

**H.R. 2523, “HELPING EXPEDITE  
AND ADVANCE RESPONSIBLE  
TRIBAL HOMEOWNERSHIP ACT  
OR THE HEARTH ACT”**

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**LEGISLATIVE HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

Wednesday, October 21, 2009

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**LEGISLATIVE HEARING ON H.R. 2523, "HELPING EXPEDITE AND ADVANCE RESPONSIBLE TRIBAL HOMEOWNERSHIP ACT OR THE HEARTH ACT."**

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**Wednesday, October 21, 2009  
U.S. House of Representatives  
Committee on Natural Resources  
Washington, D.C.**

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The Committee met, pursuant to call, at 10:45 a.m. in Room 1324, Longworth House Office Building, Hon. Nick J. Rahall, II, [Chairman of the Committee] presiding.

Present: Representatives Rahall, Kildee, Napolitano, Heinrich, Inslee, Baca, Herseth Sandlin, Hastings, Lummis, and McClintock.

**STATEMENT OF HON. NICK J. RAHALL, II, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF WEST VIRGINIA**

The CHAIRMAN. The Committee on Natural Resources will come to order.

The Committee is meeting today to receive testimony on H.R. 2523, the Helping Expedite Affordable Responsible Tribal Homeownership Act, introduced by our colleague, Mr. Heinrich of New Mexico. This bill has a bipartisan list of 25 co-sponsors, including 13 members of this Committee.

H.R. 2523 would amend the Indian Long-Term Leasing Act of 1955 to authorize Indian tribes to negotiate and execute certain leases once tribal regulations have been approved by the Secretary of the Interior. As tribal governments become more and more sophisticated and business-savvy, it sometimes becomes necessary to amend existing laws. Such is the case with the Indian Long-Term Leasing Act, which authorizes tribes to enter into 25-year leases.

Every year tribes come to our Committee seeking extended leasing authority, and nearly every year we amend the Act to assist the tribes. The Navajo Nation has long been a self-governing entity, and I commend their ability to incorporate traditional government structure into the modern-day government.

In 2000, legislation was passed granting the Navajo Nation the authority to negotiate and execute business, agriculture, public use, religious, educational, recreational, or residential leases as tribal trust land without additional Secretarial approval, once tribal regulations had been approved by the Secretary of the Interior. The measure that is the subject of today's hearing would extend that authority to all Federally recognized tribes.

I want to thank the gentleman from New Mexico, Mr. Heinrich, for his valued leadership on this issue, and for bringing this important legislation to our Committee. The number of colleagues that have co-sponsored, just from our Committee alone, shows the respect with which we all hold him and appreciate his leadership. And we do look forward to hearing from the witnesses this morning.

I recognize the Ranking Minority Member.  
 [The prepared statement of Chairman Rahall follows:]

**Statement of The Honorable Nick J. Rahall, II, Chairman,  
 Committee on Natural Resources**

The Committee is meeting today to receive testimony on H.R. 2523, "the Helping Expedite Affordable Responsible Tribal Homeownership Act" introduced by our colleague, Mr. Heinrich of New Mexico. This bill has a bipartisan list of 25 cosponsors including 13 members of this committee.

H.R. 2523 would amend the Indian Long Term Leasing Act of 1955 to authorize, Indian tribes to negotiate and execute certain leases without Secretarial approval, once tribal regulations have been approved by the Secretary of Interior.

As tribal governments become more and more sophisticated and business savvy, it sometimes becomes necessary to amend existing laws. Such is the case with the Indian Long Term Leasing Act which authorizes tribes to enter into 25 year leases. Every year tribes come to our committee seeking extended leasing authority, and nearly every year we amend the Act to assist the tribes.

The Navajo Nation has long been a self-governing entity and I commend their ability to incorporate traditional governing structures into their modern day government.

In 2000, legislation was passed that granted the Navajo Nation the authority to negotiate and execute business, agricultural, public use, religious, educational, recreational, or residential leases of tribal trust land without additional Secretarial approval, once tribal regulations have been approved by the Secretary of Interior. H.R. 2523 would extend that authority to all federally recognized tribes.

I thank Mr. Heinrich for bringing this important legislation to us and I look forward to hearing from our witnesses here this morning.

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**STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN  
 CONGRESS FROM THE STATE OF WASHINGTON**

Mr. HASTINGS. Thank you very much, Mr. Chairman, and thank you for scheduling the hearing on H.R. 2523.

Although this bill is called the Helping Expedite and Advance Responsible Tribal Homeownership Act, or the HEARTH Act for short, the legislation actually consumes more than just leasing of tribal lands for housing purposes. It fundamentally shifts Congressional policy over recognized Indian tribes in what I consider, Mr. Chairman, to be the right direction.

From what I understand, the impetus of the bill originated from certain tribes that want to reduce the kind of red tape and inefficiency that is inherent within the Federal bureaucracy. While the provisions of the bill are strictly voluntary in nature, I firmly believe that tribes which do choose to assume more control over leasing their land will find that the long-term rewards outweigh the risk and responsibility of requiring more autonomy from the Bureau of Indian Affairs.

I would note that the bill does not pertain to mineral leasing of tribal lands. Such leasing is generally governed by separate Indian mineral leasing law, which was amended in 2005, to give tribes control over energy development on their lands through tribal energy resource agreements.

Mr. Chairman, I think it would be helpful for this Committee in the near future to examine the status of energy leasing on Indian lands, just as we are examining the status of other types of leasing activities today.

So with that, Mr. Chairman, thank you for having this hearing, and I look forward to hearing from our witnesses.

The CHAIRMAN. OK. I will recognize the sponsor of the legislation first, Mr. Heinrich.

**STATEMENT OF HON. MARTIN HEINRICH, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEW MEXICO**

Mr. HEINRICH. Thank you, Mr. Chairman, and thank you for holding this hearing, and for your comments and those of the Ranking Member, as well. And I want to thank all the witnesses who are here this morning.

I introduced the HEARTH Act after meeting with several housing directors from New Mexico's Pueblos, where I learned about the owner's process for securing a long-term lease on Indian Trust land. We all know how important homeownership is to healthy communities, and I think the last thing that the Federal government should do is to stand in the way of families who are ready, willing, and able to buy a home.

Native families buying a home go through the same process as anyone else. They find a house they like, they work with their bank to gain approval for financing for a mortgage, and they make an offer to the seller. However, before these families can close on a sale, they need approval from the Bureau of Indian Affairs to lease the land that the house is built on. That approval can take anywhere between six months and two years, which sometimes is an intolerable delay for most buyers. A seller is rarely able to wait two years to sell their home, and banks are often unable to hold a mortgage approval for that long.

I know there are many families who would prefer to stay and raise their children in the community where their families have lived for generations, but instead have moved to nearby cities because they want to own their own home. While we are happy to welcome them to great cities like Albuquerque, families shouldn't be forced to make such an important decision based on how many months or years it will take the Federal bureaucracy to approve a mortgage on tribal land.

Many tribes already have a lease approval process through their tribal government that approves land sales, or land leases, before they are sent to the BIA. For those tribes that want the authority and the responsibility for making final leasing decisions at the tribal level, the HEARTH Act would give them the option of doing so.

Our nation is home to a vast diversity of tribes, and Federal policy should reflect that diversity. The HEARTH Act will allow tribes to exercise greater control over their land, and eliminate the bureaucratic delays that stand in the way of homeownership in tribal communities.

Thank you again, Mr. Chairman, for holding this hearing, and I would yield back the balance of my time.

[The prepared statement of Mr. Heinrich follows:]

**Statement of The Honorable Martin Heinrich, a Representative in Congress  
from the State of New Mexico**

Thank you, Mr. Chairman, and thank you to all the witnesses here this morning. I introduced the HEARTH ACT after meeting with several housing directors from New Mexico's pueblos where I learned about the onerous process for securing a long-term lease on trust land.

We all know how important homeownership is to healthy communities, and the last thing the federal government should do is stand in the way of families ready and willing to buy a house.

Native families buying a house go through the same process as anyone else: they find a house they like, work with their bank to gain approval for a mortgage, and make an offer to the seller.

But before these families can close on the sale, they need approval from the Bureau of Indian Affairs to lease the land the house is built on. That approval can take between six months and two years—an intolerable delay for most buyers.

A seller is rarely able to wait two years to sell their house, and banks are often unable to hold a mortgage approval for that long.

I know there are many families who would prefer to stay and raise their children in the communities where their families have lived for generations—but instead have moved to nearby cities because they want to own a home.

While we're happy to welcome them to the great city of Albuquerque, families shouldn't be forced to make such an important decision based on how many months or years it will take a federal bureaucracy to approve a mortgage on tribal land.

Many tribes already have a lease approval process through their tribal government that approves land leases before they're sent to BIA.

For those tribes that want the authority and responsibility for making final leasing decisions at the tribal level, the HEARTH Act would give them the option of doing so.

Our nation is home to a vast diversity of tribes, and federal policy should reflect that diversity.

The HEARTH Act will allow tribes to exercise greater control over their lands and eliminate bureaucratic delays that stand in the way of homeownership in tribal communities.

Thank you again, Mr. Chairman, for holding this hearing, and I yield back my time

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The CHAIRMAN. Congressman Kildee.

**STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. KILDEE. Mr. Chairman, thank you very much for having this hearing. Your abiding interest in justice for our Native Americans certainly reaches back to at least the 33 years that you have been in Congress, and the Indians have benefitted from your sense of justice.

And I want to thank Mr. Heinrich, who, as soon as he became a Member of Congress, joined the Native American Caucus, expressing his concern for justice for our first Americans. I thank both of you for your deep interest, and I am just proud to be a co-sponsor of this bill.

Thank you very much, Mr. Chairman.

The CHAIRMAN. The gentlelady from California, the Chairman of the Subcommittee on Water and Power, Mrs. Napolitano.

**STATEMENT OF HON. GRACE NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And I, too, am in full support of H.R. 2523.

Fact-finding. Native Americans have been on the back of the bus for a long, long time in being able to get heard in many areas. We deal with it in water rights in my Subcommittee, and this will deal with housing. I think it is long-coming, and I think we ought to be able to move forward on being able to allow what is fair to delete some of these lengthy processes, delays, and this forcing some of the families to move out of their areas to be able to purchase their residences.



And my hat is off to the Navajo Nation for being the first one to do it. And I look forward to making sure that we work with Mr. Heinrich in getting this bill passed.

Thank you, Mr. Chair.

The CHAIRMAN. The gentleman from California, Mr. Baca.

**STATEMENT OF HON. JOE BACA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BACA. Thank you very much, Mr. Chairman, Minority Ranking Member. And I thank you for bringing up H.R. 2523. As Mr. Kildee said, it is not just about justice, but it is about equality. Equality becomes very important as we have to treat everybody with the same opportunities. And like most of us, the American dream is to own a home, obtain a home, live in the same area, take our kids to the surrounding areas without having to move.

I know, for example, coming from a large family, we had to move from one district to another district to another district, and finally my parents were able to settle and buy a home. And it was the dream that I finally had where I had my roots, it was settled in one particular area, and not having to rent one place or another and moving from one school to another. Because it not only affects the quality of life for the individuals, but for the children as well, that have to make any kind of transition.

It is too bad that we are only talking about a 25-year lease, because it means owning a home, but not the land. It could be a combination of both owning the land and owning the home at the same time, and hopefully we can work on the other as well, sometime in the future.

I look forward to supporting this legislation, and I am currently a co-sponsor. Again, thank you very much for bringing it up and caring, because we should treat everybody with the same rights, the same kind of equality. It doesn't matter who we are or where we come from.

Thank you. I yield back the balance of my time.

The CHAIRMAN. The Chair will now recognize our first panel, composed of one individual, Mr. Jerry Gidner, the Director of the Bureau of Indian Affairs, Department of the Interior, Washington, D.C. We welcome you, and we do have your prepared testimony. It will be made part of the record as it is actually read, and you may proceed with it now.

**STATEMENT OF JERRY GIDNER, DIRECTOR, BUREAU OF  
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR,  
WASHINGTON, D.C.**

Mr. GIDNER. Thank you. Good morning, Mr. Chairman and Ranking Member, members of the Committee. My name is Jerry Gidner. I am the Director of the Bureau of Indian Affairs at the Department of the Interior, and I am here to provide testimony on H.R. 2523, otherwise known as the HEARTH Act, which, as you mentioned, is a bill to amend the Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases."

The Administration and this Department support tribal self-determination and self-governance. We want to work closely with tribes, this Committee, and Congress to address the lease approval processes that will help not just to expedite housing opportunities, but economic and other developmental opportunities for tribes.

We share the Committee's desire to address these leasing issues, and we could support this bill if it was amended to address concerns that are laid out in the testimony. We look forward to working with this Committee and the staff to address these concerns.

As we understand it, the purpose of the HEARTH Act is to amend certain sections of 25 USC 415 to allow tribes, at their discretion, to approve and enter into certain leases without the approval of the Secretary, if those tribes have regulations that have been approved by the Secretary. Currently the bill allows that for the Navajo Nation, with certain caveats.

First, the leases must be executed under regs approved by the Secretary. And there are time limits, as the Member just stated, on the length of the leases that can be approved.

The HEARTH Act will provide those same authorities to any Federally recognized Indian tribe at that tribe's discretion, with the same restrictions. And we support the increase in authority to the tribes, but we do need to point out the impacts to the Department from that bill if it were passed.

For example, we would like to clarify the Secretary's trust responsibilities for enforcing tribally-approved leases. We would also like to study further whether the HEARTH Act should clarify the language regarding the Federal government's liability in situations where losses may occur in leases approved by the tribe.

In addition, there are several impacts on our operations that we would like to evaluate, including the process for the Secretary to approve new Departmental regulations and the Secretarial process for approving tribal regulations.

The HEARTH Act will also require BIA to prepare and submit a report to Congress regarding the history and experience of Indian tribes in consultation with the Department of Housing and Urban Development, and Indian tribes that manage the land title and record office functions. We agree with the factors to be considered and reviewed as set forth in the Act.

We look forward to working through our concerns with the Committee. And that concludes my testimony, and I would welcome your questions.

[The prepared statement of Mr. Gidner follows:]

**Statement of Jerry Gidner, Director, Bureau of Indian Affairs,  
U.S. Department of the Interior**

Good morning, Mr. Chairman, Mr. Ranking Member, and Members of the Committee. My name is Jerry Gidner and I am the Director for the Bureau of Indian Affairs (BIA) at the U.S. Department of the Interior (Department). I am here today to provide the Department's testimony on H.R. 2523, a bill to amend the Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955, also known as the "Helping Expedite and Advance Responsible Tribal Homeownership Act", or the "HEARTH Act".

The Administration and this Department support tribal self-determination and self-government. We want to work closely with tribes, this Committee and Congress to address the lease approval processes that hinder not just housing opportunities in Indian Country, but also economic and other development opportunities. There-

fore, the Department shares the Committee's desire to address leasing issues in Indian Country and to improve leasing authority in Indian Country through H.R. 2523. The Department could support this bill if amended to address our concerns outlined in this testimony. We look forward to working with the Committee staff to address these concerns.

As we understand it, the purpose of the HEARTH Act is to amend certain sections of 25 U.S.C. § 415, the Indian Long-Term Leasing Act to allow Indian tribes, at their discretion, to approve and enter into certain leases without prior express approval from the Secretary of the Interior. 25 U.S.C. § 415(e), specifically addresses the Navajo Nation's current ability to lease any restricted Navajo Nation lands, with a few exceptions, for public, religious, educational, recreational, residential, or business purposes without the requirement of the Secretary of the Interior's approval of such leases. This authority does contain certain provisos: 1) the Navajo Nation leases must be executed under the Nation's regulations approved by the Secretary of the Interior; 2) the lease cannot exceed 25 years for a business or agricultural lease, which can be renewed twice but each renewed term cannot exceed 25 years; and 3) the lease cannot exceed 75 years for public, religious, educational, recreational, or residential purposes, if such a term is within the Navajo Nation's regulations.

The HEARTH ACT would provide the same authorities to any federally recognized Indian Tribes, at that Indian tribe's discretion, to lease its lands, with the same restrictions in 25 U.S.C. § 415(e), without the requirement of the Secretary of the Interior's approval of such leases, so long as such leases are executed under the Indian tribe's regulations that have been approved by the Secretary of the Interior. Given this broad increase in authorities for Indian tribes, which is consistent with this Administration's policy of supporting tribal self-determination, the Department has identified several areas in the legislation that will impact the Department.

The Department would like to clarify the Secretary's trust responsibilities for enforcing tribally-approved leases. The Department would also like to study further whether the HEARTH Act should include language that clarifies the Federal government's liability in situations where losses may occur in leases approved by the tribe. In addition, the Department will need to evaluate the impacts on operations, the Secretary's process for approving new Department regulations, and a Secretarial process for approving tribal regulations. For example, longer timelines will be necessary for reviewing and approving tribal regulations.

The HEARTH Act would also require the BIA to prepare and submit a report to Congress regarding the history and experience of Indian tribes that have chosen to assume responsibility for operating certain Indian Land Title and Records Office (LTRO) functions from the BIA. Such review would include consultation with the Department of Housing and Urban Development Office of Native American Programs and those Indian tribes managing LTRO functions. The Department agrees with the factors to be considered in the review.

We look forward to working through our concerns with the Committee so that we can wholeheartedly support this bill. This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

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The CHAIRMAN. Thank you, Mr. Gidner. I will ask a couple quick questions, then turn to the Ranking Member.

How long did it take for the BIA to approve the Navajo Nation leasing regulations promulgated pursuant to the Navajo Nation Leasing Act? Was there a Senate approval process?

Mr. GIDNER. I am not sure of the answer to that, Mr. Chairman, I would have to find that time out for you.

The CHAIRMAN. Could you explain the process which was traveled?

Mr. GIDNER. Yes, certainly.

The CHAIRMAN. What is the role of the BIA now that the Navajo Nation has the authority to issue leases without Secretarial approval?

Mr. GIDNER. Well, our role is to record the lease in our system, and that is actually one of the issues I think we need to examine. I am not sure how many leases have been approved by the Navajo Nation under this authority, and exactly how the lease income

flows from that. I think those are things that we need to examine, exactly what our role would be in those leases.

The CHAIRMAN. Are you in the process of doing that now, then?

Mr. GIDNER. We will do that, yes.

The CHAIRMAN. What factors does the BIA take into consideration when determining whether or not to approve a tribal leasing application?

Mr. GIDNER. That is a good question, Mr. Chairman. Right now the statute says that they need to be, the tribal regulations need to be consistent with the Department's regulations. Right now, for example, we do not have specific residential lease regulations. We are in the process of developing those, so we would look to see if they are consistent with the regulations that we have. But in that case, on residential leases, we do not have regulations. So that is a little bit more of a difficult question to answer.

The CHAIRMAN. Are you developing those regulations, then?

Mr. GIDNER. We are in the process of developing and revising a whole number of Trust regulations, that included. Right now we use our general non-agricultural leasing regulations for residential leases, but they are not specific to residential leases, and in some ways are probably not a very good fit for those leases.

The CHAIRMAN. Thank you. The Chair recognizes Mr. Heinrich.

Mr. HEINRICH. Thank you very much. And I want to thank you for being here today, and for your testimony.

One of the issues I wanted to touch on is that for home buyers on non-trust land, buyers can get their title and mortgage documentation finalized oftentimes within about 48 hours. And obviously Trust land transactions are more complicated, but borrowers still need to be able to get their loans finalized within traditional banking timetables to be able to access credit.

After discussions with experts in tribal housing, I understand that the timeframe is in the 10-day to two-week range for that. And because of the rapidity of interest rate changes, largely because of the rapidity of interest rate changes for bank mortgages, I was wondering what resources, in terms of money, people, technology, would the BIA need to be able to accomplish leasing decisions within that kind of a timeframe? Within a 10-day turnaround, say. And how does that compare with the current resources that are devoted to this process today?

Mr. GIDNER. Congressman, I would say we don't know the answer to that question right now. We have already undertaken an organizational assessment of all of our trust programs to try to determine exactly what our need is, to provide all of those services in a timely manner.

I would say in general, those programs, land title programs and realty programs, are under-staffed. And of course, any requests for budgetary resources would come through the budgetary process. I think over the next few months we will have a much better understanding of the resource gap there for us to factor into the budget appropriation process.

Mr. HEINRICH. Thank you, Mr. Gidner. Also, how would you characterize the quality of the Bureau of Indian Affairs data on Indian Trust lands? And what action has the BIA taken in recent

years to improve data management, and to ensure that land records are accurate and up to date?

Mr. GIDNER. I would say right now our quality is pretty good. As you probably know, we have adopted over the past several years a land title and leasing system; it is called TAMS. It is a system of record for all of our real estate records. It is constantly being updated. I would say we are, it is not entirely current at any given moment because of the volume of their workload. The organizational assessment, well, we will be looking at that to see what we would need to keep that up to date and more current. But overall, I think the quality of the data is pretty good, and much better than it has ever been.

Mr. HEINRICH. One other quick question. The BIA has enforcement responsibility for leases, in addition to the approval process itself. Can you characterize how often the Bureau actually takes action to enforce leases that it has approved, and kind of give us an overview of that system?

Mr. GIDNER. I could not give you exact numbers, but we do have a pretty active program in the field to examine land for trespass, for example. And it is fairly standard. If we find people trespassing on land without a lease, they send letters telling them they have to cure that trespass, and working toward eviction. I am not talking about residential so much as the agriculture or grazing leases particularly. So we certainly have that process. If there is non-payment of leases, we send bills of collection and invoices. The process is generally taking place on a daily basis throughout the Bureau.

Mr. HEINRICH. OK. Thank you very much, Mr. Gidner.

Thank you, Chairman.

The CHAIRMAN. The gentlelady from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. A couple of things that were talked about by Mr. Rahall. One of them specifically hit a chord when you mentioned the nine regulations for the leases. Can you enumerate what they are?

Mr. GIDNER. I am sorry, nine regulations for leases?

Mrs. NAPOLITANO. For leases.

Mr. GIDNER. I am not sure that I can. We have agricultural leases, lease regulations. I am not sure that I, that I can.

Mrs. NAPOLITANO. But there are nine?

Mr. GIDNER. I have not counted them. We have a whole regulatory system that involves.

Mrs. NAPOLITANO. Are they all separately done, differently administered? They follow one guideline? I know you mentioned just now that it is pretty much standard.

Mr. GIDNER. Well, I would say the different leasing regulations would be different based on what it is we are leasing. You know, grazing leases are different than business leasing.

So nationwide, if it is grazing leases, it should be consistent nationwide. If it is business leases, it should be consistent nationwide. But there are obviously huge differences between those kind of leases. As I said, we do not have specific residential lease regulations.

Mrs. NAPOLITANO. OK. One other question that I think the author brought out was the ability to be able to do the work. You indicate you have sometimes an overload, if I heard you correctly.

Mr. GIDNER. Yes.

Mrs. NAPOLITANO. Currently, do you have enough, do you feel there are enough personnel to be able to do what you have? Do you have a backlog? How long is that backlog? Is the funding adequate, funding needs? What is the volume of the workload?

Mr. GIDNER. The volume of the workload for leasing is pretty high across the country. We process a lot of leases.

Mrs. NAPOLITANO. A lot being?

Mr. GIDNER. I don't—

Mrs. NAPOLITANO. Thousands? Hundreds?

Mr. GIDNER. Thousands. I don't know the number off the top of my head. Whether there is a backlog or not I guess is a matter of opinion. I would say there is. The time lag between—I don't think we can process them as fast as we ought to be able to, but that would vary across the country.

And it is partly seasonal and partly business. In Palm Springs you have complex businesses; in Standing Rock you have grazing leases. So the kind of work is different, and the volume of work and the time of work is different. So I can't say we have, it takes us X amount of time to do leases nationwide. You have to look at it on a much more local basis.

Mrs. NAPOLITANO. And home leases?

Mr. GIDNER. Home leases, I don't know if we have a backlog in that or not. I know we have, the process takes us longer than land that is not held in trust. And that I think is unfair to the, to the tribal members.

Mrs. NAPOLITANO. And the reason basically is what? That there is this backlog, that there is this length of time.

Mr. GIDNER. Length of time? Well, there are a number of reasons. I suspect staff resources are one of them, and this organizational assessment I hope will quantify, verify, quantify that, so we can address that through the appropriations process.

But when we approve a lease, it is a Federal action. And that requires a NEPA review. Sometimes that can be a categorical exclusion, and fairly quick; sometimes it can't. But in any event, we have to do it. And that is something that a homeowner on non-Federal land just does not have to go through that step.

And I think that statute, putting that authority with the tribes, may drastically reduce that step. That is something that we would have to work out exactly how that would work, and what the responsibility would be.

Mrs. NAPOLITANO. In dealing with Native American tribal water rights, there is a team that deals with each tribe. Is there that kind of an effort put into it? That there are several agencies working to be able to ensure that everything is processed properly?

Mr. GIDNER. No, not for leases generally. Leases would be done at our agency, or sometimes at our regional offices. There are, they would have to coordinate with our land title offices, which we have six of those nationwide that cover our 12 BIA regions, so not every region has a land title office. But that is really the only coordination that would be needed.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

The CHAIRMAN. The gentlelady from Wyoming, Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. And thank you, Mr. Gidner. It is very nice to see you here today.

As you know, the HEARTH Act—and I am a co-sponsor, and I want to compliment the prime sponsor for putting this bill together—would allow tribes to execute their own leases, once the overarching tribal regulations have been approved by the Secretary.

Current law requires the Secretary's review and approval process of proposed tribal regulations to occur within 120 days of submittal by the tribe. What assurances can you give that the Department can and will meet this deadline for any such regulation submitted after enactment of H.R. 2523?

Mr. GIDNER. I think the timeline is a difficult question. And Mr. Chairman, I believe you asked about the timeline for approving the Navajo Nation regs. I am informed that that took approximately six years. I don't know why it took that amount of time.

We would have to develop a process to ensure that we were approving tribal regulations in a timely fashion. And that is one of the issues we would have is, do we have the staff to make that happen, how many tribes would be coming in, what our workload would be for that. We would not want to trade a backlog in processing leases for a backlog in approving regulations.

Mrs. LUMMIS. Mr. Chairman, doesn't the Solicitor's Office do that, do those reviews of regulations?

Mr. GIDNER. Oh, they are certainly involved in that, yes.

Mrs. LUMMIS. I understand that the BIA has twice now issued guidance to its regional offices directing them to process title status reports in no more than 30 days. And I also understand that the process currently takes from six months to two years to complete.

Why all these delays?

Mr. GIDNER. I would say that is largely an issue of staffing. And I mentioned before you joined us, we are right now undertaking an organizational assessment of all the Trust programs to see if we can understand what gaps exist, and quantify them between the resources we have and the resources we need to provide these services in a more timely fashion.

Mrs. LUMMIS. Mr. Chairman, can you staff up temporarily to do this kind of thing? I mean, if this bill passed, if you would know that for a period of time there are going to be a number of tribes that come in with regulations to take over this function. And I am assuming that a lot of them would use the Navajo model as their template for drafting their regulations.

So I can't imagine that it would be that different from each other. Once the Navajo regs have been approved, you know, other tribes, it seems, would just adopt something very similar.

Mr. GIDNER. Well, you might be surprised. You may well be right. Sometimes tribes like to do things their own way, which is perfectly fine.

We would have to explore how to staff that process, and whether we could use temporary staffing or put together teams. Those are some of the options we would have to look at to make those decisions in a timely manner.

Mrs. LUMMIS. Thank you. And another question. Assuming a tribe doesn't submit regulations, and its tribal members are held

to current law regarding lease approvals, what improvements can you make to reduce the waiting period in which a lease applicant can currently get approval?

Mr. GIDNER. Well, we are currently looking at how we can streamline the leasing process, and that actually has been more driven by oil and gas leasing. And we are doing this organizational assessment to look at staffing needs.

As I mentioned, we do have a different process, say, for residential leases, that people getting a loan outside of Indian country, outside of Federal land, this would not have. We are bound, if we sign something it is a Federal action. We are bound by NEPA, and that is just a step that we have to go through that other people won't. And it is a disparity between people in Indian country trying to get leases, and people in our land trying to get a mortgage.

Mrs. LUMMIS. Well, Mr. Chairman, you illustrate a great point. I mean, these are sovereign nations, and yet we are layering extra hoops to jump through on them constantly.

And so again, I want to compliment Mr. Heinrich for putting this bill together, and I yield back.

The CHAIRMAN. The gentleman from Michigan, Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Just to pick up a very important word which Mrs. Lummis used, sovereign nation. I think we have to recognize that. We are not talking to some corporation, or the Elks Club, or the Knights of Columbus, but we are talking to sovereign nations and their rights under their sovereignty. So I appreciate that you can't use that word too often, because that underpins everything that we do here when it comes to Indian nations, and I appreciate the use of that word.

Let me ask Mr. Gidner, if H.R. 2523 is enacted, and several tribes seek the authority grants, how long do you think it would take to approve the application? And will this bill help streamline, ultimately, the process?

Mr. GIDNER. I am not sure how long it would take to approve the regulations. Hopefully not six years. And I am not sure if the bill puts a timeline for that or not. As I said, we would have to staff up to make sure that did not take so long.

I think it would streamline the overall process. If we don't have to approve the leases themselves after we approve the regulations, I think that leasing process could happen much quicker.

Mr. KILDEE. I think that is very important to know, if you are dealing with the private sector—now, we are in the governmental sector here, two governments dealing with one another. In the private sector, lost time can be very costly. And it can be very costly for the tribe, also.

So I hope that your underlying attitude in implementing this bill would be one of streamlining, so money would not be lost. I mean, whether it be Chrysler Corporation, General Motors Corporation, whatever, delay can be costly.

So I think your attitude should be use this bill to streamline the process, so we can minimize the time between the application and the execution. Because time, literally, is money. So I hope you would take this bill, streamline it. I think it is a very important bill. In your hands, the execution would hopefully be streamlined.

Thank you very much, Mr. Chairman.



The CHAIRMAN. The gentleman from California, Mr. McClintock. Do you have a question?

[No response.]

The CHAIRMAN. Any other questions from Members? OK, Mr. Gidner, thank you for being with us today.

Mr. GIDNER. Thank you.

The CHAIRMAN. I am going to call the second panel to come on up, and then recognize the gentleman from New Mexico to introduce his constituents.

Panel number two will be composed of Governor Everett Chavez, the Pueblo of Santo Domingo, New Mexico; The Honorable Harvey Moses, Jr., Vice President of Affiliated Tribes of Northwest Indians, Portland, Oregon; Mr. Arvin Trujillo, the Executive Director, Division of Natural Resources, Navajo Nation, Window Rock, Arizona; Ms. Cheryl A. Parish, the Executive Director, Bay Mills Housing Authority, Brimley, Michigan. And she will be testifying on behalf of the National American Indian Housing Council.

The gentleman from New Mexico.

Mr. HEINRICH. Thank you, Mr. Chairman. I am very pleased to welcome representatives of two of New Mexico's tribes this morning. Governor Everett Chavez is here to testify on behalf of the Pueblo of Santo Domingo in northern New Mexico, and welcome, Governor, to Washington. And I want to thank you very much for making it out here to join us this morning.

And Mr. Arvin Trujillo, who is the Executive Director of the Division of Natural Resources of the Navajo Nation. Mr. Trujillo, I want to thank you very much for coming all the way here to talk about the Navajo Nation's experiences with leasing reform, and what we can learn from your experience. So thank you both very much.

The CHAIRMAN. We welcome you to the Committee on Natural Resources this morning. We do have all of your prepared testimony, and it will be made part of the record as if actually read. You may proceed as you desire, in the order in which I introduced you. Governor.

**STATEMENT OF GOV. EVERETT CHAVEZ, ALL-INDIAN PUEBLO COUNCIL, PUEBLO OF SANTO DOMINGO, NEW MEXICO**

Governor CHAVEZ. Thank you, Member Hastings, distinguished and honorable members of the Committee. Thank you for inviting me to this testimony this morning for H.R. 2523. I would like to also thank Congressman Heinrich for the invitation and introducing this important legislation.

As was mentioned, my name is Everett Chavez. I am the Governor for the Pueblo of Santo Domingo, a sovereign nation. I have never had any problem being heard, but anyway, I am from the Santo Domingo, and that is between Santa Fe and Albuquerque, New Mexico, and our population there is about 5,000 strong. We are about 35 miles north.

We certainly feel that owning a home is a fundamental part of the American dream. Santo Domingo Pueblo has long struggled to provide adequate housing for our tribal members. We are currently about 35 years behind in housing.

Our Pueblo people face barriers constantly trying to attract private investments and banks that are normally hesitant to provide mortgage financing for community members because of the long delays that are involved once a lease request is made. Typically this runs between six months to a couple of years.

And so this lengthy process in this bill I think will provide us the means for us to be able to move forward with our housing shortage that we have. If you look at the size of 5,000, approximately 1,000 homes should be present to adequately house our community members. We now have a count of about 515 homes on the reservation, which leaves a huge number of 400-plus-some homes that we need to come up with.

And unfortunately, HUD has been the primary answer for much of our housing needs. And with the challenges that we have with regard to funding, it has been quite difficult. If we had to wait for HUD to come through to make up the 400 homes, it would take a considerable amount of time.

And so this bill that is being presented really makes available options for our tribal members that are ready to go forth and build their own homes. And certainly the ability for the tribe to enact its own ordinances that allows them to secure loans in a much more timely manner certainly is a desired outcome that we are looking forward to in this bill.

I know that similarly the other Pueblos, Isleta and Acoma, are under the same kind of constraints, the same kinds of difficulties that relate to leases. And I know that some of the Pueblos in New Mexico have been looking at other ways that we can be able to generate the kind of home housing activities in the respect of Pueblos.

I know that many of us are certainly aware that the process through the Bureau is quite cumbersome. We have had to deal with it and live with it. But if there is an opportunity for us to amend these things so that tribes can be more sovereign in being able to act, enacting the ordinances that will guide housing activities, and including leasing of the lands that must be secured for houses.

This does not necessarily relieve the Federal government of its trust responsibility. We certainly will continue to hold them to that. But I think in terms of opportunity, I believe the HEARTH Act—again, I want to commend Congressman Heinrich for introducing this, and certainly we are looking forward to the successful passage of this bill.

Thank you.

[The prepared statement of Governor Chavez follows:]

**Statement of Governor Everett Chavez, Pueblo of Santo Domingo**

Chairman Rahall, Ranking Member Hastings, distinguished members of the committee, thank you for inviting me here this morning to testify in support of H.R. 2523. I would also like to thank Representative Martin Heinrich of my home state of New Mexico for introducing this important legislation. My name is Everett Chavez, and I am honored to serve as Governor of the Pueblo of Santo Domingo. Santo Domingo Pueblo is a community of more than 5,000, located just 35 miles north of Albuquerque, New Mexico.

Owning a home is a fundamental part of the American Dream. Santo Domingo Pueblo has long struggled to provide adequate housing to our tribal members. Presently, we are thirty-five years behind in our housing; however, we've made progress in recent years thanks to federal policies like NAHASDA (the Native American

Housing Assistance and Self Determination Act) and the HUD 184 Program. The Pueblo we still faces barriers in attracting private investment—banks are still hesitant to grant mortgages for houses on our reservation. One reason for that is the long process of receiving approval for long-term leases and leasehold mortgages from the Bureau of Indian Affairs. Once a tribe approves a lease and it is submitted to BIA for federal approval, the wait time is typically between six months and two years. Once a lease is approved, the leasehold mortgage goes through the same federal approval process, taking another two to six months. Banks are simply unwilling to wait this long to close a loan or finalize a sale. As a result, many of Santo Domingo's families choose to move to neighboring cities like Albuquerque because it is the only way they can realistically buy a home.

At Isleta Pueblo, the typical wait time for approval of a lease is six months and another two months for approval of the leasehold mortgage. At Laguna Pueblo, even though the BIA office is on the Pueblo, BIA delays in approving residential leases is over one year. It is not uncommon for the housing entity to have to submit a lease more than once to BIA as a result of misplacement of paperwork within BIA. In Ohkay Owingeh and Nambe Pueblo, the housing entities have waited longer than six months, and in Nambe's case, three years to obtain an approved residential lease.

At Acoma Pueblo, no home mortgaging occurs due to the traditional leaders' belief that the federal government should not set the rules for residential leasing by tribal members on tribal lands because those decisions are an internal matter. This decision has resulted in the middle class moving away from Acoma to buy homes in Albuquerque. In fact, even many Acoma tribal leaders who desperately want to live at the pueblo, where their families have lived for generations, choose to move to Albuquerque because they want the benefits of homeownership.

Most tribes, after realizing that they have to go through the BIA approval process twice to close one loan, are dissuaded from encouraging home mortgaging.

The federal government has important trust responsibilities to ensure that tribal land is protected and used for the benefit of tribes. Unfortunately, the current BIA leasing process is failing in that responsibility. The HEARTH Act would allow tribes like mine to make our own decisions about how our land is used. Within regulations crafted by our tribal government and approved by the Secretary of the Interior, the pueblo could complete the leasing process much more quickly than BIA can, allowing greater investment in our community and allowing more Santo Domingo families to become homeowners.

The current leasing system is broken. This bill will allow my pueblo, and others like us, to build leasing systems that work for our people. On behalf of Santo Domingo Pueblo, I ask your support of H.R. 2523.

Thank you again for holding this hearing today, and I would be happy to answer any questions.

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The CHAIRMAN. Thank you, Governor. Vice President Moses.

**STATEMENT OF HON. HARVEY MOSES, JR., VICE PRESIDENT,  
AFFILIATED TRIBES OF NORTHWEST INDIANS, PORTLAND,  
OREGON**

Mr. MOSES. Good morning, Chairman Rahall and members of the Committee. My name is Harvey Moses, Jr. I am Executive Vice President of Affiliated Tribes of Northwest Indians, comprised of 57 tribes in the Pacific Northwest, including Washington, Idaho, Oregon, Alaska, Montana, Nevada, and some in California.

Affiliated Tribes was established in 1953, and is one of the frontrunners in trust reform for Indian country. And I believe we are one of the leaders, we are the leader in Indian country in that aspect.

I am also a councilmember from the Confederated Tribes of the Colville Indian Reservation. My duties there include chairman of our management and budget committee and chairman of our culture committee.

ATNI's views of H.R. 2523, "Helping Expedite and Advance Responsible Tribal Homeownership Act," or HEARTH Act, the Com-

mittee has my prepared statement. And I would like to briefly highlight three points.

One, ATNI supports the HEARTH Act because it supports voluntary mechanisms to enable tribal, Indian tribes to assume greater controls over Indian Trust lands. It allows tribes to avoid the lengthy BIA approval process for leasing of our Trust lands. It encourages economic development and self-determination on our Trust lands.

Two, ATNI strongly supports the requirements that the BIA prepare a report on tribes that have contracted or compacted the LTRO function, Land Title Records Office. The Colville Tribe is one of the six tribes that has done this. Although contracting LTRO has been largely successful in expediting preparation of the title status reports at the Colville Tribes, staffing and funding challenges that persist constantly, we have one individual who performs our leasing and this LTRO function. And it slows things down quite a bit.

A report to Congress would develop this record and provide a justification of why additional resources are needed for the LTRO function.

And finally, ATNI encourages the Committee to consider other trust-related initiatives in the coming year, including comprehensive trust reform. Several tribes and tribal organizations, including ATNI and NTIA have done significant work in this area. ATNI appreciates the Committee's interest in the issue, and stands ready to assist in developing future trust-related initiatives.

This concludes my statement. I would be pleased to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Moses follows:]

**Statement of The Honorable Harvey Moses, Jr., Second Vice-President,  
Affiliated Tribes of Northwest Indians**

Good morning Chairman Rahall, Ranking Member Hastings, and distinguished members of the Committee. My name is Harvey Moses, Jr., and I am the Second Vice-President for the Affiliated Tribes of Northwest Indians ("ATNI") and a councilmember for Confederated Tribes of the Colville Reservation. Today, I am pleased to provide ATNI's views on H.R. 2523, the "Helping Expedite and Advance Responsible Tribal Homeownership Act," or the "HEARTH Act."

ATNI is gratified that the Committee is considering initiatives such as the HEARTH Act that would provide Indian tribes authority to assume more control over management of their trust resources on a voluntary basis. Because of the potential for this expanded authority to immediately benefit Indian tribes with the requisite capacity and the fact that Indian tribes would be able to decide for themselves whether or not to take advantage of this expanded authority, ATNI supports the legislation.

**Background on ATNI**

Founded in 1953, ATNI represents 57 tribal governments from Oregon, Idaho, Washington, Montana, Alaska, California and Nevada. As the Committee may be aware, ATNI and its member tribes in the Pacific Northwest have been outspoken supporters of efforts to reform the manner in which the federal government administers trust resources. ATNI has established a trust reform workgroup of tribal leaders and technical staff to comment and provide recommendations on initiatives that affect the trust relationship, including initiatives to streamline federal approvals. ATNI's support for these initiatives is grounded in its commitment to maintaining the integrity of the federal trust responsibility that is based upon the historical cession of millions of acres of ancestral lands by the tribes. Against this backdrop, ATNI appreciates the opportunity to provide its views on the HEARTH Act, which is one of the first bills considered by this Committee in this Congress that would provide Indian tribes a more direct role in managing trust resources.

### **Current Requirement for Secretarial Approval of Leases of Indian Trust Land**

The Act of August 9, 1955 (“1955 Act”), codified at 25 U.S.C. § 415, allows the Secretary of the Interior (“Secretary”) to approve leases of Indian trust land for up to 25 years, with one additional extension of up to 25 years. Since the enactment of the 1955 Act, a number of Indian tribes have successfully secured amendments to the 1955 Act that authorizes the Secretary to approve leases of up to 99 years for those particular tribes. The 1955 Act and its implementing regulations make clear that leases of Indian trust land that are not approved by the Secretary are invalid.

In the 106th Congress, Congress amended the 1955 Act by enacting the Navajo Nation Trust Land Leasing Act of 2000 (“Navajo Leasing Act”). The Navajo Leasing Act added a new subsection (e) that allows the Navajo Nation to promulgate its own leasing regulations that, once approved by the Secretary, allows the Navajo Nation to enter into leases of tribal trust land without the requirement of Secretarial approval. The Navajo Leasing Act allows the Navajo Nation to enter into business or agricultural leases for terms of up to 25 years with an option to renew for up to two additional terms up to 25 years. The Navajo Leasing Act allows for the Navajo Nation to enter into leases for public, religious, educational, recreational, or residential purposes for a term of up to 75 years. The Navajo Leasing Act does not apply to leases for the exploration, development, or extraction of any mineral resources.

The Navajo Leasing Act limits the liability of the United States for losses sustained by any party to a lease approved pursuant to the Navajo Nation’s leasing regulations. It also provides that interested parties may, after exhausting tribal court remedies, petition the Secretary to review the Navajo Nation’s compliance with its tribal leasing regulations.

On its face, the Navajo Leasing Act is voluntary and, within the parameters of the act itself, the scope and term of the tribal regulations that implement the act is determined by the Navajo Nation. Presumably, these tribal regulations are not set in stone and can be amended by the Navajo Nation as the need arises.

#### **The HEARTH Act**

Section 2 of the HEARTH Act would amend the Navajo Leasing Act to expand its potential application to all other Indian tribes. Section 3 of the HEARTH Act would require the Bureau of Indian Affairs (“BIA”) to prepare and submit to the House and Senate committees of jurisdiction a report on the history and experience of Indian tribes that have chosen to assume responsibility for operation of Land Title Record Office (“LTRO”) functions.

#### **ATNI Supports Voluntary Mechanisms to Enable Indian Tribes to Assume Greater Control over Trust Assets**

The ability of Indian tribes to enter into leases of Indian trust lands in an expeditious manner is a key component of enhancing economic development in Indian country. One of Congress’s stated purposes in enacting the Navajo Leasing Act was to “revitalize the distressed Navajo Reservation by promoting political self-determination, and encouraging economic self-sufficiency, including economic development that increases productivity and the standard of living for members of the Navajo Nation.” This statement applies with equal force to many, if not most, Indian tribes throughout the United States. Expanding the already existing mechanism in the Navajo Leasing Act to other Indian tribes would provide those tribes that so desire an alternative to the current BIA approval process.

ATNI’s support for expanding the Navajo Leasing Act to other Indian tribes is conditioned in the voluntarily nature of tribal participation and on the tribes’ own ability, present in the existing law, to shape the contents of the leasing regulations. ATNI recognizes that the limitation of the United States’ liability for losses by parties to leases executed under tribal regulations may be an issue for some Indian tribes. Similarly, other tribes may have special circumstances that do not make tribal approval of leases feasible or desirable.

Because the HEARTH Act is voluntary, ATNI supports the bill because we believe that individual Indian tribes are in the best position to determine whether these considerations outweigh the potential benefits of the act. The flexibility of the tribal regulations is another consideration. For example, a tribe that may wish to avail itself of the HEARTH Act’s expanded authority only for certain leases or projects could draft its tribal regulations accordingly. Should the tribe at a later date desire to expand the scope to include other leases, it could do so by amending its regulations.

If the Committee were considering an entirely new leasing regime for Indian trust lands, ATNI and likely other tribal organizations might have different ideas on how this might be accomplished. Because the HEARTH Act, however, is simply an

extension of already existing law and at least some tribes could benefit immediately by the expanded authority it allows, ATNI supports the Act.

#### **Tribal Assumption of LTRO Functions**

ATNI strongly supports the requirement in Section 2 of the HEARTH Act that the BIA prepare and submit to the congressional committees of jurisdiction a report on the history and experience of Indian tribes that have chosen to assume responsibility for operation of LTRO functions.

As the Committee is aware, LTROs are responsible for preparing Title Status Reports ("TSRs"). A TSR is a report that provides a legal description of a parcel of Indian land and current ownership information such as easements, mortgages or other encumbrances. For most lenders, a BIA-certified TSR is a prerequisite to begin processing an application for a home loan.

ATNI understands that, to date, six Indian tribes nationwide have contracted or compacted the LTRO function from the BIA. The Colville Confederated Tribes is one of those tribes. Based on the Colville Tribes' experience, the reporting requirement in Section 3 of the HEARTH Act would provide a valuable record for the Department, the Congress, and for tribes that are considering contracting or compacting LTRO functions.

Before the Colville Tribes contracted LTRO functions, obtaining a TSR took from 60 to 90 days, sometimes longer, and required the BIA Regional Office staff to manually search through piles of recorded documents. Now that the Colville Tribe performs these services locally and has access to its own records, the Tribe's staff can generate, on an expedited basis, a TSR in one business day. When adequately staffed, the Colville Tribes' LTRO can complete most TSRs within five business days.

Although this increased control has, at least in the Colville Tribes' case, led to increased flexibility for generating TSRs by moving control of the process from the Regional Office level to the tribal level, challenges remain. Like many BIA programs, lack of funding hampers the ability of tribal staff to fully utilize this new-found authority.

Similarly, tribes that wish to contract or compact LTRO functions from the BIA may face significant obstacles on the front end if the BIA's administration of the program has not gone smoothly. In the Colville Tribes' case, when our local agency staff visited the BIA Regional LTRO to assess the work that would be required to assume control of the program, they observed piles of recorded documents that had yet to be inputted into the applicable databases. The staff also discovered that the history or chain of title on the majority of the Indian lands within the Colville Reservation had not been updated for nearly eight years. This translated into a significant upfront expenditure of staff time to prepare the LTRO program for assumption by the Tribe. ATNI suspects that at least some of the five other tribes that have assumed control of LTRO functions have had similar experiences.

A comprehensive BIA report to Congress that fully explains the benefits and challenges for tribes in contracting or compacting LTRO would shed additional light on these issues. ATNI hopes that such a report would lead to administrative reform to make this process easier for tribes that wish to do so in the future and may lay the foundation for additional funding for LTRO activities in future fiscal years.

#### **Future Initiatives Related to Expediting Administrative Approvals and Trust Resource Management**

ATNI believes that the HEARTH Act will provide a "turn key" approach to allow those Indian tribes that wish to do so the opportunity to expedite the process of entering into leases of tribal trust land utilizing the existing Navajo Leasing Act framework. For those Indian tribes that have the infrastructure, capability, and desire to undertake their own lease approvals, they should be encouraged, not hindered.

Going forward, ATNI hopes that this will not be the last opportunity for the Committee to explore issues related to expediting administrative approvals and the administration of trust assets. ATNI believes strongly that a comprehensive approach to trust management should be considered. ATNI, NCAI, and other tribal organizations spent significant time and energy in working with both this Committee and the Senate Committee on Indian Affairs to develop Title III of the Indian Trust Reform Act of 2005 (introduced as H.R. 4322 in the 109th Congress). Title III approached these issues from a standpoint of tribes and the federal government working together to develop comprehensive trust management plans to accommodate a range of tribal needs on a resource-by-resource level.

Both ATNI and NCAI recently enacted resolutions at their annual conferences reaffirming their desire for the reintroduction of reform legislation similar to

H.R. 4322. Looking ahead to 2010 and beyond, we hope that the Committee will consider these views as it considers other bills and initiatives relating to administration of Indian trust assets.

ATNI greatly appreciates the opportunity to testify at this hearing and looks forward to assisting the Committee in any way it can in exploring and developing these issues. At this time, I would be pleased to answer any questions that the Committee might have.

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The CHAIRMAN. Thank you. Mr. Trujillo.

**STATEMENT OF ARVIN TRUJILLO, EXECUTIVE DIRECTOR,  
DIVISION OF NATURAL RESOURCES, NAVAJO NATION,  
WINDOW ROCK, ARIZONA**

Mr. TRUJILLO. Good morning, Chairman Rahall, Ranking Member Hastings, and members of the Committee on Natural Resources. My name is Arvin Trujillo, and I am the Executive Director for the Navajo Division of Natural Resources.

Mr. Chairman, President Shirley also sends his greetings to you and your Committee. I also want to thank you for the opportunity to come before you today to testify concerning H.R. 2523, the HEARTH Act.

This legislation is similar to the Navajo Leasing Act of 2000, that gave the Navajo Nation and the Department of the Interior the authorization to develop regulations to take the Federal government out of the surface leasing process on Navajo land.

As an initial matter, the Navajo Nation supports the passage of H.R. 2523 as a major step toward tribal sovereignty for all the native nations. However, based on experience implementing the Navajo Nation Leasing Act, the Navajo Nation has several recommendations that would help realize the full implementation of both the Navajo Leasing Act and the HEARTH Act.

The Navajo Nation is the first tribal nation to be authorized to fund business and residential leases without prior approval of the Bureau of Indian Affairs, the corresponding Tribal Self-Determination Contract or a compact with the Department of the Interior.

In July of 2006, President Shirley said no longer will the Navajo Nation be required to seek final approval from the Bureau of Indian Affairs to develop its own lands, nor will it be required to wait years for the Federal government to conduct appraisals.

While this was a major step forward for the tribal sovereignty, the Navajo Nation discovered many roadblocks in implementing the Navajo Leasing Act.

First, the implementation of the Act spans three administrations, each with differing views of the rights and responsibilities declared in the purpose of the Act. A streamlined process for guiding tribes through this Federal bureaucracy is essential to the successful implementation of the Act.

Second, the cost of implementation has been fully borne by the Navajo Nation. The Congressional Budget Office has inexplicably determined that the Navajo Nation, when assuming several separate functions, would not require money for direct services, data cleanup, or revising tribal procedures, the Act perceived the CBO ruling has been called into question by later Federal reports, statutes, and funding formulas for self-determination contracts performing similar work. And the Office of Special Trustee, Bureau of

Indian Affairs budget specifications for current Federal trust realty records and IT Department budgets.

While accounting for approximately one third of all Federal Indian Trust land, the Navajo Nation has been chronically underserved since 2000 in relation to other Federal tribes. Billions have been transmitted to the Office of Special Trustee during the same period. The As-Is Study produced by the Office of Special Trustee estimates tens of thousands of Navajo business site recorded leases in 2001. However, no funding formula for the portion of the tax the Navajo Nation assumed were awarded for the inherited historical DOI backlogs of pending transactions or data cleanup conveyed to the Navajo Nation.

To properly implement the HEARTH Act and the Navajo Leasing Act, and for other tribes to implement the HEARTH Act, the Congress needs to approve provisions that allow for proper funding for tribes to assume this responsibility.

Third, the passage of the Navajo Leasing Act assumed that there were existing capacity surveys available to identify land plots for leases. The Bureau of Land Management has not lived up to its responsibility to provide capacity surveys for the Navajo Nation, even though the Nation had funded 50 percent of the survey team. The existing surveys used by BLM and BIA were conducted in the mid-1900s, and are tied to points such as rocks, trees, and natural landmarks. These existing surveys are insufficient to properly assess and approve loan applications.

The Navajo Nation currently only has 25 percent of our land confirmed by an instrument survey for a public lands survey system. To address this problem, in 2004 the Navajo Nation began developing a land title status search capacity for the Nation. After assessing our needs and existing leasing procedures, the Navajo Nation Land Title Records Office soon emerged as the most feasible course of action.

The Navajo Nation developed the Navajo Land Title Data System, using our own funds. In 2007, the initial design for a title plan for the Navajo Nation was completed. The NLTDS meets the American National Standards Institute and the International Standards Organization Document Control requirements. These voluntary standards are approved by Federal regulation to meet requirements for privacy, document control, digital records, and tribal trust documentation.

The Navajo Nation, through the Division of Natural Resources, has moved forward implementing this data system within the Navajo Land Department to support records of activities or document control required by regulations.

The system is designed to expand services to other Navajo divisions and departments, including the Navajo Government. The system is used to establish these processes. However, there is a costly amount, because we are still bearing that cost to implement this through the Navajo Leasing Act.

Finally, the Navajo Leasing Act, yes, is a major step forward, and we are looking at significant hurdles. Once the Navajo completes the survey work and piles of documentation necessary for a lease packet, we still have to submit the lease to the Navajo Regional BIA Office for conveyance. This process takes from two



months to a year. The Navajo Nation Leasing Act has so far only transferred the cost and burdens of compiling and approving the lease information, without benefits of allowing final conveyance. Both the HEARTH Act and Navajo Leasing Act must improve a real commitment to transfer complete responsibility to the tribe, not just the cost.

So again, this will help enhance some of the areas. There are other areas that I am willing to answer questions to. But in closing, I would like to thank Representative Heinrich for his efforts with the HEARTH Act.

Mr. Chairman.

[The prepared statement of Mr. Trujillo follows:]

**Statement of Arvin Trujillo, Executive Director,  
Navajo Nation Division of Natural Resources**

Good morning Chairman Rahall, Ranking Member Hastings, and members of the Committee on Natural Resources, thank you for the opportunity to come before you today to testify concerning H.R. 2523, the Helping Expedite and Advance Responsible Tribal Homeownership or HEARTH Act. This legislation is similar to the Navajo Nation Leasing Act of 2000 that gave the Navajo Nation and the Department of Interior the authorization to develop regulations to take the federal government out of the surface leasing process on the Navajoland. As an initial matter, the Navajo Nation supports the passage of H.R. 2353 as a major step towards tribal sovereignty for all the Native Nations. However, based on our experience implementing the Navajo Nation Leasing Act, the Navajo Nation has several recommendations that would help realize the full implementation of both the Navajo Leasing Act and the HEARTH Act.

The Navajo Nation is the first tribal nation to be authorized to sign business and residential leases without prior approval of the Bureau of Indian Affairs, a corresponding Tribal Self-determination contract, or a compact with the Department of the Interior. In July of 2006, President Shirley said, "No longer will the Navajo Nation be required to seek final approval from the Bureau of Indian Affairs to develop its own lands, nor will it be required to wait years for the federal government to conduct appraisals." While this was a major step forward for tribal sovereignty, the Navajo Nation discovered many roadblocks to implementing the Navajo Leasing Act. First, the implementation of the Act spans three administrations, each with differing views of the rights and responsibilities declared in the purposes of the Act. A streamlined process for guiding tribes through the federal bureaucracy is essential to the successful implementation of the Act.

Second, the cost of implementation has been fully born by the Navajo Nation. The Congressional Budget Office (CBO) has inexplicably determined that the Navajo Nation, when assuming federal trust functions, would not require money for direct services, data clean up, or revising tribal procedures. The accuracy of the CBO ruling has been called into question by later federal reports, statutes and funding formulas for self-determination contracts performing similar work, and the Office of Special Trustee/Bureau of Indian Affairs budget justifications for current federal Trust, Realty, Records and IT departments budgets. While accounting for approximately one-third of all federal Indian trust land, the Navajo Nation has been chronically underserved since 2000 in relation to other federal tribes. Billions have been transmitted to the Office of Special Trustee during the same period. The "AS-IS" study produced for the Office of Special Trustee estimates "tens of thousands" of Navajo Business-site recorded leases lapsed in 2001. However, no funding formulas for the portion of the task the Navajo Nation assumed were awarded for the inherited historic DOI backlogs of pending transactions or data cleanup conveyed to the Navajo Nation. To properly implement the Navajo Nation Leasing Act, and for other tribes to implement the HEARTH act, the Congress needs to include provisions that allow for proper funding for tribes to assume this responsibility.

Third, the passage of the Navajo Nation Leasing Act assumed that there were existing cadastral surveys required to identify land plots for leases. The Bureau of Land Management (BLM) has not lived up to its responsibility to provide cadastral surveys for the Navajo Nation even though the Navajo Nation has funded fifty percent of the survey team. The existing surveys used by BLM and BIA were conducted in the mid 1900's, and tied to points such as rocks and trees. These exiting surveys were insufficient to properly assess and approve loan applications. The Navajo

Nation currently only has twenty-five percent (25%) of our land confirmed by an instrument survey for a Public Land Survey system.

To address this problem, in 2004, the Navajo Nation began developing a Land Title Status search capacity for the Navajo Nation. After assessing our needs and existing leasing procedures, a Navajo Nation Land Title Records Office soon emerged as the most feasible course. The Navajo Nation developed the Navajo Land Title Data System (NLTDS) using our own funds. In 2007, the initial design for a title plant for the Navajo Nation was completed. The NLTDS meets the American National Standard Institute (ANSI) and International Standards Organization (ISO) document control requirements. These voluntary standards are approved by federal regulation to meet requirements for: privacy, document control, digital records and tribal trust documents. The Navajo Nation, Division of Natural Resources (DNR) has moved forward with implementation of a Navajo Land Title Data System Plan within the Navajo Land Department to support the "Records of Activities" or document control required by the regulation. The system is designed to expand service to other Divisions and Departments, including local Navajo units of government. The NLTDS is a system that can be used by other tribes to establish and process leases. However, the development of this system requires a significant cost outlay on the part of the Navajo Nation that we have so far born ourselves but is essential to implementing the Navajo Nation Leasing Act. Funding from the federal government is essential to allow the Navajo Nation to complete development of this system. To properly implement both acts, Congress will either have to provide money to tribes to develop their own systems, or encourage the adoption of a system similar to what we have developed.

Finally, while the Navajo Nation Leasing Act has been a major step forward for the Navajo Nation, we are still faced with a significant hurdle from the Bureau of Indian Affairs. Once the Navajo Nation completes the survey work and compiles the documentation necessary for a lease packet we still have to submit the lease to the Navajo Regional BIA office for conveyance. This process can take from two months to a year. The Navajo Nation Leasing Act has so far only transferred the costs and burdens of compiling and approving the lease information without the benefits of allowing final conveyance. Both the HEARTH Act and Navajo Nation Leasing Acts must involve a real commitment to transfer complete responsibility to the tribes and not just the costs.

Tribal sovereignty is an essential component of the right ability of the Native nations to govern ourselves. Both the Navajo Nation Leasing Act and the HEARTH Act represent a significant step forward in providing greater self-determination to tribes. The Committee and Congressman Heinrich should be commended for moving forward to provide us with greater sovereignty. However, in order to implement the Acts the federal government must provide funding for the costs associated with transferring the responsibility to tribes, and the transfer of responsibility must be complete to allow tribes to convey the leases.

Thank you.

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The CHAIRMAN. Ms. Parish.

**STATEMENT OF CHERYL A. PARISH, EXECUTIVE DIRECTOR,  
BAY MILLS HOUSING AUTHORITY, BRIMLEY, MICHIGAN**

Ms. PARISH. Good morning, Chairman Rahall, Ranking Member Hastings, Congressman Heinrich, The Honorable Congressman Kildee, and members of the Committee. My name is Cheryl Parish; I am from the Bay Mills Tribe of Chippewa Indians in upper Michigan.

I appear before you in dual roles. I have served as the Executive Director of my Housing Authority for almost 20 years. I also serve as the Vice Chair of the National American Indian Housing Council. Thank you for inviting me to testify on the HEARTH Act.

Before I discuss the provisions of H.R. 2523, please allow me to take you back nearly two decades, when Indian tribes, tribal housing authorities, and others came together to articulate a new vision for housing and housing-related community development that was rooted in the firm foundation of Indian self-determination. These

efforts culminated into what became the Native American Housing Assistance for Self-Determination Act of 1996.

The primary objective of NAHASDA is to consolidated standard Federal housing programs into one block grant, to promote affordable and safe housing in native communities.

With the delivery of housing, it has improved, and it has increased basically since 1936. But we have many, many challenges that remain, including working with the Tribal Trust lands, which are held in a common, in common, and cannot be collateralized. The lack of private capital, dire economic conditions, these factors require vigorous Federal investment in housing and community development. And without a doubt, NAHASDA is the single biggest source of housing capital for Indian people.

Most Indian tribal land is held in trust or restricted status by the United States for the beneficial ownership of Indian tribes or individual Indians. Trust lands may not be sold, but may be leased for a variety of purposes, under Federal law.

The Indian Long-Term Leasing Act of 1955 requires the approval of the Secretary of the Interior for certain types of leases on Indian Trust and restricted Indian lands. Any lease that is not approved by the Secretary is invalid.

Timely processing of these lease documents is critical, not only for housing, but also for our Federal Loan Guarantee Program. One program, the Indian Home Loan Guarantee Program, also known as Section 184, addresses the lack of mortgage lending on our reservations in our native communities. They offer mortgage financing to eligible Native American individuals, families, housing authorities, tribally designated housing entities.

The 184 program through HUD guarantees these loans made by private sector lenders. This program requires the borrower to have a valid lease-hold subject to the approval of the Secretary. Upon default, the structure and the lease hold interest are subject to foreclosure.

The requirement of the Secretarial approval in this instance is time-consuming, and is the contributing factor to low homeownership rates in native communities.

Current law authorizes leases up to 25 years, with an option for a 25-year renewal, for public, religious, educational, recreational, residential, or business purposes. NAHASDA increases lease terms for housing development and residential purposes for 50 years, but keeps the requirement for Secretarial approval.

The Secretary, acting through the Bureau of Indian Affairs, administers the land leasing program, which can become lengthy, taking months and sometimes years, hindering housing, infrastructure, and related economic development on Trust lands. Because of these delays and the desire by individual Indian tribes for more authority and tribal control of the leasing of their own lands, 45 Indian tribes have sought release from the 1955 Act, petitioning Congress specific, tribe-by-tribe legislation.

Most recently, one tribe, the Navajo Nation, sought to liberalize the 1955 Act for its own Trust lands. In 2000, Congress responded favorably by enacting the law to authorize the Navajo Nation to enter into these lease agreements, and renewals of the leases without the Secretary's approval. The Navajo Nation was required to

develop its own tribal leasing regulations before instituting its land-leasing regime, which was approved by the Secretary in July of 2006.

In 2009, Mr. Heinrich introduced the HEARTH Act, which will offer willing Indian tribes the authority to enact their own tribal leasing regulations, and to negotiate and enter into certain leases without the approval of the Secretary.

It is crucial that any such proposal be entirely optional to Indian tribes, and to determine whether they wish to participate in such an initiative. The HEARTH Act would also require the BIA to prepare and submit to the Congress a report detailing the history and the experience of the Indian tribes that have chosen to assume the responsibility for operating the Indian Land Titles and Records Office functions from the BIA.

The National American Indian Housing Council supports efforts like the HEARTH Act because they respect tribal decision-making. It expedites what can often be a lengthy Federal process, and will serve to improve the delivery of Federal housing assistance, and expand economic opportunities to Indian country.

On behalf of NIHC and its membership, I am here today to strongly support the Heinrich bill.

Thank you, and if you have any questions, I would be happy to answer them. And Mr. Chairman, we also have three studies that we would like to submit, if possible, that were not available electronically, as requested by the Committee. Would you allow us to submit those?

Thank you very much.

[The prepared statement of Ms. Parish follows:]

**Statement of Cheryl Parish, Executive Director, Bay Mills Housing Authority, on Behalf of the National American Indian Housing Council**

**Introduction**

Good Morning, Chairman Rahall, Ranking Member Hastings and Members of the Committee. My name is Cheryl Parish and I am the Executive Director of the Bay Mills Housing Authority in Brimley, Michigan. I am a member of the Bay Mills Tribe of Chippewa Indians in Michigan and I also serve as the Vice Chair of the National American Indian Housing Council (“NAIHC”). Thank you for inviting me to testify today to present our views on the “Helping Expedite and Advance Responsible Tribal Homeownership Act” or the HEARTH bill. This legislation is another important step in respecting tribal sovereignty and encouraging the development of tribal economies.

**The National American Indian Housing Council**

The NAIHC was founded in 1974 to support and advocate for tribes and tribally designated housing entities (“TDHEs”). For more than 35 years, the NAIHC has assisted tribes achieve their primary goal of providing housing and community development for American Indians, Alaska Natives and native Hawaiians. The NAIHC consists of 266 members representing 463 tribes across the U.S., and is the only national Indian organization whose sole mission is to represent Native American housing interests throughout the Nation and provide its members with training, technical assistance, research, communications and advocacy.

As its core mission, the NAIHC provides invaluable capacity-building services to tribes, their Indian housing authorities and TDHEs. These training and technical assistance services include on-site technical assistance, tuition-free training classes, and scholarship programs that help offset the cost of attending specific training sessions, such as the Leadership Institute, a low cost professional certification course for Indian housing professionals.

### **The Native American Housing Assistance and Self-Determination Act**

Before I address the HEARTH bill specifically, please allow me to take you back more than two decades in Indian housing when beginning in the early 1990s, Indian tribes, tribal housing authorities, and others, came together to craft a new vision of how housing and housing related community development programs and services should be administered in the era of Indian Self-Determination. The NAIHC was instrumental in shaping the debate and in drafting what became the Native American Housing Assistance and Self-Determination Act of 1996 (“NAHASDA,” as amended, 25 U.S.C. § 4101 et seq).

Over the past 40 years, tribes have assumed ever-greater responsibility for the design, development and delivery of programs and services that were once exclusively the domain of the Federal government. Starting with the Indian Self-Determination and Education Assistance Act of 1975 (“ISDEAA,” as amended, 25 U.S.C. § 450), Indian Self-Determination is the hallmark of all successful initiatives aimed at improving the lives of Native people including health care, education, law enforcement and others. In attempting to repeat these successes in the realm of housing, in 1996, Congress determined that in providing Federal housing services to Indian communities, the U.S. should “recognize the right of Indian self-determination and tribal self-governance by making such assistance available [...] directly to the Indian tribes or tribally designated entities.”

NAHASDA is well-rooted in the time-tested principles of local decision-making and self-sufficiency. The primary objective of NAHASDA is to promote affordable housing that is decent, safe and healthy. Since its enactment, NAHASDA has enhanced Indian tribal capacity to address the substandard housing and related physical infrastructure conditions by encouraging greater self-management of housing programs, greater leveraging of scarce Indian Housing Block Grant (“IHBG”) dollars, and greater access to private capital through Federal loan guarantee mechanisms.

Housing activities that may be funded with NAHASDA assistance include new home construction, rehabilitation, acquisition, physical infrastructure, and various support services. Housing assisted with these funds may be either for rental or for homeownership. NAHASDA funds can also be used for certain types of community facilities if the facilities serve eligible, low-income residents.

NAHASDA is not just about constructing buildings—it is about building communities. Historically, the lack of significant private investment, well-functioning housing markets and dire economic conditions in most Indian communities have all contributed to require a vigorous Federal investment in housing and community development in tribal communities. Since Fiscal Year 1998, more than \$8 billion in Federal housing assistance has been invested in Indian Country and has helped Indian families make down payments on homes, make monthly rents, helped with home rehabilitation and build new housing units. Without a doubt, NAHASDA is the single-most important housing tool for Indian people.

### **Indian Trust Lands and the Indian Long-term Leasing Act of 1955**

As successful as NAHASDA has been in the 13 years since enactment, it is not an island unto itself in the world of Federal Indian laws and policies. Housing and community development is inextricably linked to tribal landholdings and their unique legal status. Most Indian tribal land is held in trust or restricted status by the United States for the beneficial ownership of Indian tribes or individual Indians. While trust lands may not be sold, they may be leased to Indians or non-Indians for a variety of purposes under applicable law.

The Indian Long-Term Leasing Act of 1955 (the “1955 Act,” 25 U.S.C. § 415) requires the approval of the Secretary of the Interior (“Secretary”) for the leasing of Indian trust and restricted Indian lands for a variety of purposes. The regulations implementing the 1955 Act indicate that they apply to “Indian land,” which is defined as “any tract in which an interest is owned by an individual Indian or tribe in trust or restricted status.” 25 C.F.R. § 162.102.

The 1955 Act authorizes leases of Indian land for up to 25 years with an option for one additional 25-year term—for a total 50-year term. These leases may be for “public, religious, educational, recreational, residential, or business purposes...” As an aside, NAHASDA authorizes leases of trust or restricted Indian lands for “housing development and residential purposes” for 50-year terms but retains the requirement of Secretarial approval to render the lease valid.

Under the 1955 Act, the Secretary, through the Bureau of Indian Affairs (“BIA”), is responsible for administering the land leasing process and any lease that is not approved by the Secretary is invalid. Before approving a lease, the Secretary must consider certain factors such as:

- The proposed use of leased lands with the use of neighboring lands;

- The height, quality and safety of structures or facilities to be constructed on leased lands;
- The availability of police, fire protection and other services;
- The availability of judicial venues for criminal and civil causes arising on leased lands; and
- The environmental effects of the proposed uses of the leased lands.

Leases negotiated by an Indian tribe or an individual Indian may include remedies agreed upon by the parties including, for instance, a requirement that disputes be heard in tribal court. Leases may also be advertised or negotiated by the Secretary through the BIA and the applicable regulation provides that in reviewing a negotiated lease for approval, the BIA “will defer to the landowners’ determination the lease is in their best interest, to the maximum extent possible.” 25 CFR § 162.107. Under the 1955 Act, the Secretary has authority to cancel leases if there are violations of lease terms, and remains responsible for ensuring tenants meet their payment obligations to landowners and for ensuring tenant compliance with any operating requirements contained in the lease agreement. The Secretary may also take “immediate action” to recover possession from trespassers operating without a lease, and may take “emergency action” to preserve the value of the land. 25 CFR § 162.108.

The Indian land leasing approval process can be lengthy, taking months and sometimes years, which can hinder housing, infrastructure, and related economic development on Indian lands. Because of these delays, and the desire by individual Indian tribes for more authority and latitude in the leasing of their own lands, some 45 Indian tribes have sought relief from Congress for amendments to the law through specific, tribe-by-tribe Federal legislation. As you can imagine, winning enactment of specific Federal legislation to acquire authority to enter 99-year lease terms is an unwieldy, lengthy, and expensive proposition. As laid out below, the HEARTH bill provides an optional and, we believe, an expedited way for tribes to assume greater control over their lands and encourage tribal economic development.

#### **Tulalip Tribes**

For instance, the Tulalip Tribes of Washington State can lease trust lands, for most purposes described in the 1955 Act without securing the approval of the Secretary. Leases can be for up to 15 years if there is no option to renew; for up to 30 years if there is no option to renew and the lease is issued pursuant to tribal regulations approved by the Secretary; and for up to 75 years including any period of renewal if the lease is issued pursuant to tribal regulations approved by the Secretary. In 1981, the Secretary approved the Tulalip Tribes’ regulations.

#### **Navajo Nation**

In 2000, the Navajo Nation in Arizona sought greater authority under the 1955 Act and Congress responded by enacting the Navajo Nation Trust Land Leasing Act (25 U.S.C. § 415(e)). Under this law, the Navajo Nation can enter into lease agreements and renewals of leases of trust lands without the requirement that the Secretary review and approve such leases. The Navajo Nation was required to develop regulations governing leases including an environmental review process, before it could institute its own land leasing regime. In July 2006, the Secretary approved the Navajo Nation’s leasing regulations.

Under the 2000 law, the Secretary maintains authority to take appropriate actions, including cancellation of the lease, in furtherance of the Federal trust obligation. The United States, however, is not liable for losses sustained by any party to a lease (including the Navajo Nation) entered into under the Navajo Nation’s regulations. Interested parties may, after exhausting tribal remedies, submit a petition to the Secretary to review the compliance of the Navajo Nation with the regulations approved by the Secretary. The Secretary may take actions deemed necessary to remedy the violation complained of, including rescinding the tribal regulations and re-assuming responsibility for approving leases for Navajo Nation trust lands.

#### **Indian Home Loan Guarantee Program**

An efficient and effective Indian land leasing framework is essential to housing delivery and development, but also to Federal loan guarantee programs. I want to touch on one program—the Indian Home Loan Guarantee Program—also known as the Section 184 Program. The Section 184 loan is a mortgage product, specifically geared for the unique circumstances of Native communities, to facilitate homeownership in Indian lands and within an approved Indian area.

In order to address the lack of private mortgage lending in Native communities, Congress established the Section 184 Program to offer mortgage financing to eligible Native American individuals, families, tribes and TDHEs. Notably, the default rate for the Section 184 Program remains at less than 1 percent.

The Section 184 Program involves the issuance of a Federal guarantee by HUD on loans made by private lenders. Because tribal trust lands may not be foreclosed on in the case of a default, the Section 184 Program requires that the borrower have a valid leasehold in place and demonstrate as much on the application. The borrower and the Indian tribe would negotiate a lease agreement covering the relevant land and the lease would be subject to the approval of the Secretary. In the event of a default, the structure and leasehold interest (and not the underlying land) are subject to foreclosure. The requirement of Secretarial approval in this instance, as in the others described above, can be time-consuming and contribute to low homeownership rates in Native communities.

#### **HEARTH Act**

Under current law, Indian tribes (except the Tulalip Tribes and the Navajo Nation) are presented with two options: they may choose to operate under the strictures of the 1955 Act, complete with the requirement of Secretarial approval or, alternatively, they may secure 99-year lease authority through the enactment of tribe-specific Federal legislation.

In May 2009, Congressman Heinrich introduced the HEARTH Act, which will offer willing Indian tribes the authority to enact their own tribal leasing regulations and to negotiate and enter into certain leases without review or approval of the Secretary. The HEARTH Act would also require the BIA to prepare and submit to the Congress a report detailing the history and experience of Indian tribes that have chosen to assume responsibility for operating the Indian Land Title and Records Office ("LTRO") functions from the BIA. Before Indian lands may be encumbered with a home mortgage, the BIA must prepare and issue a Title Status Report ("TSR") to HUD. In 1999 and again in 2005, the BIA issued aspirational guidance to its Regional Offices that this process should not, to the extent possible, exceed 30 days. Despite BIA aspirations that the TSR issuance should take no more than 30 days, Congress in 2005 determined that a more realistic timeline for TSR issuance is 6 months to 2 years. This is clearly unacceptable especially when compared to the title status checks for all other Americans that take no longer than 24 to 48 hours.

In 2000, Congress enacted legislation to establish the Indian Lands Title Report Commission to make recommendations to the BIA on ways to improve the TSR process. To-date, the Commission has never met due to the failure of the Bush Administration to nominate commissioners.

The study and report mandated by the Heinrich legislation will include a review of how the tribal management of the LTRO functions has fared and determine the challenges these tribes face in managing these functions.

#### **Conclusion**

The NAHASDA has been a welcome shift in Federal Indian Policy, which Congress continues to evolve with further refinements and amendments. Experience has shown that successful initiatives respect tribal involvement and authority, rather than Federal domination. The ISDEAA and NAHASDA are based on these fundamental principles and confirmed what has been made clear through research undertaken by the Harvard Project on American Indian Economic Development: "When tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform non-tribal decision-makers."

On behalf of the NAIHC and its membership, we strongly support H.R. 2523 and urge the Committee to move it swiftly through the legislative process. Your continued support of Native communities is greatly appreciated, and the NAIHC stands ready to work with you and your staff on these and any other issues to improve Indian housing programs and living conditions for America's first people.

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The CHAIRMAN. Thank you very much. Let me ask the Governor two quick questions, if I might.

How long does it generally take your Pueblo to approve a lease?

Governor CHAVEZ. You know, we also have partaken in the HUD 184 program. That in itself is probably about a year's process for us. Because the Council has actually expedited our portion of it, and normally for them, when it goes back to the Bureau is when it is the lengthiest piece. So in a case like that, it is about a year.

The CHAIRMAN. What are some of the criteria that your Pueblo considers when it comes to approving a lease on sovereign lands?

Governor CHAVEZ. Well, you know, it is very evident, as I mentioned in my statement, that if we had to just depend on NAHASDA for meeting our housing shortages, we would have a long, long wait. So that is something that the tribe has deliberately said we are going to, anyone that is interested in trying to secure any other kinds of outside mortgage financing, that the Council has stood in the affirmative to expedite that as much as possible.

So we are doing what we can internally to expedite that. But again, this law would allow us to, once we put in, I mean, we are probably right at the front steps of instituting the ordinances that we need to accommodate this. And if this Act would go through, I think it would allow us to move it even faster.

The CHAIRMAN. Vice President Moses, let me ask you what, if any, concerns do you have with the current language of the Navajo Provision of the Indian Long-Term Leasing Act?

Mr. MOSES. A couple of concerns. One, defunding, lack of funding. Two, the kind of vagueness the liability, liability of the government. It varies data on what, on what they can be held liable for. In my mind, it is trying to back out of the trust responsibilities.

The CHAIRMAN. OK. Mr. Trujillo, let me ask you how many leases have been approved by the Navajo Nation pursuant to their authority granted under the Leasing Act?

Mr. TRUJILLO. As of this point in time, I believe we have approved a little over 112, I believe. One big issue still comes back to conveyance. Let us take housing, for instance, or even business sites. We have been able to streamline the process within the Nation. We have worked with our governmental entities to delegate that to the administrative process.

But when it comes to conveyance, we send the final packet over to the BIA to get that final conveyance, again we run into that problem of two months to up to two years to get that information back.

And we made great strides within the Nation. I mean, I have people now who can get mortgages; we have developed a process to do that. We have recently got a couple homeowners now who have been able to pull equity out of their homes now on Trust land.

But again, people can't do that until they get the title. And so that has been a real issue with the Nation at this point.

The CHAIRMAN. OK. Ms. Parish, to your knowledge, what is the on-reservation versus off-reservation population of American Indians?

Ms. PARISH. Generally, census data shows around half of Native Americans and Alaskan natives live on reservations. The other half are within urban settings.

The CHAIRMAN. In your opinion, is this in part due to the problems associated with owning a home on tribal land?

Ms. PARISH. Yes, very much so.

The CHAIRMAN. OK, that concludes my questions. The gentleman from Washington.

Mr. HASTINGS. Thank you, Mr. Chairman. Mr. Chairman, at the outset, even though this is a very narrowly focused bill, I had mentioned that I thought it was a step in the right direction. Because it certainly would give a bit more autonomy to all the tribes, and I think that is a step in the right direction.



And that was confirmed by listening to all of your testimony. If there was one common thread, at least in what I heard, was a bit of frustration in dealing with the Federal bureaucracy.

So on that line, I want to ask a question not associated with this legislation, to Mr. Trujillo. And I would like to ask you what is the status of your Desert Rock project coal plant. And also, how important is that project to the Navajo Nation?

Mr. TRUJILLO. Right now, Congressman, the Desert Rock project is awaiting an air permit from the U.S. EPA. We are also finalizing the EIS for final determination on that piece.

As far as the importance that we see with this project, we see a tremendous economic benefit, not only in the aspects of royalties coming back to the Nation, but also in job creation and community development within that given area. And again, to add to that, the Nation is also embarking on a new renewable effort. We are in the processes before Council now of approving a lease for 85 megawatts at the Big Boquitas Ranch. We are looking in northern Arizona, looking anywhere between 1300 to 1800 megawatts of wind power within the next few years.

So the Desert Rock project is very important to us. It will bring additional capital to the Nation, that we can then expand not only on economic development, but looking at renewable development within the Nation.

Mr. HASTINGS. Did you have the clean air permit on that plant?

Mr. TRUJILLO. We, as of yet, do not.

Mr. HASTINGS. Did you have, or has this always been in the process?

Mr. TRUJILLO. We thought we did, but it has been remanded back to EPA for their consideration.

Mr. HASTINGS. Did EPA consult with you on that process? Or was that done, that remanding back done unilaterally?

Mr. TRUJILLO. Right now they have not consulted us on the second phase, and I am not sure if we have that ability to consult during this period.

Mr. HASTINGS. OK. Have they given you a timeframe on this?

Mr. TRUJILLO. No, sir.

Mr. HASTINGS. OK. Is there any experiences that you can draw from your experience with Desert Rock that relates to energy, or utilizing your resources? I also, in my opening remarks, suggested that maybe we ought to look at this process as far as mineral leases. Does this bring any thoughts to your mind in that regard?

Mr. TRUJILLO. It does. Let us take, for instance, the recently completed negotiations with El Paso Natural Gas on their pipeline. The Navajo Nation completed those negotiations. The agreements have been done and are in place.

We are fortunately we put in our legislation that the company would begin compensating the Nation once the Tribal Council approved that lease. As of yet, that lease has not been approved by the BIA.

Mr. HASTINGS. How long has that been?

Mr. TRUJILLO. It is going on a year and a half now.

Mr. HASTINGS. OK. Well, thank you very much. And thank you, Mr. Chairman, for indulging in these questions that aren't directly related to this legislation. But I certainly see a common thread

here, and I think these sort of issues ought to be explored. So thank you all very much.

The CHAIRMAN. The gentleman from New Mexico, Mr. Heinrich.

Mr. HEINRICH. Thank you, Mr. Chairman. Governor Chavez, I want to thank you once again for joining us today to offer your testimony.

In speaking with tribal housing officials from across New Mexico, one concern that they shared with me is that families are having to move off reservations if they want to buy a home because of the difficulty of the process.

Can you talk about why it is important to your community for families to be able to continue to live at the Pueblo?

Governor CHAVEZ. I can probably speak to this from a personal standpoint. I have two daughters that are living in Albuquerque because there is no place for them to live. I mean, I am having to put an expansion on my house to bring them home, because I want my grandchildren home. And that is the reality of it. Our families are having to move away from our homelands because of that very fact.

And that is an important case, because when you are certainly a firm believer in cultural preservation, how you do it is engage them in the language that we still speak. And that can't be done when your family is separated and split up like that. But I am one of many that has experienced it.

Mr. HEINRICH. Thank you, Governor. I think that really gets to the heart of why this issue is important.

Mr. Moses, I wanted to ask you if you think that the current leasing process, as it stands today from the 1955 Long-Term Leasing Act, is consistent with the principle of self-determination.

Mr. MOSES. To a small degree it allows the tribes to get into that. But the BIA is still involved, and it slows the process down to a great degree.

Mr. HEINRICH. Would you say that amending how we deal with long-term leasing, particularly with respect to this legislation, would be much more consistent with self-determination as a policy?

Mr. MOSES. Yes, it would.

Mr. HEINRICH. Thank you. Ms. Parish, I wanted to thank you as well for being here today, and to ask you, I know there is an enormous variation among tribes. But generally, can you describe the kind of administrative capacity that currently exists? And answer the question, are there a number of tribes who are already, have a leasing approval process in place that would be able to utilize that experience through this process.

Ms. PARISH. Tribes have a varying capacity to enable to conduct these activities. My particular tribe, the land office is within the Housing Authority, we have a, what appears to be a very, very uncommon relationship with the BIA office, and we are very, very lucky. And it is two to three weeks to get a lease. But they are primarily residential. I don't deal with, you know, some of the things these gentlemen fight with.

Kootenai has a very, very successful program. It would depend on the administrative capacity of the particular tribe, that they would be willing to put forth teachings or rules that would allow us to gain the capacity. I believe there are several tribes that could

do it right now, and do it quicker and more efficiently than it is being done.

Mr. HEINRICH. I am really pleased to hear you say that, that you are able to turn some of those around in two to three weeks. I think that, you know, when that is going well, I think BIA deserves credit for making that a priority.

Could you tell me a little bit about what role today private equity and private investment plays in being able to provide affordable tribal housing? And if this leasing process were to be streamlined under the HEARTH Act, do you think that private capital could play a larger role in providing housing, as we have heard so much housing is dependent today on HUD funding, obviously.

Ms. PARISH. Until we can straighten out the problem with the leasing, nobody wants to play that game. They do not have the time available to sit there and wait, and be dependent upon that lease process.

With the 184, there are some that are still two and three years out there. We have a very successful relationship with outlying banks and use of the 184 and private lending where we are. But we have somebody come in, and that is a 6 percent rate. And when it doesn't go well, it can jump points, and it is financially penalizing my tribal members and tribal members throughout the country.

I mean, we can go through there and get all the documents in place, and the whole thing is useless by the time they get the approval.

Mr. HEINRICH. And Mr. Chairman, I think that is an incredibly important point. If you enter into trying to establish a mortgage for a house, and you can secure financing that is, you know 5 percent or 5.5, and by the time everything has its I's dotted and its T's crossed mortgages are 8.25 percent, that is prohibitive for a lot of families. So you know, you lose out on the ability to take advantage of financing at a time when it could really help address the housing shortage in many of these tribal communities.

So with that, I would yield back the balance of my time.

The CHAIRMAN. Thank you. The gentlelady from Wyoming, Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. Ms. Parish, could you tell me if your organization, or if there is some other group out there that could provide tribes with technical assistance if this law becomes law?

Ms. PARISH. Yes. One of the main reasons for the National American Indian Housing Council is to ensure that our members and to any tribe that receives HUD funds, to build the capacity in those tribes, and to expedite building homes in Indian country.

And this is, besides tax, our biggest barrier in Indian country to building homes. We would most definitely be there to assist them, and I actually would foresee that that would be the main focus of our training.

Mrs. LUMMIS. That is fantastic, thank you. And a question for Mr. Moses.

In your testimony you reference ATNI, and said that they had established a trust reform work group of tribal leaders to provide recommendations on initiatives that affect the trust relationship.

What recommendations can you provide regarding how the BIA can streamline the lease approval process in the future for those tribes lacking the capacity to pursue the new regulatory framework in this proposed law?

Mr. MOSES. I don't want to sound too radical, but if the Colville tribal instances, if we were allowed, if we were given the funding, if we were allowed to take the leasing from step one to the Nth degree, we wouldn't have people waiting years to get the leases done. We wouldn't have the problems of lack of housing on a reservation, or lack of leasing on a reservation.

I think if we were to put our heads together in Affiliated Tribes, we could create a group within our own organization to where the tribes with the capabilities, like I think the Colvilles have, to assist other tribes in becoming independent in that fashion.

So I think we would be willing to help each other. And I think that is what Affiliated Tribes is all about.

Mrs. LUMMIS. I don't see that as the least bit radical. That sounds really practical to me, so good for you.

My next question is actually for the Chairman and the Ranking Member. In your experience here in Congress, has there been talk about how to rationalize BIA's activities in relation to the other agencies that tribes have to work with? They have to work with the BIA and EPA, they have to work with the BIA and HUD, they have to work with the BIA and Health. And then they are embedded in the Department of the Interior with regard to the trust obligations.

Has there ever been talk about removing the BIA from Interior, and creating like a stand-alone agency where tribes can go to so they don't have to have these layers of the Federal government they are dealing with?

The CHAIRMAN. If the gentlelady would yield her time, there have certainly been discussions and a concern about coordinating all the various agencies to which you refer. I don't know about eliminating BIA as such has been a concrete proposal, but certainly we recognize the myriad of other agencies with whom the Indian tribes have to deal. And there needs to be streamlining. There needs to be better coordination, cooperation, consultation, all of the above. And that is something we have been plugging away at for a number of years, but we are not there yet, obviously.

Mr. HASTINGS. If the gentlelady would yield, as you know I am just coming back as the Ranking Member this year. However, my experience representing my district—and I used to represent part of the Colville, for example, prior to the 1990 reapportionment, and so I am familiar with some of the frustrations that go on. But I personally have not pursued that, simply because I haven't been directly on the committee.

But I think it is something that ought to be pursued. Because I hear that, as you do, anybody that has tribes in their district, they know the frustration that is going on. And they overlap, and sometimes, frankly, the slowness of one agency to deal with that. And that is frustrating to our constituents.

Mrs. LUMMIS. Well, I appreciate the panelists and also the Chairman and Ranking Member for their comments. Thank you.

The CHAIRMAN. Mr. Kildee.

Mr. KILDEE. Thank you, Mr. Chairman. Mrs. Lummis, I have been on this Committee for 30 years. One of the jokes we always hear, it is a terrible joke, is that when General Custer went to his last battle, he turned to the BIA Director and said don't do anything until I get back.

I don't really believe that, but that is the joke that the BIA has to live with. I have great respect for them, and have worked with them for my 33 years here in Congress.

Ms. Parish, it is great to see you. I spent some good times up at Bay Mills and Brimley, Michigan. I can remember one time I went up there, and probably in the same hour, I met probably the oldest person there, and one of the youngest. Mr. LeBlanc, deceased since then, and Brian Newland, who now is an attorney, and he was probably a 14-year-old boy at that time.

But I can recall you have really defended your sovereignty well up there. And sovereignty is not just a theoretical thing, it is a practical thing. And the Treaty of Detroit guaranteed you the right to fish in perpetuity, and perpetuity means perpetuity.

But the Department of Environmental Quality ruled that that treaty was not valid, and that they could not fish. But the people of Bay Mills knew they could.

Mr. LeBlanc tells the story that one night he was out fishing, and the DEQ appeared to arrest him. He hid out in the reeds and the weeds, hiding out from the DEQ. And he said, Congressman Kildee, the mosquitoes were biting me fiercely, it was terrible. The only thing that gave me consolation, I knew the mosquitoes were also biting the DEQ. So he gave himself a declaration of independence there.

And in every instance you have to really keep fighting for your sovereignty. In every instance. They will never come by with a meat axe and take a huge chunk, they will take a scalpel and cut a slice, a little bit here, slice a little bit here, slice a little bit here. And you have to be very careful of that slicing. And when they treat you less than a government, you have to stand up and defend yourself on that.

I was chief sponsor last year of the reauthorization of NAHASDA. I think this bill will give you some more authority under NAHASDA. The bill actually was handled by Barney Frank's committee last year, but I think this bill certainly complements the NAHASDA reauthorization of last year. And I commend Mr. Heinrich for his introducing that, and I wish you well.

Ms. PARISH. Thank you very much. The natives across the Nation would like to thank you for all of your hard work. We have some pretty cold winters up there. We are still fighting. My fiancé fishes with Mr. LeBlanc's son, and still fights to this day.

Mr. KILDEE. Very good.

Ms. PARISH. We will continue to do so. And thank you again for your assistance. We have a lot of people out there who still need all of your help.

Mr. KILDEE. Thank you very much. God bless you.

Ms. PARISH. Thank you.

The CHAIRMAN. The gentlelady from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. And I guess I have, like an old dog, I go back to the same bond: funding. As

whether or not, in the last Administration, there was a cut in some funding.

However, when you are talking about the waiting time, do you have any idea how many are waiting? How many for business, for the housing, for grazing, for whatever, that you may have waiting—to any of you—that might give us concern that we are not helping funding, or should be looking at extension of assistance.

Ms. PARISH. We know at the National American Indian Housing Council right now, the estimate is a minimum of 200,000 housing units are needed in Indian country. So that our houses at least have water, and are not overcrowded.

Mrs. NAPOLITANO. Now, that is needed housing. What about those that are waiting for leases?

Mr. TRUJILLO. Congresswoman, with the Navajo Nation right now, I don't have the leases, but those that are looking at equity and mortgaging we have about 75 people who are ready to do that right now. But we can't do it because we can't get the title conveyed over from the BIA back to those individuals.

Mrs. NAPOLITANO. And the reason?

Mr. TRUJILLO. We are not sure. It is like it goes into a black hole, and we just wait for it to pop back out. So we have gotten the documentation put together, and we are just awaiting the conveyance of that.

In some instances it does come back that they have issues with the historic data, which means we have to go back and fix all of that. And so that is at our cost. And so that was one of the areas that I was noting. We have the data system in place, we have the process in place; we can do that work. But again, it takes that funding, and the CBO indicated there was no cost to us. There is a cost to us, because you have to clean that historical data.

And just to add to what this would mean to us is, as Congressman Heinrich noted, bringing our younger people back. Because I would like to remind members of the Committee, who are the movers and shakers of your community, it is that 25, I call them the soccer moms and the basketball dads, they are the ones with the energy. They are the ones on the school council. They are the ones on the city council. They are the movers and shakers of a community.

That is who the Navajo Nation is missing, because they all live in Albuquerque, Paige, Washington, D.C., Los Angeles. And they are the movers and shakers in these communities, whereas they should be back in Chinle, Tuba City, Kayenta, Shiprock, making those communities viable communities.

And so again, that is why it is important for us to get this in place, so our younger people can stay home and actively participate in our communities, and be an active part in developing our nations.

Mrs. NAPOLITANO. Great point. And you are very right; our youngsters, they are our future leaders. And if we don't get them where we need them, then we are not helping ourselves.

You referred to the data costs and CBO says there is no cost. That was my next question, what is your cost, and how are you paying for it? And is there any way of being able to determine what it really will help expedite? You said they are waiting, maybe, Mr.

Chair, we need to find out from BIA why the delay on these specific cases, if nothing else, to begin with. But also, why are they saying there is no cost when they have to go back and scrub? And are they using or developing a template to be able to use and say before those applications go in, these are the requirements that you will have to meet before we accept these applications, for whatever it is.

Mr. TRUJILLO. Well, again, Congressman, Mr. Chair, right now, looking at the exact waiting aspects of that, the costs in terms of the cleanup, right now we are looking at phases at this point as far as the Nation is concerned.

At this point, we are estimating about—well, we are looking for between \$8 to \$10 million to get some of these initial steps going.

I heard mentioned the TAMS system. We are not even touching the TAMS system, because again, there is a lot of concern about that whole system. The Nation has developed its own system that has, we are getting that before the ISO and ANCI to make sure it qualifies for those areas in terms of record management and record-keeping and security.

So we are looking at that process, too, to begin to develop that full process. We have been doing this piecemeal. I have been pulling nickels and dimes out wherever I can in order to get this thing going. Because we finally came to the determination in 2007, we can't wait, let us just go do it. And so that is what we have been doing.

So again, looking at the development of that, getting the necessary personnel to follow through on that, and because these records are so sensitive, there has to be training and there has to be security involved in this, too. So all of this costs money. And right now, like I said, we are looking at \$8 to \$10 million to get ourselves up to speed in terms of the initial personnel, and then also getting the data system in place so that we can convey that.

Now, we have done that within the Division of Natural Resources. We are also conveying this over land parcel status, so we can have not only surface information and description, but also subsurface. Because within my division, I have all those areas, as well as cultural, mineral rights, water rights, all those ties to the parcels of land.

But again, it starts from the very basics. We only have 25 percent of our land under the National Survey right now. The other pieces are still tied to roads, trees, rocks, hills. And so when we convey that information to get a title, it is shot back to us. And so again, we have to go and clean that historic information up so that there is a clear title, or a chain of title, so that the financial institutions can look at that both for mortgaging aspects, as well as, like I said right now, we are looking at equity.

Mrs. NAPOLITANO. Mr. Chair, I would like to ask one more question, and it has to do with TAMS. Is it something that is advantageous to any of the tribes? Were you consulted in being able to set it up? Is BIA aware of all the work that you are doing? Are they helping you add to your information to be able to add to the historic value?

Mr. TRUJILLO. We are in the processes of working with our regional office. We went ahead and basically took the bull by the

horns, and are developing this on our own, looking at what is needed in terms of record-keeping and what kind of security efforts we would need within the Nation.

We have done a lot of modifications on our leasing aspects. We are now going to home-site leasing. We have an eminent domain process in place. So the idea here is not how to build a system in order to make sure all of that is recorded, and we have access to that information on all the parcels of land.

And so basically what we are looking at, Congresswoman, is eventually coming to the point where we take over the title plan. And we have that under our jurisdiction for Navajo land. By that means we obtain not only then to put these packets together, but we will also convey it and get those issues out to our people.

On the local side, we have also gone to what is known as local governance, meaning now we are beginning, as was noted before. On tribal lands you have to, because it is designated as Federal land, whenever you do anything, even up to a home-site lease, that is a Federal action. Meaning we have to follow through with NEPA. We have to do an environmental assessment, we have to do an archaeological clearance, we have to do all those things.

What we have now designated is to have chapters go out and develop land use plans by which they are now going on larger tracts of land to do this clearancing. So in essence, we are beginning to look at zoning for our local areas. So that when a person wants a home-site lease in an area, and it is designated as a residential area, they don't have to go through NEPA or archaeological work. They already have that done.

But again, all of this has to be recorded, and it has to be applied to the parcels of land that we have out there. So that is the system that we are putting together, with the idea that, based off of the Navajo Leasing Act, if other tribes wish to utilize the system that we have developed, we are open to that. Because again, we are building this with the idea of looking at Trust land and keep simple lands in mind. Which is different than lands that are outside the reservation.

Mrs. NAPOLITANO. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Inslee.

Mr. INSLEE. Thank you, and thanks for the Colville leader for coming. I appreciate it.

I want to note that Mr. Hastings is proud of having representing the Colville Nation. And I just wanted to point out that I represented it before Mr. Hastings, so I just want to make sure that I have seniority in regard to the Colville. I am sure he respects that.

Council member Moses, I read your testimony. I didn't get to listen to it, but I read it. But you talked in there about the sort of procedural aspects of being able to handle the leaseholds to a system that would be faster to the current system. You alluded to the delays and just the procedural aspects of that. Could you talk about how you think this legislation could help or hurt in that regard?

Mr. MOSES. Just by getting the BIA to begin recognizing their trust responsibilities, and to—the only way they can actually get things going is to get a new system, new computer system



altogether. I think they got a new computer system about four or five years ago, and it was antiquated then. Nobody wanted it except the BIA.

If they went to a system, an automated system that was comparable to IBM or something like that, then they wouldn't have the problems of not being able to update their hardware in a timely fashion. And that would be comparable to the tribe system, you know.

We are probably in the 21st Century; the BIA is still in the 19th Century. You know, we have the laptop computers or Blackberries, and they still have the big, huge, antiquated systems. If they were able to update their automated systems, then that would go a long way to getting rid of some of the backlogs that they have.

Funding, again—everything I think points to funding. The Congresswoman asked the question about getting us out from under the BIA. I am not a real supporter of the Bureau, but I am not a supporter of BLM or any of those other agencies. Because they are worse on Indian affairs than you would have thought. They split the BIA in half and created an Office of Special Trust. Now, that really did nothing to enhance the dealings with Indians in the government.

In fact, it slowed everything down more so, because they took away the funding that the BIA had, which was woefully underfunded to begin with. And now they have the Office of Special Trust, which has a lot of funding, but they don't do much for Indian country.

So if they were to automate themselves, get the BIA automated, get them comparable with the Indian tribes that they are supposedly over, then I think we would have a lot of these problems solved.

Mr. INSLEE. Thank you, that is helpful. I appreciate it. Say hello to our friends at home.

Mr. MOSES. Will do.

The CHAIRMAN. Any other Members with questions? If not, the Committee wishes to thank each of the panelists for taking the time and the travel and effort to be with us today. The testimony has been very helpful to us.

And again, the Chair wishes to commend the gentleman from New Mexico, Mr. Heinrich, for his tremendous leadership and introduction of this legislation. And we look forward to working and continuing to work with all the parties.

Thank you. The Committee on Natural Resources stands adjourned.

[Whereupon, at 12:20 p.m., the Committee was adjourned.]

