

S. 4104, S. 4439, AND H.R. 5221

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

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JULY 20, 2022
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WEDNESDAY, JULY 20, 2022

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

The Committee met, pursuant to notice, at 2:53 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 three bills: S. 4104, the Hualapai Tribe Water Rights Settlement Act of 2022, S. 4439, the Katimiin and Aameekyaaraam Sacred Lands Act, and H.R. 5221, Urban Indian Health Confer Act. S. 4104, introduced by Senators Sinema and Kelly, would authorize and ratify the Hualapai Tribe Water Rights Settlement Agreement between the tribe, certain allottees, and the State of Arizona, and would transfer certain lands into trust for their benefit.

H.R. 5221, passed by the House in November last year, would require the Department of Health and Human Services to confer with Urban Indian Organizations, or UIOs, on matters impacting healthcare for American Indians and Alaska Natives living in urban areas. I will note that Senators Smith and Lankford introduced an identical Senate companion bill in May.

Lastly, Senator Padilla's bill, S. 4439, would transfer approximately 1,031 acres from the U.S. Forest Service to the Department of Interior to be placed into trust for the benefit of the Karuk Tribe to allow for traditional and customer uses.

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

Vice Chair Murkowski?

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

Senator MURKOWSKI. Thank you, Mr. Chairman, I appreciate the hearing today on these three bills. I think you have detailed them appropriately.

With regard to the legislation sponsored by Senators Sinema and Kelly, S. 4104, I think it is important to recognize that this settlement is a decade in the making. I am looking forward to hearing

more about the details. We know that settling water rights through negotiated settlements approved by Congress continues to be the best way to deliver wet water to tribes.

I am pleased that we were able to include in our bipartisan infrastructure law \$2.5 billion in an Indian Water Rights Settlement Completion Fund to fulfil the Federal Government's commitment to our tribes for Congressionally approved water rights. So it is good to see how this is playing out.

With regard to S. 4439, introduced by Senators Padilla and Feinstein, I would note that while the Department of Interior is intending to testify in support of taking this land into trust for the tribes, I do think it would be prudent, Mr. Chairman, that the Committee also receive testimony from the Forest Service, particularly on what impacts this bill may have on their current administration of these lands and waters. I would suggest that the Committee seek the testimony in writing as we continue to consider this bill.

Then with the legislation sponsored by Congressman Grijalva, I would note that Senators Lankford and Smith are sponsoring an identical Senate companion. While we have no UIOs in Alaska, it is my understanding these organizations in the lower 48 have found the Confer process with IHS to be beneficial with regard to providing healthcare services to American Indians and Alaska Natives living in our urban areas. So I am interested in learning how this confer process may help address other important health-related issues, too, as well as the missing and murdered indigenous peoples crisis.

So I look forward to the testimony and hearing from our witnesses.

The CHAIRMAN. Thank you very much, Vice Chair.

We will turn to our witnesses. First, we have Mr. Jason Freihage, Deputy Assistant Secretary of Management, of the Office of the Assistant Secretary, Indian Affairs, at the Department of Interior. Mr. Benjamin Smith, Deputy Director of the Indian Health Service, U.S. Department of Health and Human Services. And I would now like to introduce Senator Sinema to introduce her guest and testifier.

**STATEMENT OF HON. KYRSTEN SINEMA,
U.S. SENATOR FROM ARIZONA**

Senator SINEMA. Thank you. Good afternoon, Chairman Schatz and Vice Chair Murkowski. I am honored to speak about the importance of the Hualapai Tribe Water Rights Settlement Act of 2022, legislation that I have introduced with my colleague, Senator Mark Kelly.

Our legislation provides long-term stability to the Hualapai Tribe's water needs in northern Arizona, which is especially important as Arizona and the southwest face historic drought conditions. Our legislation is the result of collaboration between the State of Arizona, the Hualapai Tribe, and the Department of the Interior. It has broad support among Arizona water stakeholders, including Mojave County, Salt River Project, the Arizona Department of Water Resources, the Central Arizona Water Conservation District, and Freeport-McMoRan.

Currently, the Hualapai Tribe relies on groundwater alone to meet their water needs, which in today's climate and with our forecasted water future is not a permanent or sustainable solution. The Hualapai Tribe Water Settlement Rights Act will provide the tribe a permanent allocation of Colorado River water and the funding to construct the infrastructure needed to deliver that water from the Colorado to the tribe's main residential and commercial centers, Grand Canyon West and Peach Springs, Arizona.

I now have the incredible honor to introduce the chairman of the Hualapai Tribe, Dr. Damon Clarke, who will be able to explain the legislation in further detail and how it will benefit the tribe in Arizona. Chairman, thank you for being here today.

The CHAIRMAN. Thank you very much, Senator Sinema.

Now we have Senator Padilla to introduce his guest and explain his legislation.

**STATEMENT OF HON. ALEX PADILLA,
U.S. SENATOR FROM CALIFORNIA**

Senator PADILLA. Thank you, Chair Schatz and Ranking Member Murkowski, for allowing me to join you today to introduce Russell Attebery, Chairman of the Karuk Tribe in California. It is an honor to introduce Chairman Attebery, who is here virtually, to testify on a bill that I am leading with Senator Feinstein in this house and Congressman Huffman on the House side that will transfer 1,000 acres of sacred lands from the Forest Service to the Interior Department to place those lands into trust for the tribe. The lands covered by this bill are considered to be the center of the Karuk world and sit at the heart of the tribe's culture, religion, and identity.

Chairman Attebery is currently serving his third consecutive term as chairman, and has been a key leader in championing this effort. During his 11 years as chairman, he has also served on the Department of Interior's Tribal Interior Budget Council, the Executive Council of the California Tribal Chairmen's Association, and was recently selected as one of the seven primary tribal representatives to the Department of Interior's Progress Act negotiated rule-making committee.

Chairman Attebery was also appointed by Governor Jerry Brown to the California Native American Heritage Commission. Before serving as chairman, Mr. Attebery worked for the Reading and Siskiyou School Districts, and he holds a lifetime clear teaching credential from Humboldt State University.

The Karuk Tribe have lived and conducted ceremonies on the sacred lands known as Katimiin for centuries. These sacred lands, which are used for the tribe's World Renewal Ceremony represent the center of the Karuk world and serve as an integral part of tribal culture, religion, and identity. Currently 95 percent of the Karuk aboriginal territory is managed by the Federal Government, and the tribe has a special use permit from the Forest Service to access the land for prayers and ancestral ceremonies.

However, in recent years, the tribe has struggled to access the site and conduct their sacred ceremonies privately, without interruption. So it is a moral imperative to restore these lands to tribal ownership. Placing these lands in trust would allow the Karuk to

further their mission to enhance and restore the natural world, and allow them to preserve their traditional practices.

I thank Senator Feinstein for introducing this legislation with me in the Senate, and Congressman Huffman for championing this effort in the House. I also want to thank Chairman Attebery for his testimony today, and for his leadership in working to advance the long overdue effort. His approach to Federal-tribal relationships has been one that says collaboration is always the best first step in building partnerships, and his testimony today is a testament to that.

I look forward to working with my colleagues to enact this bill as quickly as possible and return these sacred lands to their original stewards. Thank you again, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Padilla. Now I would like to turn it over to Senator Smith to introduce her guest.

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

Senator SMITH. Thank you so much. Thank you, Chair Schatz and Vice Chair Murkowski, for holding this hearing today and for including the Urban Indian Health Confer Act.

Senator Lankford and I introduced the Senate version of this bill which would require every agency within the Department of Health and Human Services to confer with Urban Indian organizations when policies affect healthcare for urban Native communities. This measure is an important step towards parity for urban Native communities, and something that I think we should all be able to agree on. So I look forward to working with the Committee to get this bill across the finish line this year.

To help us understand the impact of this bill, I am very glad to welcome Dr. Patrick Rock, Chief Executive Officer of the Indian Health Board of Minneapolis, and a member of the Leech Lake Band of Ojibwe. Dr. Rock is a family physician and has been serving patients at IHB for over 25 years. He is a tireless advocate for the urban indigenous community in Minneapolis, and his leadership has helped IHB grow into the distinguished institution that it is today.

I recently had a chance to visit the Indian Health Board to hear about their work on mental health, reproductive care, and comprehensive health services for urban indigenous Minnesotans. Under Dr. Rock's leadership, they are also working on an expansion that will expand their capacity and incorporate indigenous cultural components into the facility. So I am very proud to work on behalf of the Indian Health Board and Minnesota's urban indigenous communities here in Washington on this bill. I hope to see us move this forward and get it done.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you very much.

And to Senator Lankford, for an opening statement.

**STATEMENT OF HON. JAMES LANKFORD,
U.S. SENATOR FROM OKLAHOMA**

Senator LANKFORD. Thank you, Mr. Chairman. Thanks for the time on this, and thanks for taking up this bill as you work through this.

I would like to first start off by saying thank you to the leadership and to the individuals that serve in the two Oklahoma Urban Indian Clinics in Tulsa and in Oklahoma City for their continued service to the urban Indian population. Oklahoma Urban Indian Clinics serve the second largest population next to California, and Senator Padilla knows we are right behind him on that one. Leaders like Robyn Sunday-Allen and Carmelita Skeeter in Tulsa and in Oklahoma City, they are the reason that all this works so well. They work incredibly hard and they are absolutely the gold standard for health care and clinic operations.

I was proud to sponsor and help pass into law two Urban Indian Clinic focused bills with Senator Smith. We helped pass the coverage for Urban Indian Health Providers Act and the Facilities Improvement Act. Both ensure greater parities for UIOs and the Indian health system. Both bills were the first ever standalone UIO bills passed in Congress. So it is a big deal. We are continuing to be able to build on that.

I am proud to be able to cosponsor with Senator Smith the Senate companion to the Urban Indian Health Confer Act. This simple legislation will ensure that UIOs are brought into important conversations in Confer at HHS. We talk a lot about consultation with tribes. But currently, HHS is not doing consultation with our Urban Indian Clinics. That needs to start. So we would like to be able to bring that into line right now on that.

I look forward to the full consideration and quick passage of the bill in this Committee. We have a lot more to do to be able to bring parity to UIOs and this is another really important step. I thank the Chairman and Ranking Member for bringing this to the attention today.

The CHAIRMAN. Thank you very much.

We welcome all of our testifiers and thank all the members for their leadership. I want to remind our witnesses that your full, written testimony will be made part of the official hearing record. Please keep your statements to no more than five minutes, so that members may have time for questions.

Mr. Freihage, you may begin.

**STATEMENT OF JASON FREIHAGE, DEPUTY ASSISTANT
SECRETARY OF MANAGEMENT, U.S. DEPARTMENT OF
THE INTERIOR**

Mr. FREIHAGE. Good afternoon, Chairman Schatz, Vice Chairman Murkowski and members of the Committee. My name is Jason Freihage, and I serve as the Deputy Assistant Secretary of Management for Indian Affairs at the U.S. Department of the Interior. Thank you for the opportunity to present the department's testimony on S. 4104, the Hualapai Tribe Water Rights Settlement Act of 2022, and S. 4439, the Katimiin and Aameekyaaraam Sacred Lands Act.

The Biden Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Congress plays an important role in approving water rights settlements, and we stand ready to work with this Committee and the members of Congress.

Negotiations regarding potential settlement of the tribe's water rights claims have been ongoing since 2011. The first phase addressed reserve water rights, the several off-reservation tracts in the Bill Williams River Basin, and resulted in the Bill Williams River Water Rights Settlement Act of 2014. The second phase addressed in S. 4104 covers additional water rights in the Bill Williams River Basin as well as the remainder of the tribe's water rights in the Colorado River Basin and the Verde River Basin.

S. 4104 would resolve the tribe's remaining water rights claims in Arizona, ratify and confirm the Hualapai Tribal Water Rights Settlement Agreement among the Hualapai Tribe, the United States, the State of Arizona, and others, and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre feet of fourth priority Central Arizona Project, non-Indian agricultural priority water, to the tribe to be used for any purpose on or off reservation within the lower Colorado River Basin in Arizona.

S. 4104 establishes a trust fund of \$180 million that the tribe can use to develop water infrastructure on its reservation. It also authorizes a \$5 million fund for the Secretary of the Interior for settlement implementation, including for ongoing groundwater monitoring and modeling.

The department supports S. 4104. The bill is a result of over a decade of good faith negotiations. Rather than committing the tribe or the United States to construct specific water infrastructure projects, S. 4104 allows the tribe to make decisions regarding how, when, and where to develop water infrastructure on its reservation. This approach to settlement is consistent with tribal sovereignty and self-determination.

Environmental compliance and issuance of a record of decision by the Secretary are conditions precedent to construction of tribal projects with the trust fund. The environmental compliance process will allow for the identification and mitigation of any adverse impacts of a project, including adverse impacts to the Grand Canyon National Park.

Previously introduced bills to approve the settlement included provisions prohibiting the tribe and the United States from objecting to any use of groundwater outside the boundaries of the reservation. Recent negotiations have produced compromise language tailored to the unique facts and hydrogeology on and around the reservation. The department believes that S. 4104 would protect the groundwater resources available on the reservation while providing certainty to surrounding communities that also rely on the Truxton Aquifer.

However, we caution that the compromises reached in this settlement are not a one-size-fits-all, and should not be considered a precedent for other settlements. As a final matter, the department notes that S. 4104 contains restrictions on taking lands into trust in Arizona. This restriction is a significant limitation on the au-

thority of the United States under existing Federal law, and is contrary to the Administration's strong support for returning ancestral lands to tribes. The department does not seek to contradict the tribe's decision that the benefits provided by S. 4104 justify this compromise.

The department supports the tribe's exercise of its sovereignty while strongly disfavoring restrictions on taking of lands into trust. The department is pleased to support S. 4104.

S. 4439 would transfer approximately 1,031 acres of Federal land in Siskiyou and Humboldt Counties, California, from the United States Forest Service to the Department of Interior, and directs the Secretary to take that land into trust for the benefit of the Karuk Tribe. The transfer of the administrative jurisdiction and transfer into trust is subject to the condition that the Chief of the Forest Service continues to manage the National Wild and Scenic Rivers System that flows through the Katimiin and Ameekyaaraam land.

Additionally, the bill directs the Secretary of Agriculture to enter into a memorandum of understanding with the Karuk Tribe to establish mutual goals to protect and enhance the river values of any components of the National Wild and Scenic River System that flows through the land. Gaming on the land would be prohibited.

The Department supports this legislation. The Katimiin and Ameekyaaraam land is sacred to the Karuk Tribe and vital to their culture and traditions. We appreciate the difficulty and uncertainty the tribe faces in relying on special use permits for ceremonial access.

The Department strongly supports returning traditional and sacred lands back to tribes, and supports agreements with Indian tribes to collaborate and co-stewardship of Federal lands and waters under the jurisdiction of the Department of the Interior and Department of Agriculture.

Chairman Schatz, Vice Chairman 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 prepared statement of Mr. Freihage follows:]

PREPARED STATEMENT OF JASON FREIHAGE, DEPUTY ASSISTANT SECRETARY OF
MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Hello and good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Jason Freihage, and I serve as the Deputy Assistant Secretary of Management for Indian Affairs at the U.S. Department of the Interior (Department).

Thank you for the opportunity to present the Department's testimony on S. 4104, The Hualapai Tribe Water Rights Settlement Act of 2022, a bill to approve the settlement of water rights claims of the Hualapai Tribe and certain allottees in the State of Arizona, to authorize construction of a water project relating to those water rights claims, and for other purposes and S. 4439, The Katimiin and Ameekyaaraam Sacred Lands Act, a bill to take certain Federal land located in Siskiyou County, California, and Humboldt County, California, into trust for the benefit of the Karuk Tribe, and for other purposes.

The Department supports both S. 4104 and S. 4439.

S. 4104—Hualapai Tribe Water Rights Settlement Act of 2022

I. Introduction

The Biden Administration recognizes that water is a sacred and valuable resource for Tribal Nations and that long-standing water crises continue to undermine public

health and economic development in Indian Country. This Administration strongly supports the resolution of Indian water rights claims through negotiated settlements. Indian water settlements help ensure that Tribal Nations have safe, reliable water supplies; improve environmental and health concerns on reservations; enable economic growth; promote Tribal sovereignty and self-sufficiency; and help fulfill the United States' trust responsibility to Tribes. At the same time, water rights settlements have the potential to end decades of controversy and contention among Tribal Nations and neighboring communities and promote cooperation in the management of water resources. Congress plays an important role in approving Indian water rights settlements and we stand ready to work with this Committee and Members of Congress to advance Indian water rights settlements.

Indian water rights settlements play a pivotal role in this Administration's commitment to putting equity at the center of everything we do to improve the lives of everyday people—including Tribal Nations. We have a clear charge from President Biden and Secretary Haaland to improve water access and water quality on Tribal lands. Access to water is fundamental to human existence, economic development, and the future of communities—especially Tribal communities. To that end, the Biden Administration's policy on negotiated Indian water settlements continues to be based on the following principles: the United States will participate in settlements consistent with its legal and moral trust responsibilities to Tribal Nations; Tribes should receive equivalent benefits for rights which they, and the United States as trustee, may release as part of the settlement; Tribes should realize value from confirmed water rights resulting from a settlement; and settlements should contain appropriate cost-sharing proportionate to the benefits received by all parties benefiting from the settlement. In addition, settlements should provide finality and certainty to all parties involved.

The Infrastructure Investment and Jobs Act provided a significant boost toward meeting our commitments to Tribal Nations for water rights by providing \$2.5 billion in the Indian Water Rights Settlement Completion Fund (referred to as the Completion Fund) for enacted Indian Water settlements. In February, the Department announced allocations totaling \$1.7 billion for enacted Indian water rights settlements that have outstanding federal payments necessary to complete their terms. All of this funding has been allocated by the Bureau of Reclamation for settlement project implementation or by the BIA into settlement trust funds where they are earning interest until the Tribes are able to pull down the funds for settlement uses. In order to complete allocations of remaining funding, BIA is engaging with Tribes to finalize indexing costs which are necessary to determine their final settlement payments over the coming months. The Bureau of Reclamation will continue to work with the Department to identify project specific allocations from the Completion Fund to meet implementation needs.

II. Historical Context

A. The Hualapai Reservation and the Hualapai Tribe

The Hualapai Tribe's aboriginal homeland is located in the Grand Canyon and plateau region to the south of the Grand Canyon. The Tribe's main Reservation was established on January 4, 1883, by Executive Order, and is comprised of approximately 992,462 acres of tribal trust lands in northwestern Arizona. The tribal headquarters is Peach Springs, Arizona, near the southern boundary of the Reservation. The northern boundary of the main Reservation is 108 miles along the Colorado River in the Grand Canyon. There is also a 60-acre Executive Order Reservation located in the Big Sandy River Basin, approximately 40 miles south of the main Reservation.

The primary sources of employment on the Reservation are recreation, tourism, and tribal and federal government services. The Grand Canyon is the primary source of tourism on the Reservation, with activities at the Tribe's tourism center, Grand Canyon West, and river rafting in the Colorado River. The Tribe also owns and operates the Hualapai Lodge, located in Peach Springs.

In 2007, the Tribe completed Grand Canyon West, which includes the Skywalk, a horseshoe-shaped glass-bottom walkway that extends out from the rim of the Grand Canyon. Pre-pandemic, annual visitation at Grand Canyon West exceeded one million visitors, making it the primary economic driver on the Reservation.

B. Water Resources of the Hualapai Reservation

The main Reservation is located primarily in the Colorado River Basin with a small portion in the Upper Verde River Basin. Most on-Reservation streams are ephemeral. Several springs discharging from the regional aquifer at the bottom of canyons can provide baseflow for short perennial reaches, which ultimately discharge to the Colorado River. The largest of these perennial streams are Diamond

Creek and Spencer Creek, with mean annual flows of over 3,700 acre-feet per year (afy) and 4,600 afy, respectively. The springs that feed these streams are located in remote portions of deep canyons and are not readily accessible for use by the Tribe. Smaller springs on the plateaus provide water for livestock purposes.

Groundwater is the primary water supply on the Reservation and is available in varying degrees of magnitude, depending on the type and location of water-bearing zones. The major water use on the Reservation occurs in two locations: the town of Peach Springs and Grand Canyon West. Three wells serve the Peach Springs public water supply system and are located approximately 6.5 miles southwest of the town. These wells produce water from the Truxton Aquifer, an aquifer in the Truxton Valley that extends off the Reservation.

For over a decade, Grand Canyon West relied entirely on groundwater pumped and then transported by way of an approximately 35-mile-long pipeline. In 2019, the groundwater well supplying Grand Canyon West went dry. To keep this cornerstone of the Tribe's tourist economy operational, the Tribe has had to haul water approximately 30-miles from a well near Peach Springs to the now-dry well site. The hauled groundwater is then piped to Grand Canyon West. For it to thrive as the Tribe has envisioned, Grand Canyon West needs improved access to water.

III. Proposed Hualapai Tribe Settlement Legislation

The Tribe claims water rights in the Colorado, Verde, and Bill Williams River basins. Negotiations regarding potential settlement of the Tribe's water rights claims have been ongoing since 2011, when the United States established a team to negotiate a comprehensive settlement of all the Tribe's water rights within Arizona. The settlement was divided into two phases; the first phase addressed reserved water rights to several off-reservation tracts in the Bill Williams River Basin and resulted in the Bill Williams River Water Rights Settlement Act of 2014, P.L. 113-223. The second phase, addressed in S. 4104, covers additional water rights in the Bill Williams River Basin, as well as the remainder of the Tribe's water rights in the Colorado River Basin and the Verde River Basin.

S. 4104 would resolve the Tribe's remaining water rights claims in Arizona; ratify and confirm the Hualapai Tribe water rights settlement agreement among the Hualapai Tribe, the United States, the State of Arizona, and others; and authorize funds to implement the settlement agreement. The bill would reallocate 4,000 acre-feet of fourth-priority Central Arizona Project (CAP) non-Indian agriculture priority water to the Tribe to be used for any purpose on or off the Reservation within the lower Colorado River basin in Arizona. S. 4104 establishes a Trust Fund of \$180 million, to be indexed, that the Tribe can use to develop water infrastructure on its Reservation as it determines necessary and on its own timeframe. S. 4104 also authorizes a \$5,000,000 fund for the Secretary of the Interior for settlement implementation, including for ongoing groundwater monitoring and modeling.

As discussed below, S. 4104 is the product of negotiations among the Tribe, the United States, the State of Arizona, and other interested parties, to resolve Departmental concerns expressed in prior testimony.

IV. Department of the Interior Position on S. 4104

The Department is pleased to support S. 4104. This bill is the result of over a decade of dedicated, good-faith negotiations to reach consensus on key issues. The Department appreciates that each settlement is unique, and its terms must be tailored to meet the needs of the settling Tribe and other parties.

S. 4104 is drafted to meet the Tribe's current and long-term needs for water by providing a Trust Fund to be used by the Tribe according to its needs and determinations. Rather than committing the Tribe or the United States to construct specific water infrastructure projects, S. 4104 allows the Tribe to make decisions regarding how, when, and where to develop water infrastructure on its Reservation. This approach to settlement is consistent with tribal sovereignty and self-determination.

S. 4104 provides that the Tribe can use the Trust Fund to plan, design, and construct a water project in the lower Colorado River basin in Arizona at locations on or directly adjacent to the Hualapai Reservation. Environmental compliance and issuance of a record of decision by the Secretary are conditions precedent to construction of such a project. The environmental compliance process will allow for the identification and mitigation of any adverse impacts of a project, including adverse impacts to the Grand Canyon National Park.

Previously introduced bills to approve the settlement included provisions prohibiting the Tribe and the United States from objecting to any use of groundwater outside the boundaries of the Reservation, even if those uses interfere with acknowledged Federal reserved groundwater rights. The Department testified repeatedly

against such restrictions. Recent negotiations, however, produced compromise language tailored to the unique facts and hydrogeology on and around the Reservation. The Department believes that S. 4104, as introduced, would protect the groundwater resources available on the Reservation while providing certainty to surrounding communities that also rely on the Truxton Aquifer for their development. However, we caution that the compromises reached in this settlement are not a “one size fits all” and should not be considered a precedent for other settlements.

As a final matter, the Department notes that S. 4104 contains restrictions on taking lands into trust in Arizona. The State of Arizona takes the position, as a matter of policy, that Indian water rights settlements must include the restriction that, as of the date of enactment, the settling Tribe may have additional lands taken into trust only if specifically authorized by Congress. This restriction is a significant limitation on the authority of the United States under existing Federal law and is contrary to this Administration’s strong support for returning ancestral lands to Tribes. The Department does not seek to contradict the Tribe’s decision that the benefits provided by S. 4104, including the addition of certain lands to the Reservation as part of the settlement, justify this compromise. The Department supports the Tribe’s exercise of its sovereignty while strongly disfavoring restrictions on the taking of lands into trust.

V. Conclusion

The Department appreciates the dedication of all parties, including the Tribe and the State of Arizona, to these prolonged negotiations and the willingness of all the parties to reach consensus on contentious issues. The Department is pleased to support S. 4104.

S. 4439—Katimiin and Aameky araam Sacred Lands Act

S. 4439 would transfer approximately 1,031 acres of Federal land, including improvements and appurtenances thereto, in Siskiyou and Humboldt Counties, California, from the United States Forest Service to the Department of the Interior and direct the Secretary of the Interior to take that land into trust for the benefit of the Karuk Tribe. The transfer of administrative jurisdiction and transfer into trust in the bill is subject to the condition that the Chief of the Forest Service continues to manage the National Wild and Scenic Rivers System that flows through the Katimiin and Aameky araam land. Additionally, the bill directs the Secretary of Agriculture to: (1) provide to the Secretary of the Interior a survey of the land, and (2) enter a memorandum of understanding with the Karuk Tribe to establish mutual goals to protect and enhance the river values of any component of the National Wild and Scenic Rivers System that flows through the land. Gaming on the land would be prohibited.

The Department supports this legislation. The Katimiin and Aameky araam land is sacred to the Karuk Tribe and vital to their culture and traditions. We appreciate the difficulty and uncertainty that the Tribe currently faces in relying upon a Special Use Permit for ceremonial access. The Department strongly supports returning traditional and sacred lands back to Tribes and supports agreements with Indian Tribes to collaborate in the co-stewardship of Federal waters under the jurisdiction of the Department of the Interior and the Department of Agriculture. As set forth in Joint Secretarial Order 3403, signed by the Secretaries of both the Department of the Interior and the Department of Agriculture, we will continue to support Tribal opportunities to consolidate Tribal homelands and empower Tribal stewardship of those resources. As an example of the multiple strategies the Administration is advancing, the FY 2023 President’s budget includes \$14.8 million for land acquisition efforts on and off current reservations.

Conclusion

Chairman Schatz, Vice Chairman 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. Smith, please proceed.

**STATEMENT OF BENJAMIN SMITH, DEPUTY DIRECTOR,
INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES**

Mr. SMITH. Good afternoon, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. Thank you for the opportunity to testify on H.R. 5221.

H.R. 5221 would amend the Indian Health Care Improvement Act to establish and Urban Indian Organization confer policy for the Department of Health and Human Services. The bill would require the Department of Health and Human Services to ensure its agencies and offices confer with Urban Indian Organizations in carrying out laws relating to Indian health care.

I would like to first start off by underscoring the unique and political relationship we do have with Indian tribes before I move on to this bill in particular. Because in the integral component of the government-to-government relationship is our commitment to regular and meaningful consultation with federally recognized Indian tribes.

The Department of Health and Human Services takes its responsibility to consult with tribal governments seriously. It first established the department's Tribal Consultation Policy in 1997. This policy specifically establishes the unique political status of tribal governments, and it is upon that the status of the government-to-government relationship is affirmed through the HHS tribal consultation policy.

The Indian Health Service Tribal Consultation Policy was last updated on January 18th, 2006. Likewise, it was developed in consultation with Indian tribes and outlines that consultation with Indian tribes will occur to the extent practicable and permitted by law before any action is taken that will significantly affect Indian tribes.

Other statutes and policies exist that allow for Federal consultation with Indian organizations and confer with Urban Indian Organizations that by the nature of their business serve Indian people and might be affected if excluded from the consultation and confer process.

As part of the Patient Protection and Affordable Care Act, Congress reauthorized and amended the Indian Health Care Improvement Act, and added a requirement that the Indian Health Service confer to the maximum extent practicable with Urban Indian Organizations in carrying out the Indian Health Care Improvement Act.

In 2014, the Indian Health Service established its first policy on conferring with Urban Indian Organizations. The policy serves as a guide when the agency seeks input from Urban Indian Organization leaders on urban Indian health matters. The IHS urban confer policy strives to assure that urban Indian health care needs are considered at the local area and national levels when implementing and carrying out the Indian Health Care Improvement Act.

The Indian Health Service confer policy has been used since its implementation to ensure that the highest possible health status for urban Indians occurs. The Indian Health Service is the only Federal agency in the Federal Government to implement this formal process. It is a best practice and critical partnership opportunity.

The Indian Health Service has consistently heard from Urban Indian Organizations through the confer process that they would like the opportunity to confer with other HHS operating divisions and staff offices. They have also expressed that the need to confer with other HHS agencies is even more critical due to the pandemic and need for interagency collaboration.

The Indian Health Service conferring process works to ensure that health care priorities for urban Indian populations are being heard and addressed at the local, area, and national levels. We look forward to continuing our work with Congress on this bill, and welcome the opportunity to provide technical assistance as requested by the Committee or its members.

I am happy to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF BENJAMIN SMITH, DEPUTY DIRECTOR, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Good afternoon Chairman Schatz, Vice Chair Murkowski, and the Members of this Committee. Thank you for the opportunity to testify on H.R. 5221, Urban Indian Health Confer Act.

The Indian Health Service (IHS) is an agency within the Department of Health and Human Services (HHS) and our mission is to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level. This mission is carried out in partnership with American Indian and Alaska Native Tribal communities through a network of over 687 Federal and Tribal health facilities and 41 Urban Indian Organizations (UIOs) that are located across 37 states and provide health care services to approximately 2.6 million American Indian and Alaska Native people annually.

H.R. 5221

H.R. 5221 would amend the Indian Health Care Improvement Act (IHCA) to establish a UIO confer policy for HHS. The bill would require HHS to ensure its agencies and offices confer with UIOs in carrying out laws relating to Indian health care.

An integral component of the government-to-government relationship is our commitment to regular and meaningful consultation with Federally-recognized Indian Tribes. The importance of Tribal Consultation has been affirmed through an Executive Order in 2000 and Presidential Memoranda in 1994, 2004, 2009, and 2021.

HHS takes its responsibility to consult with Tribal governments seriously and first established the Department's Tribal Consultation Policy in 1997, with multiple revisions since its creation, most recently updated in 2012 and evaluated in 2021. Each time the policy has been updated, it was in collaboration with Tribal governments, recognizing that HHS and Indian Tribes share the goal to establish clear policies to further the government-to-government relationship between the Federal government and Indian Tribes. As such, the policy specifically recognizes the unique political status of Tribal governments and it is upon that status that the government-to-government relationship is affirmed through the HHS Tribal Consultation Policy.

HHS has a long-standing commitment to working on a government-to-government basis with Indian Tribes and in partnership with American Indians and Alaska Natives. HHS is also committed to strengthening this relationship and enhancing coordination and collaboration across its Divisions to address Tribal issues within the context of each Division's mission. Each Division shares in the Department-wide responsibility to coordinate, communicate, and consult with Indian Tribes on issues that affect Tribes. All Divisions are responsible for conducting Tribal consultation to the extent practicable and permitted by law on policies that have Tribal implications.

The IHS Tribal Consultation Policy, updated January 18, 2006, was developed in consultation with Indian Tribes. The IHS Tribal Consultation Policy outlines that consultation with Indian Tribes will occur, to the extent practicable and permitted by law, before any action is taken that will significantly affect Indian Tribes. Such actions refer to policies that have Tribal implications and substantial direct effects on one or more Indian Tribes or on the distribution of power and responsibilities

between the Federal Government and Indian Tribes. The consultation process is triggered with the identification of a critical event, which is defined as a planned or unplanned event that has or may have a substantial impact on Indian Tribes or Indian communities, including but not limited to the development of new or revised policies or programs or funding/budget requests. Part of this process includes facilitating collaboration between HHS Divisions, Regional Offices, and the Indian Tribe(s) to assist with consultation and address any identified issue(s), such as access to HHS programs and services, that could be provided directly to an Indian Tribe(s). IHS has also developed special Tribal advisory committees to provide leadership, advocacy, and guidance to the Director on policy and program matters.

Although the unique Federal relationship with Indian Tribes is based in part on the fundamental concept of government-to-government relations, other statutes and policies exist that allow for Federal consultation with Indian organizations and confer with UIOs that, by the nature of their business, serve Indian people and might be affected if excluded from the consultation and confer process. The IHS enters into limited, competing contracts and grants with 41 non-profit organizations to provide health care and referral services for Urban Indians in 22 states and 11 IHS Areas. UIOs are defined by 25 U.S.C. § 1603(29) as a nonprofit corporate body situated in an urban center, governed by an Urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. § 1653(a).

On March 23, 2010, as part of the Patient Protection and Affordable Care Act, Congress reauthorized and amended the IHClA. 25 U.S.C. § 1601, et seq. Congress added a requirement that the IHS “confer,” to the maximum extent practicable, with UIOs in carrying out the IHClA. 25 U.S.C. § 1660d(b). “Confer” means engaging in an open and free exchange of information and opinions leading to mutual understanding and comprehension and emphasizing trust, respect, and shared responsibility. 25 U.S.C. § 1660d(a). HHS supports conferring with UIOs as set forth in the declaration of national Indian health policy in the IHClA.

On September 22, 2014, the IHS established the policy on “Conferring with Urban Indian Organizations,” in Part 5, Chapter 26, of the Indian Health Manual, consistent with the new IHClA authority. The policy serves as a guide when the Agency seeks input from UIO Leaders on Urban Indian health matters. The IHS urban confer policy strives to ensure that Urban Indian health care needs and priorities are considered at the local, area, and national levels when implementing and carrying out the IHClA.

The IHS policy has been used since its implementation in carrying out the IHClA to ensure the highest possible health status for Urban Indians. The IHS is the only agency within the Federal government to implement this formal process, and it is a best practice and critical partnership opportunity. The IHS has consistently heard from UIOs that they would like the opportunity to confer with other HHS Divisions. They have also expressed that the need to confer with other HHS Divisions is even more critical due to the pandemic and need for inter-agency collaboration. The IHS continues to implement its urban confer policy, measure the level of satisfaction of the urban conferring process, and confer with UIOs when necessary to improve the process to bring about the desired results.

We look forward to continuing our work with Congress on this bill and welcome the opportunity to provide technical assistance as requested by the Committee or its Members. We are committed to working closely with our stakeholders and understand the importance of working with partners to address the needs of American Indians and Alaska Natives.

The CHAIRMAN. Thank you very much.
Dr. Clarke, please proceed with your testimony.

STATEMENT OF HON. DAMON CLARKE, CHAIRMAN, HUALAPAI TRIBE

Dr. CLARKE. Thank you, Chairman Schatz, and Vice Chairwoman Murkowski and members of the Committee.

I am Damon Clarke, Chairman of the Hualapai Tribe. The Hualapai Tribe strongly supports S. 4104, the Hualapai Tribe Water Rights Settlement Act of 2022.

The Hualapai Reservation encompasses approximately one million acres in the northwestern Arizona. The Colorado River, we call

Hakataya, forms a 108-mile northern boundary of the reservation through a portion of the Grand Canyon. Our reservation has no significant surface streams other than the Colorado River. It has very limited groundwater resources.

The tribe's groundwater wells are being depleted and water levels on the reservation have been dropping for years. The tribe's residential community at Peach Springs relies exclusively in three groundwater wells in the Truxton Aquifer, near the reservation's southern boundary. Those wells were installed in 1975, so the piping for the well system is 47 years old and has failed in the recent past, leaving our community without water for several days.

One of the wells has also suffered episodes of dangerous E-coli contamination. We are very vulnerable to the short-term interruptions in supply from these wells, and also to the long-term decline in the water levels in the aquifer.

The situation is even worse elsewhere in the reservation. There are two wells at West Water which has provided all the water for tourist development 35 miles away at Grand Canyon West on the western rim of the Grand Canyon. But three years ago, those wells suddenly failed because of the drought. The collapse of these wells has forced us to limit our operations at Grand Canyon West, thus threatening our tribal economy and the main source of employment for our members.

As an emergency measure, we have resorted to pumping more water from the Truxton Aquifer and hauling it 15 miles by truck on a gravel road to get to Grand Canyon West. The patchwork system is insecure and expensive. But it is the only way that we can continue our remaining operations at Grand Canyon West.

The Colorado River is the only feasible solution to these problems, and the only water supply that can satisfy the long-term needs of our population living in Peach Springs and on the rest of our reservation. This settlement would give our tribe an allocation of 4,000 acre feet a year of Colorado River water and funding for the pipeline system to deliver that water to the reservation in order to serve our needs at both Peach Springs and Grand Canyon West.

Passage of this legislation is essential for our tribe if it is to have a secure future on our reservation. We have done everything possible to provide jobs and income to our people in order to lift them out of poverty. But the lack of a secure water supply is a major obstacle we still face. This legislation would very much help us to overcome this obstacle.

This legislation is strongly supported by the State of Arizona and other important State parties, including the CAP, the Salt River Project, and it also has the support of our neighbor, Mohave County. Finally, for the first time, I am very pleased that this legislation is supported by the Department of Interior and the Department of Justice.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our tribe will help in any way we can to secure enactment of this critical legislation. Thank you.

[The prepared statement of Dr. Clarke follows:]

PREPARED STATEMENT OF HON. DAMON CLARKE, CHAIRMAN, HUALAPAI TRIBE

Chairman Schatz and members of the Committee, my name is Dr. Damon Clarke. I am Chairman of the Hualapai Tribe.

The Hualapai Tribe strongly supports S. 4104, the Hualapai Tribe Water Rights Settlement Act of 2022. Before I describe the major elements of this legislation and the critical benefits the Tribe receives from it, let me briefly explain to the Committee our Tribe's pressing water needs.

1. The Tribe's Critical Need for Additional Water

The Hualapai Reservation encompasses approximately one million acres in northwestern Arizona. All lands on the Reservation are tribal trust lands; there are no allotments or fee inholdings. The Colorado River forms the 108-mile northern boundary of the Reservation through a portion of the Grand Canyon.

Our Reservation is arid. It has no significant surface streams other than the Colorado River. It has very limited groundwater resources. The Tribe's groundwater wells are a depletable resource and well levels on the Reservation have been dropping for years. The Tribe's principal residential community at Peach Springs relies exclusively on three groundwater wells in the Truxton Aquifer, near the Reservation's southern boundary. Those wells were installed in 1975, so the piping for the well system is 47 years old and has failed in the recent past, leaving our community without water for several days. One of the wells has also suffered episodes of dangerous E-coli and coliform contamination and we have not been able to locate the source of the contamination. When that well is out of service because of contamination, we are unable to supply sufficient water to the community, so we have to implement strict mandatory conservation measures. Because this groundwater is the only source of water for our residential needs on the Reservation, we are very vulnerable to any short-term interruptions in supply from these wells, and also to the long-term decline in the water levels in the Truxton Aquifer.

Our own water experts have studied the Truxton Aquifer and concluded that it can supply "approximately 30 to 40 years of the Tribe's long-term demand" and therefore is not "a permanent water supply solution" for the Tribe. In addition, the Truxton Aquifer extends off the Reservation and is vulnerable to depletion from off-Reservation pumping that is out of the Tribe's control. This groundwater clearly is not a secure long-term water supply that the Tribe can rely on for the future of our Reservation population.

The situation is even worse elsewhere on the Reservation. There is a small well on the east side of the Reservation that provides water to ranchers and wildlife in that area, but the water is not potable for human consumption. And there are two wells at West Water, which is on Buck-and-Doe Road, a gravel road that runs from Peach Springs to our tourist development at Grand Canyon West on the western rim of the Grand Canyon. The West Water wells, which are 35 miles from Grand Canyon West, previously provided all of the water for our activities there. But four years ago, the water table in those wells suddenly dropped because of the drought, and both wells failed.

This crisis continues today. For the past three years, the Tribe has been forced by lack of water to curtail some of our operations at Grand Canyon West, thus threatening the heart of our on-Reservation economy and the main source of employment for our members. We have attempted to locate other sources of water that we can use to supply Grand Canyon West. Although we did find some off-Reservation sources, Arizona law prohibited us from transporting this water across basins. As an emergency measure, we have resorted to pumping water from the Truxton Aquifer and hauling it 15 miles by truck on Buck-and-Doe Road to the West Water site, where the water is then pumped for 35 miles out to Grand Canyon West. This patchwork system is burdensome, insecure and very expensive, but it is the only way we can continue our remaining operations at Grand Canyon West. And this emergency has made the Tribe even more dependent on the Truxton Aquifer. It also has placed additional stress on that Aquifer because we are now forced to use it to supply both Peach Springs and, more distantly, Grand Canyon West. Let me quote our Director of Public Works about the current situation:

This places an even greater demand on the public water system serving the community of Peach Springs. Leaving the Tribe praying that the trucks don't break down, the pumps don't fail, the pipeline stays together and there are no more E-coli events.

Providing Colorado River water for the Tribe to use at Grand Canyon West would alleviate a substantial burden on our members, who rely on their jobs at Grand Canyon West to support their families. Grand Canyon West is located a two-hour

drive on a gravel road from Peach Springs, where virtually all tribal members now live. Thus, tribal members who are employed at Grand Canyon West have daily four-hour round-trip commutes to their jobs, and even longer in inclement weather. Currently, it is impossible to locate a residential community at Grand Canyon West because of the total lack of water there. This situation imposes an unsustainable burden on tribal members who live in Peach Springs and work at Grand Canyon West, and on their families. The Tribe urgently needs Colorado River water delivered to the Reservation in order to allow the Tribe to develop a residential community at Grand Canyon West so the tribal members who are employed there can reside closer to their jobs.

I cannot emphasize strongly enough the importance of Grand Canyon West to the economic sustainability of the Hualapai Tribe. The Hualapai Reservation does not have the natural resources to permit commercial agriculture, timber or mineral development. But the Reservation's virtually unique location on the Grand Canyon gives the Tribe a strong basis to create a self-sustaining tourism-based economy. Grand Canyon West is the centerpiece of the Tribe's economy. Prior to the pandemic, the Grand Canyon Resort Corporation, a tribal corporation which operates Grand Canyon West and other tribal enterprises, along with the tribal government, employed more than 1,500 workers (more than 550 of whom were non-tribal members). At that point, the Hualapai Tribe was the second largest employer in Mohave County in Arizona, and Grand Canyon West hosted over 1 million visitors a year. We believe that operations there will return to this capacity as pandemic restrictions continue to ease.

As I noted earlier, the groundwater wells nearest to Grand Canyon West, which are 35 miles away, have given out. With the Colorado River water that the Tribe will receive if this legislation is enacted, and with the funding to build the infrastructure to deliver that water to Grand Canyon West that will be authorized by this legislation, the Tribe will be able to take full advantage of the potential for further development of Grand Canyon West, and will be able to create additional jobs for both tribal members and non-Indians, as well as provide new revenues for our tribal government.

And there will also be significant benefits beyond this. In 2017, the Tribe commissioned Professor Joseph P. Kalt from the Harvard Project on American Indian Economic Development at the John F. Kennedy School of Government, to analyze the economic impact that implementation of our water rights settlement would have on the regional economy of northwestern Arizona and southern Nevada, as well as on the economy of the State of Arizona and the Nation as a whole. Professor Kalt's report, which was prepared prior to the impact of the recent pandemic, states that the economic development of Grand Canyon West that would be triggered by the water and infrastructure authorized by this settlement would support an average of more than 6,500 jobs per year in Arizona, and close to 1,000 jobs per year in southern Nevada. For the Nation as a whole, the project would support an average of more than 10,000 jobs per year, nearly \$1.5 billion in federal tax revenues (in 2017 dollars), and a *present value (in 2017 dollars) of more than \$9.3 billion in gross domestic product (GDP) for the United States.*

The use and delivery of water for this kind of economic development is well within the parameters of past Indian water rights settlements. Most Indian water rights settlements in this century have provided federal funding for infrastructure development to support commercial as well as residential uses of water. There is, for example, ample recent precedent for federally-funded irrigation projects to deliver water to Indian reservations for purposes of commercial agricultural, where agriculture is the basis of a tribe's economy. And in other recent settlements, federally-funded projects have delivered water to support other kinds of economic development—including hydropower and other energy development, and a retail travel center. Therefore, the infrastructure development authorized by S. 4104 to support the Hualapai Tribe's tourism-based economy is completely consistent with past Indian water rights settlements approved by Congress.

The Colorado River is the only feasible water supply for satisfying the long-term future needs of our population living in Peach Springs and on the rest of our Reservation. Our Tribe needs delivery of Colorado River water both to provide a permanent and secure water supply for the domestic and residential needs of our present and future population, and also to fully realize the opportunities for economic development that we have at Grand Canyon West.

2. History of Settlement Negotiations

Over a five-year period beginning in early in 2011 and ending in 2016, the Hualapai Tribe, in two phases, negotiated a settlement of all of the Tribe's federally reserved water rights with the State of Arizona and major private entities in Ari-

zona. The United States actively participated in these settlement negotiations through a Federal Negotiating Team consisting of representatives from affected Interior Department agencies and from the Department of Justice. In Phase 1, the parties successfully resolved a portion of the Tribe's water rights—those in the Bill Williams River watershed, where the Tribe has a small parcel of Reservation land and tribal members have some allotted trust land. That phase 1 settlement was ratified by the Bill Williams River Water Rights Settlement Act of 2014, Pub. L. 113–223, 128 Stat. 2096 (Dec. 16, 2014).

In 2016, the Tribe and the State parties reached an agreement on Phase 2, but the Federal agencies were unprepared to support it. Since then, the Tribe and the State parties have worked diligently to reach agreement with the Federal Negotiating Team, and we are very pleased that we have done so this year. The legislation now before the Committee, S. 4104, will resolve all of the Tribe's remaining water rights claims on a comprehensive basis. The legislation is strongly supported by the Tribe, by the State of Arizona and by the private entities which are parties to the settlement—the Salt River Project, the Central Arizona Water Conservation District and Freeport Minerals Corporation—all of which have signed the settlement agreement. It is also supported by Mohave County, the local jurisdiction in which most of the Reservation is located. And now for the first time, this legislation also has the support of the Departments of the Interior and Justice.

This negotiation to resolve the Hualapai Tribe's water rights, which has now taken us 11 years to complete, has been a very long road for the Tribe. Versions of this legislation to ratify our water rights settlement were introduced in the House or Senate, or both, in the 114th Congress, the 115th Congress and the 116th Congress. This Committee conducted two hearings on the Hualapai settlement bills in earlier Congresses, in September 2016 and December 2017. A subcommittee of the House Natural Resources Committee conducted a hearing just two months ago, in May 2022, on the companion House bill in this Congress, H.R. 7633.

Until this year, we never before had the full support of the Interior Department and the Justice Department for our water rights settlement. We are very pleased that the comprehensive settlement of our water rights—and S. 4104 which ratifies that settlement—now has the full support not only of all State parties, but of the Federal parties as well.

3. Elements of the Settlement

Let me now summarize the principal elements of the comprehensive water rights settlement ratified by S. 4104, and also point out two important differences in the legislation from the earlier versions of the bill:

- The Act comprehensively settles all of the Hualapai Tribe's federally reserved water right claims for its Reservation and trust lands, including the Tribe's right to water from the Colorado River.
- The Settlement Act recognizes the Tribe's exclusive rights to all groundwater and surface water on the Reservation and its other trust lands. The Act protects the Tribe's on-Reservation groundwater by preserving the rights of the Tribe and the United States to object to off-Reservation pumping in certain specifically defined circumstances that could impair the on-Reservation groundwater resource. This is an important change from earlier versions of the legislation which provided that the Tribe and the United States would entirely waive their rights to object to off-Reservation pumping. This legislation therefore strengthens the protections for the Tribe's groundwater, which is a particularly significant and positive change for the Tribe with regard to the Truxton Aquifer.
- The Tribe receives an allocation of 4,000 acre-feet a year of Central Arizona Project (CAP) water from the Colorado River. Of this amount, 1,115 acre-feet a year will be "firmed" (half by the United States and half by the State) until 2108 to protect against future shortages in the availability of Colorado River water in Arizona. The Act also provides that the Tribe itself can "firm" additional portions of the Central Arizona Project water allocated to the Tribe in any year the water is available and is not needed for delivery to the Reservation.
- The legislation authorizes the appropriation of \$180 million for a trust fund for the Tribe to use to construct an infrastructure project to deliver up to 3,414 acre-feet a year of water from the Colorado River to the Reservation. The project, as currently planned by the Tribe, will divert water from the Colorado River on the Reservation at Diamond Creek and then deliver it through a 70-mile pipeline to both Peach Springs and Grand Canyon West. This system will replace the Tribe's reliance on the existing groundwater wells in the Truxton Aquifer (except when those wells are needed as an emergency backup). The leg-

isolation also authorizes the appropriation of \$5 million for the U.S. Geological Service to use to monitor groundwater levels in the Truxton Aquifer.

I want to point out that the provisions in this legislation relating to the infrastructure project also differ from earlier versions of this bill. Previous legislation would have ratified a “project-based” settlement, and authorized funding for an infrastructure project to be constructed by the Bureau of Reclamation. S. 4104 instead will ratify a “funds-based” settlement, and authorizes an agreed-upon amount of funding to be provided to a trust fund for the Tribe to use to construct the infrastructure project. This change in approach was made at the request of the Interior Department, and is supported by the Tribe.

- Finally, certain lands owned by the Hualapai Tribe in the Bill Williams Basin are designated by the legislation to be brought into trust status, and certain other lands currently held in trust for the Tribe near the Hualapai Reservation will be made part of the Reservation.

4. Conclusion

Passage of S. 4104 to ratify the Hualapai Tribe water rights settlement is absolutely essential if our Tribe is to attain a secure future on our Reservation, to accommodate future growth of our population and to realize the full economic potential of our Reservation. We have done everything possible to provide jobs and income to our people in order to lift them out of poverty—but the lack of a secure and replenishable water supply on our Reservation is our major obstacle that prevents us from achieving economic self-sufficiency, a goal that Federal Indian policy has long favored. Passage of this legislation is essential to allow my Tribe to attain this goal.

Thank you for the opportunity to testify before you today. I will be pleased to answer any questions you may have, and our Tribe will help in any way it can to secure enactment of this critical legislation.

The CHAIRMAN. Thank you very much. Thank you for being here. Next, we have the Honorable Russell “Buster” Attebery, Chairman of the Karuk Tribe, Happy Camp, California.

STATEMENT OF HON. RUSSELL ATTEBERY, CHAIRMAN, KARUK TRIBE

Mr. ATTEBERY. [Greeting in Native tongue.] Hello, Chair Schatz, Ranking Member Murkowski, y“otva, thank you for inviting me here to testify on behalf of the Karuk Tribe. My name is Russell “Buster” Attebery. I am Tribal Chairman.

Our tribe is extremely grateful to Congressman Huffman, Senator Padilla, and Senator Feinstein for their partnership in this endeavor to return the sacred lands to the Karuk people. In Karuk language, these places are known as Katimiin and á>uuyich, our center of the world, Aamekyáaraam, our place for First Salmon Ceremony and World Renewal Ceremony, [name in Native tongue], the Klamath River, and [name in Native tongue], the Salmon River.

Our traditional ancestral homeland encompasses a vast, remote territory of over one million acres in the mid-Klamath region of northern California, near the Oregon border. The seizing of these lands by the United States was done without the free, prior informed consent of the Karuk Tribe. Nor did the establishment of the National Forest System specify its direct effects on our people. Our people have lived and conducted ceremonies on these sacred lands since time began. The stewardship and management of these lands are vital to the preservation and continuation of Karuk culture, language, religion, and identity.

Many aspects of our ceremonies require isolation from any kind of human interaction. In recent years, we have seen a dramatic in-

crease in disturbances from airplanes, helicopters, and recreational users. This legislation will provide our people protection from these types of negative and disrespectful occurrences.

The tribe's historic and present-day government-to-government relationships with the United States is due in large part to ceremonial leaders and families conducting ceremonies and rites on these lands. These areas are integral to understanding the Karuk creation stories as well as the perpetuation of Karuk customs, language, and culture.

This legislation will also provide the Karuk Tribe what other Americans have long had the right to do, which is freely exercise our religion on land that is sacred to us, without fear of outside disturbances, interference or interruptions. Our Karuk legislative team has conducted exhaustive outreach to educate stakeholders, our tribal neighbors, local and State governments, the Administration and Congress about this legislation and why it is so desperately needed.

We have also facilitated productive internal discussions with Karuk ceremonial families and community members to ensure we have their support and their advocacy through this process of returning the center of the world to our people.

To date, we have received no opposition to the Katimiin and Aamekyáaraam Sacred Lands Act. We look forward to working with Congress and the Administration to have this bill enacted as quickly as possible and return these sacred lands to their original stewards.

Y“otva, thank you to this Committee for listening to my testimony that represents many years of advocacy on the part of the Karuk Tribal Council, Karuk ceremonial leaders and Karuk people who have waited far too long for this sacred place to be repatriated. Y“otva, thank you.

[The prepared statement of Mr. Attebery follows:]

PREPARED STATEMENT OF HON. RUSSELL ATTEBERY, CHAIRMAN, KARUK TRIBE

Purpose

The purpose of S. 4439, the Katimiin and Aamekyáaraam Sacred Lands Act, is to provide for the transfer of approximately 1,031 acres of Federal land into trust for the benefit of the Karuk Tribe. This land is our “Center of the World”, a special and sacred place where Karuk people have lived, fished, prayed and fixed the world since time began, and continue those same traditions today. By placing this land into trust, this bill will forever protect and preserve our ability to exercise our religious beliefs in the same manner as our ancestors have done since the beginning of time.

Background and Need

Ancestral Territory—The traditional ancestral homeland of the Karuk Tribe encompasses a vast territory of over 1 million acres in the Mid-Klamath region of California. The seizing of these lands by the United States was done without the free prior and informed consent of the Karuk Tribe, nor did the establishment of the National Forest System specify its direct effects on the Karuk people. Natural resource utilization and management remains a vital part of Karuk culture. The territory includes two counties, two Congressional Districts and 95 percent of our ancestral territory is currently being managed by the United States Forest Service. As a result, the Tribe struggles to ensure that traditional management practices and Karuk cultural values are integrated into management decisions. The harvest of salmon, acorns, deer, elk, mushrooms and other natural products still serve as subsistence for many tribal families while the act of hunting, gathering, managing and processing these natural food products help define the Karuk Tribe's cultural identity.

Cultural Significance—The Karuk Tribe’s historic and present-day government to government relations with the United States is due in large part to ceremonial leaders conducting ceremonies and rites at Katimiin, Aameeky araam and several other ceremonial areas. These areas are integral to understanding Karuk cosmology and creation as well as the perpetuation of Karuk customs, language and culture. Enactment of this legislation will ensure Tribal ceremonial leaders and traditional practitioners will have unfettered access to these lands for inter-generational learning and traditional and customary uses in perpetuity. Some aspects of our ceremonies require isolation from any kind of human interaction, in recent years we have seen a dramatic increase in disturbances from airplanes, helicopters and recreational users. S. 4439 will provide our people protection from these types of negative and disrespectful occurrences. This legislation will also provide the Karuk Tribe what other Americans have long had the right to do, which is freely exercise our religion on land that is sacred to us without the fear of outside disturbances and interruptions.

Summary of Major Provisions

S. 4439, as introduced, is an amended version of H.R. 6032 introduced into the House of Representatives on November 16, 2021 by Congressman Jared Huffman. The Tribe has diligently conducted additional outreach with the Administration and the Senate version has incorporated those revisions: (1.) The legislation provides for the transfer of approximately 1,031 acres to the Karuk Tribe, the exact acreage and boundaries will be determined by a land survey completed within 180 days of enactment. (2.) The components of the National Wild and Scenic Rivers System that flows through this land will continue to be managed by the Chief of the Forest Service and the Tribe will enter into a Memorandum of Understanding with the Chief to ensure protection and enhancement of Wild and Scenic components are done in cooperation with the Tribe.

This legislation when enacted will not affect valid existing rights, these may include land held in fee, Special Use Permits, Easements and other similar rights held by individuals or businesses before the transfer of these lands is realized.

Outreach

The Karuk Tribe has conducted extensive outreach to cultural and ceremonial leaders, local Tribes, local and State governments, private landowners, the Administration and Congress to educate and gather support for this sacred lands bill. The level of support the Tribe has received has been both humbling and reassuring: this type of simple, straightforward legislation returning lands that are without question sacred to Tribes is of utmost importance. The Tribe has received no opposition that we are aware of in regards to H.R. 6032 or S. 4439. The Karuk Tribal Council has elevated this effort as our highest priority and will commit to further engagement as needed to educate and inform Congress and the Administration on any aspect of this legislation.

The CHAIRMAN. Thank you very much.

Finally, we have Dr. Patrick Rock, the Chief Executive Officer of the Indian Health Board of Minneapolis in Minneapolis, Minnesota.

STATEMENT OF DR. PATRICK ROCK, CEO, INDIAN HEALTH BOARD

Dr. ROCK. Thank you, Chairman Schatz. Good afternoon. My name is Dr. Patrick Rock. I am a member of the Leech Lake Band of Ojibwe. I serve as the CEO and health care provider at the Indian Health Board in Minneapolis. We are also a member of the National Council of Urban Indian Health.

Let me start by saying thank you for the opportunity to testify on the bipartisan Urban Indian Health Confer Act, H.R. 5221, which passed by an overwhelming majority of 406 votes last November. I would also like to applaud two leaders of this Committee, Senators Tina Smith and James Lankford for their bipartisan introduction of the identical companion legislation, S. 4323. This legislation would require agencies and offices within the Department

of Health and Human Services to discuss the important policies relating to health care for urban Indians with Indian health organizations.

As a background, through the Indian Health Care Improvement Act, the Indian Health Service has a legal obligation to confer with UIOs, which is an essential tool used to ensure access to health services for Native people. Unfortunately, HHS has interpreted it to mean that only IHS has the requirements to confer with UIOs. It is critical to patient care that HHS and all agencies it operates establishes a formal confer process.

We would like to adhere to the phrase, no policies about us without us. A clear communication pathway between the Federal health agencies and UIOs is imperative, especially during the ongoing COVID-19 pandemic that has disproportionately impacted Natives. This pandemic has demonstrated that a lack of a confer policy can result in missed opportunities for awareness and information provided to UIOs regarding Native health care which would otherwise be avoided through the confer process. For instance, key information regarding vaccine distribution for the initial COVID-19 vaccine rollout was miscommunicated and created necessary hardship. HHS initially only directed tribal programs, which we are not considered to be, to choose a vaccine distribution program. It was unclear if UIOs needed to decide between receiving vaccines through their State or IHS.

In fact, due to the uncertainty around Federal decisions, my clinic decided to receive vaccines through our State. However, many UIOs, unlike mine, experienced delayed rollout because the Federal Government was not prepared to distribute vaccines through our clinics. At the House hearing on this bill, IHS confirmed on the record that a lack of confer policy delayed patient access to vaccines.

Urban confer would also help with implementation of 100 percent Federal medical assistant percentage for services provided to Medicaid beneficiaries at UIOs. Last year, Congress authorized this for two years in the American Rescue Plan Act, with the intent to increase financial resources for UIOs. But over a year later, our clinics are still not receiving any financial benefit from 100 percent FMAP through increased reimbursement rates.

An urban confer policy across HHS agencies, including CMS, would be instrumental in ensuring that obstacles relating to programs and benefits that directly affect UIOs are addressed quickly so UIOs are better equipped to provide health care to their patients. Support for urban confer is strong in Indian Country. In fact, two years ago, the National Congress of American Indians passed a resolution calling for urban confer policy across HHS departments.

It is important to note that urban confer policies do not supplant or otherwise impact tribal consultation and the government-to-government relationship between tribes and Federal agencies. Further, we have support from the Administration and bipartisan support from Congress.

As such, we urge swift passage of this bill to improve health care deliver to Native patients who do not reside on reservations. We must get past the notion that only IHS has a trust obligation to

Native people, as the Federal Government as a whole has responsibility to provide health care for all Native people.

Thank you for the opportunity to speak on this important issue. I have provided written testimony to the Committee. I am happy to answer any questions.

[The prepared statement of Dr. Rock follows:]

PREPARED STATEMENT OF DR. PATRICK ROCK, CEO, INDIAN HEALTH BOARD

Chairman Schatz, Vice Chairman Murkowski, and Members of the Senate Committee on Indian Affairs of the United States, thank you for the opportunity to testify today on urban confer policies. My name is Dr. Patrick Rock, I am a member of the Leech Lake Band of Ojibwe and I serve as a medical provider and Chief Executive Officer of the Indian Health Board in Minneapolis, Minnesota. Established over 50 years ago, the Indian Health Board of Minneapolis is the oldest urban Indian organization (UIO) in the country which provides medical, dental, medication-assisted treatments, health and wellness programming, and counseling services to more than 5,000 American Indian and Alaska Native (AI/AN) patients each year. In addition, I am a member of the National Council of Urban Indian Health (NCUIH), which represents the 41 UIOs across the nation who provide high-quality, culturally-competent care to urban Indians, who constitute over 70 percent of all AI/ANs.

I testify today in support of the *Urban Indian Health Confer Act* (H.R. 5221), which requires agencies and offices within the U.S. Department of Health and Human Services (HHS) to confer with UIOs regarding health care for AI/ANs living in urban areas. This legislation enables UIOs to engage in important dialogue with all divisions within HHS so that urban Indian communities are made aware of major healthcare policies. I will speak to you today about the importance of this bipartisan legislation and how it improves communication between federal agencies and UIOs on healthcare issues, and in turn, improves healthcare access for the more than 70 percent of AI/AN people that reside in urban areas.

For the reasons stated herein, I urge the Members of this Committee to act on their commitment to improving urban Indian health and move forward on this legislation.

Background

UIOs are a critical part of the Indian Health Service (IHS) system, which includes IHS facilities, Tribal Programs, and UIOs. This is commonly referred to as the I/T/U system. Unfortunately, UIOs experience significant parity issues compared to the other components of the I/T/U system, as well as other federally funded health care systems, which greatly impacts our services and operations. This includes the lack of clear communication and urban confer policies between UIOs and federal agencies.

Urban confer policies are the response to decades of deliberate federal efforts, such as forced assimilation, termination, and relocation, that has resulted in 70 percent of AI/AN people living outside of Tribal jurisdictions. Thus, urban confer has become an essential tool used to address the health care needs of most AI/AN persons.

Currently, only IHS has a legal obligation to confer with UIOs. It is crucial that HHS, and the agencies it operates, establish a formal confer process to communicate with UIOs on policies that impact them and their AI/AN patients living in urban centers. Urban confer policies do not supplant or otherwise impact Tribal consultation and the government-to-government relationship between Tribes and federal agencies. The lack of urban confer has enabled HHS agencies outside of IHS to disregard the needs of urban Indians and neglect the federal obligation to provide health care to all AI/ANs.

Establish Urban Confer Between HHS Agencies and UIOs

I would like to applaud two leaders of this Committee, Senators Tina Smith and James Lankford, for their bipartisan introduction of the identical companion legislation, *Urban Indian Health Confer Act* (S. 4323), which reiterates the vital importance of establishing formal paths of communication between UIOs and federal agencies.

Specifically, this legislation requires HHS agencies to confer with UIOs on healthcare issues affecting AI/ANs and provides a forum for important feedback from AI/AN stakeholders. A clear communication pathway between federal health agencies and UIOs is imperative, especially during the ongoing COVID-19 pan-

demographic that has disproportionately impacted AI/ANs. Missed opportunities for awareness and information provided to UIOs regarding AI/AN healthcare can be easily avoided through a confer process.

For example, key information regarding vaccine distribution for the initial COVID-19 vaccine rollout in December of 2020 was poorly communicated to UIOs and created unnecessary hardships. HHS addressed initial communications only to Tribes and did not direct it to the UIO component of the IHS system. When HHS was asked about whether UIOs needed to similarly decide between an IHS or state vaccine allocation, it was unclear for weeks as to whether they were expected to make such a decision. Eventually, HHS asked UIOs to decide between receiving their vaccine distribution from either their state jurisdiction or IHS on the same day as the initial deadline (which thankfully HHS subsequently extended for several days). Some UIOs were informed of the deadline by their Area office with no formal national communication. Consequently, UIOs were prevented from providing input, resulting in many clinics experiencing serious delays in vaccine distribution. For example, Native American LifeLines, the Baltimore UIO, did not receive vaccines until just 5 days before the general public was eligible. This had dire consequences, as the pandemic took the lives of AI/ANs at the highest rates of any population. Ultimately, this flawed process could have been easily avoided with an urban confer policy.

In an October 2021 House Natural Resources Subcommittee for Indigenous Peoples of the United States (SCIP) hearing on H.R. 5221, IHS Deputy Director, Benjamin Smith, confirmed the failure to properly communicate with UIOs around COVID-19 vaccine distribution in his remarks, “Initially urban Indian organizations were not included in the discussion and request from the Department of Health and Human Services about whether urban Indian organizations would receive their vaccine allocation from the state or from the Indian Health Service. As a result, it was unclear to urban Indian organizations on whether they were expected to make a similar decision as tribes did. It was ultimately determined that the urban Indian organizations could select a state or Indian Health Service for their vaccine allocation. In some urban Indian organizations, however, there were delays in the initial vaccine rollout.”¹

Today, the ongoing public health crisis that is COVID-19 continues to amplify the long-overdue need for urban confer among HHS agencies to adequately communicate the constantly changing healthcare policies with UIOs that directly impact their patients.

An urban confer policy across HHS would require all agencies within HHS to engage in direct communication with UIOs on issues, resources, and programs that affect UIOs and their patients. The current lack of urban confer policies for agencies other than IHS is a significant roadblock to UIOs’ efforts to engage with these agencies to improve health services for AI/ANs living in urban areas. For example, last year, Congress passed the American Rescue Plan Act (ARPA) which authorized 100 percent Federal Medical Assistance Percentage (FMAP) reimbursement for services provided to Medicaid beneficiaries at UIOs for eight fiscal quarters. The congressional intent of this extension was, in part, to address a longstanding inequity within the Indian healthcare system and to increase financial resources for UIOs during the COVID-19 pandemic. The ARPA FMAP extension ends in less than one year, but UIOs have generally not received any financial benefit either through cost-saving reimbursement from states or increased rates. Overall, UIOs cannot expect to receive any such benefit in the absence of guidance and advocacy from the Centers for Medicare & Medicaid Services (CMS), as CMS is the federal agency responsible for the administration of the Medicaid program. While IHS has engaged with urban confer with UIOs on this matter, CMS currently does not have an urban confer policy and thus UIOs have restricted opportunities to engage and collaborate with CMS on implementing FMAP in the manner intended by Congress. Many federal agencies do not understand that over 70 percent of AI/ANs reside in urban areas and that UIOs are a critical part of the Indian healthcare system. An urban confer policy with agencies, such as CMS, would be instrumental in ensuring that obstacles relating to programs and benefits that directly affect UIOs are addressed quickly so that UIOs are able to access all resources available to provide healthcare to their patients.

This legislation remedies these problems and codifies a proper confer policy between HHS and UIOs, thus ensuring that AI/AN lives are no longer jeopardized by the lack of adequate communication pathways between HHS agencies and UIOs.

¹ https://naturalresources.house.gov/hearings/remote-scip-legislative-hearing__october-5-2021

Strong Indian Country and Congressional Support for Urban Confer

The support for confer with UIOs is strong among stakeholders in Indian Country. In November 2020, the National Congress of American Indians (NCAI) passed a resolution to “Call for the U.S. Department of Health and Human Services Secretary to Implement an Urban Confer Policy Across the Department and its Divisions.”² In October 2021, Walter Murillo (Choctaw Nations of Oklahoma), Chief Executive Officer of NATIVE Health, and President-Elect of NCUIH, testified before the House Natural Resources SCIP in support of H.R. 5221, citing the ongoing challenges that UIOs and urban AI/ANs continue to face given the absence of an urban confer policy across all HHS agencies.

Members of Congress from both sides of the aisle have expressed their direct support for urban Indian health and confer policies with UIOs. In the same SCIP hearing on H.R. 5221, Representative Matt Rosendale recognized the importance of Indian parity by emphasizing Walter Murillo’s statement of “no policies about us, without us,” and Representative Darren Soto said, “It’s time to modernize and improve health access for our Native Americans. This requires us to have greater urban access through the Indian Health Service and the U.S. Department of Health and Human Services, which is why we applaud Chair Grijalva for this great bill [H.R. 5221].”³

We are pleased that this critical legislation was ultimately passed in the House on November 2, 2021, by an overwhelming majority of 406 votes.

Conclusion

The *Urban Indian Health Confer Act* is an essential parity issue for UIOs that ensures that AI/ANs residing in urban areas continue to have access to high-quality, culturally competent health services. We must move past the notion that only IHS has a trust obligation to AI/ANs, as the federal government bears a responsibility to provide health care for all AI/AN people. Urban confer must be established across HHS to further improve healthcare delivered to urban Indian patients.

We therefore urge the Senate Committee on Indian Affairs to continue to prioritize urban Indian health and ensure the swift passage of this bill, thereby enabling UIOs to continue providing high-quality, culturally competent care to AI/AN people, regardless of where they live.

The CHAIRMAN. Thank you very much.

I will start the questions. Assistant Secretary Freihage, access to Federal lands that contain tribal sacred sites is an important exercise of the government-to-government relationship. Sometimes simple access is not enough, particularly for the Karuk Tribe, which doesn’t have a big land base.

How does this bill strike the appropriate balance between tribal and Federal interests?

Mr. FREIHAGE. The bill does strike a strong balance between the two. I think it is consistent with the joint secretarial order signed by the Secretaries of Interior and Agriculture, number 3403, which sets the direction for co-stewardship, co-management between the tribes and land management agencies.

Up front, it is also important to recognize that Federal interest does include trust responsibilities of the tribe, including the sacred lands. So we take that into account, obviously, along with the important responsibilities of land management bureaus. When you consider the sacred land, the importance to the tribe, as Chairman Attebery noted, that this is the center of their world, the bill then taking the step of ensuring that the wild and scenic river components continue to be managed by the Chief of the Forest Service allows for co-management. Then through the requirement of having

²The National Congress of American Indians Resolution #PDX-20-021. https://www.ncai.org/attachments/Resolution_ROTxpAdbKLfUbrnRVmUoOfklRbZgxXvXJBCqoyBgPomYTflsHu_PDX-20-021%20SIGNED.pdf

³ https://naturalresources.house.gov/hearings/remote-scip-legislative-hearing__october-5-2021

an MOU with the Forest Service and the Karuk Tribe, that allows them to make sure they are on the same wavelength to ensure that we have that appropriate balance.

The CHAIRMAN. Thank you very much.

Deputy Director Smith, you know Native Hawaiians receive health care through HHS as a result of, as an expression of the Federal Government's trust responsibility. But HHS doesn't have an official consultation or confer policy that applies to Native Hawaiians at the moment.

Do you need a statute in order to do that?

Mr. SMITH. Thank you for the question, Chair Schatz. I can speak from the Indian Health Service at a department level with regard to the tribal consultation policy as it pertains to federally recognized Indian tribes. It is certainly a question that we could take back.

The CHAIRMAN. Let's be crisp, here. Native Hawaiians don't have tribal recognition. Native Hawaiians are not currently pursuing tribal recognition. What we are saying is that under the trust responsibility, because there is money being pushed out, is there some way to get at conferring without having to hang your hook on a government-to-government relationship, but rather the trust relationship?

It seems to me that you have the flexibility to express the idea, nothing about me without me, without having to make a square peg fit into a round hole.

Mr. SMITH. Similar to what is at play with the proposed bill H.R. 5221, other operating divisions outside the Indian Health Service do not have a specific rule or requirement. There is nothing preventing them from conferring, but there is no requirement or policy that allows them to initiate confer.

The CHAIRMAN. They are not allowed to do it?

Mr. SMITH. There is nothing preventing them from doing it.

The CHAIRMAN. There is nothing preventing them from doing it.

Mr. SMITH. Certainly.

The CHAIRMAN. And then you say there is no statute that allows them to do it? That sounds like the lack of a statute prevents them from being able to do it.

Mr. SMITH. There is no statute, to my knowledge, that —

The CHAIRMAN. It seems to me that if an agency wants to confer, they can confer. And if using certain legal terms triggers a widespread freakout, we can use different words. But the point is, that to the extent there is trust responsibility, nothing about me without me. The Biden Administration, it seems to me, has a perfect legal right to express that through an internal memorandum, a new rule, a directive from the director of the department or one of the agencies.

I think we are overcomplicating this, and I think there are a bunch of people who are going, gosh, they are not a tribe, so we can't. That is not what I am saying. What I am saying is, to the extent that there are agencies and organizations that receive funding from HHS they should be consulted with. I am hoping we can work together on this.

Mr. SMITH. We are happy to work with you on it. Thank you.

The CHAIRMAN. Thank you very much.

Final question for this round. Chairman Clarke, you have testified about the difficulties your tribe has encountered as a result of water shortages. How does this settlement help?

Dr. CLARKE. Thank you for that question.

This will help because on one side of the reservation, we have not even looked at, on the east side, and with the drought as we are looking at today, we are very, very short on water. Like I said earlier, our water on the wells have depleted. Some of the wells have also collapsed. So now we are taking water from fire hydrants, putting it on the truck, trucking it to another area for it to get out to Grand Canyon West.

In the meantime, our community is suffering because we are taking water from the community to go out there. If our water truck breaks down or has a flat, then we have to fix that, and again, we are short on water because there is no water going out there.

On the east side of the reservation, we haven't, I mean, we have talked about it, but we need to get water on the east side as well, not just on the west side in the community, but also on the east side. So this would really help.

The CHAIRMAN. Thank you very much.

Vice Chair Murkowski?

Senator MURKOWSKI. Thank you, Mr. Chairman.

Chairman Clarke, thank you for that. It sounds like not an idea situation as you are looking to literally truck water from a fire hydrant.

Let me ask you, Mr. Freihage, the Hualapai Tribe has been working on completing this water settlement for nearly a decade now. In 2016, I recall that the tribe and the State partner reached an agreement on phase two. The Federal agencies at the time did not support it. Now we have an agreement with the Federal negotiating team and Interior is testifying in support of this.

What happened? What transpired there in the settlement that allowed interior to now get behind this settlement?

Mr. FREIHAGE. I believe one of the factors was on the looking a little more narrowly, the focusing of the looking at the impacts of groundwater uses and how that could, the ability to narrow that, so that we had a better surety about there would truly be wet water rights for the tribe at the end of the process. I believe that was one of the critical factors.

Senator MURKOWSKI. The Chairman asked you a question about the MOU between the Karuk Tribe. I raised the issue of Forest Service in my opening. Your testimony states that the department supports the agreements with Indian tribes to collaborate in the co-stewardship of Federal waters and the jurisdiction of DOI and Ag. This legislation is directing the Chief of the Forest Service and the tribe to enter into an MOU to protect and enhance wild and scenic river systems, all done in cooperation with the tribe.

So in addition to the MOUs, do you need any other tools to support the co-stewardship of lands and waters with the tribes? Just an example I would raise is the 638 contracts under ISDEA, under the Indian Self-Determination Act, they also promote co-stewardship. Is this something that could be helpful in this case?

Mr. FREIHAGE. Yes, certainly. I think the more that other Federal agencies beyond especially Indian Affairs, IHS, can use 638

contracting, self-governance compacting mechanisms, it is a great tool to allow to engage tribes in partnerships for co-stewardship, co-management.

Another key factor is in our 2023 budget we have a \$14.8 million funding request for land acquisition for tribes. That could be a tool also where tribes could be purchasing lands and end up with some joint strategies with Federal agencies. A key part of that is funding. Then the other part is to be able to do that we need, there is currently an annual cap on land acquisition funding that goes back to the 1934 Indian Reorganization Act. So if we could get that lifted to at least the amount we are requesting.

Plus the 638 contracting and OSG and self-governance compacting, those would be two significant steps forward.

Senator MURKOWSKI. Okay. It has been mentioned that Interior, well, along with the rest of the government, has of course a trust responsibility to tribes. How is the Department of Interior going to be involved in upholding that trust responsibility as the tribe and Forest Service negotiate this MOU that is mandated under the legislation?

Mr. FREIHAGE. Hopefully, I think because the structure is sort of set up in the joint secretarial order 3403 with Interior and Agriculture it outlines a lot of the best practices and policies we can provide for continuing to engage with the tribe and our trust responsibility, along with the Forest Service, to ensure that that balance is found between the Federal and tribal interests. So to be consistently engaged.

Senator MURKOWSKI. Mr. Smith, you gave a pretty good outline there about this whole process within HHS for tribal consultation and the development of the confer policy. I don't know that I actually heard you say whether or not you, whether HHS actually supports the bill. I think you said that you stand ready to provide technical assistance. But what is the position of HHS on H.R. 5221?

Mr. SMITH. Thank you very much for the question. In this declaration of National Indian Health policy, Congress has specifically declared that it is the policy of the Nation to ensure the highest possible health status for Indians and urban Indians. The Department of Health and Human Services is committed to working with Indian and urban Indian communities to meet this policy.

However, as I mentioned, only the Indian Health Service has a legal obligation to confer with Urban Indian Organizations. We are the only agency within HHS and the Federal Government at this time that has implemented a formal confer process. So at this time, I cannot speak for our departmental colleagues. But what I can tell you is that we have found the process to be successful and beneficial. We are happy to provide technical assistance to you.

Senator MURKOWSKI. I think that is kind of maybe a soft support, they think it is going to work, actually you know it can work. I am going to mark that down as a maybe.

Mr. Chairman, my time is expired.

The CHAIRMAN. Let's follow up together.

Senator MURKOWSKI. Sure.

The CHAIRMAN. Senator Smith?

Senator SMITH. Thank you. I appreciate your question, Senator Murkowski, and your response as well, Senator Schatz. Mr. Smith, I will just say that we have been working with the Department of Health and Human Services for a long time, trying to get a definite yes, we support this. And we have so far been unsuccessful in getting that. However, we have, I think, testimony today that spoke to the power of consultation with urban indigenous communities. I think it is an obvious next step that that confer process with other parts of the Department of Human Services would also be useful and valuable.

I would, Mr. Smith, ask as you return to the Department of Health and Human Services that you tell them that we are eager to work with the department, and we would appreciate it if we could get speedy responses and fast technical support, so that we can understand if there are any issues with the legislation so that we can resolve them in order to move it forward.

Will you make that commitment to me?

Mr. SMITH. Thank you, Senator Smith. I absolutely will take that back and coordinate.

Senator SMITH. All right. Let me go to Dr. Rock, if I may. I am so grateful to you for joining us today. I think you are in a great position to help us understand some of the issues that urban indigenous organizations have had that could be resolved by this kind of confer process.

One example that comes to mind, Dr. Rock, is an issue around data sharing. Senator Murkowski and I actually have a piece of legislation that would get at making sure the Department of Health and Human Services is sharing public health data with epidemiology centers, tribal epidemiology centers, urban indigenous organizations.

Dr. Rock, could you tell us how this kind of public data sharing with the CDC, for example, would help you in the work you are doing?

Dr. ROCK. Certainly. It would help at multiple levels. For example, with research and patient safety, those are areas I think we could make a lot of strides, especially with folks like CDC, with vaccine distribution and things like CARES appropriations, pieces. Also including things like missing and murdered indigenous people. That is something data is key to, to start addressing some of these issues, especially folks like out in Seattle with UIHI, and the epicenter there.

So having transparent and free flow of information helps all our urban Indian health organizations. We are really in a key place to address some of these issues.

Senator SMITH. Thank you very much. I completely agree with you.

You raised in your testimony the issue of the 100 percent FMAP policy. We worked hard in the American Rescue Plan to deliver \$84 million in direct funds and two years of 100 percent Federal medical assistance percentage for services to urban indigenous organizations. Yet we know there have been issues with implementation that I think have affected UIOs in every State.

Dr. Rock, can you let us know a little bit about what that looks like in Minnesota and how appropriate consultation might have made this problem a lot easier to resolve?

Dr. ROCK. Certainly, thank you, Senator. Over 20 years of my time has been focused on this issue of 100 percent FMAP, at least bringing payment parity to urban Indian health organizations, especially during the time of COVID. For the last 15 months since the FMAP provisions were enacted, we of course have been working with Senator Smith's office, as well as our governor's office on how to make this a reality. Unfortunately, we have yet to see really any type of activity or actual reimbursement occur, utilizing the 100 percent FMAP through the Federal system, which is extremely, extremely disappointing, I need to tell you.

We continue to seek out solutions going forward. But I think we are going to need help with our State partners as well as our Federal partners, including CMS. This would be an important point to have access and confirm with CMS.

Senator SMITH. Thank you. I know that you all are not alone in having that challenge with FMAP reimbursement. Again, if there had been good consultation across all Department of Health and Human Services, that would have been easier to resolve. On issues of data sharing, 100 percent FMAP, I would say also, federally qualified health center issues, all of those would be easier to resolve if we had the kind of consultation that our bill would require.

Thank you very much, Mr. Chair.

The CHAIRMAN. Thank you, Senator Smith.

Senator Hoeven, are you ready for your questions?

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

Senator HOEVEN. I will be in just a minute, thanks, Mr. Chairman.

The CHAIRMAN. Do you need me to stall for a moment?

Senator HOEVEN. Yes, for like 30 seconds, just to survey the terrain here.

[Laughter.]

Senator HOEVEN. We are good.

The CHAIRMAN. Senator Hoeven.

Senator HOEVEN. Thanks, Mr. Chairman. Thanks to the witnesses.

Deputy Director Smith, the Urban Indian Health Center Act requires the Department of Health and Human Services to confer with Urban Indian Organizations. Does HHS and its agencies and offices currently confer with Urban Indian Organizations on an informal basis?

Mr. SMITH. Thank you for the question, Senator Hoeven.

As I just mentioned, at this time the Indian Health Service is the only Federal agency that has the legal obligation to confer with Urban Indian Organizations, and as such is the only Federal agency within the department that has a formal policy and process.

Having said that, there have been instances where the Indian Health Service has initiated urban confer on behalf of other Federal agencies within the department in seeking input on their behalf. So I hope that answers your question.

Senator HOEVEN. I am wondering what impact formal consultation would have between HHS and Urban Indian Organizations. Talk about how that is going to change and the fact that it goes from informal to formal, and how you think that affects things.

Mr. SMITH. What I can share with you from the Indian Health Service experience is certainly by developing a policy, well, first by having confer defined in statute, which the Indian Health Care Improvement Act does, it defines confer as a form of communication that emphasizes trust, respect, and shared responsibility, and open exchange of opinions. That means that two entities are going to be listening to each other, and how they are going to listen.

We further developed policy around establishing what we are going to talk about. So we defined in our policy as a critical event. To give you an example, throughout the pandemic, Congress provided several supplemental packages that required funding decisions that had a huge impact on Urban Indian Organizations. So we engaged in our policy, invoking our policy to confer with Urban Indian Organizations to solicit their input prior to making those funding decisions. We believe that did have an impact on the manner in which we made those decisions.

Senator HOEVEN. Do you have other examples?

Mr. SMITH. Another example, one that is actually occurring right now and we are very thankful to the members of the Senate that signed a letter to the Biden Administration earlier this year requesting that the Administration consider the formation of an Urban Interagency Work Group. Certainly, that made its way down through the department. In May, we sent a letter through our Acting Director, Ms. Fowler, to Senator Padilla saying that we would initiate urban confer, to look at an exploration of an Urban Interagency Task Force on behalf of government.

So just recently, earlier this month we held our first urban confer session to hear directly from Urban Indian Organizations on what that would look like. We are actively in that process. We will look to going through our process to see what comes from the exploration of that idea of formulating an Interagency Work Force dedicated to Urban Indian Organizations.

Senator HOEVEN. Do you think that setting that up as a formal process through legislation like this would strengthen that process, and be a benefit? Any other thoughts on it?

Mr. SMITH. What we have experienced through the Indian Health Service, again, is that it really helps to identify critical issues and necessary input at the area, local and national levels on what is deemed as a critical event, whether it is a budget, policy issue, or those items that are outlined in our policy. We are happy to provide additional technical assistance to you on this matter.

Senator HOEVEN. Okay, thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hoeven.

If there are no more questions for our witnesses, members may also submit follow-up written questions for the record. The hearing record will be open for two weeks. I want to thank all the witnesses for their time and their testimony.

This hearing is adjourned.

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

A P P E N D I X

PREPARED STATEMENT OF THEODORE C. COOKE, GENERAL MANAGER, CENTRAL ARIZONA WATER CONSERVATION DISTRICT

Chairman Schatz, Vice Chairman Murkowski and members of the Committee, I am Theodore Cooke, General Manager of the Central Arizona Water Conservation District (CAWCD). Thank you for the opportunity to provide the views of the CAWCD on S. 4104 “Hualapai Tribe Water Settlements Act of 2022” through this statement for the record. For the reasons I will discuss below, CAWCD supports S. 4104.

Role of CAWCD in Arizona

CAWCD manages the Central Arizona Project (CAP), a 336-mile canal system that delivers Colorado River water into central and southern Arizona. CAWCD’s service area includes more than 80 percent of Arizona’s population. The largest supplier of renewable water in Arizona, CAWCD diverts up to 1.5 million acre-feet of Arizona’s 2.8 million acre-foot Colorado River entitlement each year through the CAP to municipal and industrial users, agricultural irrigation districts, and Indian communities. Our goal at CAWCD is to provide our customers with an affordable, reliable, and sustainable supply of Colorado River water.

Background

CAWCD, the Hualapai Tribe, the State of Arizona and other Arizona parties have worked for the past decade to reach a settlement that accomplishes the goals of fairness and certainty to all parties. H.R. 7633 represents resolution of Phase 2 of the Hualapai settlement. Phase 1 resolved issues relating to the Bill Williams watershed, and now Phase 2 resolves all remaining claims of the Tribe for water rights within Arizona, including claims to the Colorado River.

Among other things, the Act would reallocate to the Tribe 4,000 acre-feet of Central Arizona Project water, and provide federal funding for water-related infrastructure to the Tribe. This water would help address the water supply needs of the Tribe’s residents on the reservation, as well as the Tribe’s plans for economic development. The Act will not only benefit the Tribe by providing wet water, but will avoid the burden of costly litigation and provide certainty going forward to water users throughout the area.

Conclusion

For the reasons noted, the CAWCD Board of Directors voted unanimously to support the settlement and S. 4104. We would like to thank Senator Sinema and Senator Kelly for their sponsorship of this bill. Thank you for your consideration.

PREPARED STATEMENT OF THE U.S. DEPARTMENT OF AGRICULTURE

Chairman Schatz, Vice Chairman Murkowski, and Members of the Committee, thank you for the opportunity to discuss the views of the U.S. Department of Agriculture (USDA) on S. 4439, Katimiin and Ameekyaaraam Sacred Lands Act.

S. 4439 would transfer administrative jurisdiction of approximately 1,031 acres of National Forest System land located in Siskiyou and Humboldt Counties, California, from the USDA Forest Service to the Department of the Interior and direct the Secretary of the Interior to take that land into trust for the benefit of the Karuk Tribe.

The transfer of administrative jurisdiction and transfer into trust in the bill is subject to the condition that the Forest Service continues to manage the National Wild and Scenic Rivers System that flows through the Katimiin and Ameekyaaraam land. The bill directs the USDA to provide to the Secretary of the Interior a survey of the land, and also enter into a memorandum of understanding with the Karuk Tribe to establish mutual goals for the protection and enhancement of the river values of any component of the National Wild and Scenic Rivers System that flows through the land taken into trust. USDA supports continuing to manage the Na-

tional Wild and Scenic Rivers System and strongly supports the development of a memorandum of understanding to establish mutual goals for the protection and enhancement of the river values. We are committed to fulfilling the trust relationship between the United States and Tribes.

USDA acknowledges that the lands administered by the Forest Service are the ancestral homelands to American Indians and Alaska Natives and contain cultural and natural resources of significance to their people, such as sacred religious sites, burial sites, wildlife resources, and sources of Indigenous foods and medicines. The Katimiin and Ameekyáaraam land is sacred to the Karuk Tribe and vital to their culture and traditions.

With the 2021 Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (Order No. 3403), Secretary Vilsack re-committed to ensuring that the USDA manages federal lands and waters “in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes,” through co-stewardship agreements. The Secretary also re-affirmed the USDA’s obligations to Tribes in the 2021 Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites and the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty and Reserved Rights.

For all these reasons, USDA supports the intent of the Katimiin and Ameekyáaraam Sacred Lands Act and looks forward to continued discussion with the Committee and bill sponsors on provision details and considerations for implementation.

WILD AND SCENIC RIVERS COALITION
August 19, 2022

Dear Chair Schatz and Ranking Member Murkowski:

On behalf of the Wild and Scenic Rivers Coalition, we write to thank you for holding a recent Committee hearing on the Katimiin and Ameekyáaraam Sacred Lands Act (S. 4439). The Wild and Scenic Rivers Coalition is a national alliance of more than 60 river protection organizations. Coalition member organizations appreciate the Senate’s efforts to advance this legislation that recognizes Indigenous sovereignty and the cultural significance of sacred lands and waters to Indigenous Peoples.

The Wild and Scenic Rivers Coalition strongly supports the Katimiin and Ameekyáaraam Sacred Lands Act, introduced by Senator Padilla and co-sponsored by Senator Feinstein. This bill would return 1,031 acres of land along California’s Klamath and Salmon Rivers to the Karuk Tribe. This land transfer will allow the Karuk Tribe to conduct World Renewal Ceremonies and other acts of religious and cultural significance without interruption or interference while maintaining Wild and Scenic River protections. We support the bill’s provision to include the Tribe in the management and protection of the rivers within the returned lands.

We support the Katimiin and Ameekyáaraam Sacred Lands Act and urge you to advance this important bill.

Sincerely,

LISA RONALD, NATIONAL COORDINATOR

On behalf of the following Wild and Scenic River Coalition member organizations:

Joshua Theurer, Associate Director, Project Design, Adventure Scientists, Bozeman, MT

Jack West, Policy and Advocacy Director, Alabama Rivers Alliance, Birmingham, AL

David Moryc, Senior Director of Wild and Scenic Rivers and Public Lands Policy, American Rivers, Washington, D.C.

Kevin Colburn, National Stewardship Director, American Whitewater, Cullowhee, North Carolina

Megan Fiske, Executive Director, Foothill Conservancy, Jackson, CA

Fred Akers, River Administrator, Great Egg Harbor Watershed Association, Newtonville, NJ

Nicholas Nelson, Executive Director, Idaho Rivers United, Boise, ID

Richard Dodds, Chair, Lower Delaware Wild and Scenic Management Committee, Stockton, NJ

Dr. Denielle Perry, Director of Free-flowing Rivers Lab, Northern Arizona University, Flagstaff, AZ
 April Ingle, Policy Director, River Network, Boulder, CO
 Joseph Callahan, President, Taunton River Watershed Alliance, Taunton, MA
 Bill Napolitano, Administrator, Taunton River Stewardship Council, Taunton, MA
 Maggie Johnston, Executive Director, Wild Alabama, Moulton, Alabama

TROUT UNLIMITED
July 20, 2022

Dear Chairman Schatz, Ranking Member Murkowski, and members of the Committee,

We write in support of S. 4439, The Katimiin and Aameky araam Sacred Lands Act. This legislation would restore free and undisturbed access for the Karuk people to their sacred places by transferring 1,000 acres along the Klamath River from the U.S. Forest Service to the Department of the Interior to be held in trust for the Karuk Tribe. The land is currently part of a larger Cultural Management Area recognized for its significance to the Tribe. Called "Katimiin" in the Karuk language, these 1,000 acres are the heart of the Karuk's ancestral territory, "literally the center of the universe, a spiritual balance point for all of existence." The Karuk people have lived and conducted ceremonies at Katimiin and Aameky araam since the beginning of time. These areas are integral to Karuk cosmology and creation belief as well as the perpetuation of Karuk customs and culture.

Trout Unlimited has been working with the Karuk and other signatories to the Klamath Hydroelectric Settlement Agreement for more than two decades to restore the Klamath River and its once-prolific runs of salmon and steelhead. Ensuring that these lands will be held in trust for the Karuk is consistent with the overall goal of renewing the Klamath's ecological, cultural, and community values, and we are grateful to the efforts of Senator Padilla and Senator Feinstein to help us attain that goal while righting an historical wrong.

We support the Karuk Tribe's efforts to ensure the repatriation and management of Katimiin and Aameky araam so their ceremonial leaders, traditional practitioners and community members will have access to these lands for traditional and customary uses in perpetuity.

We thank you for holding a hearing on this bill and urge the committee to favorably advance this legislation.

Sincerely,

BRIAN J. JOHNSON, CALIFORNIA DIRECTOR

YUOK TRIBE
August 3, 2022

Dear Chairman Schatz and Vice Chairwoman Murkowski,

The Yurok Tribe submits this letter to support the Katimiin and Aamekyaraam Sacred Lands Act (H.R. 6032), also known as the Karuk Lands Bill. This Bill was created to restore land to the Karuk Tribe and recognize the Karuk Tribe's role and responsibility in managing federal lands within its territory. By restoring these lands to the Karuk Tribe, who were the original stewards of such lands, the Karuk Tribe can exercise its tribal sovereignty and traditional practices without interruption. We extend our support to the Karuk Tribe through this Bill.

Indeed, the Yurok Tribe supports tribal land restoration for all tribes and believe that tribes should support each other's land restoration efforts. Like the Karuk Tribe, we introduced the Yurok Lands Act (H.R. 7581). Our Bill was created to reclaim our role as the original stewards of our land by revising our reservation boundary line to transfer more than one thousand acres of historically Yurok land back to our Tribe. The Karuk Lands Bill and Yurok Lands Act are important legislation and promote the overall goal of tribal land restoration.

Lastly, the Biden Administration supports our overall goal of tribal land restoration. The Biden Administration, for example, promised to "provide tribes with a greater role in the care and management of public lands that are of cultural significance to Tribal Nations." Likewise, the Department of the Interior has launched the Tribal Homelands Initiative which increases opportunities for tribes to participate in federal lands management. We urge you to quickly take up and pass the Karuk Lands Bill and continue to work toward this shared goal of tribal land restoration.

Sincerely,

HON. JOSEPH L. JAMES, CHAIRMAN

FREEPORT-MCMORAN
July 22, 2022

Dear Chairman Schatz and Vice Chairwoman Murkowski,

I write to express the support of Freeport Minerals Corporation (Freeport) for S. 4104, the *Hualapai Tribe Water Rights Settlement Act of 2022* (Settlement Act). The Hualapai Tribe is one of the eleven federally recognized Indian tribes in Arizona that still have unresolved water rights claims. As a water user in Arizona, we strongly believe that resolving these claims through settlement will reduce the cost and uncertainty of hostile litigation and provide certainty to both tribal and non-tribal water users. Settlement provides the necessary funding to construct and operate water-based infrastructure to tribal members—something that litigation cannot. This Settlement Act is an excellent example of successful regional collaboration to address the Hualapai Tribe's water rights claims.

Freeport is one of the nation's leading producers of copper and other minerals. The Company is headquartered in Phoenix, Arizona, and its workforce in the U.S., as of 2021, included 24,700 direct employees and 42,000 contractors. Freeport's copper and molybdenum mining complex in Bagdad, Arizona, is located approximately 60 miles west of Prescott, Arizona and is 100 miles northwest of Phoenix, in Yavapai County. The open pit mine has been operating since 1945, encompassing approximately 49,800 acres. Production at the Bagdad mine in 2021 totaled 184 million pounds of copper and 9 million pounds of molybdenum. The direct and indirect economic contribution of the mine to Arizona's economy totaled \$282.7 million in 2020.

Although the Bagdad operation has sufficient water sources to support current operations, Bagdad faces increasing competition for water and variability in supply availability due to the on-going drought and climate change. Current water supplies for the Bagdad Mine include access to groundwater and surface water resources in the Big Sandy River Groundwater Basin and the Big Sandy River in the Bill Williams River Watershed. The need to protect and ensure long-term sustainable water supplies for our Bagdad mine, as well as those of our neighbors in the watershed, is the reason for Freeport's involvement in these water rights settlements. We all share this resource and Freeport strongly believes that our neighboring communities, like the Hualapai Tribe, should have equitable access to reliable water supplies for their own future.

Freeport has a unique and exceptionally cooperative relationship with the Tribe and greatly treasures its relationship with the Hualapai people. This relationship has developed through years of positive and collaborative settlement discussions and has resulted in Freeport providing the following contributions to the Hualapai Tribe:

- Assistance with the construction of a hunting bunkhouse for Hualapai Game and Fish (significant source of tribal revenue)
- Emergency Operations Center for COVID response
- Microgrid solar power project
- Playground in Peach Springs
- Juvenile Detention center gardening project
- Tai Kwon Do camps
- Blanket-making classes coordinated by the Cultural Resource Department
- Rope rescue training for the Emergency Response Team at Grand Canyon West
- Cultural Monitor Training
- 2 scholarships for tuition are awarded to Hualapai college students each year

As a precursor to this Settlement Act, Freeport played a significant role in the completion of the Bill Williams River Water Rights Settlement Act (Phase I Settlement). As a part of the Phase 1 Settlement Freeport contributed \$1,000,000 to the Tribe to assist in the development of professional studies evaluating alternatives for Colorado River water delivery. Freeport also contributed to an Economic Development Trust that enables the Tribe to seek the purchase of lands and additional water rights along the Colorado River in Arizona. Finally, Freeport donated a portion of the Planet Ranch lands and water rights to the Arizona Game and Fish Department for lease to the U.S. Bureau of Reclamation. This contribution provides a long-term benefit to the Lower Colorado River Multi-Species Conservation Program.

Freeport is grateful for Senators Kirsten Sinema and Mark Kelly's support and assistance in introducing this long-awaited and critical piece of legislation. Freeport looks forward to our continued relationship with the Hualapai Tribe ensuring they, like many others, have access to reliable and secure water supplies. Freeport urges you to positively advance S. 4104.

Sincerely,

SANDY FABRITZ, DIRECTOR, WATER STRATEGY

AMERICAN WHITEWATER
July 19, 2022

Dear Chairman Schatz and Vice Chairwoman Murkowski,

On behalf of the whitewater paddling community, American Whitewater writes to express our appreciation for holding a hearing on the Katimiin and Ameekyaaraam Sacred Lands Act (S. 4439). This legislation would take certain Federal land located in Siskiyou County, California, and Humboldt County, California, into trust for the benefit of the Karuk Tribe. The Katimiin and Ameekyaaraam land is located in the aboriginal territory of the Karuk Tribe and represents the center of the Karuk universe at the confluence of the Salmon River with the Klamath River. Restoring these unceded lands to the stewardship of the Karuk Tribe is a long overdue moral imperative.

About American Whitewater

American Whitewater is a national non-profit 501(c)(3) river conservation organization founded in 1954 with approximately 50,000 supporters, 6,500 dues-paying members, and 100 local-based affiliate clubs, representing whitewater enthusiasts across the nation. American Whitewater's mission is to protect and restore America's whitewater rivers and to enhance opportunities to enjoy them safely. The organization is the primary advocate for the preservation and protection of whitewater rivers throughout the United States, and connects the interests of human-powered recreational river users with ecological and science-based data to achieve the goals within its mission. Our vision is that our nation's remaining wild and free-flowing rivers stay that way, our developed rivers are restored to function and flourish, that the public has access to rivers for recreation, and that river enthusiasts are active and effective river advocates. Our members live, work, and recreate in the Klamath River watershed and within the lands and waters included in this bill.

Support for S. 4439—Katimiin and Ameekyaaraam Sacred Lands Act American Whitewater strongly supports the Katimiin and Ameekyaaraam Sacred Lands Act (S. 4439), introduced by Senator Padilla and co-sponsored by Senator Feinstein. This legislation would transfer administrative jurisdiction of the Katimiin and Ameekyaaraam land, representing 1,031 acres, from the Secretary of Agriculture to the Secretary of Interior to be held in trust for the benefit of the Karuk Tribe to be used for traditional and customary uses. This would re-establish the Karuk Tribe as the stewards of these lands for Tribal ceremonies, education, and cultural uses and will ensure that Tribal ceremonies can be conducted without interruption or interference.

The legislation includes a condition that the Chief of the Forest Service shall continue to manage the component of the National Wild and Scenic Rivers System that flows through the Katimiin and Ameekyaaraam lands and allow continued access by the Forest Service for the purpose of managing the Klamath and Salmon Wild and Scenic Rivers. The legislation also includes a provision for the Secretary of Agriculture to enter into a memorandum of understanding with the Karuk Tribe, to establish mutual goals for the protection and enhancement of the river values of the Wild and Scenic Klamath and Salmon Rivers.

The whitewater boating community enjoys recreational opportunities on both rivers that flow through lands included in this legislation. The Salmon River from Brannons Bar to the confluence with the Klamath River is known to boaters as the Lower Salmon,¹ and the run on the Klamath River from this point down to Dolans Bar near Orleans, California is known to boaters as the Ikes Run.² We understand and respect that when we pass through these sacred lands we come as visitors to a place of deep spiritual and cultural significance to the Karuk people and that the

¹ Salmon River, Brannons Bar to Klamath River, American Whitewater National Whitewater Inventory, <https://www.americanwhitewater.org/content/River/view/river-detail/11392/main>.

² Klamath River, Ishi Pishi Bridge to Dolans Bar (Ike's Run), American Whitewater National Whitewater Inventory, <https://www.americanwhitewater.org/content/River/view/river-detail/235/main>.

World Renewal Ceremonies that they hold here are central to their culture and identity. We have an interest in further educating our community on the importance of these sacred lands and support the Karuk Tribe in their efforts to ensure ceremonies can be conducted without interruption or interference. We welcome any opportunity to work directly with the Karuk Tribe to develop appropriate education and outreach materials for our community and the general public.

Conclusion

On behalf of the whitewater paddling community, thank you again for holding this hearing and the opportunity to provide testimony on this legislation. We strongly support the Katimiin and Ameekyaaraam Sacred Lands Act (S.4439). We urge you to move this bill through the Committee and to the Senate floor to re-establish the Karuk Tribe as the steward of their sacred lands.

Sincerely,

SCOTT HARDING, STEWARDSHIP ASSOCIATE
THERESA L. LOREJO-SIMSIMAN, CALIFORNIA STEWARDSHIP DIRECTOR

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO DR. PATRICK ROCK

Question 1. Can you expand on potential gaps in agency outreach and services for the Indian Health Board of Minneapolis resulting from the lack of a comprehensive HHS urban confer policy?

Answer. The lack of an HHS urban confer policy was incredibly disruptive in the vaccine distribution for many UIOs, and if there had been such a confer policy, we could have avoided delays.

For instance, key information regarding vaccine distribution for the initial COVID-19 vaccine rollout at the end of last year was poorly communicated to UIOs and created unnecessary hardship. HHS addressed initial communications only to Tribes and did not direct it to the UIO component of the IHS system. When HHS was asked about whether UIOs needed to similarly decide between an IHS or state vaccine allocation, it was unclear for weeks as to whether they were expected to make such a decision. Eventually, HHS asked UIOs to decide between receiving their vaccine distribution from either their state jurisdiction or IHS the same day as the initial deadline (which thankfully HHS subsequently extended for several days). Some UIOs were informed of the deadline by their Area office with no formal national communication. As a result, many of our clinics experienced delays in vaccine rollout. Had this critical request and deadline been communicated directly with UIOs in a timely manner, UIOs would not have been forced to rush their jurisdiction selection. This flawed process could have been avoided with an urban confer policy.

Another great example might be HRSA, which operates many programs that dictate our ability to provide direct care to Natives in urban areas. Right now, there is a HRSA/IHS workgroup and we appreciate the Indian Health Service for involving themselves in that, but it still doesn't provide for our direct communication with HRSA and we cannot represent the day-to-day operational issues that UIOs face. We cannot do that when we are passing through a non-operative office like IHS.

With more clear and direct communication, my UIO and all other UIOs would be aware of important healthcare policies affecting urban Indian communities, allowing us to better serve our urban Indian patients.

Question 2. How has IHS's urban confer policy helped address your organization's needs?

Answer. The IHS urban confer policy is an established dialogue to address the care needs of our Native patients. It has addressed our UIOs needs, as well as many other UIOs needs, in integral ways. For instance, IHS held an urban confer on the President's Executive Order on Missing and Murdered Indigenous People to get UIO input on this crisis affecting our community. Urban confer allowed for IHS to work with us to discuss prevention efforts that reduce risk factors for the victimization of Native Americans. However, it is the responsibility of HHS as a whole, not just IHS, to work with urban Native communities to reduce violent crime and address the MMIP epidemic.

Ultimately, IHS's urban confer policy has helped UIOs like mine have an influential voice in how to best address the most critical issues facing Indian Country. This has allowed us to provide better care and health services and has empowered us to start combatting the most pressing health issues facing our Native clients.

Question 3. What role would establishing an HHS urban confer policy play in honoring the federal trust responsibility?

Answer. Establishing a formal urban confer process with HHS, and the agencies it operates, is critical in honoring the federal government's trust responsibility to provide health care for all American Indian and Alaska Native people. This urban confer process will ensure effective communication with UIOs on health policies that impact them and their Native patients living in urban areas. Currently, the lack of urban confer has enabled HHS agencies outside of IHS to disregard the needs of urban Indians, which has prevented Native patients from receiving critical health services. We must move past the notion that only IHS has a trust obligation to American Indians and Alaska Natives, and as such, establishing this formal urban confer process is integral to furthering the trust obligation of the federal government to provide healthcare to all Native Americans by ensuring clear and direct communication with urban Indian organizations.

It must also be noted that Urban confer policies do not supplant or otherwise impact Tribal consultation and the government-to-government relationship between Tribes and federal agencies.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. RUSSELL ATTEBERY

Question 1. What challenges has the Karuk Tribe faced in light of having limited trust lands?

Answer. First and foremost; land forms the basis for social, cultural, religious, political, and economical life for tribes.¹ The Karuk Tribe's Ancestral Territory is just over 1 million acres. This area holds the history of our people since time began and has supported our needs and culture through a continuous and uninterrupted stewardship of the land. The Tribe's Aboriginal Territory consists of north east Humboldt County, much of Siskiyou County and portions of Southern Oregon. This Aboriginal Territory includes our areas of influence, service areas and large populations of Karuk people we serve. In 1905 President Theodore Roosevelt declared much of our Ancestral Territory the Klamath Forest Reserve,² later becoming the Klamath and Six Rivers National Forests. Though establishment of these reserves did not expressly extinguish any reserved, inherent or retained right or title, the Karuk Tribe has purchased and deeded back approximately 950 acres to the United States to be held in trust. However, this strategy of purchasing land and deeding it back to the U.S. is not sustainable due to limited tribal funds and the lack of private property within our aboriginal territory. With the majority of our lands, including ceremonial areas, in areas that have multiple jurisdictions, management conflicts are constant. Lacking such an essential cornerstone to a tribe's wellbeing perpetuates the negative effects of prior attempts to erase our culture and our people's way of life. The deficit in trust land creates barriers in getting crucial projects completed. When pursuing projects on our trust lands we follow our own Tribal codes thus avoiding over-complicated and sometimes unnecessary additional government restrictions (i.e. State and local requirements).

California is a P.L. 280 state which creates concurrent jurisdictions that further complicate federal and state obligations. On Karuk Lands, where we exercise jurisdiction as outlined in our Constitution, the Tribe can increase our capacity to self-govern when those jurisdictional responsibilities come with financial resources. The Tribe's compacted dollars have been woefully inadequate since we began to receive them. An increase to our compacted funds would allow the Tribe the ability to increase our capacity to meet our management needs.

Question 2. Why is it important for the Karuk Tribe to have management authority over places that help support cultural education and language revitalization?

Answer. The Karuk Tribe has steadily increased our management authority over our tribal lands with the vision of restoring their natural state and preserving our cultural and ceremonial traditions. Our ceremonies are vital to keeping our world in balance, they are conducted the same way every year since time began: we have an inherent right and responsibility to continue these same ceremonies, practices, rites and prayers to ensure our survival as Karuk People. If the Tribe has management authority over the land we utilize for ceremony we are able to conduct outreach for temporary exclusion zones, perform much needed maintenance and restorative activities and increase the safety and solitude needed for our ceremonial participants. Our language is fundamental to the inter-generational learning needed to

¹ COHEN'S HANDBOOK OF FEDERAL INDIAN LAW §§ 15.01–15.02 at 994 (2012)

² Presidential Proclamation 544—Establishment of the Klamath Forest Reserve, California (1905)

ensure future generation of Karuk people know and understand Karuk culture and customs.

Question 3. As part of S. 4439, the Forest Service will have continued access to certain relevant sections of the Wild and Scenic Rivers System. Why is this continued partnership with the Forest Service important and has the agency's expressed any administrative concerns regarding the proposed arrangement?

Answer. The Karuk Tribe's partnership with the Forest Service has been necessary and important due to the intersections between land management, access and capacity building. The Wild and Scenic Rivers System designation has objectives and goals that present a challenge for the Karuk Tribe to support, both monetarily and within the framework of our ceremonies. With a future congressional appropriation, the Karuk Tribe could possibly administer this Wild & Scenic portion of the Klamath River. Because our ceremonies require long periods of solitude, the recreational components of this designation are in conflict with our traditional ways. The Forest Service has not expressed any administrative concerns.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
HON. DAMON CLARKE

Question 1. At the hearing, you testified to the complexities and precariousness of water delivery on your reservation. Can you speak more about the economic impacts that water scarcity and insecurity have on the citizens of the Hualapai Tribe? Can you also further describe the type of resources your Tribe has to expend in order to provide water to your community and how S. 4104 addresses those issues?

Answer. The Hualapai Tribe has suffered for years from a lack of adequate water on the Reservation. We currently rely entirely on groundwater in the Truxton Aquifer in the southern part of the Reservation as our only source of water. As I stated in my testimony, that Aquifer is served by three wells that are 47 years old, and that have been prone to malfunctions and E-coli contamination.

These wells are the only source of water for our main residential community at Peach Springs. When a well is out of operation for mechanical reasons or because of contamination, the drop in the water that we can supply to the community puts enormous strain on the ability of our members to live in their homes. Because of lack of water, we have been limited in the number of new homes we can construct in Peach Springs. Residents of the Peach Springs community have been unable to maintain gardens for their personal use and enjoyment. Lack of water is especially acute in three subdivisions of Peach Springs—the Milkweed, Music Mountain and Wi Tham Bo'—where new homes cannot be constructed because there is no reliable water source.

Further, our dependence on the Truxton Aquifer provides no long-term security to the Tribe. The Aquifer extends off the Reservation and is therefore subject to uncontrollable pumping by landowners in Mohave County and to the potential for accelerated depletion.

The Tribe has suffered economically from lack of water on the Reservation in a number of ways. Our major economic activity is the Tribe's tourist attraction at Grand Canyon West, on the rim of the Grand Canyon in the northwestern part of the Reservation. This is the main engine of the Tribe's economy, generating jobs for Tribal members (as well as for non-Indians living off the Reservation). The Tribe attracts more than a million visitors to Grand Canyon West, many from nearby Las Vegas. At Grand Canyon West, visitors enjoy the magnificent vistas of the Grand Canyon as well as presentations about the Tribe's history and culture. These visitors contribute to the Tribe's economy by paying an admissions fee and spending money in our gift shops and at our restaurants.

For many years, Grand Canyon West was served by two distant groundwater wells at Westwater, about 35 miles away. But because of the drought, those wells both ran dry four years ago and have stopped producing. We have been forced to pump water from the Truxton Aquifer and then haul it by truck more than 15 miles to the Westwater wells, from where the water is pumped to Grand Canyon West. This is an expensive, insecure and burdensome process, costing the Tribe over \$350,000 in labor and equipment costs this year. It further depletes the Truxton Aquifer. And because we cannot haul the quantity of water sufficient to serve our needs at Grand Canyon West, we have been forced to curtail activities there, closing restaurants and tourist attractions, and thereby losing the revenues we would otherwise receive.

The lack of water impacts our members in another way. Grand Canyon West is located a two-hour drive on a gravel road from Peach Springs, where virtually all tribal members on the Reservation live. Thus, tribal employees at Grand Canyon

West have daily round-trip commutes of four hours a day to their jobs at Grand Canyon West, and longer in inclement weather. Our members need the ability to live closer to their jobs. But it is impossible to locate a residential community at Grand Canyon West because of the lack of water there. This imposes an unsustainable burden on tribal members and their families.

S. 4104 addresses these problems in multiple ways. First, and most importantly, it provides the Tribe with a quantified right to water from the Colorado River, which forms the northern boundary of the Reservation. The legislation also provides funding for the Tribe to develop the infrastructure necessary to deliver water from the Colorado River to Peach Springs and to Grand Canyon West. This will allow the Tribe to provide water from the Colorado River both to our members in Peach Springs and also to our tourist development at Grand Canyon West. And finally, although the Tribe will no longer be solely dependent on the Truxton Aquifer for our water supply, the settlement legislation also provides protections against off-Reservation pumping from the Aquifer at a rate that could threaten the Aquifer. This too will enhance the Tribe's long term water security.

Question 2. You testified there is federal, state, and county support for S. 4104. Can you elaborate on ways in which this settlement agreement will impact Arizona and its residents?

Answer. Our water rights settlement will bring enormous benefits not only to the Hualapai Tribe but also to Mohave County and all of northwestern Arizona. That is why our settlement is strongly supported by Mohave County as well as by Governor Ducey.

We believe that Grand Canyon West has great potential for growth as a regional tourist attraction, but it cannot take advantage of this potential because of the severe lack of water that is needed to serve visitors there.

As I noted in my testimony, the Tribe commissioned a study by Professor Joseph P. Kalt of the Kennedy School of Government at Harvard University to analyze the economic impact that enactment of the Tribe's water rights legislation would have on the regional economy of northwestern Arizona and southern Nevada, as well as on the economy of the State of Arizona and the Nation as a whole.

Professor Kalt testified to this Committee in December 2017 during the 115th Congress, at a hearing on S. 1770, an earlier version of S. 4104. In his report, which was attached to his written testimony, Professor Kalt stated that there was strong evidence that the Grand Canyon West, if supported by adequate infrastructure, is capable of attracting a growing number of visitors in the coming years, thus generating further economic development. His report estimated that the economic development of Grand Canyon West that would be triggered by the water and infrastructure authorized by this legislation would support an average of more than 6,500 jobs per year in Arizona, and close to 1,000 jobs per year in southern Nevada. For the Nation as a whole, the project would support an average of more than 10,000 jobs per year, nearly \$1.5 billion in federal tax revenues in then-present value, and a then-present value of more than \$9.3 billion in gross domestic product (GDP) for the United States.

As Governor Ducey also notes in his letter of support in this hearing record, providing the Tribe with access to Colorado River water would also diminish the Tribe's reliance on groundwater, consistent with the State's overall policy of preserving groundwater supplies.

Question 3. Can you elaborate on how the legislation's proposed trust lands may contribute to your Tribe's ability to access water and develop water infrastructure?

Answer. The legislation will take into trust the Cholla Canyon Ranch parcels of fee lands owned by the Tribe in the Bill Williams Basin. The Tribe currently has a small parcel of Reservation land in that Basin as well as a number of parcels of trust land allotted to tribal members. The Cholla Canyon parcels, which are within the Tribe's aboriginal homeland, are of great cultural significance to the Tribe since these parcels contain Cofer Hot Springs, an area of particular cultural importance. The flow of the Springs is currently threatened by development of lithium mining on nearby BLM lands. It is our hope that having the Cofer Hot Springs taken into trust will enhance the Tribe's ability to protect this sacred site.

The Cholla Canyon Ranch also presents an opportunity for additional economic development for the Tribe. The Ranch is located near a major traffic route between Las Vegas and Phoenix. Although the Tribe has no specific plans yet for economic development of this land, having the land taken into trust preserves the potential for doing so in the future.

Otherwise, the legislation confers Reservation status on a number of parcels of land near the main Reservation which are currently held in trust for the Tribe.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
BENJAMIN SMITH

Question 1. You testified that there is no formal barrier preventing the Department of Health and Human Services (HHS) from developing an official consultation or confer policy that applies to Native Hawaiians. How does HHS currently engage the Native Hawaiian community to ensure fulfilment of the federal government's trust responsibility, which includes providing health care to Native Hawaiians?

Answer. HHS authorities for Native Hawaiians include a number of programs implemented by the Health Resources and Services Administration (HRSA), the Administration for Children and Families (ACF), and the Administration for Community Living (ACL) that benefit Native Hawaiians. The Native Hawaiian Health Care Systems Program (NHHCS) is authorized by the Native Hawaiian Health Care Improvement Act (NHHCIA) (42 U.S.C. §§ 11701–11714). HRSA awards funding under this Congressional Special Initiative to improve the provision of comprehensive disease prevention, health promotion, and primary health care services to Native Hawaiians.

Question 1a. What are the next steps for HHS to develop an official consultation or confer policy for Native Hawaiians?

Answer. HHS is committed to enhancing the health and well-being of all Americans, and we will work with the Department of Interior's Office of Native Hawaiian Relations to provide consultation where possible. HHS's subject matter experts are available to provide advice and guidance in support of care delivery, health education, and disease prevention to improve health among the people of Hawaii.

Executive Order 13175, which establishes the mandate for Federal government consultation with federally-recognized Indian tribal governments, does not include Native Hawaiians. HHS agencies consult with Native Hawaiians pursuant to their authorizing legislation. For example, the NHHCIA requires consultation with Papa Ola Lokahi for grants or contracts to provide health care services to Native Hawaiians. HHS subject matter experts are available to provide technical assistance.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TINA SMITH TO
BENJAMIN SMITH

Question 1. The Congressional intent of 100 percent FMAP for urban Indian organizations was to address a longstanding inequity within the Indian healthcare system and to provide an opportunity to increase financial resources to UIOs during the COVID–19 pandemic. Can you elaborate on the FMAP implementation status and what roadblocks HHS is facing due to a lack of urban confer policy?

Answer. Under section 9815 of the American Rescue Plan Act of 2021 (Pub. L. 117–2) (ARP), states can temporarily receive a 100 percent federal match for their expenditures for Medicaid services received through certain Urban Indian Organizations (UIOs). The Centers for Medicare & Medicaid Services (CMS) implements this provision and explained in an August 30, 2021 State Health Official letter (#21–004) (SHO letter) that ARP section 9815 addresses the federal medical assistance percentage (FMAP) that CMS pays to states for certain Medicaid expenditures, and does not address the payment rates that states opt to pay to UIOs for Medicaid-covered services. States have the discretion to set and adjust Medicaid provider payment rates, as long as the state payment rates meet certain requirements under the Social Security Act. In the SHO letter, CMS offered to provide technical assistance to states that believe adjusting their reimbursement rates for UIOs is appropriate.

In that SHO letter, CMS also explained that it interpreted the amendments made by section 9815 of the ARP to authorize 100 percent FMAP for expenditures for services received by all Medicaid beneficiaries receiving services through such UIOs. Currently, the statutory language limits the 100 percent FMAP available under ARP section 9815 to the eight fiscal quarters beginning April 1, 2021, and ending March 31, 2023, with states able to claim federal matching funds retroactively, so long as they submit their claims for federal matching funds within a statutory two-year limit.

The Department of Health and Human Services (HHS) has the authority to calculate IHS All-Inclusive Rates (AIR), which are reviewed and approved by OMB prior to being published in the Federal Register. These rates are used by IHS when seeking reimbursement for services, including services covered by Medicare and Medicaid. HHS, including IHS, generally does not have the authority to require that states adopt specific Medicaid provider payment rates for UIOs. States have adopted the IHS AIR as their payment rates for certain provider types.

HHS continues to have internal discussions regarding the possible calculation of a UIO-Specific AIR through Urban Confer. To date, confer sessions occurred on July 26, 2021, and June 10, 2022, to discuss whether and how a UIO-Specific AIR might be developed.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
JASON FREIHAGE

Question 1. From the Department's perspective, how have co-management MOUs and MOAs between Tribal governments and federal agencies facilitated mutually beneficial stewardship practices over sacred sites?

Answer. Sites sacred to Indian Tribes often occur within a larger landform or are connected through physical features or ceremonies to other sites or a larger sacred landscape. The connection to place is essential to the spiritual practice and existence of Indian Tribes. MOUs and MOAs represent one of the Department's most successful tools to facilitate collaborative and cooperative stewardship for sacred sites.

For example, the Rappahannock Tribe re-acquired 465 acres at Fones Cliffs, a sacred site to the Rappahannock Tribe located on the eastern side of the Rappahannock River in Virginia. The Rappahannock Tribe will own the land, however, it will be publicly accessible and held with a permanent conservation easement conveyed to U.S. Fish and Wildlife Service. This collaborative stewardship arrangement ensures that the Rappahannock Tribe owns its ancestral homeland containing a Tribal sacred site while allowing the Department to conserve a globally significant Important Bird Area.

In keeping with Executive Order 13007 (Indian Sacred Sites), the Department, to the greatest extent practicable, accommodates access to and ceremonial use of Indian sacred sites by Indian religious practitioners from Indian Tribes and avoids adversely affecting the physical and spiritual integrity of such sacred sites. During consultation with the Department, Indian Tribes may identify sacred sites and may also identify preferred treatments of such places. Costewardship MOUs and MOAs alert planners and resource managers to the potential presence of sensitive areas and are kept confidential to the extent permitted by law.

Question 2. Have Tribal co-management agreements contributed to building Tribal capacity for cultural education opportunities, language revitalization, and land management across the Department? If so, how?

Answer. Co-stewardship MOUs and MOAs actively contribute to building Tribal capacity for cultural education, language revitalization, and land management. Multiple Tribes have arrangements in place with the Department to implement or provide cultural interpretation and/or educational programming at Departmental units located on or near Tribal homelands across multiple land management bureaus. For example, an Alaska Native group has an agreement in place to offer seasonal interpretive programming. Many Indian Tribes in the lower 48 states have similar MOUs or MOAs in place. Several Tribes also have arrangements that support language revitalization, including a Montana Tribe with an agreement in place with the Department for creation of trilingual entrance signs for units including indigenous names/language and land ownership and designation information on signs.

Multiple Tribes have agreements in place to coordinate and cooperatively manage Federal and Tribal lands and waters. A Tribe in the Pacific Northwest has received transfer and conducts full management of a federal fishery under a co-stewardship agreement. These are broad examples, and the Department is proud of the benefits to Tribal capacity for cultural education, language revitalization, and land management that result from co-stewardship MOUs and MOAs.

Question 3. From the Department's perspective, what are some barriers to facilitating efficient and effective co-management policies between Indian Tribes and the federal government?

Answer. Collaborative and cooperative co-stewardship agreements have been a component of the Department's engagement with Indian Tribes for many years. Following Joint Secretarial Order 3403 in November 2021, the Department is evaluating future policies and practices to streamline co-stewardship MOUs and MOAs. These may include, for example, broader sharing of data with Indian Tribes about co-stewardship requests and disposition of those requests, clearer information about points of contact regarding co-stewardship MOUs and MOAs, and a uniform interpretation of the Indian Self-Determination and Education Assistance Act's (ISDEAA) "programs, services, functions, and activities" for use by BIA and all non-BIA bureaus in determining eligible activities for self-governance co-stewardship activities. Specifically, broadening the use of ISDEAA 638 contracting and self-govern-

ance compacts by land management agencies would facilitate cooperation with Tribes necessary to advance costewardship.

One example of a barrier to co-stewardship is need for a Tribal land base to make use of the Good Neighbor Authority with Federal land management agencies. Many Tribes have very limited acreage or no land holdings which can be managed in ways that are complementary to Federal land holdings, as appropriate through existing Good Neighbor Authority agreements. To address this challenge, the President's Budget proposes \$14.8 million for Tribal land acquisition. Accompanying this budget request, is a request to increase the annual statutory cap on land acquisition funding from \$2 million to \$10 million. The cap on land acquisition dates back to the original language enacted in the 1934 Indian Reorganization Act. In today's dollars, \$2 million in 1934 would equal over \$40 million now. Lifting this cap is necessary for additional appropriations to be provided to advance self-determination and collaborative and cooperative stewardship. Additional funding to support increased land acquisition would eliminate one barrier to co-stewardship. Expanding the reach of Good Neighbor Authority for Indian Tribes would eliminate another barrier to costewardship for Indian Tribes.

Question 4. How can co-management policies and practices be integrated into the Department's efforts to facilitate Tribal climate resilience, adaptation, and mitigation?

Answer. The Department has already integrated collaborative and cooperative stewardship agreements into our operations to facilitate Tribal climate resilience, adaptation, and mitigation efforts. For example, the Department uses prescribed burning for vegetation management and to restore cultural landscapes. In 2017, a land management unit collaborated with Great Lakes Indian Fish and Wildlife Commission member Tribes to conduct the first cultural burn in many generations. The Department looks forward to more collaboration with Indian Tribes to further facilitate Tribal climate resilience, adaptation, and mitigation through co-stewardship agreements.

