

S. HRG. 117-360

**S. 1397, S. 3168, S. 3308, S. 3443, S. 3773  
AND S. 3789**

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**HEARING**

BEFORE THE

**COMMITTEE ON INDIAN AFFAIRS  
UNITED STATES SENATE**

ONE HUNDRED SEVENTEENTH CONGRESS

SECOND SESSION

—————  
MARCH 23, 2022  
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**S. 1397, S. 3168, S. 3308, S. 3443, S. 3773 AND S.  
3789**

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**WEDNESDAY, MARCH 23, 2022**

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

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. Brian Schatz, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. BRIAN SCHATZ,  
U.S. SENATOR FROM HAWAII**

The CHAIRMAN. Good afternoon.

During today's legislative hearing, we will consider six bills: S. 1397, the Tribal Health Data Improvement Act of 2021; S. 3168, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes; S. 3308, the Colorado River Indian Tribes Water Resiliency Act of 2021; S. 3443, MOWA Band of Choctaw Indians Recognition Act; S. 3773, a bill to amend leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation; and S. 3789, a bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes.

Senator Smith's bill, S. 1397, would expand tribal access to public health care data and public health surveillance programs. It would also reauthorize through Fiscal Year 2025 the National Center for Health Statistics, which is part of the CDC and require the CDC to take certain actions to address the collection and availability of health data for American Indians and Alaska Natives.

Senator Kelly has two bills on today's agenda. S. 3168 would extend the timeline for the White Mountain Apache Tribe's 2010 Water Settlement with the Federal Government and increased appropriations. And S. 3308 would authorize the Colorado River Indian Tribes to enter into an intergovernmental agreement with the State of Arizona to make portions of their water allocation available for leasing by off-reservation users.

Senator Shelby's bill, S. 3343, would extend federal recognition to the MOWA Band of Choctaw Indians of Alabama. And Senator Cantwell's bill, S. 3773, would make a technical amendment to the Long-Term Leasing Act to permit the Chehalis Tribe of Washington

to enter into 99-year leases of restricted Indian lands located outside the boundaries of their reservations.

The final bill on the agenda is 3789. I introduced this bill to amend the NATIVE Act to clarify that BIA and the Office of Native Hawaiian Relations have the authority to issue grants established pursuant to the Act and to authorize appropriations for those purposes.

Before I turn to Vice Chair Murkowski, I would like to extend my welcome and appreciation to our witnesses for joining us today. I look forward to your testimony and our discussion.

Vice Chair Murkowski.

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

Senator MURKOWSKI. Thank you, Mr. Chairman. I am looking forward to today's hearing.

Before I begin my comments, I want to acknowledge the loss that we have seen in Alaska. Just last Friday, we lost the Congressman for all Alaska, a Congressman who had been serving for 49 years in the 49th State. He had a passion for the people of Alaska, but most notably, the Alaska Native people. He was proud to be the chairman of the Subcommittee on Indigenous Peoples of the United States. And his legacy in focusing on matters that were important and timely for Native peoples around our Country is something that we will continue to pay tribute and recognize his contributions. I wanted to introduce that at the top of the Committee here.

Today, we are considering six bills, as you have noted. Three of these bills deal with tribal land use and water rights. One would extend full recognition to a State-recognized tribe in Alabama. Another would clarify authorities to issue grants under the NATIVE Act.

All of these measures, of course, are important. But in the interest of time today, I will limit my comments to the bill that I am co-leading with Senator Smith. This is the Tribal Health Data Improvement Act of 2021, S. 1397. What we intend to do with this legislation is to amend the Public Health Service Act to ensure that Indian tribes, tribal organizations, and tribal epidemiology centers have parity access to public health data and surveillance programs guaranteed to them as tribal public health authorities under federal existing law.

During the height of the pandemic, the 12 tribal epidemiology centers in the Country, which includes Alaska Native Tribal Health Consortium, faced some very real challenges in accessing health information about American Indians and Alaska Natives. In some cases, TECs were outright denied access to lifesaving data that the CDC routinely made available to other public health authorities, including State health departments. Access to epidemiological data is vital for TECs to provide accurate and timely public health information, including recommendations to the Native communities they serve.

Just a couple weeks ago, the GAO issued a report confirming this public health data access problem. They made five recommendations, including that HHS clarify the data it will make available to TECs as required by existing federal law, and that the CDC and

IHS develop guidance on how TECs should request data and develop agency procedures on responding to these requests. Our bill would, in effect, implement these GAO recommendations.

I am looking forward to hearing the testimony from HHS on this bill. I would hope that my colleagues on the Committee will be there to support this measure as we work it through. I think we recognize that we would like to get this done so that there are no needless delays in accessing important health data.

Again, I too join you in thanking all of the witnesses in being here before the Committee today. I look forward to their testimony and the questioning from colleagues.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Vice Chair Murkowski.

We will turn to our witnesses now. We have the Honorable Bryan Newland, Assistant Secretary, Indian Affairs, the Department of the Interior. Mr. Marvin Figueroa, Director of the Intergovernmental and External Affairs, at the Department of Health and Human Services.

I would like to call on Senator Kelly to introduce his guests and witnesses remotely.

[Technical difficulties.]

The CHAIRMAN. We are going to move on to Senator Cantwell's guest, who is the Honorable Harry Pickernell, Sr. Chairman Pickernell has served as Chairman of the Confederated Tribes of the Chehalis Reservation for the past five years. He has also served as Vice Chairman of the tribe and previously worked in the tribe's natural resource department. In all these roles, Chairman Pickernell has worked to expand economic opportunities for the Chehalis tribes and its citizens.

Senator KELLY. if you are not available, I will go ahead and provide the introductions for you.

All right, in the interest of time, we do have a vote ongoing, so we are going to move this along. We have the Honorable Gwendena Lee-Gatewood, Chairwoman of the White Mountain Apache Tribe, Whiteriver, Arizona, and the Honorable Amelia Flores, Chairwoman of the Colorado River Indian Tribes, Parker, Arizona.

We are going to wait on Senator Shelby. I know it is important for him to introduce his guest.

[Pause.]

The CHAIRMAN. We will start with the testimony and when Senators Smith and Shelby arrive, they can introduce their witnesses.

We will start with Mr. Newland. You know the drill. Please confine your remarks to five minutes. We appreciate precision and brevity. Secretary Newland.

**STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR**

Mr. NEWLAND. Thank you, Mr. Chairman and members of the Committee. Aanii, good afternoon. My name is Bryan Newland and I have the privilege of serving as Assistant Secretary for Indian Affairs here at the Department of the Interior. It is an honor to be back in front of the Committee today.

Before I begin, as Vice Chair Murkowski noted, I also want to acknowledge the passing of the Dean of the House, Congressman Don Young. My condolences go out to his family, his friends and his staff and colleagues here. He was a loving husband, both to his wife Lula, and later to Anne. He was a father, a veteran, a teacher at a BIA school. He loved telling me that story. He spent much of his life in rural Alaska, and he was very proud of that.

I know he was also a friend to many people here and in Congress. He was a friend to Secretary Haaland. His passing is a personal loss for many folks here. I am very sorry for those who are grieving his loss today.

Mr. Chairman, you have invited me here to share the Department's views on several pieces of legislation. S. 3773 would authorize leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation. The Long-Term Leasing Act generally authorizes tribes to lease their lands for up to 25 years with a renewal period of 25 years, subject to the Secretary's approval. If a tribe wishes to enter into a lease of their own lands for a longer period, it must come to Congress and get approval for that in the form of an amendment to the Long-Term Leasing Act.

The Confederated Tribes of the Chehalis Reservation are seeking the ability to lease their lands for up to 99 years, to strengthen their sovereignty over their own lands and to promote economic development. The Department supports this bill.

S. 3168 would amend the White Mountain Apache Water Rights Quantification Act of 2010 two ways. First, it would extend the enforceability date of the settlement by two years until April 30th, 2025. Second, it would authorize an additional \$250 million for design and construction of the tribe's rural water system.

Additional funds are needed to complete the construction of infrastructure included in the tribe's settlement act. The need for those funds has arisen due to unexpected problems in the original design of the drinking water infrastructure.

The Department supports the intent of this bill and has been working with the tribe to develop a more reliable assessment of the level of funding needed to fulfill the terms of the settlement act. I look forward to continuing our work with the tribe, the sponsors of the bill and the Committee on this legislation, so that we can authorize the amount of funds needed to fulfill the settlement act.

S. 3308 would authorize the Colorado River Indian Tribes to enter into agreements to lease, exchange, or store a portion of its decreed water rights in Arizona. The bill is carefully balanced among interests in the lower Colorado River Basin and contains important safeguards to promote the conservation of water.

For example, the bill requires several agreements between the tribe, the State, and the United States for any lease, exchange or storage agreement. The legislation would only authorize the tribes to lease, exchange, or store that portion of their water right that is consumptively used in Arizona in four of the five preceding years. Agreements can only be for use in the lower basin portion of Arizona, and cannot exceed a term of 100 years.

The Department supports this legislation, and supports the right of all tribes to achieve economic value from their water rights.



S. 3443 would provide federal recognition for the MOWA Band of Choctaw Indians, designate a service area, and require the Secretary of the Interior to take up to 3,200 acres of land into trust for the band. The MOWA Band had previously petitioned the Department for federal recognition under our regulations at 25 C.F.R. Part 83. The Department denied the MOWA Band's petition in 1997. We respect Congress' authority to recognize tribes under its Article 1 powers.

This proposed legislation does not include any findings or information identifying facts or circumstances that would aid us in understanding the merits of the proposal. Therefore, we do not express support or opposition to the legislation at this time.

S. 3789 would amend the NATIVE Act by creating a new section to allow the director of the Office of Native Hawaiian Relations to make grants directly to Native Hawaiian organizations. Presently, the Department makes grants to Native Hawaiian organizations under the NATIVE Act through a process that can be cumbersome.

This legislation would simplify that process and ensure that Native Hawaiian organizations have an opportunity to access this important program. We support this bill.

Chairman Schatz, Vice Chair Murkowski, members of the Committee, thank you for the opportunity to provide the Department's views today. I look forward to answering your questions.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

### **Introduction**

Aanii (hello) and good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Bryan Newland, and I serve as the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for the opportunity to present the Department's views on S. 3773, a bill to authorize leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation, S. 3168, the White Mountain Apache Water Settlement Act Amendment, S. 3308, the Colorado River Indian Tribes Water Resiliency Act of 2021, S. 3443, the MOWA Band of Choctaw Indian Recognition Act, and S. 3789, a bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes.

### **S. 3773, a bill to authorize leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation**

Since the enactment of the Non-Intercourse Act of June 30, 1834, 4 Stat. 730, codified as 25 U.S.C. § 177, and predecessor statutes, land transactions with Indian tribes were prohibited unless specifically authorized by Congress. The Act of August 9, 1955, or the Long-Term Leasing Act (LTLA), codified at 25 U.S.C. § 415, provides the authority for Indian tribes to enter into surface leases with third parties with the approval of the Secretary of the Interior. The Act limits lease agreement terms to 25 years with an option to renew for an additional 25 years.

Since 1955, Indian tribes have engaged in a diverse array of activities to facilitate economic development, and many have required lease agreements for terms longer than 50 years on their lands. Authorizing Indian tribes to lease their trust lands for terms longer than the 50-year maximum requires Congress to amend the LTLA to add tribes' names to it. Since its enactment in 1955, Congress has added 59 Indian tribes to the LTLA for this purpose. The most recent addition to the LTLA was signed into law in 2018 for the Crow Tribe of Montana as section 206 of the Indian Tribal Energy and Self-Determination Act Amendments of 2017 (Pub. L. 115-325) and the most recent standalone legislation was in 2011 for lands held in trust for Ohkay Owingeh Pueblo (Pub. L. 111-381.)

In order to develop supply chain infrastructure, the Confederated Tribes of the Chehalis Reservation are seeking financing to make improvements to an existing facility located on tribal trust land to secure a lease of the facility with an outside entity. The financing required for the project requires a lease agreement term of at least 86 years. S. 3773 provides for an amendment to include the trust lands of the Confederated Tribes of the Chehalis Reservation on the list of tribes in the LTLA so that the Tribes will have the flexibility to enter into leases of up to 99 years to finance this and future economic development projects.

The Department supports this change as it would facilitate economic development opportunities for the Tribes.

**S. 3168, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes**

The Department supports ongoing efforts to implement the White Mountain Apache Tribe Water Rights Quantification Act of 2010, Pub. L. 111–291, tit. III, 124 Stat. 3064, 3073–96, amended by Pub. L. 115–227, 132 Stat. 1626 (2018), amended by Pub. L. 116–94, div. C., tit. II, § 206, 133 Stat. 2534, 2669 (2019) (Quantification Act). We would like to work with the Tribe and the sponsors to craft a bill that we can fully support.

**Background**

The Quantification Act approved the White Mountain Apache Tribe Water Rights Quantification Agreement (Quantification Agreement) settling the White Mountain Apache Tribe’s (WMAT) water rights in Arizona. The Quantification Act authorizes the design and construction of the WMAT rural water system, consisting of a dam and storage reservoir, pumping plant, distribution system and water treatment facilities. The WMAT rural water system will address the significant water infrastructure needs on the Reservation.

The Quantification Act established several funds and subaccounts to assist in its implementation. Two funds were established in Treasury: the WMAT Settlement Fund and the WMAT Maintenance Fund; and two subaccounts in the Lower Colorado River Basin Development Fund: the WMAT Water Rights Settlement Subaccount (Settlement Subaccount) and the WMAT Cost Overrun Subaccount (Cost Overrun Subaccount). The Tribe may use funds in the Settlement Subaccount to plan, design, and construct the WMAT rural water system. Following amendments in 2018, the WMAT Settlement Fund may also be used for planning, design and construction of the WMAT rural water system and other water-related projects. The Cost Overrun Subaccount may be used to complete, operate, and maintain the WMAT rural water system if Settlement Subaccount funds are insufficient. The Tribe may use the WMAT Maintenance Fund to operate, maintain, and replace the WMAT rural water system after title to the system transfers to the Tribe.

The Settlement Subaccount was authorized to consist of \$126,193 million (indexed) in mandatory appropriations and the Cost Overrun Subaccount was authorized to consist of \$24 million (indexed) from mandatory appropriations and \$11 million (indexed) of discretionary appropriations. The Quantification Act authorized \$78.5 million (indexed) for deposit in the WMAT Settlement Fund. In 2011, mandatory appropriations for the Settlement Subaccount and Cost Overrun Subaccount were placed into those subaccounts. In 2022, the Department announced the allocation of \$109,106 million from the Indian Water Rights Completion Fund, established by the Bipartisan Infrastructure Law, to the WMAT Settlement Fund.

The Quantification Agreement, including waivers, will not become enforceable until certain conditions are satisfied. One of those conditions is the issuance of a record of decision by the Secretary approving construction of the WMAT rural water project. The Secretary must publish in the *Federal Register* a statement of findings that all conditions for enforceability have been satisfied by no later than April 30, 2023, or the Quantification Act will be repealed by operation of law. Currently, Miner Flat Dam is the only project component that is not yet designed to a thirty percent design level, the level of design usually necessary for environmental compliance activities to move forward and enforceability of the Quantification Act to be reached.

During the design of Miner Flat Dam, the Tribe identified significant concerns about unanticipated seepage. Reclamation worked closely with the Tribe to better define, characterize, and understand seepage at the proposed site for Miner Flat Dam. Currently, efforts to design Miner Flat Dam are still ongoing, however significant cost increases above the originally authorized amounts have been identified because of measures necessary to address the unanticipated seepage. The increased costs above the originally authorized funds available for construction and the rap-

idly approaching enforceability date are the impetus for S. 3168. The extent of the increased cost is unknown at this time, but it is anticipated to significantly exceed originally authorized funding sourced identified in the originally enacted Quantification Act.

#### **S. 3168**

S. 3168 would amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to extend by two years the deadline for the Secretary of the Interior to publish in the Federal Register a statement of findings that enumerated conditions precedent to enforceability of the settlement have occurred. S. 3168 would also authorize an additional \$250 million to be added to the Cost Overrun Subaccount for the design and construction of the WMAT rural water system, including Miner Flat Dam.

The Department agrees with the Tribe that there are significant challenges and cost gaps associated with the design of the WMAT rural water delivery system, specifically Miner Flat Dam. The Bureau of Reclamation and the Tribe have been working to reach agreement on the final project design and cost estimates of Miner Flat Dam, but work remains to be done. At this time, the Department cannot determine whether the additional \$250 million proposed by S. 3168 would provide sufficient funding to complete the WMAT rural water system. In addition, S. 3168 raises questions about the timing of indexing for newly authorized appropriations. The Department would like to resolve those questions with the Tribe and the bill sponsors.

The Department supports the intent of S. 3168 to provide the means to complete a needed rural water supply project for the Tribe. We agree and support an amendment that would extend the enforceability date of the Quantification Act to 2025. We are committed to working with the Tribe, the bill sponsors, and this committee to develop a more reliable cost estimate and to clarify indexing of any additional appropriations.

#### **S. 3308, Colorado River Indian Tribes Water Resiliency Act of 2021**

The Colorado River Indian Tribes' (CRIT) Reservation is located in Arizona and California. The United States Supreme Court in *Arizona v. California*, 547 U.S. 150 (2006), quantified CRIT's water rights from the Colorado River for the California and Arizona portions of the Reservation separately. In Arizona, the Reservation has a decreed right to divert 662,402 acre-feet per year of Colorado River water or to the consumptive use required for irrigation of 99,375 acres and satisfaction of related uses, whichever (diversion or consumptive use) is less, with priority dates from 1865 to 1874. CRIT historically has diverted about 90 percent of this entitlement.

Since at least 2016, CRIT has been seeking legislation that would authorize leasing, exchanging, and storing a portion of its decreed water rights located in Arizona to off-Reservation users, similar to the rights to lease Central Arizona Project Water in Arizona granted to Tribes under various Indian water rights settlements in Arizona. CRIT worked closely with the State of Arizona and non-Indian water users to craft legislation that would address concerns over this proposed use of decreed water rights. Those efforts culminated in S. 3308.

#### **S. 3308**

S. 3308 would authorize CRIT to enter into agreements to lease, exchange, or store a portion of its decreed water rights in Arizona, subject to certain conditions. The bill requires several agreements to be entered into with the State and the United States as conditions precedent to entering into any lease, exchange or storage agreement. First, CRIT must enter into an agreement with the State outlining notice, information sharing, and collaboration requirements that will apply to any lease, exchange, or storage agreement into which CRIT may enter. Second, CRIT, the State, and the Secretary of the Interior must enter into an agreement establishing the procedural, technical, and accounting methodologies for any lease, exchange, or storage agreement CRIT may enter into. Finally, S. 3308 directs the Secretary to approve or disapprove any lease, exchange, or storage agreement, or modifications to the same, so long as it is consistent with S. 3308 and the agreement.

S. 3308 provides that only that portion of CRIT's water right that was consumptively used in Arizona four of the five years immediately preceding a proposed agreement would be available for lease, exchange, or storage. In addition, the agreements could be entered into only for use in the Lower Basin portion of the State and could not exceed a term of 100 years. CRIT would be responsible for negotiating all agreements, payments would be made directly to CRIT, and the Secretary would have no trust responsibility with respect to funds paid to CRIT.

S. 3308 is the result of many years of negotiations between the CRIT and the State and its water users. Enactment of S. 3308 is consistent with principles of self-

determination and Tribal sovereignty. The Department supports the right of all Tribes to achieve economic value from their water rights and supports S. 3308.

**S. 3443, MOWA Band of Choctaw Indians Recognition Act**

S. 3443 would provide federal recognition for the MOWA Band of Choctaw Indians (MOWA Band). The legislation would also designate a service area and require the Secretary of the Interior to take up to 3,223 acres into trust for the MOWA Band within that service area.

Federal acknowledgment of an Indian tribe officially recognizes the sovereign nation-to-nation relationship the United States shares with the indigenous tribes that have inhabited our country since time immemorial. There are two methods by which tribes can attain federal recognition: through Congress or through the Department's administrative process. Both processes are legitimate avenues for a tribe to obtain federal recognition.

On May 19, 1983, the MOWA Band submitted a letter of intent to the Department petitioning for federal recognition under 25 C.F.R. Part 83. The Department evaluated the MOWA Band's petition under the prior regulations at 25 C.F.R. § 83.10(e) (1994) which provided for an expedited finding on a single criterion when the documented petition and response to the technical assistance letter indicates that there is little or no evidence that the petitioner can meet the mandatory criteria. The Department found that the MOWA Band could not meet the criteria requiring that the petitioner descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. On December 16, 1997, the Department issued a negative determination on the MOWA Band's petition under Part 83.

The MOWA Band now seeks recognition through the legislative process. While the Department's previous determination on the Band's application may differ from the present views of Congress, we recognize that Congress has plenary power over Indian Affairs and retains the authority to federally recognize tribes through legislation. The Department respects the MOWA Band's choice to seek recognition through the legislative process. At this time the Department neither opposes nor supports this legislation.

**S. 3789, a bill to amend the Native American Tourism and Improving Visitor Experience Act to authorize grants to Indian tribes, tribal organizations, and Native Hawaiian organizations, and for other purposes.**

S. 3789 would amend the Native American Tourism and Improving Visitors Experience (NATIVE) Act (P.L. 114–221) by creating a new section 6 (redesignating the current section 6 as section 7) that would allow the Director of the Bureau of Indian Affairs to make grants to Indian Tribes and tribal organizations, and the Director of the Office of Native Hawaiian Relations to make grants to Native Hawaiian organizations. The NATIVE Act, signed into law in 2016, requires the Department of Commerce, the Department of the Interior, and federal agencies with recreational travel or tourism functions to update their management plans to include Indian tribes, tribal organizations, and Native Hawaiian organizations. The Department supports this bill.

**Conclusion**

Chairman Schatz, Vice Chair Murkowski, and Members of the Committee, thank you for the opportunity to provide the Department's views on these important bills. I look forward to answering any questions.

The CHAIRMAN. Thank you very much, Mr. Secretary.

We are going to have Senator Shelby introduce his guest, and Senator Smith introduce hers. Then we will move on to Mr. Figueroa from HHS.

Senator SHELBY, it is a pleasure to have you here.

**STATEMENT OF HON. RICHARD SHELBY,  
U.S. SENATOR FROM ALABAMA**

Senator SHELBY. Thank you.

Chairman Schatz, Vice Chairman Murkowski, members of the Senate Indian Affairs Committee, it has been a number of years since I have appeared before your Committee. Thank you for allowing me here today to have the opportunity to introduce Dr. Lebaron

Byrd, seated right here, and express my strong support for providing federal recognition to the MOWA Band of Choctaw Indians in my State of Alabama.

Dr. Byrd currently serves as the Tribal Chief of the MOWA Band of Choctaw Indians. He is a native of Mobile County. Dr. Byrd has been a tribal member of the MOWA Band for more than 40 years, serving in various roles on the tribe's council. He has served in leadership positions in community organizations all across south Alabama. In particular, Dr. Byrd has worked to help provide greater educational opportunities for Native American students in both Mobile and Washington counties, as a teacher and administrator for 34 years.

During this hearing later, Dr. Byrd will testify about the MOWA Band's distinct history as an indigenous community, which warrants the need to grant the tribal federal recognition. The MOWA Band is comprised of Choctaw descendants that remained in Alabama following the removal of the main Choctaw Nation to Oklahoma. The MOWA Band occupied lands that were part of the original territory of the Choctaw Nation in south Alabama.

Today, the MOWA Band continues to occupy the same territory where the tribe provides essential government and community services to its citizens. The MOWA Band has been recognized as a tribal community by various government agencies and entities for several decades, including the State of Alabama in 1979.

Yet to date, the MOWA Band still lacks federal recognition as a tribe under U.S. law. Notably, this Committee previously approved legislation, Mr. Chairman, extending federal recognition to the MOWA Band. It is my hope that this Committee will do so once again. Federal recognition would allow for the MOWA Band to continue to maintain its tribal community and to support its citizens.

I want to thank you on their behalf, Mr. Chairman, for letting us all be here today, and for you holding this hearing. I hope that you and the Committee will act on this expeditiously. Thank you very much.

The CHAIRMAN. Thank you, Senator Shelby, for being here.  
Senator Smith.

**STATEMENT OF HON. TINA SMITH,  
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Thank you, Chair Schatz, and nice to see you, Senator Shelby.

I want to start by thanking you, Chair Schatz, for holding this hearing today. I look forward to hearing testimony on my Tribal Health Data Improvement Act, which I have introduced with Vice Chair Murkowski.

I am very excited to welcome Dr. Darin Prescott, who is the Director of Health and Clinic CEO for the Lower Sioux Community, and a board member of the Great Lakes Area Tribal Health Board, to share testimony about this bill with the Committee. I had the opportunity to visit Lower Sioux last summer and to see the great work that you are doing there. It is wonderful to welcomed you here to our Committee hearing virtually.

Dr. Prescott is an enrolled member of Lower Sioux, and has a background as a nurse, manager, educator and health care admin-

istrator. In all those roles, he has seen and knows firsthand how important data is, how important data sharing is, for tribes that are fighting the pandemic and addressing other public health issues. So wopila tanka, Dr. Prescott, for joining us today. I look forward to hearing your testimony.

The CHAIRMAN. Thank you very much, Senator Smith.

Mr. FIGUEROA, please proceed with your testimony.

**STATEMENT OF MARVIN FIGUEROA, DIRECTOR,  
INTERGOVERNMENTAL AND EXTERNAL AFFAIRS, U.S.  
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Mr. FIGUEROA. Good afternoon, Chair Schatz, Vice Chair Murkowski, and members of the Committee. Thank you for the opportunity to testify on Senate Bill 1397, the Tribal Health Data Improvement Act.

My name is Marvin Figueroa. I am the Director of the Office of Intergovernmental and External Affairs, or IEA, at the U.S. Department of Health and Human Services. The Department is dedicated to enhancing the health and well-being of every person and every community in this Country and is committed to affirming the relationship between our Department and tribal nations by advancing connections, providing expertise, increasing resources, and partnering to improve the health and safety of all American Indians and Alaska Natives.

The COVID-19 pandemic has highlighted longstanding disparities in health outcomes in tribal communities. The pandemic has also shone a spotlight on the challenges inherent in collecting, reporting, and sharing health data among State, local, territorial, and tribal governments. The Department appreciates the opportunity to discuss these issues and highlight HHS efforts to not only enhance tribal access to data, but also improve access to care and health outcomes.

IEA facilitates communication and collaboration between HHS and State, local, and tribal governments. In particular, we coordinate the Department's strategies to strengthen our nation-to-nation relationship with tribal nations and improve the multi-level coordination of Health and Human Services' programs. Within our broad tribal outreach strategy, IEA manages the Secretary's Tribal Advisory Committee, which was established in 2010 to seek consensus, exchange views, share information, provide advice and recommendations, and facilitate any other interaction related to intergovernmental responsibilities or administration of HHS programs and initiatives.

This outreach is accomplished through forums, meetings, site visits, and conversations between federal officials and elected tribal leaders. While the STAC is critical to advising the Department on its interactions with tribal nations, the Department recognizes that the STAC is no substitute for tribal consultation, which the Department is committed to holding on a regular and meaningful basis.

Engaging with tribal leadership and communities has been a priority for Secretary Becerra and Department leaders, with the goal of building a network of tribal relations and diplomacy for decades to come. Recognizing our unique nation-to-nation relationship, HHS values the work to advance tribal sovereignty and self-deter-

mination for federally recognized tribes. Ensuring access to quality health and public health data is a threshold issue for this vision.

HHS recognizes the challenges in data collection, sharing, and dissemination, especially where tribal health data is concerned. The existing framework of legal and policy issues around data collection authorities, privacy and confidentiality, data ownership and necessary data use agreements additionally complicate this data ecosystem. Accessible, timely, and quality data is essential for making decisions about how to protect and improve the health of tribal communities in rural and urban areas.

The Department appreciates the challenges in this space and is working with tribal partners to address them. For example, my colleagues at the Centers for Disease Control and Prevention are providing support both through funding and technical assistance to improve access to public health data and modernize data systems and public health capabilities across the Country, including more specifically with our tribal partners. My written testimony includes other examples of ongoing efforts.

The Tribal Health Data Improvement Act aims to ensure Tribal Nations are equipped with public health data to better operate public health programs and improve health outcomes within their communities. It works to clarify the federal role in collection and availability of health data with respect to Indian Tribes.

Moreover, this legislation identifies ways to improve the collection and calculation of health statistics with respect to Indian tribes, such as requiring the Secretary to release all applicable public health data on Tribal Epidemiology Centers within 180 days of enactment and requiring the CDC to expand and improve their assistance to States with respect to sharing data with tribal entities.

HHS supports the objectives of this legislation, and we are grateful that Senator Smith and bipartisan members of this Committee have worked to address these important issues.

The health burden carried by American Indian and Alaska Native communities is unacceptable. While we have made strides toward improving data collection and sharing during COVID-19, there is much more work to do. With these issues in mind, HHS remains available to provide technical assistance so that we can advance constructive solutions in line with the objectives and goals of this Administration.

I look forward to any questions. Thank you again for the opportunity to be in your presence this afternoon.

[The prepared statement of Mr. Figueroa follows:]

PREPARED STATEMENT OF MARVIN FIGUEROA, DIRECTOR, INTERGOVERNMENTAL AND EXTERNAL AFFAIRS, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Good afternoon Chair Schatz, Vice Chair Murkowski, and Members of the Committee. Thank you for the opportunity to testify on S. 1397, Tribal Health Data Improvement Act. I am Marvin Figueroa, the Director of Intergovernmental and External Affairs (IEA) at the U.S. Department of Health and Human Services (HHS).

The Department is dedicated to enhancing the health and well-being of every person and every community in this country. HHS is committed to affirming the relationship between our Department and Tribal Nations by advancing connections, providing expertise, increasing resources, and partnering to improve the health and safety of all American Indians and Alaska Natives (AI/AN). The COVID-19 pandemic has highlighted longstanding disparities in health outcomes in Tribal communities. In addition, the pandemic has shone a spotlight on the challenges inherent

in collecting, reporting, and sharing health data among state, local, territorial, and Tribal governments.

The Department appreciates the opportunity to discuss these issues and highlight HHS efforts to not only enhance Tribal access to data, but also improve access to care and health outcomes.

#### **Engagement with Indian Country**

IEA facilitates communication and collaboration between HHS and state, local, and Tribal governments. In particular, we coordinate the Department's strategies to strengthen our Nation-to-Nation relationship with Tribal Nations and improve the multi-level coordination of Health and Human Services' programs.

Within our broad Tribal outreach strategy, IEA manages the Secretary's Tribal Advisory Committee (STAC). Established in 2010, the STAC's primary purposes are to seek consensus, exchange views, share information, provide advice and recommendations; and facilitate any other interaction related to intergovernmental responsibilities or administration of HHS programs. This outreach is accomplished through forums, meetings, site visits, and conversations between Federal officials and elected Tribal leaders. While the STAC is critical to advising the Department on its interactions with Tribal Nations, the Department recognizes that the STAC is no substitute for Tribal consultation, which the Department is committed to holding on a regular and meaningful basis.

Engaging with Tribal leadership and communities has been a priority for Secretary Becerra and Department leaders, with the goal of building a network of Tribal relations and diplomacy for decades to come.

Secretary Becerra has been in his role for almost exactly one year. In that time he has made it a priority to meet with and hear from Tribal leaders and American Indians and Alaska Natives across the country. From his meetings with Tribal Leaders in Washington, to his visit to the Seattle Urban Indian Health Board where he learned about their ongoing COVID-19 response and how they provide services to American Indians and Alaska Natives living in the City, to his visit with the Cherokee Nation in Oklahoma listening to the challenges of providing health care in rural America. The Secretary and I are committed to advancing equity, equality, and opportunity for American Indians and Alaska Natives.

Recognizing our unique nation-to-nation relationship, HHS values the work to advance Tribal sovereignty and self-determination for federally recognized tribes. Every American Indian and Alaska Native should have access to quality and affordable health care, including advanced medicine, durable medical and health care related equipment, and modern health information technology, and to public health programs and services that keep them safe and healthy. HHS strives for flexible, nimble, and patient-friendly services through strategic investments and advanced technology such as telemedicine and secure patient records. Ensuring access to quality health and public health data is a threshold issue for this vision.

#### **Tribal Health Data-Challenges and Opportunities**

Available data show that Tribal nations have faced a disproportionate impact from COVID-19 and other long-standing health threats. American Indian and Alaska Native persons in the United States experience higher rates of COVID-19-related hospitalization and death compared with non-Hispanic White populations. The health disparities faced by Tribes extend beyond the COVID-19 pandemic, as AI/AN persons have a lower life expectancy, lower quality of life, and are disproportionately affected by many chronic conditions. HHS recognizes the challenges in data collection, sharing, and dissemination, especially where tribal health data are concerned. The existing framework of legal and policy issues around data collection authorities, privacy and confidentiality, data ownership and necessary data use agreements additionally complicate this data ecosystem. Accessible, timely, and quality data is essential for making decisions about how to protect and improve the health of Tribal communities and AI/AN people in nontribal and urban areas.

The Department appreciates the challenges in this space and is working with Tribal partners to address these challenges. For example, my colleagues at the Centers for Disease Control and Prevention (CDC) are providing support both through funding and technical assistance to improve access to public health data, and modernize data systems and public health capabilities across the country, including more specifically with our Tribal partners. CDC is working directly with Tribes, Tribal organizations, and partners to educate data users about how to access and analyze public health data, including the best available resources with demographic information on AI/AN populations. CDC has engaged Tribal Epidemiology Centers (TECs) through the Council of State and Territorial Epidemiologists' (CSTE's) Tribal



subcommittee to share available COVID-19 data and to hear how data sharing efforts for COVID-19 and public health data can be improved.

CDC is also facilitating data improvements among state, local, and Tribal jurisdictions. Through CDC's "National Initiative to Address COVID-19 Health Disparities Among Populations at High-Risk and Underserved, Including Racial and Ethnic Minority Populations and Rural Communities," the Arizona state health department is working to improve data sharing with Tribal partners. The Arizona Advisory Council on Indian Health Care will collaborate with Arizona's federally-recognized Tribes to design data collection methodology for pandemic reporting, identify best practices and models for tribal data collection in response to COVID-19, and identify barriers and missed opportunities in response to COVID-19.

Further, CDC is supporting development of tools to facilitate sharing of Tribal data. For example, in November 2021, the Northwest Portland Area Indian Health Board announced the launch of NativeDATA, a resource supported by CDC that offers practical guidance for Tribes and Tribal-serving organizations on obtaining and sharing health data. This innovative platform supports data sharing in ways that honor Tribal sovereignty, data sovereignty, and public health authority to advance the health and healthcare of Native communities.

From FY 2020 to 2021, CDC provided support to nearly 350 Tribal recipients through its "Supporting Tribal Public Health Capacity in Coronavirus Preparedness & Response Grant". A preliminary summary of year 1 activities showed that recipients were investing funding in surveillance, epidemiology, and health information technology. Further, the report showed that many recipients were conducting data analyses or assessments to support the COVID response. Toward longer term capacity building, many recipients hired epidemiologists and data analysts using this funding.

#### **The Tribal Health Data Improvement Act**

The Tribal Health Data Improvement Act aims to ensure Tribal Nations are equipped with public health data to better operate public health programs and improve health outcomes within their communities. It works to clarify the Federal role in collection and availability of health data with respect to Indian Tribes. Moreover, this legislation identifies ways to improve the collection and calculation of health statistics with respect to Indian Tribes, such as requiring the Secretary to release all applicable public health data on Tribal Epidemiology Centers within 180 days of enactment and requiring the CDC to expand and improve their assistance to states with respect to sharing data with Tribal entities.

HHS supports the objectives of this legislation, and we are grateful that Sen. Smith and bipartisan Members of this Committee have worked to address these important issues. HHS will continue to work with this Committee on efforts to improve data protection and privacy provisions in the legislation as it moves forward.

#### **Conclusion**

The health burden carried by AI/AN communities is unacceptable. While we have made strides improving data collection and sharing COVID-19 data, there is much more work to be done and HHS looks forward to working with you on legislation with the goal of better equipping Tribal nations with the public health data they need to improve health outcomes. HHS is committed to working with Tribes and Tribal organizations, and state and local health departments to enhance data collection not just for COVID-19 but across a wide range of health conditions to better inform communities and enable action.

With these issues in mind, HHS remains available to provide technical assistance so that we can advance constructive solutions in line with the objectives and goals of this Administration. I look forward to any questions you may have.

Senator MURKOWSKI. [Presiding.] Thank you, Mr. Figueroa.  
Let's turn next to Chairwoman Lee-Gatewood. Welcome.

#### **STATEMENT OF HON. GWENDENA LEE-GATEWOOD, TRIBAL CHAIRWOMAN, WHITE MOUNTAIN APACHE TRIBE FORT APACHE INDIAN RESERVATION**

Ms. LEE-GATEWOOD. [Greeting in Native tongue]. Chairman Schatz, Vice Chairwoman Murkowski and members of the Committee, thank you for the opportunity to testify in support of S. 3168, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010.

I also want to thank Senator Kelly for championing this critical legislation, Senator Sinema for cosponsoring it for the White Mountain Apache Tribe.

My name is Gwendena Lee-Gatewood. I am the Tribal Chairwoman of the White Mountain Apache Tribe, located in the beautiful White Mountains of Arizona. The headwaters and tributaries of the Salt River arise on our reservation and are our principal water sources for our people and the greater Phoenix metropolitan area. The tribe's current water sources and infrastructure have been and continue to be grossly inadequate to meet the current demands and needs of our reservation communities. We are in urgent need of a long-term solution for our drinking water needs.

Currently, the tribe is served by the Miner Flat Well Field. Well production has fallen sharply and is in irreversible decline. Over the last decade, well production has dropped by 60 percent. The tribe experiences drinking water shortages. The quality of the existing water sources threatens the health of our people, including the Indian Health Services Regional Hospital and State and Bureau of Indian Affairs schools. Here is a picture to my left of the groundwater from Carrizo with high concentrations of manganese. The only viable solution is a replacement of failing groundwater resources with surface water from the North Fork of the White River.

Fortunately, in 2010, Congress enacted the White Mountain Apache Tribe Water Rights Quantification Act, which confirmed and authorized the tribe's water settlement with the Federal Government and Arizona State parties after decades of litigation. The cornerstone of the Act is the authorization for the design and construction of the White Mountain Apache Tribe's Rural Water System, which will provide a long-term and reliable supply for current and future generations.

Recognizing the importance of the Act in rural water systems, Congress has previously approved two amendments to the Act to address cost overruns and the resulting delays in the required environmental review, which are described in more detail in my written testimony submitted to the Committee. Since the passage of the amendments, we have learned that the cost for the rural water system will exceed the cost authorized in the underlying act, even factoring in the additional flexibility to use previously authorized water-related economic development funds for the project.

The associated engineering issues have also delayed the environmental review process, thus requiring the need to extend the enforceability date to two years. As work on the design and geotechnical study of the proposed dam site for the rural water system has taken place, the tribe, together with Reclamation and its consultants, have identified additional cost overruns beyond what was initially contemplated.

In 2019, the tribe worked with Reclamation on a new drilling program to further define the site characteristics and prepare the viability assessment of the Miner Flat Dam, a key component of the rural water system. In the course of the work, the tribe's consulting engineers altered the design to address seepage and stability issues at the dam site, which resulted in an increased cost estimate for the project. In October 2021, the engineer of record finalized its viability assessment, finding the dam viable.

We continue to work closely with the U.S. Bureau of Reclamation, and believe we are close to reaching consensus on a number that would address the design issues so that the rural water system can be built and the settlement finalized. I cannot overstate the importance of our water rights settlement in the White Mountain Apache Tribe's rural water system and the health and welfare of our people. If this issue is not resolved, the completion of the rural water system project will be threatened, thereby increasing the ultimate cost to the tribe and to the United States and delaying delivery of life-sustaining drinking water to our reservation communities.

Consequently, the tribe is seeking a final amendment to increase the federal funds authorized to complete the rural water system project, to address cost overruns, and extend the enforceability date to April 30th, 2025, to allow sufficient time for the environmental review associated with the project to be completed.

Thank you again for this opportunity to testify. [Phrase in Native tongue]. Thank you.

[The prepared statement of Ms. Lee-Gatewood follows:]

PREPARED STATEMENT OF HON. GWENDENA LEE-GATEWOOD, TRIBAL CHAIRWOMAN,  
WHITE MOUNTAIN APACHE TRIBE FORT APACHE INDIAN RESERVATION

Chairman Schatz, Vice Chairwoman Murkowski and members of the Committee: Thank you for the opportunity to testify in support of S.3168—A bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions, and for other purposes. Thank you also to Senators Kelly and Sinema for sponsoring this legislation.

My name is Gwendena Lee-Gatewood, and I am the Chairwoman of the White Mountain Apache Tribe. We live on the Fort Apache Indian Reservation upon aboriginal lands that we have occupied since time immemorial. Our Reservation is located about 200 miles Northeast of Phoenix in the White Mountain Region of East Central Arizona.

The Tribe's current water sources and infrastructure have been and continue to be grossly inadequate to meet the current demands and needs of our Reservation communities. Fortunately, subsequent to our agreeing to a quantification of our aboriginal and federally reserved water rights in 2009 with various state parties following decades of litigation, Congress enacted the White Mountain Apache Tribe Water Rights Quantification Act ("Quantification Act")(P.L. 111-291). The cornerstone of that Act is the authorization for the design and construction of the White Mountain Apache Tribe Rural Water System (the "Rural Water System" or "RWS")(P.L. 111-291), which will provide a secure, safe, and dependable water supply for the Tribe and its members and ensure a long-term and reliable water supply for the Tribe for current and future generations.

Recognizing the importance of the Act and the RWS Project, Congress has previously approved two amendments to the Act to address cost-overruns and the resulting delays in the required environmental review, including: (1) clarification that \$78,500,000 (before indexing) in federal funds for "water-related economic development projects" authorized in the Act may be used for the RWS Project (See Pub. L. 115-227); and (2) a two-year extension of the enforceability date of the Act to April 30, 2023, to ensure that the Secretary of the Interior has sufficient time to issue the required ROD and publish the relevant statement of findings for the RWS Project. (See the FY 2020 Consolidated Appropriations Act, Section 206 Department of the Interior-General Provisions.)

Unfortunately, since the passage of the above amendments, the Tribe has learned that the costs for the RWS will exceed the costs authorized in the underlying Act, even when factoring in the additional flexibility to use previously authorized water-related economic development funds for the project. The associated engineering issues have also delayed dam design and the environmental review process, thus necessitating the need to extend the enforceability date by two years.

If this issue is not resolved, the completion of the Rural Water System project will be threatened, thereby increasing the ultimate cost to the United States and delaying the delivery of life-sustaining drinking water to our reservation communities.

Consequently, the Tribe is seeking a final amendment to: (1) increase the federal funds authorized to complete the RWS Project to address cost-overruns; and (2) extend the enforceability date to April 30, 2025, to allow sufficient time for dam design and the environmental review associated with the project to be completed.

#### **Fort Apache Indian Reservation and the Tribe's Reserved Water Rights**

The Tribe holds full beneficial title to 1.66 million acres of trust land in the east central highlands of the State of Arizona. The Tribe's Fort Apache Indian Reservation was established by Executive Order in 1871. We have retained actual, exclusive use and occupancy of our aboriginal lands within the boundaries we agreed to, and which were later designated by the Executive Orders dated November 9, 1871, and December 14, 1872, without exception, reservation, or limitation since time immemorial. The Tribe's vested property rights, including its aboriginal and other federal reserved rights to the use of water, often referred to as *Winters* Doctrine Water Rights, that underlie, border and traverse our lands, have never been extinguished by the United States and are prior and paramount to all rights to the use of water in the Upper Salt River drainage, the primary tributary in the adjudication of the water rights in the Gila River Basin.

Except for a small portion of the Reservation that drains to the Little Colorado River Basin, virtually our entire Reservation drains to the Salt River. The headwaters and tributaries of the Salt River arise on our Reservation and are the principal sources of water for the Tribe and the greater metropolitan Phoenix area. Specifically, 78 percent of the water in Theodore Roosevelt Reservoir located north of the Phoenix Valley is contributed from our Reservation; at Saguaro Lake reservoir, further South, 60 percent of the water is contributed from our Reservation; and below the confluence of the Verde River and Salt River, near Granite Reef Dam, Scottsdale, 42 percent of the water comes from our Reservation. The importance of achieving implementation of our 2009 Water Rights Quantification Agreement is essential to the well-being of the White Mountain Apache Tribe and the downstream water users in the Phoenix Valley.

#### **White Mountain Apache Tribe Water Rights Quantification Act of 2010**

In 2010, Congress approved the historic White Mountain Apache Tribe Water Rights Quantification Act as part of the Claims Resolution Act of 2010 (P.L. 111-291). The legislation was sponsored by the entire Arizona delegation at the time. The Quantification Act resolved the Tribe's water-related damage and reserved water rights claims against the United States, the State of Arizona, and a number of state parties regarding rights in the Little Colorado River and the Gila River (Salt River and Tributaries thereto). In consideration for the Tribe waiving its water related claims and prior reserved rights, the Act authorized funding for the construction of the Rural Water System comprised of a dam and reservoir, treatment plant, and 55 miles of pipeline to serve virtually every Reservation community. In addition, the Act also authorized funding for, among other things: (1) cost-overruns for the Rural Water System (Sec. 312(e)) and (2) "water-related economic development projects" as part of the WMAT Settlement Fund (Sec. 312(b)).

The White Mountain Apache Tribe Water Rights Quantification Agreement, which was respectfully negotiated amongst all parties, was formally approved by the White Mountain Apache Tribe and all parties, including the Secretary of the Interior, and subsequently approved by the Superior Courts (Apache County and Maricopa County Superior Court) of the State of Arizona on December 18, 2014. The White Mountain Apache Tribe Water Rights Quantification Settlement Judgment and Decree was filed in Maricopa County and Apache County on March 15, 2015. The Judgments and Decrees become enforceable on the date that the White Mountain Apache Tribe Water Rights Quantification Act becomes enforceable with the publication by the Secretary of the Record of Decision allowing the construction of the Rural Water System project to go forward.

#### **The Tribe's Drinking Water Crisis**

The driving force behind the 2009 water rights settlement and the 2010 Quantification Act was the long-standing need to provide a reliable and safe water supply and delivery system to the members of the White Mountain Apache Tribe. The Tribe and Reservation residents are in urgent need of a long-term solution for their drinking water needs. Currently, the Tribe is served by the Miner Flat Well Field. Well production has fallen sharply and is in irreversible decline. Over the last decade, well production has fallen by more than 60 percent. A small diversion project on the North Fork of the White River was constructed several years ago to compensate for the precipitous loss of well production, but was only a temporary fix. Drinking water shortages remain a chronic problem. The Tribe experiences annual summer drinking water shortages, and there is no prospect for groundwater recovery as

there is little or no groundwater on the Reservation. The quality of the existing water sources threatens the health of our membership and other Reservation residents, including the Indian Health Service Regional Hospital and State and Bureau of Indian Affairs schools. The only viable solution is the replacement of failing groundwater resources with surface water from the North Fork of the White River.

Without reservoir storage behind Miner Flat Dam, a feature authorized by the Act, the unregulated stream flows of the North Fork of the White River, supplemented by a sharply reduced Miner Flat Well Field, are together inadequate to meet current, much less future, community demands of the White Mountain Apache Tribe in the Greater Whiteriver Area, Cedar Creek, Carrizo, and Cibecue, where 95 percent of the Reservation population resides. Nor can we maintain a minimum flow in the North Fork of the White River. Therefore, Miner Flat Dam is necessary to store 8,600 acre-feet of water during runoff periods for release and enhancement of the North Fork of the White River to not only meet demands of the Reservation Rural Water System, but to maintain a minimum flow required for aquatic and riparian habitat preservation and enhancement.

In sum, the Rural Water System will replace the failing groundwater well system and enable the Tribe to construct a secure, safe and reliable drinking water supply for the current 17,000 White Mountain Apache Tribal members and residents living on our Reservation and to meet the increasing drinking water needs of the Reservation for a future population of nearly 40,000 persons in the decades to come.

#### **Need for Amendment**

Unfortunately, as work on the design and geotechnical study of the proposed dam site for the Rural Water System has taken place, the Tribe together with Reclamation and its consultants have identified additional cost-overruns beyond what was initially contemplated at the time Congress passed the first amendment to the Act. These additional costs were discovered after the Tribe conducted further review of the project with the assistance of HDR, the Engineer of Record (EOR) for the WMAT. In 2019, WMAT worked with Reclamation on a new drilling program to further define the site characteristics and to prepare the Viability Assessment (VA) of the Miner Flat Dam, a key component of the RWS. In the course of this work, the Tribe's consulting engineers altered the design to address seepage and stability issues at the dam site, which resulted in an increased cost estimate for the project.

We have continued to work closely with the U.S. Bureau of Reclamation and believe we are close to reaching consensus to address the design issues discussed above so that the RWS can be built and the settlement finalized. In October 2021, the VA was finalized and it concluded that: (1) the dam is viable with the foundation treatments proposed; (2) the dam will meet national dam safety criteria; and (3) the dam will effectively regulate the North Fork of the White River for the Rural Water System with relatively small and controllable seepage losses.

The upper end of the costs for options in the VA required an additional funding amount of approximately \$250 million to complete HDR's proposal for construction of Miner Flat Dam. The increased funding amount also includes the cost for the dam, pipelines, pumping stations, water tanks, water treatment plant, diversion to the water treatment plant and all other elements of the WMAT RWS. The additional funding is for all features of the WMAT RWS and includes construction contingencies and "non-contract" costs (such as NEPA compliance, Clean Water Act compliance, NHPA compliance, project planning, design, construction observation, administration of construction contracts with builders of the project features awarded contracts in a competitive bidding process, and Reclamation oversight, among other costs not listed).

In November 2021, the Bureau of Reclamation asked WMAT to prepare an "addendum" to the Final VA to address the costs of an additional design option that would include an underground concrete wall across the full breadth of the valley of the North Fork of the White River as deep as the basement complex and to depths of 150 to 350 feet depending on location across the Valley. WMAT complied and directed HDR to prepare a cost estimate of the option proposed by Reclamation and a second less costly option that would provide a more robust treatment of the foundation than had been provided in the Final VA to reach common ground with Reclamation.

Reclamation recognized the need to reach a consensus on foundation design and accepted a WMAT invitation for a workshop in Denver in late February 2022. The workshop helped Reclamation and the EOR agree on a foundation treatment option that will address Reclamation's concerns. It is my understanding that cost estimates of that option should be completed in the next several weeks by HDR and shared with Reclamation for review. The Tribe is hopeful that it will reach consensus on

a sum certain with Reclamation in the very near future that will be close to HDR's cost estimate.

Finally, because of the above delays associated with the RWS, the deadline for the enforceability date of the Act also must be extended by two years to 2025 so that the dam design and required environmental review of the project can be completed. As noted, one of the requirements for the Act to become enforceable is the issuance by the Department of the Interior of a ROD for the RWS and publication by the Secretary of the Interior of a statement of findings in the Federal Register authorizing construction. WMAT and Reclamation are working cooperatively to ensure steady progress to complete 30 percent design of Miner Flat Dam, the critical path to the ROD, ahead of the April 30, 2025, date for enforceability of the Quantification Act as proposed in the amendment.

Ultimately, the importance of our water rights settlement and the WMAT Rural Water System to the health and welfare of our people cannot be overstated. As noted in the previous legislative history, reservoir storage on the North Fork of the White River is key to the ability of my Tribe to use its settled water rights and deliver water to the communities on the Reservation. Absent storage we cannot capture runoff, prevent its escape from the Reservation, and use it beneficially during drier seasons. We must ensure the timely design and completion of the RWS by resolving the cost issue now, not later. This legislation would clarify that we have adequate funding to complete the project and time to complete the dam design and required environmental review. If these issues are not resolved, the water settlement and the completion of the project will be threatened, which would increase the ultimate cost to the United States, delay the delivery of life-sustaining drinking water to our Reservation communities and the membership of the White Mountain Apache Tribe, and bring uncertainty to the Tribe and its settling parties in the Gila River Adjudication.

Senator MURKOWSKI. Thank you, Chairwoman.

Before we turn to Chairwoman Flores, I understand that Senator Kelly is on the line and would like to introductions of both of you. I would just like to acknowledge; I have just been informed that both Chairwoman Lee-Gatewood and Chairwoman Flores are the first women to be the heads of your tribes. Congratulations. It is wonderful to have you as part of our Committee, and the leadership that you present.

Senator Kelly?

**STATEMENT OF HON. MARK KELLY,  
U.S. SENATOR FROM ARIZONA**

Senator KELLY. Thank you, Madam Chairwoman.

I am a little late here, but thank you for the opportunity to testify on two bills that I introduced on behalf of the Colorado River Indian Tribes and the White Mountain Apache Tribe in Arizona.

In a moment I will get to the two bills. First, I want to introduce the two tribal leaders joining us today. Obviously, you already heard from Chairwoman Lee-Gatewood. I will introduce her as well, after her testimony here.

Chairwoman Amelia Flores is testifying on behalf of the Colorado River Indian Tribes, and as you have already heard from Chairwoman Lee-Gatewood, she is testifying on behalf of the White Mountain Apache Tribe.

To both chairwomen, thank you for your leadership and support of these bills. The west is dealing with the real-time effects of the worst drought in 1,200 years. Let me say that again: 1,200 years. Below average snowpack in the upper basin of the Colorado River is reducing water availability for farmers, for ranchers, for businesses, and for communities across seven States in the west.

The issue is a priority for me, because Arizona is on the front lines of this mega-drought. In many instances, tribal nations are

among the most vulnerable to its effects. At the same time, tribes hold significant water rights that can position them to lead on water conservation and drought management.

For example, the Gila River Indian Community recently led efforts to team up with water users in Arizona, in Nevada, and Southern California. Together, they announced the first-ever plan to conserve 1 million acre-feet of water in the lower Colorado River Basin over the next two years. That water will stay in Lake Mead.

That plan demonstrates the role that tribes can play in promoting a secure water future for the west. The Colorado River Indian Tribes are located along the banks of the Colorado River where they have farmed this land for thousands of years. Agriculture is a key part of their economy and their culture.

In 2005, the Supreme Court quantified their right to nearly one-quarter of all Colorado River water allocated in Arizona. Today, they farm across 125 square miles of tribal land, using an irrigation project that was built mostly by the Bureau of Indian Affairs. It also just happens to be one of the oldest systems like this in the Nation.

I have visited the farmland, and I have seen the BIA infrastructure that was built a long time ago, and significant amounts of water being wasted by a failing flood irrigation project in some places, it is not just one place. You can see water leaking through hand-dug dirt canals, and we are just losing the water.

Chairman Flores wants to urgently modernize that system. But she needs the resources to line canals and install water efficient water infrastructure like drip irrigation. There are some pilot projects on this already that I have gone out and visited that are successful.

My bill would enable her government to lease a portion of the water off-reservation to non-tribal water users for things like habitat restoration, water storage, and for all those other communities who need it as the drought gets worse. Revenue from these transfers could then be reinvested into their farming operations for repairs and water efficiency upgrades. Then this will pay dividends, they conserve more water, they can lease more water, they will have the resources to become even more resilient and water efficient.

This capability would be a new tool in ongoing efforts to help manage drought in Arizona. This legislation was developed following a series of public meetings organized by the Arizona Department of Water Resources. It is backed by local governments, it is backed by environmental organizations, and many in Arizona's business community.

Madam Chairwoman, I will include several letters from Arizonans who support this bill.

My other bill would address the drinking water needs of the White Mountain Apache Tribe, which is completely, right now is completely reliant on a diminishing groundwater source. Twelve years ago, Senator Jon Kyle led an effort to secure the water rights of the White Mountain Apache Tribe. In exchange for waiving their claims to the Salt River, the tribe agreed to accept the Federal Government's offer to build a dam and a reservoir to store their surface water.

Unfortunately, engineering complications have led to cost overruns and delays in constructing this dam. My legislation would extend the deadline for completing the dam and increase its authorized funding level.

The United States Government has an obligation to honor the commitment that it made to the White Mountain Apache Tribe. My bill would do just that.

Madam Chairwoman, this concludes my testimony. Thank you for the opportunity to speak at today's hearing.

Senator MURKOWSKI. Thank you, Senator Kelly.

With that introduction, let's go to Chairman Flores. Welcome to the Committee.

**STATEMENT OF HON. AMELIA FLORES, CHAIRWOMAN  
COLORADO RIVER INDIAN TRIBES**

Ms. FLORES. [Greeting in Native tongue] Amelia Flores. [Phrase in Native tongue.]

Good afternoon, and thank you, Vice Chair, and honorable Committee members. I am Amelia Flores, Chairwoman of the Colorado River Indian Tribes.

I am here today to ask for your support and to answer your questions about the legislation we propose, S. 3308, the Colorado River Indian Tribes Water Resiliency Act. [Phrase in Native tongue.] I am Mohave. The Mohave people have always lived along the Colorado River and farmed with its waters.

Today, I want to talk about the river that is our namesake. It is in trouble. Our watershed is hotter, dryer and windier. This means less rain and more evaporation. Multiple years with these conditions have created extremely low amounts of runoff for our river.

In 2007, the water managers at Reclamation implemented a plan to cut water deliveries if the amount of water in Lake Mead dropped, the shortage guidelines. In 2019, the shortage cuts were not projected to be enough to save Lake Mead and we have the drought contingency plan, the DCP. In December, we learned that even those additional cuts were not enough. We are now working to cut even more because forecasts show that the balances of water between Lake Mead and Lake Powell is at risk.

CRIT is doing its part. We have been following productive farmlands to leave water in Lake Mead since 2016. We have left more than 200,000 acre-feet in the lake, raising it by three feet. But without our bill, this is the only way we can help.

The river needs all the tools that can be made available to survive this continuing trend of less and less water. This legislation, S. 3308 will provide additional tools.

The CRIT water is the first and highest priority water on the river. The water used by the Arizona metro areas that is delivered by the CAP is the lowest priority, and is getting cut. But unlike many other tribes in the State, we cannot make our water available for deliveries to them until Congress allows it.

We do not know what the future will bring, and we all need all the tools possible.

Let me address some specifics about the legislation and the tools it can provide.



First, authorizing us to lease water will not increase the use of water from the river. We can only lease as much water as we have stopped using on our reservation. The river will stay whole.

Second, no new infrastructure is needed to deliver or treat this water. There will be no federal dollars needed to implement this bill.

Third, it will expand our ability to help save the life of the river. Right now, we cannot make water available for off-reservation river habitat that is suffering as water levels drop. This bill will help us support the native plant and endangered fish restoration programs along other stretches of the river like we do on our reservation.

Fourth, and the most important to our people, this legislation protects our sovereignty over our water. This river is our namesake, it is our life, and if we do not control our water, history tells us that others will.

My tribe has worked with the Department of the Interior, the Arizona Department of Water Resources, water users, and environmental organizations over the past six years to develop and promote this legislation. It was vetted in Arizona through two public State-run hearings and a months-long comment period. We have overwhelming support.

Let me close by saying, this is a critical time in the Colorado River Basin. We are facing a mega-drought, and Arizona is ground zero. This bill helps us save our river, and it helps us generate the revenue we need to adapt to the drier climate. It also allows us to help our neighbors.

Senators Kelly, Sinema, my tribe, and many others in Arizona, believe this bill will help save the Colorado River. I ask for your support.

[Phrase in Native tongue.] Thank you for this opportunity, and I am happy to answer any questions that you may have.

Thank you

[The prepared statement of Ms. Flores follows:]

PREPARED STATEMENT OF HON. AMELIA FLORES, CHAIRWOMAN COLORADO RIVER  
INDIAN TRIBES

Chairman Schatz, Ranking Member Murkowski, Members of the Committee: thank you for the opportunity to supplement the record with additional information about S. 3308, the Colorado River Indian Tribes Water Resiliency Act.

As I said in my statement, I am Mohave. The Mohave people have always lived along the Colorado River and farmed with its waters. Our tribe also includes Chemehuevi, Hopi and Navajo people who were colonized on our Reservation by the United States or who came with the offer from the United States of farmland. We are located on a Reservation first established in 1865 that is on both sides of the Colorado River with lands in California and in Arizona.

This legislation only applies to our water rights for use in Arizona.

I want to provide additional information about the River that is the namesake my people, the drought, and how our tribe would use the authority in the bill if authorized.

The Colorado River:

Almost all the water for the Colorado River originates in the Rocky Mountains in the states of the Upper Basin, Wyoming, Colorado, Utah and New Mexico. The snow melt runs off into Lake Powell and is delivered from Lake Powell to Lake Mead. Our water is released from Lake Mead to flow south through several dams and past the intakes for the Metropolitan Water District and the Central Arizona Project.

The diversion point for most of the water that we use on the Arizona portion of our reservation is Headgate Rock Dam. The water flows into the main canal of the Colorado River Irrigation Project that is operated by the Bureau of Indian Affairs.

In 2007 the water managers at Reclamation implemented a plan to cut water deliveries if the amount of water in Lake Mead dropped. This plan is called the Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead, December 2007, more commonly known as the Shortage Guidelines.

In 2019, as a result of dropping water elevations in Lake Mead, shortages were triggered. Stakeholders in the basin, and Congress, put in place the Drought Contingency Plan, or DCP. The Lower Basin DCP includes voluntary contributions to Lake Mead, above and beyond what was called for in the 2007 Shortage Guidelines, from the Lower Basin states of Nevada, California and Arizona as well as from the United Mexican States.

In December 2021, we learned that even those additional cuts are not enough. We are now working to cut even more because the Reclamation August 24 month study predicts that Lake Mead has a chance to drop below mean sea level elevation 1030, triggering additional consultations under the DCP agreements. Recent Reclamation forecasts are now showing that the balance of water between Lake Mead and Lake Powell is at risk because of dropping elevations of Lake Powell.

As I mentioned in my statement and in response to questions, CRIT is doing its part. We were among the first in the Basin to leave water in Lake Mead through System Conservation and are still doing so today. This year, 2022, is the final year of our latest agreement and, when complete, we will have left more than 200,000 acre-feet of system conservation water in Lake Mead, raising it by 3 feet. The 2022 CRIT following plan is shown on the map in Figure 1 and is tabulated in Table 1 attached to this testimony.\*

The DCP agreement ends at the end of 2022 and we are in negotiations with Reclamation and the CAWCD to leave more water in Lake Mead in 2023 and years beyond.

But without this legislation, S. 3308, this is the only way we can help mitigate the decades long drought.

The River, and the communities and economies that depend on it, need all the tools that can be made available to survive this continuing trend of less and less water. This legislation, S. 3308 will provide additional tools.

The CRIT water rights are the first and highest priority water rights on the Lower Basin of the Colorado River. The water used by the Arizona metro areas that is delivered by the CAP is the lowest priority, and is being cut this year by a total of 512,000 acre feet based on both a Tier 1 Shortage as required by the Shortage Guidelines and the DCP agreements. But unlike many other tribes in the State who have been authorized by Congress to lease their water from the Colorado River that is delivered through the CAP, we cannot lease our water or make our water available for delivery to other water users until Congress allows it.

Congress must authorize tribal leasing of trust assets because of the restrictions in the Indian Trade and Intercourse Act that dates back to the 1790's (25 USC 177). Congress has authorized tribes to lease water in at least 24 of the water settlements that have been approved. The CRIT water rights are decreed water rights that were determined by the United States Supreme Court in the case of *Arizona v. California* in 1963 (373 U.S. 546, 1963) and therefore have never benefited from Congressional support.

I want to reiterate and provide more detail on some of the key points I made in my testimony.

**First**, authorizing us to lease water will not increase the use of water from the River. We can only lease as much water as we stop using on our reservation—usually by fallowing farmland. The River will stay whole, as it does with our system conservation water.

The legislation requires that water included in a lease, exchange or storage agreement come from a reduction in our consumptive use on the Arizona portion of our reservation. This is currently done by fallowing productive farmland as we are doing for the creation of system conservation. Consumptive Use is defined in Section 3 of S. 3308 which requires that we have farmed the parcels for four of the most recent five years before fallowing to establish a quantifiable use on the reservation.

Section 4 of S. 3308 states that “the CRIT is authorized to . lease or exchange a portion of the consumptive use for a use off the Reservation.” This requirement is repeated in Section 5 for off-reservation storage agreements.

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\*The information referred to has been retained in the Committee files.

This is the same methodology that we developed beginning in 2016 for the Pilot System Conservation Program and has been measured and verified by Reclamation, the states, and the major water users each year since then. It does not increase water taken from the River.

There seems to be some concern that CRIT will “remove its System Conservation and lease that water.” This concern demonstrates a failure to grasp the core concept of both the legislation and System Conservation.

System Conservation is, by definition, water that is left in the River system. Therefore, under the terms of the legislation before the committee, CRIT is not able to remove this water and lease it.

**Second**, no new infrastructure is needed to deliver or treat this water, so it is unlikely to have a significant budgetary score. Water we lease may be delivered through the CAP to water users and storage facilities. In 2017 CRIT participated as a stakeholder in the development of the CAP System Use Agreement and Standard Form Wheeling Agreement; with others, we ensured that CAP will be able to wheel non-project water, such as CRIT’s, through the canal.

In addition, the CRIT water, unlike recovered groundwater, is the same as the CAP project water. It may be used in the same way as CAP water that is being shorted, without any changes to water treatment facilities.

**Third**, the leasing and exchange authority in S. 3308 will expand our ability to help save the life of the River. Right now, we cannot make water available for off-reservation river habitat that is suffering as water levels drop. This bill will help us support the native plant and endangered fish restoration programs along other stretches of the River. We have seen the benefit of this from a recent lease agreement between the Jicarilla Apache Nation and the New Mexico Interstate Stream Commission facilitated by the Nature Conservancy, to provide water for habitat in the Rio Grande.

We know that with less water in the River, there is likely to be less habitat. We are uniquely situated on the River to make this water available to the United States Fish and Wildlife Service and others along the banks of the River including under the Multi-Species Conservation Program.

**Fourth**, and most important to our people, this legislation protects our sovereignty over our water. This River is our namesake, it is our life, and if we do not control our water, history tells us that others will.

We know that others will take what is ours if we do not act.

Shortly after our reservation was created gold was discovered on the southern part of our Reservation. The United States promptly turned around and took those lands from us. It was not until 2005 that Congress returned this land to us, but even today we still have limited control over it. We cannot use it for gaming and we cannot claim water rights for this land.

We have never had sovereignty over our water rights. We want to exercise our sovereign rights to make our water available to save the River and to provide economic stability for our government.

**Fifth**, and finally, this legislation is the only way that CRIT can help other tribes in the Basin.

CRIT System Conservation does not help any of the 30 tribes in the Colorado River Basin directly. The reality is that aridification and drought remove far more water than CRIT could ever leave in Lake Mead.

The authority to move our water off the reservation will allow us to work on a government-to-government basis with those tribal nations that lose water as a result of the drought. Since time immemorial the Mojave people have travelled east to trade with our O’odham and Apache neighbors; this legislation respects that tradition by allowing us to continue to work with our sister tribes. If given the authority, I know that our Council will want to help.

We are often asked what we would use the money from water leasing for. The final decisions about tribal financial resources are for each tribal council to make. I can tell you today that we first must replace the income lost from farming the lands that are fallowed and we must pay the full costs to the BIA for the operation and maintenance of the irrigation project for each acre that is fallowed. We must also reserve the money to rehabilitate and replant the fallowed land.

We are also expanding the use of water conserving delivery systems, such as drip irrigation and sprinklers. This is an expensive process and we are proud to partner with Reclamation through WaterSMART grants, and with CAWCD. Uniquely, we are working with NGO’s such as the Bonneville Environmental Foundation (B-E-F) and corporate donors to pay the cost share for grants—this expands the amount of work we can do each year on our limited government budget.

In addition, we suffered tremendous loss from the pandemic and our economy will take many years to recover. We will use any increase in revenue from water leasing to replenish our tribal budget for governmental services.

And finally, we are a rural tribe and have never had the financial resources to provide for our people the way other tribes near metro areas and with water leasing authority can do. Our elders need additional programs; our Headstart children attend school in a building more than 90 years old; our youth need supplemental programs for their education; we have a severe housing shortage and we need a new well to supply our domestic water system. These are just a few of the many needs of our people.

This legislation, S. 3308 has been shared with and reviewed by the representatives of each of the seven basin states, at conferences throughout the basin, at public meetings and we have considered all comments we have received and have answered all questions. This has been a thorough and transparent process leading up to this hearing today.

My tribe, the Colorado River Indian Tribes, has worked with the Department of the Interior, the Arizona Department of Water Resources, water users, and environmental organizations extensively and regularly over the last six years to develop and promote this legislation and to negotiate the two agreements required by S. 3308. A draft was made available to the public by the Arizona Department of Water Resources and we voluntarily participated in two State-run public meetings. After a 30-day comment period we again met with the representatives of the United States, the Arizona Department of Water Resources, the CAWCD staff and major stakeholders to address their comments in what then became the bill before you today, S. 3308. **There is overwhelming support for this bill.**

Like in my oral testimony, I want to close by saying that this is a critical time in the Colorado River Basin. We are facing a mega-drought, and Arizona is Ground Zero. This bill, S. 3308 helps us save our River, and it helps us generate the revenue we need to adapt our reservation to the drier climate. It also allows us to help our neighbors along the River and farther away in Arizona. Senators Kelly and Sinema, along with my tribe, and the State of Arizona and many other stakeholders, believe this bill will help get us through a drier future in the Colorado Basin. I ask for your support.

The CHAIRMAN. [Presiding.] Thank you very much.

We will now recognize the Honorable Harry Pickernell, Sr., the Chairman of the Confederated Tribes of the Chehalis Reservation, Oakville, Washington.

**STATEMENT OF HON. HARRY PICKERNELL, SR., CHAIRMAN,  
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION**

Mr. PICKERNELL. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Harry Pickernell, Chairman of the Confederated Tribes of the Chehalis Reservation.

I am testifying today in support of S. 3773. This bill would amend the Long-Term Leasing Act to add the Chehalis Tribe to the list of 59 other Indian tribes that are able to enter into leases with third parties for terms of up to 99 years.

The Chehalis Reservation was created by Executive Order in 1864, and is located between the confluence of the Chehalis River and the Black River. Much of the tribe's 4,800-acre land base is in flood plain, and the tribe has very little land suitable for economic development.

Southwest Washington State has long been an economically depressed area, lacking businesses and jobs for tribal members and non-Indians alike. The Chehalis Tribe operates a casino, but is always looking for ways to diversify its economic base to continue supporting its education, health, housing, safety, and other programs for its members. For example, in 2020, the Chehalis Tribe

opened Talking Cedar, a destination restaurant and brewery that is also the first-ever legal distillery built in Indian Country.

This Committee and the U.S. Senate assisted in making the Talking Cedar project a reality when in 2018, Congress repealed the 1834 law that prohibited constructing distilleries in Indian Country. The repeal of that 19th century law allowed the Chehalis Tribe to begin construction on the distillery, which was completed in 2020. Talking Cedar has been a tremendous success, and is the largest craft distillery west of the Mississippi.

Today, we ask the Committee to again assist the Tribe in its efforts to diversify its economy. The Long-Term Leasing Act limits the terms of surface leases of tribal trust land to an initial 25-year term with a 25-year extension, for a total of 50 years. Since the enactment of the Long-Term Leasing Act in 1955, Congress has amended the law and authorized the Secretary to approve leases of up to 99 years for 59 Indian tribes. S. 3773 would simply add the Chehalis Tribe to that list and authorize the tribe to execute leases with terms of up to 99 years.

The tribe is currently making improvements on two parcels of tribal trust land that are located on major transportation routes on Interstate 5 and State Highway 12. Both parcels have adjacent access to a railroad and would be very suitable for warehouse operations.

The tribe has received proposals for developing multiple warehouse facilities on these parcels to serve supply chain needs between the cities of Seattle, Tacoma, Olympia, and Portland. All these proposals, however, would require the tribe to be able to execute leases for up to 99 years.

In 2008, the tribe was able to successfully develop the first Great Wolf Lodge water park on an Indian reservation under the current 50-year leasing term limit. The financing and economic landscape in 2022, however, makes working within that 50-year term no longer viable for larger scale construction projects. S. 3773 addresses the Chehalis Tribe's immediate need for these development opportunities by adding the tribe's name to the list of tribes in the Long-Term Leasing Act with 99-year lease authority.

The tribe looks forward to working with the Committee to move this bill forward. The tribe appreciate the Committee's scheduling this hearing, and urges full consideration and passage of S. 3773.

This concludes my testimony, and I would be happy to answer any questions when appropriate.

[The prepared statement of Mr. Pickernell follows:]

The CHAIRMAN. Thank you very much.

PREPARED STATEMENT OF HON. HARRY PICKERNELL, SR., CHAIRMAN, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION

Thank you, Chairman Schatz and Vice Chair Murkowski, for holding this legislative hearing on S.3773, a bill to authorize the leases of up to 99 years for land held in trust for the Confederated Tribes of the Chehalis Reservation.

My name is Harry Pickernell, Sr., and I am the Chairman of the Confederated Tribes of the Chehalis Reservation (the "Tribe"). Senator Maria Cantwell (D-WA), together with Senator Patty Murray (D-WA), introduced S. 3773 on March 8, 2022.

The bill would amend the Long-Term Leasing Act, 25 U.S.C. § 415, which authorizes the Secretary of the Interior to approve leases of surface lands between Indian tribes and third parties. Section 415, which was enacted in 1955, authorizes the Sec-

retary to approve leases with terms of up to 25 years with an option to renew for an additional 25 years, for a total of 50 years.

Since Section 415 was first enacted into law in 1955, many tribes have required the ability to enter into leases with terms longer than 50 years to attract outside investment to their tribal lands. Such authority has required an amendment to Section 415 to add the name of the Indian tribe to the list of what is currently 59 Indian tribes for which the Secretary may approve leases with terms of up to 99 years.

The Tribe's economic development activities funds its government programs and helps to diversify its economic interests during trying times, such as the ongoing COVID-19 pandemic. Today, the Tribe is interested in developing American supply chain infrastructure, by making improvements to an existing assemblage of land suitable for a warehouse facility located on the Tribe's trust land. The improvements would secure a lease of the proposed facility with an outside entity. The location of the Tribe's land base is unique in that the Tribe's two large assemblages of Reservation trust land are located on major transportation routes, providing a key location for a warehouse facility. One area is next to U.S. Interstate 5, and the second area is next to State Highway 12. Both areas of Reservation trust land have adjacent access to a railroad.

For this project, the Tribe has received two Letter of Intent proposals for developing the multiple warehouse facilities to serve supply chain needs between the cities of Seattle, Tacoma, Olympia, and Portland. The Tribe expects additional proposals to be submitted to compete for selection. All these proposals would require the ability to execute leases of up to 99 years.

In 2008, the Tribe was able to successfully develop the first Great Wolf Lodge waterpark on an Indian reservation under the current 50-year leasing term limit. The financing and economic landscape in 2022, however, makes working within that 50-year term no longer viable for larger scale construction projects. To address the immediate need for these development opportunities, an amendment is needed to include "the Confederated Tribes of the Chehalis Reservation" to the list of tribes in Section 415. The Tribe looks forward to working with the Committee on swiftly moving this legislation forward.

If enacted into law, S. 3773 would simply authorize the Secretary to approve surface leases of land held in trust for the Tribe with terms of up to 99 years. The Secretary's approval process under the existing regulations that govern review and approval of surface leases remains unchanged. Similarly, authorizing the Secretary to approve leases with terms of up to 99 years has no effect on gaming. Whether or not an Indian tribe may conduct gaming on a particular parcel of land is governed by the Indian Gaming Regulatory Act, not Section 415. The only change that would be effectuated by S. 3773 would be to authorize a longer lease term for the Tribe.

The Tribe notes that the path for Indian tribes to obtain the ability to have leases with 99-year terms approved by the Secretary has involved Congress adding the tribes to Section 415 on a case-by-case basis. In the modern era of self-determination, however, the Tribe believes that all tribes should have the ability to enter into 99-year leases. Because of time constraints with the Tribe's pending projects, the Tribe asks that the Committee swiftly move S. 3773, as introduced, for full Senate consideration to ensure that these opportunities are not lost.

Going forward, however, the Committee should consider amending Section 415 to authorize all tribes to enter leases with third parties with terms of up to 99 years. This would save those tribes that need the authority to enter into 99-year leases the trouble of expending resources to secure enactment of what are truly one-off technical amendments.

I thank the Committee for allowing me to provide testimony on S. 3773 and look forward to answering any questions.

We will now recognize the Honorable Lebaron Byrd, the Chief of the MOWA Band of Choctaw Indians, Mount Vernon, Alabama. Welcome.

**STATEMENT OF HON. LEBARON BYRD, CHIEF, MOWA BAND OF CHOCTAW INDIANS**

Mr. BYRD, Chairman Schatz, Vice Chair Murkowski, members of the Committee, thank you for the opportunity today to testify on behalf of my tribe. I also must thank Senator Shelby for his long-

standing friendship and support of our people and our quest for full federal recognition.

Senator Shelby's introduction of S. 3443, the MOWA Band of Choctaw Indians Recognition Act, is his latest effort on our behalf to provide federal recognition to the MOWA Band. For over four decades, the MOWA Band has sought federal recognition to overturn both historic and modern injustices to our communities.

Today, we are asking this Committee to support Senator Shelby's effort to finally recognize the MOWA Band as a member of the federal family of Indian nations. We would honor that privilege.

The MOWA Band of Choctaw Indians are descendants of the Choctaw Nation that stayed in our homelands after Indian Removal, despite the fact that very few received the Indian homesteads promised by the Treaty of Dancing Rabbit Creek. We kept our communities together and supported each other, becoming identifiable Indian enclaves, separated from surrounding White and Black communities by our genetic origin, social and cultural ties, and political leadership.

Our ancestors wisely required ownership of lands centered around our homeland of today, and built homes, churches, and schools on Indian-owned property. Churches and schools built and supported by Methodist, Baptist, and Catholic missionaries became central to both the identity and survival of the MOWA Band.

Until federal court cases of the 1960s mandated integration, a three-way racially segregated education system, White, Black, and other, existed in the MOWA Choctaw community. I am a graduate of one of those other schools, and I have made it my life's work to ensure our young people have better opportunities in education.

We live in the same distinct Indian enclave in southwest Alabama, an area approximately 20 miles north to south, and 10 miles east to west. Here we provide government and community services to our citizens, including community policing, legal aid, housing, and medical services. We have begun restoring our community's cultural traditions, and have a nationally known annual powwow.

The tribe has been recognized by the State of Alabama since 1979 by federal agencies such as HUD and HHS. We are part of the National Congress of American Indians, and recognized by other federally recognized tribes, church organizations, and notable scholars. Sadly, the Department of the Interior is the only major federal agency that does not recognize us as an Indian tribe.

Our petition was among the first introduced in 1978. By the time our petition moved through the queue, the Bureau of Affairs recognition process was already being denounced as broken. Given the summary denial of our petition, I must agree with that criticism.

In 1997, the Department of the Interior denied us a summary review process that focused exclusively on the scarcity of federal records listing MOWA ancestors dating from the 1830s removal period or earlier. Federal records or lists of names did not include the MOWA Choctaw tribal members, like many others. In fact, the color choices on the 1850 census were White, Black, and Mulatto.

I want to make it clear: the malfeasance of federal agents in the 19th century by not fulfilling their federal treaty responsibility provided the rationale for federal agents in the 20th century to deny the MOWA federal recognition. Changes made in 2014 to regula-

tions at 25 C.F.R. Part 83 would make the MOWA Choctaw a strong petitioner for full review. However, as there is no reconsideration for the 1997 denial, the only avenue open to the MOWA is recognition by the United States Congress.

Federal recognition by act of Congress is longstanding, and often used to exercise the plenary power of the Congress. It was most recently exercised to recognize tribes in Virginia and Montana during the 115th and 116th Congresses, including a tribe that had its petition denied by Interior. We humbly ask that this Committee support the exercise of that power to recognize the MOWA Band of Choctaw Indians.

Thank you for the opportunity to testify today on behalf of my tribe. I stand ready to answer any questions the Committee may have for me.

[The prepared statement of Mr. Byrd follows:]

PREPARED STATEMENT OF HON. LEBARON BYRD, CHIEF, MOWA BAND OF CHOCTAW INDIANS

Chairman Schatz, Vice Chair Murkowski, Members of the Committee, my name is Lebaron Byrd and I am the elected Chief of the MOWA Band of Choctaw Indians. Thank you for the opportunity to testify today for my tribe. On behalf of the MOWA Band, I also must thank Senator Shelby for his long-standing friendship and support of our people and our quest for full federal recognition.

Sen. Shelby's introduction of S. 3443, the MOWA Band of Choctaw Indians Recognition Act, is his latest effort on our behalf to provide federal recognition to the MOWA Band allowing us to join the family of federally recognized Indian tribes that has been a part of the United States since its founding.

For over four decades the MOWA Band has sought federal recognition to overturn both historic and modern injustices to our communities. Today we are asking this Committee support Senator Shelby's effort to finally recognize the MOWA Band of Choctaw Indians as member of the federal family of Indian nations.

**Who are the MOWA Band of Choctaw**

The MOWA Band has been part of United States history since its earliest days. Initially part of the greater Choctaw Nation that entered into treaties with the United States, the MOWA are a descendant community of the Choctaw Nation that stayed in our homelands after Indian Removal policies took most of the Choctaw people to what is now Oklahoma. Since that time, we have lived in, worked in, shed blood for, and contributed socially and culturally to our country and the state of Alabama.

In the Treaty of Dancing Rabbit Creek, the federal government promised our ancestors the right to stay in our homeland and receive federal homesteads or allotments of land. Thousands of Choctaws remained in Mississippi and Alabama, attempting, often unsuccessfully, to have the federal government protect their rights under the treaty. While many later became members of the federally recognized Mississippi Band of Choctaw Indians, there is clear historical proof that hundreds of Choctaws continued to reside in Mobile and surrounding areas well into the 1850s. Very few received the Indian homesteads promised them by the Treaty because the federal agents charged with that responsibility refused to register the names of our ancestors who asked for lands. Our ancestors, most of whom spoke no English, were dependent upon these federal agents to record their names and provide them promised allotments of lands.

When the federal government broke its promises, our ancestors were left to fend for themselves. This they did by keeping their community together and supporting each other. By the Civil War era, the MOWA Choctaw people had become an identifiable Indian enclave, separated from surrounding white and black communities by our genetic origins, social and cultural ties, and political leadership.

**How Did the MOWA Band Survive?**

Following removal of the Choctaw Nation in the 1830s, the MOWA Band continued to occupy the frontier territory around and north of Mobile, and post-Civil War, clearly occupied their current and more definitively bounded homeland in Mobile and Washington Counties. In doing so we remained a distinct, Indian enclave.



Our ancestors also wisely worked to recover some of our traditional lands. Without the benefit of the Treaty rights promised, they gradually acquired ownership of land centered around our homeland of today. In this manner they built the foundation upon which our community has survived. We have been able to build homes, churches and schools—all on Indian owned land, even if not “federal trust land.”

In fact, all-Indian churches and schools became central to both the identity and survival of the MOWA Band from the late 19th Century through most of the 20th Century. Of course, this is not unique to the MOWA community. Most non-federally recognized indigenous groups in the Southeast (many of whom secured federal recognition after the BIA established its acknowledgment regulations in 1978) were anchored by Indian churches. In the MOWA territory, several all-Indian churches date to the mid-nineteenth century, and several all-Indian schools were created in the late-nineteenth century as part of the development of segregated public school systems. Until federal court cases of the 1960s mandated integration, a three-way racially segregated educational system was established in the MOWA Choctaw homeland.

#### **The MOWA Band Today**

The MOWA Band today continue to comprise the same distinct Indian enclave that remained in Alabama. Currently our homeland constitutes an area approximately twenty miles north to south and ten miles east to west. Within this territory, we provide government and community services to our citizens, including community policing, legal aid, housing, and medical services.

Like our sister Choctaw tribes, we have moved away from our traditional leadership structure to adopt a more modern democratically elected government, with a written constitution and formal membership criteria. In addition to community services programs, we have begun restoring our community’s cultural traditions by establishing language and history programs. A group of our women leaders organized a powwow that has become a nationally known annual powwow with dancers from across Indian country.

The Tribe has been recognized by the State of Alabama since 1979, and by federal agencies such as HUD and HHS. The National Congress of American Indians, other federally recognized tribes, and notable scholars have identified the MOWA Band as a surviving tribal community in the Southeastern United States. Renowned native legal experts such as Vine Deloria, Jr., author of *Custer Died for Your Sins: An Indian Manifesto*, former Executive Director of the NCAI, and political science professor, stated that the MOWA Band was a surviving tribal group.

Sadly, the Department of the Interior is the only major federal agency that does not recognize us as an Indian tribe.

#### **MOWA Recognition Efforts**

Federal recognition is very important to the MOWA people. Recognizing our sovereignty as a tribe is not just symbolic recognition of our struggle to survive in our homeland after the vast majority of our brothers and sisters were removed to Oklahoma. It is crucial to our self-determination as an Indian tribe, and to our continued ability to take care of our people. The federal tribal programs that provide basic support to tribal governments require federal recognition. Our continuing efforts to restore language, culture and history depend on that recognition for long term support. The medical care, education, and housing programs that tribal communities like ours depend on must have the support of the federal government.

When the Department of the Interior first promulgated Federal recognition regulations in 1978, we were among the first tribes to submit a petition. However, by the time our petition moved through the queue the Bureau of Indian Affairs recognition process was already being denounced as “broken.” Given the summary denial of our petition, I must agree with that criticism.

In 1997 the Department of the Interior denied the MOWA Band’s petition for acknowledgement through a summary review process, that focused exclusively on the scarcity of federal records listing MOWA ancestors dating from 1830s removal period or earlier. They did this despite their knowledge that the MOWA Band, like many tribal communities remaining in the Southeast after Removal, suffered from a lack of federal documentation directly because of the unwillingness of federal agents in the 1800s to fulfill their responsibilities under treaties. They did this despite knowing that there were virtually no other federal records or lists of names created because the MOWA Band, like many others east of the Mississippi, were not recognized as a federal responsibility until the late 20th Century.

I want to make this point clear: the malfeasance of federal agents in the 19th century, in not fulfilling their federal treaty responsibilities, provided the rationale for federal agents in the 20th century to deny the MOWA tribe federal recognition.

Unfortunately, the OFA regulations provide no opportunity for reconsideration, even if regulations are revised in a manner that would significantly affect our petition. Therefore, the only avenue open to the MOWA Band now is recognition through legislation by the United States Congress.

This summary denial sought to delegitimize our history and our ancestry. We are determined to not let that injustice stand any longer.

#### **Changes in Federal Recognition Policy**

While it doesn't provide an opportunity for the MOWA Band, it is significant that, since denial of our petition, the Department of the Interior has fundamentally changed the criteria necessary for recognition through its regulatory process. Among the most important changes made in 2014 to the regulations at 25 C.F.R. Part 83, is the date for recognition of existence of a tribal entity. That important criteria was amended from a date of "time of first contact" to the year 1900.

For instance, this change would make relevant the United States Census beginning in 1910. That census was the first that lists MOWA Band ancestors as being Indian. We believe this change in Departmental regulations would make the MOWA Band a strong petitioner for a full review. However, as there is no reconsideration after the 1997 denial, Congressional action is needed to recognize the MOWA Band.

#### **Congress has the Authority to Recognize the MOWA Band**

Federal recognition by an act of Congress is a long-standing and often used exercise of the Plenary Power of the Congress. It was most recently exercised to recognize tribes in Virginia and Montana during the 115th and 116th Congresses, including a tribe that had its petition denied by Interior. We humbly ask that this Committee support the exercise of that power to recognize the MOWA Band of Choctaw Indians.

#### **Conclusion**

Thank you for the opportunity to testify today on behalf of my tribe. I stand ready to answer any questions the Committee may have for me.

The CHAIRMAN. Thank you very much, Chief Byrd.

Finally, we have Dr. Darin Prescott, the Director and Clinic CEO of the Lower Sioux Indian Community and Great Lakes Area Tribal Health Board in Morton, Minnesota.

#### **STATEMENT OF DARIN M. PRESCOTT, HEALTH AND CLINIC CEO, LOWER SIOUX INDIAN COMMUNITY/BOARD MEMBER, GREAT LAKES AREA TRIBAL HEALTH BOARD**

Dr. PRESCOTT. Good afternoon. Hahanna Waste', good day, everybody. Chair Schatz, Vice Chair Murkowski, and members of the Committee, I am Darin Prescott, enrolled citizen of the Lower Sioux Indian Community. Currently, I am the Health and Clinic CEO and board member of the Great Lakes Area Tribal Health Board.

I want to thank Senators Smith and Murkowski for introducing Senate Bill 1397. The bill recognizes tribal sovereignty as well as the need for data-driven decisionmaking among tribes. The COVID-19 pandemic has taught us that data sharing is imperative to make decisions and create policies that protect the lives of American Indians and Alaska Natives.

Traditionally, tribes have been data-driven in their planning, more so in a qualitative way. Our survival depended on it historically, as much as our continued survival does today. There are stories of estimating seasonal counts of bison, deer, and other game populations, and determining how many could be taken for survival while maintaining the population for future generations of the game. The corn that grew the strongest was kept for seed the following seasons. These stories and practices were passed down, tying qualitative to quantitative data.

The importance of data is well known by tribes. The need for meaningful data is oftentimes challenging for tribes to obtain. Much of the data on tribal affiliation reported through the U.S. and State governments is done on a self-reporting basis of tribal affiliation. The data collection is typically done in response to a need for data on a particular utilization. Our tribal services collect data and tribal enrolment and affiliation because we have to.

In my previous work in the private sector, the impetus for a patient to identify as a tribal citizen relied solely on the patient. Even when there are hard stops implemented in electronic registration systems, oftentimes an assumption is made based on appearance or other presenting information, either classifying as Caucasian or multi-race, which only further adds to the erasure of indigenous people.

To further complicate data collection efforts, American Indian and Alaska Native citizens may not identify their tribal affiliation due to fear of discrimination, delayed treatment, or a lesser level of care.

Senate Bill 1397 has an opportunity to further acknowledge protection, relevance and obligation of meaningful data to tribal citizens from the U.S. Government. It is imperative that data sharing agreements have more intentional collaboration with tribes on birth and death certificate accuracy. A 2017 article identified that the inaccuracy rate of American Indian and Alaska Native death certificates was close to 50 percent. While there are multiple processing and processes in place for death certificates, there is no specific check and balance for tribal affiliations.

What I have experienced over the past eight years in my journey from the private health sector to the tribal health sector is more of a parental approach that is taken by federal and State governments over tribes when it comes to data. I recall in 2021, this was just before the COVID-19 vaccines were released, in a State-Tribal health director meeting, tribal health directors were very pointedly reminded that we needed to report all our data for administration to make sure we were indeed administering the vaccines. I oftentimes wonder if commercial pharmacies, health systems, and local public health were equally as scrutinized.

If the pandemic has taught us anything, it has taught us the need for data in real time. As Senator Murkowski mentioned, tribal epidemiology centers were denied access to CDC data on tribes, which could have expedited our public health response.

I want to close with a positive example of what successful data sharing agreements can look like. The Minnesota Department of Health has recently established an Office of American Indian Health. One of the Office's current objectives is to develop infectious disease data sharing agreements with all 11 Minnesota tribes. Lower Sioux Indian Community is currently working on our agreement language.

I know there are other examples of successful data sharing agreements within other States. So this can be done if it is approached in the right way with each individual tribe.

I implore you to support this bill as a pathway to honor tribal sovereignty and build tribal, State and federal relations.

[Phrase in Native tongue.] Thank you.

[The prepared statement of Dr. Prescott follows:]

PREPARED STATEMENT OF DARIN M. PRESCOTT, HEALTH AND CLINIC CEO, LOWER SIOUX INDIAN COMMUNITY/BOARD MEMBER, GREAT LAKES AREA TRIBAL HEALTH BOARD

*Hahanna Waste'* (good day), Chair Schatz, Vice-Chairman Murkowski, and Members of the Committee. Thank you for the opportunity to speak to you about "Tribal Health Data Improvement Act of 2021"—S. 1397. I am Dr. Darin Prescott; an enrolled citizen of the Lower Sioux Indian Community or, *Cansayapi'* (where they paint the trees red), in Southwest Minnesota. I am the Health & Clinic CEO of the Lower Sioux Indian Community and a Board member of the Great Lakes Area Tribal Health Board (GLATHB). I am here today with the support of both, the Lower Sioux Indian Community and the Great Lakes Area Tribal Health Board. I am an advanced-degree registered nurse and here today speaking in support of Senate bill 1397.

The Lower Sioux Indian Community is the largest of the four Dakota Communities, and one of 11 Federally Recognized Tribes in Minnesota. The GLATHB covers Indian Health Service (IHS), Tribal and Urban (ITU) health services in the State of Minnesota, Wisconsin, Michigan, Northern Indiana and the Indian Health Board of Chicago, IL.

The Lower Sioux Indian Community is committed to improving the standard of living and quality of lives for our citizens. Access to land, water, utilities, safety initiatives, programming, and business are critical to an equitable quality of life. Data is an imperative component for tribes to support these requisite accesses. As I reviewed the proposed changes in S. 1397, I'm identifying a potential improvement that is long overdue. The following are ongoing concerns of the current system and an opportunity to support tribal data sovereignty.

### 1. Need for meaningful data

Most data reported to the U.S. Government relies on elective, self-reporting of tribal affiliation instead of tribal enrollment data; much of which has been collected to satisfy the administrative needs of the U.S. Government and not the needs of the individual tribes.<sup>1</sup> Data collection for tribes in the U.S. typically revolves around programming and cost centers. This binary data is not particularly useful especially for smaller tribes.

Tribal citizens are storytellers by nature. Our stories, passed down from generation-to-generation reflect a qualitative approach to data. Oftentimes this is supported by current quantitative data to identify resource needs. Most data collected by the U.S. government is quantitative. "Indigenous data is information, in any format, that impacts indigenous lives at the collective and individual levels."<sup>2</sup>

As a registered nurse working in a tribal health system, collection of tribal citizenship data is part of our processes. In my previous work within three major health systems, the impetus for a patient to identify as a tribal citizen falls almost exclusively on the patient. One private-sector health system that asks about tribal affiliation is Yale University Medical Center in Connecticut, during the patient registration process. Kudos to them for asking this when caring for one of our relatives recently. The specificity of tribal affiliation oftentimes is not specified or may be generalized to either Caucasian or more than one race. The classifications do not support determination of tribal data.

To complicate data collection, Indian tribal citizens may not identify themselves as belonging to a tribe. This is done with concern for receiving substandard treatment or a fear of discrimination. S. 1397 may provide additional assurances to further define the protection, importance, and obligations from the U.S. Government of data to tribal citizens.

### 2. Need for data sharing agreements between U.S. Government agencies, States with tribes, tribal health boards and epidemiology centers

Lower Sioux Indian Community's tribal constitution identifies that the Tribal Council (government) is responsible for the health and wellbeing of the tribe. Tribal use of data goes back further than colonization. Data was used to make decisions on survival. Identifying the season's population of deer and bison, helped determine

<sup>1</sup>Bruhn, L. (2014). Identifying useful approaches to the governance of Indigenous data. *The International Indigenous Policy Journal*, 5(2). Doi: <http://dx.doi.org/10.18584/iipj.2014.5.2.5>

<sup>2</sup>Kimmerer, R. (2002). Weaving traditional ecological knowledge into biological education: A call to action. *BioScience*, 52(5). Doi: [http://dx.doi.org/10.1641/0006-3568\(2002\)052\[0432:WTEKIB\]2.0.CO;2](http://dx.doi.org/10.1641/0006-3568(2002)052[0432:WTEKIB]2.0.CO;2)

how many could be taken for survival and maintain the game populations for future. Another example was which type of corn grew the strongest and some of the corn would be kept as seeds for the upcoming season. Data was, and continues to be collected and analyzed for survival and harmony.

What I've seen over the past 8 years in my journey from the private to the tribal health sector is a parental role taken by the U.S. Government over tribes. The most recent example I can share with you is from 2021 when we began receiving COVID-19 vaccines. Tribes agreed to report their data with regard to vaccinations being administered through the Minnesota Immunization Information Connection; a repository for immunizations and vaccinations given in Minnesota. On a call with tribal health leaders, a staff member at Minnesota Department of Health very abruptly identified that tribes would be monitored that we were giving the vaccines and not hoarding them. When asked if other entities receiving vaccine through MDH, such as retail pharmacies, county public health agencies and private clinics would be equally monitored; the subject quickly changed. Data is also used as a pass/fail grade for tribes. This was seen early on with the State Health Improvement Program or SHIP outcomes. It took a fair amount of time to come to understanding what success looked like in a tribal community versus County.

Fast forward to today, the need to make data-driven decisions and set policy could not be better identified than the COVID-19 pandemic response. Tribes rely on their area Tribal epidemiology centers (TEC). TEC's, such as the Great Lakes Inter-Tribal Epidemiology Center were denied access to COVID-19 data what was made available to States. Tribal epidemiologists were denied access to requisite data on testing and infection rates to inform, direct and make tribal, data-driven decisions. Much of our information was based on county and State data which oftentimes was received from mainstream news streams. The concern was identified with sharing data with tribes from the CDC was data-privacy issues.<sup>3</sup>

Over the past year, about half of the 11 tribes have a data-sharing agreement between the Minnesota Department of Health and tribe. Other tribes are currently in consultation regarding the data-sharing agreement. I attribute two reasons for this success. Minnesota Department of Health elevated the priority of American Indian public health by creating it's first Office of American Indian Health. Tribal data-sharing agreements was one of the first objectives of this department.

Our TEC's consist of experts parallel to State health departments and the CDC. TEC's play various roles for tribes in the data sharing whether it's a pass through to tribal health departments or a more collaboration where some tribes do not have the professional staff in place to review and refine the data. Data sharing with a TEC brings data to the tribe in a way they may use this.

S. 1397 identifies the opportunity for development of tribal data-sharing agreements in a government-to-government consultation. Each tribe is unique and a data-sharing agreement will need to be individualized. I'm proud to share that the Minnesota Department of Health is an example of what can take place when tribal-State relationships are prioritized and fostered. This example and others can serve as a framework to CDC, States and other organizations working with tribes.

### **3. Need for data that is accurate regarding birth and death records in a tribe**

Accuracy of tribal affiliation on death certificates is a unique phenomenon to American Indians. In studies regarding white, black and Hispanic populations, they do not experience the same level of error as does the death certificate of American Indians. Reliability on appearance or peripheral exposures by persons completing death certificates is at cause for close to 50 percent of inaccuracies in reporting Caucasian versus American Indian.<sup>4</sup>

The Lower Sioux Indian Community consists of approximately 1,200 citizens. Approximately half of that number is 18 or under. Birth records are important as part of the tribe's planning. For example, Lower Sioux Indian Community supports its tribal children through supporting equity from pre-school through high school and higher education. We monitor these numbers to assure we plan to support our relatives from their start. In death, we look for data to help identify causes that may be impacted by disparities. Some examples include chronic illness, diseases, and sui-

<sup>3</sup>Rothermich, E. (2021). Pandemic strengthens calls for Indigenous data sovereignty. *The Regulatory Review*. Retrieved March 21, 2022 from: <https://www.theregreview.org/2021/02/11/rothermich-pandemic-strengthens-calls-indigenous-data-sovereignty/>

<sup>4</sup>Wheeling, K. (2017, June 14). How mortality data fails Native Americans. *Pacific Standard*. Retrieved March 19, 2022 from: <https://psmag.com/news/how-mortality-data-fails-native-americans>

cide. It's difficult to cite errors when one does not have access to a birth and death certificate.

The CHAIRMAN. Thank you to all of our testifiers.

I will start with Mr. Newland. A brief question, hopefully a brief answer. Congress has amended the Long-Term Leasing Act nearly 60 times on a tribe-by-tribe basis. We just heard from Chehalis about how the 25-year lease limitation is stifling business prospects.

Are you able to address this without a statutory fix?

Mr. NEWLAND. No.

The CHAIRMAN. Will you work with me on finding a statutory fix?

Mr. NEWLAND. Yes.

The CHAIRMAN. Thank you.

Chairman Pickernell, if Congress were to amend the Long-Term Leasing Act to authorize 99-year leases, would this support the economic sovereignty of your tribe, and how so, if so?

Mr. PICKERNELL. It would help us in securing loans for our economic development ventures, and give us the ability to ensure our lenders that we can map longer terms with the projects that we present.

The CHAIRMAN. Thank you very much.

Mr. NEWLAND. for the record, does the Department of Interior support the changes to the NATIVE Act in S. 3789?

Mr. NEWLAND. Yes, Mr. Chairman.

The CHAIRMAN. Thank you.

Chief Byrd, what hurdles have you faced in building a historical record to support your tribe's efforts to achieve federal acknowledgement?

Mr. BYRD. Since most of our Choctaws and other southeast Indians moved to Oklahoma, the greatest number of recorded names are those that moved. In that respect, those that remained, they were literate, and they were able to push federal agents to get their names on federal rolls. Those that were not as literate, they would have to have been included, most of our ancestors were at the mercy of unscrupulous federal agents who often refused to enroll them.

Therefore, the action or inaction of those federal agents resulted in most of our ancestors being excluded from federal lists or Indians remained in Alabama. With that being said, we rely on scholars from universities, we have Dr. Denise Bates from the University of Arizona, she is working exclusively with us now in getting recorded documentation for our tribe that we did not have access to before. We are putting that on digital networks so that we will have that information readily available.

We receive additional information concerning census reports, military records, and everything that proves that there were Choctaws in the Mobile-Washington County areas during the pre- and post-Civil War era.

The CHAIRMAN. Thank you very much.

Chairwoman Flores, I understand Arizona is in a mega-drought and that tribal conservation at Lake Mead is really essential. What would your conservation plan be if you had water releasing authority, and how would you partner with other stakeholder tribes to mitigate the depletion of Lake Mead?

Ms. FLORES. Thank you for the question. How would we partner with other States? With the State of Arizona, we would partner with stakeholders within the State. We wouldn't go outside the State of Arizona. We have overwhelming support; we have had hearings with the State. We work with the Federal Government; we work with the State of Arizona.

And going back to my first statement, we held public hearing meetings and we have feedback from that. We have held open discussions of comments, a month-long comment period. So we have overwhelming support in working with the State of Arizona and water users.

The CHAIRMAN. Thank you.

Final question. Chairwoman Lee-Gatewood, I understand drought conditions are getting worse. They are getting worse everywhere, but I know it is particularly bad in the State of Arizona. If this bill passes, how quickly will you be able to get shovels into the ground on your water system?

Ms. LEE-GATEWOOD. Construction is scheduled for our rural water system, according to our tribal engineer, assuming the record of decision is completed in April 2024 for the project. Final design of the pipelines could be finished and construction started in late 2025, and the dam in 2026 and water treatment plant in 2028. Water could start to be delivered to our communities in 2028.

So we are looking forward to that.

The CHAIRMAN. Thank you very much. Senator Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Mr. NEWLAND. I would like to turn to you first. This will relate to previously denied recognition petitions. Is it Interior's position that in order to obtain federal recognition after a petition is denied, that the tribe has to come to Congress?

Mr. NEWLAND. Thank you, Madam Vice Chair. Yes, that is our position.

Senator MURKOWSKI. Given then that the administrative recognition process was overhauled effectively in 2015, why not just allow the tribes that were denied under the old process to try again for Department recognition?

Mr. NEWLAND. Thank you. I appreciate that question, Vice Chair Murkowski. That was the position that the Department maintained in the 2015 regulations, that groups that had been previously denied should not be permitted to repetition under revised regulations. The Department was sued on those regulations and we had a remand from the federal courts in two cases to take another look at those regulations. We are in the process of doing that.

I hope to have a clearer answer for you on what the regulations will say. I can't speak to it at this time.

Senator MURKOWSKI. Do you have any sense of timing on that?

Mr. NEWLAND. I would say soon.

Senator MURKOWSKI. Soon.

[Laughter.]

Mr. NEWLAND. Madam Vice Chair, I think we can measure that in weeks, not months.

Senator MURKOWSKI. I look forward to receiving an update on that. Thank you.

Mr. NEWLAND. Thank you.

Senator MURKOWSKI. Mr. Figueroa, let me ask you about this GAO report that I referenced in my opening, and you have referenced as well. The report identified a lot of what we knew when we were working to put together the bill. It provides for five recommendations on how to best remove these challenges. Apparently, HHS concurred with all five of these.

So the question is whether or not any steps have been taken so far to resolve these five recommendations that are highlighted in the report.

Mr. FIGUEROA. Thank you for that question, Vice Chair. The Department appreciates the GAO's careful examination of tribal access to the data. We have been working through the Secretary's tribal advisory committee to be able to identify those data needs and work with tribes to ensure that information is available.

We have the good fortune of having Councilman Victor Joseph as the chair of the STAC, and also Vice President Ileen Sylvester to provide us that unique Alaska perspective to ensure that we are incorporating those ideas and those realities into our approach, to ensure that in the future of tribes have the data they need to make public health decisions.

Senator MURKOWSKI. Another question for you, and I would ask Dr. Prescott to weigh in on this as well. There were these supporting tribal public health capacity grants that were administered through CDC for State, tribal, local and territorial support. CDC's approximately 70 grants were awarded to various Alaska entities.

We all recognize that this pandemic has been very, very hard on American Indians, Alaska Natives. I know that many tribes across the Country are searching for qualified public health staff, particularly the epidemiologists, to work on providing timely health data and recommendations.

But this grant funding out there is basically one-year funding. If what we are trying to do is build long-term capacity here, capacity building, does this really allow for that? Will this grant funding continue beyond the pandemic? What is the status as you understand it? Then Dr. Prescott, if you might give some anecdotal information to this as well.

Mr. FIGUEROA. Vice Chair, thank you for that question. In terms of the grants, we moved quickly in the Administration to ensure that we were building the capacity, and that American Indians and Native Alaskans had the resources they needed to be able to respond. As you mentioned, the disparities that we saw in these communities were unacceptable.

For the first-year analysis, it shows that these folks have gone through surveillance, epidemiology, and also building up health infrastructure. The future of those funds and the future of our ability to continue to fund those programs will depend on our ability to work with Congress to continue the available funding for those programs.

Senator MURKOWSKI. Dr. Prescott?

Dr. PRESCOTT. Thank you, Vice Chair Murkowski.

I am familiar with the CDC grants that you alluded to. Of the grants, speaking for Lower Sioux Indian Community, we have applied before. We are a smaller tribe, so it is a big challenging. We were not successful. However, we have participated; our tribal epi-



demology center was a grant recipient and we were a sub-awardee of that.

I agree with the one-year term being very challenging. In Minnesota, we have had a little bit of success by having grants available for three years. This is largely to see a program go through time, versus one year whereas oftentimes you may not know about funding for a second year, and the employee is looking for another job at nine months, hence they move on and the program is incomplete. So I hope that helps give you a picture.

Senator MURKOWSKI. I appreciate that.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Smith.

Senator SMITH. Thank you, Mr. Chair.

Thanks so much to all of our panelists. I am going to focus my questions on the Tribal Data Health Improvement Act, which we have been talking about. Thanks so much for your partnership, Senator Murkowski.

We introduced this bill because of reports during the pandemic of the CDC failing to share public health data with tribal public health authorities and epidemiology centers. The bill is pretty simple. It clarifies the CDC's responsibility to share the data and it encourages States and the Federal Government to work with tribes to solve the problems of under sampling and misclassification that we have been hearing about today.

At its core, this is certainly a public health issue. But it is also an issue of tribal sovereignty, as part of the treaty responsibilities and government-to-government relationships between the government and tribal nations. So we need to figure out a solution to this problem.

Dr. Prescott, I am going to start with you, and then I will come to you, Mr. Figueroa. Dr. Prescott, could you tell us a bit about how data sharing issues during the pandemic have had an impact on your tribe's ability to respond to the crisis? If our bill passed, how would it help?

Dr. PRESCOTT. Thank you, Senator Smith, for the question. Data sharing was limiting to us during the pandemic, primarily because there was a lag time getting tribal-specific data. What we have found is that our tribal epidemiology center was somewhat very limited because they had resources to help us put together tribal-specific public health responses and whether the education policy, whatever it may be. We had to rely on our State partners who could get the data. We have a good relationship with our State health department, the American Indian office that we have there. So we were able to get that data.

But the fact that we couldn't get it from the CDC, which again, if we look at government-to-government relations, that should have been readily available. Coming from the private sector, getting data like that was not so problematic until I came to the tribal world.

I hope that helps.

Senator SMITH. Let me understand that. So you had asked for the data and then it just wouldn't come, or they would say they couldn't provide it to you? Give me a little bit more detail on what that problem looked like.

Dr. PRESCOTT. Sure. We worked through our tribal epidemiology center, the Great Lakes Tribal Epidemiology Center. They were not able to get the data. And then at times the data wasn't specific enough.

We are a very small tribe, 1,200 people. It was very difficult because it was oftentimes not collected or we had to wait for county data to be published, and then you would assume that if it is Redwood County in Minnesota that it was part of the American Indian-identified group. So it was very hard to get data from the CDC for us directly.

Senator SMITH. Having visited Lower Sioux, and having visited your clinic, I know what an amazing job you do there. But not having good data makes it really difficult for you to be able to do the job that you know how to do, you can do there.

Dr. PRESCOTT. Thank you.

Senator SMITH. Mr. Figueroa, I am sure we agree that data sharing with tribes is essential, and that this is both a public health matter as well as a matter of tribal sovereignty, right?

Mr. FIGUEROA. Yes.

Senator SMITH. Thank you. Will HHS work with us to prepare this bill for markup? Can we count you on to work with us in a timely way to get that done?

Mr. FIGUEROA. Yes, Senator.

Senator SMITH. Thanks very much. That is my Minnesota nice way of saying that I need HHS to be part of the solving of this problem, not just the explaining of it. I appreciate that very much.

Mr. FIGUEROA. Senator, I will give you my New York straightforward.

[Laughter.]

Mr. FIGUEROA. We have a scheduled meeting for this Friday, and we look forward to working with your team to provide that technical assistance.

Senator SMITH. I think we can work together. Thank you very much.

I yield back, Mr. Chair.

The CHAIRMAN. That is very nice of you to give us a minute back. Senator Cortez Masto?

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

Senator CORTEZ MASTO. Thank you. Welcome to the panelists, thank you all for being here.

Let me follow up on Senator Smith's conversation, because I do want to thank Senator Smith and Senator Murkowski for their work on the Tribal Health Data Improvement Act. Thank you to the Chairman for bringing this up.

I do agree this bill is about sovereignty. It is about honoring our trust and treaty obligations to tribal communities by providing them with the same data tools that CDC already gives to States.

Dr. Prescott, and Mr. Figueroa, let me ask you this. Can you talk a little bit about the benefit that tribal epidemiology centers bring to the communities, and why it is important they have access to data like every other governmental entity?

Mr. FIGUEROA. let's start with you, then Dr. Prescott, if you would weigh in, I would appreciate it.

Mr. FIGUEROA. Thank you for that question, Senator. The Department joins you in the overall objective to respect and honor tribal sovereignty and access to good quality data is absolutely a big part of that. It is essential for tribes to have the information they need to be able to make public health decisions as a priority of not only the Secretary but also the Administration.

I would say, to the Secretary's Tribal Advisory Committee, we bring together tribal leaders to talk about the data needs that they have, the challenges associated with getting that data, and working with them to develop solutions. We are honored to have Councilwoman Natalie Pacheco as part of that process. We will continue to work with not only the Committee but also with you to ensure that that happens on a consistent basis.

Senator CORTEZ MASTO. Mr. Prescott, without having this data, what did that mean for your community?

Dr. PRESCOTT. It meant we had to rely on those around us, which luckily our tribe does have a lot of good partners in our local public health and our State. However, it was challenging, because we had resources at the tribal epicenters that are essentially apples to apples when you look at CDC and expertise and epidemiology, where we could have, in a faster approach, gotten information out to our tribe, education and resources, and identifying specific education to tribes versus a more global approach.

Senator CORTEZ MASTO. And in the middle of a health care pandemic, I would imagine the most accurate data and most efficient, up-to-date information that you can get is going to be crucial for the tribes. Is that correct?

Dr. PRESCOTT. Correct, yes. And smaller tribes like us, we don't have an epidemiologist on staff. So we do rely on our tech centers to provide that.

Senator CORTEZ MASTO. Thank you.

Let me jump to S. 3789. We have some tribes in Nevada who are looking to expand their tourism economy, build off of our State's millions of annual visitors. Senator Schatz' bill, S. 3789, would amend the NATIVE Act to allow BIA to implement grant programs to assist in developing tourism in Native communities.

Let me ask you, Mr. Newland, would this bill help BIA expand outreach and assistance for smaller tribes like mine in Nevada and help them build things like cultural centers?

Mr. NEWLAND. Thank you, Senator. As I understand it, this bill would make this process simpler for the Department to make the grant awards and distribute that, and clarify how we award grant funding under the NATIVE Act to Native Hawaiian organizations, which in turn will make it easier for us to administer the entire program.

Senator CORTEZ MASTO. So let me ask you this. The authority was there, we just didn't have the implementation authority. And that is what this bill does, allows you to implement the grants.

How do you ensure that the tribes now are aware of these grants, and are going to be applying for them?

Mr. NEWLAND. We do our best every year, Senator, to publicize our notice of funding opportunity under the NATIVE Act and try

to encourage tribes to apply. We have seen a growth in the number of applicants. Right now we are reviewing the current year applications, and I look forward to making those awards.

Senator CORTEZ MASTO. Thank you. Let me just offer this, because I do think, as I talked with my tribes, and they are smaller tribes, a lot of times they don't have the resources, one, or the staffing to be able to be aware of the grants, let alone apply for them, which is going to be a challenge we still have to address, I believe, here in Congress. Oftentimes they are not aware.

So is there a way that we in Congress can work with your agency to figure out how we make these tribes aware, and then provide technical assistance, or figure out how we help them apply for these grants? I think they are still a challenge. Quite often what I hear from my tribes is because they lack the resources or the matching dollars, they are just not going to apply for some of these grants. We have to do a better job.

Mr. NEWLAND. I agree, Senator. It is always a challenge for us to make sure that these grants are an equal opportunity for tribes across Indian Country, and the folks who need the most help are probably the folks who need the grants the most. So we're always looking for ways to do better at that, and open to ideas.

Senator CORTEZ MASTO. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you to all of our testifiers, to all our staff, to members. If there are no further questions for our witnesses, members may submit follow-up questions for the record. The hearing record will be open for two weeks.

I want to thank all of the witnesses for their time and their testimony today. This hearing is adjourned.

[Whereupon, at 3:52 p.m., the hearing was adjourned.]

## A P P E N D I X

### PREPARED STATEMENT OF THOMAS BUSCHATZKE, DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES

Dear Chairman Schatz and Vice Chairwoman Murkowski:

We are in the midst of a Colorado River drought that has been termed by expert hydrologists to be a “mega-drought”. It is, by expert estimation, the worst drought situation on the Colorado River for over 1,200 years.

Arizona, Nevada, and Mexico are already experiencing the painful effect of the first Colorado River shortage declaration ever. In my State alone, we estimate that the shortage is causing up to 30–40 percent of our farmland within the Central Project service area to lie fallow for lack of water.

Lake Powell is also headed towards critically low elevations that raise concerns for the infrastructure there. More must be done to address that issue.

In the face of this crisis, I have been working on multiple long and short-term efforts to help our State and our region better respond to this mega-drought. The bill you are considering today, S. 3308, is one of the tools in the toolbox that I think will ultimately help to play a long-term role in giving us a flexible tool for future drought response.

It fits in a range of efforts being pursued to help develop the resources and tools for the water future of our region, ranging from rapid implementation of water conservation funding available in the Bipartisan Infrastructure Law, pursuing faster implementation of the Salton Sea mitigation plan to free up more water for conservation, and ultimately a possible desalination plant to supply our region with a new source of water.

The tribal water marketing measure contained in S. 3308 is yet another of these measures. While it cannot be considered an immediate answer to drought concerns, long term, particularly if we are able to find a path forward to bring in additional tribal supplies, it will also be a critical tool for us to use to help address the water needs in my State.

In the short term, my immediate focus is on addressing the mega-drought crisis we are facing today. To do that, our entire region must conserve water in ways we never have before. I know that the Lower Basin States of Arizona, Nevada, and California have taken a great step in that direction by committing to the 500,000 Plus Plan in December, through which the States and the federal government will seek to conserve 1,000,000 acre-feet of water in Lake Mead over 2022 and 2023. The Upper Basin States must implement their Drought Operations Agreement and I know that the details of the plan are close to completion.

Mexico is a cherished partner and are working on their Additional Proactive Measures plan to conserve more water in Lake Mead.

The major contributors to the 500,000 Plus Plan have been our tribal partners, the Gila River Indian Community, and the Colorado River Indian Tribes, and I want to commend them both for their commitment to this regional effort and urge them both to continue these efforts in 2023. Additional non-tribal contributions are being made as well.

I am thankful, that the process to begin consideration of this important bill has begun. I know that there are those who have raised concerns about the bill as drafted and I look forward to working with you and with them to finding the right path forward to allow tribes to use their tribal water rights as they see fit off their Reservations in ways that will ultimately benefit us all.

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PREPARED STATEMENT OF THE MOHAVE COUNTY WATER AUTHORITY

Dear Chairman Schatz and Vice Chairman Murkowski:

Mohave County Water Authority (“MCWA”) is a governmental agency comprised of seven governmental entities<sup>1</sup> located in Mohave County. MCWA submits this statement in support of S. 3308, a bill to authorize the Colorado River Indian Tribes (“CRIT”) to develop uses of its water off reservation through leases, exchanges, storage agreements or options for those activities. The contemplated off-reservation use of Colorado River water will provide to CRIT the same opportunities afforded other Arizona Tribes.

The CRIT are valuable partners in Arizona. Their ability to move water off reservation is essential to the successful implementation of a statewide solution to withstand the extended drought Arizona and the west is facing. Arizona and all basin states need as many tools in the toolbox as we can find to survive the ongoing drought.

The availability of CRIT water for use off reservation will increase flexibility to meet various water needs in Arizona. CRIT water could be delivered in times of shortage to replace water lost due to delivery reductions under existing delivery contracts. CRIT water could be stored in central Arizona for future recovery and use in times of shortage or otherwise. Central Arizona could also use it to meet future growth demands, leaving current Colorado River supplies in the on-River region in place.

Thank you for the opportunity to express our support of S. 3308.

**Attachment**

**Resolution no. 2020-184—a resolution of the board of supervisors of Mohave County, Arizona addressing the federal statute and agreements sought by the Colorado River Indian Tribes (CRIT) to authorize CRIT to lease, option, store and exchange up to 150,000 acre feet of first priority water from on their reservation, to off their reservation anywhere in the lower basin portion of the state of Arizona, including up and down the Colorado River**

**WHEREAS**, the Board of Supervisors met in Regular Session this 21st day of December, 2020; and

**WHEREAS**, the water rights for the Colorado River Indian Tribes (CRIT) were confirmed by the United States Supreme Court in the series of cases known as *Arizona v. California* as first-priority, present perfected rights as quantified in the Consolidated Decree in that case. The CRIT Decreed Allocation available for use in the State of Arizona is quantified as: (i) diversions of 662,402 acre-feet per year; or (ii) consumptive use required for irrigation of 99,375 acres and satisfaction of related uses, whichever of (i) or (ii) is less. The most recent Consolidated Decree entered by the United States Supreme Court in *Arizona v. California* is found at 547 U.S. 150 (2006); and

**WHEREAS**, the CRIT is seeking federal legislation in the United States Congress to authorize the CRIT to enter agreements, leases or options to lease, exchanges or options to exchange, or storage agreements or options for storage (“Water Agreements”) for the use and storage of a portion of the CRIT Consumptive Use off the Reservation up to 150,000 acre feet per year anywhere in the part of the State of Arizona that is in the Lower Basin of the Colorado River system and to authorize the Secretary of the U.S. Department of the Interior (Secretary) to approve such agreements. (“Federal Legislation”); and

**WHEREAS**, any Federal Legislation authorizing CRIT water agreements will reflect a national decision by the United States Congress to make first-priority, present perfected Colorado River water rights decreed to the CRIT available for off-reservation use only in Arizona. CRIT Land and Water rights that lie in California are not included in the Federal Legislation; and

**WHEREAS**, a federal statute enacted in 1792 (the Indian Trade and Intercourse Act) prohibits the transfer of federal Indian trust assets without an Act of Congress ( 25 USC § 177). Congress has authorized the Secretary to approve water leases in Acts of Congress authorizing tribal water settlements for other Arizona Tribes; and

**WHEREAS**, private enterprise developments in Mohave County along the Colorado River are in need of additional Colorado River water sources in order to com-

<sup>1</sup>MCWA members are Bullhead City, Golden Shores Water Conservation District, Kingman, Lake Havasu City, Mohave County, Mohave Valley Irrigation and Drainage District, and Mohave Water Conservation District. See Arizona Revised Statutes, Section 45-2202, and Sections 45-2201 through 45-2283.

plete their plans for expansion and population growth, and no groundwater exists in these areas for future growth; and

**WHEREAS**, Lake Havasu City, Bullhead City and the City of Kingman will need additional water resources later in this century to continue their economic development for their Citizens and continued population growth and;

**WHEREAS**, all water made available by the CRIT for use off the Reservation shall be from the reduction of Consumptive Use on the Reservation during the term of any CRIT Water Agreement, and will only be made available inside the State of Arizona in any area that is part of the Lower Basin; and

**WHEREAS**, CRIT water that is subject to Water Agreements shall retain its firstpriority status, must be used within the Lower Basin portion of the State of Arizona, and recipients of CRIT water must use the water in compliance with Arizona law; and

**WHEREAS**, the CRIT shall reduce the water order requested for delivery on the Reservation by an amount equivalent to the volume of water to be delivered off the Reservation pursuant to a CRIT Water Agreement. The Secretary shall report the portion of the CRIT Decreed Allocation that was delivered off the Reservation pursuant to a CRIT Water Agreement in the Water Accounting Report.

**WHEREAS**, the CRIT and the Arizona Department of Water Resources (ADWR) have reached certain negotiated written agreements now posted on the ADWR webpage. These agreements and the draft Federal Legislation were the subject of two public hearings on December 7 and 10, 2020, and are available for a public comment period that ends on January 8, 2021 at 5: 00 pm; and

**WHEREAS**, the CRIT and ADWR have agreed that CRIT shall submit proposed CRIT Water Agreements to the Director for review 60 days prior to the execution of such agreements. The proposed CRIT Water Agreements and supplemental documents may have financial and proprietary information redacted but shall include:

- a. the parties to the CRIT Water Agreements;
- b. the method of accounting for the water subject to the CRIT Water Agreement;
- c. the term of the CRIT Water Agreement;
- d. the location and purpose for the off-reservation use of the CRIT water, including maps of the location of use;
- e. technical memoranda documenting the reduction in Consumptive Use in a volume equal to the amount of water in the CRIT Water Agreement;
- f. the method for transporting the water to the end user; and
- g. the agreed upon dispute resolution mechanism; and

**WHEREAS**, The CRIT and the ADWR have agreed in their negotiated written agreement that the CRIT agrees to a limited waiver of its sovereign immunity from suit by ADWR solely for the purpose of interpretation or enforcement of this Agreement; and

**WHEREAS**, on November 18, 2019 the Board of Supervisors of Mohave County approved a Resolution 2019-138 opposing the transfer of 2, 083. 01 acre-feet (af) of fourth-priority water from a private entity GSC Farm, LLC in La Paz County to the Town of Queen Creek in central Arizona; and

**WHEREAS**, on September 17, 2020, the Board of Supervisors of Mohave County approved a Resolution 2020-138 continuing its opposition to the GSC Farm LLC transfer to the Town of Queen Creek and stating that such a transfer by a private party requires “the Bureau of Reclamation to fully comply with public processes of the National Environmental Policy Act of 1969 (NEPA) and the Endangered Species Act of 1973, and such action requires the preparation of a full Environmental Impact Statement;” and

**WHEREAS**, on November 16, 2020, in the face of ADWR’s recommendation to approve a partial “transfer [of] 1, 078.01 of/yr of fourth priority entitlement from GSC to Queen Creek,” the Board of Supervisors of Mohave County approved a Resolution 2020-167 opposing any future private party transfers of fourthpriority off-reservation water without the safeguards of (a) a public vote of the transferring District, City or Town, (b) direction of 25 percent of the transfer amount to Lake Mead as System Conservation Water, and (c) reservation of adequate water to the remaining land left behind for its future development.

**WHEREAS**, water is one of our most precious natural resources that is in jeopardy of being depleted if not managed adequately; and

**WHEREAS**, water is an essential, scarce resource necessary for the continued growth and economic development of On-River communities;

**WHEREAS**, the only source of water available to On-River Communities is Colorado River water, as ground water is not available; and

**NOW THEREFORE, BE IT RESOLVED** as follows:

1. The Mohave County Board of Supervisors on behalf of Mohave County supports Federal Legislation and agreements that will authorize the Colorado River Indian Tribes to enter leases, exchanges, storage agreements of on-reservation First-Priority, present perfected Tribal water rights to be used off the reservation, or options for those activities. We support such Federal Legislation because such leases and options may well benefit Colorado River Communities up and down the River who seek water; and
2. The Mohave County Board of Supervisors on behalf of Mohave County supports such Federal Legislation because it will be authorized by the United States Congress and as such will reflect the view of the nation, whereas a single farm transferring its allocation over the well-being and objections of many river communities is akin to tyranny of the minority; and
3. The Mohave County Board of Supervisors on behalf of Mohave County supports such Federal Legislation because it will result in the same treatment of River Community Tribes as other Arizona Tribes now enjoy; and
4. The Mohave County Board of Supervisors on behalf of Mohave County supports such Federal Legislation because it may benefit central Arizona development interests that are now engaged in the systematic raiding of our River Community Fourth- Priority water allocations that we believe were reserved for the River Communities by Arizona. If up to 150,000 acre feet per year of Tribal First-Priority, present perfected, decreed Colorado River Water becomes available for long-term leasing, those central Arizona interests may cease, or at least delay, their many attempts to raid the River Communities Fourth-Priority water allocations.
5. The Mohave County Board of Supervisors on behalf of Mohave County will continue to oppose any future off-reservation transfers of Colorado River water from the mainstem of the Colorado River away from Mohave County, and the River Communities as a whole, because it is an attack on the water rights and continued economic growth and viability of rural Arizona; and
6. That the Clerk of the Board is directed to send a copy of this Resolution to the Director of the Arizona Department of Water Resources, the Chairman of the Colorado River Indian Tribal Council, the Docket Supervisor of the ADWR, the Secretary of the Interior, the Commissioner of the Bureau of Reclamation, the Regional Director of the Lower Colorado Region of the Bureau of Reclamation, the Phoenix Area Manager, Bureau of Reclamation the Governor of Arizona, our Federal and State legislators, the Mayors of the Cities and Towns in Mohave County and the Boards of the Districts and Water Authority located in Mohave County.

**PASSED, APPROVED AND ADOPTED** this 21st day of December 2020.

PREPARED STATEMENT OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY  
RESERVATION

Chairman Schatz, Vice-Chairman Murkowski, and Members of the Senate Committee on Indian Affairs, thank you for the opportunity to submit testimony on the Legislative Hearing to receive testimony on numerous Indian Country bills, but specifically S. 3443, Mobile-Washington County Band of Choctaw Indians of South Alabama Recognition Act ("MOWA Act"). On behalf of the Ute Indian Tribe ("Tribe") of the Uintah and Ouray Reservation ("Reservation"), the Ute Tribal Business Committee would like to provide testimony on the MOWA Act. Tribal recognition is the inherent right of tribes to self-govern, and establish their own laws that govern membership, laws, religion, and community. To be a federally recognized tribe inherently includes tribal sovereignty and creates a federal trust responsibility, which must be guarded at all costs.

**Tribal Opposition of Congressionally Recognized Tribes**

Given the significance of federal recognition, the Tribe must oppose the MOWA Act. Recognition of Indian tribes, and thus tribal sovereignty, is one of the United States' most solemn and important obligations. Federal recognition establishes a special and unique government-to-government relationship between the Federal gov-



ernment and an Indian tribe and creates significant legal rights, responsibilities, and commitments. The Tribe opposes the MOWA Act for several reasons.

First, the Tribe supports the federal recognition of Indian Tribes. However, the Tribe does not believe that federal recognition should be subject to the legislative process and Congressional politics. Partisan politics can prevent a deserving tribe from being recognized or recognize an undeserving group with no indigenous ties as a federally recognized tribe. We know first-hand the problems when Congress acts on federal acknowledgment and tribal membership.

In 1954, Congress passed the Ute Partition Act (UPA), which authorized 490 Tribal members known as “mixed-bloods” to vote to terminate their Tribal status and relationship with the federal government. In the UPA, Congress took action in attempting to determine tribal membership of the “mixed-bloods,” and seventy years later, we are still dealing with the problems of unrecognized descendants attempting to interfere with our Tribal governance. These were preventable problems. The MOWA Act has no standards or minimum requirements for federal recognition and requires the Secretary of Interior to acquire up to 3,223 acres of trust land without any explanation. Congress neither has the staff, expertise, resources, or equipment to manage the recognition of Indian tribes equitably. The Department of Interior’s (“DOI” or “Interior”) Assistant Secretary of Indian Affairs, Bryan Newland, confirmed our worries when he testified that the “proposed legislation does not include any findings or information identifying facts or circumstances that would aid us in understanding the merits of the proposal (S. 3443).”

Fortunately, Congress recognized this problem in 1975 when it created the American Indian Policy Review Commission (“Commission”) to bring fairness and legitimacy to the federal recognition process. Created from the recommendations of the Commission, Congress delegated the DOI—Office of Federal Acknowledgment (OFA) the management and regulation of federal recognition. OFA uses expert anthropologists, genealogists, historians, and attorneys to evaluate whether a petitioning group comprises descendants from a historical Indian tribe that has maintained existence to earn federal recognition. This structured process shields decisions from political influence or undue pressure and ensures equity, transparency, and consistency.

Similar to our experience, the MOWA Act attempts to circumvent the OFA process and politicize tribal, federal recognition. The Mobile-Washington County Band of Choctaw Indians of South Alabama sought federal recognition through the OFA’s administrative process starting in 1988 and has been denied three times, in 1994, 1997, and 1999. In 1988, MOWA petitioned OFA claiming to be a “contemporary band of Mowa Choctaws of South Alabama who are descendants of full and mixed-blood Choctaws, Creeks, Cherokees, and Chickasaws who avoided removal West during the Indian removal in the 1830s.” However, after a nine-year review by OFA’s experts in anthropology, genealogy, historians, and attorneys who evaluated whether the group comprises any historical Indian tribe, OFA found almost no ancestry. OFA determined that [”There was no evidence in the substantial body of documentation submitted by the petitioner, or in the independent research by the BIA, to demonstrate Choctaw ancestry or any other Indian ancestry for 99 percent of the petitioner’s membership.” . . . “Rather, the evidence tended to disprove Indian ancestry” . . . “Thus, the petitioner fails to meet [mandatory] criterion (e), descent from a historical tribe.”]

Again, similar to our Tribal experience, once the group failed to meet the standards set by OFA and exhausted their administrative remedies, they turned to litigation as a way into federal recognition. See, *Mowa Band of Choctaw Indians v. United States of America*, slip. op. 2008 WL 2633967 (S.D. Ala. 2008), case dismissed, Plaintiff was clearly on notice that it was not entitled to federal acknowledgment. Once again, when the group fails to meet the threshold of available options for federal recognition, they turn to politicians.

These types of statements reinforce why the Tribe does not support the MOWA Act or any federal legislative recognition of Indian tribes. The standard for federal recognition is a high bar and justifiably so. If this bill were to pass, it would allow more groups who have not met the high standards or federal recognition to leverage politics regardless of the merits. For these reasons, the tribe opposes the MOWA Act.

#### **Amendments Needed for the Department of Interior’s Office of Federal Acknowledgment**

As stated in our opening, we do not oppose the federal recognition of Indian tribes. However, we vehemently oppose Congressional recognition of Indian tribes and any process that diminishes or jeopardizes tribal sovereignty, which must be stopped, including legislative recognition. Otherwise, tribal sovereignty and federal recognition become meaningless if political influence can cast aside the federal rec-

ognition process recognizing the special and unique government-to-government relationship between the Federal government and an Indian tribe.

With that being said, we did notice discrepancies with Assistant Secretary Newland's testimony. During the hearing, he stated on behalf of the administration that "we recognize that Congress has plenary power over Indian Affairs and retains the authority to federally recognize tribes through legislation. The Department respects the MOWA Band's choice to seek recognition through the legislative process. At this time, the Department neither opposes nor supports this legislation."

We noticed something else the Assistant Secretary stated during a conversation with Vice-Chairman Lisa Murkowski. The Vice-Chairman asked Assistant Secretary Newland if "it is Interior's position that in order to obtain federal recognition after a petition is denied, that the tribe has to come to Congress?" Assistant Secretary Newland affirmed it was the position Interior maintained in 2015 under revised OFA regulations that groups who had been previously denied recognition should not be permitted to re-petition. Assistant Secretary Newland also added that Interior was sued twice after the 2015 revised OFA regulations went into effect in federal courts, and both were remanded. As a result of those cases, DOI is currently revising those regulations, although he could not give a specific timeline for regulations to be finished.

Additionally, Chief Lebaron Byrd of the MOWA Band of Choctaw Indians testified that his tribe is not opposed to using the OFA process. Since DOI does not allow reconsideration after the 1997 denial, Congressional action is the only option to recognize the MOWA Band. Chief Byrd noted that DOI has fundamentally changed the criteria necessary for recognition through OFA since the denial of their petition. Among the most important changes made is the date for recognition of existence as a tribal entity from the date of "time of first contact" to the year 1900. This change would make relevant the U.S. Census beginning in 1910, the first census that lists MOWA Band ancestors as being Indian. Chief Byrd believes this change in Interior regulations would make the MOWA Band a strong petitioner for a full review.

As a result of these two conflicting patterns of federal recognition, we recommend that the Committee withhold any action on the MOWA ACT until DOI can issue its revised OFA Regulations. It seems as though the MOWA Band of Choctaw Indians recognizes and respects the OFA process; DOI-OFA regulations are forcing them to seek federal recognition through legislative means. As the Tribe respects the OFA recognition process, we believe it only fair that the MOWA Band be authorized to utilize the DOI-OFA process to grant federal recognition to Indian tribes.

### **Conclusion**

Tribal sovereignty is the right of tribal nations to make their own laws and be governed by them. Tribal sovereignty is not granted; it is recognized. We oppose any process that diminishes or jeopardizes tribal sovereignty and must be stopped, including legislative recognition. We want to maintain the high bar and standards it takes to become a federally recognized tribe. Without these high standards, tribal sovereignty and federal recognition become meaningless if political influence can cast aside the federal recognition process that recognizes the special and unique government-to-government relationship between the federal government and an Indian tribe.

We recommend the Committee take no further action on the S. 3443 MOWA Act. Instead, hold this administration accountable to tribes and request a full review of the DOI-OFA so that other tribes seeking federal acknowledgment can have a fair opportunity to become federally recognized.

Thank you for your consideration of our testimony of the MOWA Act.

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THE AGRIBUSINESS AND WATER COUNCIL OF ARIZONA (ABWC)  
*April 14, 2022*

Dear Chairman Schatz and Vice Chair Murkowski:

The Agribusiness & Water Council of Arizona (ABWC) writes to thank you for considering S3308, the Colorado River Indian Tribes Water Resiliency Act of 2021, introduced by Arizona Senators Mark Kelly and Kyrsten Sinema.

The ABWC is a non-profit association in Arizona that focuses its energies in representing the sustainable and efficient use of water for irrigated agriculture and agribusiness.

We support the language that allows the Colorado River Indian Tribes (CRIT) to provide their water for beneficial uses such as leasing, underground storage, exchanging, etc., especially during this unprecedented time of extended drought in Ari-

zona and the southwest. There were many stakeholders involved in the review and commenting on the proposed legislation you have before you.

We fully support this collaborative effort that can benefit many water user constituencies in Arizona and encourage its swift advancement and passage.

Respectfully,

CHRIS UDALL, EXECUTIVE DIRECTOR

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CENTRAL ARIZONA WATER CONSERVATION DISTRICT (CAWCD)  
*March 22, 2022*

Dear Chairman Schatz and Vice Chair Murkowski,

The Central Arizona Water Conservation District (CAWCD) writes today to thank the Committee for its consideration of S. 3308, the Colorado River Indian Tribes Water Resiliency Act of 2021.

CAWCD is supportive of the new flexibility the legislation provides the Colorado River Indian Tribes (CRIT) within Arizona to lease, exchange or store underground a portion of CRIT's consumptively used, Colorado River allocation.

CAWCD and CRIT have an established relationship working collaboratively on numerous projects over the last five years including the Pilot System Conservation Program, Arizona System Conservation, Intentionally Created Surplus and most recently the joint pilot study on irrigation efficiency. We appreciate the process established by the State of Arizona and CRIT to ensure Arizona stakeholders were provided an opportunity to review and comment on the proposed legislation and corresponding agreements.

We see great promise with many more years of partnerships and collaboration ahead with CRIT. Consequently, CAWCD thanks the Committee for advancing the bill and we look forward to its swift final passage.

Sincerely,

THEODORE C. COOKE, DBA, GENERAL MANAGER

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BUSINESS FOR WATER STEWARDSHIP  
*March 28, 2022*

Dear Chairman Schatz and Ranking Member Murkowski:

As an organization that works with businesses that are invested in water security in the Southwest, and that partners closely with the Colorado River Indian Tribes (CRIT), Business for Water Stewardship writes today in support of S. 3308. Drought and climate threats continue to worsen each year, threatening Arizona's water security and economic future, and disproportionately impacting many Tribal communities. Last August, Secretary Haaland declared the first-ever Tier 1 shortage for Colorado River operations in the Lower Colorado River Basin. The Lower Basin shortage, which began on January 1 of this year, will result in a substantial cut to Arizona's share of the Colorado River.

Policy must evolve and adapt to meet growing water security threats. By authorizing CRIT to assume greater agency over its Colorado River allotment, S. 3308 will allow them to engage in partnerships, if they so choose, that improve flexible management of Colorado River water within Arizona and the Lower Basin to help meet today's challenges.

Meaningful participation by Tribes in the Colorado River Basin has been crucial to recent successes of river operations and programs. In 2020 our organization supported a landmark water conservation project with the CRIT and the state of Arizona, which was one of the largest multi-sector collaborative drought response efforts ever achieved. With millions of private sector dollars invested, funding directly supports the CRIT and their comprehensive system conservation project developed as part of the Colorado River Drought Contingency Plan (DCP) negotiations that included Arizona and six other states that rely on water supply from the Colorado River. However CRIT faces further institutional, policy, and legal barriers to fully realizing and making use of their unique water rights. This legislation will empower the CRIT with flexibility to engage in water discussions and negotiations with a broader set of tools to use at their sovereign discretion.

We strongly support the passage of this legislation as a way to further our collective goals of water stability and security in Arizona and the southwest.

Sincerely,

TODD REEVE, CEO, BONNEVILLE ENVIRONMENTAL FOUNDATION; CO-FOUNDER,  
BUSINESS FOR WATER STEWARDSHIP

IRRIGATION AND ELECTRICAL DISTRICTS ASSOCIATION OF ARIZONA, INC. (IEDA)  
*April 20, 2022*

Dear Chairman Schatz:

On behalf of the Irrigation & Electrical Districts Association of Arizona, Inc. (IEDA), we are writing in support of S. 3308, "The Colorado River Indian Tribes Resiliency Act of 2021". IEDA is a statewide association of public bodies that are involved in the delivery of water and electricity to agricultural, municipal and industrial customers throughout Arizona since 1962.

Arizonans understand the importance of water, especially the members of IEDA, many of whom have been involved with water rights and supported agricultural endeavors for over 100 years. In that time, Arizona has seen both droughts and been deluged. Huge infrastructure has been built to prevent flooding, provide storage and transport supplies throughout Arizona, but we have never seen such a dire situation as today.

Hydrologists say that the Colorado River is in a "mega-drought". This situation forced the Basin States to come together and develop a Drought Contingency Plan (DCP) to help mitigate the impacts. The Colorado River Indian Tribes (CRIT) participated in those negotiations. Putting the collective good above their own, they stored 50,000 AC-FT/year for 3 years behind Lake Mead. The CRIT were willing to do more, but are currently limited by their settlement agreement.

In such a time as this, Arizona needs access to every option available. Granting CRIT the ability to lease, exchange, and store their Colorado River water to other parties in the state would be beneficial to the CRIT, but also extremely valuable to Arizona.

Sincerely,

ED GERAK

ROOSEVELT WATER CONSERVATION DISTRICT (RWCD)  
*March 22, 2022*

Dear Chairman Schatz:

I am reaching out on behalf of the Board of Directors and the landowners of Roosevelt Water Conservation District (RWCD) to offer our strong support for S. 3308, "The Colorado River Indian Tribes Resiliency Act of 2021".

Created in 1916, RWCD is a non-federal irrigation district organized under state statute. RWCD is located in southeastern Maricopa County and serves approximately 40,000 acres. We deliver water to a broad customer base including agricultural, residential, industrial, and municipal uses.

RWCD has long been a steadfast supporter of settling community water claims. We are proud to have been a party to several federal water right agreements including the Salt River Pima Maricopa Indian Community, Fort McDowell Indian Community, White Mountain Apache Tribe, and the Gila River Indian Community settlements.

The Colorado River Indian Tribes Resiliency Act of 2021 would authorize the Colorado River Indian Tribes (CRIT) to lease, exchange, and store their Colorado River water to other parties in the state. In addition to affirming CRIT's rights of use regarding their water, the act would allow them to participate more fully in discussions and agreements regarding the Colorado River and the shortages Arizona is facing. Finally, while allowing the CRIT greater control of their future, the act does not lessen any other right holders' claims to water along the Colorado River.

RWCD strongly urges you to vote yes on S. 3308. We are happy to answer questions you have.

Respectfully,

SHANE M. LEONARD, GENERAL MANAGER

NATIONAL AUDUBON SOCIETY/ENVIRONMENTAL DEFENSE FUND  
*March 23, 2022*

Dear Chairman Schatz and Ranking Member Murkowski:

We write today to express our appreciation to Senators Kelly and Sinema for leading efforts in Arizona to expand opportunities to address the serious impacts of climate change and drought in the State and Western United States and to offer our

support for S. 3308. The bill expands the ways in which the Colorado River Indian Tribes (CRIT) can use and manage their Colorado River water rights, creating a new pathway in Arizona to mitigate drought and climate impacts.

In particular we note that water conservation pursuant to this legislation could potentially support development of new native habitat on the Lower Colorado River, increasing the sustainability of Arizona's wildlife as well as the indigenous communities' cultural values of the Colorado River. These projects have the potential to confront the twenty-first-century challenges of increasing drought and water scarcity exacerbated by climate change.

CRIT has a strong track record of participating in such programs, including the Pilot System Conservation Program, Intra-Arizona Drought Contingency Plan, and Lower Colorado River Multi-Species Conservation Program. But they have faced barriers in fully utilizing their water rights to support tribal economic sustainability and conservation efforts.

This legislation, and its related agreements, would remove a critical barrier that CRIT faces in fully using their water rights by authorizing CRIT to lease, exchange, and store underground a portion of their consumptively used decreed Colorado River water allocation off of the reservation, within the Lower Basin of the State of Arizona. This will expand CRIT's ability to participate in innovative and flexible management partnerships and will provide benefits to CRIT, Arizona, and the environment.

Authorizing CRIT to lease water off their reservation takes a step towards greater equity among water users, because other water users in Arizona generally have this right. We would support other proposals to allow off reservation water leases for Native American Tribes where these transactions are currently prohibited.

Sincerely,

JENNIFER PITT, COLORADO RIVER PROGRAM DIRECTOR, NATIONAL AUDUBON SOCIETY

KEVIN MORAN, SENIOR DIRECTOR, WATER POLICY AND STATE AFFAIRS,  
ENVIRONMENTAL DEFENSE FUND

SALT RIVER PROJECT  
*January 31, 2022*

Dear Chairman Schatz and Ranking Member Murkowski:

I am writing to share Salt River Project's (SRP) **support for S. 3308**, the Colorado River Indian Tribes Water Resiliency Act of 2021, introduced by Arizona Senators Mark Kelly and Kyrsten Sinema.

The Salt River Project is comprised of the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District. SRP, formed in 1903, is the Phoenix metropolitan area's largest supplier of raw water, delivering more than 800,000 acre-feet annually to municipal, urban and agricultural water users. SRP has a long history of successfully working with Native American communities in Arizona to quantify and help put to use their important water rights on and off their lands to improve the economies and general welfare of tribal communities. SRP is prepared to work with the Colorado River Indian Tribes in a similar fashion.

The Colorado River Indian Tribes (CRIT or Tribes) hold significant, senior priority water rights from the Colorado River. S. 3308 will provide CRIT with the ability to do what many other Arizona Tribal communities can already do—utilize their Colorado River supplies for purposes of leasing, transferring or storing water outside the Tribes' reservation. This will provide the Tribes with the opportunity to improve the Tribes' economic well-being and improve the management of water supplies within the State of Arizona at a time when the West is in the midst of a decades-long drought that is coupled with increasing climate variability.

SRP thanks Senators Kelly and Sinema for introducing the Colorado River Indian Tribes Water Resiliency Act of 2021, and their work to secure Arizona's water future. SRP is pleased to be part of a growing coalition of support CRIT has built, and we look forward to working with CRIT and other water interests across the State as this program is further developed.

**Support for swift approval of S. 3168**, a bill to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010, legislation introduced by Arizona Senators Mark Kelly and Kyrsten Sinema.

Passage of S. 3168 is necessary for the White Mountain Apache Tribe (WMAT) to complete an important water infrastructure project authorized in 2010. Unforeseen technical delays and costoverruns in planning and design have resulted in a

need to revise the initial enactment of the WMAT settlement. S. 3168 provides a necessary deadline extension for the Tribe to complete the White Mountain Apache Rural Water System and Miner Flat Dam project. The legislation also authorizes the use of additional federal funds needed to complete the project.

SRP is thankful for the dedication of Senators Kelly and Sinema to deliver this legislation for the Tribe, which will ultimately secure clean, reliable drinking water for Tribal members on the Fort Apache Indian Reservation, including the communities of Whiteriver, Fort Apache, Canyon Day, Cedar Creek, Carrizo and Cibecue.

The Salt River Project is comprised of the Salt River Valley Water Users' Association and the Salt River Project Agricultural Improvement and Power District. SRP, formed in 1903, is the Phoenix metropolitan area's largest supplier of raw water, delivering more than 800,000 acre-feet annually to municipal, urban and agricultural water users. SRP has a long history of actively working with Native American communities throughout the state to address concerns about water supplies, identify alternative supply options to meet demands, and collaborate on programs to resolve water resource conflicts.

Much of the surface water supply delivered by SRP to its water users in the Phoenix metropolitan area originates in the White Mountains in eastern Arizona, which is also the homeland of the White Mountain Apache Tribe. Over the years, SRP has enjoyed a friendship and partnership with the Tribe on a number of initiatives including watershed management, forest restoration efforts, and STEM education. We look forward to S. 3168 being enacted and continuing this partnership as the WMAT drinking water infrastructure project is completed.

SRP is thankful for Chairman Schatz and Vice Chairman Murkowski's leadership on the Senate Indian Affairs Committee, and attention to S. 3168 and the White Mountain Apache Tribe.

Sincerely,

DAVID C. ROBERTS, ASSOCIATE GENERAL MANAGER, WATER RESOURCES

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VALLEY PARTNERSHIP  
March 21, 2022

Dear Chairman Schatz and Vice Chairwoman Murkowski:

On behalf of Valley Partnership and its 350 Company Partners and almost 2,000 Members, advocating for responsible real estate development in Arizona, we thank you for the opportunity to provide comments in support of S. 3308 regarding the Colorado River Indian Tribe (CRIT) proposal for use of its decreed water rights off reservation. We want to congratulate all involved in this effort to make further use of the Tribe's Colorado River rights. It is an important milestone for the CRIT Tribal members, but also the off-reservation water users in the State of Arizona.

Valley Partnership believes in responsible growth and responsible growth is not found in reliance upon declining groundwater supplies. Responsible growth is based upon perpetual and sustainable supplies such as with use of the CRIT decreed water rights off reservation. We look forward to continuing to work with all involved in this historic effort and maximizing the benefits of this critical resource for all. We proudly support the legislation.

Thank you for your consideration and please do not hesitate to let me know if you have any questions.

Sincerely,

CHERYL LOMBARD, PRESIDENT/CEO

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WATER FOR ARIZONA COALITION  
March 23, 2022

Dear Chairman Schatz and Ranking Member Murkowski:

We write today in support of S. 3308, and appreciate Senator Kelly's leadership and foresight in introducing this legislation with Senator Sinema that will provide the Colorado River Indian Tribes (CRIT) with greater authority to use and manage their Colorado River water rights. We believe it is needed even more urgently than it was last year, when we first offered our support for this proposal. Drought and climate threats continue to worsen each year. Last week, NOAA issued its U.S. Spring Outlook, and for the second year in a row, forecasters ". . . predict prolonged, persistent drought in the West where below-average precipitation is most likely." Last August, the Secretary of the Interior declared the first-ever Tier 1 shortage for Colorado River operations in the Lower Colorado River Basin. The Lower Basin

shortage, which began on January 1 of this year, will result in a substantial cut to Arizona's share of the Colorado River.

Policy must evolve and adapt to meet growing water security threats. By authorizing CRIT to assume greater agency over its Colorado River allotment, S. 3308 will allow them to engage in partnerships, if they so choose, that improve flexible management of Colorado River water within Arizona and the Lower Basin to help meet today's challenges.

Meaningful participation by tribes in the Colorado River Basin has been crucial to the recent success of river operations and programs. However, many tribes face institutional, policy, and legal barriers to fully realizing and making use of their unique water rights. This legislation will empower CRIT with flexibility to engage in water discussions and negotiations with a broader set of tools to use at their sovereign discretion. We strongly support its passage.

Sincerely,

CHRIS KUZDAS, ARIZONA PROGRAM MANAGER, ENVIRONMENTAL DEFENSE FUND  
& CO-CHAIR, WATER FOR ARIZONA COALITION  
KIM MITCHELL, SENIOR WATER POLICY ADVISOR, HEALTHY RIVERS PROGRAM,  
WESTERN RESOURCE ADVOCATES  
TODD REEVE, DIRECTOR, BUSINESS FOR WATER STEWARDSHIP  
HALEY PAUL, POLICY DIRECTOR, NATIONAL AUDUBON SOCIETY & CO-CHAIR,  
WATER FOR ARIZONA COALITION  
SINJIN EBERLE, COMMUNICATIONS DIRECTOR, INTERMOUNTAIN WEST,  
AMERICAN RIVERS

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
HON. AMELIA FLORES

*Question 1.* Arizona is facing severe drought conditions. How will S. 3308 affect the water supply for other water users in Arizona? Please provide specific examples of how S. 3308 will enable the Colorado River Indian Tribes (CRIT) to help themselves and other water users respond to drought conditions.

Answer. The CRIT water is a new supply not currently available for use by anyone other than CRIT and with S. 3308 a portion of the CRIT water right may be available for water users in Arizona.

We hold the first-priority water right in the Lower Basin. The Supreme Court held that our water rights are Present Perfected Rights because of their priority dates ranging from 1865 to 1917, all before the passage of the Boulder Canyon Project Act. The Supreme Court stated in *Arizona v. California*:

"If insufficient mainstream water is available [the current shortage conditions]. . . then the Secretary of the Interior, after providing for the satisfaction of present perfected rights in the order of their priority dates without regard to state lines [the CRIT water]. . . may apportion the amount remaining available. . ." [this was modified by the Colorado River Basin Project Act] (*emphasis added*) (*Arizona v. California*, 547 U.S. 150, 155, 2006; 376 U.S. 340, 342, 1964)

We are also on the mainstream of the Colorado River and can deliver water to water users on the mainstream and through the Central Arizona Project (CAP) canal.

The main supply of Colorado River water for use in Arizona is through the CAP canal. This water has a low priority date of 1968 the date of passage of the Colorado River Basin Project Act (CRBPA) 103 years after CRIT's priority date. The CRBPA also subordinates the water contract for the CAP to all water use in California. (43 USCA § 1524(c).

#### **Help for CRIT from Water Leasing**

Other tribes in Arizona have water leasing authority. They have benefitted financially from the increased revenue their water generates. We anticipate to economically benefit as well.

Our governmental budgets depend on revenue from our enterprises. We have a small rural casino that was closed for over a year during the worst of the COVID pandemic, we have a few commercial leases and we have our CRIT Farms enterprise and we lease land with water for farming. The fluctuation in farm commodity prices affects our government operations.

Our system conservation agreements return at least 30 percent more revenue per acre of farmland than we receive from farm commodities or leases accounting for the costs of fallowing and putting the land back into production. And, water agreements for system conservation or potentially water leases, do not have the risks as-

sociated with farming. This permits us to have more certainty in our budgets and the services we provide our people.

A portion of our revenue from system conservation has been used to meet the 50 percent matching requirements for the WaterSMART grants that we have obtained to make improvements to the BIA owned and operated irrigation project that serves our farmland. We hope to implement additional conservation measures to improve the efficiency of this project to provide “more crop per drop” of water.

We anticipate that leasing water will provide significantly more revenue than what we are paid for not using our water and leaving it in Lake Mead as system conservation, but we do not know the value of our water at this time.

CRIT Ordinance #01-18 passed by our voters in January 2019 authorizes us to pursue this legislation and provides that revenues from leasing will be used for “housing for tribal members, improved health care, education, public safety, a new nursing home on-reservation, a new Cultural Center on-reservation, new on-reservation drug and alcohol treatment programs, inclusive of residential treatment, and litigation or other efforts to fight for, preserve, and fully maximize the use of all water rights due to CRIT.” (CRIT Ordinance 01-18)

Our water rights and our land are our most valuable and important assets. We have not had the financial means to fully utilize our water rights or our reservation land. These are our sovereign resources, and it is most importantly a matter of our sovereignty that we use our resources for the maximum financial return for our survival and our prosperity.

#### **Water for Others in Arizona**

*Example One:* CRIT is uniquely situated to provide water for riparian habitat on the mainstream of the Colorado River. It is anticipated that shortages will cut the water deliveries downstream from Hoover Dam to an extent that certain reaches of the River will see reduction in habitat for endangered species. CRIT participates in the Multi-Species Conservation Program (MSCP) under the federal Endangered Species Act (ESA) permit and established the 1200 acre Aha Khav Preserve and an endangered fish hatchery on the Reservation. With this legislation, we can make our water available for use by the Fish and Wildlife Service at other locations along the River.

It is a goal of our Council, and of mine personally, to save the Life of the River. By this I mean not just the flow of the water within the banks of the River, but the preservation of the plants and animals that depend on the flow of the water for their survival.

*Example Two:* CRIT water may provide a drought supply to the water users whose supply is cut by the existing shortage criteria. A Tier 1 shortage as provided in the 2007 Interim Guidelines plus the contributions from the Drought Contingency Plan currently reduce the amount of water delivered through the CAP by 512,000 acre-feet per year. Most of these cuts were anticipated and are mitigated by the Arizona DCP. And, Arizona has a plan for addressing more cuts by recovering water from the underground water storage facilities.

However, the DCP mitigation expires at the end of 2022 and recovered groundwater that is used to replace CAP water is of a different quality and may require retrofitting water treatment facilities. The CRIT water can be delivered through the CAP and can provide water that is treatable by the same municipal water treatment plants already in place without modifications.

At CRIT we have described our water as being a “bridge” supply for essential services until the time when technological advances make wastewater reuse, desalination, or possible importation of water, all of which are being discussed in Arizona, more readily available.

*Example Three:* The United States, the State of Arizona through the Arizona Water Bank, and the Central Arizona Water Conservation District all have obligations to “firm” or replace CAP water that tribes agreed to accept as part of their settlements. Each of these firming obligations may draw upon water supplies stored in underground storage or in Lake Mead. Without knowing the future of climate change or the extent of the current 22-year drought, the CRIT water is a potentially valuable resource to meet these obligations to tribes. We could be paid for our first-priority water that then could be delivered as replacement water to other tribes.

#### **Summary of Question 1**

CRIT plans to maintain an agriculture economy on the reservation and our voters emphasized the need to maintain our history and culture as farmers. The Tribal Council will determine the acreage to be fallowed to create reduced consumptive use to be available for off reservation uses. We do not know what this amount will ultimately be, but we currently fallow over 11,000 acres to provide 55,000 acre-feet a



year for Lake Mead. Using the Arizona Department of Water Resources estimate that 3.5 households use one acre-foot per year, this is enough water to supply close to 200,000 households at current levels of municipal conservation in Arizona. (<https://new.azwater.gov/news/articles/2021-19-04>, accessed April 20, 2022)

For all the help our water would be for water users in Arizona and our need for increased tribal revenue, the most important aspect of S. 3308 is that it recognizes and supports our tribal sovereignty over our water rights.

*Question 2.* Arizona Tribes play a critical role in water management and conservation along the Colorado River. What intertribal efforts have the CRIT engaged in to secure the water supply for future generations of water users?

Answer. Each tribe has its own Indian reserved water rights that may still be unquantified or that may have been quantified in adjudications, like CRIT's, or through settlements. CRIT has not taken a position on any other tribe's water settlement. I am not sure what is meant by "intertribal efforts" by CRIT "to secure the water supply for future generations of water users?" One tribe cannot secure another tribe's water for future generations. It is my understanding that the United States has a policy that a federally reserved water right for one tribe is for its present and future use. One tribe's water right cannot be used to provide a future use for another tribe. With this explanation I will explain how we have engaged and helped other tribes and how CRIT water can help Arizona tribes in the future.

The CRIT water used for system conservation that has been created through agreements with the State of Arizona, the Central Arizona Water Conservation District and Reclamation has left over 200,000 acre-feet of water in Lake Mead. We are in negotiations for additional system conservation water to be left in Lake Mead as part of the 500+ Plan. All of the system conservation water helps those tribes that have rights to water delivered through the CAP according to their agreed upon settlements making it less likely that their water will be shorted or cut.

We have also had preliminary conversations with representatives of Reclamation that when tribal CAP water is cut according to its priority and the terms of the CAP contracts, CRIT is willing to enter agreements with Reclamation to help firm those supplies for which the United States has this obligation.

CRIT is a member of the Inter Tribal Council of Arizona, the Ten Tribes' Partnership and the loosely organized 5 Tribes Coalition (this group includes the other four tribes with water rights adjudicated in the case of *Arizona v. California* at the same time as CRIT's). This legislation, S. 3308 has been shared with all of the tribes of these organizations and we have had one-on-one conversations with many of them.

We are also active participants in the National Congress of American Indians (NCAI) that passed a resolution supporting the principles of S. 3308. NCAI Resolution PDX-20-058 states that tribes should have sovereignty over their water rights and the authority to lease water that was previously consumptively used on their reservations.

I will now address the opposition statement to S. 3308 that was submitted by Stephen Roe Lewis, Governor of the Gila River Indian Community (GRIC).

The GRIC are the largest marketer and lessor of water in Arizona and have been since 2004. Governor Lewis filed a letter of opposition to the draft legislation with the Arizona Department of Water Resources following the public meetings in December 2020. He sent letters of opposition to the sponsors of S. 3308, submitted testimony to this committee and most recently sent out a press release to many tribal leaders expressing the GRIC opposition. Governor Lewis did not accept any of the multiple invitations from our former chairman or from me to talk about their opposition.

Governor Lewis's testimony to this committee recounts the status of the basin because of the more than 20 years of drought and changes to precipitation and weather patterns. We live on the River and we know and understand these impacts. We are farmers and see the effects of drought, higher temperatures, and more wind every day on our reservation.

The current shortages required by the 2007 Interim Guidelines and the agreed upon DCP contributions cut the water to be delivered by the CAP, the source of about half of the opposing tribe's water rights. We understand that the GRIC supply will be cut. We are doing what we can for Lake Mead by leaving 55,000 acre-feet in the Lake this year, but S. 3308 does not increase or affect the cuts to lower priority water like some of the water contracted to the GRIC.

We have shared drafts of our legislation and the accompanying agreements have been shared broadly throughout the Colorado River basin, including among the leaders of the tribes in the basin and with the Governor's representatives of the states, major water users, and the general public, in formal public meetings and informally at meetings and conferences. The GRIC are the only entity that is opposed to S. 3308.

The CRIT are uniquely situated, if S. 3308 enters into law, to mitigate some of the cuts to water delivered by the CAP by providing the only renewable water supply that can be delivered through the CAP as replacement water. As discussed in response to your first question, our water can be a substitute supply for river habitat, for cities and towns, and to firm tribal supplies.

The CRIT Water Resiliency Act, S. 3308 will not alter or impact other tribal water rights. The leasing, exchange, or storage of our water rights will not use water that would otherwise be available to any other tribe.

The CRIT support each tribe's sovereignty over their land, water, and other natural resources. We cannot speak on their behalf and will not infringe on their own sovereignty by attempting to do so.

*Question 3.* Please explain whether and how leasing CRIT's water will affect the water level of Lake Mead.

If this legislation is approved and CRIT enters a lease, exchange or storage agreement for use of our water off the reservation the water level of Lake Mead will not be affected. We believe that there is some confusion about the requirements of S. 3308 and how mainstream water rights are accounted for by Reclamation.

This legislation, S. 3308, requires that all water made available for off-reservation use come from reduced consumptive use on the reservation. For every acre-foot of water included in a lease there will be a reduction of an acre-foot of use on the reservation. This is confirmed in Sections 4(a) and 5(a) of S. 3308.

CRIT has reduced on-reservation consumptive use to create more than 200,000 acre-feet of system conservation water that has been left in Lake Mead since 2016. Reclamation has verified our on-reservation land following program the reduces consumptive use on the Reservation to make sure there is not any additional water delivered to CRIT or a detrimental impact to Lake Mead. Reclamation will also verify the reduced consumptive use on-reservation for all off-reservation uses such as leases and system conservation in the same way they do for all mainstream water users.

Thank you for these questions and the opportunity to provide answers. Please let me know if you or other committee members have additional questions.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
HON. BRYAN NEWLAND

*Question 1.* Assistant Secretary Newland, you testified that the Department previously denied the MOW A Band's petition for federal recognition. Please describe in detail the bases for the Department's decision.

Answer. On May 19, 1983, the MOWA Band submitted a letter of intent to the Department of the Interior (Department) petitioning for federal recognition under 25 C.F.R. Part 83 (Part 83). The Department evaluated the MOWA Band's petition under the prior regulations at 25 C.F.R. 83 .10( e) which provided for an expedited finding on a single criterion when the documented petition and response to the technical assistance letter indicates that there is little or no evidence that the petitioner can meet the mandatory criteria.

On January 5, 1995, the Department issued a proposed finding that MOW A failed to meet the criteria for Federal acknowledgment as an Indian Tribe (see 60 Fed. Reg. 1,874 (January 5, 1995)). The Department found that MOWA was able to show only one percent of its members descended from a historical Indian Tribe (meaning 99 percent could not show descent from a historical Indian Tribe) and therefore, was not able to satisfy the criteria under § 83.7(e), requiring demonstrated descent "from a historical Indian tribe or from historical Indian tribes that combined and functioned as a single autonomous political entity" 25 CFR § 83.7(e) (1994). After reviewing comments on the proposed finding, the Department issued a final determination that MOW A did not meet the mandatory criteria for Federal acknowledgment (see 62 Fed. Reg. 67,398 (December 24, 1997)).

In April 1998, MOW A appealed for reconsideration before the Interior Board of Indian Appeals (IBIA). In August 1999, the IBIA upheld the negative final determination and referred one issue outside IBIA' s jurisdiction to the Secretary of the Interior for reconsideration. The Secretary of the Interior declined to order further reconsideration to the Assistant Secretary—Indian Affairs, making the negative decision final and effective for the Department on November 26, 1999. The MOW A thoroughly exhausted its administrative remedies before the Department.

In 2007, MOWA sought remedies through an Administrative Procedure Act complaint filed in the United States District Court for the Southern District of Alabama. In July 2008, the District Court found that MOW A's "claims were filed beyond the

six-year statute of limitations and are therefore barred.” The District Court ordered that the case be dismissed. The MOWA made no further appeal.

Having exhausted both administrative and judicial remedies, Congress is the only route available for MOWA to seek Federal recognition.

The Department’s decisions and associated documents regarding MOWA are available on the Office of Federal Acknowledgement’s website at <https://www.bia.gov/as-ia/ofa/086-mowach-al>, and provides greater detail for the bases of the Department’s negative decisions regarding MOWA.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN HOEVEN TO  
HON. BRYAN NEWLAND

*Question 1.* In 2016, Congress enacted the Native American Tourism and Improving Visitor Experience (NATIVE) Act. Can you discuss the implementation of the NATIVE Act, including whether it is helping promote tourism in Indian Country?

Answer. The Office of Indian Economic Development (OIED) has implemented the NATIVE Act’s guidance and support for Tribal tourism efforts as directed in Section 2 of the Act.

Starting in 2019, OIED supported Tribes across Montana, Virginia, South Dakota and North Dakota. OIED NATIVE Act efforts have also supported Tribal organizations and Native Hawaiian Organizations (NHO) through our tourism grant opportunities and through our NHO cooperative agreements. The following efforts supported diverse tourism strategies throughout 2019–2022:

- Cooperative Agreement between the Bureau of Indian Affairs Division of Transportation and the American Indian Alaska Native Tourism Association;
- Contract with George Washington University to promote tourism to Native locations in North Dakota and South Dakota;
- Cooperative agreement with Virginia Tech to promote inter-Tribal tourism projects in Montana and Virginia;
- Cooperative agreement with the Native American Food Sovereignty Alliance formerly Taos Community Economic Development Corporation;
- Cooperative agreement with Strongbow Strategies (a Native vendor) for operation of the Sheep Ranch and Woolen Mill Projects to promote cultural tourism at Navajo Nation;
- Two Native Hawaiian Cooperative Agreements;
- Technical Assistance-NATIVE Act; and
- Indigenous Tourism Collaboration of the Americas.

In 2021, OIED implemented our Tribal Tourism Grant Program which provides low-risk feasibility study and business plan grant funds to entertain tourism options. OIED is now transitioning from regional approaches to comprehensive support across Indian Country expanding financial and technical assistance opportunities to reach more Tribes.

*Question 2.* Are there any additional adjustments that should be made to make the NATIVE Act as effective as possible?

Answer. To gain more equitable economies for Native American Tribal Nations, OIED seeks to open/widen the process for Tribal tourism financial awards across all regions by posting a four-zone designed solicitation on [grants.gov](https://www.grants.gov) for the Tourism Memorandum of Agreement (MOA) rather than awarding another five-year cooperative agreement with one entity. Announcing this zone-designed availability will more fairly allow Native American communities, Indian Tribes, Tribal organizations, and Native Hawaiian organizations, to submit proposals for how they can more fully engage in Native American and Native Hawaiian tourism technical assistance, ultimately increasing their economic growth. When awarded, the Native Act technical assistance funds will support regional jobs, build economies, and elevate living standards and more equitably provide opportunities for Economic Development technical assistance approaches that are culturally relevant and regionally specific across Indian Country. This process will enable OIED to provide Tribal entities an opportunity to apply for and implement the important Tribal tourism technical assistance more efficiently and effectively across Indian Country, with the expected emphasis on Tribal communities. To support more MOA expectation flexibility, OIED recommends the Native Act be modified to support the MOA broadened approach providing Tribal tourism technical assistance.

*Question 3.* What are some of the benefits that tourism can bring to tribes, including potential opportunities for economic development and job creation?

Answer. Tribal tourism has the potential to provide long-lasting economic sustainability and empower communities to define the scope of tourism activities on Tribal lands and to tell their stories. Tourism can provide jobs and economic vitality, opportunities to protect and preserve natural resources and cultural history for generations to come.

*Question 4.* What are your recommendations on other ways that BIA and Congress can assist Tribes in promoting and growing tourism in Indian Country?

Answer. Cross agency collaboration is imperative to successful efforts. This would prevent federal funding duplication and ensure programmatic efforts are jointly defined.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO  
HON. BRYAN NEWLAND

*Question 1.* I can see that the S. 3308, Colorado River Indian Tribes Water Resiliency Act, is potentially a long-range tool for developing flexible water supplies in the future, but we are in the middle of a mega drought now, the crisis is on us. Mr. Newland, what do you think our most important focus should be in the short term?

Answer. The Colorado River is experiencing prolonged drought, low runoff conditions, and depleted storage in the Basin's two largest reservoirs, Lake Powell and Lake Mead. These conditions are causing unprecedented challenges and the best available science indicates that the effects of climate change will continue to adversely impact the Basin. As requested in the 2021 Tribal letter, Secretary Haaland, along with senior Department of the Interior (Department) and Bureau of Reclamation (Reclamation) leadership, met in person on March 28, 2022 with Tribal leaders. The Secretary and the Tribal leaders had a detailed discussion regarding the risks and challenges facing the Colorado River Basin and committed to transparency and inclusivity for the Tribes when work begins on the post-2026 operational rules. There are a number of urgent issues facing the Basin and following the meeting with the Secretary, on April 8, 2022 Assistant Secretary for Water and Science Tanya Trujillo sent a letter to Tribal leaders of the 30 Colorado River Basin Tribes expressing concerns that should the hydrology continue to decline this year, it is possible that Lake Powell could drop below elevations at which hydropower can be generated, which would place the infrastructure to make deliveries to downstream users at risk. Reclamation has worked diligently to regularly communicate with Tribal leaders and their staff regarding these concerns and actions being proposed to mitigate these risks in the short-term. Indian Affairs is committed to working with Reclamation and other partners in the Department to work with the Basin Tribes who are impacted by the drought.

*Question 2.* Mr. Newland, what are the agency's plans over the next two to three years to engage Basin Tribes in the development of the post-2026 rules?

Answer. It is essential that meaningful Tribal engagement inform the development of the successor operational rules to the 2007 Colorado River Interim Guidelines, which expire in 2026. These operational rules will be developed through an extensive, multi-year public process pursuant to the National Environmental Policy Act (NEPA) that is anticipated to begin in early 2023. Staff at Reclamation are currently working with Tribal representatives to develop a structure for engagement in the process that will have broad Tribal acceptance and on a plan to build Tribal technical capacity and provide technical assistance to support their participation in the process. Additionally, Reclamation, in coordination with other offices and bureaus in the Department, including Indian Affairs, intends to meet with each of the 30 Basin Tribes to further understand each Tribe's particularized interest in the process, their desire to be engaged, and how they would like that engagement to occur.

*Question 3.* Mr. Newland, after the March roundtable with Tribal leaders that took place in Albuquerque, when will the Department begin formal government-to-government consultations with Basin Tribes on the next framework for the long-term management of the Colorado River system?

Answer. The process to develop the post-2026 operational rules is anticipated to begin in early 2023. The Department communicates regularly with the Basin Tribes with respect to the timing of this process and is actively working with Tribal representatives to develop a structure for Tribal engagement in the process. Formal government-to-government consultation can occur at any point depending on the Tribe's request, but will also take place at the appropriate NEPA milestones throughout the process.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN HOEVEN TO  
MARVIN FIGUEROA

*Question 1.* Can you briefly discuss the importance of having access to accurate public health data?

Answer. Public health depends on timely, accurate, and usable data to prevent outbreaks and reduce disease burden; support public health recommendations that guide individual, clinical, community and public health decisions; and forecast disease burden trajectories and projections to guide prompt public health and policy decisions and actions.

*Question 2.* What specific impacts are there to Indian Country when public health data reporting is not accurate or complete?

Answer. We recognize the importance of having accessible, timely, and accurate data for making decisions about how to protect and improve the health of American Indian/Alaska Native (AI/AN) communities. Our goal is to ensure Tribal Epidemiology Centers (TECs) and federally recognized AI/AN Tribes (Tribes) have access to the data they need to the extent practicable. For example, the Centers for Disease Control and Prevention (CDC) is working directly with Tribes, TECs, Tribal partners, and national public health partners such as the National Indian Health Board, National Council of Urban Indian Health, and the Council of State and Territorial Epidemiologists to educate data users about how to access and analyze public health data, including the best available resources with demographic information on AI/AN populations.

The entire public health ecosystem faces challenges around data collection, timeliness, and completeness. Within HHS, CDC is working—through the data modernization initiative—to make targeted investments in public health data infrastructure to improve the quality and accessibility of data across the public health system. CDC is committed to continuing to work with Tribes, TECs, and state and local public health authorities to improve access to public health data. Improving the availability of data is a public health system effort, and all public health entities will need to work together to enhance the quality, completeness, and availability of public health data.

*Question 3.* How will the Tribal Health Data Improvement Act help close gaps in the availability of public health data?

Answer. The Tribal Health Data Improvement Act proposes to expand access to federal health and public health data, including the addition of Indian Tribes and Tribal organizations as authorized data recipients. However, there are existing statutes that already authorize access to such data for the Indian Health Service (IHS) and TECs, and this is sustained in the proposed legislation. Expanding access to include Indian Tribes could address gaps in data access, depending upon Tribal capacities to access, analyze, and interpret or use such data. However, clarification is needed regarding how data access for unspecified “Tribal organizations” could address data gaps.

HHS supports the objectives of the Tribal Health Data Improvement Act and will continue to work with this Committee on efforts to improve data protection and privacy provisions in the legislation as it moves forward. In line with these objectives, HHS offers the following recommendations on this bill:

HHS has significant concerns that the bill’s data protection and sharing provisions are insufficient and could result, without appropriate protections in place, in the release of health and public health data to entities with no suitable public health or related authority to access these data. Release of such data potentially violates federal laws that may restrict the disclosure of certain information. For instance, the data may directly or indirectly identify an individual or the data may be protected from disclosure by another applicable federal law. Further, one Tribe could request the data relating to another Tribe. The bill as written provides broad access to health and public health data collected by HHS from states. HHS and its agencies adhere to stringent privacy practices to protect this data on individuals to prevent misuse or inappropriate unauthorized disclosure. The bill does not define the scope of data Tribes or other entities can request or how that data could be used. The bill also lacks clear authority to withhold data that are exempt from the Freedom of Information Act.

Additionally, HHS strongly recommends that “Tribal organizations” be struck throughout the legislation. The bill’s definition of “Tribal organizations” could be interpreted broadly, leading to an exponential number of entities requesting data that have no Tribal governmental role or specified health functions. By disseminating health and public health data to any Tribal entity that lacks a public health role, there is an inherent risk that the data may be misused, re-released with identifiable information, or used for non-public health purposes, which goes against the intent

of the proposed legislation. The significant implementation challenges of providing data to any type of Tribal organization could undercut the key purpose of the legislation—to provide federally recognized Tribes and TECs timely and appropriate access to data that pertains to a Tribe’s members or AI/AN communities served by a TEC.

Finally, the bill proposes to improve the quality of various public health data sources for AI/AN communities, including vital statistics. Mechanisms include consultation to gain Tribal input, entering into funding agreements with Tribes and Tribal organizations, etc., and by encouraging States to improve how they collect AI/AN health and public health-related data. These efforts may help address data and data quality gaps for AI/ANs within existing or envisioned data systems. However, HHS would encourage this committee to consider options to strengthen the language for “encouraging” states to improve their processes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO  
MARVIN FIGUEROA

**Tribal Health Data Improvement Act**

In 2010, Congress enacted the Patient Protection and Affordable Care Act (ACA), which permanently reauthorized the Indian Health Care Improvement Act (IHCIA). In addition to designating Tribal Epidemiology Centers as public health authorities, IHCIA allows them access to data held by the secretary of HHS. IHCIA states that the Secretary, “shall grant to each epidemiology center . . . access to use of the data, data sets, monitoring systems, delivery systems, and other protected health information in the possession of the Secretary.”

In 2020, the Centers for Disease Control and Prevention (CDC) turned down Tribal Epidemiology Centers’ requests for data that the agency made freely available to states, despite Tribal Epidemiology Centers being entitled to this data under federal law.

New Mexico’s Tribal Epidemiology Center and Tribes, like those around the country, continue to experience great difficulties in accessing CDC data and receiving it in a timely manner. Despite these hurdles, Tribal Epidemiology Centers have used available epidemiological data to monitor the spread of COVID–19 during the pandemic and have conducted other analyses that support public health in Natives communities. However, limited data access and delays continue to hinder their ability to provide Native communities and Tribes with meaningful information needed for critical public health decisionmaking.

In 2020, I took action and joined House Energy and Commerce Committee Members to introduce the Tribal Health Data Improvement Act, which reaffirms that Tribal public health authorities are entitled to access federal public health data.

On June 17, 2021, I criticized the Trump administration for its disparate treatment of Tribal Epidemiology Centers during a hearing of the House Committee on Energy and Commerce’s Subcommittee on Health. In response to my questioning during a full Energy and Commerce Committee hearing on June 23, CDC Director Robert Redfield committed to sharing COVID–19 data with all 12 Tribal Epidemiology Centers.

On July 1, 2021, I also signed a bipartisan letter to Director Redfield and the Health and Human Services Secretary Alex Azar requesting information on CDC’s policies and practices to ensure Tribal Epidemiology Centers have access to all public health surveillance data, as required by law. We must not forget Tribes and Tribal Epidemiology Centers are entitled to COVID–19 data, but they also have a right to access pre-COVID–19 data as well.

*Question 1.* Mr. Figueroa, what progress has the Centers for Disease Control made in providing Tribes and Tribal Epidemiology Centers with both COVID–19 and pre-COVID–19 data?

*Answer.* HHS is committed to continue to engage with TECs to ensure that they have access to COVID–19 vaccination and line-level case surveillance data through HHS Protect, which includes data from the Vaccine Adverse Event Reporting System (VAERS). For example, since July 2020, CDC has provided all 12 TECs access to the COVID–19 case surveillance data. In late 2020, CDC began the process to transition access to the datasets to HHS Protect. In HHS Protect, the datasets are updated daily. In addition, the TECs have access to other COVID–19 related data collected by HHS’s various operating divisions.

In addition, CDC continues to directly engage TECs to provide technical assistance regarding access and analysis of COVID–19 data. CDC staff assigned to work on COVID–19 case surveillance data communicate directly with TECs by answering inquiries, participating in TEC Director calls, and sharing information about the

data. Examples of previous technical assistance include that CDC staff held several calls with TECs, both one-on-one and group calls to answer questions and support use of the data. In addition, through CDC's COVID-19 Emergency Operations Center's State, Tribal, Local and Territorial Task Force's Tribal Support Section, additional technical assistance was provided including during meetings and by email.

From FY 2020-2021 CDC provided approximately \$153 million to 346 Tribal recipients through the Supporting Tribal Public Health Capacity in Coronavirus Preparedness & Response grant. During the last two years, CDC has provided more than \$3 million in data modernization funds directly to Tribal recipients. These projects seek to: improve access to data; modernize infrastructure for data collection, management, and analysis; and expand data skills among the public health work force.

CDC has also engaged TECs through the Council of State and Territorial Epidemiologists' (CSTE's) Tribal subcommittee to both share what COVID-19 data are available and guide the TECs on how to access those data. Additionally, CDC has used this mechanism to allow TECs to discuss how data sharing efforts for COVID-19 and public health data can be improved.

CDC is leading efforts to work with Tribal partners to support Tribes' and TECs' access to public health data they need to respond to COVID-19, and to build the critical infrastructure and capacity needed to respond to the broader health challenges facing AI/AN communities.

*Question 2.* Mr. Figueroa, what barriers do the Centers for Disease Control (CDC), Indian Health Service (IHS), and the Department of Health and Human Resources (HHS) face in providing the data they are legally required to share with Tribal health authorities? Please be specific.

*Answer.* The United States has a highly fragmented and decentralized system of health data collection. Consequently, CDC is reliant upon inconsistent reporting from states, localities, territorial, Tribal, and health providers for COVID-19 data. Except in limited circumstances, much of this data is shared on a voluntary basis with CDC, which can result in CDC receiving incomplete data. In addition, CDC enters into individually negotiated data use agreements with states that outline the allowable expected uses of the data in relation to a particular purpose. CDC must balance the use of data provided under such agreements with how this data may be shared, released, and maintained under applicable federal laws.

HHS values the government-to-government relationship and partnership with Tribes and other Tribal entities, including TECs, and is committed to continued engagement with them to ensure that we understand their data needs. HHS works to ensure that the Tribal entities have secure access to the data and information needed to protect their jurisdictions, as permitted by federal law.

Federal, state, and local laws shape the legal landscape surrounding the collection, sharing and use of health information for public health purposes, including addressing legal issues concerning privacy, confidentiality, security, and consent. Understanding both legal authorities and challenges to public health practice is critical to ensuring the effective and appropriate use of health information, safeguarding legal rights and obligations, and promoting the prevention of disease and injury in the U.S. population.

The entire public health ecosystem faces challenges around data collection, timeliness, and completeness. Case reports for notifiable diseases, such as COVID-19, are reported to CDC from state health departments, and state and local health departments vary widely in their ability to receive, ingest, and report data. Throughout the pandemic, many health departments have relied on antiquated data systems. Additionally, state and local health departments face steep workforce challenges, often lacking critical staff required to compile data.

The public health data system is complex, and although states mandate the reporting for around 120 conditions, the sharing of case data to CDC is voluntary. Currently, CDC lacks authority to compel direct reporting from health care entities, except in limited circumstances.

CDC is committed to continuing to work with TECs, and state and local public health authorities to improve access to public health data. Improving the availability of data is a whole of public health system effort. All public health entities will need to enhance the quality, completeness, and availability of public health data across the system.

IHS has long-established data sharing practices with TECs using the IHS Epidemiology Data Mart (EDM). Since 2012, TECs have electively exercised data sharing agreements with the IHS under this protocol, which permits broad access to IHS electronic health record (EHR) data.

Like the broad issues mentioned above, the IHS data infrastructure is fragmented due to the design of the Resource Patient Management System (RPMS) EHR, an

aging technology foundation that is listed on the Government Accountability Office (GAO) Report of Legacy Systems as one of the oldest systems in HHS. Each health system, Tribe, or facility stores its data locally. There are currently no statutes that compel Tribes, counties, or states to report data to IHS. This directly impacts the completeness of data held by the agency. The IHS Health IT Modernization Project seeks to redesign the RPMS Health IT Infrastructure to improve data sharing, interoperability, and align with industry standards. The modernization effort will enable IHS, Tribal, and Urban partners to mitigate future data integrity and reporting delays evident in the current Health IT Infrastructure. These challenges often require facility, area, Tribal, and headquarters staff to invest significant labor resources to report, validate, and correct data submitted for testing, surveillance, and vaccine reporting. Despite these challenges, IHS, Tribal, and urban partners were able to quickly stand up COVID-19 testing surveillance and create systems to report COVID-19 vaccine administration data.

Additionally, there are restrictions on the disclosure and use of data that pertain to diagnosis, treatment, or referral of substance use disorder (SUD) health encounters, including those originating from health care facilities operated by the IHS, Tribes, Tribal Organizations, or Urban Indian health facilities. These restrictions are stipulated in section 543 of the Public Health Service Act, 42 U.S.C. 290dd-2, and further clarified in the Confidentiality of Substance Use Disorder Patient Records Regulations promulgated by the Substance Abuse and Mental Health Services Administration (SAMHSA) at 42 C.F.R. Part 2 (Part 2). Part 2 regulations serve to protect the confidentiality of patient records created by federally assisted programs for the treatment of SUD. These requirements directly impact how the IHS can share such data, including with TECs via required redactions to Epidemiology Data Mart data.

Question 3. Mr. Figueroa, what specific obstacles exist to HHS sharing public health data with Tribal governments and Tribal Epidemiology Centers? Is this a matter of data infrastructure, interoperability, privacy assurance, or some other issue?

Answer. As noted above, the entire public health ecosystem faces challenges around data collection, timeliness, and completeness, and these challenges have impacted Tribal governments and TECs. Data infrastructure, interoperability, and privacy assurances all play a role in the challenges around public health data reporting, collection, sharing, and dissemination.

The GAO released a report on March 4, 2022, that discussed these challenges and recommended that IHS, CDC, and HHS should take specific steps to ensure TECs have access to the IHS and CDC epidemiological data. HHS concurs with these recommendations and is working to implement them.

Question 4. Mr. Figueroa, what are the CDC's and IHS's current procedures for reviewing Tribal Epidemiology Center requests for public health data? Does the agency have standardized guidelines for reviewing these types of requests and a timeline by which it needs to respond?

Answer. CDC is examining ways to improve data practices in collaboration with Tribes, TECs, and state health departments. Each data system is unique in terms of data ownership; applicable laws and policies that govern the data, its use and sharing; applicable data use and sharing agreements; and data content. Typically, CDC does not directly collect these data; instead, CDC aggregates the data supplied by state, Tribal, local, and territorial public health authorities. In some cases, CDC analyzes datasets procured from private entities to understand disease trends. As such, CDC must work with those partners to consider the best process to share data on a per dataset basis.

Because each data system is different, the current process for requesting other public health data is for TECs or Tribal governments to request the data from the CDC program managing the relevant dataset or data system. CDC's general approach is to share data to the greatest extent possible while protecting privacy, adhering to federal applicable laws, and taking into consideration data sharing agreements for all requestors, including TECs and Tribes. Examples of CDC data sharing policies and guidance include:

- under HIPAA *Tribal Epidemiology Centers Designated as Public Health Authorities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)*—This CDC Public Health Law Program brief provides an overview of TECs and the amendment to the Indian Health Care Improvement Act (permanently reauthorized by the Affordable Care Act), which designated these centers as public health authorities for purposes of (HIPAA). The issue brief further outlines the impact of this designation under HIPAA.



- CDC's National Center for Health Statistics (NCHS) provides guidance to researchers, including those within TECs, on how to access NCHS's data. See NCHS's *Resources for Researchers*, which includes links to NCHS guidance on its data release policy and data user agreement.

IHS has guidance specific to data sharing with TECs described in a Tribal Leader Letter<sup>1</sup> and accompanying IHS Data Sharing Contract template<sup>2</sup> released in 2012. These guidelines provide a head start for establishing TEC access to the IHS Epidemiology Data Mart (EDM), which includes EHR data derived from the IHS National Data Warehouse.

TEC data requests that cannot be satisfied through the EDM are reviewed on a case-by-case basis, which routinely includes review for human subject protections considerations, privacy review, legal review, and ultimately iterative development of a tailored data use agreement between IHS and the requestor that guides the sharing and use of IHS data while also satisfying project goals.

In its report, GAO highlighted, and HHS concurs, that improvements to these system-by-system procedures are needed to improve the accessibility of public health data to TECs and bring clarity to HHS agency processes for obtaining data.

Per GAO's recommendation, CDC and IHS are each developing centralized guidance for TECs on how to submit data requests and to establish written agency procedures for reviewing and responding to these requests. HHS expects to report progress to GAO on guidance and data access for TECs in September 2022.

*Question 5.* Mr. Figueroa, will CDC and IHS develop written guidance for Tribal Epidemiology Centers on how to request data? If not, what is preventing CDC, IHS and HHS from developing standardized guidelines for Tribal Epidemiology Center requests for data sharing?

Answer. Yes. As part of their report, GAO recommended that CDC and IHS develop guidance on how TECs should request data. We appreciate GAO's careful examination of Tribal access to epidemiological data, and HHS, IHS, and CDC are committed to implementing GAO's recommendations and continuing to strengthen our data sharing relationships with TECs and Tribal jurisdictions.

*Question 6.* Mr. Figueroa, how many requests for data held by the Secretary has HHS, CDC, and IHS received from Tribal Epidemiology Centers? How many of these requests from Tribal Epidemiology Centers, Tribes, or Tribal organizations were approved, denied or delayed? Please specify for each category including time for resolution of a request.

Because TEC requests can come to CDC through many routes and be sent to individual programs within CDC, CDC does not have a centralized log of TEC requests for CDC epidemiological data. CDC will be developing and launch a centralized, online data request form for federally-recognized tribes and TECs this summer. CDC will track responses to those requests.

Historically, IHS has received infrequent formal requests from TECs using public health authority for access to IHS data held centrally (average of 1.8 requests per year from 2011–2021). The already established IHS EDM and access mechanism for TECs permits broad access to aggregated IHS EHR data, which encompasses a majority of data held by IHS and can be useful for public health activities. While IHS plans to implement a formal tracking system for data requests received from TECs in light of the increased interest in TEC access to epidemiologic data, tracking information currently available for historical requests is incomplete and does not capture timing of requests or the timing for adjudication.

Since 2012, IHS has received the following numbers of formal data requests from TECs to access public health data either held within the IHS EDM or from other centrally collated IHS data sources to support special projects:

- EDM requests<sup>3</sup>: 10
- Special projects<sup>4</sup>: 8

<sup>1</sup> Available at: [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/2012\\_Letters/05-04-2012%20TLL%20Data%20Sharing%20Contract.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/2012_Letters/05-04-2012%20TLL%20Data%20Sharing%20Contract.pdf)

<sup>2</sup> Available at: [https://www.ihs.gov/sites/newsroom/themes/responsive2017/display\\_objects/2012\\_Letters/05-04-2012%20DSA%20Template.pdf](https://www.ihs.gov/sites/newsroom/themes/responsive2017/display_objects/2012_Letters/05-04-2012%20DSA%20Template.pdf)

<sup>3</sup> This number represents the initial requests by TECs for access to the EDM resulting in establishment of formal data sharing contracts with the IHS that permit ongoing access to EDM data.

<sup>4</sup> Special projects generally include but are not limited to requests for personally identifiable patient information to permit data linkage with other public health data sources, including es-

- Total requests: 18
- Status of IHS Data Requests
- EDM requests: 10 of 10 approved
- Special projects:
  - 5 of 8 approved
  - 2 remain in development
  - 1 deferred and awaiting resubmission

*Question 7.* Mr. Figueroa, specifically, how has the director of CDC provided technical assistance to all 12 Tribal Epidemiology Centers and Tribes to facilitate the transfer of health data?

Answer. CDC continues to directly engage TECs to provide technical assistance regarding access and analysis of COVID-19 data. CDC staff assigned to work on COVID-19 case surveillance data communicate directly with TECs by answering inquiries, participating in TEC Director calls, and sharing information about the data. CDC staff held several calls with TECs, both one on one and group calls to answer questions and support use of the data. In addition, through CDC's COVID-19 Emergency Operations Center State, Tribal, Local and Territorial Task Force's Tribal Support Section, additional technical assistance was provided including during meetings and by email.

CDC has also engaged TECs through the Council of State and Territorial Epidemiologists' (CSTE's) Tribal subcommittee to both share what COVID-19 data are available and guide the TECs on how to access those data. Additionally, CDC has used this channel as a means to allow TECs to share how data sharing efforts for COVID-19 and public health data can be improved.

CDC has provided more than \$3 million in data modernization funds directly to Tribal recipients. These investments in data infrastructure, data upskilling for the public health workforce, and electronic case reporting directly to Tribal organizations are a critical step in harnessing better data to improve health outcomes in AI/AN communities.

From FY 2020-2021, CDC provided approximately \$153 million to 346 Tribal recipients through the Supporting Tribal Public Health Capacity in Coronavirus Preparedness & Response grant. In the first year, many recipients invested in activities related to surveillance, epidemiology, and health information technology.

The Tribal Epidemiology Centers Public Health Infrastructure (TECPHI) program is one example of CDC's approach to address the data gap by investing in data infrastructure. A recent evaluation of the first three years of the cooperative agreement showed for example that TECs put into place 194 new or expanded data sharing agreements, providing access to more than 200 datasets. These agreements allowed TECs to provide daily or weekly COVID-19 situational reports and create data dashboards so Tribal leaders and community members could access up to date and relevant information not available elsewhere.

- TECs assisted on the development of Community Health Assessments or provided training to Tribal staff on how to access, process and compile data into community health assessments to understand communities' current health statuses, priorities, needs, and issues.

In 2022 this important work will continue. CDC recently competed a new Notice of Funding Opportunity for the second iteration of TECPHI (2022-2027). The purpose of this NOFO is to strengthen the public health infrastructure and capacity of TECs and that of the Tribes and Urban Indian Organizations TECs support to effectively identify and address underlying social determinants of health, reduce persistent health disparities, and improve the overall health and wellbeing of American Indian and Alaska Native communities. CDC anticipates making up to 13 awards ranging from \$300,000 to \$600,000 for data infrastructure development including implementing plans to improve data quality and data systems for AI/AN populations. The anticipated award start date of the new five-year cooperative agreement is September 30th, 2022.

CDC also provides continuing education to support training capabilities in the public health workforce and has worked to ensure we meet the needs of Tribal partners. Through CDC TRAIN, a national system used by affiliate member organizations to manage and share public health trainings, CDC educated more than 9,800 learners in the Indian Health Service (6,270) and Tribal health sites (3,614) in fiscal year 2021. Through Training & Continuing Education Online, CDC provides access

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established public health data sets maintained by other public health authorities (i.e., state health departments).

to CDC educational activities for continuing education serving more than 15,900 learners at the Indian Health Service (12,661) and Tribal health sites (3,288) in fiscal year 2021.

CDC also provides continuing education to support training capabilities in the public health workforce and has worked to ensure we meet the needs of Tribal partners. Through CDC TRAIN, a national system used by affiliate member organizations to manage and share public health trainings, CDC educated more than 9,800 learners in the Indian Health Service (6,270) and Tribal health sites (3,614) in fiscal year 2021. Through Training & Continuing Education Online, CDC provides access to CDC educational activities for continuing education serving more than 15,900 learners at the Indian Health Service (12,661) and Tribal health sites (3,288) in fiscal year 2021.

*Question 8.* Mr. Figueroa, how has the TECPHI helped to address the data infrastructure concerns that have prevented HHS from sharing the health data that Tribes and Tribal Epidemiology Centers are entitled to under federal law?

Answer. CDC's Tribal Epidemiology Centers Public Health Infrastructure (TECPHI) cooperative agreement (co-ag) builds public health capacity to promote health and prevent disease in American Indian/Alaska Native communities and to address the data gap for TECs and the tribal communities TECs serve. CDC supports the 12 TECs and one Network Coordinating Center. The Network Coordinating Center coordinates the evaluation of this initiative and provides project organization, logistics, and communication across the TECs.

Activities in the current TECPHI 5-year cycle (fiscal years 2017–2021) fall under three strategies:

#### **1. Strengthen Public Health Capacity and Infrastructure**

- Collect and monitor data on health status objectives of tribes, Tribal organizations, and urban Indian organizations (UIOs).
- Evaluate delivery and data systems that impact Indian health.
- Assist tribes, Tribal organizations, and UIOs to determine health status objectives and services needed to meet those objectives.
- Provide technical assistance to Tribes, Tribal organizations, and UIOs to effectively apply surveillance data and epidemiology to determine local health priorities and to plan and monitor interventions to address them.
- Cultivate multi-sector collaborations at area tribe, state, and federal levels.

#### **2. Implement Activities to Improve Effectiveness of Health Promotion and Disease Prevention**

- Identify public health priorities by conducting or using community health assessments or other available data.
- Identify community strengths, resources, and needs.
- Develop and support implementation of culturally relevant evidence-based activities to address identified needs.
- Evaluate area and Tribal efforts to address chronic diseases and other priority health conditions

#### **3. Engage in Sustainability Activities**

- Identify possible sources for financial support that align with program priorities.
- Create a plan to sustain program efforts after grant period ends.

#### **Results from the recently released Year 3 TECPHI Progress Report found:**

- Data Access—194 new or expanded Data Sharing Agreements with TECs were put in place, providing access to more than 200 datasets.

—All 12 TECs worked towards establishing new and/or expanding current data sharing agreements (DSAs) and other partnerships to improve monitoring of health status for the tribes, Tribal organizations, and UIOs they serve. DSAs are integral to providing sustained epidemiological support and technical assistance (TA) and have become increasingly important during the COVID–19 pandemic. Tribal leadership depends on accurate data and timely information to make decisions for the communities they represent.

—Through these agreements, TECs were able to provide daily or weekly COVID–19 situational reports and create data dashboards so Tribal leaders and

community members could access up to date and relevant information not available elsewhere.

—Increased access to data for tribes and linkages to improve race classification.

- Technical Assistance—TECs fulfilled more than 1,700 technical assistance requests from tribes and UIOs, with approximately one-third of the those involving accessing, collecting, analyzing, and summarizing COVID–19 data. Through these efforts:

—Tribes and UIOs were able to access more and better-quality data to support their health priorities and COVID–19 response efforts. TECs:

\*Conducted Tribal-specific rapid COVID-response capacity assessments and provided reports to 10 tribes for the communities to make informed decisions

\*Developed a Tribal data toolkit through the Tribal data users workgroup

\*Supported COVID–19 case investigation and contact tracing for Tribal and IHS clinics

—TECs assisted on the development of Community Health Assessments or provided training to Tribal staff on how to access, process and compile data into community health assessments to understand communities' current health statuses, priorities, needs, and issues.

- Trainings—In the first 3 years of TECPHI, TECs provided over 560 trainings, including trainings for tribes, Tribal organizations and UIOs on data systems, grant writing, strategic planning, and sustainability planning.

—Divisions in CDC's National Center for Chronic Disease Prevention and Promotion provide multiple trainings for TECs around data systems, data visualization and analysis, and data access.

- Subawards—In the first 3 years of TECPHI, TECs provided 70 subawards to tribes and UIOs to support Tribally identified activities and capacity building efforts.

In addition, CDC provides regular TA and support to TECs. The Year 3 Progress Report found: TECPHI Program awardees appreciated the consistent support and communication from the CDC, especially while TECs balanced routine services and COVID–19 response work. Monthly meetings with the CDC provided opportunities to address challenges and barriers as they became apparent, and enhanced the collaborative nature of the award. These regular meetings enabled the CDC to connect TECs and organizations engaged in similar projects and facilitate connections with subject matter experts.

CDC looks forward to continuing supporting the public health infrastructure and capacity of TECs, Tribes, and Urban Indian Organizations in the new round of TECPHI (2022–2026) that is set to start in August 2022.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BEN RAY LUJÁN TO  
DARIN M. PRESCOTT

**Tribal Health Data Improvement Act**

*Question 1.* Mr. Prescott, you said in your testimony that Tribal Epidemiological Centers were limited during the pandemic because of lag time in accessing data and not being able to get data directly from the CDC. Instead, many Tribal Epidemiology Centers had to rely on state partners to provide data. When making public health decisions, what were the impacts of not having timely access to data about your Tribe? What did delays in data access mean for you? Did relying on state partners help or hinder timely access to public health data?

*Answer.* Early in the pandemic there was a lot of time spent trying to obtain data to make decisions for the welfare of our community. We erred on the side of caution by closing our casino and implementing a mask mandate as well as a travel ban. While these interventions are not necessarily specific to Lower Sioux Indian Community, these delays in access to data meant we had to either follow our county or regional guidelines which are not always in sync with our beliefs and interventions. Without having data, it made decisionmaking very challenging as our tribal citizens are also savvy to compare and contrast the decisions made in comparison with the county and municipalities jurisdictions. Relying on State data was also difficult due to the limitations on demographic collection of tribal citizenship or AI/AN tracking. Essentially, the ownership of patient tribal identification was placed on the patient to identify at AI/AN and their affiliation with the Lower Sioux Indian Community.

Most tribal citizens were not aware of the need to declare their citizenship or were not asked.

Question 2. Mr. Prescott, why is receiving public health data from the state not an adequate substitute for direct, timely access to HHS, CDC and IHS data?

Answer. As a tribal nation, we work on a government-to-government system. HHS, CDC and IHS are our federal partners and have an obligation to tribes to provide timely data. Data collection among 50 states is inconsistent and cannot be detailed based on this experience. There is also variations between State and Tribal relationships depending on the tribe. States oftentimes assume a paternalistic approach to tribes. Data ownership is then one of the parental bargaining tools used in the relationship between the State and Tribes.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
HON. LEBARON BYRD

*Question 1.* The Department of the Interior testified that it intends to respond within “weeks, not months,” to two court decisions finding Interior’s bar on the opportunity to re-petition under the 2015 Part 83 regulations was arbitrary and capricious. You testified that you believe the MOWA Band would be a strong petitioner under the 2015 regulations. If the Department of the Interior were to reverse its position and allow previously denied applicants the ability to re-apply for federal acknowledgement, would the MOWA Band of Choctaw Indians (MOWA) re-petition the Department of the Interior?

Answer. For the reasons noted below, the MOWA Band of Choctaw Indians (MOWA) are not interested in waiting for the Department of the Interior (DOI) to change its regulations to accommodate petitioners wishing to re-petition.

For the DOI to change its position, the DOI must change its regulations, which is a lengthy process requiring multiple public engagements by the DOI. Should DOI make this move, it would need to propose a rule change and present that rule change for tribal consultation. That process would likely require more than a year to complete. The proposed rule change would then need to be presented through the DOI’s normal rulemaking procedures, which would likely require an additional up to two years to complete.

Should the rule change be presented, it is highly likely that some tribes and other entities (states, local jurisdictions, and even private parties) will file legal challenges under both the APA and the U.S. Constitution. Such litigation could be expected to take as long as 4 to 6 years if appeals of the rule changes are taken to the U.S. Supreme Court.

Thus it could be as long as 10 years before the newly adopted rules and procedures would be in place to resume hearings.

If the DOI were to successfully complete a rule change, the DOI would be required to determine how to address the review of previously denied petitioners. They could not simultaneously stop reviewing those petitions currently in the pipeline in order to begin hearing re-petitions. Given the documented opinions of the DOI, there is a likelihood that re-petitions would be positioned after the current petitions of tribes awaiting their first hearing.

According to the Congressional Research Service (CRS), in a report issued February 26, 2020, officials with the DOI are of the opinion that re-petitioning is unfair to the current petitions awaiting a hearing. As a result of this statement, it is unlikely that a re-petition will gain a favorable result.

“According to DOI, “allowing for re-petitioning by denied petitioners would be unfair to petitioners who have not yet had a review, and would hinder the goals of increasing efficiency and timeliness by imposing the additional workload associated with re-petitions on the Department, and OFA in particular.”

According to information published by the DOI on their website, during the past 40 years only 18 petitions have gained favorable judgement by the DOI. During that same timeframe, DOI records indicate 34 petitions have been denied. As a result, over the past 40 years the DOI has only averaged issuing final determinations for approximately one petitioner per year. In consideration of the DOI information published in the CRS in 2013 there were 356 petitions awaiting a hearing at that time. With the DOI hearing history of one case per year, the current petitions awaiting hearings, without any additional tribes added could take more than 300 years to come up for consideration. If re-petition hearings were shifted to the back of the line, the simple math indicates the likelihood of taking 350–400 years for those re-petitions to be heard.

Additionally, even if the MOWA Choctaws were to be allowed to re-petition on the promise of a speedy review, we have no confidence that our petition would receive the consideration it deserves. Over the nearly 44 years that the acknowledgment regulations have been in place, the DOI has changed the rules several times with each change resulting in new hurdles and fewer tribes being recognized.

Officials with the DOI, are very similar with those leaders of other government agencies in that they prefer to have finality to their decisions. This position is clearly indicated in their response to the CRS noted above. As a result, any re-petitioner, including the MOWA, that reappears before the same agency officials is unlikely to receive a fair review leading to a change in decision after having been denied by those same officials on the original petition.

Since submission of our original petition, the following chiefs, council members and tribal leaders have passed on: Galisneed Weaver, Bennett Weaver, Cleve Reed, Mary Taylor, George Snow, Verma Reed, Viola Campbell, Douglas Lofton, Grover Byrd, Josephine Rivers, Prentiss Taylor, Carl Snow, Leon Taylor, Murphy Reed, and Martha Evans. Many other of our elders have passed waiting on our just and due recognition. We can easily foresee review of re-petitions taking decades to complete, if not centuries. As the result of the continued delays, even more of our elders will have died before the application would be heard again.

As the number of these leaders pass away, more of the knowledge of our tribal history is lost. We also continue to have no faith in the DOI process. The MOWA are not interested in having another generation of leaders and elders pass on, while we wait for our recognition.

This in itself stands as a reason we do not feel it is in the best interest of our tribe to await a re-petition hearing.

Question 2. You and former leaders of MOWA testified before this Committee and the House Natural Resources Committee about the many shortfalls in the Interior Department's federal acknowledgement process. Specifically, former Chief Framon Weaver submitted testimony in 2012 that "genealogical evidence . must be dismissed as a primary factor in federal recognition decisions." Does Chief Weaver's statement reflect the MOWA's current position?

Answer. Chief Weaver's statement must be read in context in order to understand his intended opinion.

In his statement, he offered several suggestions to the Committee concerning key points to be considered when determining whether a tribal community should be considered "legitimate." With reference to genealogical evidence, such as that which the Office of Federal Acknowledgment often uses as determinative of the "legitimacy" of a tribal community, Chief Weaver was pointing out the unreliability of federal census records, particularly in the South and East where binary racial laws prevented many Indian persons from being recorded as Indian.

As I noted in my testimony, the failures of federal officials early on, and the commission of blatant fraud against the Indian communities, including that of the MOWA Choctaw, makes reliance on federal census records completely untrustworthy. Their actions of taking advantage of Native Americans who had not been educated in the legal terms of other races, resulted in many Indian persons, including most MOWA ancestors, not receiving the land that had been promised to them in the treaty agreement. As a result of the actions of the federal and local agents, the official names of our ancestors and many others were never recorded in federal land records.

Another point made by both Chief Weaver and myself relates to our opinion that key factors in determining the existence of a "legitimate" tribal community should include the programs in a community that identifies the culture of those communities. In determining the legitimacy of an Indian community the records used by all government agencies during the time in question are of great probative value and should play a positive role in determining the "legitimate" identity of a community. A great example is the school system in the MOWA communities. For more than 150 years, Indian children were the victims of racist educational and political leaders who refused to allow Indian children to attend schools with either whites or blacks.

For decades political leaders maintained three different school systems, one for white children, one for black children and another for Indian children. As a result, the consideration of having separate school systems, cultural commonalities, uniquely functioning communities, land tenure customs, among other programs should play a pre-imminent role in the determination of the genealogical records.

Written records tying persons to such unique tribal communities is ultimately important for a tribe to determine its citizenship. However, it should not be the only

determinative factor of whether a tribal community existed, but rather each of the items noted previously should play a role.

