

**H.R. 1158, TO AUTHORIZE CONVEY-
ANCE OF MINERAL RIGHTS BY THE
SECRETARY OF INTERIOR IN THE
STATE OF MONTANA; & H.R. 1560,
TO AMEND THE YSLETA DEL SUR
PUEBLO AND ALABAMA AND
COUSHATTA INDIAN TRIBES OF
TEXAS RESTORATION ACT**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND
ALASKA NATIVE AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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**LEGISLATIVE HEARING ON H.R. 1158, TO
AUTHORIZE THE CONVEYANCE OF MINERAL
RIGHTS BY THE SECRETARY OF THE INTE-
RIOR IN THE STATE OF MONTANA, AND
FOR OTHER PURPOSES; AND H.R. 1560, TO
AMEND THE YSLETA DEL SUR PUEBLO AND
ALABAMA AND COUSHATTA INDIAN TRIBES
OF TEXAS RESTORATION ACT TO ALLOW
THE YSLETA DEL SUR PUEBLO TRIBE TO
DETERMINE BLOOD QUANTUM REQUIRE-
MENT FOR MEMBERSHIP IN THAT TRIBE.**

**Wednesday, June 22, 2011
U.S. House of Representatives
Subcommittee on Indian and Alaska Native Affairs
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 11:10 a.m. in Room 1334, Longworth House Office Building, Hon. Doc Hastings [Acting Chairman of the Subcommittee] presiding.

Present: Representatives McClintock, Gosar, Hastings [ex officio], Luján, and Hanabusa.

Mr. HASTINGS [presiding]. The Subcommittee will come to order. The Subcommittee on Indian and Alaska Native Affairs is meeting today to hear testimony on two bills, H.R. 1158, the Montana Mineral Conveyance Act, and H.R. 1560, the bill to authorize the Ysleta del Sur Pueblo to determine its tribal enrollment rules, on the same footing as other recognized tribes.

Under Rule 4[f], opening statements are limited to the Chairman and Ranking Member of the Committee so that we can hear from our witnesses. I ask unanimous consent, however, that any other Member who wants to submit a statement for the record be allowed to do so. Without objection, so ordered.

I note that I am pinch-hitting today for Chairman Young, who is preoccupied. So without objection, his statement will appear in the record.

[The prepared statement of Mr. Young follows:]

**Statement of The Honorable Don Young, Chairman,
Subcommittee on Indian and Alaska Native Affairs, on H.R. 1158**

Today, we will hear testimony from government and stakeholders regarding two bills: H.R. 1158, a bill to authorize the conveyance of mineral rights by the Secretary of the Interior in the State of Montana, and H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and the Alabama and Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirement for membership in that tribe.

These bills have been referred to this subcommittee and are believed to be non-controversial measures. The first bill, H.R. 1158, "The Montana Mineral Conveyance Act," as introduced by Representative Denny Rehberg, would provide for a land

exchange in the State of Montana. This land exchange would mutually benefit the Northern Cheyenne Tribe, the federal government, and a privately owned coal company. To this day, the Tribe does not own all the subsurface rights on their reservation. H.R. 1158, would bring ownership of those un-owned subsurface tracts to the Tribe, after an exchange between the federal government and a privately owned company.

H.R. 1560, as introduced by Representative Silvestre Reyes, would allow the Ysleta del Sur Pueblo to set their own blood quantum requirement that a member must possess before enrolling in their Tribe. Under current law, enrolled members must possess at least 1/8 degree or more Ysleta del Sur Indian blood. Similar bills have been introduced in every Congress since the 105th Congress.

I look forward to our witnesses' testimonies and hope to move quickly these bills to a full Committee vote.

Mr. HASTINGS. Now I will recognize the gentleman from New Mexico for his opening statement. The gentleman is recognized.

STATEMENT OF THE HON. BEN RAY LUJÁN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. LUJÁN. Thank you very much, Mr. Chairman. I would like to begin by thanking Chairman Doc Hastings for being with us today. And as well, I am here on behalf of Ranking Member Dan Boren.

I would like to welcome our colleagues from Montana and Texas to the table today, Chairman Rehberg and Congressman Reyes, whose bills we have the pleasure of learning more about today. Both bills H.R. 1158 and H.R. 1560 provide solutions to long-standing issues facing tribes from both the Congressmen's districts, and I look forward to hearing their testimonies.

I would also like to give a special welcome to Lt. Governor Hisa of Ysleta del Sur Pueblo, Pueblo Indian Tribe, that has close ties to New Mexico; and that I had the pleasure of visiting with in the past and at various meetings of the All-Indian Pueblo Council meetings.

I was fortunate to be at the IPC traditional meeting held at Tewa Pueblo for the Ysleta del Sur Pueblo inauguration ceremony back in 2010.

I appreciate your appearance here today, and I thank you for making the long journey to Washington, D.C., to represent your people. Welcome.

The first piece of legislation we will hear witnesses on today is Mr. Rehberg's bill, H.R. 1158, which addresses two issues facing the Northern Cheyenne Tribe: the Federal Government's failure to obtain, for over 100 years, the subsurface mineral rights on eight sections of Northern Cheyenne Reservation land currently owned by Great Northern Properties, GNP, which is the largest owner of coal reserves in the U.S. other than the Federal Government; and the Federal Government's transfer of 533 million tons of Federal mineral rights on the Tribe's ancestral homeland to the State of Montana without adequate tribal consultation or consideration of potential impacts development of those tracts would have on the Tribe's reservation.

To resolve these issues, the bill would authorize the Secretary of the Interior to transfer subsurface mineral rights to eight sections of Federal land managed by the Bureau of Land Management to

GNP, in exchange for GNP's transfer to the Tribe the rights to the subsurface of eight sections of land within the reservation.

For its part, the Tribe will waive and release its breach of trust claims against the United States for the Federal Government's failure to resolve the Tribe's split estate, and for the Federal Government's conveyance of Federal coal tracts located on the Tribe's ancestral homelands to the State of Montana.

I look forward to hearing more about the details of this bill, particularly with respect to how the mineral estates on the tracts to be exchanged are valued, and how the bill's objective to settle long-standing claims against the United States by a tribal beneficiary factors into that analysis.

The second piece of legislation we will hear witnesses on today is H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirements for membership in their own tribe.

This bill is very important to me because of the implications that it has upon the ability of this Tribe to determine the outcome of its own future. The Pueblo of Ysleta del Sur has endured many struggles to reach the point today.

Effectively, Congressman Reyes's bill would allow Ysleta del Sur Pueblo to determine its own requirements for membership, an inherent right of all but two of the 565 Federally recognized Indian Tribes in the United States. This bill is about allowing Ysleta del Sur to create a foundation for its own future based upon the needs of its tribal citizenry, on the principles of tribal self-governance and determination.

Tribal membership is rooted in the very notion of sovereignty, and it is critical to the preservation and protection of the Pueblo people and their culture. No other entity should be in charge of determining who is qualified to be a tribal member, other than the Tribe itself. There is no doubt that support for this legislation means understanding and respecting tribal sovereignty, because it reflects the ability of a sovereign tribe to carry on their own culture and traditions.

Ysleta del Sur has the proud support of the Pueblo Tribes by virtue of membership in the All-Indian Pueblo Council, an organization made up of New Mexico's 19 Pueblos. After being absent for over 330 years, Ysleta del Sur Pueblo recently rejoined the Pueblo Council to take its rightful place among its fellow Pueblos, charging itself with promoting social justice and the commonwealth of all Indian Pueblo people.

Mr. Chairman, I would ask unanimous consent to submit into the record a letter of support from the All-Indian Pueblo Council for H.R. 1560.

Mr. HASTINGS. Without objection, so ordered.

[NOTE: The letter submitted for the record by Mr. Luján has been retained in the Committee's official files.]

Mr. LUJÁN. Thank you again, Mr. Chairman, for the opportunity to hear this important bill, and I look forward to the opportunity to ask questions. Thank you very much.

[Prepared statement of Mr. Luján follows:]

Statement of The Honorable Ben Ray Luján, a Representative in Congress from the State of New Mexico, on H.R. 1158 (Rehberg) and H.R. 1560 (Reyes)

Thank you, Mr. Chairman. To begin, I'd like to welcome my Colleagues from Montana and Texas at the witness table today, Congressman Rehberg and Congressman Reyes, whose bills we have the pleasure of learning more about today. Both bills, H.R. 1158 and H.R. 1560, provide solutions to longstanding issues facing tribes from both the congressmen's districts. I look forward to hearing their testimonies.

I'd also like to give a special welcome to Lieutenant Governor Hisa of the Ysleta Del Sur Pueblo—a Pueblo Indian Tribe that has close ties to New Mexico and one that I have had the pleasure of visiting with in the past at various All Indian Pueblo Council meetings.—I was fortunate to be at the AIPC traditional meeting held at KEWA Pueblo for the Ysleta Del Pueblo Sur inauguration ceremony back in 2010. I appreciate your appearance here today and thank you for making the long journey to Washington to represent your people. Welcome!

The first piece of legislation we will hear witnesses on today is Mr. Rehberg's bill, H.R. 1158, which addresses two issues facing the Northern Cheyenne Tribe: (1) the federal government's failure to obtain, for over 100 years, the subsurface mineral rights on 8 sections of Northern Cheyenne Reservation land currently owned by Great Northern Properties ("GNP"), which is the largest owner of coal reserves in the U.S. other than the federal government; and (2) the federal government's transfer 533 million tons of federal mineral rights on the Tribe's ancestral homelands to the State of Montana without adequate tribal consultation or consideration of potential impacts development of those tracts would have on the Tribe's Reservation.

To resolve these issues, the bill would authorize the Secretary of the Interior to transfer subsurface mineral rights to 8 sections of federal land managed by the Bureau of Land Management to "GNP" in exchange for GNP's transfer to the Tribe the rights to the subsurface of 8 sections of land within the Reservation.

For its part, the Tribe will waive and release its breach of trust claims against the United States for the federal government's failure to resolve the Tribe's split estate and for the federal government's conveyance of federal coal tracts located on the Tribe's ancestral homelands to the State of Montana.

I look forward to learning more about the details of this bill, particularly with respect to how the mineral estates on the tracts to be exchanged are valued, and how the bill's objective—to settle longstanding claims against the United States by a tribal beneficiary—factors into that analysis.

The second piece of legislation we will hear witness on is H.R. 1560—a bill to amend the **Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act** to allow Ysleta del Sur Pueblo Tribe to determine blood quantum requirements for membership in their own tribe.

This bill is very important to me because of the implications it has upon the ability of this tribe to determine the outcome of its own future. The Pueblo of Ysleta Del Sur has endured many struggles to reach this point today. Effectively Congressman Reyes' bill would allow Ysleta del Sur Pueblo to determine blood quantum requirement for membership in their own tribe, an inherent right of all but 2 of the 565 federally recognized Indian tribes in the United States. This bill is about allowing Ysleta Del Sur to create a foundation for its own future based upon the needs of its tribal citizenry and the principles of tribal self-governance and self-determination.

Tribal membership is rooted in the very notion of sovereignty and is critical to the preservation and protection of Pueblo people and their culture. No other entity should be in charge of determining who is qualified to be a tribal member other than the tribe itself. There is no doubt that support for this legislation means understanding and respecting tribal sovereignty because it reflects the ability of a sovereign tribe to carry on their own culture and traditions.

Ysleta del Sur Pueblo has the broad support of Pueblo tribes by virtue of its membership in the All Indian Pueblo Council, an organization made up of New Mexico's 19 Pueblos. After being absent for over 330 years, Ysleta del Sur Pueblo recently rejoined the Pueblo Council to take its rightful place among its fellow Pueblos, charging itself with promoting social justice and the common welfare of all Pueblo people.

I ask my colleagues to support Ysleta Del Pueblo Sur in its efforts to determine its own membership by swiftly approving H.R. 1560.

Thank you again Mr. Chairman for the opportunity to hear this very important bill and I look forward for the opportunity to ask questions.

Thank you.

Mr. HASTINGS. I thank the gentleman for his statement. On our first panel of witnesses are our two colleagues, one from Montana and one from Texas. I understand that Mr. Reyes has a very tight schedule, and Mr. Rehberg likes to have—so he has allowed Mr. Reyes to go first.

So with that, the gentleman is recognized for five minutes. I am sure you know the light schedule. The green light goes on, you have five minutes; yellow light, 30 seconds. Your full statement will appear in the record.

So Mr. Reyes, you are recognized for five minutes.

**STATEMENT OF THE HON. SILVESTRE REYES, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. REYES. Thank you, Mr. Chairman. I want to thank my colleague for allowing me to go first. I very much appreciate it.

Good morning, and I want to thank you, Mr. Chairman, and the Ranking Member, for the support that you have given me, and also the members of this Committee for their assistance, as well.

My legislation, H.R. 1560, is set to grant the people of the Ysleta del Sur Pueblo the right to determine their own membership. This historic Federally recognized Native American Tribe is the oldest community in Texas, and one of only three Native American Tribes in the State.

The tribal community, which is known as Tewa, was established in 1681, after the Pueblo revolt against the Spanish colonization of the Americas, nearly a century before the Declaration of Independence, and more than 160 years before the annexation of Texas to the United States.

For over three centuries, the Tewa have maintained a vibrant presence in my Congressional District in El Paso, Texas, and are a central part of our community's culture and heritage. Today there are nearly 1700 enrolled members in the Tribe. But without this legislation, and without this action that will correct an injustice that has existed in Federal law since 1987, the Ysleta del Sur Pueblo will lose its recognition as a sovereign nation.

Due to an unfairly imposed one-eighth blood quantum requirement by Congress that singles out the Tewa and coming generations, they will lose their Federally recognized status, and the right to self-govern their historic community.

Of the 565 Federally recognized Native American Tribes in the U.S., the Ysleta del Sur Pueblo is one of the very few, if not the only one, whose tribal membership criteria is proscribed by the Federal Government, and not by the people of the Tribe. Every other Native American Tribe has a right to determine the criteria of its own membership based on customs, traditions, language, and tribal blood.

According to a former Tewa Governor, the imposed blood quantum requirement was the first time Congress had taken such action since 1946, and has not done so since. None of the newly recognized tribes since the Ysleta del Sur Pueblo have been subjected to such blood quantum requirements by our Federal Government.

My legislation corrects this inequity and the singling out of the Ysleta del Sur Pueblo. It removes the one-eighth blood quantum requirement in the Ysleta del Sur Pueblo in the Alabama and

Coushatta Indian Tribes of Texas Restoration Act of 1987. It also allows the Tewa to determine their own criteria for membership based on their own unique culture, heritage, and traditions.

My legislation has no cost associated with it, and I ask unanimous consent to submit two letters for the record from the Bureau of Indian Affairs and the Department of Health and Human Services that support this fact.

Mr. HASTINGS. Without objection, so ordered.

[NOTE: The two letters submitted for the record by Mr. Reyes have been retained in the Committee's official files.]

Mr. REYES. Thank you, Mr. Chairman. The Ysleta del Sur Pueblo has been an important part of the community's history for nearly 330 years. They are an important part of our identity, and continue to make invaluable contributions to our region's culture and heritage.

In addition, the Tribe is an important part of our regional economy, providing employment opportunities to approximately 400 people.

As many of you know, I have been deeply committed to correcting this inequity for many years. It has passed this Committee and the House under both Republican and Democrat leadership, in the 106th Congress and in the previous two Congresses, as well.

I appreciate the opportunity that many of you have shown to support this important legislation in the past, and in helping us to rectify this inequity. Passage of this bill and its enactment into law is critical to this historic tribe's existence. By eliminating this unfair tribal enrollment requirement, the Tewa will have the same rights afforded to every other Federally recognized Native American Tribe, and they will be able to preserve the unique heritage, based on shared history, customs, and language, in addition to tribal blood. This bill will ensure their survival as the oldest community in Texas, and the only Pueblo still in existence in the State.

I strongly urge your support again of this very important legislation to our Tewa Tribe. I thank you for your attention.

[The prepared statement of Mr. Reyes follows:]

Statement of The Honorable Silvestre Reyes, a Representative in Congress from the State of Texas, in support of H.R. 1560

Good morning, I would like to thank the Chairman and Ranking Member, and the committee for holding this hearing on my legislation, H.R. 1560, to grant the people of the Ysleta del Sur Pueblo the right to determine their own membership. This historic federally-recognized Native American tribe is the oldest community in Texas, and one of only three Native American tribes in the state. The Tribal community, known as "Tigua," was established in 1682, after the Pueblo Revolt against the Spanish colonization of the Americas, nearly a century before the Declaration of Independence, and more than 160 years before the annexation of Texas to the United States.

For over three centuries, the Tigua have maintained a vibrant presence in my congressional district in El Paso, Texas, and are a central part of our community's rich culture and heritage. Today, there are nearly 1,700 enrolled members in the Tribe, but without legislative action to correct an injustice that has existed in federal law since 1987, the Ysleta del Sur Pueblo will lose its recognition as a sovereign nation. Due to an unfairly-imposed one-eighth blood quantum requirement by Congress that singles out the Tigua, in the coming generations, they will lose their federally-recognized status, and the right to self-govern their historic community.

Of the 565 federally-recognized Native American tribes in the United States, the Ysleta del Sur Pueblo is one of the very few, if not the only one, whose tribal membership criteria is prescribed by the federal government, and not by the members

of the tribe. Every other Native American tribe has the right to determine the criteria of its own membership, based on its unique customs, traditions, and language, in addition to tribal blood. According to a former Tigua governor, the imposed blood quantum requirement was the first time Congress had taken such action since 1946, and it has not done so since. None of the newly-recognized tribes since the Ysleta del Sur Pueblo have been subject to such blood quantum requirements by the federal government.

My legislation corrects this inequity and the singling out of the Ysleta del Sur Pueblo. It removes the one-eighth blood quantum requirement in the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act of 1987, and allows the Tigua to determine their own criteria for membership based on its own unique culture, heritage, and traditions.

My legislation has no cost associated with it, and I ask unanimous consent to submit two letters for the record, from the Bureau of Indian Affairs and the Department of Health & Human Services, that support this fact.

The Ysleta del Sur Pueblo has been an important part of the community's cultural heritage for nearly 330 years. The tribe is an inseparable part of our history, and it should be allowed to preserve its status as a sovereign nation for future generations.

As many of you know, I have been deeply committed to correcting this inequity for many years. It has passed this committee and the House under both Republican and Democratic leadership in the 106th Congress and in the previous two Congresses. I appreciate the support that many of you have shown in this effort and in helping to rectifying this inequity.

Passage of this bill and its enactment into law is critical to this historic tribe's survival. By eliminating this unfair tribal enrollment requirement, the Tigua will have the same rights afforded to every other federally-recognized Native American tribe, and will be able to preserve their unique heritage based on shared history, customs, and language, in addition to tribal blood. This bill will ensure the preservation of Texas' oldest community, and the only remaining pueblo in the state. I strongly urge your support of this legislation.

Mr. HASTINGS. I thank the gentleman for his testimony, and I will recognize the gentleman from Montana, Mr. Rehberg, for five minutes.

STATEMENT OF THE HON. DENNIS REHBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

Mr. REHBERG. Chairman Hastings, Mr. Luján, thank you for inviting me to testify before the Subcommittee on my bill.

Before I begin, it is a privilege to welcome one of my constituents here today, Joe Fox, to testify. Joe is Vice President of the Northern Cheyenne Tribe, which is located in southeastern Montana.

I introduced this Act to right a wrong that has been done to the Northern Cheyenne. For more than 111 years, the Northern Cheyenne have been deprived of controlling eight sections of land on their reservation, the only subsurface rights on the reservation they do not own. The Tribe does not own this property because of an oversight of the United States more than a century ago. The failure to remedy this oversight has gone on for far too long. This legislation makes the Northern Cheyenne whole again, which is why I am proud to sponsor it.

In 1900 the Federal Government failed to purchase eight sections of subsurface property within the reservation. This omission left those sections under control of the Northern Pacific Railway, which has since been passed into Great Northern Properties. The Tribe and Great Northern Properties negotiated an agreement that provides for relinquishment by GNP to the Tribe of these eight sections, or about 5,000 acres of on-reservation subsurface coal owned by GNP.

In return, GNP will receive approximately 5,000 acres off-reservation Federal coal located in Bowl Mountains and Bridge Creek Federal coal tracks in Montana. This collaborative legislation strikes a reasonable balance between all impacted parties. The Tribe regains subsurface control, which makes their land and resources contiguous and provides needed revenue; and Great Northern Properties receives subsurface access from two other areas in Montana currently owned by the Federal Government.

This bill will provide much-needed impact funding for the Northern Cheyenne, as well. The Tribe will receive 40 percent of the royalties Great Northern Properties is paid from any coal development that occurs on Federal land received by GNP as compensation. This money will help alleviate some of the challenges now faced on the reservation, whether it is for health care, education, or infrastructure.

I would also like to mention that enactment of this legislation will ensure that 280 miners at Signal Peaks Mine in Mussel Shell County, Montana will keep their good-paying jobs. Rural Montana desperately needs these jobs, and this bill will provide an avenue for more coal production. This area has been devastated by recent flooding, and Signal Peak Energy, the mine's owner, has been integral in helping Roundup's residents protect their businesses and homes. I want to thank them for those efforts.

It is important to stress the bipartisan nature of this legislation. This legislation had bipartisan support in 2002, when the Board of Land Commissioners, which is comprised of the top five elected officials in the State, entered into the so-called Otter Creek settlement with the Northern Cheyenne. That settlement was supported by the entire Montana Congressional delegation. This legislation has also been introduced on the Senate side by Sen. Baucus and Sen. Taster, and supported by the Governor, Gov. Schweitzer.

As you know, Federal coal royalties are split between the Federal Government and states. While both lose out on royalties, the State supports the settlement and its job-creating impacts. In return for the package of commitments, the Tribe, in 2002, promptly dismissed, with prejudice, a Federal Court lawsuit against the United States challenging the transfer of the Otter Creek tracts to the State.

I am working with the Congressional Budget Office to ascertain the cost to the Federal Government of the withdrawal of royalties, but the Tribe's aforementioned claim could offset the value of these royalties. The Tribe committed that in return for the conveyance to it of the eight sections, it would release any and all claims it may have against the United States for its failure to acquire that subsurface. Furthermore, \$70 million in impact funding contemplated by the Tribe's Otter Creek settlement has been deleted from the bill. Congress, as a result, will not need to appropriate any funds for this legislation upon passage.

With passage of this legislation, the American taxpayer will avoid costly litigation, the Tribe will regain control of its own resources and associated revenue, and the people of America will benefit from the development of Montana's abundant coal reserves. Coal can and should be a part of America's all-of-the-above energy

solution to ease prices while stimulating job growth in our rural communities.

Because of everything the bill will do for the Northern Cheyenne, H.R. 1158 has the support of the Montana-Wyoming Tribal Leaders Council and the National Congress of American Indians. This bill is the right thing to do.

Again, I want to thank you for allowing this opportunity. I would like to enter a couple of letters into the record, if I may, please.

Mr. HASTINGS. If you would identify the letters, we would be more than happy to do those.

Mr. REHBERG. They are a letter of support from the Montana Board of Land Commissioners, and a resolution passed by the Montana-Wyoming Tribal Council, Leaders Council.

Mr. HASTINGS. Without objection, they will be part of the record.

Mr. REHBERG. Thank you.

[The prepared statement of Mr. Rehberg follows:]

Statement of The Honorable Dennis Rehberg, a Representative in Congress from the State of Montana—At Large, on H.R. 1158

Chairman Young and Ranking Member Boren, thank you for inviting me to testify before the Subcommittee on H.R. 1158, the *Montana Mineral Conveyance Act*.

Before I begin, it's a privilege to welcome one of my constituents here today, Joe Fox Jr., to testify on this bill. Joe is Vice President of the Northern Cheyenne Tribe, which is located in Southeastern Montana, and he will be able to share with the Subcommittee the importance of this legislation to the Northern Cheyenne. Montana's a long way from Washington, and I appreciate his willingness to travel across the country for this hearing.

I introduced the *Montana Mineral Conveyance Act* to right a wrong that has been done to the Northern Cheyenne. For more than 111 years, the Northern Cheyenne have been deprived of controlling eight sections of land on their Reservation—the only subsurface rights on the Reservation they do *not* own.

The Tribe does not own this property because of an oversight of the United States more than a century ago. The failure to remedy this oversight has gone on for too long. This legislation makes the Northern Cheyenne whole again, which is why I'm proud to sponsor it.

In 1900, the federal government failed to purchase eight sections of subsurface property within the Reservation. This omission left these sections under control of the Northern Pacific Railway, which has since been passed onto Great Northern Properties. The Tribe and Great Northern Properties negotiated an agreement that provides for relinquishment by GNP to the Tribe of these eight sections—or about 5,000 acres—of on-Reservation subsurface coal owned by GNP. In return, GNP will receive approximately 5,000 acres of off-Reservation federal coal located in the Bull Mountains and Bridge Creek federal coal tracts in Montana.

This collaborative legislation strikes a reasonable balance between all impacted parties. The Tribe regains subsurface control, which makes their land and resources contiguous and provides needed revenue. Great Northern Properties receives subsurface access from two other areas in Montana currently owned by the federal government.

This bill will provide much-needed impact funding for the Northern Cheyenne as well. The Tribe will receive 40% of the royalties Great Northern Properties is paid from any coal development that occurs on the federal land received by GNP as compensation. This money will help alleviate some of the challenges now faced on the Reservation, whether it's for healthcare, education or infrastructure.

I'd also like to mention that enactment of this legislation will ensure that 280 miners at Signal Peak's mine in Musselshell County, Montana will keep their good-paying jobs. Rural Montana desperately needs these jobs, and this bill will provide an avenue for uninterrupted coal production. This area has been devastated by recent flooding, and Signal Peak Energy, the mine's owner, has been integral in helping Roundup's residents protect their businesses and homes. I want to thank them for their efforts.

It's important to stress the bipartisan nature of this legislation. This legislation had bipartisan support in 2002—when the Montana Board of Land Commissioners, which is comprised of the top five elected officials in the State, entered into the so-

called Otter Creek settlement with the Northern Cheyenne. That settlement was supported by the entire Montana Congressional delegation.

This bipartisan support continues. Senator Baucus has introduced companion legislation in the Senate. And, the current Montana Board of Land Commissioners, which has five Democrats, including Governor Schweitzer, has sent a letter urging Congress to pass the bill. Today's hearing is a great start.

As you know, federal coal royalties are split between the federal government and the states. While both lose out on royalties, the state supports the settlement and its job-creating impacts. In return for the package of commitments, the Tribe in 2002 promptly dismissed with prejudice a federal court lawsuit against the United States challenging the transfer of the Otter Creek tracts to the State.

I'm working with the Congressional Budget Office to ascertain the cost to the federal government of the withdrawn royalties, but the Tribe's aforementioned claim could offset the value of these royalties. The Tribe committed that, in return for the conveyance to it of the eight sections, it would release any and all claims it may have against the United States for its failure to acquire that subsurface. Furthermore, \$70 million in impact funding contemplated by the Tribe's Otter Creek settlement has been deleted from the bill. Congress, as a result, will not need to appropriate any funds for this legislation upon passage.

With passage of this legislation, the American taxpayer will avoid costly litigation, the Tribe will regain control of its own resources and the associated revenue, and the people of Montana will benefit from the development of Montana's abundant coal reserves. Montana has been called the "Saudi Arabia" of coal. It's plentiful and relatively easy to get to—when the government permits it. Coal can, and should be a part of America's all-of-the-above energy solution to ease prices while stimulating job growth in our rural communities.

Because of everything the bill will do for the Northern Cheyenne, H.R. 1158 has the support of the Montana-Wyoming Tribal Leaders Council and the National Congress of American Indians. This bill is the right thing to do.

In closing, I want to thank Chairman Young and Ranking Member Boren for holding a hearing on this legislation. I also want to thank the Tribe and all those who've come together on this agreement. With your permission, I'd like to submit for the record a letter of support from the Montana Board of Land Commissioners and a resolution passed by the Montana-Wyoming Tribal Leaders Council. Again, thank you, and I'd be happy to answer any questions the Subcommittee may have.

[NOTE: The letters submitted for the record by Mr. Rehberg have been retained in the Committee's official files.]

Mr. HASTINGS. I want to thank my colleagues for their testimony. This Committee, unlike other committees, do question Members. Other committees don't do that. I guess it is not because we are not afraid of what you might say, but whatever it is.

So I just have one question, and I think you alluded to that in your testimony. But the potential is here, clearly, for all of the above energy, if a tribe decides to exercise their rights, if this bill should pass. Is that the essence of what this bill is?

Mr. REHBERG. That is correct. It is a jobs-creator because the property we are talking about, specifically the subsurface, is in the way of, or in the path of an existing mine. And we actually need to probably get, need to get something done through Congress, and signed by the President, if we can, by September, and the Senate is ready to fast-track this, as well. Because it does affect 280 jobs at Signal Peak; it is something that has a little time sensitivity.

So it is part of the all-of-the-above solution, and it is part of the jobs package.

Mr. HASTINGS. Good. Well, I appreciate the gentleman's response. I, too, am a very strong supporter of all-of-the-above energy, and I recognize that the fossil fuels that we have in this country are immense, and we should be utilizing all of those that we possibly can, if that is what the decision is.

Mr. REHBERG. Again, Mr. Chairman, and I would like to stress that I really thank the Cheyenne Tribe for being willing to drop the financial aspect. That is really what is going to allow this to move forward. Because we are in a budget crisis; we know that. I am having to try to find at least \$25 billion worth of reductions just in my Appropriations Subcommittee alone.

And by their being willing to drop the financial aspect, this goes a long ways toward helping us solve a fiscal crisis, too. So it is jobs, it is all of the above, and it is helping with our fiscal crisis.

Mr. HASTINGS. Well, I thank the gentleman for his testimony. And when these agreements can be worked out before a bill is introduced, obviously that is very, very helpful.

Mr. REHBERG. And unusual.

Mr. HASTINGS. I have no further questions. I will ask if any of my colleagues want to ask any questions, rather than going one by one. OK?

With that, Mr. Rehberg, thank you very much for your testimony. I would like to ask that if there are further questions from the Members, we would appreciate it if you could respond in a timely manner.

Mr. REHBERG. I will indeed. Thank you, Mr. Chairman.

Mr. HASTINGS. Thank you. We will now call the next panel. Our next witnesses are Jodi Gillette, the Deputy Assistant Secretary for Indian Affairs. She is accompanied by Mitchell Leverette of the Bureau of Land Management. Mr. Leverette is the Division Chief for BLM's Solid Waste Materials Divisions.

Once again I remind that your testimony, Ms. Gillette, will be entirely part of the record. You have five minutes. And you heard that when the green light goes on, you have the five minutes; yellow light, 30 seconds; and the red light, hopefully you can wrap up.

So with that, gentlelady, you are recognized.

STATEMENT OF JODI GILLETTE, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Ms. GILLETTE. Good morning, Mr. Chairman and members of the Subcommittee. My name is Jodi Gillette, and I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior.

I am here today to provide the Department's position on H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, to allow the Tribe to determine blood quantum requirements for membership in their Tribe, and H.R. 1158, the Montana Mineral Conveyance Act.

It is an honor to appear today before this new and important Subcommittee. I will testify first on H.R. 1560, and then H.R. 1158.

In 1987, Congress passed the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, which restored the Federal trust relationship between the Federal Government and the Ysleta del Sur Pueblo. The Restoration Act proscribes membership for the Tribe to only those individuals on the Tribe's 1984 membership roll and to their descendants with at least one

eighth or more Tewa Ysleta del Sur Pueblo Indian blood, and who are enrolled by the Tribe.

H.R. 1560 would amend the Restoration Act to enable the Tribe to determine for themselves the blood quantum requirements, if any, for membership into the Tribe. This amendment would allow the Tribe to determine their own enrollment criteria, as any other Federally recognized tribe has the right to do.

While the legislation would allow the Tribe to determine the size of its own membership, the Department does not expect an additional tribal priority allocation base funding amount to be awarded to the Tribe. The Department supports the Tribe's request to determine its criteria for membership, which is consistent with the Administration's support for the policies of self-governance and self-determination for all Federally recognized tribes.

H.R. 1158 states that the Northern Cheyenne Tribe has been wronged in two ways by the Federal Government. First in 1990, when the reservation was expanded, the United States Indian inspector made efforts to purchase private lands within the reservation boundaries, but was unable to secure subsurface rights in eight sections, about 5,000 acres, from Northern Pacific Railway.

The mineral rights to the Cheyenne tracts, as they are known, are now held by a successor of the railroad, Great Northern Properties.

Second is the potential for mineral development of the Otter Creek area, which is east of the Tribe's reservation. The 1998 Interior Appropriations Act authorized the conveyance to the State of Montana of all the Federal mineral rights on three Otter Creek tract parts, of which are located within three to four miles of the Northern Cheyenne Reservation.

The Northern Cheyenne filed suit in the U.S. District Court in the District of Columbia in January 2002, against the Secretary of the Interior, to stop the transfer, and to assert that extensive coal mining so close to the reservation would violate several Federal laws and the Federal trust responsibility to the Tribe.

The Tribe's suit was withdrawn, with prejudice, when the Tribe entered into an agreement with the Montana State Board of Land Commissioners, guaranteeing tribal consultation on the approval of mining plans.

H.R. 1158 seeks to accomplish the conveyance to the Tribe of about 5,000 acres in subsurface mineral rights that the Tribe did not receive in 1900, when it acquired the rights to the surface.

Great Northern Properties, under the bill, would receive an exchange conveyance of all interest of the United States of approximately 5,000 acres of unleased Federal coal rights in Montana. The Department supports the goals of H.R. 1158, but has some concerns, and would like to work with the Subcommittee to make some refinements to ensure that the exchange is equal value, and that the appraisals are done consistent with the Department of Justice appraisal standards, and to make its implementation practical.

H.R. 1158 would bring closure to the Tribe's claim against the United States dating back to 1900, but at a cost to the United States and the State of Montana in royalty payments and other revenue associated with Federal coal leasing of these lands.

Furthermore, the Bureau of Land Management estimates the off-reservation Federal coal rights being conveyed to the Great North-

ern Properties contain nearly twice as much coal as the Cheyenne tracts contain.

In addition, we have some concerns with the language in Section 4[a] and 5[c] requiring the conveyance to be carried out “notwithstanding any other Federal law,” as well as the language in Section 5[c] that require the conveyance to be carried out within 90 days of receiving the revenue-sharing agreement, and would like to work with the Subcommittee to address these concerns.

Last, Section 3[2][d] should be amended to reference the appropriate date of March 18, 2011.

Thank you again for the opportunity to testify on H.R. 1560 and H.R. 1158, and I would be glad to take any of your questions.

[The prepared statement of Ms. Gillette follows:]

**Statement of Jodi Gillette, Deputy Assistant Secretary, Indian Affairs,
U.S. Department of the Interior, on H.R. 1158**

Good morning Mr. Chairman and Members of the Subcommittee. My name is Jodi Gillette. I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department’s position on H.R. 1158, the Montana Mineral Conveyance Act. It is an honor to appear today before this new and important Subcommittee.

H.R. 1158 seeks to accomplish the conveyance to the Northern Cheyenne Tribe (Tribe) in Montana of about 5,000 acres in subsurface mineral rights that the Tribe did not receive in 1900, when it acquired the rights to the surface. The subsurface rights are held by a third party, Great Northern Properties, which, under the bill, would receive in exchange approximately 5,000 acres of unleased Federal coal rights in Montana.

The Department of the Interior supports the goals of H.R. 1158, but has some concerns and would like to work with the Committee to make some refinements to ensure that the exchange is equal value and to make its implementation practical. We would like to work with the Sponsor and the Subcommittee to ensure that the exchanges of mineral interests are of equal value and that the appraisals are done consistent with Department of Justice appraisal standards.

BACKGROUND

H.R. 1158 states that the Northern Cheyenne Tribe has been wronged in two ways by the Federal Government. In 1900, when the reservation was expanded, the United States Indian Inspector made efforts to purchase private lands within reservation boundaries, but was unable to secure subsurface rights in eight sections, about 5,000 acres, from the Northern Pacific Railway. The mineral rights to the Cheyenne tracts, as they are known, are now held by a successor of the railroad, Great Northern Properties.

Great Northern Properties has other mineral holdings in the area, including some near the lands containing the mineral rights they would receive in exchange for relinquishing the Cheyenne tracts. These holdings are in an area called Otter Creek, east of the Reservation. It is the potential mineral development of the Otter Creek area that leads to the second claim the Northern Cheyenne Tribe asserts it has against the Federal Government.

The Department of the Interior Appropriations Act of 1998 authorized the conveyance to the State of Montana of all the Federal mineral rights on three Otter Creek tracts, parts of which are located within 3 to 4 miles of the Northern Cheyenne Reservation.

The Northern Cheyenne filed suit in the U.S. District Court in the District of Columbia in January 2002 against the Secretary of the Interior, to stop the transfer and to assert that extensive coal mining so close to its reservation would violate several Federal laws and the Federal trust responsibility to the Tribe.

The Tribe’s suit was withdrawn with prejudice when the Tribe entered into an agreement with the Montana State Board of Land Commissioners guaranteeing tribal consultation on the approval of mining plans. The agreement also requires the State Board’s support of the legislation before you today.

H.R. 1158

H.R. 1158 requires the Secretary of the Interior to convey to Great Northern Properties all interest of the United States in specified unleased Federal coal tracts

in Montana outside of the Tribe's reservation, if Great Northern Properties conveys to the Northern Cheyenne Indian Tribe all its mineral interests underlying specified tracts of land within the Tribe's reservation.

The bill also requires the Northern Cheyenne Tribe to waive legal claims related to the failure of the United States to acquire in trust for the Tribe the private mineral interests underlying the Cheyenne tracts as part of the Tribe's reservation. These waivers should be drafted and included in the bill. The bill instructs the Tribe and Great Northern Properties to notify the Secretary in writing when they have agreed to a formula for the sharing of revenue from the coal produced from the Federal tracts. Finally, we recommend that Great Northern Properties also waive its potential claims against the United States.

H.R. 1158 would bring closure to the Tribe's claim against the United States dating back to 1900, but at a cost to the United States and State of Montana, in royalty payments and other revenue associated with Federal coal leasing of these lands. Furthermore, the Bureau of Land Management (BLM) estimates the off-reservation Federal coal rights being conveyed to Great Northern Properties contain nearly twice as much coal as the Cheyenne tracts contain.

In addition, a portion of the Federal tracts that the bill defines as subject to transfer to Great Northern Properties is included in an ongoing Lease by Application process initiated in 2008 by Signal Peak Energy, which operates an underground coal mine in the area. An Environmental Assessment has been completed for this lease sale, and BLM signed a Finding of No Significant Impact and Decision Record in April 2011. The decision was made to offer the Bull Mountain No. 1 Mine Coal Lease by Application for sale.

If the lease sale is completed before this legislation becomes law, 20 percent of the bidder's bonus payment would be due when the bid is submitted with the balance of the bonus due when the lease is awarded. If a successful bonus bid is received at the sale and all of the other requirements are met, then the payment is sent to the U.S. Treasury with 48 percent obligated to the State of Montana. If the conveyance under this legislation is consummated before the actual issuance of the coal lease, then the Federal Government would not receive the balance of the bonus payment.

In addition, we have concerns with language in section 4(a) and 5(c) requiring the conveyance be carried out "notwithstanding any other Federal law" as well as the language in Section 5(c) that requires the conveyance be carried out within 90 days of receiving the revenue-sharing agreement and would like to work with the subcommittee to address these concerns. Lastly, section 3(2)(D) should be amended to reference the appropriate date of March 18, 2011.

CONCLUSION

Thank you again for the opportunity to testify on the Montana Mineral Conveyance Act. BLM would be glad to work with the Committee on any technical issues associated with the land conveyance. I would be glad to answer your questions.

Statement of Jodi Gillette, Deputy Assistant Secretary, Indian Affairs, U.S. Department of the Interior, on H.R. 1560

Good morning Mr. Chairman and Members of the Subcommittee. My name is Jodi Gillette. I am the Deputy Assistant Secretary for Indian Affairs at the Department of the Interior (Department). I am here today to provide the Department's position on H.R. 1560, a bill to amend the Ysleta del Sur Pueblo and Alabama Coushatta Indian Tribes of Texas Restoration Act to allow the Ysleta del Sur Pueblo Tribe to determine blood quantum requirements for membership in their Tribe. The Department supports H.R. 1560.

BACKGROUND

In 1987 Congress passed the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (Restoration Act), which restored the federal trust relationship between the federal government and the Ysleta del Sur Pueblo (Tribe).

The Restoration Act, (25 U.S.C. § 1300G-7(a)(2)(i)), prescribes membership for the Tribe to only those individuals on the Tribe's 1984 Membership Roll, and to their descendants with at least 1/8 or more Tigua-Ysleta del Sur Pueblo Indian blood and who are enrolled by the Tribe. This codified criterion has been adopted into Article 3, Section 3.01, of the Ysleta del Sur Pueblo Code of Laws. Currently the tribal enrollment for the Ysleta Del Sur Pueblo is 1,691 members. Indian Affairs cannot find any other instances where a Tribe's membership is bound by a blood quantum requirement under Federal statute.

H.R. 1560

H.R. 1560 would amend the Restoration Act to enable the Tribe to determine for themselves the blood-quantum requirements, if any, for membership into the Tribe. The proposed amendment would delete the 1/8 blood quantum requirement and replace the current requirement with “any person of Tigua-Ysleta del Sur Pueblo Indian blood enrolled by the tribe.” This amendment would allow the Tribe to determine their own enrollment criteria, as any other federally-recognized tribe has the right to do.

While the legislation would allow the Tribe to determine the size of its own membership, the Department does not expect an additional Tribal Priority Allocation base funding amount to be awarded to the Tribe.

Indian tribes have the inherent authority to determine their membership. The Supreme Court has noted, “A tribe’s right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.” See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). The Department is in receipt of copies of tribal resolutions from the Ysleta del Sur Pueblo Tribal Council in support of the change to the blood quantum requirements stated within the legislation. The Department supports the Tribe’s request to determine its criteria for membership, which is consistent with the Administration’s support for the policies of Self-Governance and Self-Determination for all federally recognized tribes.

CONCLUSION

This concludes my prepared statement. I will be happy to answer any questions the Subcommittee may have.

Mr. MCCLINTOCK. [Presiding.] Thank you very much, and that is what we will do now. I have just one question for you, and that is, this does deal with sovereignty issues, does it not?

Ms. GILLETTE. Correct.

Mr. MCCLINTOCK. Well, why would the Department object to the phrase “notwithstanding any other law?” Sovereignty is absolute, is it not?

Ms. GILLETTE. Sovereignty is, I am sorry?

Mr. MCCLINTOCK. Absolute. You are either sovereign or you are not.

Ms. GILLETTE. I would like to get back to you on that, unless you have a response, if I could.

Mr. MCCLINTOCK. All right, I appreciate that. That is my only question. I will defer to the Ranking Member, Mr. Luján.

Mr. LUJÁN. Thank you very much, Mr. Chairman. In regards to H.R. 1560, Ms. Gillette, what was the policy behind the Federal Government setting the one-eighth-degree blood quantum threshold to the Tewa Indians in the Restoration Act?

Ms. GILLETTE. The funding? I am sorry.

Mr. LUJÁN. What was the policy behind the establishment of that policy?

Mr. LUJÁN. Of establishing—I don’t think that the Department, I think Congress put that into the law. Are you talking about the one-eighth-degree blood quantum?

Mr. LUJÁN. Correct.

Ms. GILLETTE. I am not, I don’t believe that we had a policy on that. I don’t—

Mr. LUJÁN. It was at the direction of Congress that the Department established the one-eighth-degree threshold?

Ms. GILLETTE. Actually, it is part of the recognition, or the Restoration Act that was passed by Congress. So the Department doesn’t have blood quantum requirements as part of how they

interact with tribes; that is an inherent sovereign right of tribes to determine their own membership.

Mr. LUJÁN. So going back to your testimony, it appears to indicate that the Administration supports H.R. 1560, is that correct?

Ms. GILLETTE. That is correct.

Mr. LUJÁN. In regards to H.R. 1158, in your testimony you imply that the land exchange authorized by this bill would result in a windfall profit in royalties to GNP. This statement is based on an estimate that the underlying mineral estate on the Federal tracts is worth twice as much as the mineral estate underlying the Cheyenne tracts.

Yet this bill would settle claims against the United States that could be worth millions in liability. Moreover, the bill would compensate the Tribe for its loss by authorizing a revenue-sharing agreement with GNP for any coal developed on these tracts.

As trustee, isn't it in the Department's interest to see this bill enacted so as to close the door on its liability, rather than engage in potential costly litigation?

Ms. GILLETTE. I believe that it is in the best interest for all parties that we are supportive of the legislation. I believe that the Department would like to work with the Subcommittee to address some of those concerns of valuation, and we would like to have further discussion with that.

Mr. LUJÁN. Mr. Kerr—oh, he is on the next panel. I apologize.

Ms. Gillette, on the 20 percent of the bidder's bonus payment is due to the United States when the bid for a lease sale is submitted, and the remainder of such payment is due when the lease is awarded. What is a bonus payment?

Mr. LEVERETTE. Yes. A bonus payment is a payment that the successful bidder pays, or a bidder pays when they are bidding on a competitive co-lease. A competitive co-lease consists of three payments: the royalty payment, which is for underground mines, 8 percent; the bonus bid; and the rental, if production is not occurring.

So the bonus is a payment that is made over and above the royalty payment, and you bid that bonus at the time of the competitive bid or the competitive sale. The normal process is 20 percent is due at the time of the bid. And we have a policy that some sales can pay the balance over five years, but for this sale we are trying to, the payment would be required, the full payment would be required at the issuance of the lease.

Mr. LUJÁN. So under the current policy, the remaining portion or time period for that bonus payment is five years? Is that what I just heard?

Mr. LEVERETTE. Yes.

Mr. LUJÁN. Is the 20/80 percent scheme current policy?

Mr. LEVERETTE. Yes. And the policy says that some sales, we should do the deferred bonus, but it doesn't say we have to do all of them that way.

Mr. LUJÁN. I appreciate it. Thank you very much, Mr. Chairman.

Mr. MCCLINTOCK. Mr. Gosar.

Dr. GOSAR. More of a comment, Ms. Gillette, in regards to the appraisal process. We are finding that in Arizona, as well as in any other appraisal process, this is arduous. So I would hope that we

would have a streamlined effect in that appraisal process. Because that will be the holdup. Because we are seeing that all the way across the board.

So I would actually urge some urgency in regards to streamlining that appraisal process.

And then just a real quick question also to my colleague on the other side of the aisle. It is Congress's jurisdiction in regards to oversight of the tribes, is it not?

Ms. GILLETTE. I believe so.

Dr. GOSAR. Thank you.

Mr. MCCLINTOCK. Are you done? That is it? OK. Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chair. Ms. Gillette, going back to H.R. 1560, it seems that one of the uniqueness of what has led to this bill is the fact that in 1968, when the Tribe I guess was first recognized, for some reason the fiduciary responsibility was transferred to the State of Texas, it appears. And somehow the Restoration Act then took that back. Am I correct about that?

Ms. GILLETTE. Yes.

Ms. HANABUSA. And the one-eighth blood quantum, was that something that was instituted in 1968? Or was that something that happened in the Restoration Act?

Ms. GILLETTE. I would have to check back on the record for that. But in the Restoration Act, that is where the blood quantum was specified as part of the legislation, so it was actually in the Act.

Ms. HANABUSA. Is there a reason why, or are you aware of the reason why the transfer or the taking back from the State of Texas of this responsibility, in the Restoration Act? Was there something improper about the original transfer of that obligation to the State of Texas?

Ms. GILLETTE. I am not sure. I am sorry, I don't have the specifics of that history.

Ms. HANABUSA. Could you get back to me on that?

Ms. GILLETTE. Sure.

Ms. HANABUSA. Switching to H.R. 1158, in reviewing the bill itself, there is, of course, Section 5, which speaks to the waiver of legal claims. That statement is also found in Section 2, subpart [8]. And it just refers to the Tribe will waive all legal claims against the United States.

Is there a process where, for example, the Secretary would be satisfied that the Tribe has waived? In other words, you know, I don't want to see us faced with some other kind of class action suit because the waiver is improper.

So in your mind, when this says the Tribe will waive, who or what type of transaction is going to be necessary to ensure that there has been a proper waiver?

Ms. GILLETTE. I will have to get back to you on that. I am not sure what the—that is probably a question that I would ask my solicitor.

Ms. HANABUSA. OK. Now, in addition to that, along those same lines, in reading your testimony, you also recommend that the Great Northern Properties waive its potential claims against the United States as well. I did not find anything like that in the bill. So you are asking that a section like that be included?

Ms. GILLETTE. That is correct.

Ms. HANABUSA. When you are asking for their waiver of potential claims against the United States, what kinds of claims were you thinking of when that was written into your testimony?

Ms. GILLETTE. I will defer to my colleague.

Mr. LEVERETTE. I think we were thinking of some type of takings claim for their resources on the reservation, their mineral resources.

Ms. HANABUSA. That is what I thought you were going to say. So are you saying that though it appears that we are talking about the same kinds of claims, both that the Tribe would have for our failure to protect their interests and the underlying mineral rights; and then you are also saying that the Great Northern Properties has basically somehow vested in those same claims? Is that what the concern is?

Because we are talking about the same mineral rights, aren't we? Subsurface mineral rights.

Mr. LEVERETTE. Yes.

Ms. HANABUSA. So you are saying that you believe that what has happened in this transaction is that the tribes have a legal claim, because the government did not protect their interests in those claims; and Great Northern Properties, through this action way back when, is somehow vested in the same rights, even if the government may not have legally protected the people who truly have the rights to those claims? Am I understanding you correctly?

Mr. LEVERETTE. Yes, and that is what this bill is doing. It will give Great Northern additional mineral rights, and convey the subsurface minerals to the tribe on the reservation. And once that agreement is made, we would hope that all the litigation would, would be removed, or not brought.

Ms. HANABUSA. I think I understand what you are saying. But can you write up for me as well these potential claims against the United States that you are envisioning? And this is on page 2, paragraph, the second paragraph under H.R. 1158. Thank you very much. Thank you, Mr. Chair.

Mr. MCCLINTOCK. Thank you. I want to thank Ms. Gillette for her testimony today, and for Mr. Leverette's expertise. We will now dismiss this panel, and I will call up our final panel of witnesses this morning.

They are Joe Fox, the Vice President of the Northern Cheyenne Tribe; Carlos Hisa, the Lieutenant Governor of the Ysleta del Sur Pueblo; and Charles Kerr, President and CEO of Great Northern Properties.

Again, as a reminder, your oral statements are limited to five minutes. However, your written statement will appear in full in the hearing record. We thank you for joining us this morning.

Also to remind you the microphones are manually activated, so be sure to push that button and get that green light on your microphone base. And we have the lighting system, which has already been explained. So with that, I will introduce again the Hon. Joe Fox, Jr., Vice President of Northern Cheyenne Tribe.

**STATEMENT OF JOE FOX, JR., VICE PRESIDENT,
NORTHERN CHEYENNE TRIBE**

Mr. FOX. Good morning, Mr. Chairman, Subcommittee members. I am Joe Fox, Jr., Vice President of the Northern Cheyenne Tribe. Thank you for the opportunity to convey my Tribe's total support of H.R. 1158.

We greatly appreciate Rep. Rehberg's championing of this much-deserved bill for our Tribe. At this time I would like to introduce two gentlemen, William Walksalong, former Chairman of the Northern Cheyenne Tribe, also Administrative Assistant to the President's Office, LeRoy Spain, and also Steve Chestnut, Chief Legal Counsel for the Northern Cheyenne Tribe. These two gentlemen have been involved in this bill process for 18 years.

The following summarizes somewhat the points discussed at greater length in my written submission to the Committee on H.R. 1158. It is of tremendous importance to my people. We have been pursuing remedies for the issues it addresses for decades.

Our reservation is truly the homeland of the Northern Cheyenne people. Ninety-nine percent of the surface is owned and controlled and used by the Northern Cheyenne, and 90 percent of the resident population is Northern Cheyenne. Of all subsurface, except for each section of subsurfaces owned by Great Northern Properties, have been addressed by H.R. 1158, is owned by the Tribe as a whole.

H.R. 1158 will correct a 111-year-old Federal error, which had an unintended effect of denying the Tribe, from 1900 to the present, ownership of these eight sections of subsurface. H.R. 1158 would consolidate our land base, prevent development of that subsurface without our consent, and otherwise protect our homeland. Protection of our reservation is of the greatest importance to us.

H.R. 1158 will also help address a major problem which has plagued us for 40 years, arising from the intensifying pattern of coal-related development encircling our reservation. Much of this development has been sponsored and facilitated by the Tribe's trustee, the United States, and has provided vast revenues to the United States.

As shown on two maps attached to my written statement, our reservation has been surrounded by coal-related development. Although the development provides tremendous revenue in the form of bonuses, rents, royalties, and multiple tax revenues to the United States, the State and its subdivisions, we receive none of that revenue.

Also, the Tribe and its members barely share in the upside of the development, such as jobs, commercial opportunity, although our unemployment rate averaged around 65 percent. Thus, we get negatives and virtually none of the positives of the nearby development that surrounds our homeland.

Public services and facilities on the reservation are chronically substandard and inferior to those of the off-reservation communities. This is made worse by the increasing pressures of surrounding development.

H.R. 1158 would enable the Tribe to acquire, from GNP at least, a 40 percent interest in the royalties. GNP would receive from the leasing of the coal tracts, GNP would receive, under H.R. 1158, the Bowl Mountain tracts. And if ever developed, the Bridge Creek

tracts. Thus, for the first time, the Tribe would receive development-related funding to address the substandard and declining conditions on the reservation. The funding would come from royalties received by GNP under an arrangement the Tribe conceived, and then negotiated with GNP.

H.R. 1158 is a key element of the comprehensive settlement arrangements developed and negotiated by the Tribe with the Montana Congressional Delegation. Sen. Campbell, State of Montana, Great Northern Properties, in consultation with the Secretary of the Interior, Gale Norton, and a bill in Montana State Office and the Bureau of Indian Affairs.

The Tribe initiated that settlement effort in 2001, triggered by Federal legislation causing the transfer of the Federal Otter Creek coal tracts to the State of Montana. Those massive tracts lie just east of our reservation, and combine with adjoining private and State coal, contain about 1.2 billion tons of minable coal.

It was very difficult to achieve this settlement. Many parties were involved, and we pursued it with great determination and honor all settlement commitments we made, including dismissal of litigation we had filed against the United States challenging the Otter Creek transfer.

The settlement arrangements also called for Federal legislation that would provide \$70 million in Federal impact funding to the Tribe. Unfortunately, we had to delete the funding from the bill with the current Congressional realities. Therefore, the impact funding we would now receive is from royalty interests we proposed and negotiated with GNP. In the future, our Tribe will continue to pursue the \$70 million in impact funding.

[The prepared statement of Mr. Fox follows:]

**Statement of Joe Fox, Jr., Vice President,
Northern Cheyenne Tribe, on H.R. 1158**

Chairman Young and Committee Members, I am Joe Fox, Jr., Vice President of the Northern Cheyenne Tribe of Montana. I was elected as Vice President for a four-year term by vote of our Tribal membership. Prior to that, I was elected by the people to multiple terms on our Tribal governing body, the 11-person Northern Cheyenne Tribal Council. I am pleased to be here today to testify on behalf of the Northern Cheyenne Tribe in strong support of H.R. 1158, the Montana Mineral Conveyance Act. I am accompanied by Steve Chestnut, who has been the Tribe's principle attorney since 1973, and has represented the Tribe in all of the matters referred to in our submissions to the Committee.

If H.R. 1158 is enacted, several long-standing paramount issues for the Northern Cheyenne will finally be resolved. First, our Reservation will finally be made whole by rectifying an error made by the United States over a century ago. Second, commitments made to the Tribe in 2002 by the Montana Congressional delegation, others and the State of Montana to help mitigate the adverse effects on our Tribe and Reservation of 40 years of coal-related development encircling our Reservation, largely sponsored and facilitated by the Federal Government, notwithstanding its trust responsibilities to the Tribe, will be fulfilled. H.R. 1158 will enable the provision to the Tribe by Great Northern Properties (GNP) of a desperately needed revenue stream to help mitigated the many impacts of the encircling development on our Reservation and people. This pattern of development culminated most recently in the Congressionally-directed transfer to the State of Montana in 2002 of the massive federal Otter Creek coal tracks adjacent to our reservation.

Attached to my written statement is a document that summarizes the Northern Cheyennes' dramatic struggles over the past 40 years with that coal-related development, which provides perspective on why the enactment of the Montana Mineral Conveyance Act is just and appropriate. I also have attached copies of a letter signed by each member of the State of Montana's Board of Land Commissioners (consisting of the State's five top elected officials), a resolution of the Montana-Wyo-

ming Tribal Leader's Council, and a resolution of the National Congress of American Indians, each supporting H.R. 1158 and urging its passage. Finally, I have included two maps—one showing how our Reservation has been encircled by coal-related development projects, and another showing our Reservation, its communities and the network of on-Reservation roads serving those off-Reservation projects. As discussed in greater detail herein, these projects visit extensive unmitigated impacts on our Reservation and people, while the Tribe and its members are excluded from the compensating benefits (impact funding, employment, and commercial opportunity) of such development.

We Northern Cheyenne cherish our land. To us, our land is everything. It has provided for our families for centuries. After we were forcibly relocated to the Oklahoma Territory in 1878 as retribution for our resistance to White domination and our participation in the Battle of the Little Bighorn (the Custer Battle), we (uniquely among all other tribes so relocated) trekked back to our historic homeland in Montana. This journey came at great cost to the Tribe—death, imprisonment and other deprivations—as we were hounded along the way by thousands of hostile military and settlers. We eventually made it back to Montana to reclaim our homeland and the Northern Cheyenne Reservation was later formally established by Presidential Executive Order in 1884.

Today the Northern Cheyenne Reservation is bordered on the west by the much larger Crow Indian Reservation and on the east by the Tongue River. Our Reservation is truly the homeland of the Northern Cheyenne. The Reservation population is approximately 90% Northern Cheyenne. Non-Indian presence on the Reservation is minimal. A majority of our more than 9000 Tribal members reside on the Reservation. Traditional Cheyenne values and culture still thrive on the Reservation and the Cheyenne language is still spoken. The Reservation remains culturally distinct from the surrounding land and communities.

Of its 447,000 acres, 99% of the Reservation surface is owned, controlled and used by the Tribe and its members. The primary land uses are cattle grazing, timber harvesting (entirely suspended for years due to adverse market conditions), and ceremonial and subsistence use. Non-Indian use of Reservation lands is minimal. The entire Reservation mineral estate—except for the eight sections that are the subject of H.R. 1158—is owned by the Tribe as a single entity. Because of the paramount importance to us of our land, we have a sacred duty to pursue ownership of the eight sections. Securing ownership of those eight sections has been a priority of the Northern Cheyenne for decades and H.R. 1158 will finally accomplish that goal.

The eight sections of subsurface are also of great commercial value—50 years ago, the then-owner Burlington Northern Railroad—leased that subsurface to Peabody Coal Company for valuable consideration. Although those leases are no longer in force, we don't want to suffer that experience again. But, without ownership of that subsurface, we at best have limited power over, and would suffer impacts and gain scant benefits from, its development.

We have been continuously deprived of ownership of the eight sections because of a federal error which occurred at the end of the 19th century. Because of hostilities and violence then prevailing between Northern Cheyenne and legal and illegal non-Indian settlers on or adjacent to the Tribe's 1884 Reservation, Congress directed Indian Inspector James McLaughlin to buy out the legal and non-Indian illegal interests on and near the Reservation, so that the Reservation could be enlarged eastward to the middle of Tongue River. McLaughlin proceeded to do so, paying the legal and illegal settlers between \$1500 and \$2000 per claim. In contrast, Inspector McLaughlin paid only \$25 per family to Northern Cheyennes then living on federal land previously allocated to them east of the Tongue River. The Reservation was then expanded eastward to mid-channel of the Tongue River by Presidential Executive Order in 1900.

In performing his duties, Inspector McLaughlin made a critical error. Although he purchased all lands within the Reservation (as expanded) then owned by Northern Pacific Railway, Inspector McLaughlin missed eight sections of subsurface beneath surface the Railway had previously conveyed to others. For 111 years, the United States has failed to remedy this error by buying this valuable mineral estate for the Tribe. Approximately 20 years ago, Great Northern Properties (GNP) purchased the entire inventory of railroad subsurface in Montana and elsewhere, including the eight sections on the Northern Cheyenne Reservation. With the willing cooperation of GNP and the Tribe, the United States is now in a position to remedy that continuing federal omission. The Northern Cheyenne have waited many decades for this opportunity.

The Northern Cheyenne Reservation lies in the heart of Montana's Powder River coal region. As shown in the attached maps, the Reservation is surrounded on all sides by major existing and proposed coal-related projects and includes a network

of roads used by these off-Reservation projects to travel through the reservation and the region. This pattern of development produces major influxes of newcomers to the area and leads to undesirable socio-economic effects on the Tribe, including on-Reservation crime, traffic and accidents. Because Tribal government lacks adequate legal authority and resources to deal with these non-Indian incursions, there are heightened tensions between Tribal members and non-Indian intruders.

Public services and facilities on the Reservation have long been grossly inadequate, both in absolute terms and in marked contrast to off-Reservation communities. The surrounding development increases pressures on those public services and facilities. Severe deficits have been documented Reservation housing, water and sewer, solid waste, education, health care, law enforcement, fire protection, and transportation. Those deficits increase as on-and off-Reservation populations increase with development.

With no tax base and minimal on-Reservation economic development, the Tribe thoroughly lacks the financial resources to address these socio-economic impacts and respond to the increased demands. In contrast, the surrounding development produces tremendous public revenues (lease bonuses, rents and royalties, state production taxes, real and personal property taxes, and other exactions) for the United States, the State and the counties and municipalities adjoin the Reservation. The Tribe is privy to none of these public revenues.

Also, although the Northern Cheyenne constitute the largest indigenous community in the immediate area, and suffer chronic unemployment rates averaging 65%, very few Northern Cheyenne are employed in these off-Reservation projects. Indeed, reservation unemployment rates have not improved during the course of this development of coal mines and power plants in the vicinity of the Reservation. Historically, Native Americans employment in Montana's Powder River Basin mines has averaged approximately only 3.5% of the total labor force, absent any special hiring agreement mandates, even though the Northern Cheyenne represent the area's largest, most available and neediest labor pool. State law does not authorize the holders of State mining leases to offer any employment preferences to local Native Americans. Relief in this area occurs only in the few situations where the Tribe, through aggressive legal action, wrests a special employment program from a typically hostile project, with predictable ensuing enforcement difficulties. The bottom line is that average per capita income on the Northern Cheyenne Reservation is a minor fraction of that in surrounding communities, and the Tribal unemployment rate is many multiples of the off-Reservation rate.

In summary, because of the very weak economic ties between the Reservation and surrounding off-Reservation communities, the Northern Cheyenne have not shared in the economic gains from regional coal development. The Reservation does not benefit significantly in terms of jobs, construction contracts, general business activity, or increases in Tribal governmental revenues from the regional increase in economic activity generated by additional off-Reservation coal development. Thus, the Northern Cheyenne suffer an array of major adverse impacts from the off-Reservation (largely federally-sponsored or facilitated) coal-related development and enjoy few, if any, of the compensating benefits enjoyed by the United States, the State and surrounding communities and residents.

The Congressionally-directed transfer in 2002 of the massive federal Otter Creek Coal Tracts to the State of Montana perpetuates and exacerbates these inequities. The Otter Creek Tracts comprise about 8,000 acres of coal lands along both sides of Otter Creek south of Ashland, Montana, and just east of the Northern Cheyenne Reservation. The Tracts are estimated to contain 533 million tons of recoverable coal reserves. The surface rights to the Otter Creek Tracts are held by private landowners, the State of Montana and the Bureau of Land Management. Otter Creek is a tributary of the Tongue River, which forms the eastern boundary of the Northern Cheyenne Reservation.

Although outside the boundaries of the Reservation, the Otter Creek Valley is within the ancestral territory of the Northern Cheyenne. Following bloody conflicts between the United States government and the Tribe in the latter part of the 19th century, the United States reserved lands for the Northern Cheyenne both east and west of the Tongue River. With the assistance of the United States, many Northern Cheyenne families homesteaded under federal law east of the Tongue River along Otter Creek. These families were later induced to move by the federal government, for unconscionably low consideration of \$25 per family, onto the Northern Cheyenne Reservation when the final boundaries of the Reservation were established in 1900. Consequently, the Otter Creek area has great legal, historical and cultural importance to the Tribe and its members. Ancestors of current Tribal members are buried in the Otter Creek area.

For the past 40 years, all of the foregoing Northern Cheyenne concerns and issues regarding encircling coal-related development have been very publically and repeatedly raised by the Northern Cheyenne to the United States, the State and industry, as described in the memo submitted contemporaneously herewith. Most recently, the Tribe did so in connection with the plan to transfer the Otter Creek Tracts to the State.

The Otter Creek Tracts contain more than half a billion tons of federal coal and are checkerboarded with more than 700 million tons of private and other State coal. The result is the single largest block of currently available, developable coal reserves in Montana. Those resources have now been entirely leased to a wholly-owned subsidiary of Arch Coal, Inc., the Nation's second largest coal mining company, and Arch is aggressively proceeding toward development.

Out of the above concerns, the Tribe, in extensive correspondence and meetings with all major interests, strongly and repeatedly expressed opposition to the proposed transfer of the Otter Creek tracts to the State, without accompanying mitigation measures. Solely on its own initiative, throughout 2001 the Tribe met separately and extensively with members of Congress, the Governor, the other top elected officials of the State, the Secretary of the Interior, BLM, BIA, industry and other interested parties, while the Secretary honored a commitment sought and obtained by the Tribe to withhold the Otter Creek transfer while the Tribe pursued settlement discussions.

With scant resources for travel, professional assistance and other necessary expenses—but armed with a long and remarkably successful record of advocating and demonstrating the legitimacy of its concerns—the Tribe's settlement initiative bore fruit:

1. The Tribe proposed and successfully negotiated and drafted a Settlement Agreement with the Montana Board of Land Commissioners, which committed the State to the following:
 - a. In leasing the Otter Creek Tracts to industry, the State will require that the lessee, in close consultation with the Tribe, adopt special Operating Plans aimed at providing:
 - enhanced Project employment opportunity to Indians (principally Northern Cheyennes), including training at all levels and for advancement;
 - enhanced opportunity to Northern Cheyenne businesses to obtain Project contracts for goods and services;
 - an on-Reservation conduct program designed to encourage Project employees and truckers to behave appropriately while on the Reservation;
 - enhanced environmental protection for the Reservation; and
 - enhanced protection for Northern Cheyenne historic, cultural, religious and burial sites in the conduct of Project operations.
 - b. State Land Board support for the improvement of certain off-Reservation roads in the area.
 - c. State Land Board support for cooperative law enforcement agreements among the Tribe and State and county law enforcement agencies.
 - d. State Land Board support for legislation along the lines now before this Committee (including promised federal impact funding for the Tribe, which has now been deleted from the bill), even though departure of the Bull Mountains tracts and the Bridge Creek tracts from federal ownership will eliminate the State's half-interest in proceeds of federal leasing of those tracts.

In return for the foregoing State commitments, the Tribe agreed to dismiss with prejudice a lawsuit it had filed in Federal District Court in Washington, D.C. to enjoin the Secretary's transfer of the Otter Creek Tracts to the State. The Tribe filed that action on the eve of consummation of the Otter Creek settlement, upon receiving a tip from an informed source that—notwithstanding her standstill commitment and without notifying the Tribe—the Secretary was about to convey the tracts to the State. After consummating the Settlement Agreement with the State, as promised the Tribe immediately dismissed the lawsuit with prejudice.

As part of its settlement initiative, the Tribe on its own initiation also approached GNP with a proposal to resolve by agreement the 111-year old federal error which deprived the Tribe of ownership of the eight sections of Reservation subsurface now owned by GNP. The Tribe successfully negotiated and drafted a written agreement with GNP committing GNP to deed its eight sections of Reservation subsurface to the Tribe if GNP receives off-Reservation federal coal reserves in Montana in lieu thereof. Because the eight Reservation sections were encumbered by a royalty interest reserved by the Burlington Northern subsidiary that sold the eight sections to

GNP, the Tribe—GNP agreement also provides that the Tribe will receive at least an identical interest in the royalties GNP would receive from leasing the off-Reservation federal coal—specifically, at least 40% of those royalties if the off-Reservation coal is subbituminous and at least 24% if the off-Reservation coal is lignite. The federal coal tracts which have been identified by GNP and the Tribe for this transaction, and which are described in the bill, consist of tracts within the Bull Mountains Life of Mine Plan to be mined in the near term, plus tracts at Bridge Creek immediately to the east of the Northern Cheyenne Reservation.

Without these Bull Mountain tracts, the Bull Mountains Mine would have to shut down within approximately three years, and hundreds of jobs and secondary economic development would be lost to that part of Montana. In contrast, the Bridge Creek tracts would be mined—if at all—many years from now.

The Tribe's royalty interest in the Bull Mountains tracts would provide sorely needed revenue to the besieged and impoverished Northern Cheyenne Tribe. The Tribe's royalty interest in the Bridge Creek tracts would, if the tracts were ever mined, be the only source of funding available to the Tribe to deal with the impacts of the mining of those tracts on the margins of the Reservation. All of these tracts contain subbituminous coal and the Tribe would therefore hold at least a 40% interest in the royalties derived therefrom.

In negotiating its Otter Creek settlement with all parties from beginning to end, the Tribe worked closely and with the encouragement of the Montana Congressional delegation (Senators Burns and Senator Baucus and Representative Rehberg), Senator Campbell, and the BLM's Montana State Office. In addition to legislation facilitating the coal transfers described above, the Tribe also negotiated for federal impact funding which, for the first time, would provide public revenues to the Tribe to help mitigate the accrued and projected impacts of the current and projected coal-related development encircling the Reservation. Again, largely sponsored and facilitated by the Tribe's trustee (the United States), the trustee receives major financial returns from this development while visiting a broad range of unmitigated major impacts on the Tribe and Reservation. In addition, uniquely among all other affected jurisdictions (federal and state), the Tribe is frozen-out from any mitigation funding, as well as anything beyond token employment and commercial opportunities.

The understanding reached with Congressional representatives in the settlement discussions, was that federal impact funding of \$10 million per year for seven years would be sought through legislation, structured in a way to assure that that financial resource would be a permanent resource, available to the Tribe to fund on-Reservation public services, facilities and other governmental matters, as new development projects proceeded within 25 miles of the Reservation.

The Tribe, in good faith, relied on all of these commitments in consummating the Otter Creek settlement and dismissing its litigation against the Otter Creek transfer. However, the impact funding has now been withdrawn from the bill in light of the current prevailing difficulties in securing any direct funding from Congress. Thus, as things currently stand, the proceeds of the proposed Tribal 40% interest in the GNP royalties stands as the only potential source of impact funding available to the Tribe to cope with the accrued and future impacts of surrounding coal-related development, including the massive development envisioned at the Otter Creek tracts.

As it always has, the Tribe has proceeded throughout this episode with integrity and honor. The bill, if enacted, would achieve the following constructive results:

- (1) Remediate the federal government's 111-year error which has deprived the Tribe of ownership of eight sections of Reservation subsurface. As the bill provides, in return for the mineral conveyances provided for in the bill, the Tribe would release any and all claims it may have against the United States for that error.
- (2) Consolidate the Tribe's land base.
- (3) Prevent GNP (or anyone else) from developing the eight sections without Tribal consent or benefit, irrespective of the long-standing Tribal concerns about Reservation coal development.
- (4) At long last, provide revenue to the Tribe to help the Tribe cope with the accrued and future impacts of adjoining off-Reservation coal-related development.
- (5) Address the long-standing injustices suffered by the Tribe from federally-sponsored and facilitated coal-related development in areas near the Reservation, while the Tribe's trustee financially benefits from such development.
- (6) Reward the Tribe for its self-generated, steadfast and honorable effort to resolve these matters by agreement rather than litigation.

Again, Chairman Young and Committee Members, I want to thank you for your consideration of H.R. 1158, the Montana Mineral Conveyance Act. Enactment of this bill will help address many wrongs that have been done to the Northern Cheyenne by the United States over the centuries. The Tribe did not create the situation we now find ourselves in and we hope Congress and the Administration can do the right thing and enable the Northern Cheyenne to be in control of their own destiny.

[NOTE: Attachments have been retained in the Committee's official files.]

Mr. McCLINTOCK. Thank you, Mr. Fox, I am going to have to interrupt you. The five minutes has expired. But your full testimony will appear in the Committee's record. I thank you, and if you will hang on for a moment, we will get to some questions in a few minutes.

Our next witness is the Hon. Carlos Hisa, the Lieutenant Governor of the Ysleta del Sur Pueblo. Welcome.

STATEMENT OF THE HON. CARLOS HISA, LIEUTENANT GOVERNOR OF THE YSLETA DEL SUR PUEBLO INDIAN RESERVATION

Mr. HISA. Thank you. Good morning, Mr. Chairman, members of the Committee. Thank you for allowing me to come and present. It is an honor to be here.

My name is Carlos Hisa. I am the Lieutenant Governor for Ysleta del Sur Pueblo Indian Reservation located in El Paso, Texas. With me today I have Chris Gomez, Council Member for the Pueblo, and Trini Gonzalez, also Council Member for the Pueblo. Once again, thank you.

With the blessing of our Cacique, we are here asking the Committee to consider House Bill H.R. 1560. House Bill H.R. 1560 will allow the Pueblo to determine its own membership. It is something that every other nation and tribe here in the United States of America has the ability of doing—so we are just coming here asking for parity, fairness, to be able to do the same.

This bill is the same bill that was introduced by Congressman Reyes on the last session. It was House Bill H.R. 5811. The bill passed with no problems, no opposition here from the House, but it failed to pass in the Senate because of an inaccurate report by the CBO. The CBO stated that the additional membership would have to come along with additional funding from the Federal Government. Again, that was an inaccurate statement. You heard earlier from a BIA representative stating it would not affect the funding, current funding situation. And also in my written testimony you will find a letter from IHS and BIA stating the same, that funding is not based on population, so it will not affect any funding that we are receiving currently from the Federal Government.

In addition to that, I also want to add that is a very important issue for our Pueblo. I have been in office for 10 years, and ever since I have been elected this has been a priority for Pueblo. Thanks to the efforts of Congressman Reyes and his support, we have come year after year and tried to get this passed.

Last week, June 13 was a very special day for the Pueblo. It is their annual feast day. It is the biggest day of celebration and tradition and ceremony for the Pueblo. We had over 101 participants dancing in 103-degree weather. That doesn't include the people

helping in the kitchen, the chancellors, everybody else that was helping.

In the group of dancers, there was, my daughter was dancing. She is 13 years old. She was there because she wanted to be there. She participated from 6 o'clock in the morning to 8:45 at night, when we, it was approximately 8:45 when we terminated the feast day.

Actually, she was there because she wanted to. She understands our way of life. She recognizes that our efforts from our ancestors to remain Tewa and just fight for what we believe in is something that we cannot let die.

She does not meet the quantum requirements. That day she was Tewa. She is Tewa. And nobody asked for her blood quantum where she stood. She just participated because it comes from the heart, and she is considered part of the Pueblo.

The question we need to ask each other is if my daughter decides to run for a position on Council in the near future, will she be recognized as a legitimate Council member, as a legitimate tribal member, by the Federal Government? Is that, that actually threatens who we are as a people, and our future, and our existence.

So with that, I ask that the Committee consider and support the passage of House Bill H.R. 1560. I am here to answer any questions that you might have, and thank you once again.

[The prepared statement of Mr. Hisa follows:]

**Statement of The Honorable Carlos Hisa, Lt. Governor,
Ysleta del Sur Pueblo, on H.R. 1530**

Good morning Mr. Chairman, honorable members of the Indian and Alaska Native Affairs Sub-Committee. My name is Carlos Hisa. I am a member of Ysleta del Sur Pueblo located in El Paso County, Texas. For the past 10 years I have served as the Lt. Governor of the Pueblo. My term of office is one year. The matter under consideration has been a priority for the Pueblo since before my first term.

Any assessment of last year's elections must acknowledge the American spirit for local control and cost constraint. The bill, H.R. 1530, embodies such spirit. This bill is about local freedom—to determine the destiny of one's own community.

H.R. 1530 is about freedom—freedom from intrusive federal control. Beginning in the 1970s, this Congress embarked on a new federal Indian policy. You rejected the destructive policies of termination of Indian tribes, assimilation of Indian people and their culture, and the dispossession and despoiling of Indian lands. Instead, you created the present self-determination era of Indian law to free Indian tribes from an overreaching federal government. This Congress has encouraged Indian tribes to take up the mantle of self-government as distinct and independent political entities. Critical to that task is the ability of an Indian tribe to determine its own membership. The Supreme Court has noted, "A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

The Pueblo has occupied its present location since the Spaniards removed it from New Mexico during the Pueblo Revolt of 1680, which is twice as long as the existence of the State of Texas. It is the longest continually occupied community in Texas. It is the only Indian Pueblo in Texas. It recently rejoined the All Indian Pueblo Council after being absent for over 330 years. The Council now comprises twenty Pueblos.

In 1968, toward the end of the termination era, Congress recognized the Pueblo as an Indian tribe and transferred federal trust responsibilities for the Pueblo to the State of Texas. On August 18, 1987, the United States Congress restored the Federal trust relationship between the United States and the Pueblo. In the Restoration Act, Congress imposed a 1/8th Tigua blood quantum requirement for membership.

No other Indian tribe in Texas is subject to a congressionally mandated blood quantum limitation on its membership. No other Pueblo is subject to such a blood

quantum limitation. Except for two early termination era enactments, Congress has subjected no other tribe in the United States to such a blood quantum limitation. In fact Congress has declined to include such a blood quantum limitation on those Indian tribes which Congress has recognized (five tribes) or restored to trust relationship (two tribes) subsequent to the Pueblo's Restoration Act. With the exception of Ysleta del Sur Pueblo, Congress has not imposed a blood quantum limitation on any tribe in over half a century.

Ysleta del Sur Pueblo is a tribe of Tigua Indians. To be Tigua is to believe in the power of the drum, the heartbeat of our community; to respect the authority of the Cacique; and to revere our traditions. Unfortunately, the blood quantum limitation has had the effect of preventing Tiguas from being members. At present, sixty-six percent of tribal members lack a 1/4 blood quantum. Absent the other parent having sufficient Tigua blood quantum, the children of sixty-six percent of tribal members cannot be members of the Pueblo despite being Tigua. This includes my three daughters.

Our young men and women are vibrant Pueblo people who are part of our community. Many aspire to serve our Pueblo, but do not meet the blood quantum limitation to be a member. They participate in our cultural events, they study our history, they engage in community service, they learn and speak the Tiwa language, and they understand the importance of carrying the traditions of our Pueblo forward. These "descendants" are a part of our community and our people recognize them as legitimate members. They are Tigua. They are our future, our hope, but they will not be able to serve as Tribal Councilmen and Councilwomen, offices that are older than the office of President of the United States. They will not be eligible for services from the Pueblo.

They live on our reservation and interact with our members who are their mothers, fathers, grandfathers, grandmothers, cousins, uncles, aunts, and neighbors and influence the entire community for good or for bad. They must be treated like citizens of our Pueblo, but if not included as members they will not be subject to the jurisdiction of the Pueblo. The inability to exert jurisdiction over people who are the children of many of our members has a negative social impact on our Pueblo.

Passage of H.R. 1530 frees the Pueblo to make all Tigua members rather than accepting only those who meet the requisite blood quantum but who may otherwise be anything but "Tigua." Passage of H.R. 1530 assures the future of the Pueblo and the continued security of its people and neighbors without cost to the federal government.

The legislative history of the Pueblo's Restoration Act records the Department of the Interior's belief that the Congress should place some limit on the potential service population of tribes being made eligible for federal benefits for the first time—a concern, as previously noted, that has been applied only to this Pueblo. Congress has never seen fit to do so since the Pueblo's Restoration Act, perhaps due to the sentiments expressed in a House Committee Report accompanying the bill –

The Committee has strong reservations about the constitutionality of a law which would determine eligibility for such Federal services based on a racial criterion such as the degree of Indian blood instead of a political criterion such as the membership in an Indian tribe.

The language of H.R. 1530 is the same as that H.R. 5811 introduced by Congressman Reyes in the last Congress. On a motion to suspend the rules, the House agreed to and passed the bill by voice vote on September 22, 2010. The Senate Indian Affairs Committee reported the bill favorably by unanimous voice vote on November 18, 2010. The bill was placed on the Senate Legislative Calendar under General Orders where it languished, possibly due to an erroneous CBO cost estimate.

Given the unique manner in which the federal government funds Native American services, enactment of H.R. 1530 will have no fiscal impact. In support of this statement I am providing the committee with copies of an April 29, 2011 letter from William T. Walker, Regional Director of the southwest Region of the Bureau of Indian Affairs, and a May 11, 2011 letter from Assistant Surgeon General Richie K. Grinnell, Acting Director of the Department of Health and Human Services Albuquerque Area Health Services. In his letter, Director Walker confirms:

"An increase in tribal members, once recognized, has no bearing on the TPA base budget."

Assistant Surgeon General Grinnell confirms in his letter that under this legislation:

"The Ysleta del Sur Pueblo funding would not increase due to an increase in Tribal enrollment."

In addition to these two letters, I respectfully direct your attention to the CBO cost estimate of H.R. 2912, introduced in the 108th Congress, which was passed and

signed into law, and did for the Osage Tribe what the H.R. 1530 will do for the Pueblo:

The CBO estimates that implementing H.R. 2912 would have no effect on the federal budget because federal agencies currently provide services to all Osage Indians and do not restrict services to those considered to be members of the tribe under the Osage Allotment Act. Enacting H.R. 2912 would not affect revenues or direct spending.

I am providing the committee with a copy of the Osage CBO estimate.

Passage of H.R. 1530 frees the Pueblo to determine its own future, is consistent with recent congressional action, and has no impact on the federal coffers. I respectfully request your support for and passage of H.R. 1530.

Mr. McCLINTOCK. Thank you. Our final witness is Charles Kerr, President and CEO of Great Northern Properties.

**STATEMENT OF CHARLES KERR, PRESIDENT AND CEO,
GREAT NORTHERN PROPERTIES**

Mr. KERR. Mr. Chairman, Committee members, my name is Chuck Kerr, President and CEO of Great Northern Properties. I am pleased to be here today to testify in strong support of H.R. 1158, the Montana Mineral Conveyance Act.

GNP is a privately held limited partnership that in 1992 acquired all of the former Northern Pacific, now Burlington Northern Santa Fe, land grant lands in Montana and North Dakota. In this acquisition, GNP acquired approximately 5 million middle acres, 225,000 surface acres, under which lie about 20 billion tons of coal. As part of that transaction, we did acquire the eight sections of land that are obviously subject to H.R. 1158.

A lot of history has transpired relative to the Otter Creek tracts, and leading up to H.R. 1158. My testimony today is on GNP's involvement.

GNP is a facilitator here. This is all about the Tribe, and the correction of an error that was made by the U.S. Government in 1900. Our job here is to work with the Tribe and facilitate this exchange.

GNP and the Tribe entered into an agreement to facilitate that. This agreement provides for two things. Number one, coordination and cooperation in facilitating the exchange, and to the extent that impact money could be provided, to support that. But second, to also provide a means of income for the Tribe on off-reservation exchanged tracts via a vehicle called the non-participating royalty interest.

GNP and the Tribe have agreed that the Tribe would participate in the off-reservation exchange tracts, if so enacted, to the tune of a 40 percent royalty interest to the Northern Cheyenne.

What is important to note is the underlying fundamentals that created this agreement. Number one, this is a settlement. This isn't your typical land exchange. And because of that, we are very concerned about the timing of this exchange.

The goal here is to effect a quick exchange that will allow completion of the goals of fixing the error, as well as providing income to the Tribe, without the costly time-consuming appraisals and additional studies that would be required.

The second driver obviously is the revenue source. The Northern Cheyenne need revenue. They are not applying for impact funding under this bill. This would potentially provide them with an income stream.

Third, and a major driver to the Northern Cheyenne, is that this consolidates their ownership of their own mineral resource. And this is extremely important to them because it will allow them to control 100 percent of the Tribe's mineral resources, the development and timing of that. It is extremely important for GNP to facilitate this. We are going to be a neighbor and an economic partner of the Tribe if so enacted.

The two tracts that we have nominated for the exchange satisfy the criteria above that I have previously explained. The Bridge Creek are very near the Northern Cheyenne Indian Reservation, and it is likely that the development of those tracts will take place some time in the next 15 to 20 years. It is a long time in coming; it is a wonderful reserve, but it will take time.

The five sections of tracts of land that we have nominated in the Bowl Mountains area do two things. Number one, it does facilitate an important problem that the current underground mine operator is undergoing, in that they need these five tracts in order to continue mining. Without these tracts in some control of theirs, they will not be able to mine.

Currently the lease process being undertaken by the Federal Government is being challenged legally. It is uncertain as to when that will take place.

The Bowl Mountains tracts are likely to be mined in the next 10 to 15 years. Revenue could be seen to the Tribe and GNP as early as 2015, but the majority of the income will occur in the next 10 to 12 years.

We believe that this, the enactment of H.R. 1158, is the right thing to do. It satisfies all sorts of issues on numerous fronts. It consolidates Northern Cheyenne Indian Reservation's holdings, provides them with income. It solves an issue that the U.S. has with the Northern Cheyenne, and it also provides the State of Montana and GNP with this fulfillment of its obligations under the agreements that were there.

We ask for strong support of the Committee in H.R. 1158. I am available for questions.

[The prepared statement of Mr. Kerr follows:]

Statement of Chuck Kerr, President & CEO, Great Northern Properties Limited Partnership, on H.R. 1158

Chairman Young and Committee Members, I am Chuck Kerr, President and Chief Executive Officer of Great Northern Properties Limited Partnership ("GNP"). I am pleased to be here today to testify in strong support of H.R. 1158, the Montana Mineral Conveyance Act.

GNP is a privately held limited partnership that in 1992, acquired all of the former Northern Pacific Railroad (now Burlington Northern Santa Fe Railroad ("BNSF")) land grant lands in Montana and North Dakota within the Northern Powder River Basin and Northern Lignite coal fields, respectively. GNP lands obtained in this transaction contain more than 20 billion tons of coal and lignite and are comprised of nearly 5 million acres of mineral rights and about 225,000 acres of surface ownership. This acquisition included the eight sections of mineral rights located on the Northern Cheyenne Reservation (the "Reservation") which is the subject of H.R. 1158, the Montana Mineral Conveyance Act (the "Exchange") (See attached Map 1). GNP's lands are generally located on odd numbered sections within a 120 mile wide strip straddling the BNSF main line between Bismarck, ND and Billings, MT with the BLM generally owning the even numbered sections creating the infamous "checkerboard" ownership. The National Mining Association has determined that GNP is the largest owner of coal reserves in the U.S. other than the U.S. Government.

A quick bit of historical review is in order to explain to the Committee Members GNP's role in this Exchange. Through a long series of interactions by and among the U.S. Government, the State of Montana, and the Crown Butte Mines Company to settle the New World Mine buy-out, the U.S. Government transferred all its mineral rights to the State of Montana in and to the lands depicted as Otter Creek Tracts #1, 2, and 3 on the attached Map 1. Because this transfer would have directly and materially impacted the Northern Cheyenne Tribe (the "Tribe"), another sequence of events occurred by and among the Tribe, the State of Montana, the Montana Congressional delegation, and ultimately GNP, that culminated in a formalized Settlement Agreement between the State of Montana and the Tribe. The Settlement Agreement provided that (i) the Montana State Land Board would require any lessee of the Otter Creek tracts to abide by certain terms and conditions regarding mine operations protecting and ensuring certain rights in favor of the Tribe, (ii) on-going support from the State of Montana on mitigation of impacts of these operations to the Tribe, and (iii) a separate commitment made by the Montana Congressional delegation to the Tribe to seek enactment of federal legislation providing for impact and cultural program funding and to secure the promptest possible enactment of federal legislation authorizing an acreage exchange with GNP to correct an 111 year old error made by the U.S. Government to acquire subsurface rights to the eight sections within the Reservation upon the expansion of the Reservation. In conjunction with the State of Montana Settlement Agreement, GNP and the Tribe entered into a separate agreement ("GNP-Tribe Agreement") outlining terms and conditions to facilitate the Exchange.

The GNP-Tribe Agreement is important to understand. The substantive terms of this Agreement provide that (i) both GNP and the Tribe would cooperate to "...secure the promptest possible enactment of mutually satisfactory federal legislation...authorizing and directing the Exchange and providing for coal development-related federal impact funding to the Tribe", and (ii) upon enactment of the Exchange, promptly transfer an agreed upon non-participating royalty interest to the Tribe ("Tribe NPRI") on the off-Reservation Exchange acreage. The genesis of this NPRI lies in the underlying 1992 sale/purchase transaction between BNSF and GNP. As additional purchase compensation to BNSF, GNP agreed to pay BNSF an NPRI ("BNSF NPRI") on certain undeveloped acreage. The 8 sections of minerals owned by GNP on the Reservation are burdened by the BNSF NPRI. In the event of the Exchange is enacted, GNP would exchange its on-Reservation mineral interests for off-Reservation mineral interests, but because the BNSF NPRI is a covenant running with the land and would not transfer in the Exchange, the BNSF NPRI would still burden the on-Reservation acreage while there would be no such burden on the off-Reservation Exchange tracts. GNP and the Tribe agreed to create a similar NPRI in favor of the Tribe on the off-Reservation Exchange acreage equal to the on-Reservation NPRI. For the off-Reservation tracts that have been selected, the Tribe NPRI would equal 40% of any royalties received by GNP. In crafting the GNP-Tribe Agreement, there was mutual agreement on the key drivers that created the framework of this Agreement.

The most important driver was the fact that this Exchange was a settlement that would resolve a 111 year old issue between the Tribe and the U.S. Government and not a typical land exchange. As a settlement, it was expected no costly and time consuming appraisals or additional studies would be required. The Tribe is not capable of paying for these studies and GNP has no obligation or desire to do so. Because of the unique economic partnership that could potentially exist between GNP and the Tribe, both parties would be mutually aligned in the future development of the Exchange tracts.

The second driver was the provision of a revenue source to the Tribe on the off-Reservation Exchange tracts via the NPRI vehicle previously described. Another important driver was, and still is, timing. The Tribe is in desperate need of revenue. Inasmuch as the Tribe and GNP were potentially going to be economic partners, priority was given to picking off-Reservation tracts that could yield cash flow as soon as possible.

Lastly, a major driver to both the Tribe and GNP, was the fact that enactment of the Exchange would yield tremendous intangible value by allowing each party to unilaterally develop its own resources. Currently, GNP's ownership of the On-Reservation Exchange Tracts precludes the Tribe from developing its own resources without the involvement of GNP. Likewise, GNP would not be able to develop its on-Reservation Tracts without the Tribe. The Exchange would allow the Tribe to control its own timing and destiny with regard to future coal development on the Reservation.

As shown on the attached Map 1, GNP has substantial coal holdings in close proximity to the Northern Cheyenne Reservation. GNP is committed to honor its agree-

ments and obligations to the Northern Cheyenne to resolve this matter. It is extremely important to GNP that we not only live up to our commitments, but to be a good neighbor and potentially an economic partner with the Northern Cheyenne. GNP works very hard to cultivate long lasting relationships that provide mutual alignment of the parties during the relationship and we believe this Exchange personifies that type of relationship.

Keeping in mind GNP's objectives of finding suitable exchange tracts that would provide the best chance for potential revenues to both the Tribe and GNP and aid the development of GNP's current ownership, GNP and the Tribe consulted and cooperated with each other in the current selection of the off-Reservation exchange tracts. Several different attempts have been made in this selection process yielding the current slate of nominated tracts. Upon execution of the GNP-Tribe Agreement, tracts were selected in areas that, at that time, were likely to lead to rapid development. This selection has subsequently been modified because one selected area is being abandoned by the current mine operator and the other area is close to an area recently designated a wilderness study area. With the re-engagement of the parties to move forward on the Exchange, a mutual reassessment of the Exchange tracts was conducted and a new group of tracts selected. The second group of Exchange tracts targeted three geographically diverse areas. The Tribe, to insure buy-off from all potential stake-holders, sought approval from a local environmental advocacy group, the Northern Plains Resource Council (the "NPRC"). The NPRC protested two of the three selections based on surface ownership issues. Once again, a re-selection process was undertaken, this time, giving consideration to the NPRC surface ownership concerns, culminating in the current selection.

The current selection of the 3 sections in the Bridge Creek area as shown on the attached Map 1 will meet the Exchange criteria agreed to between GNP and the Tribe, address the concerns expressed by the NPRC, but will also provide intangible benefits by being in an area known to the Tribe and in which if ever developed, could provide for Tribal employment and control/protection opportunities given its proximity to the Reservation.

The five (5) sections selected in the Bull Mountains Area (see attached Map 2) were chosen in cooperation with GNP, the Tribe and Signal Peak Energy, the current operators of the Bull Mountains underground mine. Signal Peak is expanding their current mine permit area and is experiencing timing issues that may curtail current mining operations. The nominated Exchange Acreage in the Bull Mountains area is subject to an on-going Lease By Application ("LBA") process being managed by the Bureau of Land Management. It is unknown when the process will be completed, which is a major issue for Signal Peak, and the lease process is currently being challenged by various environmental groups. The LBA lease process is likely to undergo additional challenges in federal district courts given recent precedence to similar proceedings in Wyoming. The Exchange would likely alleviate the timing problems and allow Signal Peak to continue its mine operations uninterrupted keeping nearly 300 miners employed in good paying jobs.

As Congress reviews this legislation, timing and probability of development need to be taken into consideration. At Bull Mountains, the first royalty cash flow from the Exchange Tracts will likely occur in 2015 and will not be a steady cash flow. A small amount of Exchange Tract coal will be mined in 2015 (~5%), ~ 20% in 2017-2018, with the remainder (~75%) in 2022-2024. In other words, the majority of the Bull Mountains cash flow WILL NOT occur in the next 10 years.

At Bridge Creek, IF IT IS EVER MINED, optimistically, first production could take place in 15 years. There are no current plans to mine Bridge Creek and development is almost solely dependent on the development of Otter Creek. First production at Otter Creek is likely 7-10 years away which will provide the necessary transportation infrastructure for the area, including Bridge Creek. The take-away here is that there is no immediate and significant cash flow out of any of the Exchange tracts and there is a high probability that Bridge Creek may never be mined. As a real life example, GNP bought its 5 million mineral acres and 20 billion tons of coal from BNSF in 1992. There are 60 identified developable and mineable areas on GNP lands and since the purchase in 1992, not one ton of our 20 billion tons has been developed!! As I am sure the Members of this Committee may have noticed, any new coal development faces many challenges. GHG issues, regulatory uncertainty, lack of transportation infrastructure and strong environmental opposition are just a few of the hurdles we face in opening up new coal reserves.

GNP is participating in this Exchange primarily because we want to establish a long lasting relationship with the Tribe, it is the right thing to do and, it may help the development of some of our resources in the future...maybe. This Exchange is all about the Tribe. GNP is under no obligation to participate in this Exchange and while GNP may some derive some economic benefit from this Exchange, the bigger

value is the relationship we will have built with the Tribe and the satisfaction of our (and others) commitment to resolve this issue. In the State of Montana Settlement Agreement and as part of the commitment made by the Montana Congressional Delegation, the Tribe was to receive impact funding given all of the coal development that may take place in the future. Given the legislative environment, the Tribe has elected not to pursue impact funding in the Exchange yet needs financial assistance. The Exchange, if enacted, not only remedies a long standing dispute between the U.S. Government and the Tribe, but also provides a means for the Tribe to realize revenue paid to them by private industry, potentially in lieu of federal impact funding.

At the end of the day, GNP's primary role in this legislation is to be a facilitator. I believe GNP's role as a facilitator in the enactment of H.R. 1158 is a win-win on numerous fronts. First, the enactment fulfills an obligation by the U.S. Government to correct an error that has gone on for 111 years. The enactment consolidates the ownership of mineral estate on the Northern Cheyenne Reservation allowing the Tribe to control the development of its resources in its sole discretion. It satisfies the obligation of the State of Montana in the Settlement Agreement to assist in the exchange. The enactment provides relief to Signal Peak in allowing uninterrupted mining operations. The enactment would provide a much needed income stream to the Northern Cheyenne from non-Reservation private sources, and not from the U.S. Government. And lastly, the enactment fulfills GNP's obligations contained in the Agreement between GNP and the Tribe, potentially helps GNP in the development of some of its other resources, and hopefully solidifies a deep, long lasting cordial relationship between GNP and the Tribe.

[NOTE: Attachments have been retained in the Committee's official files.]

Mr. McCLINTOCK. Thank you for your testimony. We will now move to five-minute questions by the Members. The Chair will begin.

Vice President Fox, in 2004 similar legislation was introduced, but no hearings were held. One of the differences between the 2004 legislation and H.R. 1158 is a provision that would authorize a \$70 million impact assistance fund that would benefit the Tribe. That provision is not in H.R. 1158. Why is that?

Mr. FOX. My understanding, Chairman, is that because, as I stated in my statement, the realities of the budgetary processes that are going on here with Congress. I think it is a process that would be probably expedited in a way that the land issue, primarily the Northern Cheyenne Tribe want their reservation and their lands back in whole, with the sections and the coal would be reinstated as part of the correction at this time. I think that is why it was excluded, Chairman.

Mr. McCLINTOCK. So you will be developing these resources, and that essentially becomes a tremendous economic engine for the Tribe.

Mr. FOX. Well, in the future, Chairman, that would probably be most likely that the Tribe would also be looking at ways and plans. And maybe in the future that this is a potential economic endeavor for the Tribe.

Mr. McCLINTOCK. Very good. Mr. Hisa, regarding H.R. 1560, it strikes me as one of the inherent powers of sovereignty is to determine the qualification of citizenship. That is essentially what this bill is doing, is it not?

Mr. HISA. Correct. That is all we are asking for.

Mr. McCLINTOCK. That is the way it looks to me, too. That is all I have. I would defer to the Ranking Member, Mr. Luján, for five minutes.

Mr. LUJÁN. Thank you very much, Mr. Chairman. Lt. Gov. Hisa, what are the implications if Congress does not change the one-eighth blood quantum requirement for the Ysleta del Sur Pueblo?

Mr. HISA. As you heard in my testimony, my daughters don't qualify for recognition at this point. They are Tewa, we do consider them Tewa in the Pueblo. But again, they are not recognized by the Federal Government.

I am not the only one in that situation. A lot of our families are in that situation, as well. We do have a lot of descendants waiting to be considered Tewa by the Federal Government. So it is a huge impact; our future depends on it, and our existence depends on it.

Mr. LUJÁN. I appreciate that very much. Vice President Fox, does H.R. 1158 contain any provisions that the Tribe would have authority to control and protect off-reservation tracts from harm to the land, water, and air upon development of coal mining?

Mr. FOX. With that, we have, we have, you know, the Class I air, that is being designated by the Tribe. Currently that is a process that has the impacts of the Tribe to this point in time. But you know, that is as far as I know, Congressman.

Mr. LUJÁN. So, Vice President Fox, even though H.R. 1158 doesn't contain those provisions, the Tribe will be working to ensure that you are able to protect your land, water, and air in those areas?

Mr. FOX. That is correct.

Mr. LUJÁN. And Mr. Kerr, will GNP work with the Tribe to make sure that we are ensuring protections of land, water, and air in these areas?

Mr. KERR. Absolutely.

Mr. LUJÁN. Very good. Vice President Fox, how will the Tribe's royalty interest in coal developed in both the Bowl Mountain and Bridge Creek Federal tracts assist its goal in achieving self-governance?

Mr. FOX. At this point in time, the 40 percent royalties, that would help offset, and also would help the financial stability of the Tribe. And also, would also be determined for economic purposes for the Tribe to be self-sustained, and in helping with the constraints of budgetary processes that we do face today.

Mr. LUJÁN. Vice President Fox, do you believe that that can be achieved while protecting land, water, and air, as well?

Mr. FOX. I think it can be, through the processes of negotiating and a good work relationship with our neighbors.

Mr. LUJÁN. I appreciate that. Mr. Kerr, your written statement indicates that development of coal resources in the Bowl Mountain area is burdened by an uncertain future due to the lease-by-application process. For example, the process has been challenged in Federal Court by environmental groups.

Why was this section in particular, if development is unlikely in the near term? Why was this section chosen, if development is unlikely in the near term, of Bowl Mountain?

Mr. KERR. Well, development is likely. It is in the expanded mine plan of the Signal Peak area. It is just going to take a long time for the mine to reach these tracts to receive income.

There is no question that the tracts will be developed, it is just a matter of when. And that is the issue. The Signal Peak Mine is

going to start mining on the first tracts within the next two to three years, and they need to control the mineral rights to be able to mine. The lease-by-application process is being challenged, and it is uncertain as to when that process will be completed. And so it is likely going to be beyond the three-year period.

The majority of the income, however, on the five tracts is going to take place later in 2020-to-2022 timeframe.

Mr. LUJÁN. And how will GNP benefit from the selections specifically?

Mr. KERR. Well, obviously, we are going to be mineral owner, and so we will participate in the royalties paid. We would share the royalties received to the tune of GNP receiving 60 percent and the Tribe receiving 40 percent.

Mr. LUJÁN. Very good. Thank you very much, Mr. Chairman.

Mr. MCCLINTOCK. Thank you, Ms. Hanabusa.

Ms. HANABUSA. Thank you, Mr. Chair. Mr. Kerr, I would like to understand right now, as we sit here today, is GNP still mining what would be considered the eight tracts that are at issue?

Mr. KERR. No, the eight tracts on the Northern Cheyenne are undeveloped.

Ms. HANABUSA. They are undeveloped?

Mr. KERR. Correct.

Ms. HANABUSA. But these are the issues regarding the subsurface mineral rights, correct?

Mr. KERR. Correct. In order for us to develop beyond reservation tracts, we wouldn't—the eight reservation tracts are owned in a checkerboard fashion. The Northern Cheyenne or the U.S. Government controls the offsetting section.

So in order for this, for GNP to attempt to develop, we would need to work in concert with the Tribe, as well as the BLM, which is a very long and protracted affair. And then on these tracts, if they were developed, the Tribe would receive no income.

Ms. HANABUSA. And you, GNP, has claimed some sort of interest in these tracts today, correct?

Mr. KERR. That is correct.

Ms. HANABUSA. And what is the basis of your claim, GNP's claim?

Mr. KERR. Well, these tracts were originally given to the railroads as part of the land grants back in the 1800s for the transcontinental railroads. We acquired these properties in 1992 from the railroads.

And so when the transfer took place, we acceded to the railroad. What happened here is that in 1900, when the reservation was expanded, these mineral rights were not acquired by the U.S. Government for the benefit of the Northern Cheyenne. It was a mistake. And so we actually owned the mineral rights under these, under these tracts, in error.

Ms. HANABUSA. So the settlement is really one where you are going to get 5,000 acres somewhere off reservation, Federal lands, and those are the tracts you described, two and five I think were the different ones. And in exchange for that, GNP is going to waive any interest it may have to the underlying subsurface rights on the eight tracts in the Cheyenne property.

Mr. HISA. That is correct.

Ms. HANABUSA. You heard the testimony of Ms. Gillette, where she is recommending that you also waive any claims against the United States as part of this bill. Is that going to become an issue?

Mr. KERR. I need to understand what they are asking us to waive. If they are concerned about a taking, or waiving our rights to a claim against the United States on these, on this exchange, I think that is something that we would take under consideration, and likely agree to.

Ms. HANABUSA. Also as part of this bill, it says that if any portion of the mineral conveyance under 4[a], which is the conveyance by GNP, is invalidated by a Federal Court, then basically the whole deal is off. Is that your understanding?

Mr. KERR. I am not familiar with that clause.

Ms. HANABUSA. You are not familiar with that? Now, over the years, since 1992 has it been that you have been actually, you acquired the interest, GNP acquired the interest?

Mr. KERR. Correct.

Ms. HANABUSA. Has there been mining elsewhere, on reservation property?

Mr. KERR. No. Since 1992, no new coal has been developed on not only these tracts, but on the 5 million mineral acres that GNP acquired from the railroad in the States of Montana and North Dakota. In this transaction, no new coal has been developed.

Ms. HANABUSA. But there was already coal being mined somewhere in those acres.

Mr. KERR. No.

Ms. HANABUSA. None?

Mr. KERR. No, this is fully undeveloped.

Ms. HANABUSA. Fully undeveloped. I am of course trying to ascertain what kind of damages you may have suffered, so it is good to know that you haven't really suffered anything, because you haven't mined anything.

Mr. KERR. No, the true value here is in the future cash flow.

Ms. HANABUSA. Future, exactly.

Mr. KERR. Correct.

Ms. HANABUSA. Exactly. And that is of course assuming that we don't get caught up in some kind of protracted litigation as to who had the right to deed the land grant, and so forth and so on, which could tie everyone up for more than decades.

Thank you very much. Thank you, Mr. Chair.

Mr. MCCLINTOCK. That concludes the Committee's questions. I would like to thank the witnesses and the Members and the staff for their participation and preparation today.

Members of the Subcommittee may have additional questions for the witnesses, so we would ask you to respond to those in writing. And as the Chair noted earlier, the hearing record will be left open for 10 business days.

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

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

[Additional material submitted for the record follows:]

The documents listed below were submitted for the record and have been retained in the Committee's official files.

Submitted for the record by Mr. Joe Fox, Jr. Vice President, Northern Cheyenne Tribe:

- Document titled "Montana Mineral Conveyance Act—Historical Perspective"
- Document from the National Congress of American Indians titled "The National Congress of American Indians Resolution #MKE-11-022"

Submitted for the record by The Honorable Carlos Hisa, Lt. Governor of Ysleta del Sur Pueblo:

- A letter from the Department of Health & Human Services—Mr. Richie K. Grinnell, M.P.H., Assistant Surgeon General, Acting Director—to Governor Frank Paiz of Ysleta del Sur Pueblo, dated May 11, 2011.
- A letter from the U.S. Department of the Interior, Bureau of Indian Affairs Southwest Region, to the Director, Bureau of Indian Affairs from the Regional Director, Southwest Region. Subject: Recommendation for Approval on Proposed Legislation—H.R. 5811, dated April 20, 2011.
- Document from the Congressional Budget Office, Cost Estimate regarding "H.R. 2912, an Act to reaffirm the inherent sovereign rights of the Osage Tribe to determine its membership and form of government," dated July 20, 2004.

Submitted for the record by The Honorable Ben Ray Luján:

- A letter from the U.S. Department of the Interior, Bureau of Indian Affairs Southwest Region, to the Director, Bureau of Indian Affairs from the Regional Director, Southwest Region. Subject: Recommendation for Approval on Proposed Legislation—H.R. 5811, dated April 20, 2011.
- A letter from the Department of Health & Human Services—Mr. Richie K. Grinnell, M.P.H., Assistant Surgeon General, Acting Director—to Governor Frank Paiz of Ysleta del Sur Pueblo, dated May 11, 2011.
- A letter from the All Indian Pueblo Council, Office of the Chairman, to Congressman Ben Ray Luján from Chandler Sanchez, Chairman, dated June 21, 2011.

Submitted for the record by The Honorable Frank Paiz, Governor of Ysleta del Sur Pueblo

- A letter from the U.S. Department of the Interior, Bureau of Indian Affairs Southwest Region, to the Director, Bureau of Indian Affairs, from the Regional Director, Southwest Region. Subject: Recommendation for Approval on Proposed Legislation—H.R. 5811, dated April 20, 2011.
- A letter from the Department of Health & Human Services—Mr. Richie K. Grinnell, M.P.H., Assistant Surgeon General, Acting Director, to Governor Frank Paiz of Ysleta del Sur Pueblo, dated May 11, 2011.

Submitted for the record by The Honorable Dennis Rehberg:

- A letter from the State of Montana, Board of Land Commissioners regarding "Revised Draft of Proposed Montana Mineral Conveyance Act" to Senator Baucus, Senator Tester, and Representative Rehberg, dated March 21, 2011.
- Document from the Montana-Wyoming Tribal Leaders Council, titled "A Resolution to urge Montana Congressional Delegation to pursue Enactment of S. 647 and H.R. 1158 as promptly as possible."

Submitted for the record by The Honorable Silvestre Reyes:

- A letter from the U.S. Department of the Interior, Bureau of Indian Affairs Southwest Region, to the Director, Bureau of Indian Affairs from the Regional Director, Southwest Region. Subject: Recommendation for Approval on Proposed Legislation—H.R. 5811, dated April 20, 2011.
- A letter from the Department of Health & Human Services—Mr. Richie K. Grinnell, M.P.H., Assistant Surgeon General, Acting Director, to Governor Frank Paiz of Ysleta del Sur Pueblo, dated May 11, 2011.