HOUSE COMMITTEE ON
NATURAL RESOURCES
RANKING MEMBER BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: House Committee on Natural Resources Republican Staff;
Ken Degenfelder (Ken.Degenfelder@mail.house.gov), Annick Miller (Annick.Miller@mail.house.gov), & Terry Camp (Terry.Camp@mail.house.gov)
Date: March 7, 2022
Subject: Full Committee Oversight Hearing on "Examining the History of Federal Lands and the Development of Tribal Co-Management"

The Committee on Natural Resources will hold a remote oversight hearing on "Examining the History of Federal Lands and the Development of Tribal Co-Management" on **Tuesday, March 8, 2022, at 10:00 a.m. EST** online via Cisco Webex.

Member offices are requested to notify Baylee Seeman no later than **Monday, March 7, at 4:30pm EST**, if their Member intends to participate. 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 (Everett.Winnick@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.

- While a variety of innovative authorities exist to facilitate tribal cooperation, contracting, or consultation, such as the U.S. Forest Service's "Good Neighbor Authority" or various joint management agreements, true co-management of federal lands is limited due to Constitutional constraints.

- 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 responsible energy development, timber harvesting, outdoor recreation, and grazing.

- In light of the ongoing crisis in Ukraine, Committee members are encouraged to use the hearing as an opportunity to speak about the need to responsibly develop American energy resources to reduce our dependence on Russian oil and gas and support our allies.

II. WITNESSES

Panel I

- **The Honorable Chuck Sams**, Director, National Park Service, U.S. Department of the Interior
- **The Honorable Melvin J. Baker**, Chairman, Southern Ute Tribal Council (Southern Ute Indian Tribe) *[Republican Witness]*
- **The Honorable Carleton Bowekaty,** Lieutenant Governor, Pueblo of Zuni/Member, Bears Ears Inter-Tribal Coalition (Zuni)

Panel II

- **Mr. Cody Desautel,** President, Intertribal Timber Council (Confederated Tribes of the Colville Reservation) *[Republican Witness]*
- **Mr. Doug Kiel,** Assistant Professor, Northwestern University (Oneida Nation)
- **Ms. Aja DeCoteau,** Executive Director, Columbia River Inter-Tribal Fish Coalition (Confederated Tribes and Bands of the Yakama Nation)
- **Mr. Kevin Washburn,** Dean, University of Iowa College of Law (Chickasaw Nation)

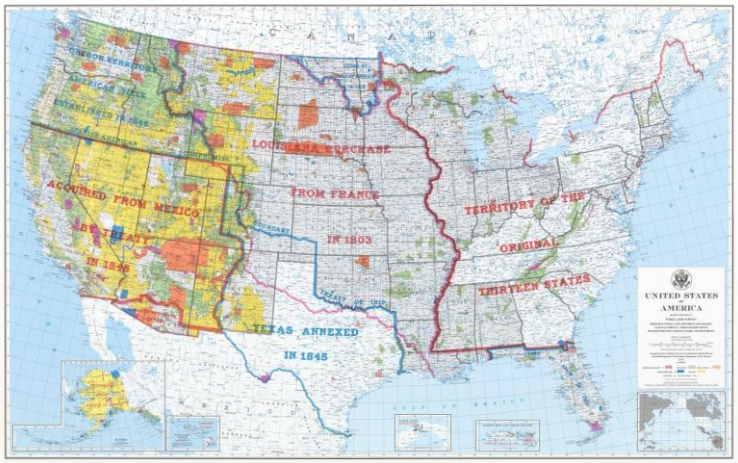
III. BACKGROUND

The History of Federal Lands

Overview

The history of federal lands consists of a complex patchwork of laws, treaties, and acquisitions over centuries that eventually evolved into the current 640-million-acre federal estate. Between 1781 and 1802, the original 13 states ceded approximately 237 million acres of land and water between the Appalachian Mountains and Mississippi River to the federal government.[1] This cession primarily occurred to resolve overlapping territory disputes between individual states that imperiled the passage and eventual ratification of the Articles of Confederation in 1781.[2] Several additional major acquisitions from foreign nations occurred between 1803 and 1867 and include the:

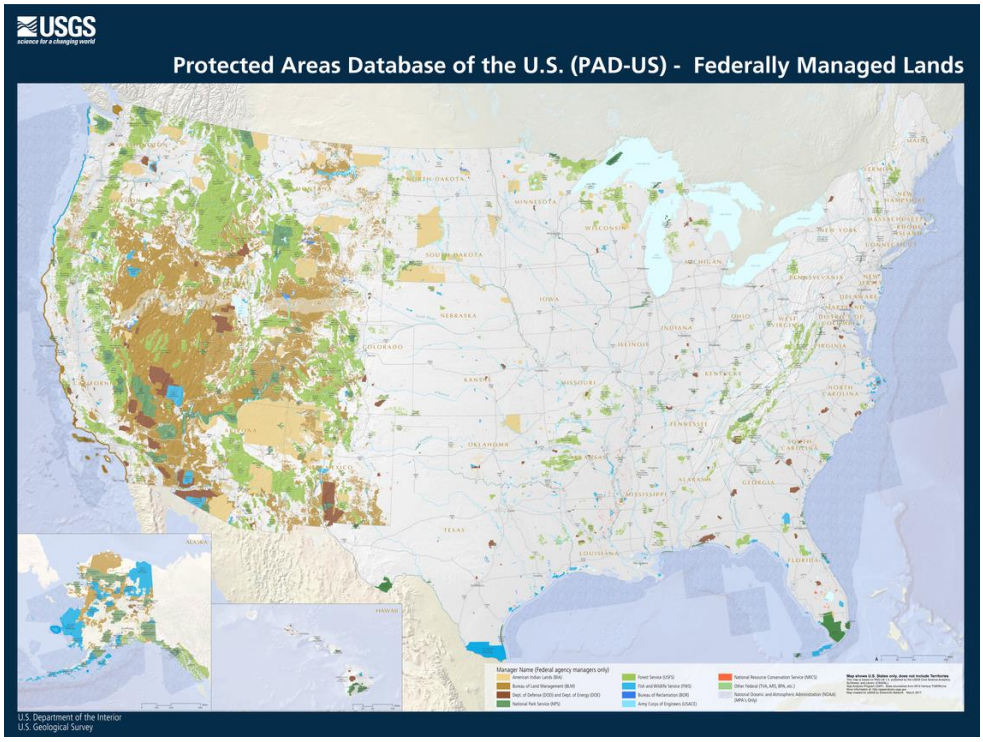
- Louisiana Purchase from France in 1803 (530 million acres);
- Red River Basin acquisition completed in 1817 (30 million acres);
- Cession from Spain in 1819 (46 million acres);
- Oregon Compromise in 1846 (184 million acres);
- Treaty of Guadalupe-Hidalgo in 1848 (339 million acres);



Source: U.S. Geological Survey

[1] Congressional Research Service, "Federal Land Ownership: Constitutional Authority and the History of Acquisition, Disposal, and Retention," Kristina Alexander and Ross W. Gorte, December 3, 2007, RL34267.
[2] Grubb, Farley, "Land Policy: Founding Choices and Outcomes, 1781-1802," https://www.nber.org/system/files/chapters/c11740/revisions/c11740.rev0.pdf.

- Purchase from Texas in 1850 (79 million acres);
- Gadsden Purchase in 1853 (19 million acres); and
- Purchase of Alaska in 1867 (378 million acres).[3]



Source: U.S. Geological Survey

In total, after these various acquisitions, the federal government acquired 1.8 billion acres of land.[4] The Constitution, which replaced the Articles of Confederation in 1788, solidified congressional control over these lands in the Property Clause (Article 4, Section 3, Clause 2).[5] Subsequently, several states were added to the union, moving westward and ending with the addition of Hawaii and Alaska in 1959. Unlike Eastern states, which were mostly settled before the federal government began acquiring lands, Western states ceded the ownership of federal lands to the federal government as a condition for obtaining statehood. For example, the Nevada enabling statute declares: "[T]he people inhabiting said territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States."[6]

Following a nearly 90-year period of federal land acquisition, Congress enacted several statutes such as the Homestead Act of 1862, the Pacific Railroads Acts of 1862, and the Desert Lands Entry Act of 1877 to "accelerate the settlement of the West by disposing of federal lands."[7] Over the next several decades, railroad companies received 174 million acres of public land under the Pacific Railroads Acts of 1862 and homesteaders received over 270 million acres of land.[8] In total, between 1781 and 2018, the federal government transferred approximately 1.29 billion acres of federal land including: 816 million acres to private ownership (including individuals and private companies such as railroad companies); 328 million

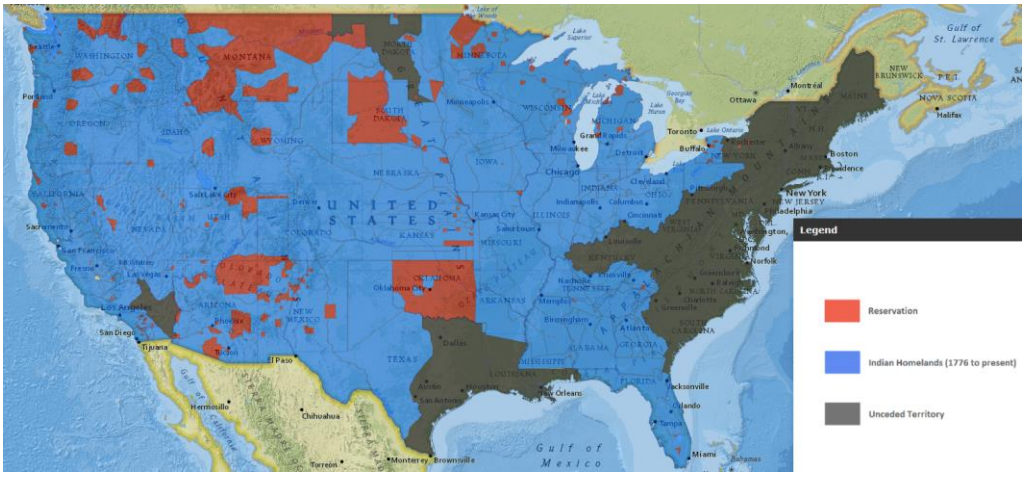
[3] Bureau of Land Management, "Public Land Statistics 2020," Volume 205, June 2021, U.S. Department of the Interior, https://www.blm.gov/sites/blm.gov/files/docs/2021-08/PublicLandStatistics2020.pdf.
[4] *Id.*
[5] U.S. Congress, "Constitution Annotated: Analysis and Interpretation of the U.S. Constitution," https://constitution.congress.gov/browse/essay/artIV_S3_C2_1_1/.
[6] Act of Congress (1864) Enabling the People of Nevada to Forma Constitution and State Government. https://www.leg.state.nv.us/Division/Research/Library/Documents/HistDocs/1864Act.pdf.
[7] Congressional Research Service, "Federal Land Ownership: Overview and Data," Carol Hardy Vincent and Laura Hanson, February 21, 2020, R42346.
[8] Our Documents Initiative, "Pacific Railway Act (1862), https://www.ourdocuments.gov/doc.php?flash=false&doc=32. National Archives, "The Homestead Act of 1862," https://www.archives.gov/education/lessons/homestead-act#background.

acres to state ownership; and 143 million acres to Alaska and Native American tribes.[9] Importantly, 97 percent of these transfers occurred prior to 1940.[10]

After this transfer of ownership and haphazard reservations of areas of significance (such as the designation of Yellowstone National Park in 1872 or the Forest Reserve Act of 1981), the government's focus shifted towards managing the lands that remained under federal ownership. Federal lands came under the jurisdiction of the major federal land management agencies as they were formed including the U.S. Forest Service (USFS) in 1905, the National Park Service (NPS) in 1916, the U.S. Fish and Wildlife Service (FWS) in 1966, and the Bureau of Land Management (BLM) in 1946.[11] Each of these agencies manage land in accordance with different mandates, ranging from the USFS's multiple use and sustained yield mandate to the NPS's mission to protect natural resources while ensuring opportunities for public enjoyment of those resources. Importantly, in 1976 Congress passed the Federal Land Policy and Management Act (known as FLPMA) which mandated the permanent federal ownership of public lands, directed the BLM to manage those lands in accordance with the principles of multiple use, and repealed statutes that previously encouraged land disposals such as the Homestead Act 1862. This is important because these laws facilitate the various uses of our public lands that we enjoy today including timber harvesting, energy development, outdoor recreation and public enjoyment, and grazing.

The Relationship Between Federal Lands and Tribes

Complicating the history of federal land ownership is the relationship between the acquisition of these lands and Native American tribes. Beginning with the first European settlers in the original thirteen colonies, tribes were slowly displaced from their original homelands. As the federal government began acquiring lands from foreign governments, questions arose to who had true ownership over that land. A series of court cases decided between 1823 and 1832 known as the Marshall Trilogy held that the federal government had ultimate right to the title of the land ceded by foreign governments, although tribes had a right to reside on those lands.[12] Additionally, these cases held that the United States "is bound to protect tribes and their right to occupy lands" and that states could not impose their laws on Indian territories within their state.[13]



Source: University of Georgia

Following the Louisiana Purchase and throughout the 19th century, federal policy accelerated the displacement of Native Americans to facilitate Westward expansion. Congress first passed the Indian

[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*

Removal Act of 1830,[14] which forcibly relocated more than 46,000 Native Americans in the Southeast to newly acquired lands West of the Mississippi River.[15] This also resulted in the formation of Indian reservations as tribes ceded "to the United States larger tracts of land for smaller parcels of land."[16] Decades after this displacement to reservations located primarily in the West, Congress passed the General Allotment Act[17] (also known as the Dawes Act) in 1887, which allowed the federal government to break up tribal lands into individual plots in an effort to "assimilate Native Americans into mainstream U.S. society by encouraging them towards farming and agriculture."[18] While tribal members were given 80- or 160-acre parcels, non-allotted lands became available for purchase by other homesteaders.[19] This, combined with the sale of allotments from tribal members due to taxation and other costs, led tribes to lose roughly 90 million acres of land from 1887 to 1934.[20] The Indian Reorganization Act of 1934[21] ended the allotment policy and put unallotted lands back into tribal ownership, helping to restore a portion of the land previously lost. However, during the Termination Era in the 1950's and 1960's, over 100 tribes were "terminated" and over 1 million acres of land were removed from trust status.[22]

Tribes clearly experienced a large diminishment in their lands. Today they collectively own 60 million acres of land, making tribes the fifth largest landowner in the United States behind only the other federal land management agencies.[23] There are several different types of tribal land designations including trust land, restrict fee land, fee lands/simple fee lands, allotted lands/allotments, Federal Indian reservation land, and Indian Country. The majority of tribal land (55 million acres) is trust land, meaning the federal government holds the legal title to the land for the benefit of federally recognized Indian tribes or individual tribal members.[24] There are broad restrictions against the sale of these lands and any disposals must now be approved by the Secretary of the Interior or by an act of Congress. Congress and the courts have also directed the Secretary of the Interior to take specific lands into trust on behalf of certain tribes.

Development of Tribal Co-Management

Indian Self-Determination Contracting

In 1975, Congress signed the Indian Self-Determination and Education Assistance Act (ISDEAA) into law.[25] ISDEAA focused on tribal self-determination and self-governance in managing certain federal programs and was intended to give tribes an opportunity to manage federal services and benefits for Indians and Indian tribes, rather than have them managed by the federal government. ISDEAA authorized the Departments of the Interior (DOI) and Health and Human Services to contract with tribes to plan and

[14] P.L. 21–148.

[15] National Geographic, "May 28, 1830 CE: Indian Removal Act," https://www.nationalgeographic.org/thisday/may28/indian-removal-act/.

[16] Congressional Research Service, "Tribal Land and Ownership Statuses: Overview and Selected Issues for Congress," Tana Fitzpatrick, July 21, 2021, R46647.

[17] P.L. 49–105.

[18] National Park Service, "The Dawes Act," July 9, 2021, https://www.nps.gov/articles/000/dawes-act.htm.

[19] *Id*.

[20] *Id*.

[21] P.L. 73–383.

[22] Indian Land Tenure Foundation, "Issues," https://iltf.org/land-issues/issues/.

[23] Washburn, Kevin (Democratic witness for this hearing), "Simple Tribal Co- Management: Using Existing Authority to Engage Tribal Nations in Co-Management of Federal Public Lands," October 2021, Iowa Legal Studies Research Paper No. 2021-45.

[24] *Id.*

[25] P.L. 93-638, 25 U.S.C. §§5301 et seq.

administer federal services and programs with federal funding through what are commonly referred to as "638 contracts" or "self-determination contracts."[26]

In 1994, the Tribal Self-Governance Act[27] amended ISDEAA by adding a new title to authorize DOI to enter into "self-governance compacts" with tribes.[28] Tribal self-governance compacts are a greatly enhanced form of contracting, as approved compacts provide tribes with the ability to assume funding of, and control over, certain federal programs and functions. Under this arrangement, a tribe may re-design the program to suit its needs and that of its members. Congress then appropriates funds for the program, which the Bureau of Indian Affairs (BIA) passes to the tribe in accordance with a self-governance funding agreement. Funds for overhead, referred to as "contract support costs," are also paid to the tribe.

In 2000, Congress further amended ISDEAA through the Tribal Self-Governance Amendments Act[29] by permanently authorizing compacts for certain Indian Health Service (IHS) programs.[30] Most recently, in 2020, Congress made additional amendments to ISDEAA to make it more difficult for the Secretary of the Interior to deny a tribal request to enter into a self-governance funding agreement.[31] The amendments increased the autonomy of a tribe to design and administer DOI programs and increased the burden on DOI to reassume management when gross mismanagement is alleged.[32] At passage, it was unclear whether additional DOI programs or projects that serve Indians as well as non-Indians could be eligible for self-governance agreements.

Each year more than 1,000 contracts are signed under ISDEAA, totaling billions of dollars. Most tribes have entered into self-governance annual funding agreements to operate a wide range of BIA services such as: law enforcement, tribal courts, education, welfare assistance, real estate services, appraisals, and natural resource programs. Within limits, tribes can also enter into funding agreements to manage non-BIA programs. Each year the Secretary of the Interior is required to publish a list of non-BIA programs eligible for inclusion in funding agreements.[33] Funding agreements between tribes and the Secretary do not permit tribes to undertake "inherent" federal functions, such as making policy decisions. The meaning of "inherent federal function," however, has previously been the subject of dispute between tribes and DOI. Non-BIA programs in DOI for which Tribes may enter into contracts or compacts include those within the FWS, Bureau of Reclamation (BOR), and the NPS. Although tribes have been successful in executing contracts for performing functions for the BIA and the IHS, tribal management of public lands has been very limited. In recent years, tribes have entered into fewer than a dozen contracts annually with the public land management agencies.

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[26] Congressional Research Service, "Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs," Tana Fitzpatrick, July 15, 2021, IF11877.

[27] P.L. 93-638.

[28] P.L. 103-413, 25 U.S.C. §§5361 et seq.

[29] P.L. 106-260.

[30] Congressional Research Service, "Indian Self-Determination and Education Assistance Act (ISDEAA) and the Bureau of Indian Affairs," Tana Fitzpatrick, July 15, 2021, IF11877.

[31] *Id*.

[32] *Id*.

[33] List of Programs Eligible for Inclusion in Funding Agreements Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs and Fiscal Year 2022 Programmatic Targets; 87 Fed. Reg. (February 8, 2022), https://www.federalregister.gov/documents/2022/02/08/2022-02584/list-of-programs-eligible-for-inclusion-in-funding-agreements-negotiated-with-self-governance-tribes

Tribal Consultation

Out of respect for the special status of Indian tribes as sovereign entities, the United States and its agencies consult with Indian tribes on proposed actions that may affect their interests. This obligation was formalized in 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 Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes."[34] Subsequently, a 2009 Presidential Memorandum on Tribal Consultation directed agencies to submit to the Office of Management and Budget (OMB), after consultation with tribes, detailed plans that agencies would take to implement the directives contained in Executive Order 13175.[35]

More recently, on January 26, 2021, President Biden issued a Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships, reaffirming the policy established under Executive Order 13175.[36] Additionally, the Secretaries of the Interior and Agriculture issued Joint Secretarial Order number 3403 on November 15, 2021 to emphasize the responsibilities the Departments have to tribes in the stewardship of federal lands and waters, including through Tribal consultation and collaboration.[37]

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. Because of this, tribes can dispute the adequacy of consultation, particularly when the subject matter concerns an issue where an interest of one party is detrimental to the interest of an Indian tribe. It is also important to note that tribes may participate in any public process undertaken by the federal government, including the environmental review process under the National Environmental Policy Act of 1970 (NEPA), the Administrative Procedure Act, and the Historic Preservation Act.

Protection of Sacred Tribal Sites

There is no statute concerning "sacred sites" of Indian tribes. On May 24, 1996, President Bill Clinton signed Executive Order 13007, titled "Indian Sacred Sites," directing agencies to implement procedures to ensure "reasonable notice" for proposed federal actions that affect access to or the physical integrity of Indian sacred sites, and to consult with Indian tribes.[38] The Order also required agencies to report back on the implementation of the Order. Under its own terms, the Order creates no enforceable rights, benefits, or responsibilities against the United States or any person. There are several statutes to provide for 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. For example,

[34] Executive Order 13175, November 6, 2000, https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf.
[35] "Presidential Memorandum on Tribal Consultation," November 5, 2009, https://obamawhitehouse.archives.gov/the-press-office/memorandum-tribal-consultation-signed-president.
[36] Biden, Joseph R., "Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships," January 26, 2021, https://www.govinfo.gov/content/pkg/DCPD-202100091/pdf/DCPD-202100091.pdf
[37] Joint Secretarial Order 3404 (November 15, 2021) https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf.
[38] Executive Order 13007, May 24, 1996, https://www.govinfo.gov/content/pkg/FR-1996-05-29/pdf/96-13597.pdf.

the Native American Graves Protection and Repatriation Act[39] provides for the disposition and repatriation of Native American human remains and artifacts discovered on federal lands, and the Archaeological Resources Protection Act of 1979[40] protects archaeological resources and sites on public and Indian lands. Many tribes have sought to designate specific areas, such as Bears Ears in Utah, as national monuments or other protected areas in an attempt to protect sacred sites. Those tribes have also asked for a co-management role in those areas, although administrative attempts to provide for that have fallen short of true "co-management" and only incorporate the tribes in an advisory role.

Case Studies in Tribal Co-Management, Contracting, Cooperation, and Consultation

Despite ample opportunities for tribes to enter into ISDEAA funding agreements, as well as numerous Executive Orders, Presidential Memoranda, and Secretarial Orders to improve tribal consultation and input into federal decision making, tribes have expressed a desire for more control and influence over federal lands and resources through co-management. However, the term "co-management" is subject to varied interpretations and applications and has been used to described instances of tribal contracting, cooperation, and consultation. The case studies that follow provide examples of the various ways that tribal "co-management" has been operationalized.

Fisheries

The term "co-management" is not typically used in federal fishery management. Instead, the Secretary of Commerce typically engages in tribal consultations. These include informing tribes of upcoming issues, inviting tribal members to regional fishery management council meetings, providing a forum for comments, sharing information about how to request consultation or be involved in the council and decision-making process, and participating in informal and formal consultation meetings.

When it comes to marine mammals, the process for tribal consultation usually takes the form of co-management agreements, which are governed by the Marine Mammal Protection Act (MMPA).[41] MMPA specifically grants the Secretaries of Commerce and the Interior the authority to "enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives."[42] Between the federal government and Alaska Native Organizations, that generally encompasses collecting and analyzing population data, monitoring the harvest for subsistence use, developing management plans for subsistence harvesting, and participating in research. In addition, Congress amended MMPA in 2018 to authorize the Secretary of Commerce to provide permits to certain state agencies and tribes for the intentional lethal taking of sea lions on the waters of the Columbia River or its tributaries that are having a significant negative impact on salmon species listed as threatened or endangered species under the Endangered Species Act.[43] However, this authority is not true "co-management" but rather a permit specifically available for certain tribes in the Columbia River.

[39] P.L. 101–601.
[40] P.L. 96-95.
[41] 16 U.S.C. 1361 et seq.
[42] Sec. 119 of MMPA, 16 U.S.C. 1388
[43] Sec. 120 of MMPA, 16 U.S.C. 1389(f)

Forestry

Tribes have a rich history in forest management dating back centuries. Tribes manage their forests for economic development, spiritual and cultural values, medicinal uses, wildlife habitat diversity, air and water quality, and to protect sacred landscapes. The federal government currently holds 18.6 million acres of forests and woodlands in trust on 334 reservations across 36 states.[44] Additionally, of all the acreage held in trust for tribes and individuals, nearly 4,000 miles border Forest Service lands," making tribes critical partners for the Forest Service.[45]

Members of the Karuk and Yurok tribes conducting a prescribe burn in the wildland-urban interface for fuels reductions, acorn research, and tribal food gathering enhancement.
Source: Frank K. Lake (USDA Forest Service and Karuk Tribe)

In 2004, Congress passed he Tribal Forest Protection Act[46] (TFPA) to give tribes better ability to manage adjacent federal lands. The TFPA directs the Secretaries of Agriculture and the Interior to give "special consideration" to tribally proposed stewardship contracting projects on federal lands adjacent to tribal lands.[47] Congress again expanded tribal self-determination and USFS contracting authority in the Agriculture Improvement Act of 2018[48] (2018 Farm Bill) by authorizing tribes as eligible entities in Good Neighbor Authority agreements. In the current Congress, several Republican bills have been introduced that build on current authorities to further incentivize tribal forest management and partnerships including: H.R. 2639 (Westerman), the Trillion Trees Act; H.R. 4504 (LaMalfa), the Tribal Biochar Promotion Act; H.R. 4614 (Westerman), the Resilient Federal Forests Act; and H.R. 4705 (Fulcher), the Treating Tribes and Counties as Good Neighbors Act.

Energy Development

Tribes collectively hold an estimated three percent of all known domestic oil and gas reserves.[49] In 2019 alone, tribes received roughly $1.1 billion in energy and mineral revenue.[50] One example of the success of tribal energy development and production is the Southern Ute Indian Tribe in Southwestern Colorado, which is producing more than 70 billion cubic feet of gas equivalent each year.[51] One area where there is great potential for more Tribal control over their own resources is through the use of Tribal Energy Resource Agreements (TERAs). In 2005 Congress passed the Indian Tribal Energy Development and

[44] Rigdon, Phil, Testimony before the House Natural Resources Committee, Oversight Hearing on "Tribal Forest Management: A Model for Promoting Healthy Forests and Rural Jobs," April 10, 2014.
[45] Ellersick, Tania, "Tribal Engagement Roadmap Highlights Report," U.S. Forest Service Research and Development, November 2015.
[46] P.L. 108–278.
[47] U.S. Forest Service, "Tribal Forest Protection Act in Brief," https://www.fs.usda.gov/detail/r5/workingtogether/tribalrelations?cid=stelprdb5351850.
[48] P.L. 115–334.
[49] University of Colorado and Boulder, "Indian Law" https://www.oilandgasbmps.org/laws/tribal/
[50] Congressional Research Service, "Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress," Tana Fitzpatrick, July 26, 2021, R46446.
[51] Red Willow Production Company, "Our Purpose" https://www.rwpc.us/

Self-Determination Act[52] (ITEDSA 2005), which created TERAs.[53] TERAs were designed to increase tribal control over Indian energy projects by allowing tribes to enter into leases, business agreements, or energy focused rights-of way with requiring the Secretary's review and approval.[54] In response to concerns with TERAs, Congress enacted the Indian Tribal Energy and Self-Determination Act Amendments of 2017[55] in order to simplify and streamline the process.[56]

Anticipated Legislation

Committee Republican staff understand that Committee Democrats have been working with various tribal nations, along with the Wilderness Society and other likeminded environmental organizations, to develop potential Tribal co-management related legislative proposals. One of the more ideologically extreme proposals that is being pushed is the creation of a brand new "Tribal Cultural Area System" that would be managed as de-facto wilderness. They are also considering some slightly more modest provisions that seek to prohibit the disposal of cultural sites, facilitate more tribal acquisition of public lands, and improve tribal consultation. It is possible that this oversight hearing is intended to the lay the groundwork for a broader legislative rollout.

The new "Tribal Cultural Area System" would aim to have a specific focus on protecting culturally significant sites to Tribes on public lands. While this particular preservation focus is intended to distinguish it from similar existing systems, this new system would likely be managed with essentially the same restrictions as Wilderness or National Monument designations require. This would include prohibitions against mining and other forms of development. To fill up the new system, land management agencies would likely be tasked with surveying their holdings to identify potential candidates for this new designation. Proponents would also likely push for the utilization of cooperative management agreements to empower Indian tribes to play a larger role in the management of new tribal cultural areas.

One of the primary goals of tribal co-management advocates is to empower tribal nations with the same type of authority and input that states and local governments have over federal land management decisions. Proponents lament that numerous Federal laws require land management agencies to consult with State and local governments, while many omit tribes. Another goal would be prohibiting the sale of any federal land that contains a tribal cultural site. Advocates would also like to require land management agencies to offer any land that they are attempting to sell first to tribes with a historic connection the lands. Mandatory tribal representation on public land advisory boards is yet another policy objective that may be pursued.

[52] P.L. 109-58.

[53] Congressional Research Service, "Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress," Tana Fitzpatrick, July 26, 2021, R46446.

[54] *Id*.

[55] P.L. 115-325.

[56] Congressional Research Service, "Tribal Energy Resource Agreements (TERAs): Approval Process and Selected Issues for Congress," Tana Fitzpatrick, July 26, 2021, R46446.