

**S. 2165, S. 2716, S. 2912, S. 3019, S. 3044,
S. 3099, AND S. 3100**

HEARING
BEFORE THE
COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS
SECOND SESSION

—————
JUNE 24, 2020
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WEDNESDAY, JUNE 24, 2020

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:30 p.m. in room 562, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon. I will call this legislative hearing to order.

Before we begin, I want to remind those members who are connecting with us remotely to please mute your microphone. This will cut down on the static feedback in the hearing room.

In addition to the Senators in the room right now, also attending remotely are Senators McSally, Tester, Cortez Masto, and Murkowski.

Today the Committee will receive testimony on seven bills, S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019; S. 2716, A Bill to Amend the Grand Ronde Reservation Act, and for other purposes; S. 2912, the Blackwater Trading Post Land Transfer Act; S. 3019, the Montana Water Rights Protection Act; S. 3044, the Western Tribal Water Infrastructure Act of 2019; S. 3099, the Southeast Alaska Regional Health Consortium Land Transfer Act of 2019; and S. 3100, the Alaska Native Tribal Health Consortium Land Transfer Act of 2019.

On July 18th, 2019, Senator Henrich introduced S. 2165, the Safeguard Tribal Acts of Patrimony Act. This legislation is centered on providing additional legal protection to Native American tribal artifacts and sacred objects, by creating an explicit prohibition on exporting cultural heritage obtained in violation of the Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, or the Antiquities Act.

The bill also sets forth an exporter certification system to accompany this export prohibition. Such a prohibition makes it possible for tribes to utilize other countries' domestic laws and law enforcement mechanisms to regain their cultural heritage.

The STOP Act confirms the President's authority to enter into agreements under a 1970 international treaty in order to request the return of tribal cultural heritage from other countries. The au-

thorization of such agreements, paired with the export prohibition and export certification system, will ensure the United States has the tools necessary to utilize this treaty.

The STOP Act also creates a Federal framework to support the voluntary return of Native American tangible cultural heritage. This includes establishing a referral program at the Department of Interior that will assist individuals in finding a tribe with a cultural affiliation to tangible cultural heritage for the purposes of proper return. Lastly, S. 2165 creates a Federal working group to ensure coordination between Federal agencies and a tribal working group to make recommendations and request agency action to assist in returning cultural items to the tribe.

As part of the record for this bill, I have asked the Department of State and the Department of Justice to send their testimony on this bill by July 1st. In addition, my staff has also been in touch with the Department of Homeland Security to also secure testimony for the record on this bill.

We have also received testimony from the Authentic Tribal Art Dealers Association, as well as from tribal leaders for the Department of Interior's testimony on the bill today.

On October 28, 2019, Senators Merkley and Wyden introduced S. 2716, A Bill to Amend the Grand Ronde Reservation Act and For Other Purposes. S. 2716 amends the Grand Ronde Reservation Act and is intended to resolve an error created by an 1871 land survey and later 1994 amendment to the Grand Ronde Reservation Act. The land survey left out 84 acres of the original tribe's reservation. This land became known as the Thompson Strip. The 1994 amendment included broader language that restricted compensation for any future land claims made by the tribe.

The bill will allow for the Confederated Tribes of Grand Ronde to relinquish its claims only to the Thompson Strip located in Oregon rather than all land claims, as the 1994 amendment made.

On November 20, 2019, Senators McSally and Sinema introduced S. 2912, the Blackwater Trading Post Land Transfer Act. This bill will authorize the Secretary of the Interior to take 55.3 acres of land located in Pinal County, Arizona, into trust for the benefit of the Gila River Indian Community. Under this bill, there is a prohibition on Class II and Class III Indian gaming on the land taken into trust.

On December 11, 2019, Senator Daines introduced S. 3019, the Montana Water Rights Protection Act. Senator Tester is an original co-sponsor. The Montana Water Rights Protection Act would approve and ratify the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, or CSKT water claims in the State of Montana.

Additionally, the bill authorizes the transfer of the National Bison Range to be held in trust by the United States for the benefit of the tribes and rehabilitates and modernizes the Flathead Indian Irrigation Project. This bill also settles many other water-related issues between the State of Montana and CSKT. This Indian water settlement would be the largest in American history.

On December 12, 2019, Senator Wyden introduced S. 3044, the Western Tribal Water Infrastructure Act of 2019, which would expand Section 2001 of the America's Water Infrastructure Act so

that it includes the Columbia River Basin Project. This bill also extends and authorizes \$10 million each year for such projects.

For this bill, I have asked the EPA to send in their testimony for the record.

On December 18, 2019, Senators Murkowski and Sullivan introduced S. 3099, the Southeast Alaska Regional Health Consortium Land Transfer Act of 2019. S. 3099 directs the Secretary of the Department of Health and Human Services to convey 10.87 acres of land located in Sitka, Alaska, to the Southeast Alaska Regional Health Consortium. The land is intended to continue to be used for providing health and social services to the local area, including the 18 Native communities in the area.

On December 18, 2019, Senators Murkowski and Sullivan introduced S. 3100, the Alaska Native Tribal Health Consortium Land Transfer Act of 2019. S. 3100 directs the Secretary of the Department of Health and Human Services to convey two parcels of land located in Anchorage, Alaska, to the Alaska Native Tribal Health Consortium. The land will be used to provide health and social services through the consortium.

Both S. 3099 and S. 3100 are similar to other bills that this Committee has approved, previously passed and have been signed into law in 2013, 2015, and 2018. Therefore, I have asked IHS to send in their testimony for the record instead of appearing today.

With that, I would turn to Vice Chairman Udall for his opening statement.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Thank you, Mr. Chairman, and thank you for scheduling today's hearing.

Before I turn to the bills before us today, I want to acknowledge the ongoing toll of the Covid-19 pandemic and the impact and what it has done and the impact it has had on tribal communities across the Country. Over the past months, it has been devastating to hear that Covid-19 has disproportionately impacted the most vulnerable. In my home State of New Mexico and across the Country, tribal communities have been on the front lines fighting this pandemic, all while bearing the weight of historic funding gaps for health care infrastructure and economic resources.

So it is a dereliction of duty, it is unconscionable how long it took this Administration to allocate the \$8 billion in relief funding set aside for tribal governments under the CARES Act.

But this is a topic our Committee will be delving into further next month. Today we will hear testimony on seven bills that broadly focus on protecting and advancing tribal sovereignty. Collectively, these bills aim to protect cultural patrimony, protect tribal interests and land, and fulfill the Federal trust responsibility to tribes by settling claims to water rights and authorizing substantial investments in water infrastructure.

Two of these bills, the Montana Water Rights Project Act, and the Western Tribal Water Infrastructure Act of 2019 aim to remedy decades of Federal neglect of water infrastructure serving tribal communities. Covid-19 has exposed the consequences of this Federal neglect. The need to frequently wash hands is hampered when

communities lack running water. Social distancing is challenging when individuals must travel long distances to common water systems and haul water back to their homes.

Water and wastewater infrastructure in tribal communities is critical to responding to this pandemic, and Congress must consider that fact when moving to any future Covid-19 emergency response legislation.

As for the Montana Water Rights Project Act, formerly known as the Kalish Kootenai Water Rights Settlement Act, I am pleased to hear that the tribe has made significant progress with the Administration in negotiating this settlement. Indian water rights settlements are critical to all our western water users, providing certainty, resolving longstanding conflicts, and fulfilling the Federal Government's trust responsibility.

But without a dependable source of funding, settlements like this one cannot be formally implemented. This Committee agreed when it unanimously approved a ten-year extension to the Reclamation Water Settlement Fund earlier this Congress. So I ask that this Committee once again come together to support the extension of the fund so that tribes can count on funding to fully implement their water rights settlements now and well into the future.

Turning to the STOP Act, this bill would prohibit the exportation of sacred, cultural patrimony and increase penalties for stealing and illegally trafficking these items. This is an important piece of legislation that I strongly support. It will provide tribes and Native Hawaiian organizations with the tools to prevent theft, sale, and export of their cultural patrimony.

I would like to thank my New Mexico colleague, Senator Heinrich, who is here with us today, for his leadership on this bill and for being a strong advocate for getting this through the Senate. I want to thank you, Mr. Chairman, for calling this hearing. I look forward to the testimony from our witnesses today.

Thank you.

The CHAIRMAN. Thank you, Vice Chairman Udall.

Before going to our witnesses, are there other opening statements members wish to make? Senator Daines?

**STATEMENT OF HON. STEVE DAINES,
U.S. SENATOR FROM MONTANA**

Senator DAINES. Thank you, Mr. Chairman.

In Montana, we have a saying, whiskey is for drinking, water is for fighting. Settling the century-old Confederated Salish and Kootenai Tribe, or the CSKT water dispute, has been no different. For years, this has been a polarizing issue in Montana. That is why I have been working in the U.S. Senate to resolve this dispute, negotiating with the tribe, local leaders, farmers and ranchers, State legislators, county commissioners, the Administration, and other key stakeholders, to find a solution, one that permanently settles the CSKT water dispute, protects the water rights of all Montanans, and avoids costly litigation.

In November of last year, a Federal circuit court found that the senior water rights of the tribes and their treaties to protect fisheries are paramount. In fact, the farmers and the ranchers in Oregon and northern California went through 18 years of costly litiga-

tion. After all that time and money and uncertainty, the court sided with the tribes in a three-way decision, a unanimous decision.

In fact, just yesterday, the United States Supreme Court denied hearing an appeal to this case, and effectively upheld the lower court's opinion that in-stream flow rights to protect fisheries are covered under the Winters Doctrine. That decision provides additional context as to why we are here today. We have a constitutional duty to bring resolution to the CSKT water dispute, helping the tribe quantify and realize the water they are entitled to under the Hellgate Treaty as well as 100 years of Federal court precedence.

We must also provide a practical solution to resolve the significant liability for the United States to protect Montana's agricultural economy, and as I mentioned earlier, protect the water rights of all Montanans. Let me provide some perspective on this. In 2015, the CSKT and the Federal Government on the tribes' behalf filed over 10,000 claims in the Montana Water Court, placing over 1.85 million acres, or 70 percent of Montana's irrigated land, at risk for losing its water.

This past January, the Montana Water Court's stay on thousands of these water rights claims, there were five on the CSKT and the reservation, was set to expire. If that stay expired, those claims could have been enforced immediately until a water court judge completes the adjudication of the claims, which would take decades and jeopardize the vast majority of the irrigated land in Montana, and casting uncertainty on landowners' property values for decades.

As a fifth generation Montanan who cares greatly about the ag economy and water rights of all Montanans, this is a risk I would not let Montana families and farmers take. With the introduction of this Federal legislation, the water court judge agreed to extend that stay for three more years. Both Secretary of the Interior David Bernhardt and Attorney General Bill Barr stated the legislation is the best course of action and that they support legislation versus litigation, which is what this bill does.

Importantly, this bill protects the water rights of all Montanans, permanently settles the water rights dispute, and reduces the cost to the taxpayer, and it creates jobs. A study has shown that this bill would create thousands of jobs by injecting \$1.9 billion to rehabilitate the Flathead Indian Irrigation Project, and reserves \$10 million specifically for Lake and Sanders Counties for related road maintenance. In addition to resolving this longstanding dispute, this is a jobs and infrastructure bill.

Without this legislation, the Flathead Irrigation Project could be decommissioned due to Federal statute, water quality and Endangered Species Act violations, which would cost taxpayers billions of dollars and would devastate the economies of Lake and Sanders Counties.

Finally, I also work to ensure there is increased transparency and accountability for the Federal dollars spent on this legislation. The Montana Water Rights Protection Act protects Montana's sovereignty, and reaffirms Montana's State constitution, stating that

Montana owns all of the water within State boundaries, and it prohibits the sale of water outside the State of Montana.

This legislation is a product of working for years with stakeholders from all sides, and a compromise that can move forward and one that can be signed into law.

With that, Mr. Chairman, I look forward to hearing the important testimony on this legislation.

The CHAIRMAN. Thank you.
Senator Heinrich.

**STATEMENT OF HON. MARTIN HEINRICH,
U.S. SENATOR FROM NEW MEXICO**

Senator HEINRICH. Thank you, Chairman Hoeven, and Vice Chairman Udall, for holding this hearing on my legislation, the Safeguarding Tribal Objects of Patrimony, or STOP Act. This bill's strong bipartisan support gives me hope that we can solve this problem for the tribal communities that we represent in the very near future.

The need for this legislation is straightforward. We all recognize the incredible beauty of American Indian art. Especially when you live in a State like New Mexico, you can explore and admire the remnants of ancient cultures in places like Chaco Canyon and the Gila Cliff Dwellings. You can discover both traditional and modern art masterpieces created by Native artists today.

But we can also recognize a clear difference between supporting tribal artists as opposed to dealing or exporting items that tribes have identified as essential and sacred pieces of their cultural heritage. This issue came to international attention in 2016, when Kurt Riley, then the governor of the Pueblo of Acoma, learned that a sacred ceremonial shield had been stolen and was about to be sold to the highest bidder at an auction house in Paris. When Governor Riley informed me about this robbery of the Pueblo's cultural patrimony, I called on the State Department to take all possible action to halt the auction.

Thankfully, intense public outcry and diplomatic pressure were enough to halt the illegal sale of the tribe's cultural patrimony. Finally, in November of 2019, more than three years after the shield was put on the auction block, it was voluntarily returned to the Pueblo. However, this only happened through the cooperation of the individual who put the shield up for auction in the first place.

There is still no Federal law prohibiting the export of items like the shield and requiring the cooperation of foreign governments in recovering them. And in many other cases, tribes in New Mexico and across the Nation have been forced to effectively pay a ransom or have to stand by and watch the sale of their priceless religious and cultural items in international markets.

Under current Federal law, it is a crime to sell these types of protected Native American cultural objects in the United States. Unfortunately, however, the penalties in the Archeological Resources Protection Act and the Native American Graves Protection and Repatriation Act are not nearly as high as other similar statutes, like the National Stolen Property Act. Prosecutions are far too infrequent to deter criminals from smuggling and selling these objects.

In addition, there is no explicit ban on exporting these items to foreign countries where they might be sold at auction, a fact that was cited repeatedly by the French government when the initially declined to stop the auction of the Acoma shield. That is why I introduced the Safeguard Tribal Objects of Patrimony Act, or the STOP Act. The STOP Act increases penalties for illegally trafficking tribal cultural patrimony and it also explicitly prohibits the exportation of these objects and creates an export certification system which will protect sacred objects under international law.

It also encourages the voluntary return of sacred objects held in private collections, because the highest priority of everyone involved in this issue is to see these sacred items returned home to where they belong.

I appreciate the collaboration and support that we have had with New Mexico's Pueblos, the Jicarilla and Mescalero Apache Nations, the Navajo Nation, and tribes across Indian Country, to craft the STOP Act. I am proud that the STOP Act has the support of the National Congress of American Indians, the All Indian Pueblo Council, the United South and Eastern Tribes Sovereignty Protection Fund, the Great Plains Tribal Chairmen's Association, the Midwest Alliance of Sovereign Tribes, and many more individual tribes across the Country. The widespread support for the STOP Act across Indian Country is unfortunate evidence of how widespread theft and illegal sales of tribal patrimony have been.

When I first introduced the Act in 2016, I met with high school students from the Santa Fe Indian School's Leadership Institute, who had come to Capitol Hill to advocate for important issues in their communities. These students shared with me a position paper they had prepared on the STOP Act and they also shared personal stories about how important protecting cultural items is to their generation.

Listening to what these incredible young people had to say reinforced the urgency with which we must act. We need to take all possible action to repatriate stolen culturally significant items to their rightful owners. Again, I am grateful for your holding this hearing, Chairman Hoeven and Vice Chairman Udall. I hope that we will work together to pass the STOP Act in the full Senate as soon as possible.

Thank you.

The CHAIRMAN. Thank you.

Senator Murkowski.

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman, and to Senator Udall, for holding this hearing.

We have two Alaska-related bills on the table here, the Southeast Alaska Regional Health Consortium Land Transfer Act, as well as the Alaska Native Tribal Health Consortium Land Transfer Act.

I also want to thank and acknowledge the leadership of Senator Heinrich on the STOP Act, the Safeguard Tribal Objects of Patrimony Act of 2019. I am lead co-sponsor of that. As he has pointed

out, there is a great deal of support for that, certainly including many of the tribes in Alaska.

As to the two land transfers, I do appreciate the Committee's time and consideration of these bills. These are necessary to ensure that Alaska's lands and health care resources are used in the best possible way.

I am reminded when I look at the bills, and one is transferring 10 acres of land down in Sitka, so that SEARHC can improve the health care provided within the southeast Alaska region, and at the Mount Edgecumbe Medical Center campus there in Sitka. SEARHC services an area over 42,000 square miles of the southeast Alaska panhandle. There are no roads connecting most of the rural communities that they serve. So what SEARHC is seeking to do is construct a hospital that is able to meet the needs, to improve the patient care and help deliver the best possible care for generations.

We also recognize that when you have lousy facilities, it is really tough to get good providers to be recruited. So an exchange of 10 acres is actually going to help.

As it relates to the ANTHC, again, that is a simple transfer between HHS and IHS in order to facilitate, again, better access to care. So this is a transfer of two parcels of HHS land to the ANTHC. Again, pretty simple, straightforward.

As to the STOP Act, I want to speak very briefly to this. Senator Heinrich has addressed what the bill does by creating this certification system that requires exporters of items that qualify as Native American cultural items or archeological resources to apply for a certificate, so that we are ensuring that only legally obtained items are eligible for removal to other countries.

In Alaska, I have heard on numerous occasions from one of our strong Native cultural leaders, Dr. Rosita Worl, of the Sealaska Heritage Institute, she tells the story time and time again how her people have attempted to repatriate their at.oow, these are the sacred objects that are held by entities overseas. And the same situation, they are basically auctioned off to the highest bidder.

These sacred objects, of course, are very personal to the Native people, believed to hold or host the spirits of their ancestors. But then when you see these objects sold to individuals, oftentimes sold to folk who will place them in private holdings, further alienating them from the communities where they belong, it is yet further injustice.

So I think the STOP Act, if we are able to advance this, will be a step in the right direction, provide the tools to stop this loss, and really the sorrow, the cultural sorry that arises with it. So I am pleased to be able to support Senator Heinrich in this effort.

Thank you for the assistance with these two land transfers.

The CHAIRMAN. Thank you.

Senator Cantwell.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. I will try to be brief if I can. We are having important testimony today on bills that provide tribes water rights and increase the access to safe

drinking water. I would be remiss if I didn't talk about the need for more resources on these issues, and providing tribes with clean and safe water infrastructure.

Many tribes throughout the west suffer with inadequate water infrastructure and lack the ability to improve water quality. In the State of Washington, clean water has long been a treaty right for our tribes. Access to clean water is a crucial aspect of health, culture, and economy of the tribes in Washington State.

However, most of the tribes still grapple with toxins in the water and struggle with building the infrastructure required for safe drinking water. I believe we need to provide more Federal resources and significantly improve Federal programs that exist, so tribes do not have to worry about how to keep their individual members safe. So we will be asking or submitting questions for Mr. Petty and Mr. LaCounte on how do we help tribes in this area.

Also, I wanted to mention that the CARES Act did provide a significant level of assistance to tribes to promote issues during the pandemic, including funds, at least \$10 million, through IHS, to help meet potable water needs in Indian Country. However, we need to make sure the money is actually getting to the tribes so they have access to potable water during the pandemic.

So I think there is a lot more we should be doing here to make sure that they have access. I do want to also bring up, as people may be aware, this spring, the Kalispell Tribe in my State sued the Federal Government and several corporations over the contamination in drinking water sources with the chemical PFAS. This is a very important issue, as my colleagues know. A recent study by the area's CDC Agency for Toxic Substances and Disease Registry found that individuals in the same area have levels of certain PFAS chemicals far higher than the national average.

So these dangerous chemicals have been found in drinking water throughout the area. We need to help tribal reservations make sure that they can take action on these issues. We need to do everything we can to make sure that we aren't just assuming the tribal reservations are going to just be dealing with potable water in the future.

So I know that any time, as you have already said with several of my colleagues, water, very big issues. But with Indian Country also, very big issues.

Thank you.

The CHAIRMAN. Thank you.

We have several members who would like to make opening statements who will do so remotely. We will start with Senator McSally.

**STATEMENT OF HON. MARTHA McSALLY,
U.S. SENATOR FROM ARIZONA**

Senator McSALLY. Thank you, Chairman Hoeven and Vice Chairman Udall. Thanks for holding the legislative hearing today on S. 2912, the Blackwater Trading Post Land Transfer Act.

This legislation, while simple, is very important to the Gila River Indian Community from Arizona. The legislation authorizes the Secretary of the Interior to take 55.3 acres of land into trust for the Gila River Indian Community. The parcel is bordered by the

reservation on three sides and is contiguous, but exterior to the current reservation boundaries.

Normally, such a land in trust acquisition would be a simple administrative action by the Department of Interior that wouldn't need Congressional consideration and action. But the community's 2004 water settlement included a provision that requires Indian land in trust exterior to the reservation boundaries to go through Congress.

The land that will be taken into trust has historically and culturally been important to the community. The Blackwater Trading Post existed on this land in one form or another since at least 1926. The trading post is similar to those found throughout Indian Country, where tribal members would go for groceries and other goods. When a tribal member couldn't pay, they would trade baskets, pottery, and other items for those goods.

By the time the tribe purchased the land and the trading post backed from the Ellis family in 2010, there were over 1,000 items, including baskets, pottery, and other artifacts that are now housed in the community's heritage center. The lands already owned by the tribe and putting the land into trust will ensure this important parcel will be acknowledged as an important piece of the community's history, and can be put to good use for the entire community, and especially the tribal members in District One where the parcel is located.

The legislation is bipartisan, has no opposition, has the support of the entire Arizona delegation, and has no cost. But it literally takes an act of Congress to get this done. So I want to thank the Department for their support of this legislation and the Committee for the hearing. I look forward to working with all of you to pass this legislation into law this year.

Thank you.

The CHAIRMAN. Thank you, Senator McSally.

Also, for another statement remotely, Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Chairman Hoeven and Ranking Member Udall. I appreciate your having this hearing on a number of very, very important bills.

I am just going to address one of them, the CSKT water settlement. I am very pleased that this is once again in front of the Committee. This moment has been decades in the making. I will be brief and just say this: it does great things for growing infrastructure, both inside the reservation and outside. It does great things for providing surety in towns and water owners across Montana, especially the western half of Montana.

And you know this, Chairman Hoeven, particularly, there is a saying in water settlements, first in time, first in line. It is hard to get ahead of Native Americans as far as being first in time.

Consequently, we need this. We need this water settlement for Montana. We need it for predictability. We need it for certainty. We need to be able to continue to grow our economy.

Another statement that has always been said is water is life. That's how important it is because it literally is life.

I appreciate the Committee hearing this today. I appreciate the Administration supporting this water compact, and I look forward to a positive vote and getting this water compact to the Floor.

Thank you, Mr. Chairman and Ranking Member Udall.

The CHAIRMAN. Thank you, Senator Tester.

And also providing a statement remotely will be Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Chairman. I am actually read to get on with the hearing if everyone else is. Thank you.

The CHAIRMAN. Thank you.

Today we passed 22 bills through the full Senate. So bills that have come through this Committee, we have passed 22 bills through the Senate. Six of those have been signed into law. So there are 16 pending in the House. We need to remember to continue to reach out to our friends in the House and try to get them to move on those 16 bills that we have pending. We have bipartisan support, I believe, all of them have bipartisan support, do they not?

And we have seven more here we would like to pass as well. So I would just remind you that we have been able to move bills in a bipartisan bill. We want to continue to do that. And we want to reach out to our House counterparts to get them to move some of these bills that we have been able to move through the full Senate, again, on a bipartisan basis.

With that, we will turn to our witnesses. Today we will hear from the Honorable Tim Petty, Assistant Secretary, Office of Water and Science at the U.S. Department of the Interior here in Washington, D.C. And then from Mr. Darryl LaCounte, who is Director of the Bureau of Indian Affairs, again based here in D.C.

I want to remind the witnesses, your full testimony will be made part of the official record. So if you would keep your opening statement to five minutes, and then we will go to questioning.

With that, I will turn first to Director LaCounte.

**STATEMENT OF DARRYL LACOUNTE, DIRECTOR, BUREAU OF
INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR**

Mr. LACOUNTE. Good afternoon, Chairman Hoeven, Vice Chairman Udall, and members of the Committee.

My name is Darryl LaCounte. I am the Director of the Bureau of Indian Affairs at the Department of the Interior.

Thank you for the opportunity to provide testimony on behalf of the Department regarding S. 2716, a bill to amend the Grand Ronde Reservation Act; and S. 2912, the Blackwater Trading Post Land Transfer Act.

In 1954, the Confederated Tribes of the Grand Ronde Community was congressionally terminated pursuant to P.L. 83-588. Twenty-nine years later, Congress restored the Tribe's Federal recognition, rights, and privileges with the Grand Ronde Restoration Act, pursuant to P.L. 98-165.

In 1988, Congress established a 9,811-acre reservation for the Tribe, pursuant to P.L. 100-425, and through subsequent amend-

ments, the Tribe's reservation grew to 9,879 acres. In 1994, the reservation acreage total grew to 10,120 acres, pursuant to P.L. 103-435, also called the 1994 Act.

After Congress re-established a reservation for the Tribe, the Tribe learned that an 1871 survey used to define the Tribe's original reservation boundaries contained an error, and that an 84-acre parcel known as the Thompson Strip was excluded from its reservation. To resolve this exclusion, the BLM and the Tribe entered into a land claim settlement wherein the BLM exchanged a 240-acre parcel for the Tribe's Thompson Strip.

The 1994 Act made that 240-acre parcel part of the Tribe's reservation and extinguished all of the Tribe's land claims in the State of Oregon. S. 2716 redefines the claims extinguished in the 1994 Act, turning the statewide extinguishment of the Tribe's land claims into a limited extinguishment for the Thompson Strip, pursuant to S. 2716, which also makes land obtained by the Tribe as part of a land claim settlement approved by the United States ineligible for class II and class III gaming under the Indian Gaming Regulatory Act, which is 25 U.S.C. § 2701.

In general, the Department would not be supportive of measures that might result in additional Federal liability for previously extinguished land claims. While the legislative history does not directly address the statewide claims extinguishment section of the 1994 Act, the Tribe had the opportunity to oppose that provision on the record. The Department encourages the Committee to pursue further investigation of the land claim settlement which resulted in P.L. 103-435 to determine if S. 2716 would be appropriate.

Moving to S. 2912, the Blackwater Trading Post Land Transfer Act. S. 2912, the Blackwater Trading Post Land Transfer Act, directs the Secretary of the Interior to take approximately 55.3 acres of land located in Pinal County, Arizona into trust for the benefit of the Gila River Indian Community. S. 2912 also prohibits Class II and III gaming under the Indian Gaming Regulatory Act on the land taken into trust for the Gila River Indian Community pursuant to this bill.

Administering trust lands is an important responsibility that the United States undertakes on behalf of Indian tribes. Through its plenary authority over Indian Affairs, Congress can direct the Department to accept and administer lands to be held in trust as it does in S. 2912. The Department supports S. 2912.

Mr. Chairman, thank you for this opportunity to testify today. Mr. Vice Chairman, thank you. I am glad to answer any questions the Committee may have.

[The prepared statement of Mr. LaCounte follows:]

PREPARED STATEMENT OF DARRYL LACOUNTE, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee. My name is Darryl LaCounte and I am the Director of the Bureau of Indian Affairs (BIA) at the Department of the Interior (Department).

Thank you for the opportunity to provide testimony on behalf of the Department regarding S. 2716, a bill to amend the Grand Ronde Reservation Act; S. 2912, the Blackwater Trading Post Land Transfer Act; and S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019.

S. 2716, a bill to amend the Grand Ronde Reservation Act

In 1954, the Confederated Tribes of the Grand Ronde Community (Tribe) was congressionally terminated, P.L. 83–588. Twenty-nine years later, Congress restored the Tribe’s federal recognition, rights, and privileges with the Grand Ronde Restoration Act, P.L. 98–165. In 1988, Congress established a 9,811-acre reservation for the Tribe, P.L. 100–425, and through subsequent amendments, the Tribe’s reservation grew to 9,879 acres. In 1994, the reservation acreage total grew to 10,120 acres, P.L. 103–435 (1994 Act).

After Congress re-established a reservation for the Tribe, the Tribe learned that an 1871 survey used to define the Tribe’s original reservation boundaries contained an error, and that an 84-acre parcel known as the “Thompson Strip” was excluded from its reservation. To resolve this exclusion, the Department’s Bureau of Land Management (BLM) and Tribe entered into a land claim settlement wherein the BLM exchanged a 240-acre parcel for the Tribe’s Thompson Strip. The 1994 Act made that 240-acre parcel part of the Tribe’s reservation and extinguished all of the Tribe’s land claims in the State of Oregon.

S. 2716 redefines the claims extinguished in the 1994 Act, turning the statewide extinguishment of the Tribe’s land claims into a limited extinguishment for the Thompson Strip. S. 2716 also makes land obtained by the Tribe as part of a land claim settlement approved by the United States ineligible for class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.).

In general, the Department would not be supportive of measures that might result in additional federal liability for previously extinguished land claims. While the legislative history does not directly address the statewide claims extinguishment section of the 1994 Act, the Tribe had the opportunity to oppose that provision on the record. The Department encourages the Committee to pursue further investigation of the land claim settlement which resulted in P.L. 103–435 to determine if S. 2716 would be appropriate.

S. 2912, the Blackwater Trading Post Land Transfer Act

S. 2912, the Blackwater Trading Post Land Transfer Act, directs the Secretary of Interior to take approximately 55.3 acres of land located in Pinal County, Arizona into trust for the benefit of the Gila River Indian Community (Community). S. 2912 also prohibits class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.) on the land taken into trust for the Community pursuant to this bill. Administering trust lands is an important responsibility that the United States undertakes on behalf of Indian tribes. Through its plenary authority over Indian Affairs, Congress can direct the Department to accept and administer lands to be held in trust as it does in S. 2912. The Department supports S. 2912.

S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019

The purpose of S. 2165 is to prevent the export of wrongfully acquired items of Native American cultural heritage—including sacred items and items of cultural patrimony—and to encourage repatriation of these items both domestically and abroad. The Department appreciates that S. 2165 is intended to strengthen the legal framework to achieve those ends. The Department has worked with multiple Interior bureaus and offices, as well as the State Department, to provide such support in recent cases that resulted in a successful repatriation from Germany in 2018, New Zealand in 2019, and England in 2020. The Department supports the spirit of S. 2165 and looks forward to working with the Committee on the important issue of preventing the export of wrongfully acquired items of Native American cultural heritage. We have technical concerns regarding certain provisions of S. 2165, as discussed in my September 19, 2019 testimony on the companion bill, H.R. 3846, before the House Natural Resources Committee Subcommittee for Indigenous Peoples of the United States. We welcome the opportunity to work with the Committee to provide technical assistance.

Conclusion

Mr. Chairman, thank you for the opportunity to testify today. I am happy to answer any questions from the Committee.

The CHAIRMAN. Thank you, Director LaCounte.
I will turn to Assistant Secretary Petty.

**STATEMENT OF HON. TIMOTHY R. PETTY, Ph.D., ASSISTANT
SECRETARY, WATER AND SCIENCE, UNITED STATES
DEPARTMENT OF THE INTERIOR**

Mr. PETTY. Thank you, Chairman Hoeven, Vice Chairman Udall, members, both present and virtual. Thank you for allowing me to come today.

My name is Tim Petty. I am the Assistant Secretary for Water and Science at the Department of Interior. I am pleased to appear before you today to provide the Department's position on S. 3019, the Montana Water Rights Protection Act. The Department supports the goals of S. 3019, and if consensus language of a substitute bill that the Department and the Confederated Salish and Kootenai Tribes have agreed upon were to adopted, the Department could fully support the bill.

Before I begin discussing this settlement, I want to note that the Department supports the policy that negotiating Indian water rights settlements are preferred to protracted and divisive litigation. We have a strong track record of trying to support all the settlements. We are grateful to the Committee for holding this hearing today.

I also would like to recognize that the tribes and the States brought significant leadership qualities to negotiating the CSKT Compact approved by the Montana legislature in 2015 that both Senators Tester and Daines have specifically talked about. And the Department commends them for the substantial efforts they have made in negotiating a solution of the Tribes' water right claims, which have been among the most contentious and challenging to be addressed in tribal water settlements.

S. 3019 would authorize, ratify, and confirm the Compact, and provide funding for its implementation. The bill would provide \$1.9 billion to be used for a number of purposes, including rehabilitation and modernization of the Flathead Indian Irrigation Project, also known as FIIP; mitigation of damages to natural resources; constructing water and wastewater facilities on the Reservation is just to name a few.

In exchange for the benefits of S. 3019, the Tribes would waive and release all water rights claims and claims against the United States related to water rights, natural resource damages, operation, and maintenance of the FIIP, and other potential claims. S. 3019 provides significant and important benefits to the economy of not only the Reservation but also to the State of Montana. If enacted, the Department notes that almost 600 permanent jobs will be added to the economy, as well as almost 5,000 temporary construction and restoration jobs through rehabilitation and modernization of the irrigation system, and restoring natural resources damaged by those operations.

The Department supports the level of funding provided in S. 3019, in large part because the Department recognize the substantial costs associated with rehabilitating and modernizing the irrigation system in a way that preserves and increases in-stream flows while still maintaining the status quo for FIIP irrigators and preserving the agricultural economy in this region of the State of Montana.

While the Department has concerns with S. 3019 as introduced, principally that the bill lacks necessary assurances that settlement funds will be spent and sent to sufficiently rehabilitate and modernize the system and project, we have worked diligently with the tribes to address these concerns.

In conclusion, S. 3019 and the underlying compact are the product of a great deal of effort by many parties and reflect a desire by the people of Montana, Indian and non-Indian, to settle their differences through negotiation rather than litigation. This Administration shares that goal and is committed to finalizing this settlement after many years of hard work between the Tribes, the State, and the Montana congressional delegation to reach a final and fair settlement of the Tribes' water rights claims set forth.

Again, thank you, and am happy to answer any questions.
[The prepared statement of Mr. Petty follows:]

PREPARED STATEMENT OF HON. TIMOTHY R. PETTY, PH.D., ASSISTANT SECRETARY,
WATER AND SCIENCE, UNITED STATES DEPARTMENT OF THE INTERIOR

Chairman Hoeven, Vice Chairman Udall and members of the Committee. My name is Tim Petty, and I am the Assistant Secretary for Water and Science at the Department of the Interior (Department). I am pleased to appear before you today to provide the Department's position on S. 3019, the Montana Water Rights Protection Act. The Department supports the goals of S. 3019, but has concerns about the bill as introduced. We have reached agreement with the Confederated Salish and Kootenai Tribes (Tribes) on a redline amendment for the underlying bill. If that language were to be adopted, the Department could support the bill.

I. Introduction

Before I begin discussing this settlement, I want to note that the Department supports the policy that negotiated Indian water rights settlements are preferable to protracted and divisive litigation. Indian water rights settlements have the potential to resolve long-standing claims to water, provide certainty to water users, foster cooperation among water users within a watershed, allow for the development of water infrastructure, promote tribal sovereignty and self-sufficiency, and improve environmental and health conditions on Indian reservations.

The framework the Department follows to guide the negotiation of Indian water rights settlements, and the support for legislation to authorize these settlements, includes four general principles set forth in the Criteria and Procedures, 55 Fed. Reg. 9223 (Mar. 12, 1990). First, settlements must be consistent with the United States' trust responsibilities. Second, Indian tribes must receive equivalent benefits in exchange for the rights they, and the United States as trustee, release as part of a settlement. Third, Indian tribes must obtain the ability to realize value from confirmed water rights. Fourth, settlements must contain an appropriate cost-share by all parties benefiting from the settlement.

The Tribes have long been leaders in water and natural resources management. They have restored the ecosystem function of miles of streams; with the State of Montana, they co-manage the fishery on Flathead Lake, the largest freshwater body west of the Continental Divide; and they also operate the Selis Ksanka Qlispe Dam at Flathead Lake under a Federal license for producing hydroelectric power.

The Tribes and the State brought significant leadership qualities to negotiating the Confederated Salish and Kootenai-Montana Compact (Compact) approved by the Montana legislature in 2015. The Department commends them for the substantial efforts they have made in negotiating a resolution of the Tribes' water right claims, which have been among the most contentious to be addressed in a tribal water settlement.

II. Historical Context¹

The aboriginal homeland of the Tribes is located in present-day western Montana, northern Idaho, and north into Canada. In 1855, the Tribes and the United States entered into the Hellgate Treaty. Under the Treaty, the Tribes ceded to the United States a significant portion of their aboriginal territory and reserved to themselves the Flathead Indian Reservation (Reservation) in northwestern Montana. The Hellgate Treaty expressly reserved to the Tribes rights of hunting, fishing, and gathering both on- and off-Reservation. In addition, the Treaty recognized the Tribes' right to an agrarian lifestyle based on the extensive lands within the Reservation that are economically viable agricultural lands.

For over a century, there have been extensive and bitter disputes over the Tribes' water rights and resources. The root of many of these conflicts is the 1904 Flathead Allotment Act and subsequent amendments in 1908. The 1904 Act, over objections from the Tribes, directed the allotment of Reservation lands to individual Indians and authorized the disposal of "surplus" unallotted land for non-Indian homestead entry. The 1908 amendment authorized the construction of a greatly expanded irrigation system to serve irrigable lands on the Reservation owned by both Indians and non-Indians. This irrigation system became known as the Flathead Indian Irrigation Project (FIIP). Over the next few decades, FIIP was constructed to irrigate approximately 130,000 acres and currently serves 132,077 acres. By the 1930s, most of the lands allotted to individual Tribal members within FIIP were no longer in Indian ownership. Currently, nearly 90 percent of the lands irrigated by FIIP are owned by non-Indians. The Bureau of Indian Affairs (BIA) owns and operates FIIP.

Much of the irrigation water supply used by FIIP is diverted directly from several streams that also support the Tribes' reserved fisheries, which has created serious conflicts. In a series of interrelated lawsuits in the 1980s, courts conclusively confirmed that the Tribes are entitled to instream flow water rights sufficient to support fishery resources and the Tribes' treaty-reserved fishing rights. The courts further found that these reserved instream flow rights have a priority date of time immemorial and thus are senior to the irrigation water rights for FIIP. Since the 1980s, there has been an impasse on the Reservation between the need for instream flows for fishery purposes and irrigation demands. The BIA continues to operate FIIP, information developed over many years indicates that the existing minimum flow protections are not adequate. Population growth on and near the Reservation over the past few decades has also increased the demand for water resources, further exacerbating these conflicts. The Tribes and the United States also asserted numerous senior water rights claims off the Reservation that create uncertainty about current and future water uses across a large section of Montana.

III. Salish and Kootenai Water Rights Compact and Proposed Legislation

A. Negotiations

Seeking to avoid costly litigation, provide certainty for all water users, and meet the needs of all parties, the State of Montana, the Tribes, and the United States have engaged in decades of negotiations. These negotiations resulted in the Compact, which was approved by the Montana legislature in 2015. The Compact is a comprehensive resolution of all the Tribes' water right claims and includes irrigation, domestic, instream flow, and other water rights to meet the Tribes' current and future needs on the Reservation. Off-reservation water right claims are also resolved as discussed below.

B. S. 3019

S. 3019 would authorize, ratify, and confirm the Compact, and provide funding for its implementation. The bill would provide \$1.9 billion to be used for a number of purposes, including: rehabilitation and modernization of the FIIP; mitigation of damages to natural resources; administration and implementation of the Tribal water rights; construction of livestock fencing; installation of devices to prevent fish entrainment; construction and maintenance of community water distribution and wastewater facilities; and repair and replacement of certain culverts, bridges and roads. It would ratify the Tribal water right and, in conformance with the Compact, would direct the Secretary to allocate to the Tribes 90,000 acre-feet per year of storage water from Hungry Horse Reservoir "for use by the Tribes for any beneficial purpose on or off the Reservation." The Compact also provides a unique and carefully crafted framework for the administration of water rights on the Reservation

¹For a more complete statement about the Tribes' history, please see the Department's 2016 testimony on S. 3013, Salish and Kootenai Water Rights Settlement Act of 2016, available at: <https://www.doi.gov/oc/s-3013>.

through the Unitary Administration and Management Ordinance (or Law of Administration), which proscribes the process to (1) register existing uses of water; (2) change water rights; and (3) provide for new water development. In a November 18, 2019 letter to Senator Daines, Secretary of the Interior David L. Bernhardt set out the conclusions of the Department that the Compact would appropriately resolve the FIIP water supply and the Tribes' water right claims and that the Unitary Administration and Management Ordinance is protective of the rights of both non-Indian and Indian water right holders on the Reservation.

In exchange for the benefits of S.3019, the Tribes would waive and release all their water rights claims and claims against the United States related to water rights, natural resource damages, operation and maintenance of the FIIP, and other potential claims.

S. 3019 provides significant and important benefits to the economy of the Reservation and the State of Montana. Significantly, by ratifying the Compact, S. 3019 protects valid existing non-Indian water uses and commits to meet "Historic Farm Deliveries" for irrigators served by FIIP. In so doing, the bill provides substantial benefits to non-Indian irrigators by keeping them "whole." The United States and the Tribe have filed extensive water claims in the general stream adjudication underlying this settlement. Absent settlement of those claims, the amount of water available to FIIP irrigators may be reduced so substantially as to render FIIP nonviable. It is expected that loss of water would result in a conversion of irrigated agriculture to lower-valued dryland agriculture on the Reservation. This conversion could result in a reduction of net returns to farming of approximately \$356 million in present value terms over 50 years.

The United States will not be able to simply walk away from a nonviable FIIP but would likely have to decommission it in order to protect lives and property. FIIP delivers water through nearly 1,300 miles of canals and laterals. There are about 10,000 structures, which include 17 dams and storage reservoirs. The reservoirs have a combined capacity of approximately 160,500 acre-feet. There are three major pumping facilities that help to supplement water supplies in portions of FIIP. FIIP consists of four management divisions: the Jocko Division (about 11,000 irrigated acres), the Camas Division (about 13,000 irrigated acres), the North Division (about 52,000 irrigated acres), and the South Division (about 52,000 irrigated acres). Estimates of the cost for the United States to decommission FIIP exceed a billion dollars.

The benefits of S. 3019 are not limited to on-Reservation farming. Nearly all of these claims recognized in the Compact are being relinquished by the Tribe under the terms of the bill. The Tribe and the United States also filed water rights claims in off-Reservation streams in western and parts of eastern Montana. If successfully litigated, these claims could result in reduced water deliveries to irrigators in these areas, resulting in an estimated reduction in off-Reservation irrigator net income of \$146 million in present value over 50 years.

In addition to avoiding losses in farm net income, S. 3019 supports positive economic activity associated with continued irrigated agriculture (on- and off-Reservation), and economic activity expected to occur as a result of the funding provided to the Tribes in the bill. The waiver of water claims contained in S.3019 will allow continued irrigation on-Reservation, with an estimated economic contribution of approximately \$34 million in total annual labor income impacts (including direct farm income mentioned above, and indirect, and induced impacts); representing \$910 million in present value. As for off-Reservation impacts, continued irrigation in eastern and western Montana supports total annual labor income impacts estimated at approximately \$372 million in present value. In total, across all regions of the state, S. 3019 preserves agricultural economic activity that supports total labor income (including direct farm income from above and indirect, and induced impacts) of approximately \$47 million annually or \$1.3 billion in present value over 50 years.

The Trust Fund created by S. 3019 provides funding for programs that would create economic activity in the regional economy: modernization of FIIP infrastructure (to increase the water use efficiency of the system), restoration of stream channels and return flow sites to enhance fish habitat, and construction of community water systems. These activities support direct, indirect, and induced jobs. Cumulatively, S. 3019 is expected to support approximately 520 permanent jobs on or near the Reservation (of which approximately half are seasonal), and approximately 4,650 temporary construction and restoration jobs through rehabilitating and modernizing FIIP and restoring natural resources damaged by FIIP operations.

IV. Department of the Interior Positions on S. 3019

While the Department has a record of strong support for Indian water rights settlements and supports many elements of the Compact, the Department has concerns

with S. 3019 as introduced. The Department supports the level of funding provided in S. 3019, in large part because the Department recognizes that rehabilitating and modernizing FIIP in a way that preserves and increases instream flows while still maintaining the status quo for FIIP irrigators requires substantial costs. However, the Department is concerned that the introduced version of the bill lacks necessary assurances that settlement funds will be spent to sufficiently rehabilitate and modernize FIIP. Given that FIIP will remain in Federal ownership, the Department needs mechanisms in the legislation ensuring that settlement funds will be used for these intended purposes. We believe the negotiated redline addresses this concern.

Another issue of significant concern is the omission in S. 3109 of a prohibition on per capita distribution of settlement funds. The Criteria and Procedures that guide the Administration's participation in Indian water rights specifically disapprove of per capita distributions. Virtually all of the 32 enacted Indian water rights settlements include provisions prohibiting per capita distribution. In this settlement, per capita distribution of funds to individual Tribal members would threaten the ability of the Tribes to carry out the essential purposes of the settlement, including rehabilitation and modernization of the FIIP; restoration of damages to natural resources; installation of devices to prevent fish entrainment; and construction and maintenance of community water distribution and wastewater facilities.

S. 3019 as introduced requires several technical corrections to clarify certain provisions and to aid in its implementation. The negotiated redline includes those technical corrections and the Department supports its adoption.

V. Conclusion

S. 3019 and the underlying Compact are the products of a great deal of effort by many parties and reflect a desire by the people of Montana—Indian and non-Indian—to settle their differences through negotiation rather than litigation. This Administration shares that goal and is committed to finalizing this settlement after many years of hard work between the Tribes, the State, and the Montana congressional delegation to reach a final and fair settlement of the Tribes' water rights claims.

Mr. Chairman, this concludes my written statement. I would be pleased to answer any questions the Committee may have.

The CHAIRMAN. Thank you. We will now proceed to questions, five-minute rounds. I will start with a question for you, Secretary Petty. The bill, S. 3019, Montana Water Rights Protection act, would allow additional acquisition improvements and additions of rehabilitating the Flathead Indian Irrigation Project.

How many additional projects will be entered into the Flathead Indian Irrigation Project? What can Congress do to make sure all BIA-owned irrigation systems are adequately addressed?

Mr. PETTY. Chairman, thank you for that question. That is a pretty extensive overview, and I really appreciated Senator Daines' opening comments of all the different claimants that are involved. So the overall number is part of even the red line items that we are working on.

And how those will break out, I don't actually have the exact numbers for you. But that is going to be part of the language set forth. So I will look forward to getting you that specific answer here in the near future.

The CHAIRMAN. Director LaCounte, according to the testimony provided by the Interior and Confederated Tribes of Grand Ronde, an error was made in the 1871 land survey, it left out 84 acres, leading to the 1994 Act that included negotiated land claims settlement over the Thompson Strip. The settlement included 240 acres, to become part of the tribe's reservation, and extinguished the tribe's right to bring any further land claims in Oregon.

So has the tribe and your department exhausted all possible negotiated solutions prior to the legislation?

Mr. LACOUNTE. To the best of my knowledge, yes. I haven't been personally involved in any of those negotiations, but to the best of my knowledge, yes.

The CHAIRMAN. All right. In Section 3 of S. 2912, there is language that requires the Secretary of the Interior to take the Blackwater Trading Post land into trust for the benefit of the Gila River Indian Community after the tribe meets four requirements. And each of these four actions that the tribe must meet relates to land being taken into trust.

Are these requirements needed to be explicitly included in the bill? If so, are there other requirements the Committee should consider adding?

Mr. LACOUNTE. Thank you for that question. I believe that Congress can act without any input from the department when it comes to Congressionally-manded fee to trust, for lack of a better word, land into trust. So I don't think that anything would be needed unless you, as a Congress, determine it to be needed.

I have had extensive experience with fee to trust, and I have actually enjoyed processing mandatory acquisitions, because I didn't have to jump through every hoop. So I would say, anything additional, absolutely not. Again, that is your authority.

The CHAIRMAN. So does anything in section 2 of the bill prohibit in any way the Secretary of Interior taking the land into trust, even if the tribe meets the four requirements? In other words, if they meet the four requirements, they are good to go?

Mr. LACOUNTE. Yes.

The CHAIRMAN. Okay, those are my questions. With that, I would turn to Vice Chairman Udall.

Senator UDALL. Thank you very much, Mr. Chairman. Let me start with a question to Mr. Petty.

Mr. Petty, the CSKT settlement includes a Federal cost share of \$1.9 billion, the largest figure associated with Indian water rights settlement in history. This cost must be viewed in the context of over \$30 billion in purported Federal liability. Last summer, this Committee unanimously approved by my bill to extend the Reclamation Water Settlement Fund for an additional 10 years. This extension would provide a reliable funding source for future settlements, including CSKT settlement.

Would the Reclamation Water Settlement Fund be a useful resource to fund Indian water rights settlements, and why would extending the fund benefit all water users?

Mr. PETTY. Senator, that is a great question, and thank you for asking. I think the Indian Water Rights at Department of Interior is a set structure, because it is a partnership for so many of the different bureaus within the Department of Interior. Just as I am here with a colleague from Interior, within the Bureau of Indian Affairs, it is a partnership with the Bureau of Indian Affairs, with Fish and Wildlife Service, with even obviously Bureau of Reclamation. We have different aspects with the Bureau of Land Management, and even Park Service components.

So having it within that Indian Water Rights Settlement would really be a useful tool for the Secretary to utilize with the different bureaus who have those specific interests with how that gets engaged.

Senator UDALL. You have heard from many members, Democrats and Republicans, on this Committee how important these water rights settlements are to both Indian Country and off-reservation. We want to try to continue to have a healthy fund there.

Mr. PETTY. Yes.

Senator UDALL. Mr. Petty, several tribes have expressed concerns that Interior is insisting that it will only support fund-based settlements. While a fund-based settlement may suit the particular needs of CSKT, it may not work for all tribes.

Can you clarify whether Interior will insist that ongoing and future Indian water rights settlements must be fund-based?

Mr. PETTY. Yes, thank you, Senator, another really good question.

The idea, for all the members, and the one on the audience, the idea of fund-based and project-based, one of the big parts is after many years there can be an increase in actual cost of tools, work, efforts. So the idea of fund-based versus project-based is always going to be a challenge, because by the time we get to a lot of those projects, many of those projects are estimated.

So when we get to the reality of what those costs are, if we put them in a certain category of a fund-based, we are trying to actually get done, and we only get halfway. It is kind of like it doesn't do us any good to build a bridge halfway.

So those are part of the issues that we are working on. We would love to interact more with you and the members to continue to work through that.

Senator UDALL. But you are not going to insist that all settlements be fund-based?

Mr. PETTY. Right. Yes.

Senator UDALL. And as you know, not just with Indian water rights settlements, with all sorts of other settlements and project, I am very familiar on the Appropriations Committee with the Defense Department.

Mr. PETTY. Yes.

Senator UDALL. When you get into a big project that is multi-year, sometimes you have increases. And a lot of times, it is at the front end on failing to estimate exactly what is going to happen over the years. Sometimes it is hard to estimate.

Mr. PETTY. Yes, sir.

Senator UDALL. This is for Mr. LaCounte. The Covid-19 pandemic has been a stark reminder that basic water and sanitation services are often lacking in far too many rural tribal communities. On the Navajo Nation, 30 percent of the population lacks running water. In Oregon, the Confederated Tribes of Warm Springs experienced numerous boil water advisories last year, highlighting the serious infrastructure deficiencies on their reservation. Water and sanitation services are critical for basic preventive measures, including social distancing and hand washing.

Mr. LaCounte, can you talk about the importance of water and sanitation as a public health issue, particularly in light of the Covid-19 pandemic?

Mr. LACOUNTE. Thank you, Senator, yes, I can. I was previously the Regional Director of the Rocky Mountain Region, in Billings, Montana. That was for the States of Montana and Wyoming. With-

in the Bureau of Indian Affairs, there are two water treatment plants in the entire Bureau of Indian Affairs, for 574 different tribes. Unfortunately, I had both of them. Oftentimes, we had problem. Outside of child protection, that was my biggest worry, was that something would go awry in those systems and people get very sick or even die.

I took a trip to the Hopi Reservation a couple of years ago, and I couldn't understand for the life of me why there were so many little villages here and there. Then it came to me, it was a water source, period. Like you said earlier, they had to all go to the same source, haul their water. It is the way they choose to live, but it was kind of sad to look at.

So yes, in light of what is happening right now, yes, it has magnified the issue. But it has always been a very difficult issue. I hope that answers your question.

Senator UDALL. It does answer the question. Obviously, water, like you say, Native Americans were here first. They went, and communities settle all the time around water. So it is really important that we make sure that water sources are good for everyone, and in particular, for the tribes who have been underfunded in so many areas, so that when we hit this pandemic, they can take care of themselves.

Thank you very much, to both of you, for being here and your answers. We appreciate it.

The CHAIRMAN. Senator Daines.

Senator DAINES. Thank you, Chairman Hoeven, Ranking Member Udall.

Secretary Petty, in your testimony you stated that the Department of Interior supports legislative action on the settlement as a preferred path forward to resolve the CSKT water rights claims. The Winters Doctrine lays out the constitutional responsibility to reserve the water necessary to fulfill the reservation's purpose.

Does this settlement comply with the Winters Doctrine?

Mr. PETTY. Yes, absolutely.

Senator DAINES. And does the Winters Doctrine change at all when considering settlements for tribes with the Stevens Treaty?

Mr. PETTY. No, it does not. It doesn't change any at all.

Senator DAINES. So since this legislation fulfills the constitutional requirement, would you explain the process that water users go through to adjudicate their claims if Congress did not act?

Mr. PETTY. Yes, Senator. The adjudication would take place in Montana's water courts. Claim is prima facie evidence until successfully contested. That means that every water right can be called by CSKT during that adjudication process.

Senator DAINES. Now, this settlement authorizes \$1.9 billion, as Ranking Member Udall just stated, it would be the most expensive settlement in water settlement history for the Federal Government, and it authorizes this large amount of money to help rehabilitate the Flathead Indian Irrigation Project, also known as FIIP.

I note your statement of support for this funding level. My question is this. What would happen to FIIP if this compact is not passed?

Mr. PETTY. Well, Senator, the continued operation of FIIP as it raises significant ESA compliance issues right off the bat, issues

that the Department will actually have to address. Water users will need to fund rehabilitation with FIIP 100 percent, which means huge increases on O&M fees, as well as increased costs to fund the ESA compliance, just to start naming a few issues. But significant.

Senator DAINES. On the economic side, what economic impacts do you estimate my legislation would have on agriculture, on jobs, and infrastructure in Montana?

Mr. PETTY. Senator, we have done quite a bit of work economically. The legislation protects the Montana ag economy from at least, in our estimation, of a \$1.3 billion hit alone. Additionally, this settlement will support approximately over 500 jobs, permanent jobs, as well as almost 5,000 temporary construction jobs that will be set forth by this legislation.

Senator DAINES. In your testimony, you mentioned need for increased assurances that the settlement funds will be spent to rehabilitate and to modernize FIIP. After meeting with our county commissioners in Montana, local legislators, and other key stakeholders, I have heard a lot of concerns, similar concerns that you mentioned in your testimony.

That is why I plan to amend my bill to reflect the language that has been negotiated by Interior to strengthen the oversight of this very important settlement. The question is this. As this bill is implemented, would you explain what safeguards would be in place to maintain fiscal integrity and how would they operate?

Mr. PERRY. Senator, that is a great question. Thank you for that support of the redline, that will be a huge part of the work that we have spent years with your help working on, which provides the Federal oversight through that. With your question, is the Indian Self-Determination and Education Act includes annual funding reports as well as funding requests in that process. So there is a high accountability there.

Senator DAINES. Who monitors that spending? Who ensures the tribe actually adheres to their spending plan?

Mr. PERRY. That is through the Bureau of Indian Affairs region. In the case of the Northwest Region specifically, it will be the coordination office as well as the Office of Trust Services that have experts in oversight.

Senator DAINES. There is concern about potential waste, fraud, abuse and so forth. What happens if, for instance, a waste, fraud, or abuse of these funds occurs?

Mr. PERRY. Another good question, Senator.

So in that case, the waste, fraud, and abuse are found in the review of the statutory requirements that we have included in the legislation, the financial reports, the single audit, information reviewed by the Office of Self-Governance, as well as general oversight by the region. And the Office of Trust Services within Indian Affairs would work with the tribes on any corrective action plans to bring them in compliance within the settlement. That is a yearly work that is being done.

Senator DAINES. An annual process, then?

Mr. PETTY. Yes.

Senator DAINES. My legislation includes language that allows the Secretary to acquire some easements and rights-of-way that receive

service from the Flathead Indian Irrigation Project in order to facilitate the rehabilitation work authorized by this bill. This language is consistent with other settlements that we have had in Montana. I think about the Blackfeet settlement, the Crow settlement. We want to maintain consistency there, where there are Federal projects involved.

There is local concern, I have heard it on the ground there in Montana, that between awarding tribal water rights and the ability of the tribe to potentially acquire land, that the tax base of Lake County and Sanders County will erode. Would you respond to some of those concerns that I am hearing back from especially those two counties that are most directly impacted?

Mr. PERRY. Yes, Senator, that is a good question. It is really common practice in Indian water rights settlements and elsewhere to require project beneficiaries to contribute the right-of-way needed for a project. So that bill is not different than what has been ongoing right now. The legislation provides direct aspects and compensation, both to Lake County as well as Sanders County. The tribes cannot use settlement dollars to simply buy land.

Senator DAINES. But is there anything in the bill that would force an unwilling landowner to give up property for an easement or a right-of-way to the tribe or the Federal Government?

Mr. PETTY. No. The bill includes language prohibiting condemnation of land.

Senator DAINES. This legislation says if a tribe retains all claims related to "activities affecting the quality of water, including any claims under CERCLA, the Safe Drinking Water Act and the Federal Water Pollution Act," my question is, does this language negate the tribe's relinquishing of claims with prejudice in Section 10?

Mr. PETTY. The Administration went through an extensive process in this to make sure that that does not happen.

Senator DAINES. So Section 12(i) in that bill authorizes the Secretary to establish a process to consolidate land on the CSKT Reservation exchanged for the same acreage of Federal land returned to State ownership. A question is this. What would these land exchange negotiations look like?

Mr. PETTY. Senator, we would follow the existing protocols in negotiating with the State, which is a high priority for us.

Senator DAINES. Would you confirm that the State landlord would be required to approve any land exchange?

Mr. PETTY. Yes.

Senator DAINES. So the State would have ultimate authority in saying whether the exchange occurs or not?

Mr. PETTY. Yes, sir.

Senator DAINES. My legislation restores the National Bison Range to tribal trust for the CSKT.

The CHAIRMAN. Senator, you probably need to check on your timeline.

Senator DAINES. My last question.

The CHAIRMAN. Go ahead.

Senator DAINES. Thanks, Mr. Chairman. Thanks for a little extra time here. Appreciate it.

My legislation restores the National Bison Range to tribal trust for the CSKT. For the first time, we are codifying public access to the National Bison Range, while protecting refuge revenue payments for Lake and for Sanders County. You mentioned in your testimony that tribes have been long leaders in natural resource management.

My question is this. What level of confidence does the Administration have in the tribes' ability to manage the bison range effectively?

Mr. PETTY. Yes, sir, we do have high confidence. Right now, actually, the current director is a CSKT tribal member. And that is the confidence within that structure and teamwork to really be able to be assured that we have the upmost confidence that the tribe can manage that.

Senator DAINES. And would you confirm that my legislation would annually save approximately \$1 million in appropriated taxpayer money to run the bison range?

Mr. PETTY. Yes, sir. Yes.

Senator DAINES. Thank you, Secretary Petty. Mr. Chairman, thanks for a little extra grace here, for time here. It is a very important issue for Montana.

The CHAIRMAN. Certainly. Absolutely understand.

Let's turn to Senator Tester.

Senator TESTER. Thank you, Mr. Chairman. I appreciate it.

Mr. Petty, as long as you have the vocal cords warmed up, we will just keep right on going with you.

As far as the Flathead Indian Irrigation Project goes, I think that Reclamation estimated about \$1.6 billion necessary for decommissioning. I think Ranking Member Udall said it was about \$30 billion. Could you shed a little light on what the real cost of decommissioning FIIP would be?

Mr. PETTY. Yes. FIIP estimates are somewhere between \$1.3 billion to \$1.4 billion, is what our estimates are at this point for decommissioning that.

Senator TESTER. Okay. So there is a technical services center, is that in your agency?

Mr. PETTY. It is. It is part of the Bureau of Reclamation out of the Denver, Colorado—that is our very [indiscernible] group.

Senator TESTER. Are you familiar with any estimates they may have put forth?

Mr. PETTY. That team has been part of this work that we have done with the Indian Water Rights Office within the Department of Interior. So they have been partnering and working closely side by side on some of these estimates.

Senator TESTER. So the fact that I read where their estimates are five to ten times, I heard that \$1.6 billion has been rolled back.

Mr. PETTY. Yes, as always, estimates are how much time do you keep putting into it. But yes, sir, I would concur with your discussion.

Senator TESTER. Needless to say, \$1.3 billion or \$1.6 billion isn't exactly small spuds.

Mr. PETTY. Yes, sir.

Senator TESTER. Four years ago, Interior testified before this Committee on this bill, on the CSKT water bill that I had, that

they wanted to see additional analyses on the State, to support the Federal cost share. In the intervening years, has Interior completed that additional analysis to support Federal cost share?

Mr. PETTY. Yes. These last number of years has really been a cooperative agreement and cooperative work with both Reclamation and with multiple meetings and getting together as well as the Indian water rights settlement team.

Senator TESTER. Okay, so based on that analysis, and Interior's negotiations with CSKT on this bill that we have in front of us today, do you support the Federal cost share in this bill?

Mr. PETTY. Yes, sir. We have been able to confirm that.

Senator TESTER. And do you believe that it is beneficial for all parties involved?

Mr. PETTY. Yes, sir, both Department as well as the Administration concurs that it is the best path forward.

Senator TESTER. You have already addressed the question about economic liabilities with potentially 10,000 water rights claims. So I just want to thank you very much for your work.

I have a quick question for Director LaCounte. It is only because you have already referenced that you were Rocky Mountain Regional Director in Billings. I know CSKT is not part of that region, but I know you are intimately familiar, Director LaCounte, with CSKT. Can you give me, through what you have seen on CSKT lands, can you give me your view of what kinds of issues will be addressed if we get this water compact passed?

Mr. LACOUNTE. Certainly, as both Senator Daines and yourself have stated, it has been a contentious issue in the State of Montana for a long time. If any of you have ever been there, it is the most beautiful place in the world, I think. Just getting this done and behind everyone would resolve a lot of issues in the State of Montana, simply because it would be resolved. And it wouldn't be laying on the table to fight over.

As Senator Daines earlier said, that is what water is about in Montana, is fighting over. Well, once you end the fight, the fight is over, everybody can get their lives in order and go about business as they know it is going to be. The Department significantly supports turning the National Bison Range back to where it started, with members of the Salish Kootenai Tribes.

Senator TESTER. Last question. The State of Montana is setting aside \$55 million in contributions to the settlement. How would you describe the State of Montana's commitment, seeing that this has already been pointed out as the biggest water settlement ever?

Mr. LACOUNTE. Well, good for them, but that is some of my tax dollars, too. So I am happy to contribute, if that is going to make things better in the State.

[Laughter.]

Senator TESTER. Okay. But it is adequate, is what you are saying? It is adequate in the overall settlement?

Mr. LACOUNTE. Yes.

Senator TESTER. Okay, thanks guys. I appreciate it. Thank you, Mr. Chairman.

The CHAIRMAN. Thanks, Senator Tester. And I will concur, it is one beautiful spot, no doubt about it. It is a beautiful place.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Mr. Chairman, Ranking Member. And thank you to the witnesses who are participating today.

As you can hear from all my colleagues, we all recognize, hopefully you do as well, the importance of water rights settlements to those of us in the west. I want to take a moment to talk about one that is not on the agenda today, but I introduced, it is S. 3754. It makes technical corrections to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act of 2009. I am grateful that my colleagues, Senators Crapo, Risch and Rosen have joined me as co-sponsors. The tribe's reservation crosses between our two States.

The 2009 Settlement Act resolved decades of tension over water rights between the tribes and non-Indian neighbors. It legislated agreement and gave certainty to farmers and ranchers regarding water allocations available to them for crops and grazing. The tribes were provided economic benefits to the reservation and assistance with their municipal water supply.

However, prior to the Act becoming effective in 2016, the funds were set aside toward the implementation of this agreement. Those funds were invested and the proceeds that were derived from these investments went into the general treasury, and not toward the benefit of the tribe.

The bill that I have introduced authorizes the amount of money that the trust funds could have earned during the period before the settlement agreement became effective in 2016 to be put back toward its intended use for the tribe's water settlement agreement. My bill essentially fulfills the promise made by the 2009 agreement.

I hope I can have commitment from the Interior Department to work with me in rectifying this matter. I look forward to working, Mr. Chairman and Ranking Member, on including this bill on a future agenda for a legislative hearing as well. So I just wanted to put that out there.

I also did not hear, for the panelists, with respect to the STOP Act, S. 2165, I am a co-sponsor of that as well, it is an important piece of legislation, I didn't hear if there was support for it or not. So to the panelists, can you let me know whether you support S. 2165?

Mr. LACOUNTE. Thank you, Senator. Yes. We are very supportive of it. I believe I have testified in front of this Committee on it before, supporting it. That could have been the House; I am getting old and I lose my train of thought sometimes.

[Laughter.]

Mr. LACOUNTE. There was a blurb that I chose not to read for the interest of time, but the Department is very supportive of it.

Senator CORTEZ MASTO. Thank you. I appreciate that. And Mr. LaCounte, I know you are also part of the Department, but do you have any concerns with the bill, the legislation?

Mr. LACOUNTE. I do not.

Senator CORTEZ MASTO. Oh, I am sorry, Mr. Petty. I can't hear you.

Mr. PETTY. No, I do not. Thank you.

Senator CORTEZ MASTO. Thank you. You made it very easy for me. Thank you very much. Thanks for joining us.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cortez Masto.

With that, unless, Senator Udall, you have other questions?

Senator UDALL. I am in good shape here. Thank you, Mr. Chairman.

The CHAIRMAN. Very good. Again, I would like to thank both of our witnesses.

At this point, we will conclude the hearing. The record will be open for two weeks. I would ask that if there are questions submitted for the record, that you follow up in a timely way.

Again, I want to thank both of the witnesses for being here. With that, we are adjourned.

[Whereupon, at 3:51 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. BILLY FRIEND, CHIEF, WYANDOTTE NATION

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Wyandotte Nation strongly supports swift passage of the STOP Act.

My name is Billy Friend and I am the Chief of the Wyandotte Nation. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. The Wyandotte Nation is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Wyandotte Nation Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

The Wyandotte Nation has first-hand experience in fighting to prevent the loss of our cultural heritage due to theft, trafficking, and illegal sales. Many of our tribal artifacts are now in museums abroad or in private collections outside the jurisdiction of the United States, due to fact that we for many years did not have the financial means or the ability to track down and acquire the items that were historically ours.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Wyandotte Nation fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARP A). Instead, when we try to regain our sa-

cred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Wyandotte Nation urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF VIVIAN KORTHUIS, CEO, ASSOCIATION OF VILLAGE
COUNCIL PRESIDENTS

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Association of Village Council Presidents strongly supports swift passage of the STOP Act.

My name is Vivian Korthuis and I am the Chief Executive Officer of the Association of Village Council Presidents (AVCP). AVCP is a Native non-profit corporation and the largest tribal consortium in the United States with 56 federally recognized tribes as members. The Yukon-Kuskokwim Delta (YKDelta), where we are located, spans approximately 55,000 square miles and is roughly the size of the State of New York. In our region there are 48 villages spread along the Yukon River, Kuskokwim River, and the Bering Sea Coast with a population of approximately 25,000. Our mission is to provide community development, education, social services, culturally relevant programs, and advocacy for the people and tribes of the YK-Delta.

The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. The AVCP tribes are no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. AVCP Tribes Have Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribes to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribe. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole-as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

AVCP fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage-especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. AVCP urges you to act swiftly to enact the STOP Act into law.

Thank you for your dedication, commitment, and conscientious work on behalf of Indian Country.

PREPARED STATEMENT OF HON. WILLIAM HARRIS, CHIEF, CATAWBA INDIAN NATION

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Catawba Indian Nation strongly supports swift passage of the STOP Act.

My name is William Harris, and I am the Chief of the Catawba Indian Nation. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. The Catawba Indian Nation is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Catawba Indian Nation Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

Before contact with the Europeans, the Catawba people inhabited most of the Piedmont area of South Carolina, North Carolina and parts of Virginia. By the late 17th century, trade began having a major impact on the Catawba society. Catawba villages became a major hub in the trade system between the Virginia traders and the Carolina traders. We have long recognized the importance of the voluntary trading and selling our traditional arts. In fact, this was the lifeblood of our economy and helped our people survive the Great Depression. However, there must be better protections to prohibit the illicit trade of tribes' sacred and cultural items that are illegally taken from indigenous people.

Despite protections in current law, the illicit trade in tribes' tangible cultural heritage continues to pose a grave threat to our cultural survival. Our sacred and cultural items are illegally taken from our people, threatening the maintenance of our cultures and traditions and depriving us of the cultural legacy we seek to leave our future generations. Meanwhile, a lucrative black market in our cultural heritage thrives, and without explicit export restrictions many of our sacred and cultural items end up abroad. Once abroad, we have had very little success in efforts to bring them home. For this reason, the Catawba Indian Nation supports the STOP Act's goal of making it more difficult to export and easier for tribes to regain their cultural heritage from abroad.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Catawba Indian Nation fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGPRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Catawba Indian Nation urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF DEANA M. BOVEÉ, TRIBAL CHAIRWOMAN, SUSANVILLE INDIAN RANCHERIA

My name is Deana M. Boveé and I am the Tribal Chairwoman of the Susanville Indian Rancheria. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. The Susanville Indian Rancheria is no exception. International markets have become a

safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Susanville Indian Rancheria Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Susanville Indian Rancheria fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Susanville Indian Rancheria urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF SEALASKA HERITAGE INSTITUTE: TLINGIT, HAIDA, AND
TSMISHIAN

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. Sealaska Heritage Institute (SHI), a Native

nonprofit serving the Tlingit, Haida, and Tsimshian people of Southeast Alaska, strongly supports swift passage of the STOP Act.

My name is Rosita Worl and I am the president of SHI. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. Sealaska Heritage Institute] Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our ceremonies, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. Many of our cultural objects are clan at.çowu (sacred objects). They are used in ceremonies to evoke the spirits of our ancestors. Under our Native laws, at.çowu cannot be alienated from the clans to which they belong, and yet, we see our sacred objects across the world separated from their clans and being sold to the highest bidder.

We have found it to be near impossible to repatriate items sold internationally or even in the United States by private collectors.

In 2016, Sealaska Heritage protested a Paris auction orchestrated by the company Eve, which put up for sale 10 Tlingit and Haida sacred objects, including a Tlingit Ixt' (Shaman's) rattle. The auction house ignored our pleas to stop the sale and the Tlingit people who appeared in Paris to protest the event. The United Nations' Universal Declaration of Human Rights has provisions to protect cultural property, but it is weak on enforcement, so the objects, which we believe are imbued with the spirits of our ancestors, were sold to the highest bidder.

In 2017, the auction house "The Cobbs" in New Hampshire attempted to sell a Tlingit Ixt' (Shaman) amulet. Native people would never alienate such a thing, so it probably was removed from a sacred space in the woods, a fate suffered by so many of our sacred objects in the past. Sealaska Heritage posted a plea for donations on Facebook so that we could bid on the amulet and possibly repatriate it to the tribes. The post reached more than 22,000 people and generated almost 800 reactions and nearly 60 comments. Clearly it hit a nerve.

As it turned out, none of the offers for the amulet, including SHI's bid, met the minimum price set for the object, so the amulet did not sell. It was at that point SHI reached out to the seller through the auction house to try to negotiate a lower price and get it back. Unfortunately, we were not able to negotiate a deal with the seller.

To address the latter problem, SHI is advocating through the Alaska congressional delegation to enact a federal law allowing tax credits to private collectors who give cultural objects back to tribes.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

SHI fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage-especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archae-

ological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. I urge you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF PAUL EDMONDSON, PRESIDENT/CEO, NATIONAL TRUST FOR HISTORIC PRESERVATION

Chairman Hoeven, Vice Chairman Udall, and members of the Committee, thank you for holding this hearing on the Safeguard Tribal Objects of Patrimony Act of 2019 (S. 2165). My name is Paul Edmondson, and I am the President and CEO of the National Trust for Historic Preservation. I appreciate this opportunity to voice the National Trust's support for this bipartisan bill to strengthen laws aimed at preventing trafficking in Native American cultural items and facilitating the voluntary return of sacred and cultural items.

Congress chartered the National Trust in 1949 to "facilitate public participation in historic preservation" and further the purposes of federal historic preservation laws. With headquarters in Washington, D.C., 28 historic sites, more than one million members and supporters, and a national network of partners in states, territories, and the District of Columbia, the National Trust works to save America's historic places and advocates for historic preservation as a fundamental value in programs and policies at all levels of government.

Continued sales of cultural items at overseas auctions highlight shortcomings in existing law that have been exploited for far too long. Currently, no law explicitly prohibits exporting items obtained illegally under the Antiquities Act of 1906, the Archaeological Resource Protection Act (ARPA), or the Native American Graves Protection and Repatriation Act (NAGPRA).

The lack of export prohibitions presents significant challenges to tribes' ability to work with foreign governments to stop sales and repatriate important cultural items. This Committee has heard extensive testimony from the Pueblo of Acoma, which is included in the portfolio of National Trust Historic Sites, and others about how efforts to recover sacred items are significantly hampered by the inadequate federal framework for protecting and recovering cultural items. Even successful repatriation, as in the recent case of the ceremonial Acoma Shield, can take years and require extensive coordination.

The STOP Act addresses this deficiency in existing law by expressly prohibiting export of illegally obtained cultural items and creating a certification system for items obtained lawfully. The bill's strengthened penalties under NAGPRA will also provide greater deterrence against illegal trafficking. Importantly, the STOP Act also facilitates voluntary return of cultural items to provide new opportunities to restore tangible cultural heritage.

The National Trust strongly supports the STOP Act, which we believe will enhance our nation's commitment to respecting and protecting the tangible cultural heritage of tribes. We encourage the Committee to act favorably and expeditiously on this bill. If you have any questions concerning these issues, please do not hesitate to communicate with me.

PREPARED STATEMENT OF JOHN E. ECHOHAWK, EXECUTIVE DIRECTOR, NATIVE
AMERICAN RIGHTS FUND

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Native American Rights Fund (NARF) strongly supports swift passage of the STOP Act.

My name is John Echohawk and I am the Executive Director of NARF. The struggle to protect tribal objects of cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address the issue. We firmly believe that, if appropriately funded, the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. NARF Has Fought to Protect Tribal Cultural Heritage Throughout Indian Country

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep significance, tangibly and intangibly, to a tribal nation. Many non-tribal people view tribal cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose. They are important for the health of ongoing, living cultures.

Tribal items of cultural heritage have significant roles to play within tribal cultures, traditional ceremonial obligations, tribal families, and ways of life. Tribal cultural heritage also helps tribal members honor and uphold their values and teach those values to their community members, particularly young people. So important are these items of cultural heritage that they are generally seen as belonging to the community as a whole—as tribal people’s shared inheritance and as their shared responsibility to honor and protect for present and future generations.

NARF has a long track record in fighting to prevent the loss of tribal cultural heritage due to theft, trafficking, and illegal sales. As experts in the field, NARF attorneys have represented many tribes in all matters of national and international scope for over 50 years. Specifically, NARF has advocated for tribal protections related to the repatriation of tribal cultural heritage items and reburial of Native American bodies. Our attorneys were among those who pioneered the development and implementation of the Native American Graves Protection and Repatriation Act (NAGPRA). Former NARF Attorney Walter Echohawk continued to advocate for changes in legislation to fill gaps left by language of NAGPRA to extend protections to all tribal nations equally. In furthering the pursuit of this cause, NARF remains involved in the representation of numerous tribes on NAGPRA claims.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

NARF fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like NAGPRA and the Archaeological Resources Protection Act (ARPA). Instead, when tribes try to regain their sacred items from an auction block abroad, they are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting

and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGPRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals. Technical matters should be addressed in a manner that does not delay passage, and funding authority should be clear as well, to allow meaningful near-term impact.

As part of what we assume will be worked out to help the STOP Act best meet its goals, we note two issues we believe will need further attention. First, caselaw has revealed that the definition of “Native American” in NAGPRA is in need of clarification, and that same clarification would be beneficial here. To best accomplish the purposes of the STOP Act, the definition of Native American that currently refers to the NAGPRA definition should be amended to read, “Native American’ means of, or relating to, a tribe, people, or culture that is or was indigenous to any geographic area that is now located within the boundaries of the United States”.

Second, Section 6, providing for voluntary return of tangible cultural heritage, in subsection (e) allows the Secretary to provide tax documentation for a charitable gift to an Indian tribe. The implications of this process are concerning and conflate the human rights purposes of this legislation with financial or property issues. Items should be returned because as tangible cultural heritage or cultural patrimony, they are by definition not properly subject of valuation. Providing tax documentation will effectively monetize the items of tangible cultural heritage and cultural patrimony. Regrettably, such a valuation will likely set a floor value for all similar items on the international black market. The opening bid for similar items will likely be the value set by the Secretary on a voluntarily returned similar item. It would be best simply to delete Section 6.

Subsection (e) in the STOP Act, and any other provision that attaches a monetary value to tangible cultural heritage or patrimony.

These difficulties should be resolved and should not delay passage of the Act. We need the STOP Act now. Without it, we will continue to see tribal cultural heritage trafficked just out of our reach and in front of our very eyes. NARF urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF J. MICHAEL CHAVARRIA, CHAIRMAN, ALL PUEBLO COUNCIL OF GOVERNORS

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The All Pueblo Council of Governors strongly supports swift passage of the STOP Act.

My name is J. Michael Chavarria and I am the Chairman of the All Pueblo Council of Governors. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. The All Pueblo Council of Governors is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The All Pueblo Council of Governors Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community

members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

The All Pueblo Council of Governors adopted Resolutions Nos. 2015–12 and 2015–13 in recognition that our Pueblo nations have been disproportionately affected by illegal trafficking in tribal cultural heritage, and they called upon the United States to address international repatriation and take affirmative actions to stop the theft and illegal sale of tribal cultural heritage both domestically and abroad. Despite protections in current law, the illicit trade in tangible cultural heritage continues to pose a grave threat to the cultural survival of our Pueblo nations. Sacred and cultural items from the Pueblos are highly sought after and often illegally trafficked through lucrative black markets. Without explicit export restrictions, many of our Pueblos' sacred and cultural items end up abroad, making it very difficult to bring them home. This illegal trafficking threatens the maintenance of our cultures and traditions, depriving us of the legacy we seek to leave our future generations.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The All Pueblo Council of Governors fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The All Pueblo Council of Governors urges you to act swiftly to enact the STOP Act into law.

Additional statement

The Pueblo of Santa Clara strongly supports prompt passage of the STOP Act. My name is Michael Chavarria and I am the duly elected Governor of the Pueblo of Santa Clara, a federally recognized Indian tribe. Santa Clara Pueblo, like many tribal communities, struggles to protect its cultural heritage items from illegal trafficking. That struggle is compounded by a gap in federal law that has made international markets a safe haven for federally protected tribal cultural heritage items. The STOP Act will plug that gap by preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. Items of Tribal Cultural Heritage are not Trinkets

While many non-Pueblo people admire our items of cultural heritage for their beauty, those items are not trinkets. The Pueblo's items of cultural heritage are central to the Pueblo's cohesion and way of life. These items tell us who we are and where we come from, and they direct our paths into the future. We would not be Santa Clara Pueblo people without our items of cultural heritage.

Because of the central and critical role of such items to our culture, they do not and cannot belong to any individual tribal member—instead, they belong to the Santa Clara Pueblo community as a whole. Each member of the Pueblo has a shared obligation to protect them, in order to protect the existence of the community as Santa Clara Pueblo. So when an item of cultural heritage is separated from the Santa Clara Pueblo people, we suffer direct and immediate harm. As explained below, the STOP Act would go a long way to alleviating such harm.

II. The STOP Act Would Close Gaps in Federal Law

The STOP Act would close existing gaps in federal law that have enabled dealers and collectors to operate with impunity with regard to items of tribal cultural heritage—particularly once such items are exported abroad.

For example, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, a 1970 treaty to which the United States is a signatory, allows signatory countries to request the return of cultural property from other signatory countries, and to call on other signatory countries to control imports of those items and help with repatriation. Yet, those provisions only apply to items that are specifically prohibited from export by a requesting signatory country. Because the United States has not explicitly prohibited exports of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA), the federal government cannot act to facilitate return of such items from another signatory country. Tribal nations are left on their own to seek the return of their cultural heritage items. Many tribes lack the resources to do that.

If it were enacted, the STOP Act would plug this gap by (1) prohibiting the export of tribal cultural heritage items already prohibited from being trafficked under federal law and facilitating the international repatriation of such items; and (2) facilitating coordination among federal agencies to protect and repatriate such items and to aid the voluntary return of tribal tangible cultural heritage property more broadly.

While the STOP Act is built upon NAGPRA and ARPA, we must note that NAGPRA and ARPA have serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. We urge Congress to enact the STOP Act, but we also encourage Congress to address the limitations of NAGPRA and ARPA in the very near future.

Please understand that unless the STOP Act is enacted, tribal communities will continue to see our tribal cultural heritage property treated like secular objects of art, which deeply damages tribal communities. The Pueblo of Santa Clara urges you to act promptly to enact the STOP Act into law.

PREPARED STATEMENT OF C. TIMOTHY MCKEOWN, PH.D, REPATRIATION ADVISOR,
NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

Thank you for the opportunity to provide a statement on behalf of the National Association of Tribal Historic Preservation Officers (NATHPO) regarding S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019.

The purpose of S. 2165 is to carry out the United States' trust responsibility to Indian tribes by: (1) enhancing existing prohibition to the trafficking of Native American cultural items; (2) stopping the export and facilitating the international repatriation of tribal cultural heritage items already protected under federal law; and (3) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of Native American tangible cultural heritage more broadly. NATHPO strongly supports the bill but recommends several changes to enhance its overall effectiveness.

Sec. 4 Enhancement of NAGPRA Penalties

This section amends Section 1170 of title 18, United States Code by striking "5 years" each place it appears and inserting "10 years."

NATHPO supports this change, but does not believe that simply increasing the period of possible incarceration for illegal trafficking of Native American cultural

items will significantly increase the effectiveness of this criminal statute. Data provided by the Executive Office of the United States Attorneys indicates that since 1990, 31 individuals (one was convicted twice) and one entity have been convicted of illegal trafficking of Native American cultural items. Most pled guilty or were convicted of misdemeanor offenses. The length of the potential penalty amount does not appear to have had any significant impact on the number of successful prosecutions since few of those who were convicted received any period of incarceration whatsoever.

Two external factors do appear to have had a significant impact on the number of successful prosecutions for illegal trafficking of Native American cultural items. First, with a positive impact, was establishment of the interagency ARPA task force in 1991 to 1995 to reduce the destruction of cultural sites on lands under the management of the United States in New Mexico, Arizona, Utah, and Colorado by identification, prosecution and conviction of looters, dealers and, collectors who trafficked in artifacts taken in violation of federal laws and regulations. Members of the ARPA Task Force aggressively investigated NAGPRA trafficking cases, including use of undercover agents, with the result that 14 of the convictions for illegal trafficking of Native American sacred objects or objects of cultural patrimony under 18 U.S.C. 1170 (b) occurred in New Mexico, Arizona, and Utah. NATHPO encourages Congress to appropriate funding specifically to reconstitute an interagency task force to identify, prosecute, and convict looters, dealers, and collectors who traffic in Native American cultural items and other artifacts taken in violation of federal laws and regulations.

The second factor that has significantly and negatively impacted the number of successful prosecutions for illegal trafficking of Native American cultural items was the 9th Circuit Court of Appeals 2004 opinion in *Bonnichsen v. U.S.* (367 F.3d 864) in which the Court interpreted the statutory definition of “Native American” to require a “significant relationship” between a cultural item and a claiming Indian tribe. While the *Bonnichsen* opinion applies only to the 9th Circuit, it has created ambiguity which, in at least one case, has led to an acquittal in a NAGPRA trafficking case. Significantly, the number of NAGPRA convictions has decreased dramatically nationwide since 2004. In order to address this issue, NATHPO recommends that the Congress amends NAGPRA’s definition of “Native American” as follows:

Definition of Native American

Section 2 (9) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001(9)) is amended—

- (1) by inserting “or was” after “is”; and
- (2) by inserting after “indigenous to” the following: “any geographic area that is now located within the boundaries of”

NMAIA Judicial Jurisdiction and Enforcement

An additional issue you may wish to consider relates to processes for the return of Native American sacred objects and objects of cultural patrimony from the Smithsonian Institution. At least one group of Indian tribes has unsuccessfully tried to recover such items from the National Museum of Natural History and has exhausted their administrative appeals, despite a unanimous recommendation to repatriate from the Smithsonian’s own repatriation advisory committee. In such a situation under NAGPRA, an Indian tribe is authorized to appeal to the Federal District Court for equitable remedy (25 U.S.C. 2013). However, the National Museum of the American Indian Act does not include a similar authorization. NATHPO recommends amending the NMAI Act to include the following provision.

20 U.S.C. 80-q is amended by inserting the following: “16. Judicial Jurisdiction and Enforcement. The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.”

PREPARED STATEMENT OF EVELYN BEETER, MT. SANFORD TRIBAL CONSORTIUM

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Mt. Sanford Tribal Consortium strongly supports swift passage of the STOP Act.

My name is Evelyn Beeter and I am the President/CEO of Mt. Sanford Tribal Consortium. The struggle to protect tribal cultural heritage from illegal trafficking

is a tragically common challenge for communities across Indian Country. The Mt. Sanford Tribal Consortium is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Mt. Sanford Tribal Consortium Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

The Mt. Sanford Tribal Consortium has first-hand experience in fighting to prevent the loss of our cultural heritage due to theft, trafficking, and illegal sales.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Mt. Sanford Tribal Consortium fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGPRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Mt. Sanford Tribal Consortium urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Alaska Federation of Natives (AFN) strongly supports swift passage of the STOP Act.

My name is Julie Kitka and I am the President of AFN. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. Alaska Native cultures is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. AFN as Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

AFN fully supports the passage of the STOP Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. AFN urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Association on American Indian Affairs strongly supports swift passage of the STOP Act. Please recognize, however, that the current 2019 legislative draft does not go far enough to stop the long and sordid history of looting and trafficking—a history that has been supported by assimilationist federal law and policies against Indian Tribes—which has emboldened dealers, collectors and institutions to traffic, commercialize and display our sensitive cultural heritage without our free, prior and informed consent.

My name is Shannon O'Loughlin, I am a citizen of the Choctaw Nation of Oklahoma and the Executive Director and Attorney for the Association on American Indian Affairs. The Association is the oldest non-profit serving Indian Country protecting sovereignty, preserving culture, educating youth, and building capacity. Since its earliest beginnings assisting Pueblo Peoples defend their aboriginal lands and water rights in 1922, the Association was formed to change the destructive path of federal policy from assimilation, termination, and allotment-to sovereignty, self-determination, and self-sufficiency. For nearly 100 years, the Association has worked tirelessly to protect Native American cultural sovereignty—the things that make us who we are as indigenous peoples—through Cultural Heritage Protection, Repatriation, and Sacred Sites initiatives, as well as ensuring the inter-generational transmission of culture through our Youth initiatives. As a vital part of our efforts, the Association works hand in hand with Tribes, Tribal organizations, museums, lawyers, academics, auction houses and the general public to secure the safe return of tangible cultural heritage such as our Ancestors, their burial items, sacred objects and cultural patrimony.

The Association maintains data on foreign and domestic auctions, including how many potentially sensitive items are being advertised by auction houses for sale. Potentially sensitive items are “cultural items” as defined by the Native American Graves Protection and Repatriation Act, and “archaeological resources” defined by the Archaeological Resources and Protection Act.¹ In 2019, the Association found that there were 3,721 potentially sensitive Native American cultural items² that were being sold at auction domestically and internationally, affecting approximately 150 Tribal Nations and regions. Of these 3,721 sensitive items—there were 20 foreign auctions in which 146 sensitive items had been included for auction.

This year, because of the coronavirus pandemic, there has been an increase in sales through online auctions. The total number of potentially sensitive cultural items for sale in 2020 seems to have decreased for the first half of the year—499 sensitive items have been marketed for auction sale from January through June this year affecting approximately 143 Tribal Nations. However, the number of international auctions and the number of sensitive items for sale at those auctions this year has greatly increased: there have been 49 international auctions, that have sold or are selling 133 sensitive items. These numbers show an alarming increase in the sale of sensitive items internationally, and mark a change in the direction of foreign sales since the Government Accountability Office report from 2018 found that sales had been decreasing after 2016. It is likely this increase is occurring because dealers want to sell all they can before the STOP Act is passed; and unfortunately, dealers may be taking advantage of the fact that Tribes have not had the capacity to go after these sales as strong because their attention is being diverted to protecting the health and safety of their citizens from the coronavirus pandemic.

Congress must pass the STOP Act immediately to stop this continued plundering of our sensitive and sacred objects. International markets continue to be a safe harbor for trafficking federally protected Tribal cultural heritage. The Association believes that foreign auctions and dealers (many of whom are connected to U.S. deal-

¹These definitions are found in NAGPRA at 25 U.S.C. sec. 3001, and in ARPA at 16 U.S.C. sec. 470bb. Auction houses provide very little information, or refuse to provide access to information, that may help Tribes and organizations like the Association determine whether any particular item has been trafficked pursuant to federal, state or Tribal laws. All we know is that an image and/or description provided by an auction house is similar to other “cultural items” and “archaeological resources” that are protected under federal, state and Tribal laws. As part of what should be professional due diligence, foreign and domestic auction houses and dealers do not consult with Tribal Nations to determine whether an item has been trafficked—in line with their good faith responsibilities to purchasers.

²The numbers of sensitive items do not account for the total number of Native American items being sold that are legitimate commercial items, such as Native American made jewelry, arts and crafts that are created by Native American artists for a commercial market; we are only reporting on sensitive items.

ers and collectors) will continue to increase their sales of our heritage unless Congress enacts federal law to address this issue. We firmly believe the STOP Act will support a change in dealer and auction practices that will prevent the international trafficking of Tribal cultural heritage and secure their return home to their Tribal Nations.

We also must alert you that the opposition to the STOP Act by antiquities dealers is misplaced and come from a very small set of antiquities dealers. The sale of “antiquities” and “artifacts” grew out of failed and abhorrent federal policies meant to dispossess Tribal Nations of their lands and their future, and assimilate them out of their traditional cultural and religious practices. Individuals profited off those federal policies by laying claim to stolen and looted Native American items. Today, Tribal Nations are still locating items that have been traded and sold, in which those Nations have retained stories and oral traditions as to how particular or groups of items left their hands. Sometimes, individual Tribal citizens sold the items under duress because they needed food or shelter. At other times, collectors crept in at night to steal objects. These scenarios continue today.

Tribal antiquities dealers want to continue to sell our stolen and looted cultural heritage without restriction—even when federal, state and Tribal law mandate otherwise. The international sale of these items is one method antiquities dealers have been able to use to skirt domestic law. The STOP Act will put the burden on the holder of an item to prove that the person who wishes to export it holds legitimate title, and provide information to Tribes and others to make sure that what the antiquities dealers are certifying is correct. After all, much of the information that is included with these sensitive items is created by the dealer to obtain a strong sale price; antiquities dealers and other private collectors do not consult with affiliated Tribal Nations to determine the true origin information of a sensitive item (seemingly in violation of the due diligence and good faith that consumers deserve).

Please also note that though the STOP Act is designed to meet very narrow goals to prevent exportation to and allow return of sensitive items from foreign nations, current domestic law including NAGPRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. The Association has found that if an object is not in violation of NAGPRA, no other state and federal laws are examined, nor are affiliated Tribes contacted to determine whether the item is legitimately held. The Association is working to develop changes to NAGPRA in the future meant to resolve these and other limitations.

The U.S. government has allowed dealers and collectors to profit off the diminution of the sacred, cultural and human rights of Tribal Nations. The time is now to STOP dealers at our borders and return objects that have been improperly taken from Tribal Nations to foreign lands. The Association on American Indian Affairs urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF THE CONFEDERATED TRIBES OF WARM SPRINGS

The Confederated Tribes of Warm Springs (“the Tribes”) would like to thank the Senate Committee on Indian Affairs for holding this legislative hearing on the Western Tribal Water Infrastructure Act (S.3044), sponsored by Senator Wyden and co-sponsored by Senator Merkley. The Tribes strongly support S.3044 and any effort to provide tribes with additional tools to meet the basic water needs of their members.

Warm Springs provides water to approximately 4,500 people on the Warm Springs Reservation in Central Oregon. Our 640,00 acres reservation spans from snow-capped mountains to the salmon-bearing Deschutes River—with forests and high desert between. Most of our tribal population lives in an arid portion of Oregon’s high desert.

The vast majority of our tribal members live on the Reservation, where we are suffering from dramatically high unemployment—which exceeded 60 percent many times over the last several years. A recent study ranked the town of Warm Springs as having the second highest incidence of poverty in Oregon. Putting our people to work and providing basic social services -especially health care and education—for our members is extremely challenging at Warm Springs. Possibly more challenging than anywhere in Indian Country, or the nation at large.

The COVID-19 crisis has struck our reservation especially hard. As of last week, Warm Springs Health and Wellness Center has tested 852 people. We have had 55 positive cases with 19 tests still pending and four people hospitalized.

Many of our families are crowded into small dwelling units. Our water infrastructure deficiencies have exacerbated the COVID-19 response—as both social

distancing and access to clean, running water are very real challenges on our reservation.

The Agency Water system consists of over 825 water service connections that serve both Commercial and Residential homes that has been severely impacted by the Shitike Creek Crossing and failed Pressure Reducing Valves.

Water is produced and delivered via the following four community-owned and operated water systems. Each of those systems has significant failures, as does the Tribes' water treatment facility. Water storage has also been a challenge for Warm Springs—so much so that we received a substantial grant from the Republic of Turkey in 2013 to help finance construction of a new water tower to service our elementary school.

While there are many federal programs to assist tribes, they have not individually or collectively been able to meet the magnitude of infrastructure challenges on our reservation. Three of our four water delivery systems require major upgrades or replacement. The Tribes are facing a minimum cost of \$5–6 million to simply maintain existing systems at status quo. To provide for future improvements to meet the growing population, the Tribes face a cost of \$40–50 million for water infrastructure.

Here is a summary of those needs:

- Agency Water System (surface water system from the Deschutes River at Dry Creek):

—We are addressing upgrade/repair issues identified in an EPA Administrative Order of Consent and Emergency Order (1414 and 1431). Funding for this resolution is funded at \$900,000 to remediate deficiencies. The current funding is adequate enough to complete all of the issues identified in the EPA Orders and will likely require funding of \$20 million to complete all deficiencies and necessary upgrades. The existing water plant is 40 years old and is nearing its end of life cycle.

—The distribution system is in need of upgrades and replacements as well. Most recently, the tribe has experienced a serious failure at the Shitike Creek crossing which required an emergency repair with a line that is undersized. If this issue is not mitigated, we will suffer immediate threats to life and property during a fire disaster. IHS is working with the tribe to develop plans to install a permanent solution with a larger line to feed the reservoirs at the south end of the agency community. The cost to install will likely exceed the estimated \$1.5M in current dollars by the time the engineered plans are complete.

- Sidwalter Water System: To bring the existing facility into compliance with today's standards we estimate a low-end cost of \$300,000 to upgrade the electrical system and to repair existing appurtenances (fire hydrants, isolation valves, etc.). Since the Sidwalter water system was initially constructed in 1977 which was designed for 20 homes, there has been an addition of 20 homes which requires an expansion of the current distribution system. The estimated cost for the expansion is \$3.0 million. The expansion would provide a steady source of potable water to all residents in the Sidwalter area and it would provide much needed fire protection.

- Simnasho/Schoolie Water System:

—The water system feeding the Simnasho has been recently upgraded in 2012 to decommission previous wells that had unacceptable levels of Arsenic. The new wells are now located an additional 5 miles away from the Simnasho area. The storage capacity of the Simnasho system is inadequate (less than 100,000 gallons) and needs to be upgraded to a reservoir with the capacity of at least 250,000 to 500,000 gallons. The cost to upgrade the reservoir is estimated to be somewhere between \$750,000 to \$1 million.

—The Schoolie Flat water system was built and designed in 1971 for 20 residential homes is currently operating well below minimum standards. The Schoolie water system currently has an additional 40 homes and is going to need about \$4 million to upgrade the existing booster station to house vertical multi-stage pumps, a new reservoir with at least \$250,000 gallons of capacity and upgrading of the existing 3" main line to at least a 6" main line. This system is currently the highest need and it also requires an inordinate amount of staff time to maintain.

The Tribes are currently coordinating with BIA, HIA, HUD and EPA to cobble together funding for renewal of the water treatment facility. Our experience is that there must be a better way for Tribes in our circumstances to seek emergency assistance from the federal government to provide basic clean water to our members.

We are grateful to Senators Wyden and Merkley for crafting legislation to give tribes like ours a lifeline. S.3044 would help Warm Springs get past the “band-aid” approach to our water infrastructure failings and help us make full repairs and replacements where needed.

Particularly in light of the COVID–19 crisis in Indian Country, the Confederated Tribes of Warm Springs respectively urge the Committee to favorably review this legislation and support its swift enactment. We share the sentiment of those at the Navajo Reservation in saying that “you can’t wash your hands without running water.”

PREPARED STATEMENT OF SUSAN FELLER, PRESIDENT & CEO, ASSOCIATION OF
TRIBAL ARCHIVES, LIBRARIES AND MUSEUMS

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Association of Tribal Archives, Libraries, and Museums strongly supports swift passage of the STOP Act.

My name is Susan Feller and I am the President & CEO of the Association of Tribal Archives, Libraries, and Museums. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country and impacts the tribal communities we serve. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Association of Tribal Archives, Libraries, and Museums Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

The Association of Tribal Archives, Libraries, and Museums has first-hand experience in fighting to prevent the loss of our cultural heritage due to theft, trafficking, and illegal sales. For example, we currently are helping the Pawnee Nation of Oklahoma in its attempt to retrieve the human remains and regalia of White Fox, a Pawnee Scout who died in Sweden in the late 1800s. At the time of his death, the Swedish government refused to release the remains of White Fox to his brothers. Instead, it placed his remains in the Karolinska Institute where a plaster cast was made of his body, his skin was removed and replaced onto the torso. The remains were then on display for decades. The Institute has returned the skin to the Pawnee Nation but refuses to return the regalia, even though they do not have a right to them.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Association of Tribal Archives, Libraries, and Museums fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage—especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items

and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGPRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Association of Tribal Archives, Libraries, and Museums urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF HON. ROBERT A. MORA, SR., GOVERNOR, PUEBLO OF
TESUQUE

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Pueblo of Tesuque strongly supports swift passage of the STOP Act.

My name is Robert A. Mora, Sr. and I am the Governor of the Pueblo of Tesuque. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. The Pueblo of Tesuque is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Pueblo of Tesuque Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

The Pueblo of Tesuque has first-hand experience in fighting to prevent the loss of our cultural heritage due to theft, trafficking, and illegal sales. We have had the same experience as our sister Pueblo, the Pueblo of Acoma. We learned that one of our war shields was up for auction in France, however for us it was too late and the contact's we had directed us in a different direction or gave us the wrong information and therefore we missed out on getting this item back. We are slowly learning that there are more objects from the Pueblo abroad and these items are too sensitive to explain or write down.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Pueblo of Tesuque fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGPRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Pueblo of Tesuque urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF RADM MICHAEL D. WEAHKEE, DIRECTOR, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

S. 3099

Chairman Hoeven, Vice-Chairman Udall, and Members of the Senate Committee on Indian Affairs. I am RADM Michael D. Weahkee, Director of the Indian Health Service (IHS). Thank you for the opportunity to provide a statement of the record on S. 3099, the Southeast Alaska Regional Health Consortium Land Transfer Act of 2019, a bill to provide for the conveyance of certain property to the Southeast Alaska Regional Health Consortium (SEARHC), aka the Consortium, located in Sitka, Alaska.

The IHS mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives (AIAN) to the highest level. This mission is partnership with the AIAN communities we serve. As an agency within the Department of Health and Human Services (HHS), the IHS provides comprehensive health service delivery to approximately 2.6 million AIAN across 37 states and through a network of over 605 Federal and tribal health facilities including hospitals, clinics and school health centers. In addition, the IHS contracts with 41 Urban Indian Organizations that deliver health care services to AIAN urban populations.

S. 3099 would provide conveyance by warranty deed of certain property to the SEARHC, a tribal organization that has provided IHS-funded health care services since 1976 under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA). The federal property described in S. 3099 would be used in connection with existing health programs in Sitka, Alaska operated by the SEARHC aka the Consortium. Under S. 3099, the Consortium would not provide the Federal Government any consideration for the property and the Federal Government would

not be able to impose any obligation, term, or condition on the Consortium with regard to the property. In addition, the Federal Government would not retain any reversionary interest in the property. It also would require completing the conveyance no later than two years from the date of enactment of the bill.

S. 3099 would free the Consortium of any liability that it otherwise would have assumed for any environmental contamination that may have occurred on or before the date of the transfer, including the period prior to the date of the transfer during which the Consortium has been using, occupying and/or managing the property. S.3099 also specifies HHS would also not be liable for any contamination for the same period of time, thus making it unclear who would be liable.

We have seen several bills of this sort move through Congress in recent years mandating transfer by warranty deed rather than by quitclaim deed, including S. 825, the Southeast Alaska Regional Health Consortium Land Transfer Act of 2017. As with previous bills, HHS is concerned about the details of S. 3099. Specifically, HHS does not prefer to make ISDEAA transfers by warranty deed as such deeds create the potential for liability if a competing property interest is subsequently discovered. In addition, barring retention of a reversionary interest (as is the standard practice with transfers of property for ISDEAA purposes) deprives HHS of a means to ensure that the property will continue to be used for health services in furtherance of the purposes of this bill.

With respect to environmental liability, S. 3099 would protect HHS from liability for contamination that may have occurred subsequent to the time when administration of the facility was turned over to the Consortium, though the result of immunizing both the Consortium and the HHS from liability for contamination occurring during that period may be that anyone injured from such contamination would be without a remedy.

With these concerns in mind, HHS supports the purposes of the bill to convey the property to the Consortium in order to facilitate providing improved health services to Alaska Natives. We would like to work with the committee on technical changes to address the issues raised above. We remain firmly committed to improving quality, safety, and access to health care for AIAN. We appreciate all your efforts in helping us provide the best possible health care services to the people we serve.

S. 3100

Chairman Hoeven, Vice-Chairman Udall, and Members of the Senate Committee on Indian Affairs. I am RADM Michael D. Weahkee, Director of the Indian Health Service (IHS). Thank you for the opportunity to provide a statement for the record on S.3100, the Alaska Native Tribal Health Consortium Land Transfer Act, a bill to provide for the conveyance of certain property to the Alaska Native Tribal Health Consortium (ANTHC), aka the Consortium, located in Anchorage, Alaska.

The IHS mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives (AIAN) to the highest level. This mission is done in partnership with the AIAN communities we serve. As an agency within the Department of Health and Human Services (HHS), the IHS provides comprehensive health service delivery to approximately 2.6 million AIAN across 37 states and through a network of over 605 Federal and tribal health facilities including hospitals, clinics, and school health centers. In addition, the IHS contracts with 41 Urban Indian Organizations that deliver health care services to AIAN urban populations.

S. 3100 would provide conveyance, by warranty deed, of certain property to the ANTHC, a tribal organization that has provided IHS-funded health care services since 1999 under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA). The federal property described in S. 3100 would be used in connection with existing health programs in Anchorage, Alaska. Under S. 3100, the Consortium would not provide the Federal Government with any consideration for the property and the Federal Government would not be able to impose any obligation, term, or condition on the Consortium with regard to the property. In addition, the Federal Government would not retain any reversionary interest in the property. It also would require completing the conveyance no later than 180 days from enactment of the bill. HHS has determined this timeframe would not provide sufficient time to fully complete the transfer.

S. 3100 would free the Consortium of any liability that it otherwise would have assumed for any environmental contamination that may have occurred on or before the date of the transfer. Notably, S.3100 does not address liability during the period that the Consortium was using, occupying and/or managing the property prior to conveyance.

We have seen several bills of this sort move through Congress in recent years mandating transfer by warranty deed rather than by quitclaim deed, including S. 825, the Southeast Alaska Regional Health Consortium Land Transfer Act of 2017. As with previous bills, HHS is concerned about the details of S. 3100. Specifically, HHS does not prefer to make ISDEAA transfers by warranty deed as such deeds create the potential for liability if a competing property interest is subsequently discovered. In addition, barring retention of a reversionary interest (as is the standard practice with transfers of property for ISDEAA purposes) deprives HHS a means to ensure the property will continue to be used for health services in furtherance of the purposes of this bill.

With respect to environmental liability, S. 3100 does not protect HHS from liability for contamination that may have occurred subsequent to the time when administration of the facility was turned over to the Consortium.

With these concerns in mind, HHS supports the purposes of the bill to convey the property to the Consortium in order to facilitate providing improved health services to Alaska Natives. We would like to work with the committee on technical changes to the bill to address the issues raised above. We remain firmly committed to improving quality, safety, and access to health care for AIAN. We appreciate all your efforts in helping us provide the best possible health care services to the people we serve.

S.3100 Technical Comments

- **Section 2. Page 1, line 10:** Drafters may want to consider changing the deadline to complete the transfer of the property as follows to ensure the requirement can be met:

“not later than two (2) years, after the date of enactment”

- **Section 2. Page 3, line 21:** Drafters may want to consider language immunizing IHS from any contamination which may have occurred during the period the property has been used, occupied and/or controlled by the Consortium.

“to the Consortium, except that the Secretary shall not be liable for any contamination that occurred after the date the Consortium controlled, occupied, and used the property.

PREPARED STATEMENT OF AARON PAYMENT, PRESIDENT, MIDWEST ALLIANCE OF SOVEREIGN TRIBES

Thank you Chairman Hoeven, Vice Chairman Udall, and Members of the Committee for the opportunity to submit testimony on S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019. The Midwest Alliance of Sovereign Tribes strongly supports swift passage of the STOP Act.

My name is Chairperson Aaron payment and I am the President of the Midwest Alliance of Sovereign Tribes. The struggle to protect tribal cultural heritage from illegal trafficking is a tragically common challenge for communities across Indian Country. For the thirty five Midwest Tribes is no exception. International markets have become a safe harbor for trafficking federally protected tribal cultural heritage items, and they will remain this way until Congress enacts federal law to address this issue. We firmly believe the STOP Act will make tremendous strides in preventing international trafficking of federally protected tribal cultural heritage items and securing their return home to their tribal communities.

I. The Midwest Alliance of Sovereign Tribes Has Fought to Protect Our Tribal Cultural Heritage

Items of tribal cultural heritage are as unique as the tribal nations to whom they belong. These items share the common characteristics of being of deep intangible and tangible significance to a tribal nation. Many people view our cultural heritage as beautiful works of art, as talismans of a past culture they would like to own, or as items to trade for profit. Whatever intrinsic beauty these items possess, that is not their intended purpose.

Our items of cultural heritage have significant roles to play within our cultures, our traditional calendars, our families, and our ways of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our community members, particularly our young people. So important are these items of cultural heritage that they belong to the community as a whole—as our shared inheritance and as our shared responsibility to honor and protect for present and future generations.

The Midwest Alliance of Sovereign Tribes has first-hand experience in fighting to prevent the loss of our cultural heritage due to theft, trafficking, grave robbing and

illegal sales. Our Nations have lost sacred ceremonial pipes, head dresses, wampum belts, attire, prayer bundles, etc.

II. Support for the STOP Act to Close Gaps in Existing Federal Law

The Midwest Alliance of Sovereign Tribes fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. Gaps in existing federal law have enabled dealers and collectors to operate in the shadows when it comes to items of tribal cultural heritage-especially once exported abroad. The STOP Act illuminates these dark corners.

There is an already-existing international mechanism through which countries can request the return of cultural property from other countries. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty that the United States signed. France, now a safe harbor for those seeking to sell federally protected tribal cultural heritage items, is also a signatory. When a signatory prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, that signatory can call on other signatories to control imports of those items and help with repatriation. The United States has not explicitly prohibited export of tribal cultural heritage items otherwise protected under federal laws like the Native American Graves Protection and Repatriation Act (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Instead, when we try to regain our sacred items from an auction block abroad, we are told these gaps in United States law prevent government action to facilitate return.

The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.

The STOP Act is designed to meet these very narrow goals. But NAGRA and ARPA have other serious limitations that make even their domestic implementation difficult, including restrictive provenance requirements. While the STOP Act works to prevent the export of items already protected under NAGPRA and ARPA and to secure their return, we hope to see larger changes to NAGPRA and ARPA in the future meant to resolve these other limitations.

We understand the STOP Act has been developed with significant expert feedback, including from seasoned agency officials. We welcome this expert feedback to strengthen the STOP Act so that it best meets its goals.

We need the STOP Act now. Without it, we will continue to see our tribal cultural heritage trafficked just out of our reach and in front of our very eyes. The Midwest Alliance of Sovereign Tribes urges you to act swiftly to enact the STOP Act into law.

PREPARED STATEMENT OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Chairman Hoenes, Vice Chairman Udall, and members of the Committee, this statement for the record summarizes the U.S. Environmental Protection Agency's (EPA) important work to improve access to safe drinking water on tribal lands, and provides EPA's technical assistance comments on S. 3044, the Western Tribal Water Infrastructure Act. The Administration does not have an official position on S. 3044.

EPA's Commitment to Improving Tribal Drinking Water Infrastructure

Since passage of the Safe Drinking Water Act (SDWA) in 1974, EPA and our implementing partners, including tribes, have made tremendous progress in providing clean and safe water to our Nation's citizens. In the 1970s, more than 40 percent of our Nation's drinking water systems failed to meet even the most basic health standards. Today, over 93 percent of community water systems meet all health-based standards, at all times. Congress passed SDWA to protect public health, including by regulating public water systems. SDWA requires EPA to establish and enforce standards that public drinking water systems must follow. EPA delegates primary enforcement responsibility (also called primacy) for public water systems to states and tribes if they meet certain requirements.

EPA also has a critical role in helping to support investments in our nation's drinking water infrastructure. In particular, the Drinking Water State Revolving Loan Fund (DWSRF) was established by the 1996 amendments to SDWA. The DWSRF is a financial assistance program to help water systems achieve the health protection objectives of SDWA. As described further below, specific funding for tribal projects is provided through a set-aside from the DWSRF.

EPA has specifically identified drinking water compliance and drinking water infrastructure priorities within EPA's fiscal year (FY) 2018–2022 strategic plan and associated long-term performance goals. In particular, EPA has set goals for reducing the number of community water systems out of compliance with health-based measures and for increasing the amount of non-federal dollars leveraged by EPA's water infrastructure finance programs.¹

Assessing Tribal Drinking Water Needs

SDWA requires EPA to assess the nation's public water systems' infrastructure needs every four years and use the findings to allocate DWSRF capitalization grants to states and tribes. As part of this assessment, EPA documents the 20-year capital investment needs for tribes. The survey reports infrastructure needs that are required to protect public health. These include projects to ensure compliance with SDWA that are eligible for funding under the Drinking Water Infrastructure Grants

Tribal Set-Aside Program (hereafter "Tribal Set-Aside Program"), discussed in greater detail below. EPA's most recent drinking water infrastructure needs survey and assessment estimated the total 20-year need for tribal water systems to be \$3.1 billion.²

The Drinking Water Infrastructure Grants Tribal Set-Aside Program

The Tribal Set-Aside Program helps address the unique challenges tribes face in providing reliable access to safe drinking water and provides annual funding for federally recognized tribes for public drinking water systems.³ The Tribal Set-Aside Program funds come from a 2 percent set-aside of the DWSRF program provided in EPA's annual appropriations. In FY 2020, Congress appropriated \$22.52 million for the Tribal Set-Aside Program. Any federally recognized tribe is eligible to receive a grant.

Community water systems and non-profit, non-community water systems that serve a tribal population are eligible to have projects funded, in whole or in part, with Tribal Set-Aside Program funds. If the Indian Health Service (IHS) agrees, tribes may request that IHS receive the project funds to administer the project. Funds can be used for planning and construction expenditures at community or non-profit non-community drinking water systems that serve tribes. Furthermore, the SWDA states that funds must be used to address the most significant threats to public health. SDWA further directs that funds may be used only for projects that facilitate compliance with the National Primary Drinking Water Regulations or will further the health protection objectives of SDWA. These funds cannot be used for compliance monitoring, operation, or maintenance of a system.

EPA Regions are responsible for working with the tribes and other federal agencies like IHS to identify, prioritize, and select projects to receive funding from the Region's share of the program funds. Projects are selected in close coordination with other federal agencies to most effectively leverage existing authorities and to ensure efficient use of resources. Prioritization of projects is especially important given the highly varied needs across tribal communities.

Examples of projects funded by the Tribal Set-Aside Program are:

- Rehabilitation or development of sources of drinking water;
- Installation or upgrade of treatment facilities;
- Installation or upgrade of storage facilities;
- Installation or replacement of transmission or distribution pipes; or
- Replacement of aging water system infrastructure.

Projects can also be funded to develop project engineering reports, engineering design work, and project administration. The 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act) expanded the activities that are now eligible for Tribal Set-Aside Program funds to include training and operator certification programs.⁴

EPA uses a formula to allocate Tribal Set-Aside Program funds to EPA Regions annually. The formula provides a base amount of 2 percent of the total annual set-

¹ See <https://www.epa.gov/sites/production/files/2019-09/documents/fy-2018-2022-epa-strategic-plan.pdf>

² EPA's sixth Drinking Water Infrastructure Needs Survey and Assessment, available at <https://www.epa.gov/sites/production/files/2018-10/documents/corrected-sixth-drinking-water-infrastructure-needs-survey-and-assessment.pdf>.

³ <https://www.epa.gov/tribaldrinkingwater/drinking-water-infrastructure-grants-tribal-set-aside-program>

⁴ <https://www.epa.gov/tribaldrinkingwater/amendments-drinking-water-infrastructure-grants-program-required-water>

aside to each Region. EPA Regions receive the remaining fund allocations based on their percentage share of the tribal drinking water system “needs.” The drinking water system “needs” come from the most current statistics reported in two different surveys: EPA’s Drinking Water Infrastructure Needs Survey and Assessment, described earlier, and IHS’s Sanitation Deficiency System.

Additional EPA Funding Sources for Tribal Drinking Water Projects

In addition to the Tribal Set-Aside Program, EPA has several other potential sources of funding for tribal water infrastructure projects.

Water Infrastructure Improvements for the Nation Act (WIIN Act) Grant Programs

The 2016 Water Infrastructure Improvements for the Nation Act (WIIN Act) addresses, supports, and improves America’s drinking water infrastructure. Included in the WIIN Act are three new drinking water grants that promote public health and the protection of the environment. Within the WIIN Act section 2105 lead infrastructure grant program, EPA has set aside \$3 million to fund tribal drinking water infrastructure projects using funding appropriated in FY2018–FY2020.⁵ EPA is also implementing a tribal grant program under section 2104 of the WIIN Act that may include infrastructure investments necessary to comply with the SDWA.⁶

The Water Infrastructure Finance and Innovation Act (WIFIA) Program

The Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) established the WIFIA program, a federal credit program administered by EPA for eligible water and wastewater infrastructure projects. The WIFIA program accelerates investment in our nation’s water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. Tribes are eligible borrowers under WIFIA and may apply for loans to finance projects of at least \$5 million.

EPA drinking water infrastructure activities in the Columbia River Basin

From FY 2013 to FY 2019, the Tribal Set-Aside Program awarded \$2.6 million, through interagency agreements with IHS, to 6 different tribes for 11 drinking water infrastructure projects in the Columbia River Basin to provide water supply and storage, improve source water, support planning and design of infrastructure, and improve pumps and treatment.

Shoshone Bannock—Fort Hall Community Water System

After the discovery that the aquifer that underlies the reservation was contaminated with ethylene dibromide and nitrate (both in excess of the national primary drinking water standards) in the early 1990s, EPA and other funding agencies helped pay for the construction of a large community water system that provides access to safe water to the residents of the reservation.

Simnasho Water System—Warm Springs

After the revisions to the arsenic rule in 2000, the community needed treatment or a new source of drinking water. Through cooperative efforts with IHS, the Department of Housing and Urban Development (HUD) and the Tribe, EPA funded the construction of a new source (wells), a water treatment building and a water transmission main needed to deliver a safe water supply to the community. EPA funded 66.3 percent of the \$3.37 million project which resulted in the elimination of a violation of a national primary drinking water standard (arsenic).

EPA has been heavily engaged in providing technical assistance and compliance assistance to the Confederated Tribes of the Warm Springs, starting in November 2018. Through the Interagency Agreement for Public Water System Supervision, EPA funds IHS Utility Consultants. The utility consultant staff funded by IHS have spent multiple weeks onsite providing hands-on training, troubleshooting and technical assistance to Warm Springs’ operators. Also, EPA has regularly participated in funding summits at Warm Springs (June 2019, September 2019 and February 2020). The organization and event management of the first two meetings was supported by EPA at the request of the Tribe. The June and September 2019 meetings involved significant federal participation.

⁵ More information is available at <https://www.epa.gov/tribaldrinkingwater/wiin-act-section-2105-reducing-lead-drinking-water-tribal-grant-program>.

⁶ More information is available at <https://www.epa.gov/tribaldrinkingwater/wiin-act-section-2104-assistance-small-and-disadvantaged-communities-tribal>

EPA drinking water infrastructure activities in the Upper Missouri River Basin

Over the last seven fiscal years, the Tribal Set-Aside Program awarded \$17 million, through an interagency agreement with IHS, to 10 different tribes for 30 drinking water infrastructure projects in the Upper Missouri River Basin to upgrade or install new drinking water storage tanks, replace or consolidate water mains and pipes (including lead service lines and intakes), and install new filters and treatment technology.

In March 2020, EPA Region 8 convened a workgroup of multiple federal agency regional leaders to discuss Drinking Water/Wastewater/Solid Waste issues in Indian country in Wyoming and Montana. Leaders from over 8 federal agencies and administrations began a collaborative, regional-level discussion to address the concerns regarding systemic violations of these systems, and to identify agency resources that may help address these continuous violations.

EPA drinking water infrastructure activities in the Upper Rio Grande Basin

In FY 2019 and FY 2020, the Tribal Set-Aside Program awarded \$2.5 million, through an interagency agreement with IHS, to 6 different tribes for 7 drinking water infrastructure projects in the Upper Rio Grande Basin to fix corrosion issues in water storage facilities, help meet drinking water standards for arsenic, fix operational problems by updating electronic control systems, and construct additional water supply facilities for reserve and backup capacity to meet design standards.

S. 3044—the Western Tribal Water Infrastructure Act

In section 2001 of America’s Water Infrastructure Act of 2018 (AWIA), Congress authorized EPA to create an Indian Reservation Drinking Water Program that would fund projects to connect, expand, or repair existing public water systems on Indian reservations in the Upper Missouri River and Upper Rio Grande Basins. EPA has not received appropriations to carry out this program.

S. 3044 would amend the Indian Reservation Drinking Water Program to include projects in the Columbia River Basin and make several additional technical changes. As noted earlier, EPA supports efforts to address drinking water challenges on tribal lands and is interested to work with the Committee on how to best target federal efforts toward this important goal. EPA has two technical comments on S. 3044:

- EPA would need a specific appropriation from Congress to carry out the Indian Reservation Drinking Water Program; and
- S. 3044 describes a specific number of projects located in specific watersheds. Based on the authorization of appropriations in section (d) of \$30 million, it would be challenging for EPA to fund 10 projects in each of the three Basins. Projects vary substantially by size and scope and this framework may severely constrain EPA in making project decisions.

Conclusion

Thank you for the opportunity to submit this written statement for the record for today’s hearing. EPA remains committed to its ongoing work to improve access to safe drinking water on tribal lands, and we appreciate Congress’s attention to this important issue.

PREPARED STATEMENT OF KIM MARTINDALE, PRESIDENT, AUTHENTIC TRIBAL ART DEALERS ASSOCIATION (ATADA)¹

The Safeguard Tribal Objects of Patrimony Act of 2019 (STOP Act), S. 2165²

ATADA is a professional organization established in 1988 in order to set ethical and professional standards for the art trade. Its membership includes hundreds of antique and contemporary Native American and ethnographic art dealers and collectors, art appraisers, and a strong representation of museums and public charities across the U.S.

ATADA is engaged in intensive community educational work to build understanding of Native American concerns over the loss of cultural heritage. In 2016 and

¹ATADA, the Authentic Tribal Art Dealers Association, www.atada.org, email director@atada.org, PO Box 45628, Rio Rancho, NM 87174.

²This testimony also pertains to the current House version of the Safeguard Tribal Objects of Patrimony Act, S. H.R. 3846. 116th Cong. (2019)

2017, ATADA adopted Bylaws forbidding trade in items in current ceremonial use,³ established Due Diligence Guidelines to protect buyers and sellers,⁴ and began public education programs⁵ working together with tribal representatives.

ATADA has built a highly successful, community-based Voluntary Returns Program for lawfully owned ceremonial objects. The Voluntary Returns Program has brought several hundred important ceremonial items from art dealers⁶ and collectors to tribes at no cost since it began in 2016.⁷ The vast majority of sacred items that ATADA has returned to tribes have come from collections built 30–70 or more years ago, prior to passage of NAGPRA in 1990. NAGPRA was clearly a wake-up call to collectors and art dealers as well as for museums. It remains the most effective federal tool for ensuring that sacred items are returned to tribes.

ATADA appreciates the opportunity to assist in promoting legislation that protects tribal ceremonial and sacred items, strengthens enforcement of existing laws consistent with citizens constitutional rights and facilitates legitimate trade in legal items. However, the Safeguard Tribal Objects of Patrimony Act of 2019 (STOP Act), S. 2165, fails on all these counts.

This is the third version of STOP introduced since 2016. It replicates and even expands many provisions rejected in prior versions of the bill. Like earlier iterations of STOP, this bill will embargo lawfully owned Indian artifacts, will fail to provide notice to the public of what Indian objects are prohibited from export, will impose burdensome export requirements on very low value items, and allow seizure without constitutional due process.

For all the reasons set forth below, ATADA believes that S. 2165, will not achieve its primary goal—the return of important cultural objects to Native American tribes and Native Hawaiian organizations. It is constitutionally, procedurally, and practically flawed.

1. The STOP Act undermines constitutional protections guaranteed to American citizens, placing the burden of proof on the applicant, not the government, and reversing the American concept of innocent until proven guilty.

The STOP Act does not require “knowing” wrongdoing for there to be a crime. It does not require proof of violation of NAGPRA, ARPA, or other U.S. law. Export restrictions can be placed on lawfully-owned objects.

The STOP Act provides for criminal penalties of up to ten years’ imprisonment for exporting lawfully owned items without a permit. Despite these heavy penalties, due process is absent. The STOP Act places the entire burden of proof on the exporter, even if the exporter is a tourist.

STOP’s tribal review process for issuing export permits is secret. It is not subject to Freedom of Information Act requests. Evidence from tribes on which seizure was based would be withheld, severely limiting opportunities to appeal seizures or refusal to export and denying future access to information for the future.

2. The STOP Act potentially restricts commercially-made and legal items as tribal heritage.

Native Americans have been making ceramics, carvings, jewelry, and weavings for commercial sale for literally hundreds of years.⁸ There are hundreds of thousands of Native American antique objects that have circulated in the market for decades, many of which are now said by tribes to have a ceremonial character or to be tribal

³ATADA Bylaws, Article X, Trade Practices, Ethics, And Guarantees. <https://www.atada.org/bylaws-policies/>

⁴ATADA Bylaws, Article XI, Due Diligence Guidelines. <https://www.atada.org/bylaws-policies/>

⁵For example, the ATADA Symposium, Understanding Cultural Property: A Path to Healing Through Communication. May 22, 2017, Santa Fe, NM.

⁶ATADA Bylaws, Article X, ATADA Guidelines Regarding the Trade in Sacred Communal Items of Cultural Patrimony. <https://www.atada.org/bylaws-policies/>

⁷A Journey with Ceremonial Objects, <https://committeeforculturalpolicy.org/a-journey-with-ceremonial-objects/>

⁸Native American artists created outstanding works of art for sale and trade even before the time of first contact, trading with indigenous American peoples in the Plains and the far West and sending goods to exchange for Mayan and Aztec products southward into present-day Mexico. Contact with the Spanish conquistadors and the settlers that followed them led to development of many Indian arts. To give just one example, Navajo weaving is a traditional art, but it was not until the introduction of shepherding after contact that there was a large scale expansion of trade in woven goods, blankets and mantas, made both for commercial and domestic use.

“cultural heritage.”⁹ Even Indian art made for sale would be subject to restrictions and tribal review. A receipt from a Native American artist does not guarantee that an object is exempt from review and possible seizure.

3. The STOP Act sets no time-limit for review and gives limitless scope to the objects that cannot be exported.

The STOP Act has no time limit for tribal review. There is no list of forbidden items for export. STOP provides only for a general description of objects that may be unlawful to export. The documentation burden and delay of STOP’s proposed tribal review system would be a de-facto export ban as the work would not be justified for low value items.

Legitimate business relationships with international partners and art fairs will be curtailed due to concerns over unlimited delays. The lack of a clear definition of what may be exported without a permit will result in the seizure of objects exported in good faith.

4. The STOP Act does not enable self-certification.

A self-certification process under U.S. law would never be a free ride as a false statement would lead to imprisonment, a significant safeguard. ATADA endorses self-certification to ensure a paper trail for exports and to provide true accountability.

5. The STOP Act will harm American small businesses exports, Native and non-Native alike.

ATADA is committed to helping to build markets for Native and non-Native American small businesses and Native craftspeople. The STOP Act’s time-consuming and potentially expensive export process (for which an unstated fee will be assessed) will eliminate small scale exports and place an additional burden on Indian artisans as well as art dealers.

Art and craft production is important in the economies of tribal nations across the U.S., including Native Alaskan sculptors, Northwest Coast weavers and carvers, California basketry-makers, Cherokee Nation beadworkers, and craft marketers from the Plains to the Penobscot people of Maine and others in the Northeast. These and many others are working to build local artist markets in their communities; they are also represented together with hundreds of Native Americans artists from Southwestern tribal nations in galleries and fairs in New Mexico.

Travel restrictions have already decimated the hopes of thousands of Native artisans dependent on summer sales for the majority of their annual earnings. Imposing export barriers to businesses and tourists alike would threaten the ability rebuild sales venues for Indian art.

6. The STOP Act will harm both U.S. and foreign tourism.

The STOP Act requires tourists as well as commercial exporters to submit photos and forms and obtain permissions for exports as low as \$1 value. These requirements will be impossible for most tourists to meet and will taint the domestic market with concerns that buying Indian art is “wrong.” Too broad or too vague criteria would trap many foreign tourists, inevitably resulting in thousands of inadvertent, innocent violations and seizures for technical errors rather than criminal acts.

To give just one example of STOP’s potential for negative impact, the first international news article about seizure of an ordinary object from a tourist for failing to meet STOP’s vague export permitting requirements would seriously harm international tourism to important tourist destinations, such as Santa Fe’s almost 100-year-old Indian Market, which ordinarily draws about 100,000 tourists to New Mexico each year.

7. Consumer confusion will further damage tribal markets.

Public confusion about laws regulating trade can result in unintended harm. A case in point is the federal law banning trade in elephant ivory, which has seriously impacted Native Alaskan craftsmen who legally carve marine mammal ivory.¹⁰ Many Native artisans depend on sales of carved marine mammal ivory, particularly walrus, to pay for necessities like fuel oil through the winter. The federal elephant ivory ban has reduced Native carvers’ earnings by as much as 40 percent. As Native carver Dennis Pungowiyi explained to Arctic Today, negative perceptions have

⁹For example, American auction houses have recently received ‘cultural heritage’ claims for hand-carved and painted wooden kachinas originally sold by the tribal artist-makers in the 1990s on eBay.

¹⁰Zachariah Hughes, Lower 48 ivory bans hit Alaska Native carvers, Alaska Public Media, November 7, 2016. <https://www.alaskapublic.org/2016/11/07/lower-48-ivory-bans-hit-alaska-native-carvers/>

grown among his customers who believe that owning a walrus ivory sculpture might be illegal, even though it is legal under Alaskan and federal law.¹¹

Several U.S. states have gone far beyond federal regulations and passed laws prohibiting trade in all ivories. The losses suffered by Native Alaskan craftspeople were so alarming that Alaskan Senators Dan Sullivan and Lisa Murkowski introduced the 2017 Allowing Alaska IVORY Act,¹² S. 1965, to mitigate the harm. Unfortunately, S. 1965 was not passed, leaving many Native carvers in doubt whether their industry can survive.

The STOP Act's overbroad, vague provisions would similarly taint other Native artworks with potential illegality and raise the concept that ownership of Native art was harmful to cultural integrity and public interest.

8. The STOP Act provides no funding for a system of review, and no guidance as to how such a system should be organized.

The STOP Act leaves the Department of the Interior to create and fund a system of tribal review from scratch. The system must cover virtually all exported Indian art and artifacts (many of which cannot be identified to specific tribes) from every federally recognized tribe and Hawaiian Native organization. Yet five years after first asking the federal government to establish this system, no tribe has come forward with a plan for coordinating or organizing it.

9. STOP fails to utilize the existing U.S. Customs' AES export reporting system agreed to by tribes in 2018, sets no low-value threshold.

The AES system used for all commercial exports of \$2500.00 or more provides an adaptable online system for tracking exports. Using this \$2500.00 threshold would already be far more restrictive than any import/export system for art and artifacts currently in use in market nations.

To compare, in early 2019, the European Parliament enacted legislation requiring a certification system for art imports. Although the EU already has harmonized Customs systems, the European Parliament estimates that it will take 5 years to build a permitting system to manage this. The new EU system requires only a self-certification from importers for most types of artworks, including ethnographic objects such as Native American art. For these, it requires self-certification only for objects over 200 years old AND over 18,000 euros in value.¹³ Even so, the burden on art businesses is expected to seriously damage the European market and harm international art fairs, an increasing segment of the art market.¹⁴

How long would be needed for almost 600 tribes and the Department of the Interior to build an independent system for export permits? The only realistic approach is to utilize an already existing system and to limit the items covered as much as possible in order not to overburden it. ATADA hopes that tribes will join it in seeing the benefit of having a functional system that can start almost immediately rather than confront all the hurdles a new system would create.

10. The STOP Act is bad public policy that will undermine NAGPRA and harm U.S. museums.

U.S. museums and educational institutions that receive any federal funding are already subject to strict NAGPRA rules of compliance that enable tribes to claim museum-owned Native American objects. The STOP Act ignores NAGPRA criteria that an object be a ceremonial or sacred object at the time that it left tribal hands. The STOP Act treats NAGPRA's definition of "cultural items" as one category when NAGPRA has five separate categories of cultural items with separate statutory definitions.

NAGPRA returns are dealt with in a case-by-case process between museums and tribes. Under STOP, tribes have no need to show affinity or substantiate that an object may be claimed.

The STOP Act makes it illegal to export "cultural items"—a term that includes items that are not subject to NAGPRA repatriation. Export by museums for loans or traveling exhibitions of items that were legally acquired decades ago could put museums in violation of the STOP Act. Objects not subject to NAGPRA could be seized if claimed by a tribe.

¹¹Yereth Rosen, Some U.S. state ivory bans affect Alaska Native carvers. A new federal bill aims to override them, Arctic Today, October 24, 2017, <https://www.arctictoday.com/some-u-s-state-ivory-bans-affect-alaska-native-carvers-a-new-federal-bill-aims-to-override-them/>

¹²S. 1965, Allowing Alaska to Improve Vital Opportunities in the Rural Economy Act, <https://www.congress.gov/bills/115/congress/senate/bills/1965/text>.

¹³EU Regulation Curtailing Import of Art & Antiquities Now Law, Cultural Property News, June 16, 2019, <https://culturalpropertynews.org/eu-regulation-curtailing-import-of-art-antiquities-now-law/>

¹⁴*Id.*

11. STOP abandons earlier progress on finding working solutions to preserve heritage.

During the last Congress, our efforts to produce a version of STOP that works led ATADA to work with the Acoma Pueblo and their representatives and produce legislation that banned the export and facilitated the return of illegal sacred and ceremonial items: H.R. 7075, the “Native American and Native Hawaiian Cultural Heritage Protection Act” of 2018.

H.R.7075 accomplished these objectives by grafting an export certification system for Native American items onto the existing Department of Commerce AES system and permitting selfcertification for lower value items, insuring speedy and effective implementation, operation, participation and enforcement of an export certification regime without infringing on individual’s constitutional rights.

Despite the burden that H.R. 7075 placed on American businesses, ATADA approved these restrictions in order to assist tribes to achieve their goal of preserving ceremonial and sacred items in the U.S. Regrettably, the STOP Act fails to incorporate compromises agreed to in H.R. 7075.

12. Conclusion.

The STOP Act represents the first time in the United States’ entire history that it has sought to restrict export of art or cultural heritage. Restrictions on any U.S. cultural heritage contravenes long held principles that have emphasized the free trade of cultural property for the public good, and Congress should be wary of enacting such a major statutory change, especially one whose breadth and scope is unlimited and shorn of due process protections.¹⁵

The problem of loss of tribal cultural heritage will not be solved by passing constitutionally suspect legislation or creating a new, unwieldy, and expensive federal bureaucracy. There are relatively few objects in private hands that actually meet the criteria set forth under NAGPRA or ARPA as objects unlawful to trade. Even fewer are ever exported. The GAO reports for previous versions of STOP counted the total overseas sales of Native American objects (sometimes twice) without identifying any items as actually sold in violation of ARPA, NAGPRA or other U.S. law.

ATADA is strongly supportive of the goal of returning objects necessary for tribal spiritual activities, and of halting all illegal trade in the U.S. as well as abroad. ATADA’s due diligence requirements for dealers, combined with the ATADA Voluntary Returns program, which has brought hundreds of important objects back within just a few years, are models for best business practices and for community-based return programs.

ATADA supports taking steps now to safeguard objects for tribal use. These should include significant federal investment in programs located on tribal lands and the building of safe, secure chapter houses to ensure that cultural objects remain under the control of tribal governments or tribal elders.

Any law passed limiting export should protect U.S. citizens from constitutional abuse by ensuring due process and enabling Freedom of Information Act requests. This requires:

- Adopting clear definitions of what can and cannot be exported.
- Applying CAFRA provisions to protect unconstitutional and unwarranted seizures.
- Exclusions for low value items and tourist purchases.
- Self-certification by business to create accountability and enable tracking of exported items.
- Limiting export prohibitions to items actually deemed sacred.

¹⁵The U.S. has longstanding import policies encouraging the importation of modern and antique artworks, manuscripts, books, scientific, and other cultural objects by making such imports free of duty. The Educational, Scientific, and Cultural Materials Importation Act of 1966, Section 1(b) provides that “The purpose of this Act is to enable the United States to give effect to the Agreement on the Importation of Educational, Scientific and Cultural Materials. with a view to contributing to the cause of peace through the freer exchange of ideas and knowledge across national boundaries.” The Agreement on the Importation of Educational, Scientific and Cultural Materials was opened for signature at Lake Success, on November 22, 1950, 131 U.N.T.S. 25 (1950); The Educational, Scientific, and Cultural Materials Importation Act of 1966, Pub. L. No. 89–651, 80 Stat. 897 (1966). Even earlier, in the U.S. Tariff Act of 1930, Congress exempted antiquities and art objects made before 1830 from duty in order to encourage the free flow of artistic and cultural materials into the U.S. The exemption from duty on antiques and archaeological materials is under the Harmonized Tariff Schedule of the United States Revision 7, ch. 97, § XXI (2019), (Works of Art, Collectors’ Pieces and Antiques, Subheading 9705.00.00 to 9706.00.00).

ATADA wishes to emphasize its willingness to work together with all interested parties to create legislation that will truly protect important sacred objects and return them to tribes.

My thanks to the Committee for its attention to these important issues.

PREPARED STATEMENT OF HON. BRIAN D. VALLO, GOVERNOR, PUEBLO OF ACOMA

On behalf of the Pueblo of Acoma (Pueblo), please accept this written testimony for the Senate Committee on Indian Affairs' legislative hearing on the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165, and other bills.

The Pueblo appreciates the opportunity to present on this important topic to the Committee and your staff. The Acoma people have a great deal of experience in both combating illegal trafficking of our protected tribal cultural heritage and in seeking repatriation of those items. From our own lived experiences, we have learned where the gaps in current federal law are that allow traffickers to continue to illegally export and sell federally protected tribal cultural heritage items abroad—the very gaps the STOP Act seeks to fill. The Pueblo is grateful for the opportunity to share this experience with you.

I. The Pueblo's Experience Prioritizing Protection of Tribal Cultural Heritage and the Story of the Acoma Shield

The Pueblo has developed expertise in the protection of tribal cultural heritage, especially across international borders. Unfortunately, this expertise came out of a necessity to protect our community and our cultural heritage, essential to our way of life. Many people view our cultural heritage as beautiful works of art or as talismans of a past culture they would like to own. Others seek to gain profit by trafficking in our sacred items, and they know that these items are extremely difficult to retrieve once they are exported abroad. A quick look at past auction catalogues of places where Pueblo cultural heritage has been sold reveals the sheer enormity of tribal cultural heritage that has left the country.¹

Whatever intrinsic beauty these items possess and whatever value they may generate for traffickers, that is not their intended purpose. Our items of cultural heritage have significant roles to play within our culture, our traditional calendar, our societies, our families, and our way of life. Our cultural heritage also helps us honor and uphold our values and teach those values to our young people. So important are these items of cultural heritage that, under the Pueblo's traditional law, no one person may own them. Rather they belong to the community and are cared for by their caretakers, who cannot sell them or take these items from the Pueblo. We have prioritized protecting the Pueblo's items of cultural heritage because we believe that, without their presence, we cannot continue our way of life.

The Pueblo has fought many instances of trafficking in our cultural heritage, including in New Mexico, across the country, and overseas. One well-known example was our fight to regain an important ceremonial shield (often referred to as "the Acoma Shield"), which was set to be auctioned in Paris, France in 2015 and then again in May of 2016. The Acoma Shield was stolen from its caretaker in the 1970s and was eventually exported overseas. We engaged in intense, closely negotiated discussions with the auction house and the individual consigner who claimed to hold title—all with the help of our congressional delegation, federal agency officials and law enforcement, Indian Country, and the general public. Through these discussions and backed by litigation filed by the federal government that resulted in a warrant, we were able to halt the illegal sale of the Acoma Shield. *Over 40 years after it was torn from our community, the Acoma Shield finally returned home in November of 2019.*

¹The French auction of tribal cultural heritage has been widely reported since at least 2013. See, e.g., Tom Mashberg, *Secret Bid Guides Hopi Spirits Home*, NY TIMES, (Dec. 16, 2013), <https://www.nytimes.com/2013/12/17/arts/design/secret-bids-guide-hopi-indians-spirits-home.html>; Tom Mashberg, *Despite Legal Challenges, Sale of Hopi Religious Artifacts Continues in France*, NY TIMES, (June 29, 2014), <https://www.nytimes.com/2014/06/30/arts/design/sale-of-hopi-religious-items-continues-despite-us-embassys-efforts.html>; SeaAlaska Heritage Institute, *Secret Bidder Saves Sacred Object from Auction for Alaska Natives*, (Sept. 6, 2014), <http://indiancountrytodaymedianetwork.com/2014/09/06/annenbergs-foundation-returns-sacred-object-alaska-natives-156764>; Navajos Reclaim Sacred Masks at Auction, CBS NEWS, (Dec. 16, 2014), <http://www.cbsnews.com/news/navajo-indians-buy-back-sacred-masks-in-france-auction/>; *Hopi Sacred Masks Auction in Paris Despite Protests*, REUTERS, (June 11, 2015), <https://www.reuters.com/article/us-france-auction-masks/hopi-sacred-masks-auctioned-in-paris-despite-protests-idUSKBN0OR1DG20150611>. The Government Accountability Office published a report recognizing the prevalence of this trafficking, discussed further below.

The joy of our Pueblo in welcoming the Acoma Shield home is without measure. A physical and spiritual absence in our community has been filled. Our people and the Acoma Shield upon reunion shared a deep contentedness impossible to put into words. The story of the Acoma Shield's return is illustrative of how cooperation, both internationally and domestically, can be effectively wielded to facilitate the protection and repatriation of tribal cultural heritage. It is a story of success—in federal-tribal partnership, in cooperative engagement, in redressing historic injustice, and in healing.

And yet, the story of the Acoma Shield's return is also story of the shortcomings in existing federal law that continue to cause profound harm to tribal nations and which must be addressed to fully protect our tribal cultural heritage. Through our fight to regain the Acoma Shield, we were told time and again that current federal law fell short of providing the tools necessary to use the existing international framework through which countries regain their cultural patrimony from one another; this should not be so. And it is an uphill battle we and other tribal nations will be forced to fight again and again unless the STOP Act is enacted. The Acoma Shield was just one of hundreds of items of cultural heritage that have illegally left our community and been trafficked into various markets—countless items that have not, and may never, come home.

The Acoma Shield is not the only time we have stepped forward to demand protection of our cultural heritage. Some of the earliest recorded incidents of the Pueblo's efforts to regain its cultural heritage involve federal criminal convictions handed down just after the 1990 passage of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001–3013, 18 U.S.C. § 1170. In *United States v. Brian Garcia and Gerald Garcia*, 92–515 JC (D.N.M. 1992), two Pueblo brothers pled guilty to illegally trafficking the Pueblo's cultural heritage in violation of NAGPRA. The Pueblo worked closely with the United States Attorney's Office to verify the provenance of the items sold. Later, in 1999, another example in *United States v. Tidwell*, 191 F.3d 976 (9th Cir. 1999), involved a set of historic Catholic priest robes cared for by the Pueblo, dating from the time of the Pueblo Revolt. They were recovered along with many Hopi items of cultural heritage. A Bureau of Indian Affairs (BIA) special agent who is also a member of Acoma investigated a non-Indian tribal art and antique dealer, leading to his conviction and the recovery of the items.

Later, in the 2000s, as national and international auction houses began to expand and reach more collectors through the Internet, the Pueblo became significantly more involved in attempting to identify and recover its cultural heritage. In 2006, the Pueblo worked diligently with its legal counsel for the return of historic wooden beams and doors from the San Esteban del Rey Mission Church.² A national auction house had possession of the wooden beams along with nearly 50 other items of cultural heritage belonging to the Pueblo. The auction house, unlike the situation with the Acoma Shield, facilitated negotiations between the consignor and the Pueblo, and all items were returned without incident.

In 2015, the Pueblo began devoting more of its resources to addressing this issue, as it observed a disturbing number of its cultural heritage items for sale in a variety of contexts. They were being sold in locations locally, nationally, and internationally. The Pueblo continues to monitor auctions and other sales in which cultural heritage items may be trafficked. When the Pueblo identifies such an item, it seeks its return, but it is only sometimes successful. And we fear that our increased monitoring is driving the market underground, increasing black market activity hidden from the public eye. However, our biggest concern remains that, as these items travel from domestic to international markets, the ability for federal enforcement to intervene and opportunities for civil negotiation become almost nil.

II. How the Pueblo Combats Illegal Trafficking

Monitoring Market

With the increased availability of auction house catalogues on the Internet, the Pueblo regularly attempts to monitor and respond to auctions involving its cultural heritage items. Subscriptions to a wide variety of auction catalogues, online gallery websites, and auction websites (like eBay) allow for scanned listings of sensitive items belonging to the Pueblo or our sister pueblos. The Pueblo also attempts to attend local antique or art conventions and to visit local galleries and pawnshops, where we often discover cultural heritage items for sale. Often it is through tips

²The San Esteban del Rey Mission Church sits atop the mesa at the Pueblo. Founded in 1629, it is still cared for and maintained by the Pueblo's people. It was declared a National Landmark and also listed on the National Register of Historic Places in 1970.

from our own members that we learn of an item of cultural heritage for sale. This was the case for the Acoma Shield, where an Acoma member forwarded an online auction listing to the Pueblo Governor's Office.

The Pueblo has learned from its experience that, despite a myriad of individual domestic sellers, galleries, and auction houses, the U.S. Customs and Border Protection is likely the singular entity through which cultural heritage items are funneled for exportation. Therefore, the exportation restrictions and certification system in the STOP Act are critical for monitoring the attempted export of cultural heritage items that have been illegally removed from their communities.

System for Identifying Protected Items of Cultural Heritage

It is important to understand that existing federal law protects only specific types of items associated with tribal nations. Most items are not protected. For example, NAGPRA and the Archaeological Resources Protection Act (ARPA), 16 U.S.C. §§ 470aa-470m, have specific statutory standards for the items they protect. Generally, they must meet a threshold level of cultural significance and must have been taken from specific lands within specific time periods. Although tribal nations are involved in determining which items are protected, *see United States v. Tidwell*, 191 F.3d 976, 980 (9th Cir. 1999), they cannot claim items are federally protected if they do not meet these statutory standards. However, even when an item of tribal cultural heritage does not fall into the restrictive parameters of current federal law, individuals sometimes choose to voluntarily return the item.

The Pueblo has a rich customary or common law tradition, which is often referred to as the Pueblo's "traditional law." This traditional law is recognized in the Pueblo's written law, and the Pueblo's traditional law helps identify items of significant cultural value, which aids in establishing their protection and facilitating prosecution under federal law.² Under the Pueblo's traditional laws, it is illegal for any member who may have these cultural heritage items in their care to sell or remove these items from the Pueblo.³ These cultural heritage items are often considered sacred, and many are used publicly and privately in ceremonies.

The Pueblo also has in place a system that tribal representatives use for identifying whether an item is from the Pueblo and whether it qualifies as protected tribal cultural heritage. The Pueblo has appointed an Advisory Board for its Tribal Historic Preservation Office to assist and consult on cultural matters. The Advisory Board is staffed with knowledgeable cultural practitioners, many of whom are current or former religious leaders within the community.

To pursue the Acoma Shield, federal agencies first needed information from the Pueblo to establish that it qualified as protected under existing federal law. When the Acoma Shield first came up for auction, Pueblo cultural practitioners identified it, recognizing its construction, iconography, and usage as a ceremonial and sacred item. Needing further information, the Pueblo worked with its community and cultural leaders to find out as much information as possible about how it left the Pueblo. While an object of cultural heritage need not be stolen to be protected by federal law, we learned that the Acoma Shield was stolen in the mid-1970s from a home in "Sky City," our ancestral mesa-top village.⁵ We were extremely fortunate to locate an individual who had a living memory of the theft of the Acoma Shield and immediately recognized it.

Working with Department of Justice and Bureau of Indian Affairs special agents, we obtained affidavits from tribal members to establish the facts surrounding the Acoma Shield's theft and information about its cultural significance. These affidavits were used to establish that the Acoma Shield qualified for protection under federal law.

Many collectors have argued that these items were lawfully acquired and can be legally sold. This is a false statement and a mischaracterization of how Pueblo and

³See *United States v. Brian Garcia and Gerald Garcia*, 92-515 JC (D.N.M. 1992); *United States v. Tidwell*, 191 F.3d 976 (9th Cir. 1999).

⁴Different types of the Pueblo's cultural heritage may be stored, cared for, or used differently depending on what the item is. For example, some cultural heritage items may be cared for and stored by individuals or families in their homes. Other times, different cultural heritage items may be cared for and stored in communal buildings, called kivas, by specific societies or clan groups. Other times, these objects may be placed outside in the open at sacred sites. Some items are put in special places to be left there permanently, not unlike the San Ildefonso Pueblo object at issue in the case of *Pueblo of San Ildefonso v. Ridlon*, 103 F.3d 936 (10th Cir. 1996), or the repatriation of the Zuni War Gods in the late 1980s (a well known example of the removal of cultural objects from area shrines).

⁵At the time, the Pueblo did not have an established police force, and it was unclear, but unlikely, whether the caretaker ever made any criminal report to BIA officials, who would have had jurisdiction over crimes in Indian Country.

federal law treats these items. Under Pueblo and federal law, the Pueblo itself effectively “owns” the items in question.⁶ They need not be stolen to qualify for protection. Instead, if they meet the statutory standards for protection under federal law—including NAGPRA or ARPA—their removal from tribal or federal land and trafficking is illegal.

Therefore, the Pueblo asks this Committee to not think of these sacred and ceremonial objects in property rights terms, like title and ownership. If you insist on viewing tribal cultural heritage in traditional property rights terms, the Pueblo has significant claims and arguments to make that its items of cultural heritage are forms of tribal governmental property. However, if these items are merely treated like other pieces of property, their true significance is lost. These are items so significant that they are federally-protected contraband in which no individual person has a legal right to hold title. In this way, it is important to move beyond the Western view of property rights and consider this issue as one of human and cultural rights.

Relationships with Federal Officials

The Pueblo has also worked to create and maintain close relationships with federal officials who can help when a protected item of cultural heritage is identified as being trafficked domestically or abroad. We work closely with a Southwest Regional Enforcement Officer from the BIA’s Office of Justice Services and have also made other contacts within the Department of State, Department of Justice, and Department of the Interior. In some instances, we have facilitated communication between these federal agencies, where their jurisdictions often overlap in the area of international repatriation in sometimes confusing ways. Thankfully, these federal officials have been instrumental in the Pueblo’s efforts to regain its items of cultural heritage. They have been true advocates who have zealously fought to regain our protected tribal cultural heritage items.

In the case of the Acoma Shield, the Pueblo was able to call on contacts in relevant federal agencies for help. The Department of the Interior and Department of State together urged the auction house to halt the auction and called on France to intervene. The Department of Justice and Department of the Interior worked to compile evidence. The Department of Justice thereafter filed litigation using the current patchwork of federal law that protects tribal cultural heritage, and it later facilitated negotiations between the auction house, consigner, and Pueblo that eventually resulted in return of the Acoma Shield. The Department of State utilized international mechanisms to formally request mutual legal assistance from France, and it eventually helped pave the way for the Acoma Shield’s international trip home. Individual federal officials in each agency prioritized securing return of the Acoma Shield, and for that we will be forever grateful.

Voluntary Return

Under federal law, like other governmental entities, tribal nations are treated as non-profit entities for tax purposes. The Pueblo has used this to our advantage in attempting to incentivize individuals who are considering returning an item of tribal cultural heritage. Paperwork and information are provided for these individuals to seek a tax deduction, and the returned item is treated as a donation to the Pueblo. Voluntary return may take place even for items not fitting into the restrictive limitations of current federal law.

In the case of the Acoma Shield, current gaps in federal law prevented the United States from fully using the existing international mechanism under which France would have facilitated the return of the Acoma Shield. France said that, without an explicit export prohibition in United States law and an accompanying certification system, it would not facilitate return. For this reason, the Acoma Shield was eventually retrieved based on meaningful dialogue between the Pueblo and the consigner and an agreement that resolved the litigation from which a warrant for the Acoma Shield was obtained.

III. Cannot Access Existing International Mechanism for Repatriation

There exists an international mechanism that has been in operation for decades through which countries can request the return of cultural property from one an-

⁶The clearest analogy to describe the Pueblo’s law is the legal concept of property rights being that of a “bundle of sticks.” For the Pueblo, some members may have rights of possession, but they do not have the right to sell an item of cultural heritage. In fact, traditional law dictates what is to happen to a cultural heritage item if a caretaker can no longer care for the item. The right to sell an item of cultural heritage, although not contemplated in the Pueblo’s traditional law, would be exclusively reserved to the Pueblo itself. Certainly, the Pueblo has never exercised this right.

other. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is a 1970 international treaty to which the United States and France are both parties. When a state party prohibits export of particular cultural patrimony items and introduces an accompanying export certificate, the state party can call on other state parties to control imports of those items and otherwise facilitate repatriation.

The United States enacted the Convention on Cultural Property Implementation Act, through which it returns cultural patrimony items to other countries. And France has enacted similar legislation, where France's legislation requires the requesting country to have put in place an explicit export prohibition and accompanying export certification system.

The United States has not enacted such an explicit export prohibition and accompanying export certification system for the tribal cultural heritage items for which it prohibits trafficking domestically—namely, items protected under NAGPRA or ARPA. It is for this very reason that the Acoma Shield did not return home expeditiously but instead took years of less formal negotiations and eventually came home through voluntary return. The STOP Act would fill these gaps.

IV. Support for the STOP Act

The Pueblo of Acoma fully supports the passage of the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165. The STOP Act places an emphasis on facilitating the return of protected cultural heritage items trafficked internationally, where we have been the most powerless to gain their repatriation. The STOP Act sets out to accomplish the two main goals of: (1) stopping the export and facilitating the international repatriation of tribal cultural heritage items already prohibited from being trafficked under federal law; and (2) facilitating coordination among federal agencies in protecting and repatriating such items and in aiding the voluntary return of tribal tangible cultural heritage more broadly.⁷

The STOP Act is the culmination of significant momentum towards addressing international trafficking in tribal cultural heritage. A 2016 joint resolution entitled the Protection of the Right of Tribes to stop the Export of Cultural and Traditional (PROTECT) Patrimony Resolution, H. Con. Res. 122, supports congressional development of an explicit restriction on exportation. It calls for the implementation of several measures to protect against the export of tribal cultural heritage and to secure the repatriation of illegally exported items to their home communities. Additionally, at Congress's request, the Government Accountability Office released a research report in 2018 citing the international trafficking in tribal cultural heritage as an ongoing problem.⁸ Passage of the STOP Act would, thus, turn past congressional intent into present congressional action in resolving the problem.

The STOP Act has been developed with significant expert feedback from agency officials, tribal representatives, art dealers, and others. The legislation currently has 10 bipartisan cosponsor Senators and 19 bipartisan cosponsor Representatives. Over 40 tribes and national and regional tribal organizations as well as the Southwestern Association for Indian Arts and the Society for American Archeology have provided letters of support for the legislation. The Pueblo of Acoma has long advocated for the legislation.

The STOP Act would allow the United States to use the existing international mechanism under which countries request the return of their cultural patrimony. The STOP Act would explicitly prohibit the export of tribal cultural heritage items whose trafficking is already prohibited under federal law: NAGPRA, ARPA, or the Antiquities Act. It would also create an export certification system where an exporter seeking to export an item that qualifies under NAGPRA, ARPA, or the Antiquities Act as a Native American cultural item, archaeological resource, or object of antiquity must apply for a certification. Only those items legally obtained—usually demonstrated through the exporter's self-attestation—are eligible to receive a certification and thereafter be exported.⁹ As discussed earlier, in the Pueblo's experience, preventing the exportation of prohibited items of cultural heritage initially largely increases the chances of their recovery. This export prohibition and accompanying

⁷ It should be noted that there are other very serious issues with the limitations of NAGPRA and ARPA as they function domestically, but the STOP Act does not seek to address those. Rather, the STOP Act only seeks to put the tools in place that are necessary to retrieve from abroad items that are already protected domestically.

⁸ *Native American Cultural Property: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions*, Government Accountability Office (Aug. 6, 2018), <https://www.gao.gov/products/GAO-18-537>.

⁹ Many items that qualify as a Native American cultural item, archaeological resource, or object of antiquity are nonetheless legally held, in part due to the restrictive provenance requirements tied to the federal statutes.

export certification process would limit export of federally protected cultural heritage items and also put in place the tools necessary to secure their international repatriation.

The STOP Act uses existing federal definitions and legal limitations that have been in place for decades—seeking only to control the export of items that are illegal contraband domestically and facilitate their international repatriation. Federal courts have long upheld the current federal framework for defining federally protected tribal cultural heritage. *See, e.g., United States v. Tidwell*, 191 F.3d 976 (9th Cir. 1999) (upholding NAGPRA); *United States v. Carrow*, 119 F.3d 796 (10th Cir. 1997) (upholding NAGPRA); *see also United States v. Austin*, 902 F.2d 743 (9th Cir. 1990) (upholding ARPA). Further, courts have stated that those engaging in the sale and trafficking of protected items are deemed to possess a certain level of knowledge of whether an item qualifies as protected. *See, e.g., United States v. Tidwell*, 191 F.3d 976, 980 (9th Cir. 1999); *United States v. Carrow*, 119 F.3d 796, 803–04 (10th Cir. 1997). Still, the STOP Act calls on the Department of the Interior in consultation with tribal nations to produce a federal register notice providing additional clarity and notice. It also encourages tribal nations to issue their Native artists receipts that they may use when selling their art in order to demonstrate their art is not federally protected tribal cultural heritage. Under no circumstance would an individual have an item forfeited or face criminal penalties if the cultural heritage item is legally held under federal law.

The STOP Act would also pave the way for smoother dialogue to facilitate return. It would create a framework for the federal government to work with individuals and entities to facilitate the voluntary return of cultural heritage to tribal nations, regardless of whether those items are legally held or not. It would also create formal bodies through which federal agencies can interact with each other and through which tribal representatives can interact with those federal agencies on the complicated and cross-jurisdictional issue of repatriation. Additionally, it would increase penalties under NAGPRA to encourage deterrence and prosecution.

We would also support incorporation of some changes to the STOP Act that would incorporate expert feedback received on the STOP Act as introduced. We understand—indeed we have lived—the complicated nature of international repatriation of tribal cultural heritage. We appreciate expert feedback, especially from seasoned federal officials, that will help ensure the STOP Act accomplishes its goals.

V. Conclusion

The continued trafficking, theft, and illegal sale of items of tribal cultural heritage poses an existential threat to our Pueblo beliefs and identity. These items are imbued with and transmit core aspects of who we are as Pueblo people. The intimate relationship we share with these items can be found in other tribal communities across the country. For all of us, the loss of tribal cultural heritage items and their absence from our ceremonies and daily lives is a painful reality.

We are encouraged, however, by the recent efforts and surge in interest around the protection of tribal cultural heritage, which has resulted in increased contact between the Pueblo and various collectors and dealers. The return of the Acoma Shield was a moment of unprecedented joy in our community—a happiness following over 40 years of sorrow that could have been avoided with export controls and other protections for tribal cultural heritage.

We hope that no other tribal nation has to undertake such an arduous journey as ours in tracking, negotiating, and fighting for the return of the Acoma Shield. Regrettably, we know that far too many tribal nations have shared in similar experiences and will continue to do so as long as we have glaring gaps in our federal laws.

Passage of the STOP Act would send the clear message that the United States both recognizes and actively treats the repatriation and protection of tribal cultural heritage as a national priority. The Pueblo of Acoma looks forward to working with the Committee on passage of the STOP Act to better protect tribal cultural heritage for generations to come.

Dá'wá'éh; Thank you.

PREPARED STATEMENT OF LT. COL. GLENN TIMM (USAF(RET), POLSON, MT

S. 3019, the Senators Daines/Tester farcically named “The Montana Water Rights Protection Act,” admittedly (I witnessed this admission during a conference call among Daines rep. , tribal legal department head and Lake County Commissioners) written by CSKT legal team; neither Daines nor Tester have any idea what’s REALLY IN IT! It should be killed with prejudice before it goes any further.

S. 3019 is based upon the illegally and unconstitutionally passed Montana Bill S. 262—that was passed with a plurality of the Montana Legislature. The Montana Constitution requires a “super majority” for such bills. Further, the bill was tabled and expired in 2019. Beyond that, it (and S. 3019) violates the terms of three treaties—including the Boundary Line Treaty between the United States and Great Britain, as well as the Hellgate Treaty and Lame Bull Treaty—the latter two, expired completely in the 1950s. The Hellgate Treaty became mute in 1909 following the settlement of Indian land allotments and there after the Dept. of Interior listed the Flathead Reservation as “the former reservation.” It was listed by Interiors’ Forest Service maps as such. Further, members of the CSKTribes are citizens of the United States.

S. 3019 double downs on Sen. Tester’s tabled S. 3013 Bill. As others have noted, this is huge financial bailout to a corporate entity occupying a small village. It also gives away the National Bison Range—in which Nickels and Dimes from non-Indians on the former Flathead Indian Reservation originally financed. The land has been paid for. Further, it asserts tribal water rights that never existed in violation of the Boundary Line Treaty. It further gives this corporate entity control over the Flathead Irrigation Project and its reservoirs paid for by the Irrigators. All this to be traded for nebulous Federal Lands in Eastern Montana. And, it will effectively destroy the school system and lake County. Further, there doesn’t appear to be any accountability for the 1.9 Billion dollars to be paid to this corporation. In addition, this corporate entity is an unaccountable “dark money” for various politicians!

This illegal and unconstitutional bill must be killed and never allowed to surface again!

For the restoration of Liberty.

PREPARED STATEMENT OF RAY SWENSON, CHAIRMAN, MISSION IRRIGATION DISTRICT,
FEDERAL FLATHEAD IRRIGATION AND POWER *

The MWRPA is intended to be the implementing legislation for the Confederated Salish and Kootenai Tribes (CSKT) Compact (CSKT Compact), a Montana-based negotiated agreement that advanced to the federal level despite its questionable passage and many known but unresolved legal and constitutional problems. That document is incorporated by reference in the MWRPA but unfortunately will not be reviewed by this Committee as it is simply incorporated by reference. Importantly, the CSKT Compact document is at the heart of the serious problems in the MWRPA and without this information, we believe that the discussion of the MWRPA by this Committee will be dangerously incomplete.

The significance of the MWRPA’s omission of the CSKT Compact for the SCIA is that the MWRPA enacts fundamental changes to the Indian Reorganization Act (IRA), the Indian Self-Determination and Education Assistance Act (P.L. 93–638), and unlawfully expands Tribal jurisdiction over tens of thousands of non-Indians and state law-based water rights without those changes ever being examined by the state of Montana or federal agencies. The MWRPA also enacts major changes to federal reclamation law which is the foundation for the development, construction, and operation of the FIPP. The burden of transmitting this information to this Committee falls upon those of us most impacted by the MWRPA.

Overview of Testimony

This report asserts that S. 3019 should be rejected by this Committee because it ignores the 112-year Congressional history, intent, and authorization of the federal irrigation project at the center of the MWRPA. The consequences of ignoring these federal obligations in the MWRPA include tangible injury to the property rights, land patents, and Constitutionally-guaranteed due process rights of thousands of Montanans who reside on private property within the exterior boundaries of the Flathead Indian Reservation (FIR). Thus, the presentation of the United States’ liability contained in S. 3019 as determined by the Department of the Interior vastly underestimates the costs to and implications of the MWRPA for the United States.

Significantly for this Committee, the treatment of the federal irrigation project in the MWRPA as solely an Indian irrigation project violates the Indian Reorganization Act (IRA)¹ and causes an unacceptable expansion of the Indian Self-Determination and Education Assistance Act (P.L. 93–638) beyond “projects that are con-

*1AAttachments to this statement have been retained in the Committee files.

¹Section 3 of IRA protects existing rights.

structed for Indians because of their status as Indians.”² Alternatively, if Congress chooses to pass the MWRPA and abandon its obligations to citizens it invited to settle the open Flathead Reservation, or to drastically change federal Indian policy, such changes should be openly discussed and evaluated, not buried in or obscured by a bill like the MWRPA.

In addition to the issues above, the MWRPA renders a pending General Accounting Office (GAO) audit of the Bureau of Indian Affairs (BIA) distribution of power revenue in the FIPP moot.³ We requested the audit to understand whether that distribution complies with federal law,⁴ and further, wrote to your office requesting a delay of any hearing on the MWRPA until the audit is completed.⁵ However, specific provisions of the MWRPA simply rewrite or erase the law applicable to the FIPP. If passed, the MWRPA will likely prevent the recovery of potentially millions of dollars for the irrigation project as required by federal law,⁶ leaving a legacy of unresolved federal waste, fraud, and abuse with its attendant adverse effects on water rights, property values, the security of land patents, and the U.S. and private investment in the largest irrigation and power project in Montana.

Within the context of these threshold issues, this testimony discusses the known but unresolved deficiencies in the MWRPA as they relate to the FIPP. The most significant issues in this context are:

- Failure to consider the federal contract obligations to project users in the Flathead Irrigation and Power Project (FIPP), including federal turnover of project management and operation\$ to land owners
- Waste, Fraud and Abuse of federal and private funds by the Bureau of Indian Affairs (BIA) in the FIPP that will be buried by provisions of the MWRPA
- MWRPA violations and expansion of the Indian Reorganization Act (IRA) and Indian Self Determination and Education Assistance Act (ISDEAA), or P.L. 93–638 beyond their original purposes

Each of these provisions are substantive issues that should have been addressed before the MWRPA got this far, engendering our lengthy testimony. The MJJB asserts that the primary responsibility for the information deficiencies in the MWRPA lies with the Department of the Interior (Interior) inasmuch as it only represented the CSKT, not project users, and did not do its due diligence with regard to the liabilities of the United States beyond its trust obligations to the CSKT. We are confident that had such a comprehensive and independent review been completed by Interior, the document before you today would be completely different and not pose such drastic and damaging impacts to the Mission and Jocko irrigations districts or the FIPP.

In the attachments (retained in the Committee files), we present our testimony in strong opposition to the MWRPA and attach three critical reference documents for the Committee’s use. We hope these materials give the Committee a better understanding of how significant the MWRPA is for the livelihood (of 3,500 families, for the viability of the largest irrigation project in Montana, and for the long-term direction of federal Indian policy.

BIG HOLE WATERSHED COMMITTEE

6/20/2020

Dear Senators and Committee Staff,

We would like to express our unanimous support for the Montana Water Rights Protection Act (S.3019).

For 25 years the Big Hole Watershed Committee has sought to bring together stakeholders in our 2 million-acre watershed in the search for reasonable, common ground approaches to natural resource management. In part because of this foundational social fabric and culture of coming together, we are a highly un-adjudicated watershed.

² Letter from DOI Solicitor to James Steel, CSKT Chair, denying 638 application for Flathead Irrigation Project because it was not built for the Tribes (cite language). CSKT have persistently been trying to change the language of PL 93–638 with respect to the Flathead Irrigation Project

³ Letter to Senator John Hoeven from Montana state senators and representatives; Lake and Sanders County Commissioners, and the Mission-Jocko Joint Irrigation Districts, January 2020.

⁴ letter to Senator Steve Daines requesting a GAO audit for the FIPP, May 2019.

⁵ Letter to Senator John Hoeven, January 2020, from State Senator K. Regier and others; the MJJB; and Sanders and Lake County Commissioners regarding postponing any hearing on the MWRPA until after an audit is completed.

⁶ cite.

We believe that this bill is the result of an admirable effort by all parties to reach a just compromise for all water users. The ranchers in our watershed want to see this passed in order to avoid costly legal proceedings to defend their legal water rights and their ability to continue stewarding our landscapes.

The stability and predictability provided by this agreement will also help businesses in the watershed dependent on a burgeoning recreation economy. Passage of this legislation will generate economic activity for our watershed, save taxpayers money, and provide the foundation for us to continue our culture of grassroots collaboration, as opposed to costly legal battles over water.

We encourage the Indian Affairs Committee to pass this landmark piece of legislation to protect the future of Montana's water resources. Thank you.

Sincerely,

PEDRO MARQUES, *Executive Director*,
RANDY SMITH, *Board Chair*.

MONTANA AGRICULTURAL BUSINESS ASSOCIATION
June 18, 2020

Dear Chairman Hoven and Vice Chairman Udall:

The Montana Agricultural Business Association (MABA) submits this letter to express our support of S. 3019, the Montana Water Rights Protection Act, introduced in the U.S. Senate by Senator Steve Daines and Senator Jon Tester. This bipartisan legislation which ratifies the CSKT Compact is very important for all citizens in the State of Montana.

The Senior Water Rights Coalition is a coalition of senior water right holders including irrigators, stock MABA is a trade association that represents agricultural input wholesale and retail companies and facilities. We recognize that without the irrigation water that our growers use, and that is protected with ratification of the CSKT Compact, our businesses and the economy of Montana will be greatly impacted.

S. 3019 ratifies a solution based and negotiated agreement that protects Montana citizen's property rights. We respectfully request that Congress pass S. 3018 and ratify the CSKT Compact as soon as possible.

Respectfully,

LUKE DIGHANS, *President*.

MONTANA TROUT UNLIMITED, SNOWY MOUNTAIN CHAPTER
June 24, 2020

To the Members of the Committee:

On behalf of the members of the Snowy Mountain Chapter of Montana Trout Unlimited, I urge this committee to advance S. 3019, the Montana Water Rights Protection Act. As sportsmen and sportswomen who care deeply about the future of coldwater fisheries, we have been actively involved from the start in the process that crafted the Confederated Salish and Kootenai Tribes (CSKT) Water Compact. It's been a contentious issue through the years, and what you find before you now is the result of good debate from all the stakeholders. The resulting product has our full support.

The CSKT Water Compact will result in significant investment in water infrastructure that will benefit the CSKT, irrigators, coldwater fisheries, anglers, and conservationists. This investment will likely not be realized if S. 3019 does not succeed. In that scenario, Montanans will face years of litigation over water rights and individuals could lose control over the water resources they now employ and fish could lose out.

Our area is predominantly rural, but it is growing at an accelerating rate. The CSKT Water Compact will ensure that development is conducted the right way, and with legal certainty for those planning to make an investment in our community.

The Montana Water Rights Protection Act is the result of compromise by the primary stakeholders and people across Montana. The resulting agreement will lead to increased cooperation in the objective of making water go further for more users. In a time of uncertainty about how our global climate may be changing, increasing the flexibility and resilience of our water resources is critical for both the future of agriculture, and the future of our coldwater fisheries.

I urge the committee's support of this important issue for Montana.

Sincerely,

MICHAEL CHAPMAN, *President.*

POLSON, MT

We are in favor of the Montana Water Right Protection Act, which includes management of the National Bison Range by CSKT.

We have lived here for some 23 years, and have been very pleased with CSKT, Mission Valley Power, Salish Kootenai College and the associated nurses school.

Sincerely,

OLGA LINCOLN,
BOB BUSHNELL.

FINLEY POINT, MONTANA
6-18-2020

SUBJECT: SB 3019

We are OPPOSED to everything in this bill.

We have heard that your committee will not hear any opposition. If true, what has happened to this country and democracy?

Frank is 80 years old, a 4th. generation Montanan. Mary in her 70s. We have had this home on Finley Point since 1980. We have invested a lot of money and tons of hard work in it. It is about all we have. Four generations of our family enjoy it and love it. This bill may mean we will lose it or at least drastically reduce the value and force us out.

Frank is a combat area Navy Viet Nam veteran and has served as a civilian in USDA and the State Department. Mary served in the State Department, heading up anti-drug programs. We have a small orchard, officially recognized as a veteran, first time farm by USDA. We and all other farmers in Lake County Montana need to keep our free water to survive.

Is this our reward for serving the country?

Water in the West, is essential in many ways. Taking it has always meant strong resistance. Just watch some old western movies-based on true history.

Water goes with the land, it has never been awarded based on race. Right now we do not need more racial tension.

The name of this bill is a lie. No way does it protect access to water for ALL Montanans. It is an illegal taking.

The bill violates the Montana and US Constitutions. It does not consider them, it ignores them. You all took oaths to obey and uphold the Constitution, remember?

This issue has never been subject to popular vote. It started in Montana, mostly in secret. We can have popular votes on marijuana or mill levies, but not on taking our water.

It is NOT widely supported in Montana and as the truth about it gets out, it has less and less support.

The Flathead Reservation about 2/3 of Lake County. Non tribal population of Lake County is 75.83 percent. This bill will bankrupt Lake County and we and the Tribes will lose much of our representation when the county is divided into adjoining counties.

The reservation was opened to homesteading in 1910. Land titles were issued by the Federal Land Office. Water belongs to the state for the people of Montana and it goes with the land. The government gives and now takes away. It speaks with a forked tongue.

No cost has been determined by the Congressional Budget Office. Why not? The cost is well over \$2 Billion dollars including inflation, appraisal costs, and costs to the Federal Government for various services and even liability insurance. PLUS giving away the National Bison Range, worth about \$1 Billion. None of these give ways are subject to audit or accountability. Very bad precedents. More federal debit. Borrowed from China? We are funding our own demise!

It may rob the county of state trust lands including state parks and islands on Flathead Lake.

This is part and parcel of the publicly announced and documented plans by the Tribe to smoothly and quietly force all whites off of the Reservation by taxation, reducing property values, buying them out-a provision in the bill-and by "other means". What are these other means? Down town Seattle perhaps? These measures also harm many tribal members who own deeded land, pay taxes on it and want to maintain property values in case they want to or need to sell.

Proponents claim it settles potential lawsuits. Another lie. It settles nothing. There will be lawsuits against it no matter what.

This issue should be returned to the state, this bill should be withdrawn by the sponsor/s who are facing political suicide. Time should be given for making it known to the public and be subject to popular vote. Then if the public wants it, so be it. Thank you for your consideration. Please do not rubber stamp this bill.

FRANK AND MARY MUTCH, POLSON.

SUBJECT: SUPPORT S. 3019 MONTANA WATER USE PROTECTION ACT
Senate Committee on Indian Affairs:

As a member of the Confederated Salish & Kootenai Tribes residing on the Flathead Indian Reservation I realize how important it is to reach a settlement on the CSKT water rights.

Senate bill 3019, The Montana Water Use Protection Act is a bipartisan effort both in the State of Montana and our Congressman, Senator Daines and Senator Tester.

Thank you for your consideration.

RICHARD LARANCE

CHARLO, MT

To the US Senate Committee on Indian Affairs:

We are irrigators and non-Indian residents of the Flathead Indian Reservation, writing in support of the Montana Water Rights Protection Act, S. 3019.

The basic facts have long been clear. This bill was the product of many years of negotiation and countless hearings and opportunities for public input. It passed the Montana legislature on a bipartisan basis. It will safeguard the rights of all parties and the resources that we all depend upon. It will guarantee water rights and provide for certainty and security. The alternative would be decades of legal fighting with no clear outcome, worsening divisions within our communities here, and certainly none of the benefits to the agricultural economy that are part of this agreement.

At a time of too much rancor and division in our country, here is an example of people coming together in good faith and finding a practical, workable solution to a longstanding, difficult problem.

Thank you for your consideration of our views and for finally giving this long overdue bill a hearing. We urge all members of the Senate Committee on Indian Affairs to give this bill your full support.

Sincerely,

THOMPSON SMITH AND KARIN STALLARD.

Dear Chairman Hoven and Vice Chairman Udall:

I submit this letter in strong support of S 3019, the Montana Water Rights Protection Act, introduced in the U.S. Senate by Senator Steve Daines and Senator Jon Tester.

I work with hundreds of water right holders across Montana and actively engaged in advocating for the ratification of the CSKT Compact. The CSKT Compact recognizes a negotiated solution that protects existing water rights while still recognizing and providing for the CSKT in stream flow water rights necessary for the protection of fisheries. The CSKT Compact was negotiated in good faith and as water users we strongly support the negotiated agreement. Without this legislation Montana water users will be faced with lawsuits with the Confederated Salish and Kootenai Tribes and the Federal Government on behalf of the Tribe that could go for decades and cost Montana Agricultural Producers millions. Another important reason to finalize the adjudication of Montana Water rights is that questions on water rights cloud title and borrowing ability of those folks who own those rights.

The CSKT Compact is a fair and equitable solution that is the result of collaboration and working together as good neighbors.

I strongly support this bipartisan legislation and urge Congress to pass S 3019 without delay.

Respectfully,

JOHN YOUNGBERG.

RONAN MT

Please know this compact took a great bi-partisan effort on Flathead Indian Reservation and the vast majority of the ranchers and farmers here are very much in favor of this water compact becoming law.

Please get this done!!

Thank you,

KAREN RYAN.

THE ASSOCIATION OF GALLATIN AGRICULTURAL IRRIGATORS

June 12, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of the Association of Gallatin Agricultural Irrigators (AGAI), I submit this letter in strong support of S 3019, the Montana Water Rights Protection Act, introduced in the U.S. Senate by Senator Steve Daines and Senator Jon Tester.

AGAI represents over 20 ditch/canal companies and 250 individual water users in the Gallatin Valley in Western Montana. AGAI has been actively engaged in advocating for the ratification of the CSKT Compact since its introduction in the Montana Legislature in 2015. The CSKT Compact achieved a negotiated solution that protects existing water rights while still recognizing and providing for the CSKT in stream flow water rights necessary for the protection of fisheries. The CSKT Compact was negotiated in good faith and as water users we strongly support the negotiated agreement.

It is important to recognize that absent this legislation Montana water users will be embroiled in lawsuits with the Confederated Salish and Kootenai Tribes and the Federal Government on behalf of the Tribe. In a McCarren amendment compliant statewide water adjudication the Tribe's instream flow water right claims would be litigated in front of the Montana Water Court at great expense in time, resources, and money to all of those involved. The CSKT Compact is a fair and equitable solution that is the result of collaboration and working together as good neighbors.

AGAI strongly supports this bipartisan legislation and we urge Congress to pass S. 3019 without delay.

Respectfully,

WALT SALES, *President.*

HELLGATE HUNTERS AND ANGLERS (HHA)

June 16, 2020

Dear Chairman Hoeven,

Hellgate Hunters and Anglers (HHA) is an all-volunteer Rod and Gun Conservation club based in Missoula, Montana. Founded in 2005, our mission is "to conserve Montana's wildlife, wild places, and fairchase hunting and fishing heritage." We represent over 400 members and suppmters. Our work has ranged from volunteer land-owner fencing projects, to advocating for LWCF funding to weighing in on how big game species are managed by our state wildlife management agency. We write to you today to voice our support for S. 3019, Montana Water Rights Protection Act.

HHA has long supported Tribal management of the National Bison Range. In 2007, HHA first wrote a letter of suppmt to Secretary Kempthome outlining our support for Tribal involvement in the management of the National Bison Range under a Tribal Self-Governance agreement with the U.S. Fish and Wildlife Service. While disappointingly this agreement never came fully to fruition and lawsuits prevailed, we are extremely pleased to see the National Bison Range management and ownership addressed in the Montana Water Rights Protection Act. Many of our members recreate, hunt and fish on Confederated Salish and Kootenai (CSKT) Tribal lands and have treasured the spotting oppo1tunities in the Flathead Valley. We have the full trust and confidence in the CSKT to assume ownership and management of the National Bison Range.

In summary, this legislation will be good for the people of Montana. We also appreciate that our delegation members Senator Jon Tester and Senator Steve Daines, both of whom are on the Senate Committee on Indian Affairs, are co-sponsors of this legislation. Thank you for the opportunity to voice our support for this bipartisan legislation.

Sincerely,

ADAM SHAW, *President.*

BELGRADE, MONTANA 59714
June 24, 2020

Dear Committee Members,

Please reconsider the wisdom of using a National Wildlife Refuge, as cash, to settle a Montana water rights issue. S. 3019 proposes to barter away 56,000 acres of Federal public land to remedy a state concern. The 18,800-acre National Bison Range (NBR) portion of the barter is an iconic parcel of the National Wildlife Refuge System (NWRS). It is the 10th most visited Refuge in the USA. This legislation should also be considered in the Committee on Environment and Public Works, a standard practice for the National Wildlife Refuge Administration Act and its amendments. S.3019 is in conflict with provisions of that Act. No portion of the NWRS shall be proposed for divesting without conducting appropriate National Environmental Policy Act (NEPA) analysis. If divestment proceeds then replacement is required elsewhere to keep the public land base and American Bison mission of the NWRS whole.

The Senators from Montana are proposing the USA pay the Confederated Salish and Kootenai Tribes (CSKT) for past wrongs by the state and federal governments related to land and water. Disturbingly they propose to use Federal public lands for payment rather than General Funds. What a terrible precedent! Language in the bill would also repay Montana for divesting of state land within boundaries of the CSKT Reservation by giving them BLM lands elsewhere in Montana, then spending additional funds to buy other lands, to keep state land acreage whole. Loss of BLM land is unacceptable and they too must be replaced. There is hypocrisy in the Senate passing The Great American Outdoors Act one week and bartering away public land as cash the next.

The current U.S. Fish and Wildlife Service (USFWS) leadership are not public land passionate. Most come from other-world careers, not public land manager careers. Those folks proposed this divestment. That fact is verified by CSKT statements and Freedom of Information Act (FOIA) documents. The American people don't know that USFWS is trying to exit NWRS participation in bison conservation. Do you think they would support such a divestment if they understood? Not likely! Public lands advocates were not at the table for negotiations nor have they been informed through procedures of NEPA analysis. Those in FWS, who are not passionate about public land, see the NBR as a headache and costly to limited wildlife budgets. Divesting of land legislatively is a work around that is disrespectful of American values.

Those most in support of this divestment are USFWS leadership, CSKT and farmers/ranchers off Reservation who worry about CSKT claims on their water. None of those folks are public lands passionate nor do they care if the Wildlife Refuge system maintains its bison conservation mission.

In the 1855 Hell Gate Treaty, the U.S. made commitments to the CSKT that weren't kept. Specifically, "Montana" convinced the U.S. Congress and President to open the Flathead Reservation to non-Indian settlement by 1904 Flathead Allotment Act. Now all Americans will be burdened with the financial cost. Negotiators trying to settle, determined damages to CSKT at \$2.3 billion for payment by the U.S. Montana pays almost nothing. Senator Daines negotiated a lower cash settlement of \$1.9 billion by offering public land to CSKT in lieu of cash. You should not, "barter away" Federal Land and a National Wildlife Refuge without public consent!

The 1908 Act establishing the NBR had a special mission, saving our national mammal from extinction. Today conservation of bison genetics, habitat and native birds are its purpose. It's done an extraordinary job of accomplishing all for 112 years. For decades the U.S. Fish and Wildlife Service has considered those genetics the most important within the 150 million-acre NWRS. The herd is free of brucellosis, while Yellowstone Park bison are not, making them unusable for conservation without a 4-year quarantine at \$1,000s per animal. NBR bison have more unique alleles and contain a larger proportion of the federal bison genome than any other federal herd.

This divestment is a Trojan horse effort to set a precedent, that it is OK to sometimes pick citizen's pockets of their public land inheritance, the greatest concentration of undistributed wealth in the world, a remarkable legacy. They belong to all Americans, including Native Americans. They are not money to solve complex problems.

Polished PR advertisements touting this legislation are running here in Montana. They smack of a philosophy descended from 19th century robber barons and copper kings who ran Montana and despoiled it. That philosophy would privatize public

lands wherever convenient for the already wealthy and politically connected. Please don't start selling cherished portions of America when there is high value to special interests. If divestment language is not removed, or mitigated, our cultural loyalty to and appreciation of Western public lands will have fundamentally changed, for the worse.

Please consider removing public lands from the bill.

Yours,
WILLIAM L. WEST, *USFWS recently Retired*, 35+ YEARS MANAGING NWRs, 31
YEARS IN MONTANA.

RONAN MT
June 23, 2020

I am a rancher in the Flathead Indian Reservation. I am writing in strong support of S. 3019. The Act is a reasonable basis for settling on good terms the important matter of the use of water in Montana.

I strongly encourage you to vote in favor of it tomorrow.

Best regards,

GILES CONWAY-GORDON

TROUT CREEK, MT
June 23, 2020

G'day,

As a rancher in Sanders County, I strongly support the MT Water Rights Protection Act. We use the surface water for livestock and domestic use and cannot afford to lose the water right.

Also, I have respectable friends who farm on Flathead Reservation and they cannot afford to be without this Act.

Thank you,

BILL AND HELEN MEADOWS

JUNE 23, 2020

I am writing to you to express my strong support for the Montana Water Rights Protection Act.

As a Montana citizen, I understand that our state's tourism, agricultural, and real estate economy depends on a clear right to water. From irrigators to sportsmen, and municipalities to commercial users, Montanans need water right certainty.

I, along with thousands of water users across our state, agree that the Montana Water Rights Protection Act is a sensible solution that will benefit all Montanans.

The Montana Water Rights Protection Act will support Montana's \$4 billion agricultural economy, prevent years of costly litigation, and permanently protect the water rights of all Montanans.

I urge you to take swift action to ratify the Montana Water Compact and pass the Montana Water Rights Protection Act NOW!

Roger Starkel

GREENOUGH, MONTANA
June 23, 2020

To whom it may concern:

I wish to strongly urge passage of the Montana Water Rights Protection Act.

I have been a long term resident of the Blackfoot Valley and as well a long time agricultural irrigator. I have participated in numerous meetings on this matter over the past several years and heard the same arguments for and against the compact on numerous occasions. I am convinced, based on the thoughtful case presented by the tribes and the majority of non tribal irrigators, that passage will settle existing claims by the tribes without years of costly litigation and uncertainty. The settlement of this issue is obviously long overdue. I welcome bipartisan support for passage of this bill by Senators Daines and Tester, and look forward to additional collaboration across party lines in the interests of all residents of Montana in the future.

LAND M. LINDBERGH

 THE RUBY VALLEY STRATEGIC ALLIANCE (RVSA)

The Ruby Valley Strategic Alliance (RVSA) is writing to express our support for the Montana Water Rights Protection Act (S. 3019), introduced by Senator Steve Daines and co-sponsored by Senator John Tester.

The RVSA represents a diverse group of individuals and organizations that have been convening over the last four years to advance shared values around conserving public and private lands in the Ruby Valley in southwest Montana. We are committed to working collaboratively to address the most urgent threats to the people and nature that we cherish here. Our alliance is broad, including members from agriculture and conservation organizations, as well as several individual landowners, water users, and community members. Senate bill 3019 is a bi-partisan piece of legislation that would have direct benefits for members of our group and the organizations and constituencies we represent.

The RVSA's shared values are in part dependent on the viability of working ranches. Without the CSKT Water Compact, existing water rights across Montana will remain legally uncertain and threaten working ranches like those found in and around the Ruby watershed. We believe that the CKST water rights settlement is the best path forward for water users across the state to secure certainty and avoid decades of legal battles. Implementation of the agreement will produce new and productive partnerships that will focus on the common objective of making water go farther for more uses—an important objective in the face of rapidly shifting land use trends and unpredictable water supply availability.

The CSKT Water Compact successfully quantifies the Tribe's water claims and secures critical water resources for all Montanans on and off the Reservation. The Compact protects existing rights and ensures new sources of water for irrigators, businesses, farmers, ranchers, conservation, and the Tribes. Most importantly, the Compact provides Montanans security in their existing water rights and allows the Water Court to facilitate completion of the statewide general stream adjudication, providing water users with legal certainty and allowing for economic development both on and off the Reservation. Finally, the Compact is fiscally responsible and strikes a thoughtful balance between all water users in Montana.

We appreciate the effort and commitment to a robust public process that has been demonstrated by the delegation, the Tribes and diverse bi-partisan partners in getting to this point, and we encourage the Senate Indian Affairs Committee to ensure the legislation's speedy passage.

Respectfully,

DAN ALLHANDS, MADISON COUNTY COMMISSIONER
 JOHN ANDERSON, RUBY DELL RANCH
 NEIL BAMOSKY, LEDFORD CREEK GRAZING ASSOCIATION
 EMILY CLEVELAND, MONTANA WILDERNESS ASSOCIATION
 CHRIS EDGINGTON, MONTANA TROUT UNLIMITED

To Whom it May Concern,

My wife and I are Ranchers and Irrigators' on the Flathead Indian Reservation. We are asking for your support of the Montana Water rights protection Act (S.3019). Passage of this bill would bring stability and ensure our water for irrigation and livestock, and we could continue with farming and ranching and producing Beef.

If it does not pass, our ranch and many others would be in jeopardy. The litigation that would ensue would probably break us. The entire livestock industry in Montana would be devastated.

Please support the Montana Water Rights Protection Act.

Thank you,

GLEN & KAREN RAISLAND

RONAN, MT
June 23, 2020

Good Afternoon,

I am writing this letter in support of S. 3019, The Montana Water Rights Protection Act. This act will define the federally reserved water rights of the Confederated Salish & Kootenai Tribes and settle the legal claims of the Tribes against the federal government.

As a farmer/rancher on the Flathead Indian Reservation, I am very concerned with the cost of protecting my existing water rights through the court system. This water compact was negotiated for decades with different ideas coming together. The different sides involved in the negotiations each agreed to set aside differences to enable a water compact acceptable to all users.

I encourage the members of the Indian Affairs Committee to pass this landmark piece of legislation to protect the future of Montana's water resources.

Respectfully submitted,

JOAN M. SHERMAN

CHARLO-MOIESE, MT

I write to express my strong support for the Montana Water Rights Protection Act, due to be considered during tomorrow's hearing. I would ask that you please enter my comments into the record as a part of public testimony, since I am unable to travel to Washington, D.C., for the hearing.

My husband and I live on the Flathead Indian Reservation and have a domestic well, whose legal status is uncertain as it relates to water rights. For this and other reasons, we strongly support the bipartisan Montana Water Rights Protection Act (S. 3019). The bill would give us certainty over our right to water, without having to resort to uncertain and costly litigation. This bill offers a much-needed settlement to the long and sometimes divisive dispute over water rights on the Flathead Indian Reservation and beyond.

Thank you for considering my comments.

Sincerely,

JOANNA R. SHELTON

To Whom It May Concern:

I am a citizen and registered voter in western Montana. I am writing to thank you for your hearings on the Montana Water Rights Protection Act (S. 3019) and your willingness to hear from your constituents in the Treasure state. I am a registered voter in Missoula County and own agricultural land in Moiese, Montana in southern Lake County on the Flathead Indian Reservation. I irrigate my fields and depend on our water district for maintenance and support.

I am writing in support of passage of the Montana Water Rights Protection Act (S. 3019). After much consideration, I believe this is the right compact for water users throughout our part of the state. It is a good thing for the state and the nation. The compact honors traditional usage, respects all parties, brings much-needed funds for infrastructure repairs, and prevents future needless lawsuits.

I am grateful for the good things our Federal government can accomplish and I urge passage this legislation.

Sincerely,

H. RAFAEL CHACON

Chairman Hoeven, Members of the Committee

I have lived my entire life on the Flathead Indian Reservation and have farmed there for over forty years.

I am respectfully asking your support of the Montana Water Rights Protection Act (S. 3019) It has been a decades long effort to resolve the CSKT water rights. The compact was debated and passed by the Montana Legislature.

It was a good faith effort of all parties and I believe it is a fair resolution to a complicated issue. In my opinion it is better to negotiate a settlement of this complicated issue than to rely on attorneys and courts to mandate conditions to those involved.

Thank you for all you do for our country.

BARRY A. BAKER

BELGRADE, MT

Please help pass the Montana Water rights Protection Act (S.3019.) This landmark piece of legislation will protect the future of Montana's water resources as it will define the federally reserved water rights of the Confederated Salish and Kootenai Tribes and settle the legal claims of the Tribes against the federal government. As a Montana citizen using Montana Irrigation water rights, I will appreciate

being protected by this act introduced by Senator Daines and co-sponsored by Senator Tester.

This legislation has received broad bi-partisan support from every major agriculture and water use group in Montana, as well as we individual irrigators. Our local businesses and governments also support S. 3019.

The passage of S.3019 will protect those of us farming and ranching in Montana from being forced into costly legal proceedings to defend our water rights. It will save taxpayers \$400 million compared to alternative settlement proposals.

Thank you,

ILENE CASEY

June 23, 2020

I am writing to you to express my strong support for the Montana Water Rights Protection Act.

As a Montana citizen, I understand that our state's tourism, agricultural, and real estate economy depends on a clear right to water. From irrigators to sportsmen, and municipalities to commercial users, Montanans need water right certainty.

I, along with thousands of water users across our state, agree that the Montana Water Rights Protection Act is a sensible solution that will benefit all Montanans.

The Montana Water Rights Protection Act will support Montana's \$4 billion agricultural economy, prevent years of costly litigation, and permanently protect the water rights of all Montanans.

I urge you to take swift action to ratify the Montana Water Compact and pass the Montana Water Rights Protection Act NOW!

KATHY STARKE

June 19, 2020

Chairman Hoven and Vice Chairman Udall,

I am writing to you today in strong support of S. 3019, the Montana Water Rights Protection Act, introduced by Senator Steve Daines and Senator Jon Tester.

I am a strong advocate for agriculture and the water users involved in it, along with many other kinds of water users. The need for a clear right to water is something that all water users depend on—from the agricultural users to the hydro power facilities and more.

The ratification of the CSKT Water Compact will be accomplished by S. 3019 is also extremely important and valuable to Montana water users. To have this ratified by a negotiated agreement is another benefit from S. 3019 so that water users can avoid hefty litigation fees.

This bill will help aid water users, protect the \$4 billion agricultural economy as well as the farmers and ranchers behind it.

I encourage the members of this committee to pass this bi-partisan supported legislation to ensure the protection of Montana water-users.

Regards,

RACHEL CONE

June 22, 2020

I am a third generation irrigated farmer within the exterior boundary of the flat-head irrigation project. I SUPPORT ratification of the CSKT/MT water compact.

DAVID AND LORRIE LAKE

I am writing today in support of the Montana Water Rights Protection Act (S. 3019). I am a cattle rancher, land owner and water user in Southwestern Montana. The Montana Water Protection Act will define the federally reserved water rights of the Confederated Salish & Kootenai Tribes and settle the legal claims of the Tribes against the federal government. It will also settle any outlying claims in my watershed and give my family certainty for generations to come. We recently completed the long and complex process of adjudicating our water claims and without the passage of the Montana Water Protection Act we may have to revisit many parts of this costly and time consuming process again. This Act will protect Montana farmers and ranchers from being forced into costly legal proceedings to defend their water rights. This Act represents reasonable, common ground that will protect Montana's \$4 billion Agricultural Economy.

Sincerely,
JOHN M. (JM) PECK, P.E., *Manager, Trapper Creek Ranch Montana Farm
Bureau; Young Farmer and Rancher Committee Chairman.*

June 22, 2020

Greetings,

I am stating my support of S. 3019. The Montana Water Protection Act will define the federally reserved water rights of the Confederated Salish and Kootenai Tribes and settle the legal claims of the Tribes against the federal government. It will provide protection to existing water right holders in Montana and protect Montana farmers and ranchers from being forced to protect their water rights through costly legal proceedings. I support the passage of S. 3019.

ALLEN MARTINELL, *Pres., Water Users Irrigation Company*

BOZEMAN, MT
June 19, 2020

Dear U.S. Senate Committee on Indian Affairs,

I am writing to ask for bipartisan support of the Montana Water Protection Act (S. 3019).

I am a water rights holder and irrigator in the Gallatin Valley. As you know the CSKT Compact is critical to the protection of Montana's water right owners and will eliminate years of litigation and millions of dollars in attorneys fees.

I appreciate your support on this matter.

Thank you,

GEORGE ALBERDA.

June 20, 2020

I write this to support SB 3019, as a farmer and irrigator on the Flathead Indian Reservation. If this does not pass, this will destroy agriculture as we know it on this reservation.

MARY STRANAHAN.

MONTANA WATER RESOURCES ASSOCIATION
June 19, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

Montana Water Resources Association supports passage of the Montana Water Rights Protection Act, S. 3019, introduced by Senator Steve Daines and co-sponsored by Senator Jon Tester. The settlement legislation is a very important step in the long process of ratifying a negotiated settlement of Confederated Salish-Kootenai Tribes (CSKT) claims, including reserved water right claims.

In Montana, our State Legislature recognized the benefit of negotiation and determined that it was appropriate to negotiate separate tribal reserved water right compacts and respective Congressional settlements with each of our state's federally recognized tribes. In 2015 the Legislature passed the negotiated CSKT water right compact, approving the last of seven tribal compacts in Montana.

The Montana Water Rights Protection Act provides for settlement of CSKT water right claims, prevents costly litigation, and protects Montana water rights. Additionally, S. 3019 provides for economic development and jobs as well as crucial funding for infrastructure rehabilitation and water efficiency improvements within the Flathead Irrigation Project, and very importantly, recognizes and protects Montana's primacy over our water resources.

We extend appreciation to our Montana Congressional Delegation for their support and encourage your support for and passage of the Montana Water Rights Protection Act.

Sincerely,

MICHAEL E. MURPHY, *Executive Director.*

MONTANA STATE SENATE
June 22, 2020

Good morning,

I would like to express my strong support for SB 3019. I have a long history with this issue. I have lived in the heart of the Mission Valley and the Flathead Indian Reservation for over 60 years on a 600-acre irrigated dairy farm. I have represented this area in the Montana Legislature for 10 years. I served on the Montana Reserved Water Rights Compact Commission and was involved in the negotiations for the agreement between the CSKT, the State of Montana and the Federal interests. I helped champion SB 262 through the Montana Legislature in 2015.

Agriculture is the lifeblood of the Mission Valley and the Flathead Reservation. This negotiated agreement allows for robust fisheries and the opportunity for the Flathead Indian Irrigation Project (FIIP) to revitalize. Instream flows will be increased as efficiencies are met within the repairs and maintenance of FIIP. This will benefit everyone from sportsman to farmers and ranchers.

This agreement brings some clarity to the water rights of tens of thousands of Montanans. The compact (SB 262) and the settlement agreement (SB 3019) will bring the CSKT Federal Reserve Rights to the tribe for ratification and then to the Montana Water Court to be adjudicated. If this doesn't happen, the CSKT rights go into effect and the Water Court must go back and reopen the process anywhere there is a claim by the CSKT. These claims involve well over half of the state and would very likely take multiple decades and affect tens of thousands of individuals, business owners, cities and towns etc.

There is an allocation of 90,000-acre feet of water under federal control that can be utilized from Hungry Horse Reservoir. This will be leased water that can only be utilized in Montana. It has the potential to be the new water that Western Montana will need for many decades.

The Compact (SB 262) is a true negotiated agreement where all parties worked together to reach a consensus. It has survived both constitutional and fact challenges. I believe SB 3019 is very similar legislation. It has taken many turns and incredible dedication and effort by all parties involved to get to the hearing process. I again strongly support this legislation.

Sincerely,

DAN SALOMON—SENATOR, MONTANA DISTRICT #47

MONTANA STOCKGROWERS ASSOCIATION
June 19, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of the Montana Stockgrowers Association (MSGA), we are submitting this letter in support of S 3019, the Montana Water Rights Protection Act, introduced by Senator Steve Daines and Senator Jon Tester.

For more than 130 years, MSGA has been dedicated to influencing public policy improving the profitability of Montana's ranching families and protecting their private property rights. Our members have determined this legislation meets the needs of the water right holders and will eliminate decades of litigation. The Montana Water Rights Protection Act will ensure that historical water use by all water users on and off the reservation are protected.

The success of Montana's agriculture industry is dependent upon water and water right certainty. It is easily the single most important resource for people across Montana, which is why MSGA has long supported an agreement such as the Montana Water Rights Protection Act. This legislation will permanently eliminate 97 percent of all CSKT's water rights claims across Montana, which will save taxpayers over \$400 million and protect the water rights of all Montanans. It will prevent years of costly litigation for Montana water users and provide much needed certainty for all parties involved.

MSGA would like to thank the committee for your consideration passing this important legislation.

Sincerely,

FRED WACKER, *President*

 UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND
June 22, 2020

Dear Chairman Hoeven and Vice-Chairman Udall,

On behalf of United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write to express our strong support for S.2165, the Safeguard Tribal Objects of Patrimony (STOP) Act. Since 2016, USET SPF has supported the STOP Act in order to help ensure the protection of our sacred items, which are often illegally obtained then sold abroad. Provisions within the STOP Act would not only make it more difficult to export cultural items, but also provide mechanisms for the U.S. and Tribal Nations to regain our cultural heritage from abroad and return it to our communities.

USET SPF is a non-profit, inter-Tribal organization advocating on behalf of thirty (30) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Despite protections in current law, the illicit trade in the items of cultural heritage for Tribal Nations continues to pose a grave threat to our cultural survival. Our sacred and cultural items continue to be illegally taken from our communities, threatening the maintenance of our cultures and traditions, and depriving us of the legacy we seek to leave our future generations. Meanwhile, a lucrative black market for our cultural heritage thrives, and without explicit export restrictions, many of our sacred and cultural items end up abroad. Once abroad, it is exceedingly difficult to bring them home. The STOP Act creates an explicit prohibition on exporting cultural heritage obtained in violation of existing law² and it puts in place an export certification system to accompany the prohibition. These measures would make it possible for Tribal Nations to access other countries' domestic laws and law enforcement mechanisms to regain our cultural heritage. For instance, certain countries, such as France, restrict import of cultural heritage illegally exported from a country that provides export certificates. The STOP Act confirms the President's authority to enter into agreements under a 1970 international treaty in order to request return of a Tribal Nations' cultural heritage from other countries. Lastly, the legislation includes important provisions that would facilitate more internal coordination with the federal government and coordination with Tribal Nations in facilitating the return of cultural heritage items.

The STOP Act is the product of significant expertise provided by Tribal leaders, Tribal organizations, federal agencies, archaeologists, art dealers, and others. USET SPF underscores that the STOP Act does not extend federal protections to cultural heritage that is not already protected, and thus it does not criminalize any currently legal domestic activity. Instead, it merely increases the deterrent effect of current law by imposing heightened penalties and provides that traffickers may not export their contraband.

USET SPF strongly supports this important legislation that will help to protect the cultural heritage of Tribal Nations and facilitate the return of sacred items.

We call upon Congress for its immediate passage.

Sincerely,

¹USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

²Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, and the Antiquities Act.

KIRK FRANCIS, *President*
KITCKI A. CARROLL, *Executive Director*

SENIOR WATER RIGHTS COALITION
June 18, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

The Senior Water Rights Coalition submits this letter in strong support of S. 3019, the Montana Water Rights Protection Act, introduced in the U.S. Senate by Senator Steve Daines and Senator Jon Tester.

The Senior Water Rights Coalition is a coalition of senior water right holders including irrigators, stock water users, and hydropower facilities. The Senior Water Rights Coalition works to protect the property rights of senior water right holders in Montana.

Ratification of the CSKT Compact which is accomplished via S. 3019 is extremely important for Montana water users. Having the CSKT water rights quantified through a negotiated agreement rather than through years of costly litigation is a great example of the results that can be achieved through public involvement, collaboration, communication, and negotiation. Montana's communities, agricultural users, hydropower utilities, and others cannot afford another 50 years of litigation to complete our statewide adjudication. Simply put, this settlement saves time, money, and resources for all parties including the federal government.

The Senior Water Rights Coalition strongly supports ratification of the CSKT Compact and urges Congress to pass S. 3019 as soon as possible.

UNIVERSITY OF MONTANA SCHOOL OF LAW
June 17, 2020

Dear Committee Members:

I write to urge your endorsement of the Montana Water Rights Protection Act (S. 3019),¹ which represents the culmination of an extraordinary effort on the part of Montanans, the Confederated Salish & Kootenai Tribes, and the federal government to successfully resolve complex water issues in the Flathead Valley of Montana.

As the professor of water law at the University of Montana School of Law for over a decade, I have followed and am intimately familiar with the MT-CSKT Compact. I am also a fourth-generation Montanan, having grown up in the same area as my great grandparents' original homestead, where my family still raises alfalfa, wheat, and black angus cattle on a landscape dependent on state water rights.

The Montana Water Rights Protection Act is a win for us all, as it protects non-Indian agricultural operators as well as tribal members and invests in the critical infrastructure that makes this equitable sharing of water possible. Having observed the many public proceedings and extensive data gathering that went into the Compact, it is clear why it enjoys bipartisan support from the State Legislature, the Governor and Attorney General, as well as numerous ranchers and irrigators. It is based on sound science, reflects applicable law, and adopts reasoned compromises hard-earned through negotiations with the state Reserved Water Rights Compact Commission.

Without this legislation, hundreds of Montana agricultural operators, both on- and off-reservation, along with the state, tribal, and federal government, would be forced into expensive litigation that would likely last decades and come nowhere near the comprehensive, forward-thinking solutions achieved in the Compact. Because the CSKT holds off-reservation claims throughout a significant portion of the state, there is also great risk to Montana appropriators should such litigation occur. As it stands, the Compact memorializes major tribal concessions that relinquish many of these off-reservation claims and extend tribal priority dates to non-Indian residents on the reservation. These are concessions that everyday Montanans can ill afford to lose.

As a cautionary tale, we need look no further than our neighbors to the south, where the State of Wyoming, the Tribes, and the federal government became embroiled in the Big Horn adjudication for thirty-seven years. Judges began and ended lengthy careers before its completion. And after countless dollars and hours, prolonged acrimony among users, and innumerable documents that now fill an entire storage room, the parties finally have a decree that does nothing more than describe everyone's water rights on paper. They have no mechanism for administration, nor

¹The views contained in this letter are mine alone and do not represent an official position of the University of Montana or the Montana University System.

a properly functioning infrastructure to coordinate water delivery for actual use on the ground. Meanwhile, functional water governance remains an illusion, stymied by an ongoing rift in the relations of the parties.

We in Montana are fortunate to have chosen a different path—one with a remarkable vision that far eclipses what any one party could achieve in litigation, where a state and tribal government have created a unique system of joint administration, where they have planned a mutual response to address times of shortage, where they will undertake the work of improving infrastructure, and where a community can take a step toward healing, building a more positive future around a shared resource. Thank you for wisely advancing this legislation.

Yours very truly,

MICHELLE BRYAN, *Professor of Law*

NATIONAL PARKS CONSERVATION ASSOCIATION

June 8, 2020

Dear Senators Hoeven and Udall,

Since 1919, the National Parks Conservation Association (NPCA) has been the leading voice of the American people in protecting and enhancing our National Park System. On behalf of our more than 1.4 million members and supporters, I write to express support for S. 3019, the Montana Water Rights Protection Act. The Act equitably resolves multiple longstanding issues, including tribal water rights claims and management of the National Bison Range (NBR).

This legislation restores ownership of the National Bison Range to the federal government in trust for the Tribes of the Flathead Indian Reservation, and ratifies and implements the water compact negotiated between the state of Montana and the Confederated Salish and Kootenai Tribes.

Specifically, this legislation seeks to restore the lands of the National Bison Range to federal trust ownership for the Confederated Salish and Kootenai Tribes, and clearly states that the lands restored shall be managed by the Tribes “solely for the care and maintenance of bison, wildlife and other natural resources.” This legislation also requires that the Tribes shall “provide public access and educational opportunities,” and shall “at all times, have a publicly-available management plan for the land, bison and natural resources.”

These values and outcomes reflect NPCA’s position of ensuring both conservation and public access, and we recognize the Confederated Salish and Kootenai Tribes’ (CSKT) long and highly successful history of wildlife protection and wildland access. It is time to restore the National Bison Range to federal trust ownership for the Salish, Kootenai and Pend d’Oreille.

Congress and President Theodore Roosevelt established the National Bison Range (NBR) in 1908. The land was taken in what the U.S. Court of Claims, in a 1971 decision, held to be an unconstitutional taking due to lack of tribal consent to its acquisition, and failure of the federal government to pay the Tribes fair market value for the land. Although the court ordered the United States to pay the Tribes what it should have at the time of acquiring the Bison Range, the fact remains that the Tribes never consented to the taking of the land.

Located wholly within the boundaries of the Flathead Indian Reservation (home of the CSKT), the purpose of the NBR was to conserve bison at a time when that species was threatened with extinction. The National Bison Range’s unique history, location and narrow mission means the restoration of management to CSKT will in no way establish a precedent regarding the disposition of other federal lands, a fact made explicit in the legislation.

Since Roosevelt created the NBR, the initial herd of 40 bison has grown and thrived; today, the NBR is managed as home to between 350 and 500 bison. Throughout the intervening years, the CSKT have established world-class wildland, wildlife and recreation programs. This includes, but is by no means limited to: protection and restoration of species such as grizzly bears, trumpeter swans, peregrine falcons, northern leopard frogs and bighorn sheep; establishment of the Mission Mountain Tribal Wilderness (the first Tribal Wilderness in North America); co-management of recreational and commercial fisheries in Flathead Lake (the largest lake west of the Mississippi); and protection and restoration of critical watersheds, including streams, rivers, lakes and waterfowl production areas.

In addition to this proven expertise, the geographic location of the NBR—within the boundaries of the Flathead Indian Reservation—argues strongly for restoration of management authority to CSKT. Also important is the profound historic and cultural connections of CSKT to bison; in fact, CSKT members played a critical role in preserving the original bison herd at the NBR, more than a century ago. In short,

this legislation represents good Tribal policy, good wildlife policy and good land-use policy. It has the support of many land- and wildlife-oriented organizations (locally, regionally and nationally), and the US Fish and Wildlife Service has been supportive of the idea.

While we understand there are efforts by some to transfer public lands out of federal ownership and into state ownership, restoration of the National Bison Range is an entirely different matter. Fundamentally, the National Bison Range would remain in federal ownership, but would once again be held in trust for CSKf. In addition, the National Bison Range was originally Tribal Reservation land taken without Tribal consent—a fact that distinguishes it from virtually any other situation. Finally, as mentioned above, the very bison for which the NBR was created descend from a herd that was started and managed by CSKT members at a time when the plains bison was under a very real threat of extinction.

NPCA supports this legislation, including ratification of the CSKT–MT water compact as well as provisions to ensure the NBR will be managed for both conservation and public access, just as Theodore Roosevelt envisioned when establishing the NBR. Restoration of management authority of the NBR to the CSKT honors the historic and cultural ties of Tribes to both the land and to the bison, and recognizes the many groundbreaking successes of the CSKT wildlife and wildland programs.

Sincerely,

MICHAEL JAMISON, *Glacier Program Manager*

MONTANA FARM BUREAU FEDERATION
June 19, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of the more than 20,000 member families of the Montana Farm Bureau Federation, I am reaching out to share our support for S. 3019, the Montana Water Rights Protection Act, which is sponsored by Senator Steve Daines and Senator Jon Tester of the great state of Montana. Our farmer and rancher members raise a variety of commodities on irrigated and non-irrigated land all across our vast state. Many of them will be impacted directly by the passage of this incredibly important piece of legislation.

Our organization was very active in the passage of the CSKT Water Compact during the 2015 Montana Legislative Session. Our farmer and rancher members supported this negotiated agreement and recognize the years of work and compromise that went into coming up with a product that satisfied the needs of irrigators and water right holders on and off the reservation, as well as the demands of the Tribe. We appreciate the bipartisan support that has gotten the Compact this far, and ask for your support of S. 3019 to get it even closer to completion.

It is important to note that without passage of this important bill and completion of the Compact, our farmer and rancher members in approximately two-thirds of the state, will be subject to years of expensive litigation with regard to their water rights. Many have already gone through the adjudication process or spent a good deal of time and money settling the rights they currently hold. Without their water rights, many farms and ranches in Montana would be in severe jeopardy. Also, given that Montana is a headwaters state, our members believe the finalizing our adjudication process statewide is incredibly important. The sooner we are able to finalize this chapter in water rights history, the sooner we will be able to achieve the task of final adjudication.

Thank you for your time and consideration,

HANS MCPHERSON, *President*

FORMER COMMISSIONERS, FLATHEAD INDIAN IRRIGATION PROJECT
February 6, 2019

As former commissioners on the three irrigation districts that represent irrigators on the Flathead Indian Irrigation Project (FIIP), we encourage you to take every opportunity to promote funding, passage and enactment of the CSKT Water Compact this year.

The FIIP delivers water to over 800 irrigators on 128,000 acres. Project water makes it possible to grow a wide range of crops including alfalfa, grass hay, barley, oats, wheat and corn and also grow pasture for goats, sheep, horses and especially cattle. The project also delivers water to many families growing organic vegetables for local markets.

As former commissioners, we know how much time and effort the Compact Commission and our tribal, state and federal governments devoted over many years to

reach a negotiated agreement. We can personally attest to the fact that the negotiators kept our three irrigation boards informed and provided opportunities for us to comment and contribute. We also can personally attest to the large number of Compact negotiating sessions that were open for participation from individual irrigators, representatives of the irrigation boards and representatives from other groups with an interest in irrigation water.

We support the Compact because it is the best way of maintaining historical deliveries of irrigation water to farms and ranches and, through its funding of project rehabilitation, increasing instream flows to achieve tribal fishery objectives.

For many reasons, the so-called "People's Compact" is not an alternative to the CSKT Compact. It is an attempt to delay and defeat the CSKT Compact at the federal level.

If the Compact fails, Montana's Water Court will need to adjudicate competing claims. Based on what we know of the Water Court process, farmers and ranchers would face major uncertainties about the ultimate outcome and incur significant litigation costs. In contrast to the Compact, the Water Court also would not be able to fund project rehabilitation to improve water management and reduce water loss.

Thus, we strongly urge you to lend your active support to achieving passage and enactment of the Compact this year.

TRENT COLEMAN
KERRY DONEY
DICK ERB
STEVE HUGHES
PAUL HUNSUCKER
JERRY JOHNSON
LEROY LAKE
WALT SCHOCK
PAUL WADSWORTH

LEWISTOWN, MT

Honorable Committee members,

I am writing today to ask you to pass, S. 3019 The Montana Water Protection Act. This landmark legislation will protect Montana's water resources into the future.

Passage of the Confederated Salish & Kootenai Tribe water compact, addressed within S.3019, is critical to the protection of Montana's water right owners. The Montana Water Protection Act will define the federally reserved water rights of the Confederated Salish & Kootenai Tribes and settle legal claims of the Tribes against the federal government.

As part of a ranching family, I understand how important this legislation is to our water rights in Central Montana. As an active member of Montana Farm Bureau, I saw how much time, energy and thought went into drafting this legislation. Key stakeholders, including agriculture, irrigators, the tribes, Montana legislators and our US Congressmen all came to the table to draft legislation that will protect water rights across the state.

S. 3019 has broad bi-partisan support from every major agriculture and water user group in the State. Key stakeholders, including those listed above, support of S. 3019 is because they understand the importance of protecting Montana's water resources and individual water rights.

Without the passage of this legislation, water rights on our ranch, and many across the state of Montana could be in jeopardy. Passage of this legislation will give Montanans security that costly legal proceedings to defend their water rights can be avoided.

This legislation represents reasonable, common ground. I encourage the members of the Senate Indian Affairs Committee to pass this landmark legislation to protect the future of Montana's water resources.

Sincerely,

KRIS DESCHEEMAEKER

RONAN, MONTANA
June 23, 2020

Dear Chairman Hoeven and Members of the Committee:

I am a lifelong resident of the Flathead Reservation, raised in Arlee on a ranch and for 40 years have lived in the Polson/Ronan area. I currently live on a small

(47 irrigated acres) ranch property that is two miles south of Ronan. I am currently a Real Estate Broker.

I am now 70 years old. Over the years I have witnessed many issues between the Confederated Salish and Kootenai Tribes and the majority of non-members that share the beautiful Flathead Reservation. Most of those issues have been resolved. All but water rights. Passage of S. 3019 will solve that problem. A problem that none of us created over 100 years ago is now to be resolved for the benefit of all. S. 3019 is the culmination of nearly 20 years of negotiation, debate and study. It is not popular with everyone, but I believe it will benefit all 30,000 residents when it is passed. I encourage your support in making it Law. Live will improve once this contentious issue is behind us. If you have any questions, please notify me.

Sincerely,

ROBERT GAUTHIER

RONAN, MONTANA
June 23, 2020

Dear Chairman Hoeven and Members of the Committee:

I am a lifelong resident of the Flathead Reservation, I was raised in Pablo, Montana. My father worked at the Plum Creek Mill there for nearly 30 years. I currently live on a small (47 irrigated acres) ranch property operated by my family.

Over the years I have witnessed many issues between the Confederated Salish and Kootenai Tribes and the majority of non-members that share the beautiful Flathead Reservation. Most of those issues have been resolved. All but water rights. Passage of S. 3019 will solve that problem. A problem that none of us created over 100 years ago is now to be resolved for the benefit of all. S. 3019 is the culmination of nearly 20 years of negotiation, debate and study. It is not popular with everyone, but I believe it will benefit all 30,000 residents when it is passed. I encourage your support in making it Law. live will improve once this contentious issue is behind us. If you have any questions, please notify me.

Sincerely,

MYRNA GAUTHIER

CENTENNIAL VALLEY ASSOCIATION
June 24th, 2020

Dear Senate Committee on Indian Affairs,

My name is Kara Maplethorpe and I am the Executive Coordinator for the Centennial Valley Association (CVA). The CVA is a local, landowner driven organization that strives to preserve traditional ranching as a way of life in the Centennial Valley, and maintain quality open space, wildlife habitat, water quality and wildlife migration corridors as they exist today for future generations.

The Centennial Valley is a 400,000+ acre wildlife corridor in the Greater Yellowstone of Montana, which an abundance of wildlife, including elk, sage-grouse, moose, grizzly bear, and wolves, call home. The Centennial Valley is also a working landscape, with multi-generational ranch families that strive to preserve the landscape for future generations of ranchers and wildlife, which thrive together on a shared landscape.

Water is ever important in these changing climate conditions, for all of Montana's water users. The Water Rights Protection Act (S. 3019) has received bipartisan support from agricultural and water user groups, irrigators, businesses, and local governments. It will not only define the federally reserved water rights of the Confederated Salish and Kootenai Tribes, but will also protect Montana's \$4 billion agricultural economy, protect Montana farmers and ranchers from costly legal proceedings defending their water rights, and will save taxpayers \$400 million compared to other settlement proposals. The Water Rights Protection Act will protect the way of life for future generations of ranchers, farmers, and local communities, which are the heart of Montana's culture and economy.

Please vote in support of the Montana Water Rights Protection Act (S.3019). Your vote will protect the future of Montana's water resources. Thank you for your time and consideration.

Sincerely,

KARA MAPLETHORPE, *Executive Coordinator*

NATIONAL WILDLIFE FEDERATION

June 24, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of the National Wildlife Federation, we write in support of S. 3019, the Montana Water Rights Protection Act, jointly introduced by Montana Senators Steve Daines and Jon Tester. This legislation will provide Congressional approval for the water compact negotiated between the State of Montana and the Confederated Salish and Kootenai Tribes (CSKT) and transfer the National Bison Range from the U.S. Fish and Wildlife Service to CSKT. The National Wildlife Federation (NWF) strongly endorses both of these objectives.

The water compact is the result of years of negotiations between the State of Montana, the Salish and Kootenai Tribes, and the Department of the Interior, and it was ratified by the Montana Legislature in 2015. In agreeing to the compact, the Tribes relinquished considerable legal rights in order to accommodate water uses that have developed subsequent to the Hellgate Treaty of 1855-and to ensure productive, cooperative management of waters throughout western Montana.

The National Wildlife Federation supports the negotiated agreement not only because it reflects a collaborative solution to often contentious water use issues, but also because of its innovative approach to habitat restoration and protection, water conservation, and instream flows that are essential to fish and wildlife populations on and off the Flathead Reservation. The Compact agreement reflects a positive, forward-looking approach to water management, community development, and ecosystem recovery.

The National Wildlife Federation has also long supported efforts by the Salish and Kootenai Tribes to assume greater management responsibility for the National Bison Range. As the bill recognizes, bison have tremendous social and cultural importance that for Salish and Kootenai and the Tribes played a pivotal role in saving bison from extinction in the late 1800s. Given these facts, it was always wrong to exclude the Tribes from a management role in the National Bison Range, and S. 3019 corrects this by transferring the range to the Tribes for bison conservation purposes.

Having worked closely with the Salish and Kootenai Tribes for many years, the National Wildlife Federation looks forward to their stewardship of the National Bison Range and the important tribal perspectives that they will bring to both management and interpretation for the thousands of people that annually visit the Bison Range.

The National Wildlife Federation works closely with many tribes in both the U.S. and Canada who join together to conserve and restore buffalo on both tribal and non-tribal lands. On behalf of these partners, we would like to draw your attention to the attached 2016 resolution supporting transfer of the National Bison Range to the CSKT.

We appreciate the Committee holding this important hearing, and we ask that this letter and the attached Buffalo Treaty Tribes Resolution* be entered into the hearing record for S. 3019.

Sincerely,

TOM FRANCE, *Regional Executive Director*
GARRIT VOGGESSER, *Director, Tribal Partnerships Program*

COLE AG LLC
6/24/2020

We are writing on behalf of our family and our farm in support of the Montana Water Rights Protection Act.

We are a 5th generation farm and hope to pass this wonderful and rare way of life on to our kids. In order to do this, we must have water to grow our crops. Not only do we love our life here on the farm, we provide people with quality food and we help maintain the environment by using the best farming practices we can.

It is imperative that we have water and in order to protect that, we urge you to support the Montana Water Rights Protection Act.

Keep Montana families in ag!

Thank you for your time,

*The information referred to has been retained in the Committee files.

TRAVIS AND MELISSA STUBER

LAKE FARMS, INC., RONAN, MONTANA
Wed 6/17/2020

Senate Committee on Indian Affairs:

I am writing in support of The Montana Water Rights Protection Act.

Our family has lived on the Flathead Indian Reservation since the 1930s. My dad served on the Flathead Joint Board of Control representing irrigators for over 20 years. In that time they spent millions of irrigators dollars fighting with the tribes over water. They never prevailed. They finally sat down with the tribe and created a cooperative entity to operate the irrigation system. That was destroyed when another group who wanted to settle things in court took control of the irrigation project. They too wasted millions of dollars of irrigator dollars in litigation.

We need this final settlement that protects the tribes water rights and the state based water rights in a fair and equitable manner.

The Montana Water Rights Protection Act is the result of a good faith negotiation of all parties.

I respectfully ask for your support,

JACK LAKE

POLSON, MONTANA
6/20/2020

Chairman Hoeven, Members of the Committee

I have lived my entire life on the Flathead Indian Reservation and my parents farm there. I am respectfully asking your support of the Montana Water Rights Protection Act (S. 3019). It has been a decades long effort to resolve the CSKT water rights. It was a good faith effort of all parties and I believe it is a fair resolution to a complicated issue.

Thank you for all you do for our country,

KATIE SAMEL

6/17/2020

Our family has been putting the waters of the Big Hole River to beneficial use since the 1870's. The passage of the Montana Water Rights Protection Act (S. 3019) co-sponsored by Senator Testor and Senator Dsines is paramount for the water users and the water rights within the State of Montana. This legislation will finally define the federally reserved water rights of the Confederated Salish & Kootenai Tribes and settle their claims against the federal government.

As an existing water right holder in Montana this act will provide protection against the filed aboriginal rights of the tribe. The Montana Department of Resources and Conservation estimates the negative impact of no Compact to Montana water rights and irrigators is summarized below:

- of the estimated 2.5 million irrigated acres in the State, 73 percent (1.85 million acres) of all irrigated acres (state-based rights) in Montana could be subject to call by the tribes' non-compact claims
—(23 percent west of divide, 77 percent east of divide)
- Number of state-based irrigation water right owners subject to call by the tribes' non-compact claims is—10,127
- state-based irrigation rights subject to call by the tribes' non-compact claims exist in 41 of Montana's 56 counties
- state-based irrigation rights subject to call by the tribes' non-compact claims—45,485 (made up of 75 percent surface water rights, 25 percent groundwater)

S. 3019 will alleviate the impact described above and has broad bi-partisan support of the majority of water users in Montana. It will protect our family from individually having to object to the Tribes' claims and enter into costly legal battles against the Tribe and the Federal Government with little chance of prevailing. If this legislation does not pass, the Tribes claims on the Big hole River would require our loss of irrigation waters in mid-July on average which would devastate our agricultural family operation,

S. 3019 represents a settlement that will protect Montana's \$4 Billion agricultural economy, generate \$52.9 billion in annual economic activity and over 6000 jobs and will save taxpayers \$400 million compared to alternative settlement proposals.

Passage of S. 3019 is important to the Tribe, the water right system in Montana, the water users of this state and the survival of our family and many family ag operations in Montana. Please encourage the members of the Indian Affairs Committee to pass this landmark legislation to protect and enhance Montana's water resources.

Sincerely,

JIM HAGENBARTH

6/20/2020

Good Day,

The Montana Water Rights protection Act (S. 3019) goes deeper than just irrigation water. The process, the time, the money, and the outcome is the result of a diverse group. Not only the people who played a role to create the Compact, but the wildlife, the bugs, the bees, the birds are all integral components.

Everyone and everything wins with the passage of this legislation. My irrigation of cropland spreads and feeds the most amazing symphony of other critters. For over thirty years I have grown with the Flathead Indian Irrigation Project near Arlee, Montana. I can look out over the Jocko Valley and observe awesome fields of pollinator plants.

This act will benefit the country, the state of Montana, Lake County, the Jocko Valley, my neighbors, my home, and every stalk of grass and alfalfa that it feeds.

Please pass this legislation, S.3019, ASAP!

Thank you,

MERRILL BRADSHAW

GRANDE RANCH COMPANY
June 23, 2020

Dear Senators:

I would like to express my strong support for S. 3019, the Montana Water Rights Protection Act. My family has been ranching in Montana since 1877, and thus have very senior water rights. However, the priority of these rights pales next to the "time immemorial" rights of the Confederated Salish Kootenai Tribes. The CSKT actually have rights filed on two streams from which we irrigate (250 miles from the reservation) and therefore our ability to irrigate and even water cattle would be severely impacted if this legislation does not pass. Many other farmers and rancher in Montana are in the same situation.

The state of Montana has been in the process of attempting to adjudicate all water rights for forty years. Passage of this legislation will be a huge step forward in achieving this goal.

Some may recoil at the price tag on this legislation. As a fiscal conservative I understand this concern. However, these costs will benefit fisheries and irrigators, have been studied as within the liability that the United States Government owes the CSKT, and most importantly, pale next to the costs of decades of litigation that will undoubtedly occur if these rights are not settled by this legislation. There are several states that serve as examples of the harmful effects on economies when tribal water rights are not cooperatively resolved.

I respectfully urge you to vote yes on S. 3019 to protect our water rights and define these rights once and for all to avoid the economic costs of future uncertainty.

Sincerely,

JOHN A. GRANDE

JUNE 24, 2020

Dear Committee Members:

We, the undersigned current Montana legislators, are opposed to S. 3019 that is being heard in the Indian Affairs Committee. The original Confederated Salish Kootenai Tribe (CSKT) Water Compact was unconstitutional when it was passed out of the MT Legislature. It granted state immunity which constitutionally required a two-thirds majority that it didn't receive. It remains a very controversial and divisive issue in MT.

S. 3019 retains much of the original CSKT Water Compact. It puts private non-reservation land owners under a water authority heavily influenced by the CSKT tribe. Control of the water that farmers and ranchers depend on is a taking.

There are many other reasons to oppose the CSKT Water Compact that have been addressed in other documentation to this committee. We will not expand on those in this letter. We wish to express our desire for a water compact; not this one. Montana has passed several other tribal water compacts that have been reasonable and well serve the state and the specific tribes. The question that is not answered in S. 3019 or the original CSKT Water Compact is, "What is the purpose of the reservation and how much water is needed to achieve that purpose?" It is evident in the Hellgate Treaty of 1855 that the intent was to develop an agrarian life style for the CSKT. A water compact should provide for those agricultural needs and for any future development.

We urge this committee to table S. 3019. Let us work on a water compact that benefits all citizens and include a Committee on Indian Affairs field hearing in Montana.

Sincerely,

SENATOR KEITH REGIER, SD#3
 REPRESENTATIVE MARK NOLAND
 REPRESENTATIVE JOHN FULLER
 REPRESENTATIVE CARL GLIMM
 SENATOR DEE BROWN
 REPRESENTATIVE MATTHEW REGIER
 SENATOR MARK BLASDEL
 SENATOR BOB KEENAN
 REPRESENTATIVE DEREK SKEES
 SENATOR JENNIFER FIELDER
 REPRESENTATIVE BRAD TSCHIDA
 SENATOR STEVE HINEBAUCH
 SENATOR DAVID HOWARD
 SENATOR CARY SMITH
 SENATOR ROGER WEBB
 REPRESENTATIVE DAN BARTEL
 REPRESENTATIVE STEVE GUNDERSON
 REPRESENTATIVE LOLA SHELDON-GALLOWAY
 REPRESENTATIVE BARRY USHER
 REPRESENTATIVE PEGGY WEBB
 REPRESENTATIVE JOE READ
 REPRESENTATIVE THERESA MANZELLA

BOZEMAN, MT
 6/16/2020

I am writing all of you to voice my support for the passage of S. 3019, the Montana Water Right Protection Act sponsored by Senator Daines and Senator Tester. As an attorney who represents clients in water right matters, I support this legislation because it will protect Montana farmers and ranchers from being forced unnecessarily into costly legal proceedings to defend their existing water rights from potential tribal claims.

DAVID L. WEAVER

MONTANA POTATO IMPROVEMENT ASSOCIATION
 June 22, 2020

Dear Chairman Hoeven and Members of the Committee:

On behalf the Montana Potato Improvement Association, we would like to register our support of the Montana Water Rights Protection Act (S. 3019).

The potato industry depends on secure water rights. Should this water rights issue not be resolved, it puts 2/3s of Montana's water rights in jeopardy and will cost the agricultural industry untold millions of dollars in litigation.

Thank you for your consideration of important bill.

Sincerely,

TIM VENHUIZEN, *President*THE HOPI TRIBE
August 28, 2019

Dear Chairman Hoeven and Vice Chairman Udall,

On behalf of the Hopi Tribe ("Tribe"), I am writing to express our support for S. 2165, the Safeguard Tribal Objects of Patrimony (STOP) Act and encourage the Committee to advance the bill. I would like to begin by extending our thanks to Senator Heinrich for introducing this important piece of legislation, as well as our Arizona Senators-Senator McSally and Senator Sinerna-for cosponsoring the bill.

As you know from our previous letters of support for the STOP Act, Hopi people trace our history back thousands of years, making Hopi one of the oldest living cultures in the world. Today, Hopi continues to be a vibrant, living culture. Hopi people, *Hopisnom*, continue to perform our ceremonial and traditional responsibilities in our ancient language.

According to Hopi tribal law, the presence of a sacred Hopi object outside of the Tribe's care is sufficient evidence that it has been stolen, because such an item is considered inalienable and communal property. Therefore, when we see our sacred objects appear in auction houses, it is both deeply offensive and a violation of Hopi law.

Over the last several years alone, dozens of sacred Hopi items have appeared in auction houses. For instance, in April 2013, 70 sacred Hopi objects were included in a high-price auction in Paris, France. Despite our best efforts to prevent these objects from being auctioned, the highlycoveted items ultimately sold for over \$1 million.

Existing laws, the court system, and diplomacy have generally proven unsuccessful for the Hopi Tribe. As a result, enactment of the STOP Act is desperately needed. The STOP Act would confirm the President's authority to enter into agreements to request the return of sacred tribal objects from other countries; prohibit the export of cultural items obtained in violation of current laws; increase penalties under current law; and establish interagency and tribal working groups. These would have been valuable tools in our prior efforts to have sacred objects returned.

In closing, the Hopi Tribe thanks the Committee for approving the STOP Act last Congress. The Tribe encourages the Committee to once again pass the STOP Act and help advance it through the full Senate. Enactment of the STOP Act would help end the illegal trafficking of sacred objects and create avenues for such objects to be returned to their rightful place.*

Respectfully,

CLARK W. TENAKHONGVA, *Vice Chairman*

6/24/2020

I am a resident of the Flathead Indian Reservation and live on Flathead Lake in Polson, Montana. I have a water well. S. 3019 will protect farmers, ranchers, and myself (a widow) from expensive legal proceedings to defend

our water rights. It will also protect Montana's \$ 4 billion agricultural economy. The Water Compact has received bi-partisan support from every major agriculture and water use group in the state as well as irrigators, businesses, and local governments. The Compact was passed by our state legislature in 2016.

Please pass this legislation to protect Montana's water resources for the future. It is the right thing to do!!

LINDA GREENWOOD

RONAN MONTANA
6/24/2020

Dear Sirs:

As an irrigator on the Flathead reservation in Lake County Montana I would like to express my support for Senate Bill 3019. It is critical for my business and my future that we resolve the water issues on the Reservation and this action will go along ways toward addressing water rights and availability in Lake County and much of the rest of Montana.

*The attachments: Hopi Tribal letters dated June 16, 2017, July 20, 2017 and November 6, 2017 have been retained in the Committee files.

JAN NIEMEYER

6/19/2020

My name is Ken McAlpin. I live in Ronan Montana, farming in the Mission Valley with my wife Gina McAlpin almost 2000 acres of wheat, corn and hay. Water rights and water resources are a concern of ours.

The Montana Water Protection Act (S. 3019) which was introduced by Senator Daines and subsequently co-sponsored by Senator Testor will define the federally reserved water rights of the Confederated Salish & Kootenai Tribes and settle the legal claims of the Tribes against the federal government and will provide protections for existing water users across Montana.

S. 3019 has received broad bi-partisan support from every major agriculture and water use group in the state, as well as irrigators, businesses, and local governments. It will also protect Montana farmers farmers and ranchers from being forced into costly legal proceedings to defend their water rights.

S. 3019 will generate \$52.9 million in annual economic activity and 6,330 jobs in Montana and will save taxpayers \$400 million compared to alternative settlement proposals.

Encourage the members of the Indian Affairs Committee to pass this landmark piece of legislation to protect the future of Montana's water resources.

Regards,

KEN MCALPIN

POLSON, MT
6/24/2020

Considerations:

Real, long term impact and cost.

Affected loss of tax base.

Huge impact on our county infrastructure and resources for all communities.

Ambiguities need clearer language.

Changes from the Compact and new additions.

Changed scope of easements.

Long term effects of land trades and water use.

I am a senior citizen already struggling with the increase in property taxes and living expenses but love my Montana home. I work as a Paraprofessional at Polson High School and care about what impacts the future of our tribal and non tribal community; we are here together.

PLEASE DO NOT SUPPORT PASSAGE OF S. 3019!

ROSEANNE DETTERER

6/23/2020

Good Evening My Fellow Montanan's:

Please join all Montanans in supporting the passage of S. 3019—The Montana Water Rights Protection Act.

My wife is a 6th generation Montanan born and raised in the Mission Valley, my children were born and raised in the Mission Valley and I am the product of multiple generations of fellow Montanans. I personally spent years working alongside my friends, family and fellow business leaders to see this legislation passed in Helena. We now reside in Corvallis, Oregon due to the fallout surrounding the Great Recession, but our hearts will always be in Montana. My wife and I continue to be proud Montana taxpayers and property owners in the Mission Valley. You can take the girl out of Montana, but no one will ever take Montana out of the girl.

As Senators Tester and Daines can attest to, I remain committed to the Great State of Montana and the strong bipartisan work both Senators continue to provide for its Citizens.

Passage of this Act will finally secure these water rights, assuring continued prosperity for future generations of Montanans. Its been an honor to see this Bill finally reach the US Senate, and I implore you to use all efforts to secure its passage. Montanans as well as multiple states across the Pacific Northwest depend on it.

Thank you Senator Tester, Senator Daines and all Staff that have worked untold hours to get the Bill to this point. Let's get it across the finish line. Our future depends on it.

Best regards (And Go Griz),

GORDON ZIMMERMAN

THE WILDERNESS SOCIETY
June 23, 2020

Dear Chairman Hoeven and Ranking Member Udall:

On behalf of The Wilderness Society and our more than one million members and supporters, we write to offer our views on S. 2165, the Safeguard Tribal Objects of Patrimony Act, and S. 3019, the Montana Water Rights Protection Act, and S. 2192, the Blackwater Trading Post Land Transfer Act.

S. 2165—Safeguard Tribal Objects of Patrimony Act—SUPPORT

TWS supports S. 2165, the Safeguard Tribal Object of Patrimony Act, by Senators Heinrich and Murkowski. This important, bipartisan legislation will prevent the illegal export of sacred Native American items and increase penalties for stealing and illegally trafficking cultural patrimony.

The legislation is necessary to help safeguard Native American heritage, including the art, cultural patrimony, and other objects that are sacred to Native people. For too long, looting and theft have destroyed sacred Native American art and culture. The legislation will help prevent the continued theft and desecration of Native American culture, while empowering the United States to ensure that foreign governments honor Native American cultural heritage. For these reasons, we support S. 2165, and urge the committee to advance this important legislation.

S. 3019—Montana Water Rights Protection Act—SUPPORT

TWS supports S. 3019, the Montana Water Rights Protection Act, by Senators Daines and Tester. This legislation is necessary to fulfill the United States' treaty and trust obligations to the Confederated Salish and Kootenai Tribes. The legislation will end the decades of uncertainty over water use in northwest Montana, settle damages to the Confederated Salish and Kootenai Tribes, prevent costly litigation, and facilitate tribal economic development.

Importantly, the legislation will take into trust the 18,500-acre National Bison Range for the benefit of the Confederated Salish and Kootenai Tribes. This land is in the center of the treaty—reserved Flathead Indian Reservation, and was illegally taken by the United States. Restoring the land to trust status for the benefit of the tribes rights a historical wrong while supporting tribal sovereignty. The proposal does not transfer public lands out of the public estate. Instead, it returns ancestral lands to the Confederated Salish and Kootenai Tribes while maintaining the United States' trust responsibilities as well as public access. Based on the unique circumstances of the establishment of the National Bison Range, the transfer into trust will not set precedent for other public lands.

For these reasons, we support S. 3019 and urge the committee to advance it.

S. 2912—Blackwater Trading Post Land Transfer Act—SUPPORT

TWS supports S. 2192, the Blackwater Trading Post Land Transfer Act, by Senators McSally and Sinema. This bill would authorize the Secretary of the Interior to place approximately 55.3 acres of land in Pinal County, Arizona into trust status for the Gila River Indian Community. Due to the Arizona Water Settlements Act, taking any lands outside the existing reservation boundaries into trust status requires Congressional action. The Blackwater Trading Post has long been a community center for the Gila River Indian Community and the Community purchased this land in 2010, recognizing the cultural and historical significance of the Trading Post and the land it sits on. Since 2012, the Community has been trying to have this land taken into trust status so that it will effectively be part of the reservation and preserved as a place of cultural significance. For these reasons, we support S. 2192 and urge the committee to advance it.

Thank you for considering our views.

Sincerely,

PAUL SPITLER, *Director of Wilderness Policy*

RONAN, MONTANA
June 17, 2020

Chairman Hoeven, Vice Chairman Udall, Committee Members:

Thank you for taking up this important legislation.

I am writing in support of Senate Bill 3019, The Montana Water Rights Protection Act. It truly does just that.

Our family has farmed on the Flathead Indian Reservation since 1934. We raise potatoes, grain, hay, cattle and grand kids here on a thousand acres. This is a beautiful place and the Montana Water Rights Protection Act protects this place, the heritage and the economic viability of this place many of us call home.

The act gives us the certainty that we can continue to farm while respecting the natural resources and rights of the tribe.

The bill is the culmination of decades of negotiations between the Confederated Salish & Kootenai Tribes, the United States Government and the State of Montana.

It is my sincere hope that this bill will finish this great work.

SUSAN LAKE

MARTINSDALE, MONTANA
June 23, 2020

Dear Senators:

I wholeheartedly thank Senators Daines and Tester for sponsoring the landmark legislation, The Montana Water Protection Act, S. 3019. As a rancher's daughter, a rancher's wife, a member of the Montana Farm Bureau, as an attorney practicing in the area of property and water rights, and a long-time advocate for farmers and ranchers on policy issues on local, state and national levels, I strongly support immediate passage of S. 3019.

Sincerely,

HERTHA L. LUND

OFFICE OF THE GOVERNOR, STATE OF MONTANA
July 6, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

I write today in support of the Montana Water Rights Protection Act (bill) to ratify the Confederated Salish and Kootenai Tribes-Montana water rights compact (Compact). I appreciate the excellent hearing that was held on the bill last week and urge the Committee to expeditiously mark up the bill along the lines discussed at the hearing, pass the amended bill from Committee, and support its passage in the full Senate.

This bipartisan and equitable bill will provide vital certainty to all Montana water rights holders, avoid expensive and protracted litigation, and authorize necessary funding to ensure that critical water infrastructure in western Montana is rehabilitated and modernized to meet the current and future needs of all water users.

The Compact is the result of more than two decades of negotiations between the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States to resolve the Tribes' water rights claims within Montana. For more than a decade I have supported this settlement in my role as Attorney General and Governor. In my first term we successfully passed the water rights compact. Since then my office has strongly supported federal settlement and I am pleased that settlement will occur before my term ends. S. 3019 commits the federal government to fulfill its nation to nation responsibilities and respects federal, state and tribal nation interests as co-sovereigns.

The state has committed \$55 million toward the rehabilitation of the Flathead Indian Irrigation Project, which serves both tribal and non-tribal irrigators on the Flathead Indian Reservation-the largest such settlement ever approved by the Montana Legislature. Following legislative approval, I signed the Compact into Montana law in 2015.

I appreciate the massive effort it takes to get a bill of this size negotiated and moved. I look forward to continuing to work with the Committee, the full Congress, and the Administration to assure that Montana's interests are protected.

Sincerely,

HON. STEVE BULLOCK, GOVERNOR

POLSON, MT
7/3/2020

To whom it may concern

I support strongly the return of the Bison Range, near my home, to tribal management. I have had many interactions with tribal members over decades and the overwhelming majority have been very positive. And the land was taken from them illegally, albeit it is a complex issue. I have every indication that they would be excellent stewards.

DR. CHARLES HALL (ECOLOGIST)

7/3/2020

Dear Committee:

All we hear about the injustice and racism is this: "It happened yesterday. Get over it." "You being a victim. Quit whining around. "You are a race-baiter (unknown to me what that is)". "I don't owe you anything as I wasn't the one who took it from you." The illegal taking of the Bison Range from the Salish-Kootenai Confederated Tribes is prime example that it isn't "yesterday", "there is no getting over being robbed", "that claiming this is playing victim", that the ones profiting from it are benefiting from the larceny. Why is it that when any Native claims his/her/tribal property of any kind, we portrayed as playing the victim yet when a non-Native goes after their property they have a legal claim, a right to have their property returned and that whoever took it must pay restitution. You have an opportunity to help right a wrong taking, an illegal act, and to restore the property to the rightful owners. I hope you that do just that and return the land, the Bison Range, to the Salish-Kootenai Confederated Tribe which is made up of fine individuals who want nothing more than justice. Thank you for listening,

STEVE YAPUNCICH

7/7/2020

It is my belief that The Bison Range should be turned over to The People who first lived as One with Bison. I trust The People who have lived with Bison for thousands of years are best qualified to care for both The Bison and the public best interests.

DALE BROSZEIT

7/4/2020

Hello,

My name is Clarence Sanders, and I reside in Bozeman, MT.

I write to emphatically support return of the National Bison Range to the Confederated Salish and Kootenai Tribes.

The U.S. Claims Court ruled the land was improperly taken, and per that ruling should be returned to jurisdiction and authority of the Tribes.

Please adopt that measure as part of S. 3109, The Montana Water Rights Protection Act.

Thank you,

CLARENCE SANDERS

BOZEMAN, MT

7/7/2020

I am not against The Confederated Salish Kootenai Tribe but I am against relinquishing Federal land to private entities. I oppose transferring the National Bison Range which is currently publicly owned land managed for the public by the US Fish and Wildlife Service. I believe the US Fish and Wildlife Service is the appropriate agency to manage the National Bison Range because it is a wildlife refuge. I believe the National Bison Range should remain in public ownership.

I am worried that in the future the National Bison Range may not be managed properly to protect its wildlife habitat, bison preservation and public use mandates if management and ownership of the land is transferred to a tribe. I am sure that the tribe currently intends and would for a time manage in accordance with these mandates however there is no guarantee that the tribe's priorities and personnel will continue this management into the future.

I have visited the Bison Range and it is a rare jewel of accessible prime habitat that is an important place for the public to view wildlife and learn about the history of wildlife management. Not only are bison readily visible but magnificent elk, mule deer, pronghorn and bighorn sheep are easily viewed in the wild and in their native habitat. This is because the area is currently closed to hunting. I am concerned

about hunting being allowed in the Range and/or poaching occurring. I am also concerned about the land being sold in the future. Currently the Flathead Reservation is majority owned by whites because tribal members sold off large areas of their historical reservation for private profit.

If the Fish and Wildlife Service wants to incorporate tribal members in management that is fine but the land should remain in permanent public ownership and under management by an agency responsible to the American public.

Thank you for considering my comment.

NIKE STEVENS

MISSOULA, MT
7/3/2020

I support the wildlife management programs of the Tribes on the Flathead Reservation and Tribes' ability to manage the Refuge both for preservation of the bison and for continued public access. I believe the wrongful taking should be righted by returning the land.

BRUCE BENDER

GALLATIN WILDLIFE ASSOCIATION
July 4, 2020

Dear Committee Members,

The Gallatin Wildlife Association (GWA) has been following the actions and proposed threats to the National Bison Range (NBR) for several years now. We were shocked and dismayed to learn of the attempts by the Montana Congressional Delegation, specifically those by Senators Daines and Tester, to secretly propose a land transfer of public lands managed by the U.S. Fish and Wildlife Service over to the Confederated Salish and Kootenai Tribes (CSKT) of Montana. All of this done without approval, permission or widespread knowledge of the people of Montana, let alone the country. We use the word "secret" because other than perhaps one meeting in Missoula, there have been no hearings, no presentations, no announcements before the public. Not even staff people of Sen. Daines' office in Bozeman, MT knew of this issue when GWA visited with them. This in and of itself sets bad precedent.

GWA would like to comment further on this proposal. We should first define who we are. We are a local, all volunteer wildlife conservation organization which is dedicated to the preservation of wildlife and wildlife habitat in Southwest Montana. We are a nonprofit 501(c)(3) organization which has been in existence since 1976 representing hunters, anglers, and other wildlife advocates with the mission to protect habitat and conserve fish and wildlife populations on a sustainable basis for our children and future generations. This issue very much becomes our issue by its potential repercussions on native wildlife, but also on the future of public lands. We want to make clear; we are only commenting on the inclusion of the NBR in Senate Bill 3019.

S. 3019 is a water-rights compact issue, a state issue. Section 2 of the bill lists the four purposes of the Act as follows:

1. to achieve a fair, equitable, and final settlement of claims to water rights in the State of Montana, and in recognition of article I, and section 3 of article IX, of the Montana State Constitution for-
 - (A) the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation; and
 - (B) the United States, for the benefit of the Tribes and allottees;
2. to authorize, ratify, and confirm the water rights compact entered into by the Tribes and the State, to the extent that the Compact is consistent with this Act;
3. to authorize and direct the Secretary of the Interior-
 - (A) to execute the Compact; and
 - (B) to take any other action necessary to carry out the Compact in accordance with this Act;
4. to authorize funds necessary for the implementation of-
 - (A) the Compact; and
 - (B) this Act.

As the committee can see, nowhere in the designated design purpose is there a statement about a resolution of the NBR. Nowhere does the purpose deal with wildlife, bison, or public lands. The only reason the NBR is even part of this legislation

is to help provide payment to the CSKT. The only purpose in mentioning the NBR is to explain what the NBR is in that function for payment; payment by the way which was not done in accordance with the approval of the citizens of Montana, the country or done in conjunction with conducting a National Environmental Policy Act (NEPA) analysis, which is law. The people of the United States should have a say in such a land reallocation. It is the 10th most popular visited park within the National Wildlife Refuge System. Not only does it set bad precedent to try and hide public land transfers from the public, but it is also setting bad precedent to take land or funds from the federal trust to pay a state's debt. What is the legality of such action? The people of Montana are being represented very poorly in this action by Senator Daines, the sponsor of this bill.

There are other problems and/or questions GWA has with the legalities or processes of this legislation. Under Standing Rules of the Senate, Rule XXV, 1(h)(1), there is this statement:

“Committee on Environment and Public Works, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects.”

Of those numerous subjects listed, several apply, stating that this legislation should be considered by this particular committee. Those which apply, but which are not limited to, are: “Environmental policy, Environmental research and development, Fisheries and wildlife, and Public buildings and improved grounds of the United States generally, including Federal buildings in the District of Columbia.”

Why has this legislation not been introduced into this committee, one where it is mandated?

On another front, GWA questions whether or not the U.S. Fish and Wildlife Service (USFWS) has been adhering to the original intent of the National Wildlife Refuge System Administration Act (NWRSA) of 1966 or the National Wildlife Refuge System Improvement Act of 1997. That may get us into a broader issue other than to say perhaps that problem gave rise and justification for the Senators and the CSKT to push the idea of this land transfer. If the USFWS had managed the NBR in recent years in the way they're mandated to do so, perhaps the NBR would not have been included in this bill.

There's recent history over the fact the NBR has had a mismanagement problem, and that raises a serious question. If the NBR is not getting the necessary oversight, protection and fulfillment of the NWRS mission, how are they going to get those assurances within the CSKT? Meaning no disrespect to the CSKT, but they are a tribal entity with a different purpose and existence. They are an entity which does not provide or possess those national protections, an entity outside the jurisdiction of the American people and its government, and an entity where there are no guarantees of fulfilling that national mission. How are they going to improve the condition?

On to the NBR and its specifics. The NBR contains 18,800 acres of federal public land, land that was designated to be set aside as a refuge for bison in 1908 by President Theodore Roosevelt. This is a public trust which has had an iconic presence within the National Wildlife Refuge System for 112 years with a specific mission to protect our most recent National Mammal from extinction. That mission still holds true today in spite of the fact there are plenty of bison herds across the country, privately and federally owned on tracts of private and public land. It is sad to think that some feel the NBR is a victim of its own success, but it is not. What is being ignored is the fight for the enduring protection of the purity of bison genetics. Through those 112 years, the USFWS has done a remarkable job in preserving bison alleles, the genetics which have their founding before the private herds of Allard, and the selling of that herd to the Conrads in 1901-02. It is that stock which was used in the original founding herd of the NBR. The purity of those alleles is intact. In quoting *DOI Bison Report*, “Looking Forward”, Natural Resource Report NPS/NRSS/BRMD/NRR-2014/821, it states this on page 38:

Recent science has established that the Yellowstone and NBR herds are closely related and both have high genetic diversity (Dratch and Gogan 2010). Like Yellowstone, NBR bison represent one of the four primary genetic lineages of extant conservation herds.

There has been 112 years of investment by the American people and their tax dollars into the preservation and management of the NBR. The American people have a right to know the purpose for the potential loss at stake. The federal mission has not changed. The only thing that has changed is the willingness of specific interests and tribal groups to use the NBR as an easy way out of correcting some wrongful

deeds by state and federal governments. Speaking of which, there needs to be a historical consensus and agreement as to what occurred at the turn of the 20th century. By not correcting the NBR historical record as stated in this legislation, it further stains the justification and premise of this Act. It is a sad state of affairs when a federal piece of legislation could become law when based upon such a controversial recollection of history. There should be an effort to get this right before the American people.

Finally, to conclude on the premise in which we started, we feel this legislation is dangerously precedent setting in one other way. Contrary to what is stated in Sec. 13. of S. 3019 entitled National Bison Range Restoration, line item (k) (No Precedent), GWA believes we cannot depend upon the provided denial that these provisions are not precedent setting. There are no guarantees, even in law. As we have stated in prior public comments, there are 68 National Parks and 34 National Wildlife Refuges listed in policy under Section 403(c) of the Tribal Self-Governance Act of 1994. Who's to say those lands can't or won't be subject to the same threat. As we have learned, laws can be over turned or amended. Just because it's stated in Sec. 13 of this legislation, doesn't make it so. There is a steep irony here. S3019 opens that door wide, launching a precedent setting change, robbing Americans of their public land. The CSKT and other First Nation people are well aware of that feeling.

GWA also wants to clarify that we are not against reparations to Native American Indigenous tribes. We believe there are many justifications for such action, but reparations can come in many forms. If the purpose of this action is for reparations, then we should have that discussion, but this is not the forum that it should take place. GWA's sole purpose is to protect America's wildlife and their respective habitat. We are against taking lands out of the public domain and the federal trust for that purpose unless there are lands of equal or greater value that can restore those lost acreages and protect our natural heritage. With that in mind, GWA urges the Senate Committee on Indian Affairs to remove the inclusion of the National Bison Range from S.3019.

We want to thank you for receiving our comments and for any thoughtful consideration you can provide pertaining to this issue. The American people have a right to know how their government is working or not on their behalf.

Respectfully,

CLINTON NAGEL, *President*

SANTA CRUZ, CALIFORNIA
7/5/2020

Dear Senate Committee on Indian Affairs,

You have a valuable opportunity to help right a wrong in Montana Indian Country. I urge you to do the right thing.

The Montana Water Rights Protection Act (S. 3019) would return the lands of the National Bison Range to the Confederated Salish and Kootenai Tribes to continue preservation of the bison and provide public access and educational opportunities.

The land that is now called the National Bison Range was acquired by the United States without the Tribes' consent in what was later held by a Federal Claims Court to be a taking.

Returning the land to federal trust ownership for the benefit of the Tribes is a small but very important step towards strengthening sovereignty and repairing the harms of colonialism. It will make a key difference in the lives of many CSKT Tribal members.

Please do everything you can to pass S. 3019.

With gratitude and good wishes,

NATASCHA BRUCKNER

BOZEMAN, MT
7/6/2020

Absolutely return the National Bison Range to the Native American tribes it belongs, to correct the stealing of their lands in the Flathead Indian Reservation. They love the bison and will treat them humanely and allow access to the public. I've visited the Bison Range and enjoyed seeing the bison peacefully graze. I've lived in Montana for 41 years and it is outrageous the federal and state governments have never recovered the native Montana bison to public lands. This is the US's national mammal. This species should be managed by Native Americans as they are who lived side by side the bison and then "white men" ruined their entire cultures and

murdered almost every single bison for greed, power and control. Our country has stolen many Native American lands and broken many treaties—this would be one small step to correct this travesty by the US Government. Thank you.

PAT SIMMONS

MISSOULA, MT
7/5/2020

Honorable members of the Senate Committee,

I am a citizen of Montana and I would like to record my support for tribal management of the National Bison Range. I live near to the Flathead reservation and have visited and enjoyed the Bison Range on many occasions, often bringing family and visitors to enjoy the unique, informative and scenic environment. I am familiar with the history of the bison and land that make up the range and share what I know with my guests. It is almost unanimous that my guests find the tribe's lack of involvement in the creation and management of the bison range as a rude injustice, an injustice that continues today as part of a legacy of regrettable acts by the U.S. government against the Native American peoples of Montana. These regrettable acts separated tribal members from the land and bison that sustained and nourished them, economically, culturally and spiritually. Putting management of the National Bison Range into tribal hands is a way to right some of these wrongs.

I trust tribal management. As a student of environmental sciences at the University of Montana, I became familiar with the approaches and successes of the CSKT in managing the natural resources of the Flathead reservation. As a recreationalist, I've enjoyed the benefits of that management in the lakes, streams and wilderness of the reservation. The CSKT are skilled and able managers of natural resources, which should be no surprise, as their knowledge of this landscape and the species that inhabit it run deep. I am confident that the tribe will manage the Bison Range skillfully and in the interest of the public.

It is time to return the land and bison to the care of the CSKT. Please support tribal management of the National Bison Range.

Respectfully,

YVONNE SOROVACU

NATIVE AMERICAN RIGHTS FUND
July 6, 2020

Dear Chairman Hoeven and Senator Udall,

The Native American Rights Fund writes in support of Senate Bill 3019, the Montana Water Rights Protection Act, jointly introduced by Montana Senators Steve Daines and Jon Tester. NARF has a long history of supporting the settlement of Indian water rights claims for our tribal clients and other tribes, and of securing congressional approval of the settlements. For nearly four decades, we've partnered with the Western Governors Association and the Western States Water Council in these efforts, recognizing that we all live in the same river basins and watersheds and have to work together to share in the benefits of these vital natural resources.

This legislation will provide congressional approval for the water compact negotiated between the State of Montana and the Confederated Salish and Kootenai Tribes (CSKT) pursuant to the State's water compacting process. Several other Montana tribes as well as federal agencies have successfully settled their water rights and secured congressional approvals. CSKT will be the last Montana Tribal compact to receive congressional approval. S. 3019 is also noteworthy in that it transfers the National Bison Range located on the Flathead Reservation from the U.S. Fish and Wildlife Service to CSKT. NARF strongly endorses the legislation and these purposes.

The water compact is the result of years of negotiations between the CSKT, the State of Montana, water users in the Flathead Valley, and the Department of Interior. It was ratified by the Montana Legislature in 2015. This, like all Indian water settlements ultimately approved by Congress, was not a one sided deal. The Tribes relinquished considerable legal rights in order to accommodate water uses that have developed subsequent to the Hellgate Treaty of 1855. The compact was derived from long and intense negotiations. Importantly, it will bring a new structure and process to water management in western Montana, for the benefit of all water users as well and the water and fisheries resources of the region. Its innovative approach to habitat restoration and protection, water conservation, and instream flows is essential to fish and wildlife populations on and off the Flathead Reservation.

The National Bison Range sits within the CSKT Reservation and the Tribes, as sovereigns, are very well situated to take over management of the Range. Bison have tremendous social and cultural significance to the Salish and Kootenai peoples. It is much more than a symbolic gesture to restore the Range and its resources to the rightful management of the Tribes. Their integration of tribal culture into bison management will benefit the animal, as it enriches the experience of the thousands of people that annually visit the Bison Range.

Very truly yours,

JOHN E. ECHOHAWK, *Executive Director*

FLATHEAD RESERVATION HUMAN RIGHTS COALITION, INC.
6/28/2020

As the President of FRHRC and a 40 year resident on the Flathead Reservation, I have seen many attempts and actions against the sovereignty of the Flathead Nation (the Confederated Salish and Kootenai Tribes).

It is evident that not only is sovereignty not understood, but by some it is met with resistance as evidenced by the talk of dismantling the reservation because it is open, meaning all land is not owned by the tribe and its members, fighting against concurrent jurisdiction of law enforcement, continual complaints by non-Indian residents over purchasing hunting and fishing permits from the Tribe, etc.

This history is important to understand the resistance to Tribal Bison Range management I have witnessed co-management of the National Bison Range and the institutional racism and undermining of that brief period by some of the non-indigenous Bison Range employees and others that perpetuate the fear of Tribal management.

I have witnessed excellent tribal management of land and natural resources through traditional burning and clearing of brush to help reduce impact of wildfires. The air quality we enjoy is rated as pristine and is managed by the tribe. The efforts to minimize further negative impact of lake trout in Flathead lake, the water quality is managed by the Tribe, as is the wonderful wilderness of the Mission Mountains kept clear of buildings and roads. The Tribe also does a great job of running Mission Valley Power and the Selkirk Sanka Qlipel, (formerly Kerr Dam).

The Tribe is a good neighbor and supports local fire departments and helps with search and rescue operations, MMIP task force, and most lately the Tribe and Lake County formed the Unified Command Center for COVID and CSKT offered free COVID testing to keep all reservation residents informed and safe!

The tribe managed buffalo since the 1800's and provided some of the stock to start the bison range to begin with. This type of wildlife management is well within the scope historically and presently of the Flathead Nation. This move will also still provide visitation to the NBR by the public, together with added opportunities to learn about Bison from a tribal perspective. The Salish Kootenai College provides degrees in Forestry Forest Management, Forestry Wild land fire management, Hydrology, Wildlife and Fisheries not to mention Tribal History Preservation. All of these programs help to maintain the knowledge base to thrive as the stewards of the National Bison Range.

We support The MT Water Rights Protection Act and the transfer of the National Bison Range to the CSKT Tribe within the Bill.

TAMMY MILLER PRESIDENT

NATIONAL CONGRESS OF AMERICAN INDIANS
July 14, 2020

Chairman Hoeven and Vice Chairman Udall:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative national organization comprised of tribal nations and their citizens, I write to express NCAI's support for S. 3019, the Montana Water Rights Protection Act.

Permanent and reliable access to water creates significant health, cultural, and economic development benefits for tribal nations and surrounding communities. Securing this resource through water rights settlements meets these conditions by resolving past conflicts, providing future certainty, and ensuring "wet" water reaches tribal lands. For these reasons, NCAI membership codified its support for Congressional approval of the water rights compact negotiated between the state of Montana and the Confederated Salish and Kootenai Tribes (CSKT) by passing NCAI Resolution #MSP-15-038, Support for the Water Rights Compact between the Con-

federated Salish and Kootenai Tribes, the State of Montana, and the United States of America.

Additionally, tribal communities are often place-based and their relationship to their homelands extends from time immemorial and is rooted in tribal eco-cultural practices developed over millennia. When tribal nations have the ability to make culturally appropriate management decisions about their lands and natural resources they bring health and cultural and economic development benefits to their citizens and surrounding communities. In this regard, NCAI Resolution #SPO-16-006, Support Tribal Legislation to Return the Land and Resources of the National Bison Range to Federal Trust for the Confederated Salish and Kootenai Tribes, formalizes NCAI's strong support for restoration of the bison range to CSKT and for their eco-cultural management approach to the care and continuity of the bison heard and the National Bison Range.

The Montana Water Rights Protection Act, S. 3019, would provide water security and certainty to future generations of citizens of CSKT, surrounding communities, and the state of Montana. With regard to the management of the National Bison Range, S. 3019 represents an appropriate management solution to the unique situation and history of the National Bison Range and CSKT's relationship with the bison, wildlife, natural resources, and land. For these reasons, NCAI supports passage of S. 3019, the Montana Water Rights Protection Act.

Sincerely,

KEVIN J. ALLIS, *CEO*

NATIONAL CONGRESS OF AMERICAN INDIANS
July 14, 2020

Chairman Hoeven and Vice Chairman Udall:

On behalf of the National Congress of American Indians (NCAI), the oldest, largest, and most representative national organization comprised of tribal nations and their citizens, I write to thank you for holding a hearing to consider S. 2165, the Safeguard Tribal Objects of Patrimony Act of 2019 (STOP Act), and to express NCAI's strong support for this bill.

Core to NCAI's mission is the protection and preservation of Native cultures and ways of life for future generations. NCAI's membership has repeatedly expressed the importance of protecting from dispossession unique, irreplaceable, and indispensable items of cultural and religious importance.¹ Most recently, NCAI codified this commitment in Resolution #REN-19-003, *Supporting Legislation to Facilitate International Repatriation of Tribal Nations' Tangible Cultural Heritage and Coordination among Federal Agencies*. This resolution requests Congress enact legislation to prevent the illegal export and facilitate the international repatriation of items of tribal cultural heritage.

To this end, the STOP Act is significant legislation that addresses deep and longstanding harms suffered by Native people and their cultures through the dispossession of cultural items from their homelands and cultural contexts to foreign countries and markets. To do this the STOP Act would, (1) increase Native American Graves Protection and Repatriation Act (NAGPRA) penalties; (2) prohibit the export of cultural items held in violation of existing domestic law and establish a certification system to facilitate lawful export; and (3) establish working groups to promote coordination among federal agencies and assist with the voluntary return of cultural items.

The STOP Act is an important piece of legislation that draws on the strengths and successes of existing cultural heritage laws and addresses a limitation in them—the lack of an explicit prohibition against the export of items otherwise protected under federal law. Cultural heritage laws like NAGPRA and the Antiquities Act were passed to protect the cultural heritage of tribal nations. In preventing international export of these items, the STOP Act builds on the purpose of these laws and recognizes the sanctity of tribal cultural items to tribal nations and their citizens. For these reasons, NCAI strongly supports the passage of S. 2165, the STOP Act.

Sincerely,

¹ See generally, NCAI Resolution #SAC-12-008, *Support for International Repatriation*; Resolution #ATL-14-032, *Calling for the Protection of Native Peoples' Sacred Places, Sacred Objects, and Ancestors under United States, Native Nations and International Law, Policy, and Practice*.

 KEVIN J. ALLIS, *CEO*

 BOZEMAN MT
 7/2/2020

Respectfully, I oppose the privatization of public lands whether done in a massive step or whether step by step. If reparations are appropriate for some past deed, pay, but don't privatize public lands. Public land stewardship has proven the most effective conservation in the history of this nation, not perfect, usually requiring public pressure to do better, but the most effective. Wilderness designation is the gold standard of conservation. The National Park Service have done a good job, particularly given inadequate funding, population pressures, and political interference. The National Bison Range is a tiny piece of land in the context of public lands, but it has every privatization advocate strongly behind it as it would open the door to privatization of public lands in general. I oppose giving, transferring, selling, exchanging, leasing, and other euphemisms as well as the act of privatizing public lands. Public lands are not a political favor to be granted to any special interest, whether the interest is defined by wealth, ethnicity, race, religion, political ideology, etc. Keep public lands public!

Sincerely,

 ANNE MILLBROOKE, *Public Land Owner*

 KALISPELL, MT
 7/3/2020

Please return the National Bison Range to the Confederated Salish and Kootenai Tribes. This is their heritage. They have the right to regain all land illegally and forcefully taken from them by the US Government. The US Government needs to make amends for its genocide of Native Americans and past racist agenda towards Native Americans.

 NORMAN MELLIN

 KALISPELL, MT
 7/7/2020

I would very much like to see the National Bison Range return back to the care and keeping of the Confederated Salish and Kootenai Tribes. From a moral perspective, I believe it is one step toward amending so many past wrongs done to the Native Americans. From an ecological perspective, I have seen lands flourish under the management of Tribes. The deep, connected relationship that Tribes have with the earth puts me at ease knowing that they will truly care for these lands in the highest and best way possible.

Most sincerely,

 LINDSAY MINNICH

 Missoula, MT
 7/6/2020

I write to express my strong support for both the water rights compact/settlement and National Bison Range restoration to the Confederated Salish and Kootenai Tribe (CSKT—comprising the Salish, Kootenai and Pend Oreille people) elements of Senate Bill 3109.

The water rights settlement portion of the bill reflects a measured compromise between the sovereign CSKT Nation and the State of Montana. The provisions of this bill relating to the water compact agreement embody the efforts of the both state and tribal authorities to reach a settlement of the pre-eminent rights of the CSKT to water under their Treaty of 1855. It provides for the welfare of the tribe and those that depend on the water affected by the agreement. It has passed the Montana Legislature, which gave the agreement substantial attention in legislative sessions before approving it. The US Senate should applaud and support the terms of that agreement that make a fair and equitable division of water availability for all.

The National Bison Range restoration part of the bill is a long overdue acknowledgement of the rights, culture and spiritual attachment of the CSKT people to bison and the land on which the NBR is found. The preamble of the bill recites an accurate and telling history surrounding the NBR and the bison found on it. Indeed,

the actions of the Salish people were among the first moves to conserve bison from extinction. The connection of CSKT confederated tribes to bison is strong and spiritual. The NBR lies wholly within the CSKT reservation boundaries and was taken without tribal consent by the federal government, a fact established by judicial review. It is only just to acknowledge this connection and correct the mistakes of the past.

Such a transfer to federal trust ownership of the NBR does not set a precedent for other public lands. The unique history of the situation and the connection of the CSKT to the place and the species for which it is managed distinguish this transfer from proposed transfers to state or private ownership. Moreover, public access is preserved by the express terms of the bill.

Finally, the CSKT Resource Management staff is top-notch and a recognized leader in natural resource management in Montana and the nation. The care and effectiveness that they have shown managing grizzly bear and bull trout, two other species that suffered sharp declines, speaks loudly to the CSKT leadership in wildlife management. Bison, a spiritual being for the CSKT, can only be expected to flourish under CSKT management.

In sum, there is every reason to restore the NBR to the CSKT. It would serve as a meaningful step to restore essential cultural connections of native people. In these times, it is an essential step to address past injustice.

LEN BROBERG

POLSON, MT
7/4/2020

In regard to my personal introduction, I am a retired cattle rancher in the Polson, Montana, area, having lived here for over fifty-nine years. I am a 50+ year member of the Society for Range Management (SRM), served on the SRM Board of Directors and received the highest award SRM gives for excellence in land stewardship. I served four years on a National Academy of Sciences committee that evaluated various means of defining rangeland condition. On the State level I served ten years on the Montana Noxious Weed Trust Fund advisory committee. On the local level, I served on the Lake County Weed District Board. I feel I am well qualified to pass judgment on the Confederated Salish and Kootenai Tribes (CSKT) ability to manage rangeland.

One provision of SB 3019 is the transfer of the National Bison Range (NBR) to the CSKT. First of all, this portion of SB 3019 has nothing to do with the ratification of the Flathead Water Compact, which I have supported. Therefore, the transfer of the NBR should be stricken from the Bill.

My second point is that the CSKT has already been paid twice for the land that encompasses the NBR. This ill conceived legislation would not only give the CSKT the land but also the bison themselves, considerable range improvements like fences, water developments, bison handling facilities, and access roads, as well as numerous buildings, all paid for by American taxpayers.

My third point is the CSKT's lack of ability to properly manage rangelands. The primary goal of managing the NBR is to properly manage the health of the rangeland. Bison and other wildlife depend upon healthy, robust rangeland. Based on my almost sixty years of living in Lake County and being involved in range management, it is my observation that the CSKT has not exhibited good stewardship on the rangelands that they manage, especially their grazing leases. They may have established wilderness areas, etc., but these areas do not require the annual, hands-on management that rangelands require, like weed control, fencing, water development, rotation grazing and proper stocking rate.

Based on my observations of both Tribal rangeland management and the U.S. Fish and Wildlife Service management of the NBR, I believe it would be in the best interest in the health of the land and of the American people that the NBR be retained under its current ownership status.

I, therefore, urge you to delete this provision in SB 3019.

CHUCK JARECKI

7/4/2020

I am a Montana Resident and fully support the return of the Nt. Bison Range to the ownership and management of the Confederated Salish and Kootenai Tribes. In fact the original preservation of the bison in the Flathead Valley in 1884 was due to the efforts of two men, Michel Pablo and Charles Allard, both of whom had Native American mothers.

 MARK MILES

 MISSOULA, MT
 7/6/2020

To whom it may concern;

I am writing to support the passage of The Montana Water Rights Protection Act (S 3019). The National Bison range lands should be returned to the Confederated Salish and Kootenai Tribes. These tribes will work to preserve the animals and their habitat forever. They are committed to maintaining public access and education. I have enjoyed this historic place for over 40 years and look forward to many more.

Thank you for your consideration.

 BETH IKEDA

 HELENA, MONTANA
 7/7/2020

The Montana Water Rights Protection Act, if passed, will return the lands of the National Bison Range to the Confederated Salish and Kootenai Tribes. The land upon which the National Bison Range is located was acquired by the U. S. without the Tribes' consent. That action has been held by a Federal Claims Court to be a taking. Returning the land to federal trust ownership for the benefit of the Tribes is the right thing to do as it is a step in repairing the historical harms Indian Tribes have suffered from the U. S. government.

The Confederated Salish Kootenai Tribes have a history of excellent management of their lands and of the wildlife on their lands. The National Bison Range lies wholly within the Flathead Indian Reservation. The National Bison Range is one of Montana's gems. I have confidence that the Confederated Tribes would manage the Bison Range well for the preservation of the bison and for continued public access.

Thank you for this opportunity to comment.

Sincerely,

 MARYLIS FILIPOVICH

 MISSOULA, MT
 7/2/2020

I am a retired physician and lifetime Sierra Club member living in Missoula, MT. My passion is nature photography. One of the most magical places in our beautiful state is the National Bison Range. For years now, I have gone several times each year to observe and photograph the many wild creatures who live there, not just the magnificent bison herds, but also pronghorns, bighorn sheep, bear, elk, deer, and others. It has been my pleasure to take many family members and visitors there as well. It's high time that we returned the management and ownership of this special place to their rightful owners, the Flathead Indian Reservation. The land was taken from their reservation illegally years ago, and it's only just and appropriate that they own and control it now for the benefit of all the people of this country and other countries as well. The tribes of the Flathead Indian Reservation have amply shown by the creation of their own wilderness area in the Mission Mountains, unique in the nation, how much they value and wish to protect the natural beauty and the creatures that surround them. Thank you for considering my thoughts about this important matter.

 JEROME WALKER, M.D.

 WILDLIFE CONSERVATION SOCIETY
 June 30, 2020

To Whom it May Concern,

The Wildlife Conservation Society (WCS) is writing to offer this letter for the hearing record in support of S. 3019, The Montana Water Rights Protection Act, which was heard by the Senate Committee on Indian Affairs on June 24th, 2020. WCS stands in strong support of the Confederated Salish and Kootenai Tribes (CSKT) and their efforts to bring closure to and resolve longstanding resource issues addressed in S. 3019, and particularly Section 13 of the bill which addresses restoration of the National Bison Range.

WCS was founded as a science-based conservation organization in 1895 in large part to help support the conservation of species like the American Bison. Today WCS works in over 60 countries to help conserve wildlife and wild places through science, conservation action, education, and inspiring people to value nature. WCS's own organizational history is deeply intertwined with efforts in the late 19th and early 20th centuries to help prevent American Bison from becoming extinct. WCS helped to found the American Bison Society in 1905 and was intimately involved in the establishment of the National Bison Range in 1908, including providing animals from WCS's Bronx Zoo for reintroduction.

Today, 112 years later, WCS recognizes the sovereign rights of the Confederated Salish and Kootenai Tribes and stands in solidarity with CSKT and the provisions of this bill in: (1) acknowledging the history, culture, and ecological stewardship of the Tribes of these lands, natural resources, and bison; (2) ensuring the protection and enhancement of these lands, resources, and bison; (3) continuing access and educational opportunities; and (4) a smooth transition and restoration of the stewardship of these lands, resources, and bison to CSKT, which is recognized as an international leader in wildlife conservation.

Part and parcel of this restoration is a reconciliation with the past and the wrongful taking of the Tribes' lands, a recognition of the Tribes' use of these lands and resources since time immemorial, the Tribes' reservation of these lands through the Treaty of Hell Gate on July 16, 1855 (12 Stat. 975), and their protection under Federal law.

WCS is proud to support this bill and its efforts to restore the National Bison Range, bison herds, and property and resources associated with these lands to the rightful stewardship of CSKT. It is long overdue.

We wish to thank Chairman Hoeven and Vice-chairman Udall and Members of the Committee for hearing this bill, and sponsors Senator Daines and Senator Tester for their leadership in carrying this critical piece of legislation. There is a no more timely moment than the present to advance this piece of legislation and WCS looks forward to its hopeful adoption this year. Thank you for the opportunity to comment. Should you have any further questions or concerns, please do not hesitate to be in contact.

Our sincerest thanks,

CRISTINA MORMORUNNI, *Director*

ARLEE, MT
7/7/2020

My name is Susan Lindbergh Miller and I have lived in Arlee, Montana since 1994. My husband's name is Elon Hamilton Gilbert. We are writing you to express our confidence in the proposal included in the Montana Water Rights Protection Act for the Confederated Salish and Kootenai Tribes to Manage the National Bison Range in Moiese, Montana, on the Flathead Indian Reservation.

Over the years we have watched and appreciated the efforts made by the Confederated Salish and Kootenai Tribes to manage the natural resources of this reservation. The environmental and cultural education for local students has been exceptionally interesting and deeply rooted in centuries' old practices of honoring the land, water and air of this reservation. This ensures that in the future there will be a continuation of an understanding, reverence for, and ability to manage its resources.

The Tribes have written a series of books and stories (some, maybe all, translated into the Salish Language) for youth that teach and explore their native legacy of caring for this planet and in particular the land within the reservation.

The restoration of the Jocko River to support the survival of the Native Bull Trout as well as the health of the river is another example of how the tribes are honoring their sacred land. The River Honoring ceremony held every year on the Flathead River for school children in the area, including our grandchildren, is another example of honoring the past, teaching in the present, and looking towards a multi-layered and deep understanding for the future of this beautiful area we call home.

We live adjacent to the Tribal Trust Forest land, portions of which are generously open for recreation to those of us who live here but are not tribal members if we purchase an annual permit. We walk there almost every day and have been grateful for the Tribes' management practices.

We have visited the National Bison Range, love it, and can't think of no better future for its management than to be in the hands of the local Confederated Salish and Kootenai Tribes. It is their land, their heritage, and if ever there were an appropriate time to honor their rightful heritage it is now.

Thank you for standing behind the Tribes in their desire and their right to manage this important place on the planet. And thank you for allowing us to enter into the decisionmaking process.

Sincerely,

SUSAN L MILLER AND ELON H. GILBERT

WATER POLICY INTERIM COMMITTEE
July 14, 2020

Dear Sen. Hoeven,

The Water Policy Interim Committee (WPIC) urges the Senate Indian Affairs Committee to pass S.3019 (Montana Water Rights Protection Act) at its earliest convenience. Doing so will begin to secure the future of the Confederate Salish and Kootenai Tribes (CSKT)-and that of thousands of farmers, ranchers, and water users across Montana.

In the arid West, water is a fundamental element for Montana's cities and towns, farms and ranches, industries and natural wonders. Legendary, one-armed geologist and explorer John Wesley Powell forecast a struggle for water in the American West, observing that "there is not sufficient water to supply these lands." Today, Montana's legal system relies on a clear delineation of one's water rights-not only to protect private property rights, but for maximum benefit of all uses.

After decades of negotiation, the Montana Legislature passed the CSKT compact and associated federal settlement in 2015. The compact will not only quantify and protect Indian and non-Indian water rights, but will rehabilitate an aging irrigation project feeding some of the state's most productive lands, conserve the water resources for riparian habitat, and drive economic development in western Montana through access to unallocated reservoir water.

Without approval of the compact, the tribe may be forced to litigate thousands of claims to protect their "first in time" rights, casting a shadow over tens of thousands of others' water rights.

The WPIC firmly believes that approval of S.3019 by the Senate Indian Affairs Committee will start the legislation on a path to approval by Congress and the President.

Thank you for your consideration.

Sincerely,

REP. ZACH BROWN, *committee presiding officer*

MONTANA PUBLIC SERVICE COMMISSION
June 30, 2020

Chairman Hoeven,

We are writing to you to voice our support of the request made by Republican members of the Montana State Legislature to hold at least one field hearing on the Montana Water Rights Protection Act. Your Committee's work on this issue will be precedent-setting and spends nearly \$2 billion in taxpayer money—making this request both reasonable and prudent.

Together, we represent more than 320,000 of the nearly 1.1 million Montana residents and 25 of Montana's 56 counties. We would like to stress the importance of ensuring that field hearings are conducted at times which would allow for as many constituents as possible to attend and participate in the Committee's proceedings.

Thank you for your consideration, and we look forward to welcoming you, and your Committee members, to the Treasure State.

Respectfully,

BRAD JOHNSON, *Vice Chairman*
RANDY PINOCCI, *Commissioner*

MISSOULA, MT
6/27/2020

Dear All Committee Members of the Senate Committee on Indian Affairs and My Senator Steve Daines of Montana,

My comments are in response to the June 24 hearing that took place in Washington, D.C. with all members of the U.S. Senate Committee on Indian Affairs. The public and media were blocked from attending this hearing and as I understand it, only one person from the U.S. Dept. of Interior was invited to speak to the com-

mittee even though many other expert witnesses requested the opportunity to speak.

I'll make this real simple. Water rights that belong to an individual, business, city, state or any other water holder must maintain their water rights and one water right holder, namely the CSKT or Fort Belknap Indian Reservation governments, do not own any other water rights except their own. Private landowners pay for their own water rights and government agencies such as the State of Montana and county governments pay for their own water rights through taxpayers that foot the bill. The CSKT and Fort Belknap Indian Reservation governments have no right to anyone else's water rights as much as others do not have water rights belonging to the CSKT or Fort Belknap Indian Reservation governments. These sovereign Indian governments should not be paid billions of dollars of U.S. taxpayer money for water rights that belong to other people and governments. Period.

Secondly, no federal land mass including the National Bison Range, a NATIONAL wildlife refuge, and Grinnell Notch, a large recreational area under the Bureau of Land Management, belong to ALL Americans, not just a certain portion of Americans that also have the advantage of sovereign control over their reservations as a separate nation within the United States of America. State parks named in S. 3019 and S. 3113 don't belong to a sovereign Indian government but to all taxpayers and citizens in Montana.

The fact that S. 3019 and S. 3113 give away land that belongs to all Americans totally disgusts me.

I am sad that Senator Daines, who is right now advertising that he supports national parks and public lands through other legislation has decided to give away state parks and a very popular national wildlife refuge to the CSKT without any input from the very taxpayers that bought and paid for these lands. All you advertising to support S. 3019 only talks about water rights and doesn't mention that state and federal public lands are being given to the CSKT PLUS billions of dollars all out of the pockets of taxpayers.

I am totally disgusted with this whole secret process that never even allowed such groups as Lake County Commissioners or Blue Goose Alliance to speak at the Senate hearing that was closed to the public.

Since when are the activities of the Senate held in secret?

All Republicans and Democrats on this committee disappoint me with the two bills because there is no respect for all Americans that paid for the public lands you generously give away to two sovereign governments that do not have to follow ANY federal or state law and will likely ignore any water right restrictions on them because they can.

The wildlife and the habitat of the state and federal lands need to remain with the Montana Fish, Wildlife and Parks for the state parks and the BLM and U.S. Fish and Wildlife Service for the federal lands you give away without any ability of Americans who love these properties to speak up at a Senate hearing or at hearings around Montana.

You all should be ashamed of yourselves. Republicans that joined with liberal Democrats to give away water rights and public lands to two sovereign Indian governments should be ashamed of themselves. You aren't helping farmers, ranchers, landowners, and businesses, not to mention sportsmen, that normally vote for you as Republicans. Really stupid.

Sincerely,

SUSAN CAMPBELL RENEAU

MISSOULA, MT
7/8/2020

Dear Folks. At this time of new awareness of our White Privilege and the racist if unconscious system we all are living in today, I feel compelled to speak out in support of returning control of the National Bison Range to the Original Americans who for thousands of years operated in balance with nature and helped maintain the planet we are currently destroying. It is the height of hypocrisy to assume we "whites" are better positioned to "manage" this little plot of God's earth when we have done such a poor job up to this point. Why not try something different and see if the Original Americans with their proven long term success in maintaining a healthy productive diversified ecosystem might just show us a better way! I know this sounds harsh but our "ethno centrism" is just too much in today's reality. Our "Great White Father" is a fool without any clothes! Wake up and smell the coffee before it is too late!

Sincerely,

STEVE McARTHUR

CITIZEN AND RESIDENT OF THE STATE OF MONTANA
July 8th, 2020

Dear Members of the United States Senate Committee on Indian Affairs:

I fully support the Montana Water Rights Protection Act (S. 3019), especially the Act's provisions regarding the National Bison Range restoration (SEC. 13). Restoring the National Bison Range as part of the Flathead Indian Reservation under the management of the Confederated Salish and Kootenai Tribes (CSKT) is an important step in reconciling the wrongful appropriation of the refuge by the United States Federal Government, and would restore and uphold CSKT's rights and sovereignty as guaranteed by the Hellgate Treaty.

The restoration will not only fulfill the Federal Government's legal obligation to CSKT—it will also reduce the financial burden on taxpayers by transferring the refuge's management and costs to CSKT. CSKT's demonstrated record of sound and effective environmental management makes it clear that their management and protection of the refuge "solely for the care and maintenance of bison, wildlife, and other natural resources" will be nothing short of exemplary.

The cultural resources, history, and perspectives that will be added by CSKT's management of the refuge will further enrich and enhance the educational opportunities provided to the public. The Act's provision also provides legal assurance for continued public access to the refuge, guaranteeing the continued enjoyment of the refuge for present and future generations of CSKT Tribal Members, Montanans, and Americans. Restoring the National Bison Range will be a powerful action as we work towards righting what was a wrongful acquisition of the refuge's bison, wildlife, and other natural resources, while upholding a shared commitment to respecting the Tribes' cultural and historical connection with bison and the landscape.

Finally, these provisions along with the Act's other provisions will help to save millions of dollars in litigation costs that would otherwise go on to taxpayers, while assuring the protection of hundreds of Montanan's water rights across the state. This act is good for Montanans and the American Public, and I give it my full support.

Sincerely,

TRAVIS D. ANKLAM

MISSOULA, MT
7/7/2020

I am writing to express strong support for returning the lands of the National Bison Range to the Confederated Salish and Kootenai Tribes.

As a resident of nearby Missoula, the National Bison Range is a unique place and a matter of pride for all in Western Montana. But the fact that the range is not currently under the management of the very people who have stewarded this land for countless generations is unconscionable, and is an embarrassment for our state. Returning the National Bison Range to the CSKT tribes is an opportunity for our community, and nation, to learn from the wisdom of generations as we seek more resilient and sustainable ways of living on this planet for the years to come.

Sincerely,

ABIGAIL HUSETH

BOZEMAN, MT
7/7/2020

To the Senate Committee on Indian Affairs,

I strongly support Section 13 of the Montana Water Rights Protection Act that returns the lands of the National Bison Range to the Confederated Salish and Kootenai Tribes. This is an opportunity to right a terrible wrong done to a Tribal government by the United States of America. The land that is now called the National Bison Range lies wholly within the Flathead Indian Reservation and was acquired by the United States without the Tribes' consent in what was later held by a Federal Claims Court to be a taking. The Tribes will respect and manage the land well and ensure continued public access for non-Tribal individuals. Montanans can only benefit through this arrangement. I urge you to give S. 3019 your strongest support, and if it does not pass, please continue to fight for Section 13 in other legislation.

Thank you,

BREE CUMMINS

GEORGE GRANT CHAPTER OF TROUT UNLIMITED
June 29, 2020

Senators Hoeven and Udall,

On behalf of the George Grant Chapter of Trout Unlimited, I write in support of Senate Bill 3019, the Montana Water Rights Protection Act (WRPA). This bi-partisan legislation introduced by Senators Steve Daines and Jon Tester will provide federal approval for the water Compact negotiated between the State of Montana and the Confederated Salish and Kootenai Tribes. (CSKT)

The George Grant Chapter of Trout Unlimited (GGTU) is based in Butte, Montana and represents the interests of over 300 conservation minded anglers in southwest Montana. Our group has been actively involved in conservation issues on the upper Clark Fork for over 25 years and we are acutely aware of the water supply challenges in the Clark Fork Basin.

The water rights Compact approved by the WRPA is the result of decades of negotiations between the Confederated Salish and Kootenai Tribes, the State of Montana and the federal government. The Compact, which was ratified by the Montana Legislature in 2015, equitably and permanently resolves disputes over the Tribes' water rights, saving water users the considerable time, expense and resources associated with years of litigation. When implemented, the Compact will ensure productive, cooperative management of waters throughout western Montana.

Most importantly, GGTU supports the Compact because it contains key protections for fish and wildlife in the Clark Fork watershed. Specifically, it includes enhanced streamflow protections for the upper Clark Fork River (a river that faces chronic dewatering issues). Approval and implementation of the Compact will produce new and productive partnerships between the Tribes, federal agencies and state/local partners that will focus on the common objective of conserving Montana's water resources.

Congressional approval for the water compact has been debated over the course of several Congresses. Please act now to approve the WRPA.

Sincerely,

MARK THOMPSON, *President*

MONTANA STATE LEGISLATURE
June 30, 2020

Chairman Hoeven,

We would like to request that the Senate Committee on Indian Affairs hold a field hearing in Kalispell, Flathead County, Montana on S. 3019, the Montana Water Rights Protection Act. The combined populations of Flathead, Lake, and Sanders Counties is roughly 13 percent of the state population, making it an ideal location for a hearing. Furthermore, we ask that at least one such hearing be held at a time of day that would permit as many Montanans as possible to participate and have their voices heard. If a second hearing can be accommodated, we would suggest Great Falls, Cascade County, Montana as it is east of the continental divide.

Along with the two-thirds of Montanans that could be negatively impacted by passage of this legislation, we believe it is imperative that your committee members have the opportunity to hear from those who stand to lose so much. Signed nearly 165 years ago, the original Hellgate Treaty has no mention of water rights for the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation. If passed, this legislation will set a precedent for tribes across the nation, and perhaps into Canada as well, looking to pursue similar action—making it all the more prudent to hold a field hearing in Montana's Flathead Valley. During your committee's hearing on June 24, 2020, comments by multiple senators, such as Maria Cantwell, indicate that this will be a model for other tribes going forward.

We appreciate your consideration and look forward to working with you to ensure that this proposed field hearing is a success.

Respectfully,

SEN. MARK BLASDEL CR-KALISPELL)
 SEN. CARY SMITH CR-BILLINGS)
 SEN. DEE BROWN CR-HUNGRY HORSE)
 SEN. AL OLSZEWSKI, MD CR-KALISPELL)
 SEN. ROGER WEBB CR-BILLINGS)
 SEN. JENNIFER FIELDER CR-THOMPSON FALLS)
 SEN. KEITH REGIER CR-KALISPELL)
 SEN. DAVID HOWARD CR-PARK CITY)
 SEN. MIKE LANG CR-MALTA)
 SEN. KENNETH BOGNER CR-MILES CITY)
 SEN. BOB KEENAN CR-BIGFORK)
 REP. BRAD TSCHIDA CR-MISSOULA)
 REP. CARL GLIMM CR-KILA)
 REP. ALAN REDFIELD CR-LIVINGSTON)
 REP. JOHN FULLER CR-KALISPELL)
 REP. MARK NOLAND (R-BIGFORK)
 REP. FORREST MANDEVILLE (R-COLUMBUS)
 REP. DAN BARTEL (R-LEWISTOWN)
 REP. WENDY MCKAMEY (R-GREAT FALLS)
 REP. THERESA MANZELLA (R-HAMILTON)
 REP. MATT REGIER (R-KALISPELL)
 REP. BOB BROWN (R-THOMPSON FALLS)
 REP. DEREK SKEES (R-KALISPELL)
 REP. PEGGY WEBB (R-BILLINGS)
 REP. TOM BURNETT (R-BOZEMAN)
 REP. GREG DE VRIES (R-JEFFERSON CITY)
 REP. LOLA SHELDON GALLOWAY (R-GREAT FALLS)

7/16/2020

To the Honorable Senator Steve Daines,

I am writing today to ask for your support for S. 3019, the Montana Water Rights Protection Act. This act, introduced by Senator Steve Daines (R-MT) and subsequently cosponsored by Senator Jon Tester (D-MT), has broad bipartisan support from each of Montana's major agricultural organizations, our state's business community, and our counties and municipalities.

S. 3019 is necessitated by the lawful requirement to quantify the Confederated Salish and Kootenai Tribe's Indian reserved water right. There is a rich history of judicial action that supports and secures Indian reserved water rights and this settlement accurately follows in the footsteps of historical jurisprudence.

The quantification process inevitably uncovers many thousands of competing water rights claims that then must be settled. Settlement can occur either through negotiation or through litigation. This act, by including the CSKT water compact, replaces expensive and time consuming litigation with the product of a fair and thoughtful negotiated settlement.

Montana's agricultural economy, our fisheries and tourism economy, and our local governments are all dependent on clearly defined access to water. This act provides a clear and lawful definition and, by doing so, it provides long term water security to our state's water users.

Again, I am asking for your support of S. 3019, the Montana Water Rights Protection Act. This settlement represents Montana's final required Indian reserved water rights legislation and its passage is necessary to protect the future well being of the engines of Montana's economy.

Respectfully,

REPRESENTATIVE LLEW JONES

U.S. DEPARTMENT OF HOMELAND SECURITY
July 23, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

Set out herein are the Department of Homeland Security's views on S. 2165, the "Safeguard Tribal Objects of Patrimony Act of 2019."

In brief, the Department of Homeland Security supports the Committee's efforts to deter the illicit exportation of Native American cultural items, Native American archaeological resources, and Native American objects of antiquity. To that end, the Department of Homeland Security supports the intent of S. 2165. The Department of Homeland Security, however, notes that the section 3 text and the section 5(b)

text do not wholly comport with current customs law and practice, and the Department of Homeland Security fears that these variances could adversely affect the measure's intended efficacy. The Department of Homeland Security recommends that the Committee adopt a slight, yet significant change in terminology so that the U.S. Customs and Border Protection is able to implement the export controls effectively and efficiently.

Enclosed is draft legislative text that the Department of Homeland Security proffers for the Committee's consideration.*

The Office of Management and Budget advises that, from the viewpoint of the President's program, there is no objection to the presentation of this letter to the Committee.

Respectfully,

BETH SPIVEY, ASSISTANT SECRETARY FOR LEGISLATIVE AFFAIRS

FIVE VALLEYS AUDUBON SOCIETY
January 23, 2017

Dear Chairman Finley,

The Board of the Five Valleys Audubon Society, Missoula, MT has reviewed the Draft Legislation to Restore the National Bison Range to the Confederated Salish and Kootenai Tribes, and has voted unanimously to support this proposal. We recognize the Tribes' cultural and historical connection to bison and to the lands of the Bison Range—which are wholly located within the Flathead Reservation. We also acknowledge the expertise the Tribes' have demonstrated in wildlife management and endangered and threatened species recovery.

Our Chapter appreciates the varied habitats, wildlife, and bird species supported on Tribal lands. We annually visit these areas during field trips, to help others enjoy the wildlife and appreciate the rich natural resources of the Mission Valley. In addition, our Chapter has deep ties cooperating with local refuge management, and in fact we participated in the 'adopt a refuge program' at Ninepipe Refuge during the 1980s. We also have helped secure past Land Water and Conservation funding for nearby Waterfowl Production Areas. In that spirit, our Chapter would like to offer our continued volunteer support, if that would be helpful, in such activities as bird surveys or winter raptor counts, for example.

We are pleased that the transfer stipulates continued public access at the Bison Range, and that the transfer in no way could be construed as setting a precedent for relinquishing management of other federal lands.

Thank you for your continued commitment to science-based wildlife and habitat management.

With kindest regards,

ROSEMARY H. LEACH, *President*

HABITAT PROTECTION, LAST CHANCE AUDUBON SOCIETY
7/9/2020

I am writing to comment on the Montana Water Rights Protection Act (S.3019), which the Senate Indian Affairs Committee heard on June 24th. I support this bill. It is a moderate, bipartisan solution that will preserve water claims for current users in western Montana while giving long-overdue recognition to the Confederated Salish and Kootenai Tribes' unceded water rights and empowering the tribe to continue their leadership in wildlife conservation.

A small but vocal minority of Montanans have voiced concern that the Confederated Salish and Kootenai Tribes (CSKT) would be incapable of assuming management of the National Bison Range, as proposed in S.3019. In fact, the CSKT has a robust history of successful and innovative partnerships to manage and restore wildlife habitat. One of several excellent examples is their highly successful Trumpeter Swan reintroduction program—which has brought a population up from total extirpation to almost 200 thriving swans. Ironically, the National Bison Range actually lies on treaty-protected tribal lands, stolen by the federal government without consultation in the early 1900s. In a further irony, tribal members (including Michel Pablo and Charles Allard) had already undertaken restoration of bison to the Mission Valley—prior to the confiscation of tribal lands for the National Bison Range. Indeed, the liquidation of the Pablo herd was a result of allotments policy in the early 1900s—a federally orchestrated program that once again violated treaties and

*The information referred to has been retained in the Committee files.

the U.S. government's trust responsibility, drastically shrinking Native reservation lands and eroding community governance systems. It is only fitting to restore the responsibility for bison management to the CSKT—along with the proposed portion of the tribes' water rights, which have a "priority date" that is hundreds if not thousands of years before the first Euro-American settlers.

I am a citizen of Helena, Montana, where I live on the traditional territories of the Salish, Kootenai, and Blackfeet people. The Montana Water Rights Protection Act will be a step forward for all Montanans as we acknowledge our indigenous communities and leadership, past and present, and work together with tribes to provide for all of our existing communities and for our rich wildlife heritage. Please feel free to contact me if you have any questions.

Sincerely,

SHANE SATER, *Chair*

ST. IGNATIUS, MT

July 7, 2020

Dear U.S. Senate Indian Affairs Committee:

I am a non-Tribal resident of the Flathead Indian Reservation. I am a middle school teacher at the Two Eagle River Tribal school in Pablo, Montana. I teach Tribal children and participate in Tribal events.

I support the Montana Water Rights Protection Act (S.3019) because Montana and the United State need to settle the legitimate water right claims of the Confederated Salish and Kootenai Tribes and because the National Bison Range property needs to be returned to its rightful owner, the Tribes. S. 3019 finally settles these claims and the return of Tribal lands in a fair manner, including providing funding for Flathead Irrigation Project upgrades and modernization so important to conserving water for all users, including the Tribes, irrigators and fish and wildlife as Climate Change advances.

There are some loud people on the reservation and off who oppose this important legislation. I think it's instructive that these voices are a small minority who seem to think that litigating each Tribal water right claim somehow makes sense. S.3019 charts a more intelligent way forward by modernizing the irrigation system and thus ensuring that no one will lose their water allocation. It also will avoid costly, divisive litigation.

There is absolutely no argument that Tribal rights precede all other rights. It is fully appropriate that Tribal claims get recognized and settled. This legislation arose out of years and years of negotiations, Montana legislative deliberation and vote, revision and final agreement.

We would also note the support for this legislation from the Tribes, the Trump Administration, the U.S. Attorney General, and the Montana Congressional Delegation.

Please pass this important legislation out of committee.

Sincerely,

JAIMIE STEVENSON

KALISPELL MT

July 16, 2020

Senator Tester

I would like to voice my support for the Water rights protection act. I am a large irrigator in Northwest Montana. I also was a State Senator and voted for the CSKT water compact in the 2015 session. The negotiated CSKT compact is a win for both the CSKT tribe and the other citizens of Montana. I have read the complete text and have a good understanding of the CSKT compact.

BRUCE TUTVEDT, *Montana State Senator*

HELENA MT

7/2/2020

I am writing to voice support for passage of the Montana Water Rights Protection Act (S. 3019). This bill would ratify the water compact reached some years ago between the Confederated Salish and Kootenai Tribes and the state of Montana, as well as restore management of the National Bison Range to the Tribes. This important legislation would provide federal approval of the state's efforts to reach agreement with the Tribes, while protecting non-Indian water rights as well. Further, the

Tribes have shown they are capable and competent managers of natural resources, meriting the restoration of their management of the bison range.

CURT LARSEN

7/9/2020

I am in solid and appreciative support of the Montana Water Rights Protection Act (S. 3019), heard before the Senate Indian Affairs Committee on June 24. I am so pleased that both our Montana senators are behind this.

I understand that this Act would honor current water claims for users in western Montana, but at the same time recognizes the unceded water rights of the Confederated Salish and Kootenai Tribes and gives the tribe jurisdiction to manage the National Bison Range. This is consistent with ethics and justice, and additionally recognizes work that tribal members (including Michel Pablo and Charles Allard) had already begun (restoring bison to the Mission Valley) BEFORE our federal government violated treaty agreements and stole tribal lands for the National Bison Range in the early 1900's. In addition to returning significant treaty rights and honoring the history and legacy of stewardship & wildlife conservation of the Salish & Kootenai peoples, we can also point to successes like their robust reintroduction of Trumpeter Swans. The swans were nearly wiped out, and the tribes' careful work has restored a thriving population that now numbers almost 200.

I applaud such federal action in Montana as this bill proposes with no hesitation—it is reparation for past wrongs that we can make with pride!

With legislation like this, we are beginning to set right some of the illegal and unethical actions of our forebears. This is so long overdue. That instead of being embarrassed & ashamed, here is this smart, balanced, bipartisan plan Montanans can get behind that repairs and offsets some good part of the damage done by our having stolen lands, water rights & environmental/ecosystem stewardship, and dishonorably breaking treaties. Bravo.

I am a citizen of Missoula, traditional Salish lands.

Thank you SO MUCH and please enter my strong supportive voice in this conversation.

Appreciatively,

Ms. CAROL WILBURN

7/7/2020

In a time when racial injustice is at the surface, visible and visceral, to the world, there is an opportunity to help right a wrong in Montana Indian Country. The Montana Water Rights Protection Act (S. 3019) would return the lands of the National Bison Range to the Confederated Salish and Kootenai Tribes to continue preservation of the bison and provide public access and educational opportunities. The land that is now called the National Bison Range was acquired by the United States without the Tribes' consent in what was later held by a Federal Claims Court to be a taking.

Returning the land to federal trust ownership for the benefit of the Tribes may be one small step towards strengthening sovereignty and repairing the harms of colonialism, but it will make a significant difference in the lives of many CSKT Tribal members.

I feel very strongly that NOW is the time to make at least this one small gesture towards understanding and reparation for one of many many insensitive and unjust actions on the part of the US government against Native American peoples.

Please include my comments in the June 24, 2020 hearing record for S. 3019, the Montana Water Rights Protection Act.

Thank you.

KERRY L. KREBILL, ARTISTIC DIRECTOR, MUSIKANTEN (BETHESDA MD) AND
MUSIKANTEN MONTANA (HELENA MT); GENERAL DIRECTOR, HELENA CHORAL
WEEK AND MONTANA EARLY MUSIC FESTIVAL

BILLINGS, MT.

7/7/2020

Please return the land taken from reservation land belonging to the tribes for the purpose of the National Buffalo Management and care. This land belonged to the tribes and was wrongly taken from them! U.S. Govt has got to STAND FOR SOMETHING, and STAND BEHIND ITS AGREEMENTS with Native people. It's time to right this wrong.

Please vote to restore the Water Rights Protection Act S. 3019 and include my remarks in the hearing.
Thank you!

BONNIE ELDREDGE

PAT BARNES MISSOURI RIVER CHAPTER OF MONTANA TROUT UNLIMITED
June 28, 2020

Dear Members,

The Pat Barnes Missouri River Chapter of Montana Trout Unlimited wishes to express our strong support of the Montana Water Rights Protection Act, S. 3019, the legislation to federally ratify the Confederated Salish and Kootenai Tribes (CSKT) Water Compact.

We support this legislation for a number of reasons, chief among them the coldwater fisheries conservation aspects of the agreement that were reached between the CSKT, stakeholders, and the state of Montana. Further, the Compact under your consideration includes increased instream flow measurements that will allow for more water resources being available for wild and native fish.

The state of Montana has a Constitutional duty to ensure a clean and healthful environment for and trust obligation for the future health of Montana's fish and wildlife resources, and this Compact certainly helps meet that objective. This is not only good for native fish, but good for the sportsmen and women who spend millions every year in the Montana economy and our communities.

At the same time, the Compact strengthens Montana's \$4 billion agriculture economy and will lead to new water infrastructure projects and provide certainty on water rights for both tribal and non-tribal water users. Without enactment of this compact, individual water users, especially irrigators and property developers, face incredible risk with the prospect of decades litigation to sort out water rights. We are concerned that our coldwater fisheries will lose out in that battle.

We are very proud of the leaders who brought people together to produce an agreement that all can benefit from. Senator Daines and Senator Tester deserve much of the credit for getting this Compact to the position it is currently in. We urge you to join us in supporting the Montana Water Rights Protection Act (S. 3019)

Sincerely,

SHALON HASTINGS, *President*

MISSOULA, MONTANA
7/8/2020

Greetings,

This legislation would return the lands of the National Bison Range to the Confederated Salish Kootenai tribes and would be one step toward righting a great wrong against the people who originally populated this region. I strongly urge members of the Senate, including Montana Senators Jon Tester and Steve Daines, to support this legislation.

Learning the history of these lands is helpful in understanding how great the injustice was. In the 1870s, a tribal member (Ataticce) brought herds of bison to the area from east of the Continental Divide. Other tribal members (Michel Pablo and Charles Allard) continued to increase the size of the herd, which then roamed freely in the area. This effort to return bison to a people who had traditionally depended on them ended with the Allotment Act of 1904, by which reservation land was divided into parcels suitable for farming by white settlers—a clear violation of the previous US government dedication of the land as a reservation for the tribes in perpetuity. The Allotment Act removed 60 percent of the reservation land base, thus impacting the lives and well-being of tribal members in numerous and devastating ways. Allowing the bison to roam freely was no longer an option, and the present National Bison Range, a much smaller and fenced area, was dedicated as a home for bison that were not sold off. The Bison Range is now under the jurisdiction of the National Fish & Wildlife Service.

The CSK tribes seek to have the responsibility for managing the Bison Range transferred from the US Department of Fish & Wildlife to them. It lies completely on Reservation land and is a rightful part of their heritage. CSK tribes currently manage other resources through their departments of Tribal Lands, Tribal Forestry, and Natural Resources and will manage this resource in a manner that reflects their dedication to the land and the bison that have been integral to their history for generations.

I request that the Committee include my comments in the June 24, 2020, hearing record for S. 3019, the Montana Water Rights Protection Act.

Sincerely,

SUZANNE SHERMAN ABOULFADL

STOCKETT MT
7/8/2020

I am writing to ask your support for S. 3019, the Montana Water Rights Protection Act, to return control of the National Bison Range to the Salish-Kootenai tribes, to preserve the bison along with the water, land and life on the Flathead. There is no better way to protect this area, and no more positive action that could be taken in this time of uncertainty for people and the planet. As a Montana resident, I know firsthand the importance of water rights, and believe that S. 3019 is the best possible path to a good future for the bison and the people of Flathead country.

Thank you for your work.

LAURAN EMERSON

7/8/2020

Dear Committee Members:

I understand that you are deliberating on The Montana Water Rights Protection Act (S. 3019). I have been a resident of Montana for over 37 years. During this time I have visited The National Bison Range in every season and I have taken friends and family to visit this grand landscape on many occasions. I will never forget the time several years ago when management of the Range was temporarily in the hands of the Confederated Salish and Kootenai Tribes as an experiment, as I recall. When I went to pay my admission fee in the visitor center I said to the Native woman at the counter, "I'm so glad to see you back in charge of your land." She was shocked that I understood the history of the removal of this land from tribal control and that I appreciated her historical relationship to bison and all the other creatures that make the Refuge their home.

I am strongly in favor of correcting this longstanding injustice. I want CSKT people to be able to manage their own land in the ways they see fit while insuring public access to Mission Creek, the prairie and mountain trails. CSKT land managers have proven their ability to restore the adjacent Jocko River, including youth in the process, to manage fire and deal with the weed problems we all face. In an era of great racial injustice, let's right the wrong and restore management of the Range to the people who have the longest history with it.

Sincerely,

GARY W. HAWK

6/7/2020

I am writing in support of the Montana Water Rights Protection Act. I was born and grew up in Montana. Our family often took visitors to the Bison Range, but as a child, I didn't understand the significance of the bison for the tribes and their members.

Now as an adult, I am acutely aware of that significance, and support returning the Range to the Salish and Kootenai Tribes. Please include my comments in the hearing record for Senate Bill 53019

Thank you,

SUSAN BARMeyer

MONTANA LEGISLATIVE WATER POLICY INTERIM COMMITTEE
Dear Chairman Hoeven and Vice Chairman Udall:

As Chairman and Vice Chairman of the Montana Legislative Water Policy Interim Committee (WPIC), we submit this letter in strong support of S 3019, the Montana Water Rights Protection Act, introduced in the U.S. Senate by Senator Steve Daines and Senator Jon Tester.

The Water Policy Interim Committee has worked to protect state-based water rights and recognize the importance of a McCarren Amendment compliant statewide water adjudication in quantifying the CSKT's water rights. In 2018, the Committee sent a letter to the Department of Interior urging the administration to move for-

ward with Federal Ratification. The CSKT Compact is a negotiated solution that is fair and reasonable for all water users in Montana.

S. 3019 is a bipartisan solution that provides important cost savings to Montana and her citizens as well as creating thousands of jobs. The CSKT Compact is a fair and equitable solution that is the result of collaboration and working together as good neighbors.

We strongly urge Congress to ratify the CSKT Compact and pass this bipartisan legislation without delay.

Respectfully,

REPRESENTATIVE ZACH BROWN, *Chairman*
SENATOR JEFF WELBORN, *Vice Chairman*

MONTANA WILDERNESS ASSOCIATION
July 1, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of Montana Wilderness Association, we write to support Senate Bill 3019, the Montana Water Rights Protection Act, jointly introduced by Montana Senators Steve Daines and Jon Tester. The legislation would resolve more than a century of federal mismanagement of Tribes' water resources, contribute to tribal economic development, and provide security to water users on and off the reservation.

The legislation also restores federal trust ownership of the National Bison Range for the benefit of the Confederated Salish and Kootenai Tribes, which we also strongly support. Given the historical circumstances surrounding these lands, we believe this restoration is just and supports tribal sovereignty. As described in the bill, the lands that currently compose the National Bison Range were taken from the Tribes without consent. The bill is explicit in requiring continued conservation of the land and wildlife as well as public access. The Tribes have consistently demonstrated their commitment to conservation over the years, establishing the nation's first Tribal Wilderness in the Mission Mountains and restoring threatened and endangered species to their lands. This restoration of lands into federal trust is in response to a very unique set of historical circumstances, and will not set a precedent for any other federal lands.

For these reasons, Montana Wilderness supports S. 3019 and urges the committee to advance it.

Thank you for your consideration.

Sincerely,

BEN GABRIEL, *Executive Director*

SUPERIOR, MT
7/8/2020

I urge you to support the return of the National Bison Range to its rightful owners, the Salish and Kootenai Tribes. Buffalo are a part of Native culture and they, in fact, were responsible for establishing this herd of buffalo in the first place. The tribes have the capacity not only to manage the facility successfully, but would also incorporate valuable elements of Indian history into the site.

Thank you,

DIANE L. MAGONE

7/7/2020

I have lived in Montana for 17 years, and grew up in Northern Idaho, traveling past the National Bison Range many times. I am fully in favor of returning the lands to the Confederated Salish and Kootenai Tribes. I have no doubts that the tribes will manage the bison range responsibly, and it will remain open to the public so that Montanans and others can appreciate the landscape and the animals.

Returning the lands to the tribes would also help to right the wrong that was done when the United States took the land without consent. It will make a great difference to tribal members, and help towards healing between the tribes and the US government. This will benefit everyone involved.

 KRISTIN HARBUCK

 MISSOULA, MT
 7/7/2020

Dear US Senators:

I urge you to pass the Montana Water Rights Protection Act (S. 3019). Returning the lands of the National Bison range to the Confederated Salish and Kootenai Tribes would take a necessary step towards righting the grievous wrong committed when the United States took that land from the tribes in an action held by a Federal Claims Court to be an unlawful taking. Returning the land to federal trust ownership for the benefit of the Tribes may be one small step towards strengthening sovereignty and repairing the harms of colonialism, but it will make a significant difference in the lives of many CSKT Tribal members who have a historic, ancestral connection to the range and the bison.

So please: do the right thing and pass S. 3019.

 SALIM MATT GRAS

7/7/2020

Please return the National Bison Range to the tribe from which it was taken. I trust them to manage it well.

In returning it, you can right one of the many wrongs that our government inflicted on America's native peoples.

Thank you,

 JANICE L. ROBERTS

7/7/2020

I am writing to express my strong support for the return of the National Bison Range to the tribes. I am a resident of the Flathead Reservation and have seen the responsible leadership provided by the tribes and believe they would and should do the best job possible for the bison and public. This is their land and it should be returned to them to manage at the very least. Please include my comments in the June 24, 2020 hearing record for S. 3019, the Montana Water Rights Protection Act.

Sincerely,

 LINDA S. VEUM

 ARLEE, MONTANA
 7/7/2020

I am a tribal member from the Fort Peck Reservation, where my dad was a wheat farmer, but I have now lived most of my life on the Flathead Reservation. I practiced Indian law for 31 years in Montana and am generally familiar with most of the tribal governments. Early in my legal career, I was an in-house attorney for the Confederated Salish and Kootenai Tribes (CSKT) for a decade, and specialized for many of those years on issues surrounding the Flathead Indian Irrigation Project (FIIP). A FIIP irrigation ditch now crosses on our land in the Jocko Valley, and I have neighbors on both sides of this issue.

I find it noteworthy that some of the principle irrigator opponents to the CSKT back in the late 1980s are now some of the strongest supporters of this water compact and S. 3019. How did that happen? It happened because both sides came to know each other better and realized that there is more to be gained by working in partnership than endless litigation. In my opinion, the single most important Indian legislation to come before and pass the Montana Legislature in the last 50 years was the CSKT Water Compact. I drove over to listen to the final argument on the House floor.

I am aware of compromises the CSKT made to accommodate the concerns of the State of Montana and reservation irrigators. The State of Montana and irrigators can point to their compromises as well. That's how agreements work. The successful ones. What the water compact agreement delivers is certainty and stability for everyone: a solid economic foundation for the Flathead Reservation and certainty for Montana agriculture in uncertain times. (My brother now operates the wheat farm, and uncertain times is an understatement of the challenges facing farmers, for those whose family farms have managed to survive.) The aging FIIP will get badly needed improvements and improved water management practices overseen by joint management. And the CSKT's involvement will ensure that impacts on reservation fish and

wildlife are fully considered and mitigated in project management. I am confident that thirty years from now, when others look back on S. 3019, it will be viewed as one of the most successful and important tribal water settlements in the West.

Last, I support the transfer of the National Bison Range to the CSKT, another historic accomplishment. While Teddy Roosevelt and William Hornaday are heroes of mine for their efforts at the end of the 19th Century to speak out and try to save the last of the wild bison, confiscating the CSKT's lands to do it was not right. Just as the time has come for the Smithsonian's Natural History Museum in New York to remove the statute of Teddy Roosevelt on a horse, with a slave and an Indian at his feet in tow, the time has come to restore the bison range lands to their rightful owner, the CSKT, whose tribal members played such a critical role in bison restoration through what became the Pablo-Allard herd. The legislation has safeguards assuring continued management exclusively for bison and wildlife purposes, as well as public access, and I personally look forward to witnessing their contributions to the management of the bison range in this new chapter of its history.

Thank you for letting me comment,

PAT SMITH

MISSOULA, MT
7/8/2020

Dear Senate Committee on Indian Affairs,

I have visited the Bison Range on multiple occasions for bird watching, with cultural archeologists, and for spirit restoring days on a piece of native Montana land. I believe Tribe management of the Bison Range would further its preservation while allowing visitors to deepen their knowledge and connection to the Indian Country and its peoples.

Since the land that is now called the National Bison Range was acquired by the United States without the Tribes' consent it's an opportune time to return it to its rightful and capable owners via the Montana Water Rights Protection Act.

Sincerely,

JEAN CLAIRE DUNCAN

7/2/2020

As a Montanan who lives near the the National Bison Range I support the Montana Water Rights Protection Act. The land currently called the National Bison Range was acquired by the USA without the local tribes consent. Returning the land to federal trust ownership for the benefit of the Tribes will be a small step in the right direction. The CSKT has a cultural and historical connection to bison and to the land of the bison range. I trust that they will effectively manage the refuge both for preservation of the bison and for continued public access. The taking of the land from the Tribes was an injustice that needs to be corrected.

Thanks,

MARY OWENS

MARGERY HUNTER BROWN INDIAN LAW CLINIC
7/8/2020

Dear Chairman Hoeven, Vice-Chairman Udall, and Members of the Committee:

The Margery Hunter Brown Indian Law Clinic (MHBILC) at the Alexander Blewett III School of Law at the University of Montana appreciates the opportunity to submit these comments to be entered in the record of the hearing on Senate Bill 3019 (S. 3019), which took place on June 24, 2020.

The MHBILC was established in 1980 to provide law students with the opportunity to gain practical experience regarding Indian law issues and generally focuses on projects affecting tribal governments, their citizens, and the rights of both. Although the MHBILC often works with and represents tribes and tribal members, these comments are not submitted on behalf of any tribe or tribal interest and do not advocate for a particular outcome or decision. Instead, consistent with the commitment to public service on behalf of both the MHBILC and its home institution, the MHBILC developed these comments with the intent of assisting in the consideration of important Indian law-related issues in the context of this bill.

As discussed at the Committee's hearing, S.3019, co-sponsored by Montana Senators Steve Daines and Jon Tester, will ratify the water compact negotiated between the Confederated Salish and Kootenai Tribes (CSKT) and the State of Montana and

transfer the management of the National Bison Range from the U.S. Fish and Wildlife Service to the Tribes. The compact would settle tribal claims to water rights across what is now Montana and, in light of these longstanding issues, S. 3019 and the water compact it seeks to ratify is best understood within the historical and legal contexts in which they arise.

For over a century, the United States Supreme Court has recognized the importance and nature of water rights reserved by tribes through treaties and the creation of Indian reservations. See *United States v. Winans*, 198 U.S. 371 (1905); *Winters v. United States*, 207 U.S. 564 (1908). Despite those rulings, however, tribal rights have not been protected. In 1973, for example, the National Water Commission reported to the President and Congress on the state of water and water rights in the nation at the time and noted that, “[i]n the history of the United States Government’s treatment of Indian tribes, its failure to protect Indian water rights for use on the Reservations it set aside for them is one of the sorrier chapters.” National Water Comm’n, *Water Policies for the Future-Final Report to the President and to the Congress of the United States 475* (1973), available at <https://www.epw.senate.gov/public/~cache/files/0/9/09fa2cfd-e480-40e6-bdf6-fc9fc8b5b0e3/6A20EC2999F0441563294B9DFFCFDD6E.water-policies-for-the-future-final-report-1973.pdf>.

Like Indian tribes across the country, the CSKT have historically been deprived of the full extent and use of water rights reserved by and for the Tribes in the Hellgate Treaty of 1855. The water compact to be ratified by S. 3019 would enable the Tribes to take advantage of the rights guaranteed to them by the Treaty and the U.S. Supreme Court by confirming the CSKT’s water rights, returning the management of the water on the sovereign CSKT nation to the Tribes, and establishing a collaborative and innovative management plan for water resources with the state of Montana. While the use of water and water rights in Montana have certainly evolved since the Hellgate Treaty of 1855, the compact and S. 3019 take these adaptations into account, and, like the application of many principles of federal Indian law in modern times, the CSKT and the State of Montana have negotiated the compact to balance the Tribes’ legal rights with the development of an equitable and effective management plan.

In addition to the historic, treaty-based nature of the rights that the compact and S. 3019 seek to resolve, more recent history is also relevant to consider. The compact was developed through a collaborative, negotiated process designed to resolve reserved rights across the State of Montana. The Montana Reserved Water Rights Compact Commission (RWRCC), specifically. The RWRCC was established by the 1979 Montana Legislature “to conclude compacts for the equitable division and apportionment of waters between the state, its people, and the several Indian tribes and the federal government claiming reserved water rights within the state. Section 85–2–701, MCA”. Since its foundation, the RWRCC has helped to negotiate eighteen compacts, including those settling the reserved water rights of the Indian tribes in Montana.

The compact to be ratified and authorized by the Montana Water Rights Protection Act was negotiated by the RWRCC, which noted in a recent report in support of the bill’s ratification that the approval of S. 3019 will result in “significant benefits to Montanans.” The RWRCC’s deliberations on Montana’s behalf, in the context of past compacts, have taken into account public consideration, cooperation, and “common-sense solutions to water use problems” (dnrc.mt.gov). The compacts that the commission has supported in the past have been forward-thinking and collaborative; the Montana Water Rights Protection Act does not stray from these principles. The RWRCC’s support of S. 3019 serves as yet another example of the benefits and the widespread support of this legislation.

Finally, though technically separate from the legal status of the CSKT’s reserved rights to water and the negotiation of the compact through the RWRCC, the transfer of the National Bison Range to the Tribes is a viable conservation decision that, like the Tribes’ water rights, should be viewed through the lens of history. The CSKT have a cultural imperative to ensure the preservation and well-being of bison, as has been demonstrated in the Salish and Kootenai’s integral role in saving the animal from extinction in the 1800s. See <https://bisonrange.org/>. S. 3019 would restore the National Bison Range to the federal trust ownership for the benefit of the CSKT, which would again ensure the lands are reserved for the Tribes benefit as set forth in the Hellgate Treaty of 1855.

The restoration of the National Bison Range to the CSKT is not only a wise decision for the continued health and longevity of the National Bison Range, but would also serve as some measure of justice for the long-standing injury caused by the unconstitutional taking of the land that became the National Bison Range from the Tribes without their consent. See, e.g., *Confederated Salish and Kootenai Tribes v.*

United States, 437 F.2d 458 (Ct. Cl.1971). Like the compact's innovative approach to the management of historically reserved water rights, S. 3019's inclusion of the return of the National Bison Range to the CSKT's oversight presents a workable, modern approach to a century-old legal issue.

These historical and legal matters are relevant to the consideration of S. 3019 and the water compact that it proposes to ratify and we hope this letter is helpful in that process.

Sincerely,

MONTE MILLS, *Associate Professor & Director*

WESTERN NATIVE VOICE
7/7/2020

Dear Chairman Hoeven, Vice-Chairman Udall:

On behalf of Western Native Voice, we write in support of S. 3019, the Montana Water Rights Protection Act, jointly introduced by Senators Steve Daines and Jon Tester of Montana. This legislation will provide Congressional approval for the water compact negotiated between the Confederated Salish and Kootenai Tribes (CSKT) and the State of Montana, and it also transfers the National Bison Range from the U.S. Fish and Wildlife Service to the CSKT. We strongly support both objectives.

Western Native voice is a non-Partisan, Native-led, nonprofit organization, based in Billings, that works on all of Montana's Indian reservations and key urban centers to increase Native involvement in civic affairs, especially voting. We supported the CSKT Compact when it was approved by the 2015 Legislature. It is wonderful to see bi-partisan support for this historic legislation. The ompact represents more than a decade of negotiations and has been the subject of dozens of public meetings and hearings. It has been fully vetted.

Passage of this legislation will settle the CSKT's water rights and also claims regarding mismanagement of the tribes' water resources. Importantly, by settling the CSKT water claims, it avoids decades of water rights litigation by hundreds of Montana farmers and irrigators who would be forced to litigate their rights. That is precisely why Montana's major agricultural organizations are also in support of this legislation. The legislation also provides for rehabilitation of an aging irrigation project. This will improve overall water efficiency for the future benefitting all water users, including for fish and wildlife.

We also strongly upport the provision of the bill that restores tribal ownership of the National Bison Range to the CSKT. The courts have ruled that the unilateral taking of the CSKT's lands for the bison rang was unconstitutional. The CSKT were leaders in bison preservation long before their lands were taken for the bison range, and so it is just and right that these lands be restored to tribal ownership especially where, as here, the lands are right in the middle of the Flathead Reservation. The CSKT are recognized as national leaders in conservation and fish and wildlife management. Time and time again they have demonstrated they are fully capable of managing tribal natural resources, resulting in extensive fish and wildlife restoration on their lands, and strong collaborative relationships with federal, state and other fish and wildlife managers. The legislation requires that the bison range lands continue to be managed exclusively for bison and wildlife purposes, as well as for public access.

We appreciate th Committee holding this impoliant hearing.

PAT SMITH, *Chairman, Board of Directors*

KILA, MT
7/7/2020

"We respect the Tribes' cultural and historical connection to bison and that the National Bison Range (NBR) lies wholly within the Flathead Indian Reservation, on lands appropriated from the Tribes by the U.S. Government with minimal compensation."

I believe returning the land to federal trust ownership for the benefit of the Tribes may be one small step towards strengthening sovereignty and repairing the harms of colonialism. This action will make a significant difference in the lives of many CSKT Tribal members like Shane Morigeau.

"Shane and other Tribal members see the opportunity to revitalize and strengthen the Tribes' connection to the bison and that land through restoration of the range to the Tribes. He sees the chance to connect tribal youth more deeply with their culture and language, a language that is relational and depends on cultural experi-

ences like interacting with bison. He sees it as one step in righting a wrong for a Tribe that was once slated for termination, and on a reservation that was sliced up by extensive allocation to non-Indians for homesteading.”

I believe we have over homesteaded Native American land for interests that are not sustainable for the land as well as damaging to the land and area. I believe returning the land to the tribes is the answer for better management as well as enriching tribes cultural connection and livelihood to their historical rights and roots.

I support that hopeful vision Shane shared by submitting my comments in support of the Tribes’ right to have the National Bison Range returned to them.

What is true for me:

I have witnessed the effective wildlife management programs of the Tribes on the Flathead Reservation;

I have confidence in the Tribes’ ability to manage the Refuge both for preservation of the bison and for continued public access;

I believe the wrongful taking should be righted by returning the land.

Thank you for your time,

NANCY HORNE, *TBT Master Practitioner, MMCP, CEMP*

THE BOARD OF FLATHEAD WILDLIFE INC.

6/9/2020

Dear Senator Daines,

Flathead Wildlife Inc. (FWI) has been in existence for 64 years and is the largest sportsmen and women club in northwest Montana. We are opposed to the transfer of the National Bison Range (NBR) into federal trust status for the Confederated Salish and Kootenai Tribes (CSKT) as proposed in S. 3019, the Montana Water Rights Protection Act. Through the years FWI has commented a number of times on management of the NBR. FWI and other groups have always advocated for keeping NBR under the proven, successful management of the US Fish and Wildlife Service as have the majority of public comments. FWI is also concerned about the potential net loss of 36,808 acres of public land as proposed in an exchange of federal lands to replace in-reservation state lands transferred to CSKT. Maintaining public access to public lands is a top FWI priority. Although CSKT allows non-tribal use of most of their lands, there is nothing to guarantee that continued use.

Water right laws are complex and FWI does not claim to understand all the ramifications of the water rights settlement. FWI sees value in ending the uncertainty over water rights but that should be a stand-alone resolution. Turning over public lands does nothing to address the quantity, quality and location of water available to CSKT. The National Bison Range and state lands have nothing to do with mitigating water rights, they are inappropriately being offered in lieu of cash compensation for surrendering water rights. Something as important as the transfer of the National Bison Range should be done as a stand-alone bill, not attached to a complex water rights settlement. FWI applauds the efforts by you and Senator Tester to permanently authorize and fund the Land and Water Conservation Fund (LWCF) which has provided tremendous dividends to Montana’s public lands. We see S. 3019 as a step backwards.

The FWI Board met with Mr. Ron Catlett of your Kalispell office and Ms. Smith Works of Senator Tester’s Kalispell office. Mr. Catlett was well versed in the details of S. 3019 and provided a good deal of information beyond the simple bill language which we appreciated. It was apparent that S. 3019 was the result of extended negotiations and therein lies part of the problem. CSKT, as a sovereign nation, often insists on secret negotiations. In some past negotiations on the NBR the US Fish and Wildlife Service wasn’t even privy to details. While that may be CSKT’s right, it prevents US citizens from knowledgeable participation in discussions of land and resource management. In FWI’s past comments to USFWS on NBR management our testimony was displayed along with comments by other groups and individuals so we could see how public testimony shaped decisions. CSKT has often not been held to that standard.

Ironically, the US Fish and Wildlife Service just completed a rigorous planning process on management of the NBR that included extensive public comment and FWI recently received a copy of the NBR Comprehensive Management Plan. The S. 3019 proposal would place the NBR under federal tribal trust status, therefore the CSK Tribal council would direct decisions related to uses including fees and restrictions of public use, development, management practices and goals. Accessing and commenting to the CSK Tribal Council is a daunting task. Further, CSKT’s Damage Assessment relative to water rights is not available for public review. Therefore,

FWI, the general public, and affected agencies and entities cannot review how damages were calculated or how the value of government lands offered as compensation were determined.

FWI recognizes the significance of bison to CSKT culture. Bison also have a significance for the American people as demonstrated by designation of the bison as our official national mammal. FWI recognizes the role of Michel Pablo and Charles Allard Sr. in establishing a privately owned bison herd on the Flathead Reservation. However, Mr. Allard's heirs sold their bison in 1901, years before passage of the Allotment Act, and Mr. Pablo later sold his portion of the herd to Canada.

The American Bison Society and US Congress established the National Bison Range and populated it with bison purchased with private citizen donations, including bison from the Conrad herd which originated from the Allard herd. FWI recommends you read the history of the NBR as compiled by retired FWS employee William C. Reffalt. Without the efforts of the American Bison Society and the US Congress, the lands that now comprise the NBR likely would have been homesteaded and this discussion would have been moot. The bison remaining on the Reservation after the Pablo herd roundup were scattered, hunted and otherwise taken outside of state law within a year or two.

Establishment of the NBR in 1908–09 was a separate process from the Allotment/homesteading action of 1904 for the explicit purpose of the conservation of the bison. The CSKT were paid twice by the US Government to settle a fair price dispute for establishing the NBR and all lands removed from the Reservation under the Allotment Act. If the NBR is ultimately given back to CSKT, will CSKT repay those payments with interest? Through the years millions of dollars have been spent in developing the NBR and facilities. Will those investments be paid back?

CSKT states that if they take over management of the NBR, it will remain open to the public. The NBR is in the top ten most visited refuges in the US and currently has a management budget of around \$1 million which is about half historic levels. Although the CSKT government is well run and well-funded, that is a significant financial burden. CSKT says it will develop a budget with visitor fees to defray costs. Currently, visitor fees are subsidized by the entire federal refuge system to remain affordable and citizens can complain to the US Fish and Wildlife Service and Congress if fees are not acceptable. Will CSKT be made to justify future visitor fee increases and what standing and process will US citizens have to complain to the CSK Tribal Council if fees become unreasonable? Could entrance fees be raised to the point where, although the NBR is technically open to the public, most average citizens cannot afford entrance? CSKT were given 30 bison in the 1980s, which they soon sold due to costs of maintaining a bison herd. S. 3019 would relinquish control of the bison to CSKT and has only general statements about managing bison, wildlife, providing public access and controlling noxious weeds. What will happen if NBR management becomes too burdensome?

S. 3019 only addresses transfer of the National Bison Range. However, the NBR is part of a Fish and Wildlife properties complex in the area including the Ninepipes National Wildlife Refuge (NWR), Pablo NWR and the Northwest Montana Wetlands Management District (Lake County). Will there be demands to return those other lands to CSKT management also? If the US Fish and Wildlife Service retains management of the remaining parcels, it would be challenging to maintain staff and resources to continue to manage those parcels minus the NBR since they are far removed from other NWR properties in northwest Montana.

Population genetics prescribe that the bison herd should number 1000 or more to maintain genetic integrity. The size of the NBR does not allow that herd size. The FWS has established a "metapopulation" comprised of all six of its bison herds on separate refuges with regular interchange of bison. The NBR bison are a vital component of the metapopulation, they contain the purest genetics of any of the herds and NBR bison are used to improve other herds. Removal of the NBR and its bison from that effort will severely threaten the success of the bison metapopulation and its goal of maintaining genetic integrity among all herds. Flathead Wildlife, Inc. believes there is a better solution by retaining the NBR under US Fish and Wildlife Service management but providing funding to CSKT to develop their own bison range. CSKT has extensive land holdings containing similar habitats in the area. Bison could be donated by the FWS to populate a new CSKT bison range. CSKT would be free to provide whatever level of cultural interpretation and public access they desire. CSKT has stated they would not hunt on the NBR other than management hunts. CSKT would be free to provide any level of hunting they wanted on their own bison range to recapture that part of their heritage. A CSKT bison herd could contribute to metapopulation management. By maintaining two herds in the Mission valley and doing periodic exchanges of bison, the genetics for each herd could be maintained at the currently high level.

S. 3019 also proposes to grant 36,808 acres of Montana state trust land to CSKT. In exchange, Montana would be given a similar amount and value of federal land. State lands within the Flathead Reservation include valuable lands such as Elmo Fishing Access Site which was previously leased by Montana Fish, Wildlife and Parks and is now leased by Lake County. Many of the state lands have lessees who would be displaced. Any trades will result in a transfer of government lands now owned by Montana citizens to a sovereign nation with no guarantee of continued public access and a net loss of up to 36,808 acres of public land. If not all state lands can be traded, S. 3019 commits that federal lands elsewhere in Montana will be traded for private lands within the reservation to make up the difference. FWI believes a better option than trading for federal lands would be to purchase parcels of land in northwest Montana recently purchased by Southern Pines Plantation (SPP) from Weyerhaeuser. Those SPP parcels could then be deeded to Montana DNRC in exchange for deeding state trust lands to CSKT. In this manner there would be no net loss of public lands and the SPP lands traded to DNRC would remain available for timber management, wildlife habitat and public access and recreation.

S. 3019 states that the proposed NBR transfer in no way should be considered precedent setting. However, there are other indigenous claims on federal lands under similar circumstances. It would be folly to claim lawyers and courts won't point at a NBR transfer as justification to pursue similar claims. The Blackfeet Nation makes basically the same claim to the east side of Glacier National Park. The Fort Belknap Indian Community is making similar demands for state and federal lands and water rights adjacent to their reservation. There are other indigenous claims across the nation. Stating lack of precedence in the S. 3019 will not settle or prevent those claims.

Sincerely,

JIM VASHRO, *President*

BELGRADE, MT
June 27, 2020

Dear Montana Congressman,

I am writing to you as a Professional Fly Fishing Guide in the state of Montana. I guide in southwest Montana and educate and entertain fishermen from all over the world on the Madison, Jefferson Gallatin and Yellowstone rivers among others. As a water user that is dependent on the resource as a source of income, I believe that passage of the CSKT Water Compact is critical. I am writing to express my strong support for S 3019, Th Montana Water Protection Act.

In Montana, water is our most valuable resource. As someone who both enjoys the water for recreation, it also provides my family with an income that is essential. I believe that our cold water fisheries need to be cared for and respected, not only for the fish but for all of Montana's water users. This legislation will not only protect the fish and wildlife that depend on the resource for habitat, but will also support the economies across our state who rely on the resource for their success.

The Montana Water Protection Act will allow for improving our fisheries by:

- Ensuring instream flows for fisheries
- Providing water for future development across western Montana
- Investing in critical irrigation infrastructure upgrades
- Restoring habitats of native westslope cutthroat trout and bull trout in western Montana

I, along with many professional fishing guides around our state would agree that the Montana Water Rights Protection Act will benefit all Montanans. This bill will help ensure the health of the resource that the almost 900 guides in Montana depend on as part of the \$917 million dollar guided Fishing related economy. This revenue is part of the much bigger, nearly \$8B/year outdoor recreation economy that healthy streams and rivers help make possible . In addition, It will provide jobs and opportunities for many other business owners and keep our cold water fisheries safe and productive.

I encourage you gentlemen to act to preserve our resource so that myself and others who rely on it as an income, may maintain and continue to thrive on it for many years to come and for future generations.

Ratify the Montana Water Protection Act!!

Thank You,

JEFFREY E GROM

BOZEMAN, MT
7/8/2020

Greetings,

My name is Graham Cummins, and I am a US citizen living in Bozeman, MT. I am writing to express support for S.3019, the Montana Water Rights Protection Act. Particularly, I support the settlement fund described by sections 8 and 9 and the national bison range restoration provisions in section 13.

In addition to their hereditary rights, the Salish and Kootenai tribes have shown their commitment to natural resource management and their enduring love for this land. I can think of no better stewards. Restoration of the bison range to the tribes will benefit the land itself and all nearby residents and visitors.

I would like my comment to be included as a public comment on the June 24, 2020 hearing record for S. 3019.

Thank you for your time and public service.

GRAHAM CUMMINS

MISSOULA, MT
7/8/2020

I support return of management of the National Bison Range to the Confederated Salish and Kootenai Tribes. I have been impressed with their ethical & scientific management of wildlife, land and water resources.

I think they would focus on preservation of the bison species and on providing public access and educational opportunities to the benefit of all.

Thank you.

VICKI WATSON,

POLSON, MONTANA
July 6, 2020

Dear Senator Hoeven and Committee on Indian Affairs,

This testimony specifically addresses Senator Daines and Senator Tester's statements regarding S.3019, the Montana Water Rights Protection Act (MWRPA). I would like this testimony entered into the record of the Indian Affairs Committee. I provide my testimony as allowed and requested following the 24 June 2020 hearing on a variety of issues before the committee.

I will make this letter short since many of us from Lake County Montana have been writing letters and supplying extensive documentation concerning S.3019 for months—all of which appears to have been tossed into the nearest trash receptacle. It is clear to many of us that our State Senators do not care one whit about our concerns regarding the settlement portion of Montana Senate Bill 262—the enabling federal legislation referred to as the MWRPA. Neither of our State Senators have had the courage to come and discuss this issue in a public forum here in Lake County and have instead hidden behind the tribal skirts and cash of the Confederated Salish and Kootenai Tribes (CSKT). The people of Lake County concerned with the non-negotiated MWRPA are certain this agreement will be dictated to us and that our input means absolutely nothing within the DC beltway. Nonetheless, I will try one more time to bring the MWRPA into the democratic processes for which our Republic is known so that perhaps those we have elected will do what they were put in office for and represent not just the wealth of the CSKT, but also the majority non-tribal American citizen population that calls this region home.

I will discuss only a few points of concern though there are many, many more.

- Field Hearings should be held before this bill is considered any further. Senator Daines stated that the MWRPA was “negotiated” by him with the people and county commissioners of this region. That is a lie. Senator Daines’ staff has admitted to me that the commissioners had nothing more than “input,” which is a far cry from participating in “negotiations”. I personally spoke with all three Lake County commissioners and they will verify to anyone concerned that they took part in no such “negotiations.” These commissioners will have to deal with the wreckage wrought by S3019 and have offered to testify before your committee and were, of course, denied the opportunity. Many of the non-tribal majority population of Lake County feel completely abandoned by all of our representatives. To avoid undue hostility and further impediments to this compact,

the best way forward would be for the MWRPA to come back to Montana and be addressed in multiple public forums to include field hearings. It is not asking too much that the people affected by this settlement be a part of the negotiations, but that has not happened. The Montana Senate Bill 262 went through Montana's legislative process. The settlement portion—S. 3019—has not. Those are the facts, and both Senators Tester and Daines have dodged the people of Lake County and turned a deaf ear to everyone here—everyone except the CSKT. The CSKT, of course, has very deep pockets and suspicion abounds.

- The MWRPA creates new law, bypasses existing doctrine and Congressional legislation, and does so without any effective oversight. Based on nothing more than internal agency policy, the MWRPA reinterprets Congressional intent and creates new water rights within the Winters Doctrine and McCarran Amendment. Senator Daines asked the wrong question when he inquired of the Department of Interior whether the MWRPA satisfies the Winters Doctrine. Winters requires the reservation be given the water required to satisfy the purposes for which the reservation was created. Since the MWRPA gives more water to the CSKT than all other tribal water settlements negotiated in the United States combined, it is impossible for the settlement to not satisfy Winters! The real question is whether this is an equitable settlement for everyone else who must have water. Is this a fair settlement or a complete capitulation to the CSKT? This is an action that-like it or not—will establish a precedent all the other tribes will try to use to control water throughout the entire United States.
- SB262 was errant in its very first statement, and this established a falsehood in need of correction. This same error is repeated in the MWRPA and made worse since it writes this mistake into federal law. The faulty assumptions stems from the error regarding whether the federal government or Tribe reserved the Flathead Indian Reservation. In fact, the 1855 Hellgate Treaty saw all lands ceded to the United States, and then the United States set apart a region for the reservation from those ceded lands. Failing to recognize this fact leads to the erroneous creation of new “tribal reserved water rights” outside the Winters Doctrine, and these “rights” extend off the reservation and across western and eastern Montana. This fatal error expands Tribal jurisdiction and disrupts the property rights of federal patent-holding non-tribal citizens, and lays the groundwork for future hostilities.
- The inside-the-beltway agencies and elected officials on the Indian Affairs Committee see themselves as agents working only for the benefit of the Tribes. One size does not fit all, and the CSKT reservation is vastly different than even the other reservations within Montana. The MWRPA seeks to satisfy the CSKT to such an extent it tries to pretend the 1904 Allotments Act did not occur—but it did. The majority of the populace here are non-tribal, and about 30 percent of the reservation was diminished by the allotment process, with the lands now held by non-tribal American citizens. While the CSKT and the DC agencies may wish to rewrite the history of the allotment sale and settlement of surplus Flathead Reservation lands, as well as the construction of an integrated irrigation and power project statutorily authorized to serve all citizens, the people here are not going to let that happen. It was clear from watching the hearings that no one is standing up for the non-tribal American citizens who moved here by invitation. This is an “open reservation” where tribal and non-tribal members have lived in harmony for decades. However, that harmony is rapidly deteriorating due to the CSKT's open hostility and desire to roll back history to an imaginary time no one living today remembers. The bias and predilection of the entire DC establishment to pre-judging outcomes in favor of the tribes and placing tribal interests above those of the other American citizens they are supposed to represent is obvious. If the people here feel they are not being fairly and justly represented, they will have no more respect for the decrees coming out of DC than our forefathers had for those coming out of the Parliament in London, and no one should expect otherwise. The MRWPA diminishes the rights of other citizens with whom the United States has contractual and Constitutional obligations, and that's not lost on any of us out here in Lake County.

I could go on and on about how this bill could be improved to a level that would make it acceptable to all parties concerned. If our elected leadership were interested in achieving an equitable solution instead of kowtowing to every whim of the CSKT, such a solution could be found. What we have seen here in Lake County, however, is a complete unwillingness to even consider such an outcome, and instead a desire to dictate terms straight from the tribes' lawyers. Hostility here has become the order of the day and you in Congress are responsible for it. Given the anarchy evident throughout our nation, what makes our Congressional representatives so sure

something equally ugly couldn't happen out here? Locally, displaying an America flag or a "Trump" bumper sticker can get you thrown out of tribal-run business, and on the fourth of July here in Polson, an 18 year old girl was punched in the face "for being white." Does it sound like things are going well?

You in Congress are responsible for what happens here, and you are not taking your responsibility seriously. You have ignored our letters; ignored the extensive factual documentation I know you have received from other groups well versed in water rights; you have dictated terms and hidden from our public forums. Many inside the beltway agencies have accepted the notion that the tribes will win in court no matter what while ignoring the fact the CSKT is bound by whatever the Congress decides—not the courts. All the Tribes have learned to exploit the grievance industry, but you have the power to mandate an equitable solution to the water issue on behalf of all American citizens. It would have a very positive effect if you would have public field hearings where you could become better educated on what is happening, and we could all come to a fair compromise solution. That is not what is happening now.

The MWRPA in its current form is fatally flawed. You should be in search of a salvageable and workable solution. One is out there, but it won't be found if the only place you look is in the deep pockets of the CSKT.

Sincerely,

MR. TRACY A. SHARP

CHARLO MT
7/7/2020

I fully and unequivocally support the Indian water rights bill Senate bill 3019 which includes the return of the National Bison Range to the management of tribes of the Flathead Indian reservation. It's time to right a historically grievous wrong—no more waiting!

DEBORAH TOMAS

CORVALLIS, MT
7/8/2020

I support the Native Tribes of Montana and salute them in their efforts to regain some of the lands and rights that have been illegally taken from them.

The Montana Water Rights Protection Act (S. 3019) would return the lands of the National Bison Range to the Confederated Salish and Kootenai Tribes to continue preservation of the bison and provide public access and educational opportunities. The land that is now called the National Bison Range was acquired by the United States without the Tribes' consent in what was later held by a Federal Claims Court to be a taking.

Returning the land to federal trust ownership for the benefit of the Tribes may be one small step towards strengthening sovereignty and repairing the harms of colonialism, but it will make a significant difference in the lives of many CSKT Tribal members.

Sincerely,

TODDY PERRYMAN

SIERRA CLUB
June 23, 2020

Dear Chairman Hoewan and Vice Chairman Udall:

On behalf of Sierra Club's more than 4 million members and supporters, I am writing to express our strong support for The Montana Water Rights Protection Act, S. 3019. In addition to settling Tribal water rights, the Act would authorize, and pay for, remediation and restoration projects for damaged waterways and riparian habitats on the Flathead Indian Reservation. It will also improve in-stream flows for fish. Finally, these projects will create jobs, all the more important in the current economic landscape.

The Sierra Club has a long-standing history of working with the Confederated Salish and Kootenai Tribes (CSKT) on wildlife and conservation issues. We respect the Tribes' cultural and historical connection to bison and that the National Bison Range (NBR) lies wholly within the Flathead Indian Reservation, on lands appropriated from the Tribes by the U.S. Government with minimal compensation.

Given the history of these lands, the Sierra Club affirms the restoration of The National Bison Range and its bison to the Confederated Salish and Kootenai Tribes for the purpose of bison conservation and ensuring the long-term health of the NBR bison.

Although Sierra Club vehemently opposes the transfer of federal public lands to states, this provision is uniquely suited to restore the wrongfully acquired land and bison of the CSKT back to the Flathead Indian Reservation and affirms the cultural and historical connections to the bison and the relationship to wildlife and the land which was held in time in memoriam. The support for the CSKT and the National Bison Range will not be interpreted as a precedent for any other suggested land transfer, property, or facility but will be recognized as a restoration of lands and wildlife under the care of the Flathead Indian Reservation and the Confederated Salish and Kootenai Tribes.

The Sierra Club offers our full support in restoring the land and bison to its rightful caretakers and stewards, the Confederated Salish and Kootenai Tribes and the Flathead Indian Reservation, as outlined in this legislation. We look forward to working with the committee to help advance the legislation forward.

Sincerely,

KIRIN KENNEDY, *Deputy Legislative Director, Lands and Wildlife*

RESOLUTION #2020—23

We, the members of the Affiliated Tribes of Northwest Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian Treaties, Executive Orders, and benefits to which we are entitled under the laws and constitution of the United States and several states, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise to promote the welfare of the Indian people, do hereby establish and submit the following resolution:

WHEREAS, the Affiliated Tribes of Northwest Indians (ATNI) are representatives of and advocates for national, regional, and specific tribal concerns; and

WHEREAS, ATNI is a regional organization comprised of American Indians/Alaska Natives (AI/AN) and tribes in the states of Washington, Idaho, Oregon, Montana, Nevada, Northern California, and Alaska; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of the ATNI; and

WHEREAS, water is among the most sacred substances to the Confederated Salish and Kootenai Tribes (“CSKT” or “Tribes”), and the tribes utilized water in their aboriginal territory that stretched from Canada to Wyoming, and from Washington to Montana, for religious, hunting and fishing, and sustenance purposes; and

WHEREAS, federally-reserved water rights sufficient for the Tribes’ perpetual existence on the Flathead Indian Reservation were secured at the signing of the Hellgate Treaty in 1855, and moreover the Tribes’ aboriginal rights were confirmed by the express rights of the CSKT to hunt, fish, and gather throughout their aboriginal territory; and

WHEREAS, the United States illegally opened up the Flathead Indian Reservation for non-Indian settlement, and created the Flathead Indian Irrigation Project that dramatically altered natural waterways and irreparably damaged fish and wildlife habitat of the Reservation by creating a network of over 1,300 miles of ditches and canals filled with irrigation structures that now serve over 1,800 irrigators, 90 percent of which are non-Indian, and would have made prior appropriation of water rights nearly impossible to implement; and

WHEREAS, the State of Montana has pursued a state-wide adjudication of water rights, including Indian water rights pursuant to the McCarren Amendment as found applicable to Indian water rights in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), and simultaneously pursued negotiations between tribes; and

WHEREAS, the Tribes negotiated with the State of Montana and the United States for over 15 years to quantify the Tribes’ reserved and aboriginal water rights, with the Tribes making many concessions and compromises in an effort to find an amicable resolution, which resulted in the Water Rights Compact Entered Into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America (“Compact”); and

WHEREAS, the Compact benefits the Tribes by quantifying water for the CSKT people, as was promised by the U.S. upon the signing of the Hellgate Treaty, and

benefits the State by protecting water rights for its citizens and its wildlife, thus creating a benefit for the whole region; and

WHEREAS, the Compact requires passage by the Tribes, the State, and the U.S. to be implemented; and

WHEREAS, the Montana legislature approved the Compact, and on April 24, 2015, Montana State Governor Steve Bullock signed the Compact into State law; and

WHEREAS, the Compact now must be approved by the U.S. Congress; and

WHEREAS, Montana Water Rights Protection Act, is bi-partisan legislation that was introduced by Senator Daines and Senator Tester in June 2020; and

WHEREAS, the Montana Water Rights Protection Act is the CSKT water settlement, which authorizes, ratifies, and confirms the Compact; and

WHEREAS, the CSKT has always had a deep relationship with bison, and the Montana Water Rights Protection Act also includes provisions that would restore the National Bison Range to federal trust ownership for CSKT and would require continued management for bison conservation purposes and public access; and

WHEREAS, the Montana Water Rights Protection Act authorizes federal funding to CSKT to settle damages, rehabilitate the Flathead Indian Irrigation Project, restore the National Bison Range to tribal trust ownership, among other provisions; now

THEREFORE BE IT RESOLVED, that ATNI supports the rights of all tribes to negotiate agreements and compacts to settle damages and restore and exercise their water rights; and

BE IT FURTHER RESOLVED, that ATNI supports the Confederated Salish and Kootenai Tribes efforts to settle their water rights through—Montana Water Rights Protection Act to promote the sovereignty of the Tribes for future generations; provide certainty for the State of Montana; and benefit all people and wildlife in the region, and therefore asks that the U.S. Congress approve—Montana Water Rights Protection Act.

CERTIFICATION

The foregoing resolution was adopted at the 2020 Virtual Mid-Year Convention of the Affiliated Tribes of Northwest Indians, Portland, Oregon, on June 30—July 2, 2020, with a quorum present.

LEONARD FORSMAN, *President*
NORMA JEAN LOUIE, *Secretary*

ROCKY MOUNTAIN TRIBAL LEADERS COUNCIL RESOLUTION #07—JULY 1, 2020

A Resolution to Support S. 3019- Mont1111a Water Rights Protection Act, the Confederated Salish and Kootenai Tribes Water Settlement Legislation

WHEREAS, we, the Executive Board Members of the Rocky Mountain Tribal Leaders Council of the United States (RMTLC), invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the RMTLC has been created for the express purpose of providing its member Tribes with a unified voice and a collective organization to address issues of concern to the Tribes and Indian people; and

WHEREAS, the Board of Directors of the RMTLC consists of duly elected Tribal Chairs, Presidents and Council Members who are fully authorized to represent their respective Tribes; and

WHEREAS, as a manifestation of their solemn duty, the Tribal governments actively engage in policy formation on any matters that affect the Tribes and reservations; and

WHEREAS, the governments of the various Native American nations have exercised full sovereign authority since time immemorial, including over their separate territories, lands, sacred grounds, and natural resources, including clean and fresh water; and

WHEREAS, the RMTLC's mission is to preserve our homelands, defend rights of the Indian Tribes with the United States, speak in a unified voice, offer support to our people, offer a forum in which to consult each other and enlighten each other

about our peoples, and to otherwise promote the common welfare of all of the Indian Peoples of Montana, Wyoming and Idaho; and

WHEREAS, the vision of the RMTLC is a healthy, prosperous and strong Tribal communities for our Tribal people living in Montana, Wyoming and Idaho; and

WHEREAS, the goal of the RMTLC is to create an environment conducive to change within our communities by cultivating positive collaborative efforts with a sense of purpose by building strong, healthy societies where respect and honor is a way of life.

WHEREAS, the values of the RMTLC are based on unity, mutual respect, community, strong work ethic, accountability, kindness, tradition, giving, pride, leadership, personal growth, gratitude, and justice; and

WHEREAS, water is among the most sacred substances to the Confederated Salish and Kootenai Tribes (“CSKT” or “Tribes”), and the tribes utilized water in their aboriginal territory that stretched from Canada to Wyoming, and from Washington to Montana, for religious, hunting and fishing, and sustenance purposes; and

WHEREAS, federally-reserved water rights sufficient for the Tribes’ perpetual existence on the Flathead Indian Reservation were secured at the signing of the Hellgate Treaty in 1855, and moreover the Tribes’ aboriginal rights were confined by the express rights of the CSKT to hunt, fish, and gather throughout their aboriginal territory; and

WHEREAS, the United States illegally opened up the Flathead Indian Reservation for non-Indian settlement, and created the Flathead Indian Irrigation Project that dramatically altered natural waterways and irreparably damaged fish and wildlife habitat of the Reservation by creating a network of over 1,300 miles of ditches and canals filled with irrigation structures that now serve over 1,800 irrigators, 90 percent of which are non-Indian, and would have made prior appropriation of water rights nearly impossible to implement; and

WHEREAS, the State of Montana has pursued a state-wide adjudication of water rights, including Indian water rights pursuant to the McCarren Amendment as found applicable to Indian water rights in Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976), and simultaneously pursued negotiations between tribes; and

WHEREAS, the Tribes negotiated with the State of Montana and the United States for over 15 years to quantify the Tribes’ reserved and aboriginal water rights, with the Tribes making many concessions and compromises in an effort to find an amicable resolution, which resulted in the Water Rights Compact Entered Into by the Confederated Salish and Kootenai Tribes, the State of Montana, and the United States of America (“Compact”); and

WHEREAS, the Compact benefits the Tribes by quantifying water for the CSKT people, as was promised by the U.S. upon the signing of the Hellgate Treaty, and benefits the State by protecting water rights for its citizens and its wildlife, thus creating a benefit for the whole region; and

WHEREAS, the Compact requires passage by the Tribes, the State, and the U.S. to be implemented; and

WHEREAS, the Montana legislature approved the Compact, and on April 24, 2015, Montana State Governor Steve Bullock signed the Compact into State Law; and

WHEREAS, the Compact now must be approved by the U.S. Congress; and

WHEREAS, the Montana Water Rights Protection Act is the CSKT water settlement, which authorizes, ratifies, and confirms the Compact; and

WHEREAS, the Montana Water Rights Protection Act authorizes federal funding to CSKT to settle damages, rehabilitate the Flathead Indian Irrigation Project, restore the National Bison Range to tribal trust ownership, among other provisions; and

NOW THEREFORE BE IT RESOLVED, RMTLC supports the rights of all tribes to negotiate agreements and compacts to settle damages and restore and exercise their water rights; and

BE IT FURTHER RESOLVED, that RMTLC supports the Confederated Salish and Kootenai Tribes efforts to settle their water rights through S. 3019—Montana Water Rights Protection Act to promote the sovereignty of the Tribes for future generations; provide certainty for the State of Montana; and benefit all people and wildlife in the region, and therefore asks that the U.S. Congress to pass S. 3019—Montana Water Rights Protection Act into law; and

BE IT FINALLY RESOLVED, that this resolution shall be the policy of RMTLC until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

We, the undersigned, as the Chair and Secretary of the Tribal Leaders Council, do hereby certify that the foregoing Resolution was duly presented and approved by

majority vote at an official Emergency Board Meeting of the Rocky Mountain Tribal Leaders Council, which was held on July 8, 2020 with 6 member Tribes present to constitute a Quorum of the Rocky Mountain Tribal Leaders Council.

GERALD GRAY, *Chairman*

JESTIN DUPREE, *Secretary*

NATURAL RESOURCES DEFENSE COUNCIL
June 22, 2020

Dear Chairman Hoeven and Ranking Member Udall,

On behalf of the Natural Resources Defense Council and its three million members and online activists nationwide, I write in support of The Montana Water Rights Protection Act, S. 3019. This legislation is the product of over a decade of negotiations between the Confederated Salish and Kootenai Tribes (CSKT), the State of Montana, and the United States. The CSKT-Montana Water Compact was the subject of dozens of public meetings and has bipartisan support from the Montana State Legislature, Montana Governor, and Montana Attorney General, as well as farmers and irrigators.

By passing S. 3019, Congress will confirm and ratify water rights for the Confederated Salish and Kootenai Tribes, as well as settle Tribal claims stemming from federal mismanagement of the Tribes' water resources. In the process, the Act protects the water rights of many non-Indians on the Reservation and throughout the western two-thirds of Montana who would otherwise have to defend their water rights in litigation. The Act will authorize and fund numerous remediation and restoration projects for waterways and riparian habitats on the Flathead Indian Reservation, as well as improve in-stream flows for fish while creating jobs for people to implement the projects.

In addition, by passing S. 3019, Congress will transfer the management of the National Bison Range from the U.S. Fish and Wildlife Service to the CSKT. For over a century, the Tribes have sought to be reunited with this land and its bison, and to once again participate in their management. S. 3019 returns the lands in trust for the CSKT to manage the lands for bison and other wildlife, education, and public access. The legislation recognizes that exceptional circumstances led to the creation of the National Bison Range, the transfer into trust will not set precedent for other public lands, and it is now time for Congress to act to return the land to the CSKT.

S. 3019 honors the Tribes' long conservation legacy and provides them the opportunity to share their rich heritage and history with all who visit the bison reserve in the future. The CSKT are well positioned to steward the bison range—for thousands of years the Tribes have had a cultural and spiritual relationship with bison and the Mission Valley landscape. And, the Tribes have a wildlife and land conservation legacy that demonstrates their commitment and knowledge of land and wildlife stewardship. Their achievements include:

- Protecting, through designated management areas, thirty percent, or 400,000 acres, of the Flathead Reservation for fish, wildlife, and cultural conservation.
- Creating the 92,000-acre Mission Mountains Tribal Wilderness, the first actively managed, tribal-designated Wilderness area in the United States, and then establishing a 23,000-acre wilderness buffer zone to support it and the wildlife who depend on it.
- Reintroducing trumpeter swans, peregrine falcons, northern leopard frogs, and Columbian sharp-tailed grouse to the Mission Valley.
- Restoring the meandering bends of the Jocko River that provide habitat for westslope cutthroat trout, bull trout, and countless other species that depend on the revived riparian areas.
- Redesigning and building-in partnership with state and federal highway managers—U.S. Highway 93 to include 43 wildlife crossing structures—including an overpass, underpasses, and extensive fencing. Called "The People's Way," the improvements along this stretch of highway have resulted in the preservation of human life and property and reduced the number of wildlife that perish on the highway.

Thank you for considering S. 3019. The Natural Resources Defense Council encourages you to support this bill and pass it out of Senate Indian Affairs Committee so it can be voted upon by the entire Senate. We appreciate you considering our views.

Respectfully,

AMY McNAMARA, *Northern Rockies Director*

MONTANA CONSERVATION VOTERS
June 10, 2020

Dear Chairman Hoeven and Vice Chairman Udall:

On behalf of the members of Montana Conservation Voters (MCV), a statewide not-for-profit advocacy organization, we submit this letter in strong support of S. 3019, the Montana Water Rights Protection Act, introduced in the U.S. Senate by Senators Steve Daines and Jon Tester.

MCV's members have been tracking the progress of this critical legislation which, at long last, codifies the Confederated Salish and Kootenai Tribes's (CSKT) final settlement of claims to water rights, and transfers the National Bison Range (NBR) to the Tribes's management. The Montana Water Rights Protection Act is an important step toward course-correcting decades of injustices experienced by the Tribes, and MCV proudly supports any such effort.

The 2015 Montana Legislature ratified the CSKT's water compact with bipartisan support because it was negotiated in good faith. Montana legislators don't often agree on much, but this plan earned support from elected leaders across the Big Sky State. That speaks volumes about the quality of this proposal. We see no reason that the federal component of this compact—this legislation—should face any insurmountable political hurdles in the weeks and months ahead.

The Confederated Salish and Kootenai Tribes have a strong record of sound resource management, and the capacity to continue doing so following the finalization of this compact. It is also worth noting that this legislation will permanently protect water rights for many users on the Flathead Reservation, reducing uncertainty that often leads to litigation.

As for the National Bison Range, which sits entirely within the boundaries of the Flathead Reservation, S. 3019 finally and fairly resolves a long and painful dispute for the Confederated Salish and Kootenai Tribes. Under this legislation, the NBR will continue to be open and accessible to the general public. The Tribes have used the lands and the resources within what is now the NBR since time immemorial—for thousands of years before the U.S. government drew its own political boundaries within the sovereign tribal land, without tribal consent. S. 3019 provides a hopeful conclusion to this chapter of injustice.

S. 3019 has earned bipartisan support. It is the product of government-to-government collaboration that falls directly in line with this organization's (and most Montanans') commitment to finding and supporting fair and equitable solutions for sovereign tribal governments and their lands, for our shared public lands, for bison and other wildlife, and for the precious resource of water. Section 13 of S. 3019 does exactly that.

MCV's mission includes "striving for racial justice, equity and inclusion, and learning from each other in an environment that does not perpetuate or tolerate injustice of any kind." The decades-long political process that culminated in the introduction of S. 3019 experienced a similar journey. Our members strongly support this bipartisan legislation and we urge all in Congress to pass it quickly and without delay.

Respectfully,

AARON MURPHY, *Executive Director*

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
HON. TIMOTHY R. PETTY, PH.D.

Question 1. Your testimony noted, "[w]e have reached agreement with the Confederated Salish and Kootenai Tribes (Tribes) on a redline amendment for the underlying bill. If that language were to be adopted, the Department could support the bill". The use of the word "could" suggests there may be additional caveats that would preclude the Administration from supporting the redline amendment. To clarify, does the Administration support the redline amendment?

Answer. The Administration supports the redline amendment.

Question 2. During the hearing you were asked, "would the Reclamation Water Settlement Fund be a useful resource to fund Indian water rights settlements, and why would extending the fund benefit all water users?" Your response was:

I think the Indian Water Rights at Department of Interior is a set structure, because it is a partnership for so many of the different bureaus within the Department of Interior. Just as I am here with a colleague from Interior, within

the Bureau of Indian Affairs, it is a partnership with the Bureau of Indian Affairs, with Fish and Wildlife Service, with even obviously Bureau of Reclamation. We have different aspects with the Bureau of Land Management, and even Park Service components. So, having it within that Indian Water Rights Settlement would really be a useful tool for the Secretary to utilize with the different bureaus who have those specific interests with how that gets engaged.

Please clarify whether the Reclamation Water Settlement Fund, as enacted, is a useful resource to fund Indian water rights settlements and whether extending the fund would benefit all water users.

Answer. The Reclamation Water Settlement Fund as enacted is proving to be a useful resource to the Department of the Interior in budgeting the funds necessary to implement Indian water rights settlements. The Department's views on extending the Fund are set forth in the attached testimony dated July 18, 2018, on S.3168 and April 4, 2019, on H.R. 1904.

Question 3. I am concerned about the Department of the Interior's reluctance to provide Congress with a better understanding of what activities of enacted Indian water rights settlements are eligible for the Reclamation Water Settlement Fund, beyond the priority settlements listed in section 10501(c)(3) of P.L. 111-11.

On March 11, 2019, Bureau of Reclamation Commissioner Brenda Burman appeared before the Senate Committee on Appropriations, Subcommittee on Water and Power to discuss the President's budget request. The following exchange took place:

Senator Udall: Can you explain whether there are sufficient authorized activities to use the entire reclamation water settlement fund, and will you commit to work with us to provide that information to Congress so that we can unlock the settlement fund for future settlements?

Commissioner Burman: Senator, Reclamation believes there are more than enough activities to use the entire fund, as currently laid out. We would be happy to work with you and with the committee to clarify any questions or to bring information.

In follow-up questions for the record, I requested the Bureau of Reclamation provide information on how there "are more than enough activities to use the entire fund". Yet in the Department's response, it indicated it was unwilling to provide Congress with the details on how it arrived at this conclusion. This is critical information for our Committee to consider in authorizing future Indian water rights settlements.

Please provide a list of enacted Indian water rights settlements that are eligible for funding under the Reclamation Water Settlement Fund and specify how much funding would be available for each.

Answer. As noted, P.L. 111-11 Section 10503 (c)(3) established tiered funding priorities for seven Indian water rights settlements. Under current law, the Reclamation Water Settlement Fund is expected to receive deposits of up to \$120 million per year for 10 years, or \$1.2 billion. The priority for each settlement is conditioned on Congress enacting legislation authorizing the settlement by December 31, 2019. The list of the five enacted water rights settlements specified as priorities that are eligible to receive this funding, per PL 111-11, is as follows:

- Navajo-Gallup Water Supply Project (\$500 million).
- Other New Mexico Settlements, which includes both the Aamodt adjudication and the Abeyta (Taos) adjudication (\$250 million).
- Montana Settlements, which includes the Blackfeet Tribe and Crow Tribe (\$350 million).

Two settlements designated as priorities in P.L. 111-11—Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation (Montana) and the Navajo Nation Lower Colorado (Arizona)—were not enacted by December 31, 2019. Therefore, these two settlements no longer retain the priority designation.

The decision on the allocation of funds from the Reclamation Water Settlements Fund is made annually based on the priorities in P.L. 111-11, funding requirements for each of the settlements, and circumstances at the time. Most of the settlements designated in P.L. 111-11 have settlement deadlines in FY 2024 through FY 2025 and will require the full amounts available in the Reclamation Water Settlements Fund for at least the first five years.

In addition to funding settlements designated as priorities in P.L. 111-11, if funds are available from the Reclamation Water Settlements Fund—after ensuring there are sufficient funds for the priorities establish in P.L. 111-11—there are a

number of other enacted water rights settlements that could be considered. This could include funds to implement the Gila River Indian Community Water Rights Settlement, San Carlos Apache Water Right Settlement, Southern Arizona Water Rights Settlement, White Mountain Apache Tribe Water Rights Quantification, or Ak-Chin Water Rights Settlement in Arizona; and Nez Perce in Idaho.

Question 4. Describe the financial impacts on Lake and Sanders Counties that would stem from conveying the National Bison Range to the United States to be held in trust for the benefit of the Tribes, along with estimated costs per activity.

Answer. There would be no negative financial impacts on Lake and Sanders Counties as a result of the legislation restoring the National Bison Range to federal trust ownership for the Tribes. Section 12(k)(1)(A) of S. 3019, as introduced, would continue the existing level of payments that the Counties receive from the U.S. Fish & Wildlife Service under the Refuge Revenue Sharing fund. Section 12(k)(2) requires those payments to be equal to the amount the Counties would have received if the legislation had not been enacted. For amounts of such funding, see response to question #6.

Question 5. Please provide a list of authorized Indian water rights settlements that have included a direct payment to surrounding communities, along with citations, to compensate for impacts associated with a settlement.

Answer. It is unusual, but not unprecedented, for Indian water rights settlement to include direct payments to surrounding communities. Section 5(b) of the Snake River Water Rights Settlement Act of 2004, P.L. 108-447; Div. J; Title X, 118 Stat. 3431, 3433, provides:

(b) MITIGATION FOR CHANGE OF USE OF WATER.—

(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$2,000,000 for a 1- time payment to local governments to mitigate for the change of use of water acquired by the Bureau of Reclamation under section 111.C.6 of the Agreement.

(2) DISTRIBUTION OF FUNDS.—Funds made available under paragraph (1) shall be distributed by the Secretary to local governments in accordance with a plan provided to the Secretary by the State.

(3) PAYMENTS.—Payments by the Secretary shall be made on a pro rata basis as water rights are acquired by the Bureau of Reclamation.

Question 6. What are the amounts and sources of payments that Lake and Sanders Counties “would have received” if Section 12(k) were not enacted? How was that figure calculated?

Answer. Under the Refuge Revenue Sharing Act (16 U.S.C. § 715s), the U.S. Fish and Wildlife Service (USFWS) makes annual payments to counties for true-exempt USFWS-managed lands to offset true losses. The funding is derived from net income the USFWS receives from the sale of products or privileges on refuges, such as from timber sales and grazing leases, and direct Congressional appropriations. Per the Refuge Revenue Sharing Act, the calculations for payments to counties and other units of local government for land purchased by or donated to USFWS is based on the greater of: (a) 3/4 of 1 percent of the market value; (b) 25 percent of the net receipts; (c) 75 cents per acre. Historically, the payments for National Bison Range lands have been based on the market value calculation.

When there is not enough revenue funding to cover the payments, Congress is authorized to appropriate money to make up the difference. If the amount Congress appropriates is not enough, the payments the Service distributes to counties and other local governments is based on a pro-rata share.

The amount varies each year; in FY 2020, for lands associated with the National Bison Range, Lake County received \$9,652 and Sanders County received \$11,257.

Question 7. What are the estimated number of jobs that would be created in Lake and Sanders Counties if the settlement were enacted and fully implemented?

Answer. In the Department’s testimony before the Senate Committee on Indian Affairs, Assistant Secretary Petty highlighted that funding authorized under S. 3019 would create significant economic activity in the region on and near the Reservation, which includes Lake and Sanders Counties. The Department’s analysis concluded that the economic activity would support direct, indirect, and induced jobs in the region, including approximately 520 permanent jobs (of which approximately half are seasonal), and approximately 4,650 temporary construction and restoration jobs through rehabilitating and modernizing FIIP and restoring natural resources damaged by FHP operations.

Question 8. Senator Daines noted that decommissioning the Flathead Indian Irrigation Project “would devastate the economies of Lake and Sanders Counties”. What

are the economic impacts to Lake and Sanders Counties if this settlement was not authorized and the Flathead Indian Irrigation Project were to be decommissioned? What are the benefits?

Answer. The Department has not analyzed the economic impacts of the potential decommissioning of FHP on Lake and Sanders Counties specifically. However, the Department has analyzed the effects on total economic activity in the State of Montana if the United States and Tribes were to succeed on their instream flow claims, and a range of irrigated agriculture acreage was converted to dry land farming. Depending on the amount of irrigation water supply curtailed, the effects on total State of Montana economic activity are estimated to range from a reduction in labor income of \$12.9 million to \$34.7 million per year and a reduction in employment of between 110 to 310 jobs. The majority of the income effect and at least half of the employment effect would likely be felt in Lake and Sanders Counties. (All direct impacts to farm income and farm jobs would be in Lake and Sanders Counties.) Given that over two thirds of Lake County's lands lie within the Flathead Reservation, it is reasonable to expect that the majority of On-Reservation impacts would be felt by Lake County residents. The impacts would likely be less in Sanders County. Apart from benefits related to instream flows and fish habitat, the Department has not identified any economic benefits to Lake and Sanders Counties if FIIP were to be decommissioned.

Question 9. Section 9106 of P.L. 111–11 required the Secretary to submit a report to Congress no later than March 30, 2011, to conduct a study of Pueblo irrigation infrastructure and develop a list of projects that are recommended to be implemented to repair, rehabilitate, or reconstruct Pueblo irrigation infrastructure. Please provide an update to the Committee on the status of the report.

Answer. The Department has completed a draft Study Report pursuant to Section 9106 of P.L. 111–11 that includes surveys of the existing irrigation infrastructure at each Pueblo, a list of Pueblo irrigation improvement projects recommended for implementation, as well as the other items provided for in subsection (c)(4). The draft is currently being edited to address reviewer comments.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. STEVE DAINES TO
HON. TIMOTHY R. PETTY, PH.D.

Question 1. Where in the CSKT Compact are the damages to be paid to the 3500 irrigators who lost their irrigation rights to the tribe and had their traditional amount of irrigation water cut in half?

Answer. This question was answered in the attached letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress, Section B.2 (Nov. 18, 2019).

Question 2. How do you avoid the Winters Doctrine which established compacts and the procedure to get water to meet the purpose of the reservations to make them productive?

Answer. This question was answered in the attached letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress, Section B.2 (Nov. 18, 2019).

Question 3. Why is the Tribe given the authority to manage all of the water on the open CSKT Reservation when the Montana Department of Natural Resources DNRC was formed to treat everyone the same?

Answer. This question was answered in the attached letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress, Section B.2 (Nov. 18, 2019).

Question 4. Why is the Hell gate Treaty and Federal and state constitutions avoided in issues of land and water, off the CSKT Reservation?

Answer. This question was answered in the attached letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress, Section B.2 (Nov. 18, 2019).

Question 5. Why are the required studies not made available such as legal, economic, and environmental?

Answer. The relevant legal, economic, and environmental studies undertaken in the development of the Compact were provided to and considered by all parties.

Question 6. Would you provide examples of how you intend to implement this legislation, when it's in clear violation of Fifth Amendment "taking" clause?

Answer. The legislation will be implemented as provided in the legislation and the Compact consistent with the Fifth Amendment of the United States Constitution.

See Letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress (Nov. 18, 2019).

Questions 7 and 8. Would you provide examples of how you intend to implement this legislation, when it's in clear violation of Fourteenth Amendment Equal Protection clause?

Answer. The legislation will be implemented as provided in the legislation and the Compact consistent with the Fourteenth Amendment of the United States Constitution. See Letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress (Nov. 18, 2019).

Question 9. Why do you need such a drastic change in centuries of water law in America?

Answer. This settlement is consistent with established water law in America. See Letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress, Sections A & B.1 (Nov. 18, 2019).

Question 10. Do you have a plan to deal with every tribe in America who will then want what only this tribe has if you pass this: off reservation water right, with a time immemorial seniority date on any area they may have once ever fished?

Answer. Every settlement of federal Indian reserved water rights is based on the unique circumstances, history, and claims of the Tribe or Tribes involved.

Question 11. How will you then be able to violate all those State constitutions, as you will have done to Montana?

Answer. This settlement is consistent with the Constitution of the United States and the State of Montana's constitution. See Letter from David L. Bernhardt, Secretary, Dep't of the Interior, to the Honorable Steve Daines, Senator, United States Congress (Nov. 18, 2019).

Attachment

The Honorable Steve Daines,
United States Senate,
Washington, DC.

Dear Senator Daines:

I have received your correspondence regarding the proposed settlement of the reserved water right claims of the Confederated Salish and Kootenai Tribes (CSKT or Tribes). Although I did not participate in the negotiation of this proposed settlement, I have evaluated the matter. In sharing my perspective, it may be useful to know that I have been involved with the negotiation and approval of other water rights settlements over the last two and a half decades.

I understand that following nearly a decade of negotiations, negotiators for the Tribes, the State of Montana (State), and the United States submitted to their respective principals a proposed settlement of the Tribes' reserved water right claims known as the CSKT Water Rights Compact or CSKT Compact. The Compact, approved by the Montana legislature in 2015, is currently proceeding through the appropriate Federal review and approval processes.

As a general policy matter, for more than 30 years, the United States has supported resolving Indian reserved water right claims through negotiations rather than protracted and divisive litigation. I am informed that during the course of negotiating and reviewing the CSKT Compact, concerns and objections were raised about whether proposed Compact terms appropriately resolved the Tribes' claims and about the perceived impacts that the Compact could have on non-Indian water right holders. These concerns are important, and it is my understanding that these concerns were considered and evaluated during the negotiations, in the context of potential risks and liabilities resulting from non-settlement.

Given your commitment to resolving longstanding issues and avoiding needless litigation, you have asked for the Department of the Interior's (Department) views on these concerns. I would like to provide our perspective at this time on how I understand that these concerns have been addressed.

A. Background on the CSKT Reserved Water Right Claims

Historically, the Federal Government, when called upon to file reserved water right claims as trustee for a Tribe and its members, files claims that it determines are legally justified under Federal law, including under the Tribe's treaty or other documents creating the Tribe's reservation, and that are consistent with State and Federal court decisions interpreting the Winters reserved water rights doctrine. These initial filings by the United States tend to be broad in scope, based on credible claims that can be supported with competent expert testimony.

In 2015, using this framework, the United States and CSKT filed in the Montana Water Court several categories of reserved right claims, including these that relate to the concerns discussed below:

- Instream flows to support the fisheries, both on- and off-Reservation, based on language in the CSKT Hellgate Treaty expressly reserving Tribal fishing rights.
- The irrigation water supply for the Bureau of Indian Affairs (BIA) Flathead Indian Irrigation Project (FIIP or Project) to serve all lands within the Project, both Indian and non-Indian.
- Future irrigation water for the CSKT, consistent with U.S. Supreme Court precedent.

When parties propose settlement of a Tribe's reserved claims, the United States traditionally evaluates the agreement from various perspectives, including:

- Does the proposed settlement secure adequate Tribal water resources to meet the purposes of the reservation?
- Are the Tribe's water rights legally protected and enforceable?
- Would the settlement resolve all of the Tribe's reserved water right claims?
- If a BIA irrigation project is involved, are the water rights for the project properly resolved?
- Are proposals to address how water rights on the reservation would be administered and enforced acceptable?

B. Discussion of CSKT Compact Concerns

It is my understanding that the primary concerns about the Compact raised to date tend to fall into three main themes:

- Objections to the inclusion of reserved rights for off-Reservation instream flows.
- Objections to how the Compact resolves the water rights for FIIP in conjunction with the CSKT reserved rights for on-Reservation instream flows.
- Assertions that the Compact's approach to administering and enforcing water rights on the Reservation is unconstitutional, primarily under Montana law.

I address each of these three themes below.

1. Reserved Rights for Off-Reservation Instream Flows

Concerns have been raised about whether there is a legal basis for the off-Reservation flow rights CSKT would obtain under the Compact. These concerns are understandable. Although there is extensive experience with reserved off-reservation flow claims elsewhere in the Northwest, fewer such claims have been addressed in Montana. That said, similar claims were confirmed in the legislation approving the Blackfeet Water Rights Compact. The CSKT Compact, however, is the first time that claims based on a treaty reserving off-Reservation fishing rights have been addressed in Montana.

The United States and CSKT filed off-Reservation reserved instream flow claims premised on the Hellgate Treaty and its promise in article III that Tribal members may fish off the Reservation at "all usual and accustomed places, in common with citizens of the Territory." These claims are intended to protect Tribal members' ability to fish in the rivers and streams where Tribal members fished at the time of the Treaty in order to provide a meaningful fishery. This language is virtually the same as clauses found in several Indian treaties in the Pacific Northwest known as "Stevens Treaties," which were negotiated in 1854–55 with Washington Territory Governor Isaac Stevens. Generally, the legal premise is that in the Stevens Treaties, when Tribes expressly reserved off-Reservation fishing rights, they impliedly reserved the water rights necessary to support the fishing purpose. This theory follows the holdings in *Winters* and *Winans* that Tribes may reserve aboriginal rights when entering into treaties establishing reservations. (See *Winters v. United States*, 207 U.S. 564 (1908); *United States v. Winans*, 198 U.S. 371 (1905).)

To illustrate, Federal and State courts have considered the water rights of the Yakama Nation, a Stevens Treaty Tribe with treaty language equivalent to the Hellgate Treaty language. Federal courts have ordered that water be released from a Federal reservoir to protect spawning flows needed to support the Yakama Nation's off-Reservation fishing right more than 50 miles upstream of the Yakama Reservation. (*Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1032, 1033–35 (9th Cir. 1985).) Washington trial and appellate State courts also have made extensive rulings finding and clarifying the Nation's rights to off-Reservation flows for fisheries throughout the Yakima River basin. The Yakama Nation's adjudicated water rights extend throughout the Yakima basin, even though

the Reservation only occupies the southwestern portion of the basin. Further, courts have found that these rights have a priority date of time immemorial.

Another illustrative case is *United States v. Adair*, where the Federal courts concluded that the Klamath Tribes' treaty recognized the Tribes' aboriginal title in the reservation lands and natural resources and confirmed to the Tribes "a continued water right to support its hunting and fishing lifestyle on the Klamath Reservation." (723 F.2d 1394, 1413–14 (9th Cir. 1984).) These courts held that the Klamath Tribes therefore enjoyed water rights sufficient to support their treaty fishing, hunting, and gathering rights with a "time immemorial" priority. The Adair decision also defined how to quantify the Klamath Tribes' instream rights, recognizing the Tribes' water right included the right to prevent other appropriators from depleting the streams' waters below a protected level in any area where the non-consumptive right applies. Subsequently, Phase I of the State of Oregon's Klamath Basin Adjudication resulted in a Final Order of Determination issued in 2013 that quantified the Tribes' instream flow right.

The Department determined that the case law, the history of the Tribes, and the Hellgate Treaty supported off-Reservation flow claims for CSKT in the Montana adjudication. It found that it was appropriate to address these claims as part of the Compact. These reserved rights are Tribal property rights, but they do not provide for Tribal jurisdiction off the Reservation. Resolution of the Nez Perce Tribe's reserved water right claims for flows in the Snake River Basin Adjudication in Idaho does not change our conclusion. In that case, a State trial judge found the Nez Perce Tribe (which has a Stevens Treaty) was not entitled to off-Reservation instream flows. However, the State trial court's decision is not binding, and, in any event, the Tribe agreed in that litigation to settle its off-Reservation flow claims for extensive instream flow protections under State law that they can enforce. As with the CSKT claims, the Federal Government found these settlement proposals to be an appropriate resolution to the Indian reserved claims at issue.

2. Resolution of the Water Rights for FIIP in Conjunction with the CSKT Reserved Rights for On-Reservation Instream Flows

I understand that a central concern is that the Compact may deprive water users served by FIIP of their entitlements to Project water. In fact, it appears that one of the most contentious issues during the negotiation was how to address the FIIP irrigation water right claims. Further, because the FIIP water rights and the Tribes' on-Reservation reserved flow rights often compete for the same water supply, addressing in tandem these two rights was critical for reaching a successful settlement.

The United States filed comprehensive water right claims for the entire FIIP irrigation water supply to serve all lands in the project, both Indian and non-Indian. It appears that one of the Department's primary goals during the negotiations was to preserve the historical irrigation water use on lands served by FIIP. This position comports with the Federal Government's past practice in general stream adjudications to claim the entire water supply of Federal irrigation projects. Also, as detailed below, Federal courts have confirmed the Tribes' entitlement to on-Reservation reserved instream flow right and these rights have a priority date of time immemorial and thus are senior to the FIIP water rights. (See *Joint Board of Control v. United States*, 832 F.2d 1127 (9th Cir. 1987); *Joint Bd. of Control of the Flathead, Mission & Jocko Irrigation Dists. v. United States*, 862 F.2d 195 (9th Cir. 1988).) The Federal courts left to the Montana Water Court the job of quantifying the amount of flow required to satisfy these rights; if these claims cannot be settled, the Water Court will proceed with that task.

Concerns remain that the Compact would permanently reduce the FIIP water supply. I understand that this concern was a central one in the negotiations, and the Compact protects the net FHP water supplies needed to irrigate crops. Tribal, State and Federal negotiators employed technical studies to determine that historical net irrigation supplies could be maintained and protected while project improvements were made to save water for instream flows. To this end, diversions under the Compact initially remain the same as historical amounts. As FIIP improvements and water conservation measures are implemented, the saved water is left instream to help meet flow rights. In turn, FIIP diversions would be reduced by a commensurate amount while ensuring that net crop demands continue to be met. As a safeguard, the Compact provides that, during implementation, irrigation diversions "shall be evaluated to ensure their adequacy to meet Historic Farm Deliveries." (Compact, Article IV.D.1.e.) If water in excess of those deliveries is needed, it will be provided by increasing water pumped from Flathead Lake. (Compact, Article IV.D.1.e.ii.)

There are additional terms that would further safeguard FIIP water use. The CSKT and the State committed in the Compact to seek Federal legislation to provide funds from power revenues on the Reservation to improve FIIP operations and water supplies. (Compact, Article IV.H.3.) They also agreed to several provisions in the Compact that protect the FIIP water supply in times of shortage, including sharing between instream flows and irrigation diversions. In dry years when “water supplies are inadequate to simultaneously satisfy” instream flows and irrigation diversions, the Compact sets out several measures that can be taken to augment irrigation water. (Compact, Article IV.E.1.3.)

The negotiators also addressed assertions that the Compact takes legal title to the FIIP water rights away from landowners served by FIIP and places it with CSKT. There is little precedent, however, supporting third-party party claims to legal title to BIA project water rights held in trust for Tribes. In contrast, Indian settlements in Montana and Idaho placed title to BIA irrigation project water rights in the name of the United States in trust for the Tribe, even for BIA projects that serve both Indian and non-Indian irrigators on a reservation. We also note that Washington State courts adjudicated the water rights for the BIA irrigation project on the Yakama Reservation, which serves extensive non-Indian lands, to be properly held by the United States in trust for the Yakama Nation.

However, the Department also recognizes that all landowners served by a BIA irrigation project, whether Indian or non-Indian, are entitled to continue to receive project irrigation water to the extent the water is physically and legally available and assessments have been paid. The CSKT Compact includes protections for FIIP water users’ entitlements to Project water. (See Compact, Article III.C.1.a (expansive definition of FIIP service area); Compact, Article IV.D.2 (recognition of entitlement through a “delivery entitlement statement”).)

Finally, I note the obvious risks that FIIP water users would face if the quantification of CSKT’s on-Reservation instream flow rights cannot be settled. As noted above, Federal courts in the 1980s recognized CSKT’s entitlement to on-Reservation instream flow rights throughout the Reservation with a time-immemorial priority date that is senior to FIIP. Under this legal precedent, water would not be shared between FIIP and the instream flows; rather, instream flows would be met first to the full extent of their legal entitlement. The one question that the Federal courts left for the Montana courts was the quantification of CSKT’s on-Reservation flow rights. Currently, Federal claims seek instream flow rights for the majority of water even in wetter years; if the courts were to confirm this claim, water for FIIP diversions would be available only in the wetter years and only to the extent not needed to meet the instream flow right. Even if the Water Court were to quantify the right at a lower median range, the Department’s assessments show a likelihood that insufficient water will remain for viable FIIP irrigation diversions. Some objectors to the Compact argue that the “interim instream flows” established by BIA in the late 1980s should be the permanent quantification of the Tribes’ flow rights. In my view, this position faces significant risk because the interim flows are not quantified and they do not appear biologically sufficient. The Compact, in contrast, ensures water for FIIP that otherwise might not be available if these claims were litigated.

For these reasons, the Department concluded that the Compact would appropriately resolve both the FIIP litigation and the CSKT flow rights.

3. Administration of Water Rights on the Flathead Reservation under the Compact

Concerns have been raised about the Compact’s terms for on-Reservation administration and enforcement of water rights after entry of a decree. This is set forth in the “Unjitary Administration and Management Ordinance” (UMO), and administered by the joint State-Tribal “Flathead Reservation Water Management Board” (Board) of water rights post-decree. Montana State government entities are best positioned to respond to assertions that these terms violate the Montana Constitution. The State—under the auspices of the Montana Reserved Rights Commission, the Attorney General’s Office, and legal counsel for the Montana legislature—has analyzed the matter and concluded that the UMO is constitutional. The Montana Supreme Court has also confirmed that the legislature’s approval of the Compact, including the UMO, complied with State law.

As noted above, it is my experience that, during the entirety of my professional career, the Federal Government has consistently supported efforts in Tribal water right negotiations to address how water rights on the reservation will be administered and enforced once a settlement is reached. In this negotiation, given the vast number of commingled Tribal and non-Tribal water uses on the Reservation, the parties explored proposals to create a single Tribal-State administrative body to administer on-Reservation rights, rather than a system of dual administration by the State and the Tribes. The single administrative body, the Board, consists of five vot-

ing members. CSKT and Montana would each appoint two board members. A fifth board member is then to be selected by the four appointees, or, if they cannot agree, alternative provisions exist for the appointment of the fifth board member. There are also provisions for local county commissioners' involvement in the selection of the State representatives. (Compact, Article IV.1.1.2.) The jurisdiction of the Board is limited to approving new rights, authorizing changes in use, and enforcing existing rights as set forth by the Compact. (Compact, Article IV.1.4.)

The Department did an extensive review of the UMO and concluded that, while the administration of on-Reservation rights through a single management board is novel, the terms of the Compact establish a workable and appropriate administration regime, provided that the Board and UMO are authorized by the State legislature, the Tribes, and Congress.

The Department's review of the UMO focused on whether the UMO properly recognized and protected the water entitlements of the Tribes and Indian allottees on the Flathead Reservation; improperly placed the management and administration of the water rights of non-Indian residents on the Reservation under Tribal jurisdiction; and provided basic due process protections to all water rights holders. First, with respect to the Federal reserved water rights of the Tribes and Indian allottees, which fall within Congress' restrictions against alienation and the unique protections for allottee water rights, the Department concluded that the Board, as governed by the UMO and the Compact, provided ample protections. Second, the State concluded that the UMO did not place non-Indian residents on the Reservation under Tribal jurisdiction. The Department concurs in that conclusion. The Board has been approved by the Montana legislature (as well as by the Tribes and the United States). Therefore, the Board's activities with regard to non-Indians constitute an exercise of State jurisdiction.

Finally, the UMO accords those appearing before the Board the same substantive standards and procedures available to others in the State. The Compact makes clear that the Board lacks the authority to amend the UMO, preventing changes to these procedures. (Compact, Article IV.J.) ("No amendment by the Tribes or the State of the Law of Administration shall be effective unless and until the other makes an analogous amendment.") The Compact further provides the opportunity for judicial review of decisions made by the Board in a court of competent jurisdiction. (Compact, Article IV.1.6.) Although parties may argue whether that review lies in State or Federal court, nothing in the Compact extends Tribal court jurisdiction over non-Indian water rights holders. The Department ultimately agreed with the State's conclusion that the UMO procedures that govern the Board in conjunction with the opportunity to seek judicial review of the Board's decision protect the due process rights of both non-Indian and Indian water rights holders.

C. Conclusion

Through its negotiation team, the Federal Government actively participated in the CSKT reserved water right negotiations. Once negotiations were completed, the Federal team brought the proposed CSKT Compact to the Interior and Justice Departments for review and consideration whether to support the Compact. The Department of the Interior has evaluated the core concerns and criticisms that have been raised with respect to the Compact and found that these concerns were addressed in the negotiations.

I look forward to working with you as you work to resolve this important issue in Congress.

RESPONSES TO THE FOLLOWING QUESTIONS FAILED TO BE SUBMITTED AT THE TIME THIS HEARING WENT TO PRINT

WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
U.S. ENVIRONMENTAL PROTECTION AGENCY

Question 1. Please provide the Committee with a list of Indian tribes in the portion of the Columbia River Basin that is south of the Columbia River, below the Grand Coulee Dam, or is in an adjacent coastal basin, which would be eligible under §2(1)(D) of S. 3044.

Question 2. Please provide a list of Indian tribes located in the Columbia River Basin that have been terminated and subsequently restored, which would be eligible under § 2(3)(B) of S. 3044.

