



To: House Committee on Natural Resources Republican Members
From: Republican Committee Staff; Ken Degenfelder
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Date: October 25, 2021
Subject: Oversight Hearing titled: “Strengthening Indigenous Communities Through Cultural and Environmental Preservation”

The Subcommittee for Indigenous Peoples will hold an oversight hearing titled “Strengthening Indigenous Communities Through Cultural and Environmental Preservation” on **Tuesday, October 26, 2021, at 12:00 p.m. EDT online via Cisco WebEx.**

Member offices are requested to notify Brandon Ashley (Brandon.Ashley@mail.house.gov) by **4:30 p.m. EDT on Monday, October 25, 2021**, if their Member intends to participate from his/her laptop in 1324 LHOB or from another location. Submissions for the hearing record must be submitted through the Committee’s electronic repository at HNRCDocs@mail.house.gov. Please contact David DeMarco (David.DeMarco@mail.house.gov) or Everett Winnick (EverettWinnick@mail.house.gov) should any technical difficulties arise.

I. KEY MESSAGES

- Congress and federal agencies have recognized tribal stewardship of the land and, over years, legislation has been introduced that would give more latitude to Indian tribes to co-manage certain federal lands adjacent to tribal lands.¹
- Republicans have led the effort for Indian tribes to actively participate in managing federal forest lands that border or are adjacent to their tribal lands with the Tribal Forest Protection Act (TFPA) of 2004.² The TFPA was further amended in 2018 to expand the scope of federal lands eligible for tribal management.³
- Indigenous communities have long been active stewards of their native and tribal lands. Tribal communities have passed down cultural traditions of managing and preserving their lands.⁴

¹ [P.L. 108-278](#); [P.L. 115-325](#); [P.L. 115-334](#).

² [P.L. 108-278](#)

³ [P.L. 115-334](#)

⁴ U.S. Department of Agriculture. “Integrating tribes and culture into public land management”
<https://www.nrs.fs.fed.us/pubs/60223>

- Tribal members have traditionally used everything that comes from the land. This includes wildlife, plant communities, water, timber, and minerals for cultural and economic benefits.⁵
- There is a growing international movement that recognizes species and ecosystems as living entities with rights of their own. Some Indian tribes are embracing this doctrine and have adopted tribal laws recognizing rights of ecosystems and nature on tribal lands.⁶
- Indian tribes have demonstrated that a balance can be achieved in maintaining cultural and environmental conservation through continued active management, without restricting access.

II. WITNESSES

- **Mr. Cody Desautel**, President, Intertribal Timber Council, Portland, OR [*Republican Witness*]
- **The Honorable Michael Fairbanks**, Chairman, White Earth Nation, Ogema, MN
- **Mr. Chase Meierotto**, Division Administrator, Treaty Natural Resources Division, Red Cliff Band of Lake Superior Chippewa, Bayfield, WI
- **Ms. Elizabeth Azzuz**, Secretary, Cultural Fire Management Council, Hoopa, CA

III. Background

It has been long documented that tribal communities have been active stewards of their natural resources and ecosystems. The hearing will highlight how Indian tribes manage their ecosystems (water and wild rice), fisheries, and provide wildfire mitigation on tribal lands. The Republicans' witness, Cody Desautel, President of the Intertribal Timber Council, will testify about Indian tribes taking an active and balanced role in managing tribal forest areas, with fire mitigation and timber sales.

While this is not a legislative hearing, Committee Democrats will also likely promote aspects of Chair Grijalva's H.R. 2021, the Environmental Justice for All Act.⁷ One of the major provisions of this legislation within the Committee on Natural Resources' jurisdiction provides tribes the authority to act as a "cooperating agency" during actions that are subject to the National Environmental Policy Act (NEPA). This would elevate tribal involvement during the NEPA process, allowing for tribal input on any proposed action that could impact a tribe, as determined by the tribe, extending to off-reservation land and sacred sites. Tribal input could occur as early as the scoping process for a

⁵ NPR. "Native American Tribes Gaining Recognition For Timber And Forestry Practices."

<https://www.klcc.org/post/native-american-tribes-gaining-recognition-timber-and-forestry-practices>

⁶ MPR News. "Advocates hope White Earth wild rice case will boost 'rights of nature'"

<https://www.mprnews.org/story/2021/09/01/advocates-hope-white-earth-wild-rice-case-will-boost-rights-of-nature>

⁷ <https://www.congress.gov/bill/117th-congress/house-bill/2021>

proposed action, requiring the preparation of an environmental impact statement should a tribe request that level of review.

Tribal Lands in the United States

There are 574 Indian tribes,⁸ with an approximate population of 2.8 million American Indian and Alaska Natives living in United States.⁹ The United States has a unique legal relationship with Indian tribes and their members that has been established in the U.S. Constitution, treaties, federal statutes, and Supreme Court decisions.¹⁰

Approximately 56.2 million acres of land are held in trust by the United States.¹¹ These lands are generally the remnants of an Indian tribe's historic land base. When land is held in trust for an Indian tribe, the federal government holds the legal title, and the Indian tribe holds the beneficial interest.

Indian Self-Determination and Education Assistance Act of 1975

The Bureau of Indian Affairs (BIA) has the responsibility for the administration and management of Indian trust land.¹² This means an Indian tribe must go through the BIA for most matters that pertain to Indian land management.¹³ However, enacted in 1975, the Indian Self-Determination and Education Assistance Act,¹⁴ authorizes Indian tribes to contract (commonly referred to as a "638 contract") for the administration and operation of certain Federal programs which provide services to Indian tribes and their members. An overwhelming number of Indian tribes participate in some sort of 638 contract with federal agencies. Examples of some of these services include law enforcement, education, welfare assistance, real estate services, appraisals, probates, and natural resource programs.

Rather than relying on the federal government, 638 contracts allow Indian tribes to have a greater role in the management of natural resources. Tribes are then able to tailor the program to the unique cultural and geographic considerations each are faced with.

⁸ National Conference of State Legislatures. "Federal and State Recognized Tribes."

<https://www.ncsl.org/legislators-staff/legislators/quad-caucus/list-of-federal-and-state-recognized-tribes.aspx#:~:text=The%20following%20state%2Dby%2Dstate,federally%20recognized%20tribes%2C%20click%20here.>

⁹ U.S. Census 2019 American Community Survey.

https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDPIY2019.DP05&vintage=2017&layer=state&c&id=DP05_0001E

¹⁰ U.S. Constitution, Article I, §2, cl. 3; Cherokee Nation v. Georgia (1831); Seminole Nation v. United States (1942).

¹¹ U.S. Bureau of Indian Affairs. "Frequently Asked Questions." <https://www.bia.gov/frequently-asked-questions#:~:text=Approximately%2056.2%20million%20acres%20are,%2C%20communities%2C%20etc.>

¹² Congressional Research Service. Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress. July 2021 at 10. <https://crsreports.congress.gov/product/pdf/R/R46647>

¹³ *Id.*

¹⁴ [P.L. 93-638.](#)

Cultural and Environmental Preservation

Indigenous people have maintained long-established traditions in maintaining and managing their natural resources and lands.¹⁵ Many of the traditional customs for the management of land and natural resources come from cultural education that has been passed down through generations. For example, Council Member Carole Lankford of the Confederated Salish and Kootenai Tribes (CSKT) testified before Congress:

“Our tribal ancestors took a very active role in management of our vegetative landscape, primarily with fire, be it prescribed or wildfire in nature. Our traditional world evolved from a cultural landscape that was shaped by fire. This way of life continues today.”¹⁶

The tribe further added that their approach to mitigating wildfires is “all-inclusive” and includes fuels reduction treatments, thinning, piling, pile burning, and understory burn projects.¹⁷ The tribe concluded by saying, “[w]e take great pride in being active land managers, to sustain vital forest communities for our future generations.”¹⁸

A report submitted to Congress notes that Native Americans, for thousands of years, have been great stewards of the Sierra Nevada ecosystem.¹⁹ The report continues that Native Americans’ “traditional knowledge of former abundances, composition, density, and quality of plant and animal species extends to time periods long before the advent of governmental land management. Their land-use practices were successful for thousands of years in maintaining diverse and productive ecosystems.”²⁰

Today, many Indian tribes have established their own department of natural resources within their tribal governments and have executed 638 contracts with federal agencies to help manage their lands and wildlife.

“Rights of Nature”

“Rights of Nature” is a legal and jurisprudential theory that describes inherent rights with ecosystems and species.²¹ Some Indian tribes are embracing this doctrine and have adopted

¹⁵ U.S. Department of Agriculture. “Integrating tribes and culture into public land management” <https://www.nrs.fs.fed.us/pubs/60223>

¹⁶ *See*

<https://www.indian.senate.gov/sites/default/files/documents/6.8.16%20Carole%20Lankford%20Testimony.pdf>

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ University of California Davis. “Sierra Nevada Ecosystem Project: Final report to Congress, vol. II, Assessments and scientific basis for management options.” https://pubs.usgs.gov/dds/dds-43/VOL_II/VII_C09.PDF

²⁰ *Id.*

²¹ *Id.*

tribal laws recognizing rights of ecosystems and nature on tribal lands.²² For example, in 2018, the White Earth Nation formally recognized the rights of wild rice, under tribal law.²³

In August 2021, the White Earth Nation filed a lawsuit against the state of Minnesota in tribal court over its issuance to divert water as part of its Line 3 oil pipeline.²⁴ The complaint argues that the state of Minnesota did not receive consent from the tribe to temporarily pump up to 5 billion gallons of shallow groundwater for installing a new pipeline.²⁵ The tribe also contends that the increased pumping puts wild rice at risk and interferes with tribal members' rights to use treaty lands to hunt, fish, and gather wild rice.²⁶

Solutions

Indian tribes have demonstrated active stewardship of their tribal lands. Republicans have led the effort for Indian tribes to actively participate in managing federal forest lands. For instance, the Tribal Forest Protection Act (TFPA) of 2004²⁷ is a law that authorized the Bureau of Land Management and the U.S. Forest Service, upon the request of an Indian tribe, to enter 638 contracts with the Secretaries of Agriculture and the Interior to perform forest management on public land that border or are adjacent to an Indian tribe's land. This law was amended in the 115th Congress and allows the Secretary of the Interior to enter into stewardship agreements with Indian tribes to carry out demonstration projects to promote biomass energy production on Indian forest lands.²⁸ In 2018, the TFPA and the Good Neighbor Authority were amended and expands the scope of federal lands eligible for tribal management.²⁹

There is bipartisan support that Indian tribes can produce and manage healthy forests on and off their reservations. Indian tribes have demonstrated that a balance can be achieved in maintaining cultural and environmental preservation, including providing economic benefits to their tribal communities.

²² MPR News. "Advocates hope White Earth wild rice case will boost 'rights of nature'.

<https://www.mprnews.org/story/2021/09/01/advocates-hope-white-earth-wild-rice-case-will-boost-rights-of-nature>

²³ *Id.*

²⁴ Reuters. "Minnesota hit with novel 'natural right' tribal lawsuit over Line 3"

<https://www.reuters.com/legal/litigation/minnesota-hit-with-novel-natural-right-tribal-lawsuit-over-line-3-2021-08-06/>

²⁵ MPR News. "Line 3: White Earth argues DNR water permit violates wild rice rights"

<https://www.mprnews.org/story/2021/08/05/line-3-white-earth-argues-dnr-water-permit-violates-wild-rice-rights>

²⁶ *Id.*

²⁷ [P.L. 108-278](#)

²⁸ [P.L. 115-325](#)

²⁹ [P.L. 115-334](#)