H.R. 1246, TO AUTHORIZE LEASES OF UP TO 99 YEARS FOR LAND HELD IN TRUST FOR FEDERALLY RECOGNIZED INDIAN TRIBES; AND H.R. 1532, TO AUTHORIZE ANY INDIAN TRIBE TO LEASE, SELL, CONVEY, WARRANT, OR OTHERWISE TRANSFER REAL PROPERTY TO WHICH THAT INDIAN TRIBE HOLDS FEE TITLE WITHOUT THE CONSENT OF THE FEDERAL GOVERNMENT, AND FOR OTHER PURPOSES

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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Friday, March 24, 2023
U.S. House of Representatives
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 9:05 a.m., in Room 1324, Longworth House Office Building, Hon. Harriet Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, LaMalfa, González-Colón; and Grijalva.

Ms. HAGEMAN. Good morning. The Subcommittee on Indian and Insular Affairs will come to order. Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on H.R. 1246 and H.R. 1532. Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o). Without objection so ordered.

I will now recognize myself for an opening statement.

STATEMENT OF THE HON. HARRIET HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. HAGEMAN. Today, we are meeting to consider two bills I've introduced to ensure all tribes have access to economic tools: H.R. 1246 to authorize leases of up to 99 years for land held in trust for federally recognized Indian tribes, and H.R. 1532, to authorize any Indian tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian tribe holds fee title, without the consent of the Federal Government, and for other purposes.

I want to thank Ranking Member Leger Fernández, Mr. Grijalva, Mr. LaMalfa, Mrs. González-Colón, and Mr. Sablan for their

support of H.R. 1246, and I look forward to working with you all and other members of the Committee on both of these bills.

The first bill on the agenda, H.R. 1246, would amend the Long-Term Leasing Act to authorize any federally recognized Indian tribe to lease land held in trust for their benefit for terms up to 99 years, subject to approval of the Secretary of the Interior. For many Indian tribes and Alaskan Natives, real property holdings are the basis for social, cultural, and religious life and often their single most important economic resource.

In 1834, with the enactment of the Indian Non-Intercourse Act, land transactions with Indians were prohibited, unless authorized by Congress. Over time, these restrictions came to apply primarily to lands held in trust by the United States for the benefit of individual Indians or Indian tribes, and to lands with a title that was subject to a restriction against alienation.

In 1955, Congress passed the Long-Term Leasing Act which generally authorizes any Indian land held in trust or land subject to a restriction against alienation to be leased by the Indian owner, subject to the approval of the Secretary of the Interior. These leases were generally only allowed for 25 years, with an option to renew for one additional term, for a total lease term of up to 50 years.

Unfortunately, lease authority up to 99 years is often needed for today's long-term commercial leases and for some financing contracts. And the fact is, a 50-year lease term is simply too short. H.R. 1246 will ensure that all tribes can negotiate effectively and on the same playing field as other landholders for long-term leases. This can clear the way for further economic development, especially in rural or extra rural areas.

H.R. 1246 will also end the practice of individual tribes needing Congress to pass legislation so that the tribe can offer these long-term leases. In other words, we trust the tribes to make the right decisions for their own people.

Congress has amended the Long-Term Leasing Act more than 50 times to adjust the terms and conditions of leases of Indian lands and to authorize specific Indian land or tribes to lease land for a term of up to 99 years. It is time to end this piecemeal approach of the past 67 years. By proactively extending this authority to all federally recognized tribes, economic development plans can proceed on a more expedited path.

The second bill on our agenda is H.R. 1532, which would exempt lands held in fee simple by any federally recognized Indian tribe from the limitations imposed by the Indian Non-Intercourse Act. This bill would clarify that any tribe has the legal ability to lease, sell, convey, warrant, or transfer any portion of the interest in real property that the tribe owns that is not held in trust.

In recent years, the Indian Non-Intercourse Act has generally not interfered with the ability of tribes to buy, sell, or lease land that it owns in fee simple. However, it has generated a great deal of litigation throughout history, which has resulted in several court decisions on the issue.

The U.S. Supreme Court in 2005 said that the Indian Non-Intercourse Act remains substantially in force today and can bar sales of tribal land without the consent of the Federal Government.

Some tribes have also encountered interference with economic development and job creation when titled insurance companies have interpreted the Indian Non-Intercourse Act to apply to fee simple real estate owned by the tribes and would not grant title insurance.

Congress has waived the application of the Indian Non-Intercourse Act to several tribes, but it has been needed on a case-by-case basis. Again, this piecemeal approach requires Congress to go back again and again to do something that should be clear already. Tribal governments already seek to make the best decisions for their members, for their social, cultural, and economic security.

We should ensure that Indian lands, whether owned in fee, owned in restricted fee, or held in trust for the benefit of the tribes are able to be used as tribes want to use them. I believe these two bills are a good step forward to ensure that. I am glad to see the Assistant Secretary here to testify on these bills and would appreciate his insight on whether further technical changes to the bills are needed.

I also want to thank our tribal witnesses for being here to tell your stories, to tell us how these bills would be beneficial to all tribes, and if they need to be improved.

The Chair now recognizes the Ranking Minority Member for his statement.

STATEMENT OF THE HON. RAÚL M. GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much, Madam Chair. Thank you for the hearing on these two pieces of legislation. I'm a co-sponsor of H.R. 1246, and I thank the Chair and the Ranking Member of this Subcommittee, Representative Leger Fernández, for their work on it. Today, we will hope to hear more from the witnesses.

We are discussing the other piece of legislation, H.R. 1532, which authorizes tribal governments to lease, sell, convey, warrant, or otherwise transfer real property to which they hold fee title, without the consent of the Federal Government. I think both bills address existing barriers to tribal economic development and were previewed at the Subcommittee's first oversight hearing earlier this month.

And on the research committee if there is an area in which cooperation, and compromise, and moving forward—it is going to be around the issues that we are addressing today, and other issues. But this is a very important one and a step addressing the paternalism of the Federal Government with regard to tribes, amplifying tribal self-determination and amplifying the very critical issue of sovereignty for federally recognized tribes.

The Chair has outlined both pieces of legislation, and I look forward to the witnesses and thank them very much for being here. With that, I yield back to you, Madam Chair.

Ms. HAGEMAN. Thank you so much. I'm now going to introduce the witnesses. The Honorable Bryan Newland, Assistant Secretary of Indian Affairs, U.S. Department of the Interior, Washington DC; the Honorable Marcellus Osceola, Chairman of the Seminole Tribe

of Florida, Hollywood, Florida; and the Honorable John Williams, Vice Chairman, United Auburn Rancheria, Auburn, California.

Let me remind the witnesses that under Committee Rules they must limit their oral statements to 5 minutes, but your entire statement will appear in the hearing record.

To begin your testimony, please press the talk button on the microphone. We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light turns yellow. At the end of the 5 minutes, the light will turn red, and I will ask you to please complete your statement. I will also allow all witnesses on the panel to testify before Member questioning.

The Chair now recognizes Assistant Secretary Bryan Newland for 5 minutes.

STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. NEWLAND. Thank you, Madam Chair.

[Speaking Native language]. Good morning, members of the Committee. Thank you for having me here today to offer the Department of the Interior's testimony.

Madam Chair, also I want to apologize for my tardiness this morning. I know I kept you waiting; it won't happen again. Thank you.

The Department is here to present testimony on H.R. 1246 and H.R. 1532. These two bills seek to address concerns raised by many tribes that have encountered barriers in the development and use of their lands due to laws designed to ensure the Federal Government fulfilled its responsibility as trustee.

The Long-Term Leasing Act provides the authority for tribes to enter into surface leases with third parties with the approval of the Secretary of the Interior. This Act limits lease agreements, as Madam Chair indicated, to 25-year terms with an option to renew for an additional 25 years.

Over the years, tribes have engaged in a wide range of activities to promote economic development and many leases require terms longer than 50 years to promote economic development. Since its enactment in 1955, Congress has added 60 tribes to the Long-Term Leasing Act for this purpose, and each addition, as you've noted, Madam Chair, has required separate legislation, which is time-consuming and resource-draining for tribes.

H.R. 1246 amends the Long-Term Leasing Act to add any other tribes listed pursuant to the List Act to enter into leases for up to 99 years, and the inclusion of all tribes will be in addition to the 60 tribes already listed through previously enacted legislation. The Department supports the goal of this legislation as it would promote economic development opportunities and avoid tribes having to acquire separate legislation for this purpose.

Congress previously amended the Long-Term Leasing Act in 2012 by passing the HEARTH Act which restored tribes' ability to control and lease their land under their approved tribal regulations without further approval from the Secretary of the Interior. Since that time, 82 tribes have adopted their own leasing regulations to

regulate the use of their lands, and the implementation of this program has been a huge success for tribes across the country.

While the Department recognizes and supports revising laws governing tribal land use, amending these laws must be done carefully to ensure that there are not unintended consequences. The Non-Intercourse Act was passed to ensure that the Federal Government had an orderly process to acquire lands from Indians, and over the past two centuries, a significant amount of case law and Federal law has been built on top of that Act.

Any legislation that would change the operation of the Non-Intercourse Act, however well-intentioned, may create more confusion around the status of Indian lands and inadvertently harm tribes in the process. H.R. 1532 would expressly allow tribes to lease, sell, or transfer tribal lands not held in trust by the United States, without any further action of the Department to validate that transaction. At this time, the Department cannot support H.R. 1532.

While H.R. 1532 does not directly amend the Non-Intercourse Act, it expressly exempts land from restrictions in the Non-Intercourse Act and may have unintended consequences. The Department understands that some tribes may ask for legislative relief, as commercial lenders and title companies often ask tribes to confirm that the Non-Intercourse Act is inapplicable to their fee land. We believe this is an unnecessary step, which unfortunately is used to raise the cost of transactions and business deals for tribes across the country.

The Department appreciates the opportunity to present its views on H.R. 1532 and H.R. 1246. And Madam Chair and Ranking Members of the Committee, I look forward to answering your questions this morning and I will yield back the rest of my time

[Speaking Native language].

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF BRYAN NEWLAND, ASSISTANT SECRETARY—INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and Members of the Subcommittee. My name is Bryan Newland. I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department).

Thank you for the opportunity to present testimony regarding H.R. 1246, a bill to authorize leases of up to 99 years for land held in trust for federally recognized Indian Tribes, and H.R. 1532, a bill to authorize any Indian Tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian Tribe holds fee title without the consent of the Federal Government, and for other purposes.

H.R. 1246, a bill to authorize leases of up to 99 years for land held in trust for federally recognized Indian Tribes

Since the enactment of the Non-Intercourse Act of June 30, 1834, and predecessor statutes, land transactions with Indian Tribes were prohibited unless specifically authorized by Congress. The Act of August 9, 1955, or the Long-Term Leasing Act (LTLA provides the authority for Indian Tribes to enter into surface leases with third parties with the approval of the Secretary of the Interior. The LTLA limits lease agreement to 25-year terms with an option to renew for an additional 25 years.

Since 1955, Indian Tribes have engaged in a diverse array of activities to facilitate economic development, and many have required lease agreements for terms longer than 50 years on their lands. Authorizing Indian Tribes to lease their trust lands for terms longer than the 50-year maximum requires Congress to amend the LTLA

to add Tribes' names to it. Since its enactment in 1955, Congress has added 60 Indian Tribes to the LTLA for this purpose. Each addition has required separate legislation, which is time consuming and resource draining for Tribes.

H.R. 1246 amends the LTLA to add all Indian Tribes on the list published by the Secretary of the Interior as required by the Federally Recognized Indian Tribe List Act to enter into agreements for up to 99 years. The inclusion of all Indian Tribes will be in addition to the 60 Indian Tribes already listed through previously enacted legislation.

In addition to legislation allowing certain Tribes to enter into leases of up to 99 years, Congress amended the LTLA in 2012, by passing the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act), which restored Indian Tribes ability to control and lease their land under their approved HEARTH Act regulations without further approval from the Department. So far, 82 Tribes have adopted and regulate the leasing of their Tribal trust lands. The implementation of this program has been a success, and a great help to Indian Tribes in facilitating economic development.

The Department supports the goal of H.R. 1246 to authorize any Indian Tribe to lease lands for up 99 years as it would facilitate economic development opportunities and avoid individual Tribes having to acquire separate legislation for this purpose. The Department looks forward to continuing working with the Subcommittee and sponsors of the legislation to ensure the language in the bill achieves the goal of removing barriers to economic development.

H.R. 1532, a bill to authorize any Indian Tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian Tribe holds fee title without the consent of the Federal Government, and for other purposes

H.R. 1532 would expressly allow Indian Tribes to lease, sell, convey, warrant, or otherwise transfer all or part of the Tribe's real property that is not held in trust by the United States without further approval, ratification, or authorization by the United States. Under H.R. 1532, action by the United States is not required to validate the Tribe's land transactions for Tribally owned fee land. The legislation clearly states that H.R. 1532 does not authorize the Tribe to lease, sell, convey, warrant, or otherwise transfer lands held in trust or affect the operation of any law governing such transactions.

The Department does not support H.R. 1532. While H.R. 1532 does not directly amend the Non-Intercourse Act, 25 U.S.C. § 177, the bill expressly exempts land from restrictions in the Non-Intercourse Act and may have unintended consequences. The Department understands that some Tribes may ask for legislative relief as commercial lenders and title companies are asking Tribes to confirm that the Non-Intercourse Act is inapplicable to Tribally-owned fee land. This is an unnecessary step which, unfortunately, can raise the cost of business deals for Tribes.

The Non-Intercourse Act was passed to ensure that the Federal Government had an orderly process to acquire lands from Indians, and over the past two centuries, a significant amount of case law has been built on this Act. Any legislation that would change the operation of the Non-Intercourse Act, however well-intentioned, may create more confusion around the status of Indian lands and inadvertently harm Tribes in the process.

The Department appreciates the opportunity to present its views on H.R. 1532.

Conclusion

Chair Hageman, Ranking Member Leger Fernández, and Members of the Subcommittee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions that you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO BRYAN NEWLAND, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Newland did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. How many inquiries on title insurance related to land owned by tribes in fee simple has the Department received over:

1a) the past 5 years?

1b) the past 10 years?

1c) Please estimate the amount of staff time has been spent responding to those inquiries, including but not limited to time spent researching, drafting, and reviewing solicitor opinions.

Question 2. How many leases has the Department approved under the Long-Term Leasing Act for a tribe that had 99-year lease authority over:

2a) the past 5 years?

2b) the past 10 years?

2c) Please estimate the average length of time it takes a lease under the above authority to be approved or denied by the Department once it is submitted for approval by the Secretary.

Questions Submitted by Representative Grijalva

Question 1. Could you provide to the Committee examples of the "unintended consequences" in the case law related to the Non-Intercourse Act that may arise under the passage of H.R. 1532, To authorize any Indian Tribe to lease, sell, convey, warrant, or otherwise transfer real property to which that Indian Tribe holds fee title without the consent of the Federal Government, and for other purposes.

Ms. HAGEMAN. Thank you.

The Chair now recognizes Chairman Marcellus Osceola for 5 minutes.

STATEMENT OF HON. MARCELLUS OSCEOLA, CHAIRMAN, SEMINOLE TRIBE OF FLORIDA, HOLLYWOOD, FLORIDA

Mr. OSCEOLA. Thank you, Madam Chair. Good morning Ranking Member Leger Fernández, Ranking Minority Member Grijalva, and members of the Subcommittee.

My name is Marcellus Osceola, Jr. I am the Tribal Council Chairman for the Seminole Tribe of Florida. In 2021, this Subcommittee advanced legislation to allow the Seminole Tribe to lease, sell, or otherwise transfer real property owned by the Tribe in simple fee. On November 23 of that year, the bill was signed into law.

I am here today to provide an update on what that law has meant for the Seminole Tribe and to urge Congress to move quickly to enact H.R. 1532. That bill would give all federally recognized tribes the authority to lease and transfer certain fee lands without requiring prior congressional approval.

Seminoles have lived in Florida for thousands of years. We are a sovereign government with our own schools, police, and courts. We run one of the largest cattle operations in the United States. We own Hard Rock International in 70 countries. We will continue our traditions of sewing, patchwork, chickee building, and alligator

wrestling, but the world has changed, and we have adapted as well.

A key part of the strategy has been to diversify our investments. Toward that end, we set up a sovereign wealth fund to invest in commercial real estate, but after identifying our first investment opportunity, the plan was stalled due to concerns raised by lender and title insurance companies over the Indian Non-Intercourse Act. The NIA dates back to the 1800s and in part was designed to prevent tribes from being defrauded.

Today, it is interfering with the ability to encourage a normal business activity for tribes that are eminently capable of making their own business decisions. The title insurance companies we approached for our first transaction would not insure the lien of the mortgage due to the concerns about the NIA. This was completely unacceptable to mortgage lenders and effectively brought our ability to finance real estate acquisitions to a grinding halt. One title insurer eventually took the risk of ensuring titles, however if that insurer had changed their mind, failed, or been acquired by one of the other carriers, we would have not been able to proceed.

The sustainable economic independence of the Seminole Tribe or any other federally recognized tribe should not depend on one title company's willingness to provide title insurance to lenders or buyers without an Act of Congress. In January 2021, in order to address this issue, Florida Representative Darren Soto, then a member of this Subcommittee, introduced H.R. 164. Florida Senators Rubio and Scott introduced a companion bill, S. 108. In November of that year, Congress approved the legislation and the President signed Public Law 11-65.

That law gave the Seminole Tribe the opportunity to shop carriers and lenders and have the confidence to continue to acquire real estate investments. There have been other positive outcomes as well. Due to the lack of availability of housing on our reservations, the Seminole Housing Authority previously has purchased off-reservation homes for tribal members. Since then, we have been able to add to our trust land and build on-reservation home sites for these tribal members.

Thanks to Public Law 11-65, when off-reservation homes were no longer needed, we have the ability to sell them without having to seek an Act of Congress to provide a lengthy explanation to the title companies, so the law has eased the path of home ownership for tribal members and has cleared the barriers to the ability to diversify and provide for future generations. However, most tribes still face these barriers I have described.

It is time for Congress to grant federally recognized tribes the authority and the ability to make their own decisions about managing tribal resources and generating tribal income without needing to obtain congressional approval.

For these reasons, I want to thank the Subcommittee and Congress for enacting Public Law 117-65. I further commend Subcommittee Chair Hageman for introducing H.R. 1532 and encourage Congress to act quickly to approve the bill and ensure that NIA language is no longer hindering economic opportunities for the federally recognized Indian tribes.

Thank you for the opportunity to appear before you today, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Osceola follows:]

PREPARED STATEMENT OF MARCELLUS OSCEOLA JR., TRIBAL COUNCIL CHAIRMAN, SEMINOLE TRIBE OF FLORIDA

Chair Hageman, Ranking Member Leger Fernandez and Members of the Subcommittee, my name is Marcellus Osceola, Jr., and I am chairman of the Tribal Council of the Seminole Tribe of Florida. In 2021, this Committee advanced legislation to allow the Seminole Tribe to lease, sell, convey, warrant, or otherwise transfer real property owned by the Tribe in fee simple. On November 23rd of that year, that bill was signed into law. I am here today to provide an update on what that authority has meant for the Seminole Tribe, and to urge Congress to move quickly to enact H.R. 1532, broader legislation that will give all federally recognized tribes the authority to lease or transfer certain fee lands without requiring prior congressional approval.

Seminoles have lived in Florida for thousands of years. When President Andrew Jackson signed into law the Indian Removal Act in 1830, we resisted efforts to displace us from our native lands. Instead, we settled deep into the Florida Everglades where we maintained our ways and traditions. Since then, we have grown and prospered and today number more than four thousand Tribal members. We are a sovereign government with our own schools, police, and courts. We run one of the largest cattle operations in the United States. We own Hard Rock International, with locations in 74 countries. We still continue our traditions of sewing, patchwork, chickee building, and alligator wrestling, but the world has changed, as it always has; and we have adapted, as we always have.

A key strategy we have chosen to pursue in adapting to a changing world is diversification of our investments and revenue sources. Toward that end, in 2020 the Seminole Tribe established a sovereign wealth fund to invest in commercial real estate properties in order to create sustainable income and generational wealth for the Seminole Tribe. We set up a state chartered subsidiary entity to act as a holding company. The holding company, in turn, creates subsidiary entities to purchase and hold title to our investment properties, enter into typical mortgage financing transactions and grant lenders mortgage liens on each of the investment properties we acquire.

After identifying the first investment opportunity, this investment diversification plan stalled due to concerns raised by the lender and proposed title insurance company over the Indian Non-Intercourse Act (NIA). The NIA states in part:

> "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

The NIA dates back to the 1800's and in part was designed to prevent Indian tribes from being defrauded. Today, it is interfering with the ability to engage in normal and regular commerce and generate and diversify income streams for tribes that are eminently capable of making their own business decisions.

Here is the problem we encountered with the NIA: For the properties we acquire through the investment fund, lenders require that they be granted a first-mortgage lien on the properties financed and that the first lien position be insured with a mortgagee title insurance policy. The title insurance companies we approached for that first transaction interpreted the NIA to apply to all real estate owned by the Tribe, even non-reservation lands owned by a state-chartered subsidiary entity of the Tribe. The title companies would not insure the lien of the mortgage without an exception for the NIA. This was completely unacceptable to mortgage lenders and effectively brought our ability to finance real estate acquisitions to a grinding halt.

One title insurer eventually took the risk of insuring title. However, if that title insurer had a change of position, failed or was acquired by one of the other carriers, the Tribe would not have been able to proceed. The sustainable economic independence of the Seminole Tribe—or any other federally recognized Indian tribe—should not depend on one title company's "current" willingness to provide title insurance to lenders and buyers absent an act of Congress.

In order to address this issue and provide certainty to lenders and title insurers as well as buyers of properties that the NIA does not apply to the Seminole Tribe's real estate transactions, Representative Soto introduced H.R. 164 in January, 2021 and Senators Rubio and Scott introduced the companion bill S. 108. In November

of that year, Congress approved the legislation and the President signed into law Public Law 117-65.

Prior to enactment of this law, all of the major title companies except for one had a specific policy that precluded them from insuring mortgage liens and sales undertaken by Indian tribes because of the potential application of the NIA. Only one company was willing to provide such insurance, but there is always the chance that the company could have a change of position, fail, or be acquired by another company with a different policy that prohibits insuring title to properties owned by an Indian tribe. P.L. 117-65 served to open the title insurance market to the Seminole Tribe giving us the opportunity to shop carriers and lenders and have the confidence to continue with the acquisition of real estate investments in the ordinary course of business, just like any other real estate investor, knowing that title insurance will be available.

There have been other positive outcomes, as well. The Seminole Tribe previously established the Seminole Housing Authority (the "Authority"). The Authority, a subgovernmental unit of the Seminole Tribe, had authority over housing matters and had purchased certain off-reservation homes for Tribal Members, which homes are no longer needed. P.L. 117-65 has allowed the Seminole Tribe to dispose of these properties without the lengthy process of seeking an exception to the Non-Intercourse Act or explanation to the title companies.

As you can see, enactment of P.L. 117-65 has eased the path to homeownership for Seminole Tribal members and has cleared away barriers to our ability to diversify and provide for future generations through real estate investment. The law is consistent with our goals of self-determination and economic independence.

However, most tribes still face the barriers I have described. It is time for Congress to free tribes from the NIA and grant all federally recognized tribes the authority and ability to make their own decisions about managing tribal resources and generating tribal income without needing to obtain congressional approval for what otherwise are routine real estate transactions.

For all these reasons, I want to thank this subcommittee and the Congress for enacting P.L. 117-65. I further commend Subcommittee Chair Hageman for introducing in this Congress H.R. 1532, to extend authority to encumber land held by a tribe in fee simple to all federally recognized Indian tribes. I encourage Congress to act quickly to approve the bill. Your prompt action will assure that this outdated and paternalistic NIA language will no longer hinder economic opportunities for any federally recognized Indian tribe.

Thank you for the opportunity to appear before you today.

Sho-Na-Bish.

Ms. HAGEMAN. Thank you. I appreciate your comment that you are eminently capable of making your own decisions. I think that is absolutely correct, and that is why we are here to make sure that you can.

The Chair now recognizes Vice Chairman John Williams for 5 minutes.

STATEMENT OF HON. JOHN WILLIAMS, VICE CHAIRMAN, UNITED AUBURN RANCHERIA, AUBURN, CALIFORNIA

Mr. WILLIAMS. Thank you, Chair Hageman, Ranking Member Grijalva, Ranking Member Leger Fernández, and members of the Subcommittee. My name is John Williams, and I am the Tribal Vice Chairman of the United Auburn Indian Community. Joining me today from our Tribal Council are Honorable Tribal Secretary Gabe Cayton and Honorable Council Member Leonard Osorio.

United Auburn is a separate band of Nisenan, Pomo, Washo, Maidu, and Miwok Indians. We originally occupied a village on the outskirts of Auburn, California. Along with many other California tribes, United Auburn was terminated by the 1958 Rancheria Act. We were then restored by the 1994 Auburn Indian Restoration Act.

United Auburn is here today to express our strong support for H.R. 1532. As you know, this bill addresses a problem that tribes can have when they try to lease or sell real property that they hold in fee simple status. A very outdated statute called the Indian Non-Intercourse Act prohibits tribes from engaging in these types of real estate transactions without formal approval from either the Interior Department or the Congress.

H.R. 1532 would waive these requirements of the Non-Intercourse Act and permit federally recognized tribes to lease and sell real property that they hold in fee simple status without the consent of the Federal Government. The original purpose of the Non-Intercourse Act was to protect tribes from losing their land through unfair real estate transactions. While tribes may have needed this protection centuries ago, there is no longer any need for the Federal Government to oversee or approve transactions on real property that is located outside of tribes' reservation or trust lands.

Unfortunately, attempts to lease or sell fee lands owned by tribes have run into challenges with title insurance companies. According to our legal counsel, at least seven of the largest title insurance companies are known to have policies against allowing tribes to sell their fee lands without approval from the Interior Department. Tribes facing these problems are then forced to request a legal opinion from the Interior Department or persuade Congress to enact an exemption from the Act's restrictions.

United Auburn is going through this process today with the Interior Department, as we are attempting to sell a public golf course on fee land that we purchased in 2012. The golf course is located outside of our other United Auburn lands. It is more than 16 miles from our tribal headquarters and more than 5 miles from our casino resort, Thunder Valley.

The title company involved with this real estate transaction is unwilling to write a title insurance policy without a legal opinion from the Interior Department that the land is not subject to the Non-Intercourse Act. The issuance of such an opinion will allow United Auburn's sale to go through, but the Department should not have to allocate its limited resources. Drafting an issue that cures this problem for all federally recognized tribes is a better solution.

Over the past two decades, Congress has passed Non-Intercourse Act waivers for specific tribes in Florida, Oregon, Oklahoma, Minnesota, and Michigan. However, instead of adopting a tribe-specific approach to curing this problem, H.R. 1532 addresses this issue for all federally recognized tribes and avoids the need for Congress to continue to pass legislation for individual tribes.

For all these reasons, United Auburn strongly supports H.R. 1532 and urges the members of the Committee on Natural Resources to support this legislation and vote it favorably out of Committee. Thank you for the opportunity to present United Auburn's views on H.R. 1532.

At the appropriate time, I'm happy to answer any questions that Members of this Subcommittee may have. Thank you.

[The prepared statement of Mr. Williams follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN WILLIAMS, TRIBAL COUNCIL VICE CHAIRPERSON, UNITED AUBURN INDIAN COMMUNITY

Chair Hageman, Ranking Member Leger Fernandez, and Members of the Subcommittee, my name is John Williams, and I am the Tribal Vice Chairperson of the United Auburn Indian Community ("United Auburn" or "Tribe"). Joining me today from our Tribal Council are Tribal Secretary Gabe Cayton and Council Member Leonard Osorio.

United Auburn is a separate band of Maidu and Miwok Indians, who originally occupied a village on the outskirts of the City of Auburn, California. In 1917, the United States acquired land in trust for the Auburn Band near the City of Auburn and formally established a reservation, known as the Auburn Rancheria. Tribal members continued to live on the reservation as a community despite great adversity.

In 1958, the United States enacted the Rancheria Acts, authorizing the termination of Federal trust responsibilities to a number of California Indian tribes, including the Auburn Band.[1] With the exception of a 2.8-acre parcel containing a tribal church and a park, the government sold the land comprising the Auburn Rancheria. The United States formally terminated Federal recognition of the Auburn Band in 1967.[2]

In 1970, President Richard Nixon declared the policy of termination a failure. In 1976, both the U.S. Senate and House of Representatives expressly repudiated this policy in favor of a new Federal policy entitled Indian Self-Determination.

In 1991, surviving members of the Auburn Band reorganized their tribal government as the United Auburn Indian Community and requested that the United States restore their Federal recognition. In 1994, Congress passed the Auburn Indian Restoration Act, which restored the Tribe's Federal recognition and confirmed that United Auburn may acquire additional trust lands in Placer County.[3]

H.R. 1532 and the Indian Non-Intercourse Act

United Auburn is here today to express our strong support of H.R. 1532. As you know, this bill addresses a problem that Indian tribes can have when they try to lease, sell, or otherwise transfer real property that they hold in fee simple status. A very outdated statute, called the Indian Non-Intercourse Act ("Non-Intercourse Act"), prohibits Indian tribes from engaging in these types of real estate transactions without formal approval from either the Interior Department or the Congress.

H.R. 1532 would pre-empt the requirements of the Non-Intercourse Act and permit federally recognized Indian tribes to lease, sell, convey warrant, or otherwise transfer real property they hold in fee simple status without the consent of the Federal government.

This is a somewhat complicated issue and let me provide the Subcommittee with background on this issue.

The Non-Intercourse Act Problem

The Non-Intercourse Act comprises a series of laws enacted by Congress between 1790 and 1834. The Non-Intercourse Act is codified at 25 U.S.C. § 177, which states:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

The original purpose of the Act was to protect Indian tribes from losing their lands through disadvantageous real estate transactions, except by treaty, an act of Congress, or some other form of Federal consent.[4]

While Indian tribes may have needed this protection in the 18th and 19th centuries, much has changed in Indian Country since the early years of the United States. Tribal governments now have sophisticated electoral and governance

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[1] California Rancheria Termination Act, Public Law 85-671 (Aug. 18, 1958).

[2] Auburn Rancheria in California, Notice of Termination of Federal Supervision Over Property and Individual Members Thereof, 32 Fed. Reg. 11,964 (Aug. 18, 1967).

[3] Auburn Indian Restoration Act, Title II, Public Law 103-434 (Oct. 31, 1994).

[4] *See, e.g., Federal Power Comm'n v. Tuscarora Indian Nation*, 362 U.S. 99, 119 (1960) (stating that the original purpose of the Non-Intercourse Act was to "prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties" without Federal consent.).

processes, operate leading-edge enterprises, and use their resources to offer wide-ranging programs to benefit their members.

There is no longer any need for the Federal government to oversee or approve real estate transactions on parcels held in fee simple and located outside of an Indian tribe's reservation, rancheria, or trust lands. Individual tribal governments are in the best position to ensure the financial well-being of their tribes and their members.

Unfortunately, attempts to lease, sell, or otherwise transfer fee lands owned by an Indian tribe have run into challenges with title insurance companies. On a number of occasions, these companies have not been willing to write title insurance for the buyer of real property held in fee status by an Indian tribe, citing the Non-Intercourse Act. And the problem is widespread across the United States. According to our legal counsel, at least seven (7) of the largest title insurance companies are known to have policies against allowing Indian tribes to sell their fee lands without approval from the Interior Department.[5] Tribes facing this problem are then forced to request a lands opinion from the Interior Department, or persuade Congress to enact an exemption from the Act's restrictions.

The Role of the Interior Department

The Interior Department is a sympathetic partner to tribes facing this problem and has determined that fee lands owned by a tribe are not subject to the Non-Intercourse Act.

Solicitor's Opinion M-37023, issued in 2009, states the current legal position of the Department that "Federal restrictions under the Non-Intercourse Act do not automatically attach to off-reservation parcels acquired by a tribe in fee simple absolute."[6]

Solicitor's Opinion M-37023 also cited a 2008 letter from a senior Interior official to a tribal leader in Wisconsin regarding the status of fee lands located outside of reservation or trust lands. In this letter, the Department "agreed with the Tribe that off-reservation land[s] the Tribe acquired in 2000 which were never owned by the Tribe or its members in restricted status, and never held by the United States for the Tribe or its members in trust status were not subject to the Non-Intercourse Act and the Tribe was not required to obtain Federal approval to convey the property."[7]

Any tribe that is facing a Non-Intercourse Act problem with a real estate transaction involving lands outside of its reservation, rancheria, or trust lands can request that the Office of the Solicitor issue a legal opinion that the specific lands at issue are not subject to the Non-Intercourse Act and are freely alienable.

United Auburn is going through this process today, as the Tribe is attempting to sell a public golf course on fee land that it purchased on the open market in 2012. After more than 10 years, the Tribe has determined, based on its business needs, that it no longer needs to own this property. The golf course is also located remotely from other United Auburn lands, more than 16 miles from our tribal headquarters and more than 5 miles from Thunder Valley, our casino resort located on trust lands.

The title company involved with this real estate transaction is unwilling to write a title insurance policy for the purchaser of this public golf course without a legal opinion from the Interior Department that the land is not subject to the Non-Intercourse Act. The issuance of such an opinion will allow United Auburn's sale to go through, but the Department should not have to allocate its limited resources to draft and issue these Non-Intercourse Act opinions. A legislative solution that cures this problem for all federally recognized Indian tribes is far more preferable.

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[5] The seven (7) title companies known to have a Non-Intercourse Act policy are: Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, Fidelity National Title Insurance Company, First American Title Insurance Company, Old Republic National Title Insurance Company, Stewart Title Guaranty Company, and Westcor Land Title Insurance Company.

[6] U.S. Department of the Interior, Office of the Solicitor, *Applicability of 25 U.S.C. §2719 to Restricted Fee Lands*, at 6 (Jan. 18, 2009).

[7] *Id*. at 7, citing Letter from George Skibine, Acting Deputy Assistant Secretary—Policy and Economic Development, U.S. Department of the Interior, to Carl W. Edwards, President, Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin (Dec. 19, 2008).

Legislation to Exempt Individual Tribes from the Non-Intercourse Act

Congress has already been active in this area, enacting legislation to exempt specific tribes from the restrictions in the Non-Intercourse Act and permitting these tribes to lease, sell, or otherwise transfer their fee lands. Specific examples include:

- A 2021 statute to authorize the Seminole Tribe of Florida to lease or transfer any real property that is not held in trust by the United States; [8]
- A 2018 statute, the Oregon Tribal Economic Development Act, to allow 7 tribes in Oregon to lease or transfer their fee lands; [9]
- A 2016 statute to allow the Miami Tribe of Oklahoma to lease or transfer its fee lands; [10]
- A 2014 statute to allow the Fond du Lac Band of Lake Superior Chippewa in Minnesota to lease or transfer their fee lands; [11]
- A 2007 statute authorizing the Coquille Indian Tribe in Oregon to convey land and interests in land owned by the Tribe; [12]
- A 2007 statute authorizing the Saginaw Chippewa Tribe in Michigan to convey land and interests in land owned by the Tribe; [13] and
- A 2000 statute providing that fee land owned by the Lower Sioux Indian Community in Minnesota may be leased or transferred by the Community without further approval by the United States.[14]

Summary of H.R. 1532

Instead of adopting a tribe-specific approach to curing this problem, H.R. 1532 authorizes any federally recognized Indian tribe to lease, sell, or otherwise transfer any fee lands that it owns without the consent of the Federal government.

A national approach to this issue will avoid the need for Congress to continue to pass legislation for individual tribes to exempt them from the Non-Intercourse Act. Additionally, the Interior Department will no longer need to respond to individual tribal requests for legal opinions confirming that real estate transactions involving fees lands are not subject to the Non-Intercourse Act.

Conclusion

For all these reasons, United Auburn strongly supports H.R. 1532 and urges the Members of the Committee on Natural Resources to support this legislation and vote it favorably out of Committee.

Thank you for the opportunity to present United Auburn's views on H.R. 1532.

Ms. HAGEMAN. Thank you so much for that very important insight as to the situation that you are dealing with.

The Chair will now recognize Members for 5 minutes for questions, and the first Member this morning to ask questions will be Congressman Doug LaMalfa from California.

Mr. LAMALFA. Thank you, Madam Chair. First, let me welcome our friends and colleagues from my neighborhood at home. Vice Chairman Williams, great to have you here today, thank you. And is Elijah present here? Elijah Montez?

Mr. MONTEZ. Hey.

Mr. LAMALFA. Welcome. Thanks for coming all the way to Washington, DC with your dad today. And I think it is a very special day for another one of your colleagues. Raymond? Hey Raymond, 10 years old today. Congratulations, right? Raymond

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[8] Public Law No. 117-65 (Nov. 23, 2021).
[9] Public Law No. 115-179 (June 1, 2018).
[10] Public Law No. 114-127 (Feb. 29, 2016).
[11] Public Law No. 113-88 (Mar. 21, 2014).
[12] Public Law No. 110-75 (Aug. 13, 2007).
[13] Public Law No. 110-76 (Aug. 13, 2007).
[14] Public Law No. 106-217 (June 20, 2000).

and Ceenas, good to see you. I hope your birthday is a lot of fun. You can have fun in this town; it is possible.

So, anyway, thank you, Madam Chair. To the questions here, I'd like to—well one sidebar, I need to take advantage of the opportunity here with Assistant Secretary Newland in the room here. A very important issue affecting my constituents and some just north of my district as well; you are reviewing a gaming proposal by the Coquille Tribe about 170 miles from the Tribe's current location, and it was previously rejected by the Department for failing to meet Department requirements. It is opposed by several legislators in Northern California and Oregon, and your office has found that 11 tribes, including the Karuk in my district, and the Tolowa to the west of me, would be seriously impacted by the project, as would hundreds of their employees. But your office, from what we can tell, has yet to meet with these tribes and talk about what the effect is going to be on them.

Can you commit to sitting down or meeting with these tribes and hearing what their issues are going to be with a tribe that is going to be 170 miles from its current location if approved?

Mr. NEWLAND. Thank you, Congressman. Under our current regulations, the Department is required to consult with tribes that are located within 25 miles of a proposed gaming site, but as a general matter, I generally have an open door when it comes to tribal leaders about matters of importance and am generally happy to meet with tribal leaders.

When it comes to the formal consultation required by our regulations, that is a little bit different, so again, happy to hear from them on issues of importance and just that there is a differentiation between the formal process required by our regulations and——

Mr. LAMALFA. Understood. I understand that well, the 25 miles, and in the past it has been pretty effective, but indeed there are 11 tribes, including the two I mentioned right in my immediate neighborhood: the Karuk and Tolowa, so when you are talking about a project that Coquille is doing 170 miles from their current location, it seems like that would kind of open the window that the 25 miles isn't necessarily something you have to adhere to as tightly, right? Does that seem fair?

Mr. NEWLAND. Congressman, again I've met with other tribes who have expressed concerns about that project, or that proposal, and others, and I'm happy to do that.

Mr. LAMALFA. Alright, I urge you to please meet with the others involved.

Let me jump to H.R. 1532. I think this is a very good piece of legislation. What we are reflecting upon is, and what our panel has talked about, we are talking about an 1834 law. This country looked a whole lot different.

The relationship between the people that were settling here from Europe at that time and the folks that were native to the country looked a whole lot different at that time as well. So, what we are looking at is an issue where H.R. 1532, where it applies to fee land, I would like to know how does that look any different, where tribes are trying to make autonomous decisions on fee land—we will set aside restricted or trust land in the conversation for a moment—

how is that any different than me, for example, as a U.S. citizen making a transaction having to do with farmland or something like that? Why should it be different for tribes to have to have a third party intervene?

Mr. NEWLAND. Thank you, Congressman, for that question. We don't believe that it is different. We believe, at the Department, that tribes have the ability to buy and sell fee lands off the reservation under existing legal authority today. So, it is not that the Department disagrees with the esteemed tribal leaders here today about the challenges posed by private lenders and title insurance companies. It is that the Department disagrees with whether this legislation is necessary in the first place.

Mr. LAMALFA. My neighbor, United Auburn, is running into issues just dealing with the piece of golf course property, so we will explore this more in a little bit, as my 5 minutes have already eclipsed here, but it doesn't seem right, we are talking fee land, that they should have these challenges that have to have a sign-off from a congressional action or Department action the same as anybody else would. I yield back.

Thank you, Madam Chair.

Ms. HAGEMAN. Thank you. The Chair now recognizes the Ranking Minority Member, Mr. Grijalva, from the beautiful state of Arizona.

Mr. GRIJALVA. Thank you very much for the "beautiful state of Arizona," that was nice. Chairman Osceola, you spoke about in your testimony, as the Department stated today, that the Non-Intercourse Act does not apply to fee lands, and that this is still a point of concern and a point of contention with yourself and your members.

And your communications are particularly a point of concern for title insurance and lender companies. So, in your communications with these companies, did they make it clear to the Tribe that clarifying this legislation from Congress was necessary in order for them to proceed and do business with the Tribe as they do with any other entity?

Mr. OSCEOLA. In a roundabout way, yes sir, they have made that mention. We have visited with several title companies and insurers for the liens and mortgages on any of these properties that we have purchased in the past, and we have been met with a lot of red tape, so to speak. And it all comes back to the NIA, and we introduced legislation with Representative Soto back in 2021 to help clarify that for us.

And other tribes have sought this path as well as we have; we are not the first one to do it, and we hope we are not the last, but we just want to make sure that in what we have accomplished at the Seminole Tribe of Florida, and we want everyone else to accomplish the same thing and to remove those hurdles that are in the way of us prospering in a way that everybody else has.

Mr. GRIJALVA. Assistant Secretary, welcome. Good to see you again. At the outset to me, let me thank you. Your office and your team have been very responsive as tribal leaders and communities have made inquiries into our offices, we have been able to refer them to yours, and maybe there isn't a resolution at this moment, but the attention, the time, the effort, and the respect that was

given to those communities and tribal leaders is very much appreciated by all of us; thank you very much.

Other than H.R. 1532, Mr. Secretary: specifically, the Department is kind of wary of impacting the existing case law pertaining to the Non-Intercourse Act. Maybe there is not a legal need for clarifying the Act; it is a question, the Act's effect on fee lands, but going back to the question I asked the Chairman, there seems to be a reaction from title and lending institutions, title insurance. They interpreted it as differently, and it then becomes an impediment.

Given that issue, does the Department have any recommendations in terms of the legislation and working with the author of the legislation, the Chair, with text changes that would thread that needle, if it is even possible.

Mr. NEWLAND. Thank you, Ranking Member. Thank you for your kind words, I really appreciate that.

Again, when it comes to recommendations on how to address that, I'd be happy to sit down with you and your team and other members of the Committee to talk about that and give that some thought. The Department doesn't dispute that this is an issue from lenders and title insurance companies, and oftentimes, including in my own experience, the attorneys who are advancing this theory that if the Seminole Tribe were to buy a business office here in Washington, DC that there has to be an extra transaction cost on top of it, to the company, because it is an Indian tribe buying the land, the attorneys need to take an Indian law class, because it is a solution in search of a problem and what we have done over the past two centuries is build all this body of law on top of the Non-Intercourse Act, and it is still relevant today in a lot of cases we are seeing, and even in the Supreme Court in the past several years, that deal with Indian land tenure, so that the concern the Department has is unintended consequences on that body of law which benefits and protects tribes.

And the real issue are these attorneys and lending institutions that add these transaction costs on tribes without any basis.

Mr. GRIJALVA. So, the issue is potentially undoing a precedent that could be, on the other side, harmful to the issues of self-determination, sovereignty, and to tribal governments and tribes, correct?

Mr. NEWLAND. Yes, sir.

Mr. GRIJALVA. I yield back, thank you.

Ms. HAGEMAN. Thank you. The Chair now recognizes Jenniffer González-Colón from Puerto Rico.

Mrs. GONZÁLEZ-COLÓN. Thank you, Madam Chair, and good morning to everybody here. Happy birthday to one of our guests today.

Vice Chairman Williams and Chairman Osceola—in his testimony, the Assistant Secretary raised Department concerns that any changes to the operation of the Non-Intercourse Act may have unintended consequences. I would like to give you both the opportunity to comment on that. Do either of you have any concerns at all that were raised with this bill that will cause any unintended consequences?

Mr. OSCEOLA. Good morning, Congresswoman. Thank you for the time. We appreciate the ability to be here this morning. The concern raised by the Interior, I think, are not our concerns at this time of the Seminole Tribe, and I think we recognize the benefits of the bill that was passed in 2021.

The Tribe has flourished in its sovereign wealth fund activities. We have bought nine properties total—we sold one and we have kept eight. At this point, we hope to continue to further expand on that. Our hurdle was that every title company we went to except for the exception of one, told us that we needed to have congressional approval to get the insurance of the lien or even title, anything of that property, in our name.

That was a challenge that we had, and again, as I stated in my statement, the ability for us to do that without congressional approval put many hurdles in the way and stalled, and we actually lost deals. If anyone knows how a deal works, it doesn't sit on the table for long, and we lose the opportunity to bid, purchase, and acquire any of that stuff in the future.

So, the removal of that helped us, and I am sure it helped a lot of other tribes, because we weren't the first ones. There were other tribes that came before us, and I think that every other tribe that had come before us would probably share the same sentiment that I'm sharing with you today on behalf of the Seminole Tribe and the tribes that will come after me and the Seminole Tribe will probably express the same thing. I do agree there might be some challenges for other tribes, but again, I think the sophistication of the world that we live in today that we adapted, and we are ready to conquer. Thank you.

Mrs. GONZÁLEZ-COLÓN. I do agree with you 100 percent. Chairman Williams, do you want to add something?

Mr. WILLIAMS. Yes Madam, we would just like to work with the Department to make sure this goes through. We always enjoy working with our partners to make things easier for Native American tribes. Thank you.

Mrs. GONZÁLEZ-COLÓN. Thank you. Very politically correct. I do believe in both bills, and they will ensure clarity to the process and, of course, allow you guys to have an expedited process to make those deals.

The remainder of my time I wanted to yield to my fellow Member and colleague from California, Mr. LaMalfa.

Mr. LAMALFA. Thank you, my great colleague from Puerto Rico, I appreciate it. I agree with you on your positions there too. So, to Assistant Secretary Newland, just following up: bottom line, is it the Department's position that this legislation will change how the Department administers on trust land or land held in restricted fee?

Mr. NEWLAND. Thank you, Congressman. The Department's position, I wouldn't say yes to that, but the challenge we face with this legislation is we don't know the consequences and how it would interact with two centuries of case law that have been built on top of the Non-Intercourse Act and how it would affect Indian land tenure and other places in other contexts.

Mr. LAMALFA. OK, so not a clear yes, but indeed an issue "unintended consequence"; I've heard it several times alright, and

again we are talking about—the original law in 1834, the United States only had 24 states at that time. Only two of them, I think, were west of the Mississippi. So, there were a whole bunch of states that didn't have a legal status at the time.

I think tribes these days are certainly up to the task of figuring out how to protect themselves. We have heard testimony a couple times here too about the ability to do simple transactions, to get title insurance, is tainted or maybe seen as impossible, so that really restricts their ability to directly do business in a modern age. I don't know that they really need that much protection from themselves as the Department is asserting here, so I appreciate the time, and I will yield back. Thank you.

Ms. HAGEMAN. Thank you. The Chair now recognizes herself for my questions.

Mr. Newland, over the past 10 years, do you know how many leases the Department has approved under the Long-Term Leasing Act that were for a period of up to 99 years?

Mr. NEWLAND. I don't, Madam Chair, but will be happy to follow up with an answer to that.

Ms. HAGEMAN. But you are aware that there have been some?

Mr. NEWLAND. Yes.

Ms. HAGEMAN. OK, from your experience and professional knowledge, have these leases been beneficial to the tribes?

Mr. NEWLAND. On the whole I believe so, yes.

Ms. HAGEMAN. Good. And how has the BIA supported efforts for tribal leaders to have longer term leases?

Mr. NEWLAND. Ten years ago, we reformed the BIA's leasing regulations to try to make that process faster, and I believe that has been successful and provides more deference to tribes in making decisions about leases, both in terms of compensation and term, as well as implementing the HEARTH Act, which we are almost to 100 tribes that have taken over the leasing under tribal law and we try to get those requests approved expeditiously so that we are not interfering with tribal land use decisions.

Ms. HAGEMAN. You have voiced some concerns about H.R. 1532 and you have mentioned that you believe that there were potentially unintended consequences and that is in relation to how this particular Act would play out against the existing case law. Is that correct?

Mr. NEWLAND. Yes, Madam Chair.

Ms. HAGEMAN. Is there anything beyond your concern about the inter-relationship between this Act and the long history of case law that we have?

Mr. NEWLAND. Not at this time. What I can add, if you'd like Madam Chair, is I don't dispute, and the Department doesn't dispute, that the issues raised by the tribal leaders on the panel are real, because I've experienced those myself.

The issue is not the law. The law as it exists right now allows tribes to purchase and sell fee land for business purposes, home sites. That already exists. The issue is the lack of understanding of the law by some of these lending institutions and title insurance companies, and we are happy to, again, continue this discussion and assist tribes, as the Vice Chairman noted, but the law itself

is not the impediment—it is the companies' lack of understanding of it.

Ms. HAGEMAN. Well, that raises an interesting point, which is it isn't necessarily unusual for Congress to clarify a particular law to address those kinds of concerns, isn't that right?

Mr. NEWLAND. Correct.

Ms. HAGEMAN. OK, so I see the role of Congress that if there is confusion or there is something that needs to be addressed, because as you say, they just need to go and read the case law, I don't necessarily disagree with that, but if we have the opportunity to clarify something that is going to give our tribes the autonomy that they seek, don't you think that that could be beneficial?

Mr. NEWLAND. I do. Generally, Madam Chair, we saw again just last year, the Supreme Court made decisions about the status of reservations in Indian land tenure and it is all built upon the Non-Intercourse Act, which was one of the very first laws that this country's Congress enacted to address the acquisition of Indian lands. So much that we rely upon in Indian Country rests on top of that law, and our concern is if we pulled a Jenga block out from the bottom row, we don't know how that affects everything else.

Ms. HAGEMAN. Mr. Newland, could I request a commitment from you to work with us to address what some of those concerns may be so that we can clarify and make this easier and better for our tribes to be able to have the autonomy that they so rightfully deserve?

Mr. NEWLAND. Madam Chair, I would be happy to have those conversations and to help tribes not have to endure the hassle and the expense that are imposed by some of these companies that they deal with.

Ms. HAGEMAN. And Chairman Osceola, I have a couple of questions for you. Your testimony detailed how uncertain it was to work with title insurance and lenders without the certainty of the Tribe having Non-Intercourse Act waiver legislation signed into law. Do you know why the one title insurer took the risk of insuring title, and did they have a different understanding than the other title companies?

Mr. OSCEOLA. We did what we could to try to get them to understand the law, but I think the question that is raised is that there are so many other lending agencies that weren't up to speed, as Secretary Newland has mentioned, that is a challenge that we all face as tribes, that maybe one might understand how it works, but not all understand how it works, and they are not keeping up with legislation.

And I think that is a challenge, that they are not willing to go and look at the legislation, and yes it calls for additional fees, attorney fees and closing fees, because we have to try to educate them, and if we didn't do a good job or they didn't do a good job understanding what that education process was from our side or their side, then they deny it and we are not able to move forward. Then we were able to find just that one company out of so many that we looked for, and it was not only in the state of Florida, but all across the country, just to find somebody and the local areas where we were buying real estate, so the challenges are faced not only by us, but by the tribes. I understand the concerns raised by

the Department, but again we are all moving fast and the world is growing way beyond us, so we need to keep up as tribes, and this is one of the ways that we believe at the Seminole Tribe that we can advance ourselves even further if we can get this removed, if not amended, as you are so speaking with Secretary Newland on how we can make it easier for everybody, because what we have experienced since 2021 and that law being introduced and passed, we have experienced a lot easier path to acquiring lands off-reservation.

Ms. HAGEMAN. Well, H.R. 1532 is quite simple and straightforward, and I would assume that our title insurance companies could read that and understand it, and perhaps that just takes away one of those moving parts that we don't need.

Mr. OSCEOLA. Agreed.

Ms. HAGEMAN. With that, I believe that—please go ahead.

Mr. GRIJALVA. Thank you, Madam Chair for indulgence. Mr. Secretary, it is the two issues, the two pieces of legislation. I support one very much and will continue to do so. The second one, I support the concept and the intention on the title companies, and insurance, and the lenders, that you have to treat federally recognized tribes and their representatives with equity as you do any other, whether it is the municipality, or an individual, or whatever. So, I support that intent.

The challenge to some precedents and the Intercourse Act causes me hesitation in the sense that, as my colleague said, unintended consequences. The unintended consequences could be pretty big in terms of tenure and other issues that have been established by case law. Could you provide to the Committee perhaps in that overview and that discussion about text that the Chair is going to engage with you in, some examples that that potentially could be. And I say that because as we go further through this legislation and it moves along, those examples are going to come up, and then there are going to be the challenges to the legislation based on an unintended consequence and an example of what could happen to dilute self-determination and sovereignty for tribes. I want to avoid that and I know the Chair does as well, so if you could provide us some examples and that maybe leads to the conversation about what needs to be done with text and how we can legislate the intent to title, and insurance, and lenders in terms of how they deal with tribes specifically and generally not have to rely on a piece-by-piece legislation that a given Senator might hold up for years because they are worried about market share or competition to their region. So, if you would, I would appreciate it.

Thank you, Madam Chair, for the indulgence.

Ms. HAGEMAN. Wonderful, thank you. I'm just going to ask one more question that I want to make sure, I have a question for Vice Chairman Williams. You mentioned in your remarks that a title company is refusing to provide title insurance to the company that wants to purchase your public golf course. They are telling you that the Interior Department needs to issue a legal opinion stating that the sale is not subject to the Non-Intercourse Act. Is the Department of the Interior being cooperative in responding to your request for this legal opinion?

Mr. WILLIAMS. Yes, Madam Chair, they have been very responsive, and we are in the process of getting a legal opinion that our golf course property is not subject to the Non-Intercourse Act. However, as the problem becomes more widespread, the Department could be overwhelmed with these types of requests. It makes more sense for Congress to act and address this problem up front. H.R. 1532 does that.

Ms. HAGEMAN. OK. Thank you very much, and I want to thank the witnesses for your valuable testimony and for traveling to Washington, DC. I hope that you have an opportunity to see some of the beautiful cherry trees, the cherry blossoms out there. It was a gorgeous day coming in this morning.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Thursday, March 30, and the hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection the Subcommittee stands adjourned.

[Whereupon, at 9:57 a.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submission for the Record by Rep. Westerman

Statement for the Record

Michael Chavarria
Governor of the Pueblo of Santa Clara, New Mexico

Introduction

Thank you, Chairperson Hageman, Ranking Member Leger Fernández, and Subcommittee Members for the opportunity to share our experience with 99 year leasing authority for our lands. My name is J. Michael Chavarria and I am the Governor of the Pueblo of Santa Clara in New Mexico. The ability to negotiate leases with a period that may last up to 99 years better respects our status as a sovereign Tribal Nation and has produced vital benefits to the Pueblo in the forms of economic development and building long-term business relationships with nationally known and diverse companies.

Our Pueblo

The Pueblo is a sovereign Tribal Nation located in north-central New Mexico. The Pueblo and our sister Pueblos have operated as sovereign governments since time immemorial. We have formed political relationships with foreign governments dating back to at least the 16th century, when we negotiated treaties with the Spanish conquistadores during their early explorations of the southwest. Both the Spanish Crown and the United States recognized the Pueblos' right to self-rule and declared that Pueblos be presided over by tribal Governors with ownership of their land. In acknowledgment of our intimate and time-honored connection to our land and nation-to-nation relationship, President Lincoln bestowed each pueblo with a silver-tipped cane, which we proudly carry today. The Pueblo has land sites that can be traced back to our original land grant which we now hold in restricted fee simple status. The Pueblo's land base includes land sites within a major metropolitan area in Northern New Mexico.

The Pueblo actively pursued the expansion of its 99-year leasing authority resulting in the enactment of Public Law 115-227 in 2018. Prior to the enactment of Public Law 115-227, the Pueblo's 99-year leasing authority was limited to lands held in trust by the federal government, but that excluded our restricted fee lands, which encompass the most attractive locations for potential business lessees. The 2018 Act extended 99-year leasing authority to all of our lands.

In coordination with our wholly owned Santa Clara Development Corporation (SCDC), the Pueblo currently utilizes the ability to negotiate 99-year leases to create economic opportunities on our land for the benefit of our citizens and community. In 2019, the Secretary of the Interior approved our 99-year leases between the Pueblo and SCDC. SCDC now uses its approved leases to enter into diverse business arrangements and subleases with other entities to support the essential governmental and community services of the Pueblo. As discussed below, the Pueblo's ability to leverage its 99-year leases has furthered our sovereignty, incentivized investments on our land, and allowed us to attract businesses to build valuable partnerships.

Sovereignty

Our Pueblo's ability to negotiate leases for a duration that best meets our community's needs, as determined by our leaders, is key to our sovereign status. Current restrictions under 25 U.S.C. § 415(a) limit a Tribal Nation's ability to negotiate longer term leases even if Tribal leaders determine that negotiating a longer lease term is appropriate. The current limitation of 25-year leases for those Tribal Nations not listed in the exceptions under Section 415(a) substantially restricts those Tribal Nations from exercising their sovereignty to determine whether to negotiate a lease with a term that exceeds 25 years. The Pueblo, not subject to the 25-year limit, is able to exercise its sovereignty to determine whether to negotiate leases with a longer term in light of the various considerations in leasing arrangements.

Incentivizing Investments

The Pueblo's ability to enter into leases for a longer duration incentivizes much-needed outside investment in our community. A common challenge for tribal leaders across Indian Country is finding successful business opportunities, particularly from non-Indian companies, that can be leveraged to grow our local economies. The ability to negotiate leases for up to 99 years better reflects current realities within the business world and allows Tribal land to better attract business opportunities that can benefit our citizens and community.

In our experience, businesses generally expect commercial property leases to have a duration that justifies the investments required to operate their business at a profit. Currently, restrictions on Tribal land leases do not reflect current market expectations and, therefore, poses a challenge to economic development. For example, the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 (HEARTH Act) only permits business leases for up to 25 years with the potential to renew for up to two additional terms which may not individually exceed 25 years. While the HEARTH Act represents significant legislation for Tribal self governance, it is constrained by applicable lease term limits that prevent the law from reaching its full potential and reflecting current business realities. Therefore, H.R. 1246 is an important step in amending federal law to reflect current business expectations by permitting longer term property leases. The Pueblo hopes that other relevant federal statutes, such as the HEARTH Act, can be amended to permit longer term leases of Tribal land to further promote Tribal sovereignty and economic development.

For example, the Pueblo recently partnered with a national telecommunications provider to lease our land for a cellular tower. As a result of this transaction, the telecommunications provider would pay the costs to build the cell tower which is owned by the Pueblo. In exchange, the Pueblo agreed to allow the telecommunications provider to use the tower for their services without paying a fee for a specified number of years.

The crucial component to this arrangement was the term of the lease which allowed the transaction to be mutually beneficial. As a result of a long-term lease, the telecommunications provider is able to recover its investments in building the tower and is then able to enhance its services through using the Pueblo's tower. The Pueblo benefits from this transaction as it receives a cellular tower without having to pay for its construction. Additionally, the Pueblo can then use this tower to enter into agreements with other telecommunications providers to use the tower for their services at a fee. This is a valuable opportunity to the Pueblo which was made possible by the ability to negotiate leases for a longer term.

Looking forward, the Pueblo and SCDC plan to leverage our 99-year leasing authority to negotiate and attract a regional or national retailer to our land. The flexibility in negotiation from our 99-year lease can incentivize a retailer to invest in a business on our land with the ability to recover that initial investment throughout the term of a lease.

Building Relationships

The Pueblo's ability to negotiate long-term leases supports strong relationships with our business partners and encourages other businesses to partner with the Pueblo. Longer term leases allow the Pueblo to develop trusted partnerships with those businesses that decide to operate on our land. These trusted partnerships improve the Pueblo's standing in the business community and our ability to enter into new profitable relationships.

For example, SCDC has entered into an arrangement by which a Fatburger restaurant franchise has opened up on our land. Longevity in our partnership with Fatburger was core to this arrangement for both SCDC and the Fatburger chain. Fatburger, like all other businesses, is working to grow its brand and expand its business operations in a sustainable manner. A longer term lease not only allows the Fatburger franchise to grow but also demonstrates the Pueblo's commitment to supporting the Fatburger chain as a valued business partner.

The ability to negotiate a longer term lease can enable Tribal Nations to build strong and trusting relationships with their partners. A shorter term lease can be subject to disruption that prevents the partnership from reaching its full potential such as premature lease expiration. The Pueblo has experienced significant interest in entering conversations on economic partnerships when outside companies are aware of potential lease lengths.

Conclusion

Thank you for the opportunity to testify on the Pueblo's experience with its 99-year leases. The Pueblo's ability to leverage its 99-year leases has furthered our sovereignty, incentivized investments on our land, and allowed us to attract businesses to build valuable partnerships. On behalf of the Pueblo of Santa Clara, kuunda and thank you.