



To: House Committee on Natural Resources Republican Members
From: Subcommittee for Indigenous Peoples Republican Staff; Ken Degenfelder
(Ken.Degenfelder@mail.house.gov)
Date: March 28, 2022
Subject: Legislative Hearing on three bills: H.R. 4715, H.R. 5715, and H.R. 6707

The Subcommittee for Indigenous Peoples will hold a legislative hearing on three bills: H.R. 4715 (Rep. Mullin), the Quapaw Tribal Landowner Settlement Act of 2021; H.R. 5715 (Rep. Grijalva), To reauthorize the Morris K. Udall and Stewart L. Udall Trust Fund; and H.R. 6707 (Rep. Golden), the Advancing Equality for Wabanaki Nations Act; on **Thursday, March 31, 2022, at 1:00 p.m. EDT** online via Cisco WebEx.

Member offices are requested to notify Ken Degenfelder (Ken.Degenfelder@mail.house.gov) by **4:30 p.m. on Monday, March 28, 2022**, 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

- H.R. 4715 would authorize \$137.5 million to be appropriated to the Secretary of the Interior to pay Quapaw Nation tribal member claimants in accordance with the 2020 recommendation of the Review Panel of the United States Court of Federal Claims.
- H.R. 5715 would reauthorize the Morris K. Udall and Stewart L. Udall Foundation (Foundation) Act through 2029 and would authorize the Foundation to use up to \$5,000 for official reception and representation expenses.
- H.R. 6707 would extend the applicability of future federal Indian laws to the Wabanaki tribes and extend the applicability of the Indian Child Welfare Act to the Houlton Band of Maliseet Indians. Under current law, the four federally recognized tribes in the State of Maine, collectively known as the Wabanaki, are excluded from federal Indian law application.



II. WITNESSES

PANEL I

- **Representative Jared Golden**, Maine, 2nd District
- **Representative Raul Grijalva**, Arizona, 3rd District

PANEL II

- **The Hon. Joseph Byrd**, Chairman, Quapaw Nation, Quapaw, OK [*Republican Witness*] (H.R. 4517)
- **Mr. Patrick Strauch**, Executive Director, Main Forest Products Council, Augusta, ME [*Republican Witness*] (H.R. 6707)
- **The Hon. Kirk Francis**, Chief, Penobscot Nation, Indian Island, ME (H.R. 6707)
- **The Hon. William J. Nicholas Sr.**, Chief, Passamaquoddy Tribe, Princeton, ME (H.R. 6707)
- **The Hon. Edward Peter-Paul**, Chief, Mi'Kmaq Nation, Presque Isle, ME (H.R. 6707)
- **The Hon. Clarissa Sabattis**, Chief, Houlton Band of Maliseet Indians, Littleton, ME (H.R. 6707)
- **Mr. Charles Rose**, Chair, Board of Trustees, Tucson, AZ (H.R. 5715)

III. BACKGROUND

[H.R. 4715, the Quapaw Tribal Landowner Settlement Act of 2021 \(Rep. Mullin\)](#)

The Quapaw Nation ancestral lands are located at the confluence of the Arkansas and Mississippi rivers in what is present day Arkansas. A series of treaties with the United States Government in 1818 and 1824 resulted in most of the Quapaw Nation's land being ceded to the United States, and the tribe was eventually relocated to the far northeastern corner of present-day Oklahoma.¹

In the early 1800's, the world's largest deposits of lead and zinc were discovered on a portion of the Quapaw Nation land in Ottawa County, Oklahoma.² According to the tribe, the federal government allowed mining activities to be carried out largely unfettered, and

¹ Tiller's Guide to Indian Country. Veronica E. Tiller. Third Edition, at 648.

² Thomas Charles Bear v. United States. Case 1:13-cg-00051-TCW No.12-51X. https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2013cg0051-353-0.

not for the benefit of the Quapaw Nation and its members. Mines were located on the lands owned by 65 individual Quapaw Nation tribal members.³

In 1921, Congress declared members of the tribe to be incompetent and restricted their ability to deal with their land, money or leases with mining companies.⁴ These restrictions were extended in 1939,⁵ in 1970,⁶ and then indefinitely.⁷ According to the tribe, the federal government and United States Attorneys took advantage of the valuable mineral rights and stole their money, underpaid them for lead and zinc and other byproducts.⁸

In addition, there was little federal supervision of the mining companies mining methods or any reclamation of the lands mined.⁹ In 1970, when the last mine was shutdown, approximately 16 square miles owned by the Quapaw Nation tribal members or descendants was destroyed and in 1983 the Quapaw Nation's tribal member lands were designated as part of the largest Superfund site in the United States.¹⁰

In 2002, the Quapaw Nation filed a lawsuit against the United States seeking an order requiring the Department of the Interior to conduct an accounting of the historical federal management of tribal member trust assets.¹¹ After two years, the United States government and the tribe signed a settlement agreement committing to use alternative dispute resolution (ADR) to resolve the trust claims brought by the tribe and its members.¹² After six years preparing its claims for resolution in ADR, the negotiations stalled, according to the tribe.

From 2011 to 2013, tribal members filed lawsuits against the federal government for the mismanagement of trust assets.¹³ On December 19, 2012, the House passed H.Res. 668 which referred H.R. 5862, to the United States Court of Federal Claims to determine whether the tribe and its members have trust-related legal or equitable claims against the United States.¹⁴ This was in response to statute of limitation arguments brought in the *Bear v. United States* case. In October 2019, the federal government and the tribal members in *Bear* reached a settlement agreement of \$137.5 million before oral arguments were to be

³ Thomas Charles Bear v. United States. Case 1:13-cg-00051-TCW No.12-51X. Congressional reference; settlement.

⁴ 41 Stat. 1225, 1248–49 (March 3, 1921).

⁵ 52 Stat. 1127 (July 27, 1939).

⁶ 84 Stat. 325 (June 25, 1970).

⁷ 104 Stat. 206 (May 25, 1990).

⁸ *Response to Motion for Summary Judgment*, Grace M. Goodeagle et al. v. United States, No. 12-431L (2016), available at <https://turtletalk.files.wordpress.com/2016/09/162-goodeagle-response-to-155.pdf>, at 21.

⁹ Thomas Charles Bear v. United States. Case 1:13-cg-00051-TCW No.12-51X. Congressional reference; settlement.

¹⁰ Oklahoma Department of Environmental Quality, *Tar Creek Superfund Site*, <https://www.deq.ok.gov/land-protection-division/cleanup-redevelopment/superfund/tar-creek-superfund-site/>.

¹¹ Quapaw Tribe of Oklahoma (OGah-Pah) v. United States Department of the Interior, No. 02-CV-129-H(M) (N.D. Okla.).

¹² Exhibit 1. https://www.justice.gov/archive/civil/cases/cobell/docs/pdf/07232004_motion.pdf

¹³ Bear v. United States, 112 Fed. Cl. 480, 482 and Grace M. Goodeagle v. United States, No. 1:11-cv-00009.

¹⁴ H.Res. 668 (112th Congress), <https://www.congress.gov/bill/112th-congress/house-resolution/668/all-actions?q=%7B%22search%22%3A%5B%22%22%5D%7D&r=6&overview=closed&s=1#abs>.

made before the Court of Federal Claims. In light of the agreement, the Court of Federal Claims recommended the amount be paid to certain Quapaw Nation tribal members.¹⁵

H.R. 4715 would authorize \$137.5 million to be paid to certain Quapaw tribal members.
Staff contact: Ken Degenfelder (x62090)

[H.R. 5715, To reauthorize the Morris K. Udall and Stewart L. Udall Trust Fund, and for other purposes \(Rep. Grijalva\)](#)

In 1992, Congress passed the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Act).¹⁶ The House Education and Labor Committee has primary jurisdiction over this Act. The Foundation established a Board of Trustees to award scholarships and select Native American Congressional Interns with strategic goals to strengthen the appreciation and stewardship of the environment, public lands, and natural resources and strengthen Native nations to facilitate their self-determination, governance, and human capital goals.¹⁷

In 1998, Congress amended the Udall Foundation enabling legislation to create the United States Institute for Environmental Conflict Resolution (United States Institute) and create a fund for dispute resolutions.¹⁸ The United States Institute provides mediation and related services to help resolve environmental, natural resources, and public lands conflicts that involve the federal government. In 2009, the Act was reauthorized and amended to enhance the foundation and added former Secretary of the Interior Stewart Udall's name to the foundation title.¹⁹ In 2019, the Act was again reauthorized, technical changes were made and the United States Institute was renamed to the John S. McCain III National Center for Environmental Conflict Resolution.²⁰

The Udall Foundation is composed of four major programs:

1. The Education Trust Fund, which includes:

- *The Udall Undergraduate Scholarship*
- *The Native American Congressional Fellowships*
- *The Native American Fellowships*
- *Parks in Focus*²¹

2. The Native Nations Institute for Leadership, Management, and Policy (NNI) has served Native American leaders representing 48 percent of federally-recognized tribes located in

¹⁵ Thomas Charles Bear v. United States. Case 1:13-cg-00051-TCW No.12-51X. Congressional reference; settlement.

¹⁶ 20 U.S.C. 5601 et seq.

¹⁷ Udall Foundation, *Budget and Performance Reports*, <https://www.udall.gov/AboutUs/BudgetAndPerformance.aspx>.

¹⁸ P.L. 105-156.

¹⁹ P.L. 111-90.

²⁰ P.L. 116-94.

²¹ This program is intended to foster greater understanding, appreciation, stewardship, and enjoyment of the Nation's public lands and natural resources by connecting youth from underserved communities to nature through photography, positive outdoor experiences, and environmental education.

28 States. NNI serves as a self-determination, governance, and economic development resource for the tribes by providing education and leadership training that is based on rigorous, accessible research conducted by NNI and the Harvard University Project for Indian Economic Development.²²

3. The Udall Center for Studies in Public Policy (Udall Center) is a unit of the University of Arizona under the Senior Vice President for Research, Discovery, and Innovation. It supports policy-relevant, interdisciplinary research, science-policy dialogues, and other endeavors that link scholarship and education with decision-making, particularly in the areas of water security and management, climate change adaptation and planning, and ecosystem services valuation and protection, primarily in the Southwest.²³
4. The John S. McCain III National Center for Environmental Conflict Resolution (Center) provides impartial collaboration, consensus-building, and conflict resolution services on a wide range of environmental, natural and cultural resources, tribal, and public lands issues involving the federal government. The Center's range of services includes consultations, assessments, process design, convening, mediation, facilitation, training, stakeholder engagement, tribal consultation, and other related collaboration and conflict resolution activities.²⁴

GAO & Inspector General Audits

A December 2012 audit by the Department of the Interior's (DOI) Office of the Inspector General (OIG) found the Udall Foundation was not meeting federal requirements to monitor and assess its spending and lacked key procedures to check for efficiency and guard against fraud or mistakes in personnel and contracting.²⁵ The United States Government Accountability Office (GAO) performed a follow-up audit in 2013, and found that the Foundation had developed a corrective action plan to address the OIG's findings and that the corrective action plan included steps to address deficiencies in the Foundation's internal control monitoring and assessment process, internal controls related to personnel issues, and internal controls related to contracting. For those actions that were sufficiently documented by the Foundation at the time of the report, the GAO found that the corrective action plan was consistent with internal control standards and applicable laws and regulations.²⁶ In 2015, the GAO reported that the Foundation has made significant progress; however, the Foundation did not have formal written policies and procedures

²² University of Arizona, *Native Nations Institute*, <https://nni.arizona.edu/about-us>.

²³ University of Arizona, *Udall Center for Studies in Public Policy*, <https://udallcenter.arizona.edu/about>.

²⁴ Udall Foundation, *John S. McCain III National Center for Environmental Conflict Resolution*, <https://www.udall.gov/ourprograms/institute/institute.aspx>.

²⁵ Office of Inspector General, United States Department of The Interior. *Follow-Up On Internal Controls at the Morris K. Udall and Stewart L. Udall Foundation* (Sept. 2014) <https://www.doi.gov/sites/doi.gov/files/C-FL-UDL-00041-2014Public.pdf>.

²⁶ Government Accountability Office, *Corrective Actions Under Way to Address Control Deficiencies at the Morris K. Udall and Stewart L. Udall Foundation*, GAO-14-95 (Dec. 6, 2013), <https://www.gao.gov/products/GAO-14-95>.

related to the hiring and separation of employees .Despite these findings, GAO reported that controls over employee hiring, separation, and outside employment had been implemented effectively during its review.²⁷

In 2019, when the Act was last reauthorized,²⁸ new language requiring the DOI OIG audit to be completed within 2 years of enactment was included. Though more than two years has elapsed, the DOI OIG has not yet issued its findings. **Staff contact: Ken Degenfelder (x62090)**

H.R. 6707, Advancing Equality for Wabanaki Nations Act (Golden)

Native Americans have lived in present-day Maine for thousands of years, since long before the arrival of Europeans. Today, the four federally recognized Indian tribes in Maine are the Houlton Band of Maliseet Indians, the Mi'kmaq Nation (formerly known as the Aroostook Band of Micmacs), the Passamaquoddy Tribe, and the Penobscot Nation, known collectively as the Wabanaki people, or “People of the Dawnland.”²⁹

From 1780 to 1820, Maine was a district of Massachusetts.³⁰ From 1794 to the 1800s, millions of acres of Wabanaki lands were transferred from the tribes to Massachusetts and then Maine, as well as to private individuals, through a mix of treaties and other dealings.³¹ However, before these transfers of land, Congress passed the *Nonintercourse Act* in 1790 (P.L. 10-24).³² This law prohibited any transfer of land from Indian tribes to another state or person unless the sale or transfer was ratified through a treaty with the United States

In 1972, the Passamaquoddy tribe filed a lawsuit challenging whether these land transfers were legal under the *Nonintercourse Act*. Prior to this lawsuit, no challenge had been made against the State of Maine as it exercised exclusive jurisdiction over the tribes. In 1975, the First Circuit ruled that the *Nonintercourse Act* applied to the Passamaquoddy Tribe and Penobscot Nation, even though they were not federally recognized at the time.³³ The opinion also established a trust relationship between the tribes and the federal government and clarified that the two tribes are federally recognized Indian tribes.

In 1980, the *Maine Indian Claims Settlement Act* (MICSA) (P.L. 96-420) was enacted to extinguish the legal claims of the Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet³⁴ Indians to their historic lands in Maine in exchange for trust funds to allow the tribes to purchase lands and provide general revenue and old-age pensions to

²⁷ Government Accountability Office, *The Morris K. Udall and Stewart L. Udall Foundation Has Made Significant Progress But Needs to Fully Document Certain Policies and Procedures*, GAO-16-52 (Nov. 6, 2015), <https://www.gao.gov/products/GAO-16-52>.

²⁸ P.L. 116-94.

²⁹ Abbe Museum, *About the Wabanaki Nations*, <https://www.abbemuseum.org/about-the-wabanaki-nations>.

³⁰ New England Historical Society, *Maine Statehood: The Mexit from Massachusetts in 1820*, <https://www.newenglandhistoricalsociety.com/maine-statehood-the-mexit-from-massachusetts-in-1820/>.

³¹ H. Report 96-1353 accompanying H.R. 7919, the Maine Indian Claims Settlement Act 1980 at 12.

³² 25 USC 177.

³³ <https://law.justia.com/cases/federal/appellate-courts/F2/528/370/178873/>

³⁴ The Maine Indian Claims Settlement Act also extended federal recognition to the Houlton Band Maliseet.

their members.³⁵ In addition, MICSA ratified the state-level *Maine Implementing Act*,³⁶ which extended state civil and criminal jurisdiction over the Passamaquoddy Tribe, Penobscot Nation, and Houlton Band of Maliseet Indians.

Notably, Section 6(h) of MICSA prohibited any federal law previously enacted for the benefit of Indian tribes from applying to tribes in the State of Maine if the law would affect state jurisdiction, with limited exceptions. Section 16(b) of MICSA similarly restrained the application of future beneficial federal Indian laws in Maine, unless the law specified that it would apply in Maine. This exclusion is unique to the Wabanaki tribes.

While the intent of H.R. 6707 is to extend future federal Indian law applicability to the Wabanaki tribes, it is critically important that the Committee work with the State of Maine on any amendments to the MICSA. The MICSA was a ratification of a settlement entered into between the tribes and the state. Congress should give deference to the State of Maine to determine which changes, if any, to the MICSA should be made. For the last forty years, the State of Maine has exercised certain jurisdiction over civil and criminal matters over all persons in the state, as well as an assumption of certain federal delegations of authorities. Unless carefully executed in close coordination with the state, new authorizations and changes to existing Indian law, may cause confusion over what the state or tribe's responsibilities under the statutes. *Staff contact: Ken Degenfelder (x62090)*

IV. MAJOR PROVISIONS & ANALYSIS

H.R. 4715, the Quapaw Tribal Landowner Settlement Act of 2021 (Mullin)

Section 1. *Short Title.*

Section 2. Subsection (a). *Findings*

Section 2. Subsection (b). *Definitions.*

Section 2. Subsection (c). *Authorization of Appropriations.* Authorizes \$137.5 million to be appropriated to the Secretary of the Interior to pay the claimants in accordance with recommendation of the Review Panel of the United States Court of Federal Claims submitted to the United States House on January 9, 2020.

H.R. 5715, To reauthorize the Morris K. Udall and Stewart L. Udall Trust Fund, and for other purposes. (Grijalva)

Section 1. Funding. Amends section 13 of 20 USC 5609 to authorize the Morris K. Udall and Stewart L. Udall Foundation Act through 2029. The Foundation is further authorized to use up to \$4,000 more of its funding for official reception and representation expenses.

³⁵ P.L. 96-420.

³⁶ 30 M.R.S.A. 6201 et. seq.

H.R. 6707, Advancing Equality for Wabanaki Nations Act (Rep. Golden)

Section 1. *Short Title*

Section 2. *Application of State Laws*. Subsection (a). Adds a definition of “Mi’kmaq Nation”, which is the new federally recognized name of the nation previously known as the Aroostook Band of Micmac Indians.

Revises section 6 of the MICSA to provide that, after the date of enactment of HR 6707, the Wabanaki Nations can benefit from federal laws enacted for the benefit of tribal nations and their citizens.

Subsection (b). Amends section 8 of the MICSA to provide that the Houlton Band of Maliseet Indians and the Mi’kmaq Nation may exercise exclusive jurisdiction over Indian child welfare proceedings pursuant to the Indian Child Welfare Act (ICWA) in the same manner as the Passamaquoddy Tribe and Penobscot Nation do under current law.

Strikes section 16(b) of MICSA, which currently provides that federal laws passed for the benefit of Indian country after the original enactment date of MICSA passed will not apply in Maine unless such law is made specifically applicable within Maine.

Subsection (d). Strikes section 8 of the Aroostook Band of Micmac Settlement Act, which limited the nation’s ability to exercise jurisdiction pursuant to ICWA.

V. COST

H.R. 4715 (Mullin)

A Congressional Budget Office (CBO) score for the legislation in the 117th Congress has not been completed.

H.R. 5715 (Grijalva)

A CBO score for the legislation in the 117th Congress has not been completed.

H.R. 6707 (Golden)

A CBO score for the legislation in the 117th Congress has not been completed.

VI. ADMINISTRATION POSITION

H.R. 4715 (Mullin)

Unknown.

H.R. 5715 (Grijalva)

Unknown.

H.R. 6707 (Golden)

Unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

H.R. 5715 (Grijalva)

H.R. 6707 (Golden)