Report_FY2014_draft1-25-2015.pdf) pg. 46

<sup>17</sup> Information obtained by the Congressional Research Service and provided by the Bureau of Land Management.

<sup>18</sup> Fox 13 News, “Rangers investigate vandalism at Grand Staircase-Escalante National Monument”, 04/04/16, <http://fox13now.com/2016/04/04/rangers-investigate-vandalism-at-grand-staircase-escalante-national-monument/>.

<sup>19</sup> Ibid. Rebecca Benally, Subcommittee on Federal Lands Hearing on H.R. 5780.

<sup>20</sup> Bears Ears Inter-Tribal Coalition, May 26, 2022, [https://twitter.com/savebears/status/1529864705254182928](https://twitter.com/savebears/1529864705254182928).

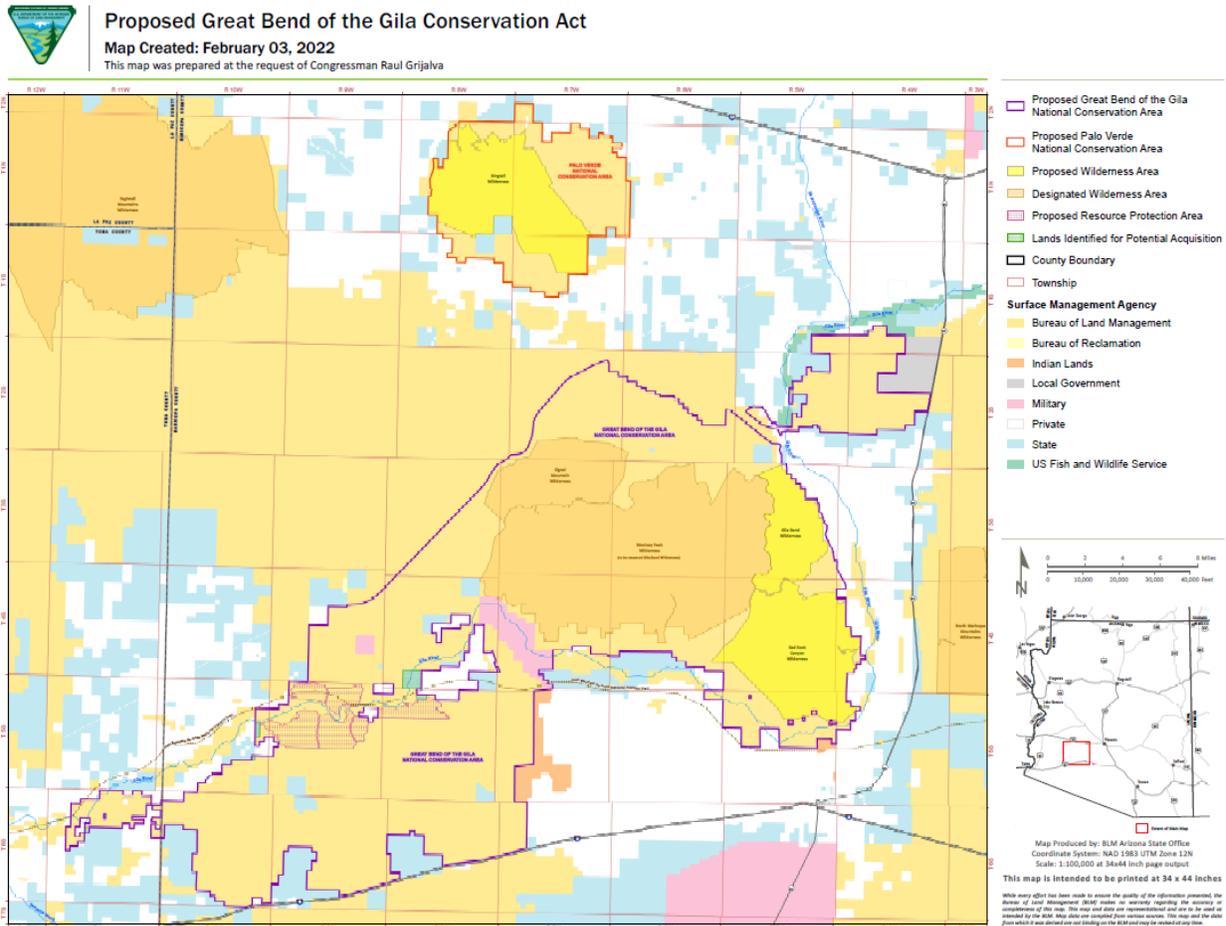
<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

A Senate companion to H.R. 8109 was introduced as S. 4423 by Senator Heinrich and referred to the Senate Committee on Indian Affairs.  
**Staff contact: Aniela Butler (x6-7736)**

**H.R. 8719 (Grijalva)**

H.R. 8719 would designate thousands of acres of new wilderness, establish two national conservation areas (NCAs), and create a new tribal commission for the management of the NCAs. The proposed BLM-managed wilderness areas and NCAs are located in Maricopa and Yuma counties in southern Arizona. H.R. 8719 is the latest iteration of legislation that Chair



**Source:** Bureau of Land Management

Grijalva introduced as the *Arizona Sonoran Desert Heritage Act* in the 113th, 114th, and 115th Congresses. None of the previous versions of the bill received any action in the House or had Senate companions.

Specifically, H.R. 8719 would add approximately 57,000 acres of wilderness by establishing the Red Rock Canyon Wilderness and Ringtail Wilderness and expanding the existing 64,000-acre Woolsey Peak Wilderness. The Woolsey Peak Wilderness area would be renamed “Gila Bend” and be expanded by 9,809 acres (a 16 percent increase in size). Additionally, the bill would

establish the Great Bend of the Gila and the Palo Verde NCAs, consisting of approximately 377,000 total acres. In addition to these restrictive designations, the bill also withdraws, subject to valid existing rights, all mineral rights from the NCAs and restricts current multiple uses such as livestock grazing and vehicle access.

The bill would establish a new tribal commission, modeled on the Bears Ears Inter-Tribal Commission, for the NCAs. This commission would consist of representatives designated by each interested tribe with a historical association with the lands included in the NCAs. Finally, the bill would authorize tribes to perform administrative or management functions within the NCAs through contracts entered into under the *Indian Self-Determination and Education Association Act*.<sup>23</sup>

The bill's prohibition on new grazing permits following enactment is particularly short sighted as grazing is an important tool for the prevention of invasive species such as buffelgrass. Buffelgrass is an introduced forage grass that is now invasive within native plant communities in southwestern states like Arizona.<sup>24</sup> The spread of buffelgrass in Arizona is leading to fires in the Sonoran Desert that historically did not occur.<sup>25</sup> Because of its threat to the Sonoran Desert ecosystem, buffelgrass is listed as a noxious weed in Arizona.<sup>26</sup> Grazing is an important tool for buffelgrass management and can be used along with herbicide application to prevent its spread.<sup>27</sup> Curtailing future grazing will inhibit an important land management tool and increase the threat of wildfires in these areas. Ironically, Chair Grijalva himself seemed to recognize the threat of buffelgrass recently, stating: "Buffelgrass is a threat — a fuel for wildfire, a threat to biodiversity, a threat to species and a threat to the landscape that we all love and cherish."<sup>28</sup> Chair Grijalva also requested a \$50,000 earmark for buffelgrass eradication in southwestern Arizona last year.<sup>29</sup>

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## IV. MAJOR PROVISIONS & ANALYSIS

### [H.R. 8108 \(Grijalva\)](#)

#### **Sec. 2. Preventing Disposal of Cultural Sites.**

- Amends *FLPMA*, the *Forest Service Facility Realignment and Enhancement Act* and the *Small Tracts Act* to require federal land agencies to consult with any interested tribe to verify that disposal of the tract would not impact the rights and interests of any interested tribe or impair access to a reservation.

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<sup>23</sup> Public Law 93-638.

<sup>24</sup> U.S. Department of Agriculture, "Field Guide for Managing Buffelgrass in the Southwest," USDA Forest Service Southwestern Region, Sep. 2014, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5410107.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5410107.pdf)

<sup>25</sup> Arizona-Sonora Desert Museum, "Buffelgrass: Making Wildfires Wilders," Arizona-Sonora Desert Museum Newsletter, July, Aug., Sep., 2011, <https://www.ltr.arizona.edu/~sheppard/sop/ASDMBuffelgrass2011.pdf>

<sup>26</sup> U.S. Department of Agriculture, "Field Guide for Managing Buffelgrass in the Southwest," USDA Forest Service Southwestern Region, Sep. 2014, [https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb5410107.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5410107.pdf)

<sup>27</sup> *Id.*

<sup>28</sup> Grijalva, Raul, August 29, 2022, <https://www.facebook.com/Rep.Grijalva/videos/buffelgrass-is-a-threat-a-fuel-for-wildfire-a-threat-to-biodiversity-a-threat-to/783877516372559/>.

<sup>29</sup> Grijalva, Raul, "Rep. Grijalva Secures Community Funding for Arizona-Sonora Desert Museum in Appropriations Bill," June 29, 2021, <https://grijalva.house.gov/rep-grijalva-secures-community-funding-arizona-sonora-desert-museum-appropriations/>.

- When a federal agency determines, after consultation with interested tribes, that disposal of a tract of federal land will not impact tribal rights, the agency is required to notify an interested tribe of availability of the tract for sale and must provide the tribe with a right of first refusal to bid on the land. Land grants are offered the second right of refusal if no tribes are interested. If multiple tribes are interested in a parcel, the Secretary is authorized to attempt to reach an agreeable sale; if no agreement is reached, the parcel will not be sold.
- Amends *FLPMA* to include tribes along with state and local government to be notified before putting lands up for sale or auction.
- Amends the *Federal Land Transaction Facilitation Act* to include “Indian Tribe” where “state and local government” is included.
- Requires agencies to consider sacred sites and land that affect the “exercise of treaty or other reserved rights” to the definition of the term “exceptional resource” on federal land.
- Requires agencies to provide notice to “interested Indian Tribes” when owners of federal inholdings wish to sell the land.
- Requires agencies to consider the extent to which the acquisition of the land will uphold the United States treaty and trust obligations to tribes and the preservation of Native American culture and religion” when considering consolidating inholdings on federal land.
- Amends the *Recreation and Public Purposes Act* to 1) prevent the transfer of federal lands of cultural and legal importance to tribes and 2) make tribal governments eligible to receive federal lands designated for transfer or disposal by federal agencies.
- Amends the *Small Tracts Act* to include tribes in the list of entities eligible to acquire national forest tracts.
- Adds schools operated or controlled by the Bureau of Indian Education to be included in eligible districts able covered by the *Education Land Grant Act*.
- Strikes two laws that allow states to acquire land within reservations for public education purposes and authorizes litigation over such lands to proceed without the involvement of the affected tribe.

### **Sec. 3. Increased Consultation.**

- Amends *FLPMA* and the *Forest and Rangeland Renewable Resources Planning Act of 1974* to require the Secretary to consult with tribes when conducting inventories or planning on public lands.
- Requires that land management plans on public land be consistent with tribal plans to the maximum extent practicable (in addition to the current requirement to be consistent with State and local plans).
- Requires advisory councils established under *FLPMA* include at least one member of an interested tribe.
- Amends the *Multiple Use Sustained Yield Act* and *Forest and Rangeland Renewable Resources Planning Act* to authorize the Secretary of Agriculture to cooperate with tribes, coordinate with tribal planning processes, utilize tribal data, and notify tribes of planning processes.

- Amends the *Multiple Use Sustained Yield Act* to require that advisory boards to include at least one member of an interested tribe.

## H.R. 8109 (Grijalva)

### **Sec. 5. Tribal Cultural Areas System.**

- Establishes a Tribal Cultural Area System on public lands consisting of tribal cultural sites that are historic landforms, landscapes, or locations with significance to tribal entities.
- Specifies areas may only be designated or removed by an Act of Congress. Allows the Secretaries overseeing land management agencies to recommend sites for inclusion.
- Prohibits any new or existing uses unless those uses are consistent with the preservation of tribal cultural sites. If a new use is approved, the tribal commission for the area must also approve the use before it can commence.
- Requires management plans are developed with tribes and incorporate tribal knowledge and expertise.
- Prohibits the construction of new or temporary roads with limited exemptions, limits motorized vehicles, sets forth parameters for existing grazing permits, and restricts vegetation management for only the protection of tribal cultural sites or restoration purposes.
- Withdraws all lands in Tribal Cultural Areas from energy and mineral development, subject to valid existing rights.
- Allows for temporary closure of public lands for tribal traditional cultural and religious purposes.

### **Sec. 6. Tribal Commission.**

- Requires the Secretaries of Agriculture or the Interior to establish a tribal commission within 180 days of the creation of a specific Tribal Cultural Area.
- The tribal commission shall provide guidance and recommendations on the management of the Tribal Cultural Area.
- Each tribal commission will consist of representatives of each interested tribe with a historical association with the Tribal Cultural Area.
- Exempts the tribal commissions from the Federal Advisory Committee Act.

### **Sec. 7. Self-Determination Contracts.**

- Allows DOI and USDA to contract with tribes under the *Indian Self-Determination and Education Assistance Act* to perform administrative or management functions within a Tribal Cultural Area.
- Allows the agencies to provide technical and financial assistance to tribes to improve their capacity to engage in such contracts.

### **Sec. 8. Agency Recommendations.**

- Requires DOI and USDA to establish criteria for recommending Tribal Cultural Area designations to Congress, solicit recommendations from tribes on potential Tribal

Cultural Areas, and recommend new Tribal Cultural Areas for designation within 3 years.

- Directs the agencies to consider factors such as the cultural, traditional, or historical uses or importance of a particular area to one or more tribes.
- Requires the agencies to identify and recommend potential tribal cultural sites on public lands during any revision or update to a land management plan.
- Allows one or more tribes to submit to DOI or USDA recommendations for creating a new Tribal Cultural Area. Sets up timelines and guidance for how the agencies must respond to such recommendations.
- If a Secretary concurs with the recommendation to establish a Tribal Cultural Area, the Secretary shall manage land as a Recommended Tribal Cultural Area until Congress determines otherwise.
- Withdraws all Recommended Tribal Cultural Areas from energy development or production, subject to valid existing rights.

#### **Sec. 9. Tribal Coordination.**

- Directs DOI and USDA to identify tribes interested in the management of a Tribal Cultural Area within 180 days of the establishment of such area.
- Once identified, DOI or USDA shall consult with any interested tribes on the management of the Tribal Cultural Area no fewer than twice per year and shall consider any proposals submitted regarding the management of the Tribal Cultural Area.

#### **Sec. 10. Effect.**

- Includes several savings provisions clarifying the law's effect on fish and wildlife management, water rights, and public access.
- Prohibits the public disclosure of any sacred site if the Secretary determines such site is at risk of vandalism or destruction.

### **[H.R. 8719 \(Grijalva\)](#)**

#### **Sec. 3. Establishment of Conservation Areas.**

- Establishes the Great Bend of the Gila NCA, consisting of approximately 329,310 acres in Arizona administered by the BLM.
- Establishes the Palo Verde NCA, consisting of approximately 47,653 acres in Arizona administered by the BLM.
- Requires that the Secretary, in consultation with the applicable tribal commission, only authorize new or existing uses within the NCAs that are consistent with the preservation of tribal cultural sites as well as the purposes and management priorities defined in the Act.
- Specifies that the Secretary can only authorize new uses with the NCAs if the applicable tribal commission agrees to the new use or does not respond to the request within 60 days following the request by the Secretary.
- Limits the use of motorized vehicles within the NCAs to roads and trails designated in the land management plans.

- Prohibits vehicle use, except for emergency purposes, within the Great Bend of the Gila NCA Resource Protection Area and states that no new permanent or temporary roads or other motorized vehicle routes shall be constructed in NCAs, with limited exceptions.

**Sec. 4. Establishment of Wilderness.**

- Amends Section 101(a) of the *Arizona Wilderness Act of 1990* (16 U.S.C. 1132 note; Public Law 101–628) by: 1) adding 9,809 acres of new wilderness to the existing 61,000-acre Woolsey Peak Wilderness and renaming it the Gila Bend Wilderness; 2) adding the 23,464-acre Red Rock Canyon Wilderness; and 3) adding the 23,712-acre Ringtail Wilderness.
- Clarifies the applicability of existing laws in administering the Wilderness Areas.

**Sec. 5. Maps and Legal Descriptions.**

- Requires the Secretary to submit a map and legal description of each of the NCAs and Wilderness Areas to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources.
- Specifies that each map and legal description submitted shall have the same force and effect as if included in this Act, except that the Secretary may correct any clerical or typographical errors in the maps or legal descriptions.

**Sec. 6. Management of Conservation Areas and Wilderness Areas.**

- Requires the Secretary to develop a comprehensive management plan for each of the NCAs within 3 years after the date of the enactment of the Act.
- Specifies that the Secretary must follow certain requirements in developing each management plan including: 1) collaboration with applicable tribal commissions; 2) consultation with tribes, state and local governments, and the public; 3) inclusion of tribes as cooperating agencies at their request; and 4) incorporation of Native knowledge.
- Requires the Secretary to ensure access to the NCAs for traditional cultural activities by members of culturally associated tribes consistent with the purpose and intent of Public Law 95–341.
- Specifies that the Secretary may temporarily close portions of the NCAs to the public upon the request of an interested tribe to protect the privacy of traditional cultural activities.
- Requires the Secretary, in consultation with each applicable tribal commission, to coordinate conservation, protection, restoration, and scientific management of the Great Bend of the Gila NCA with similar activities on PLO 1015 lands.
- Specifies that the following areas will be interpreted for the public as an overall complex linked by natural and cultural history and resources: 1) The Great Bend of the Gila NCA; 2) The Gila Bend Wilderness; 3) The Red Rock Canyon Wilderness; and 4) PLO 1015 lands.
- Withdraws all Federal land in the NCAs (including any land acquired by the Secretary within the NCAs after the date of the enactment of the Act), subject to valid existing rights.

- States that the Secretary may acquire land or an interest in land within the boundaries of the NCAs by purchase from a willing seller, donation, or exchange.
- Specifies that the Secretary shall seek to acquire by exchange or purchase from a willing seller the lands depicted on the Great Bend of the Gila Map as “Lands Identified for Potential Acquisition” in collaboration with the Arizona State Land Department.
- States that, if the Secretary determines that the lands withdrawn by PLO 1015 and utilized by the Arizona Fish and Game Commission are no longer necessary for the purposes for which they were withdrawn, these lands shall become part of the Great Bend of the Gila NCA and be managed by the U.S. Fish and Wildlife Service in accordance with the Act and any other applicable laws.
- Allows grazing of livestock in the NCAs and the Wilderness Areas, only where established before the date of the enactment of the Act, to continue.
- Includes savings clauses for state water rights and wildlife management rights.
- Allows the Secretary to prescribe measures to control or eradicate nonnative invasive plants within the NCAs and Wilderness Areas.
- Requires the Secretary to conduct an inventory of nonnative invasive plant species in the NCAs within 3 years after enactment of the Act, and every 5 years thereafter.
- States that the Secretary shall coordinate the management of nonnative invasive species in the NCAs with the Flood Control District of Maricopa County and neighboring communities.
- Specifies that the Secretary shall, in consultation with each applicable Tribal Commission, allow scientific research to be conducted in the NCAs and Wilderness Areas, including research to identify, protect, and preserve historic and cultural resources.
- States that nothing in the Act restricts or precludes: 1) low-level overflights of military aircraft over the NCAs; 2) flight testing and evaluation; or 3) the designation or creation of new units of special use airspace, or the establishment of military flight training routes over the NCAs.
- Clarifies that nothing in the Act shall be interpreted as creating a protective perimeter or buffer zone around the NCAs and the Act shall not preclude the conduct of activities or uses outside the boundary of the NCAs that can be seen or heard from areas within the NCAs.

#### **Sec. 7. Native American Rights and Uses.**

- States that nothing in the Act alters or diminishes the treaty rights of any tribe or the hunting, fishing, and gathering rights of the Tohono O’odham Nation recognized by section 4(b) of the *Gila Bend Indian Reservation Lands Replacement Act* (Public Law 99–503).
- Requires the Secretary to consult with interested tribes to implement the land management plans, provide access, and determine whether to charter an advisory committee for management of the NCAs.

### **Sec. 8. Tribal Commission.**

- Requires the Secretary to establish a tribal commission within 180 days after the date of the enactment of the Act to provide guidance and recommendations on the management and policies for the NCAs.
- Specifies that the tribal commission will consist of a maximum of one representative designated by each interested tribe with a historical association with the NCAs.
- Requires the Secretary to conduct consultation with each interested tribe to determine whether the tribe may designate a member of the Tribal commission.

### **Sec. 9. Self-Determination Contracts.**

- States that the Secretary may contract with one or more tribes or tribal organizations under the *Indian Self-Determination and Education Assistance Act* to carry out administrative or management functions within the NCAs.
- Clarifies that the Act does not change environmental and other requirements under applicable federal law, nor does it authorize the Secretary, a tribe, or a tribal organization to waive completion of any necessary environmental analysis.
- States that the Secretary shall make any decision under NEPA or other applicable federal law (including regulations) for activities under this Act on public land managed by the BLM and U.S. Fish and Wildlife Service.
- Clarifies that nothing in this section of the Act changes the application of the *Administrative Procedure Act*.
- Specifies that the Secretary may provide technical and financial assistance to a tribe in accordance with section 103 of the *Indian Self-Determination and Education Assistance Act* to improve tribal capacity to develop, enter into, and carry out activities under an *Indian Self-Determination and Education Assistance Act* contract.

## **V. COST**

None of the bills on this hearing have received a formal Congressional Budget Office (CBO) cost analysis.

## **VI. ADMINISTRATION POSITION**

The Biden administration's position on these bills is unknown at this time.

## **VII. EFFECT ON CURRENT LAW (RAMSEYER)**

[H.R. 8108](#)

[H.R. 8719](#)