

**S. 2788, H.R. 2606, AND H.R. 4032**

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

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NOVEMBER 14, 2018

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## **S. 2788, H.R. 2606, AND H.R. 4032**

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**WEDNESDAY, NOVEMBER 14, 2018**

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

The Committee met, pursuant to notice, at 3:37 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

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

The CHAIRMAN. Good afternoon. I call this oversight hearing to order.

Today, the Committee will receive testimony on three bills: S. 2788, a bill to repeal the act, entitled An Act to Confer Jurisdiction on the State of North Dakota Over Offenses Committed by or Against Indians on the Devils Lake Indian Reservation; H.R. 2606, the Stigler Act Amendments of 2018; and H.R. 4032, Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act.

On April 26th, 2018, Senator Heitkamp introduced S. 2788. If enacted, the bill would repeal a 1946 Federal statute that authorized the State of North Dakota to prosecute crimes committed on the Spirit Lake Indian Reservation. Since then, the Spirit Lake Nation has established its own tribal court, criminal code, and law enforcement and public safety system. The repeal of this 1946 law would recognize the tribe's right as a sovereign Nation to prosecute authorized crimes occurring on the reservation.

On May 23rd, 2017, Representative Cole, along with Representatives Lucas, Mullen and Russell, introduced H.R. 2606, the Stigler Act amendments of 2018. The Stigler Act of 1946 deals with the allotted lands of the Choctaw, Chickasaw, Muscogee Creek, Cherokee and Seminole tribal members in Oklahoma.

This bill, H.R. 2606, amends the Stigler Act of 1947 by removing the one-half degree blood quantum requirement needed to retain the restricted status of inherited, allotted tribal member lands.

It strikes me that those two bills show the incredible diversity we have in Indian Country, right? People think of it as kind of monolithic out there, and it is so incredibly diverse in so many ways. People just don't realize. It is amazing.

On October 4th, 2017, the House Natural Resources Committee on Indian, Insular and Alaska Native Affairs held a legislative hearing on the bill. On August 21st, 2018, the bill was favorably

reported by the full House Natural Resources Committee. On September 12th, 2018, the bill passed the House by a voice vote.

The third bill before the Committee is H.R. 4032, the Gila River Indian Community Federal Rights-of-Way Easements and Boundary Clarification Act. H.R. 4032 was introduced by Representative Tom O'Halleran on October 12th, 2017.

The purpose of the legislation is to confirm undocumented Federal rights-of-way or easements on the Gila River Indian Reservation, clarify the northern boundary of the tribe's reservation, and to take certain land located in Maricopa County and Pinal County, Arizona into trust for the benefit of the tribe.

On February 6th, 2018, the House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs held a legislative hearing on the bill. On July 13th, 2018, the bill was reported favorably by the full House Natural Resources Committee. On July 17th, 2018, the bill passed the House under suspension of the rules by voice vote. Before I turn to Vice Chairman Udall for any opening statement, I would like to welcome Vice Chairman Doug Yankton, from the Spirit Lake Nation in my home State of North Dakota. Welcome. I want to thank you for traveling here today to be with us.

With that, I will turn to Vice Chairman Udall.

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

Senator UDALL. Thank you, Chairman Hoeven, for calling today's legislative hearing.

I would like to acknowledge a constituent of mine in attendance. Gregory Ballinger is a senior at the Institute of American Indian Art in Santa Fe. Greg is Dine, from Gallup, New Mexico. Welcome, Greg. Good to have you here today.

The three bills before us would impact tribes in North Dakota, Arizona and Oklahoma. The bills correct historic wrongs related to lands and jurisdiction of these tribes and work toward fulfilling the United States' trust responsibility.

Senator Heitkamp's bill, S. 2788, would repeal a 1946 law that conferred concurrent criminal jurisdiction on the State of North Dakota and the Spirit Lake Tribe over on-reservation misdemeanor crimes. The statute, which is still on the books, is similar to other laws passed in the 1940s that this Committee has worked to repeal.

In the decades since concurrent tribal-State jurisdiction was conferred, the Spirit Lake Tribe has built up its tribal courts, established its own law enforcement capability and enacted its own comprehensive criminal code. I hope we can work with Spirit Lake and the State to address the issues raised by this antiquated law.

The second bill up for discussion today is the Stigler Act Amendments of 2018. Congress passed the Stigler Act in 1947. The law put inheritance limitations, based on blood quantum, on restricted status lands held by members of the Five Civilized Tribes of Oklahoma. H.R. 2606 would remove this requirement and allow any enrolled heirs to inherit the land and maintain its restricted status.

Lastly, H.R. 4032 would require the Department of the Interior to take approximately 3,400 acres of land into trust for the benefit

of the Gila River Indian Community and clarify the tribe's northern boundary and rights-of-way.

When the Gila River Indian Community was established in 1859, the Federal Government failed to survey its northern boundaries in a timely manner. Encroachment from settlers resulted in the tribe losing portions of its lands illegally. Almost 150 years later, the Gila River Indian Community sought resolution in the court, and ultimately, the Department of the Interior agreed to a settlement.

As part of the settlement agreement, the tribe waived its claims related to the boundary dispute in exchange for monetary damages and for the return of ancestral lands identified by the Bureau of Land Management for disposal. This legislation helps fulfill the terms of the settlement.

With these bills, Congress has the opportunity to correct historic wrongs, make clarifying changes, and ensure that the United States is holding up its side of the government-to-government relationship with the Gila River Indian Community, the Spirit Lake Nation and the Five Civilized Tribes of Oklahoma.

Thank you again, Mr. Chairman, for calling this hearing. I look forward to today's testimony.

The CHAIRMAN. Thank you, Vice Chairman.  
Senator Heitkamp.

**STATEMENT OF HON. HEIDI HEITKAMP,  
U.S. SENATOR FROM NORTH DAKOTA**

Senator HEITKAMP. Thank you, Mr. Chairman.

Very briefly, first, I want to welcome the Vice Chairman, Doug Yankton, from the Spirit Lake Nation. He is here to testify on this bill.

I want to remind this Committee that the primary responsibility of any sovereign is to provide for the safety of its people. Spirit Lake has been denied that opportunity for far too long. This bill would right that wrong.

I think it is important to note that the State, which has jurisdiction, has rarely used this authority and it only adds to the complex jurisdictional challenges that arise when trying to prosecute crimes occurring on the reservation. Repeal of this outdated law would prevent concurrent misdemeanor jurisdiction and would help protect and really, include an expansion of that tribal sovereignty that is also important.

No other reservation in North Dakota faces this bureaucratic challenge. The time has long passed since we have taken up this issue. I hope this Committee can move quickly on this bill.

As we heard with Savanna's Act, although we are talking about heinous crimes of murder, we know that every day, misdemeanor crimes occur on the reservation. Without the ability to have enforcement action, women, children, other tribal members continue to live in a state of unsafe conditions.

As a sovereign, I know both my Chairwoman, Myra Pearson, and Doug have worked very, very hard to provide for their people. But that has to include providing that security and that safety. That is a sovereign's responsibility. I know they take that responsibility very seriously.

I want to personally again welcome the Honorable Doug Yankton, Sr., for the work that he does and for the effort he has put into bringing this to our attention so that we might consider correcting this wrong.

Thank you, Mr. Chairman.

The CHAIRMAN. Other opening statements before I turn to you for the purpose of an introduction? Okay, then I will turn to Senator Lankford.

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

Senator LANKFORD. Mr. Chairman, I want to introduce a friend who is here today, the Principal Chief of the Muscogee Creek Nation, Principal Chief Floyd. We are honored that you are here. Thank you for coming and making time to be able to come and talk about the Stigler Act, in particular. As the chief executive of one of the largest tribes in the Nation, you have a very busy schedule as well.

Many people in this room may not know that you have served the Muscogee Creek Nation, but have also served the Nation of the United States for a long time as the former Director of the VA in eastern Oklahoma. You have been a valuable asset to the Nation for a long time. We are honored that you would spend time here to talk about the Stigler Act and be able to articulate some of the issues. Thank you for being here.

The CHAIRMAN. Also, I want to welcome Darryl LaCounte, Acting Director, Bureau of Indian Affairs, U.S. Department of the Interior, Washington, D.C. Chief Floyd, thank you for being here, also Vice Chairman Yankton. They should have named a North Dakota town after you, though, not a South Dakota town. Again, thank you for being here.

I would also welcome the Honorable Barney Enos, Jr., Councilman, Gila River Indian Community, Sacaton, Arizona. Thank you for being here as well.

With that, we will start with Mr. LaCounte.

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

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

I am Darryl LaCounte, the Acting Director for the Bureau of Indian Affairs in the Department of the Interior. My permanent role is Regional Director for the Bureau of Indian Affairs in the Rocky Mountain Region in Montana.

Thank you for the opportunity to present the department's views on three bills today: S. 2788, to repeal the Act entitled An Act to Confer Jurisdiction on the State of North Dakota Over Offenses Committed By or Against Indians on the Devils Lake Indian Reservation; H.R. 2606 to amend the Act of August 4, 1947, commonly known as the Stigler Act with respect to restrictions applicable to Indians of the Five Civilized Tribes of Oklahoma; and H.R. 4032, the Gila River Indian Community Federal Rights-of-Way Easements and Boundaries Clarification Act.



Improving public safety in Indian Country is a bipartisan priority. In the past, Congress has enacted legislation that allowed States to have criminal jurisdiction within Indian Country. As a result of this legislation, States were allowed to exercise criminal jurisdiction over tribal members on the reservation, removing the exclusive rights of tribes not to have State law enforced on their tribal citizens on the reservation.

S. 2788 reflects the modern Federal Indian policies of self-determination and self-governance. S. 2788 clarifies a muddled and complex jurisdictional scheme. The Spirit Lake Tribe in North Dakota currently operates its own tribal court. The Bureau of Indian Affairs, Office of Justice Services provides direct law enforcement and detention services.

If the legislation were enacted, only the tribe or the Federal Government would have criminal jurisdiction over offenses by or against Indians on the Devils Lake Indian Reservation. As an advocate of tribal sovereignty and self-determination, the department supports S. 2788.

The lands of the Five Civilized Tribes could not be allotted under the General Allotment Act because of the tribe's fee ownership, yet tribes were eventually forced to allot their lands in severalty. The Stigler Act, as amended by the Act of August 11th, 1955, 69 Stat. 666, now governs the restricted status of the Five Tribes' allotted lands based on the Five Tribes blood quantum of the Indian landowner.

Section 1 of the Stigler Act provides that all restrictions are removed at the death of the Indian landowner, provided that heirs and devisees of one-half blood or more of the Five Civilized Tribes may not convey lands that were restricted in the hands of the person from whom they were acquired without the approval of the county, now district, court in the county where the land is located.

The effect of Section 1 is that, when a person owning restricted land passes away, only the heirs of at least one-half blood of the Five Civilized Tribes inherit their interest in a protected, restricted, status. The department is aware of no other tribes in the Country where the trust or restricted status of their allotted lands are dependent upon the degree of blood of the owner.

The Stigler Act is primarily responsible for massive loss of the Five Civilized Tribes' land base. Survey of tribal lands began in 1897 in preparation for the allotment of the Five Tribes lands. By 1916, approximately 15,794,000 acres had been allotted to members of the Five Tribes. By contrast, the Annual Acreage Report prepared by the Bureau of Indian Affairs indicates approximately 381,474 acres remained in restricted status to the members of the Five Tribes in 2012.

Though no more current acreage report is available, the Eastern Oklahoma Region is confident that thousands more acres have passed out of restricted status into fee simple status since 2012. Thus, our best estimate now is that less than 2 percent of the lands originally allotted to members of the Five Tribes remain in restricted status.

Unlike previous bills where the objective was to amend the Stigler Act, this bill has a single objective: to eliminate the blood quantum requirement. This bill would not increase the amount of

restricted land in Oklahoma, nor would it change the unique Five Tribes' system of approving conveyances, determining heirs, probating estates, partitioning lands, or quieting titles through the State district courts.

It is the view of the department that this Act would be of great benefit to the Cherokee, Choctaw, Seminole, Chickasaw, and Muscogee Creek Nations, and of greater benefit to those few of their tribal citizens who are fortunate enough to still hold lands in restricted status. Their citizens would be allowed to inherit restricted or Indian lands without regard to their blood quantum, slowing the amount of land falling out of restricted status and allowing them to retain their land base. The department supports H.R. 2606.

In December 2006, the Gila River Indian Community brought action in the United States District Court for the District of Columbia, seeking relief through "a full and complete accounting of the Community's trust property and funds." The Community's priority claim in the litigation concerned the United States' alleged obligation to confirm the legal status of all rights-of-way on the reservation. The Community specifically claimed failure to properly document these rights-of-way with grants of easements constituting a continuing breach of trust.

The parties engaged in a long, yet extremely cooperative, alternative dispute resolution process that resulted in a settlement that resolved all historical mismanagement claims. The settlement agreement was executed in June 2016 and the breach of trust suit was dismissed in March 2017.

I am running out of time so I am going to skip right to the end. The department supports the enactment of H.R. 4032. We also offer some additional background information and welcome the opportunity to work with the Committee, the sponsor and co-sponsors of H.R. 4032 on recommendations to achieve the goals of the bill.

Thank you for the opportunity to provide the department's views on these bills. This concludes my statement. I would be happy to answer any questions.

[The prepared statement of Mr. LaCounte follows:]

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

Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, my name is Darryl LaCounte and I am the Acting Director for the Bureau of Indian Affairs at the Department of the Interior. I transitioned into this role from acting as the Deputy Director—Trust Services. My permanent role is Regional Director for the Rocky Mountain Region. As a Regional Director, I am responsible for all programs, services, and costs provided to and upholding the trust with Tribes in the region.

Thank you for the opportunity to present an update on behalf of the Department regarding HR 2606.

**Five Tribes Allotments and Stigler Act Background**

The Tribes referred to in the Act of August 4, 1947, 61 Stat. 731 (the "Stigler Act"), as the Five Civilized Tribes (the Cherokee, Choctaw, Chickasaw, Creek, and Seminole Tribes of Oklahoma) were removed from their homelands in the southeastern part of the United States pursuant to treaties wherein the United States agreed to convey lands to these tribes west of the Mississippi River. By 1835, the Five Civilized Tribes occupied nearly all of present-day Oklahoma.

The lands of the Five Civilized Tribes could not be allotted under the General Allotment Act because of the Tribe's fee ownership. However, the tribes were eventu-

ally forced to agree to allot their lands in severalty. Allotment of the lands of the Five Tribes was by fee patent signed by the Chiefs or Governor of the Tribes in accordance with the individual allotment agreements.

The allotments varied greatly in size from 40 to 220 acres. Separate deeds were issued for “homestead” and “surplus” allotments, and the restrictions varied by the type of allotment, the allottee’s Tribe, and the allottee’s degree of Indian blood or lack thereof.

The Allotment Agreements between the United States and the individual tribes provided for varying periods of inalienability for the allotments. However, after allotment, Congress passed laws which restricted the alienation of some allotments and allowed others to be freely alienable. This series of mostly uncoded Acts governs restricted status of the land and funds of the Five Civilized Tribes. The Stigler Act, as amended by the Act of August 11, 1955, 69 Stat. 666, now governs the restricted status of the Five Tribes’ allotted lands based on the Five Tribes blood quantum of the Indian landowner.

Section 1 of the Stigler Act provides that all restrictions are removed at the death of the Indian landowner, provided that heirs and devisees of one-half blood or more of the Five Civilized Tribes may not convey lands that were restricted in the hands of the person from whom they were acquired without the approval of the county (now district) court in the county where the land is located.

The effect of this Section of the Act is that, when a person owning restricted land passes away, only his heirs of at least one-half blood of the Five Civilized Tribes inherit their interest in a protected “restricted” status. The Department is aware of no other Tribes in the country where the trust or restricted status of their allotted lands are dependent upon the degree of blood of the owner.

#### **H.R. 2606**

The Stigler Act is primarily responsible for the massive loss of the Five Civilized Tribes’ land base. Survey of tribal lands began in 1897 in preparation for the allotment of the Five Tribes lands. By 1916, approximately 15,794,238 acres had been allotted to members of the Five Tribes. By contrast, the Annual Acreage Report prepared by the Bureau of Indian Affairs indicates approximately 381,474 acres remained restricted to the members of the Five Tribes in 2012. Though no more current Acreage Report is available, the Eastern Oklahoma Region is confident that thousands more acres have passed out of restricted status into fee simple status since 2012. Thus, our best estimate now is that less than 2 percent of the lands originally allotted to members of the Five Tribes remain in restricted status.

Unlike previous Bills where the objective was to amend the Stigler Act, this Bill has a single objective: to eliminate the blood quantum requirement. This Bill would not increase the amount of restricted land in Oklahoma, nor would it change the unique Five Tribes’ system of approving conveyances, determining heirs, probating estates, partitioning lands, or quieting titles through the state district courts. In the view of the Department, this Act would be of great benefit to the Cherokee, Choctaw, Seminole, Chickasaw, and Muscogee (Creek) Nations, and of greater benefit to those few of their tribal citizens who are fortunate enough to still hold lands in restricted status.

H.R. 2606, the Stigler Act Amendments of 2017, would greatly benefit the Cherokee, Choctaw, Seminole, Chickasaw, and Muscogee (Creek) Nations. This will further benefit the Tribes by allowing their citizens to inherit restricted or “Indian Lands” without regard to their “blood quantum”. Also by slowing the amount of land falling out of restricted status and allowing them to retain their land base. The Department supports H.R. 2606.

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Thank you for the opportunity to present this statement on behalf of the Department regarding S. 2788, a bill to repeal the Act entitled “An Act to confer jurisdiction on the State of North Dakota over offenses committed by or against Indians on the Devils Lake Indian Reservation”.

#### **Criminal Jurisdiction in Indian Country**

Improving public safety in Indian Country is a bipartisan priority. In the past, Congress has enacted legislation that allowed states to have criminal jurisdiction within Indian Country. As a result of this legislation, states were allowed to exercise criminal jurisdiction over tribal members on the reservation, removing the exclusive rights of the tribe to not have state law enforced on their tribal citizens on the reservation.

Secretary Zinke is an advocate for tribal sovereignty and self-determination. S. 2788 reflects the modern federal Indian policies of self-determination and self-gov-

ernance. S. 2788 clarifies a muddled and complex jurisdictional scheme. Accordingly, the Department supports S. 2788.

#### **S. 2788**

The Spirit Lake Tribe (“the Tribe”), located in North Dakota currently operates its own tribal court, and the BIA Office of Justice Services provides direct law enforcement and detention services. If the legislation were enacted, only the Tribe or the Federal Government would have criminal jurisdiction over offenses by or against Indians on the Devils Lake Indian Reservation.

Enactment of S. 2788 would ensure that the Tribe is treated similarly to others across Indian country where either the BIA or the Tribe provides public safety services.

#### **Conclusion**

Thank you for providing the Department the opportunity to testify on S. 2788. I am available to answer any questions the Committee members may have.

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Good afternoon Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, thank you for the opportunity to testify on H.R. 4032 “Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act (Act).” The Department supports the enactment of H.R. 4032, and offers some additional background information and other recommendations that we encourage the Committee to consider at this time.

#### **Background**

In December 2006, the Gila River Indian Community, hereinafter referred to as “the Community,” brought an action in the United States District Court for the District of Columbia, seeking declaratory and injunctive relief through “a full and complete accounting of the Community’s trust property and funds.” The Community’s priority claim in the litigation concerned the United States’ alleged obligation to confirm the legal status of all rights-of-way on the Reservation. More specifically, the Community contended that the Department’s failure to properly document these rights-of-way with grants of easement constituted a continuing breach of trust. Many of the alleged undocumented rights-of-way within the Gila River Indian Reservation are federal irrigation or power facilities, or Bureau of Indian Affairs roads, giving rise to allegations that the United States itself is now in trespass.

From the onset of the litigation, the parties engaged in a long, yet extremely cooperative, alternative dispute resolution process that resulted in a settlement that resolved all historical mismanagement claims for \$12.5 million. The settlement agreement was executed in June 2016 and the breach of trust suit was dismissed in March 2017. In separate but related negotiations, the parties, the Community and the United States, continued to collaborate on addressing the other outstanding issues that the Community identified as being critical to its economic, cultural and sovereign best interests.

#### **H.R. 4032**

Although the 2016 settlement agreement was not conditioned on any proposed legislation, it is the Department’s understanding that the Community considers H.R. 4032 to be essential to the resolution of the rights-of-way issues for the protection of the Community property rights moving forward. The Department’s review of the legislation identifies the objectives of the legislation as:

- (1) Establish, ratify, confirm and document the legal status of certain federal electrical, irrigation, and road rights-of-way or easements that now exist—undocumented or otherwise—within the exterior boundaries of the Reservation, as of the date of the enactment;
- (2) Establish a fixed location for the northern boundary of the Reservation, via resurvey (The resurvey of the fixed northern boundary has been completed and clearly marked in conformance with the public system of surveys by the Dependent Resurvey of Township 1 North, Range 1 East, Gila and Salt River Meridian, Arizona, conducted by Gordon R. Bubel, as shown on the plat and described in the field notes at Book 6060, approved November 22, 2016, and officially filed on November 23, 2016, on file with the Bureau of Land Management”, (Notice of Plat Filing was published in the Federal Register, Volume 82, No. 11, Page 5599, January 18, 2017).);
- (3) Direct the Secretary to transfer certain public lands to the Community, in trust status; and

- (4) Substitute the benefits provided to the Community, its members and individual landowners, for any claims that the Community, its members and landowners may have had against the United States, in connection with any alleged failures relating to location of the northern boundary and/or the documentation and management of rights-of-way within the Reservation; and
- (5) Authorize funds necessary for the United States to meet the obligations under this Act.

Section 4 of the bill directs the Secretary to take two parcels of land—known collectively as the Lower Sonoran Lands—into trust for the benefit of the Community. The parcels are located on the western and southern margins of the Gila River Indian Reservation in Maricopa and Pinal Counties, Arizona. These federal lands, totaling about 3,380.69 acres, are currently managed by the Bureau of Land Management (BLM) for multiple uses. The Community has historical ties to these lands and the parcels include cultural resources and archaeological sites that are of considerable significance to the Community. The cultural and archaeological resources located within these parcels include plant, animal, and raw material gathering areas; areas of religious significance; trail systems; and transportation routes with cultural and religious significance. Under BLM management there is one grazing permittee and three rights-of-way on the parcels. The BLM supports, with some minor technical corrections, Section 4.

The Lower Sonoran Lands were designated as suitable for disposal in the 2012 BLM Lower Sonoran Record of Decision and Resource Management Plan because they are isolated parcels, surrounded by non-BLM managed lands. No mineral values have been identified on the parcels. They are not suitable for management by another Federal department or agency, and are not needed for any other federal purpose. The BLM has initiated the process of a noncompetitive direct sale of the two parcels, including the subsurface, to the Community by placing a public notice in the Federal Register Volume 83, No. 103, Page 24489, May 29, 2018.

H.R. 4032 would also modify that portion of the Reservation boundary that was described by Executive Order in 1879 as being along the middle of the Salt River, to fix the boundary in accordance with the 1920 Harrington survey. The historic boundary identified in the executive order in 1879 has shifted, along with the course of the Salt River, creating uncertainty as to the precise location of the boundary between the Reservation and adjoining patented lands. The Department, in coordination with the BLM and the Community, completed the resurvey of the fixed northern boundary in conformance with the public system of surveys by the Dependent Resurvey of Township 1 North, Range 1 East, Gila and Salt River Meridian, Arizona, conducted by Gordon R. Bubel, as shown on the plat and published in the Federal Register, Volume 82, No. 11, Page 5599, January 18, 2017. The Record of Dependent Resurvey is on file with BLM. The Department recommends that the H.R. 4032 also expressly quiet the title of the affected parties and delete Section 3, “Disputed Area” definition because the fixed northern boundary has been re-surveyed and there is no discussion of a “Disputed Area” within the Bill.

H.R. 4032 would also establish, ratify and confirm those rights-of-way depicted on the Federal and Tribal Facilities Map referenced in the bill, as of the date of enactment, with the exact location of the confirmed rights-of-way to be defined by subsequent survey. H.R. 4032 would also authorize the appropriations of the funds needed to support the Departmental survey of the “rights-of-way” and all other actions required or authorized in the bill, with those surveys to be completed within a six-year period. With regard to the “other actions required,” the bill provides that the “Federal Government shall be considered the applicant or grantee.”

We note that the reference in section 8(c) of the bill to the regulation on cancellation is outdated and should be changed to correctly reference 25 CFR 169.404–409.

The Department welcomes the opportunity to work with the Committee and the sponsor and co-sponsors of H.R. 4032 to achieve the goals of H.R. 4032. Thank you again for the opportunity to provide the Department’s views.

This concludes my statement and I would be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you, Director LaCounte.  
Chairman FLOYD.

**STATEMENT OF HON. JAMES R. FLOYD, PRINCIPAL CHIEF,  
MUSCOGEE (CREEK) NATION**

Mr. FLOYD. Thank you, Mr. Chairman, Mr. Udall, Vice Chairman of the Committee, and my Senator, Senator Lankford and other members of the Committee that are here this afternoon.

I am James Floyd, Principal Chief of the Muscogee Creek Nation. I am pleased to appear before you this afternoon to provide testimony on H.R. 2606, the Stigler Act Amendments of 2018.

The Act of August 4, 1947, 61 Stat. 731, commonly referred to as the 1947 Act or the Stigler Act, is a Federal law related only to restricted lands of the Five Civilized Tribes of Oklahoma, which include the Cherokee, Choctaw, Chickasaw Creek and Seminole.

The 1947 Act created a detrimental disparity between the Five Tribes and all other Indian tribes regarding the restricted property allotments of their tribal members. The 1947 Act established a one-half minimum blood quantum requirement to maintain the restricted status of former allotted lands based on the tribal member's certificate of degree of Indian blood.

This one-half degree blood requirement imposed only on the Five Tribes is arbitrary and unjust. All other tribes, including the 33 other tribes in the State of Oklahoma, are excluded from this requirement.

As one of the affected tribes, the Muscogee Creek Nation seeks to protect the rights of our tribal members by supporting the amendments to the Stigler Act. The tribal members in eastern Oklahoma should have the same right regarding our Indian land as the other 6.7 million Native Americans in the United States who strongly support H.R. 2606 in order for our tribes to preserve our lands the same as the other 573 tribes in the United States who own land.

Tribal members and land are the basis for our jurisdiction, and jurisdiction is the basis for our sovereignty. Without amendment, the Stigler Act will continue to systematically destroy the land base of the Five Tribes by converting restricted Indian land into State fee land without the consent of the tribal members of the Five Tribes.

I would like to clarify some possible misconceptions of H.R. 2606. It will not be retroactive. Only land that is currently held in restricted status will be eligible to maintain its Indian land status.

Title to many of these allotted lands can be brought up to date to current ownership with the passage of these amendments. Tribal members will be able to probate the estate of their ancestors without the fear of losing the restricted status of their family lands because of blood quantum.

Leasing, right-of-way and other economic development will be easier with clear title and ownership of the lands. There will be no loss of State or county income from property taxes. That portion of the Stigler Act, in particular Section 6(a), is not being amended, which sets out the taxable status of restricted land for the Five Tribes.

The land base of the Five Tribes is an integral part of the culture and heritage of all tribal members of Eastern Oklahoma. It contains our homesteads, our family cemeteries, our traditional cen-

tury-old churches and our ceremonial grounds. It is our hope for providing for our citizens now and in the future.

It has been almost 117 years since the Muscogee Creek Nation allotted its tribally-owned land base to individual members pursuant to congressional order. Restrictions were enacted at that time with the purpose of keeping allotted lands in the hands of tribal citizens.

The Stigler Act defied that intent. Today, no original allottees are living and only 133,399 acres of the 2.9 million acres of land originally allotted to the Muscogee Creek citizens remain, a tiny fraction of what was once a protected individual land base. If not resolved quickly, we could lose everything, our land, our history, our stability and our sovereignty.

I am grateful to those on the Committee who are working to rectify this egregious injustice and to help our tribes have equal status with all other tribes. Though we can't get back what we lost, you can help us protect what remains.

In closing, I ask your permission to submit for this hearing record the statement of the Inter-Tribal Council of the Five Civilized Tribes, of which the Muscogee Creek Nation is a member. This statement elaborates on the points I have raised today and is consistent with my remarks.

Thank you for allowing me to appear before you this afternoon. I am prepared to answer any questions you may have.

[The prepared statement of Mr. Floyd and the referenced information follows:]

PREPARED STATEMENT OF HON. JAMES R. FLOYD, PRINCIPAL CHIEF, MUSCOGEE  
(CREEK) NATION

Mr. Chairman, members of the Committee:

I am James Floyd, Principal Chief of The Muscogee (Creek) Nation. I am pleased to appear before you today to provide testimony on H.R. 2606, the Stigler Act Amendments of 2018. The Act of August 4, 1947 (61 Stat. 731), commonly referred to as the "1947 Act" or the "Stigler Act," is a federal law related only to restricted lands of the Five Civilized Tribes of Oklahoma, which include the Cherokee, Choctaw, Chickasaw, Creek and Seminole.

The 1947 Act created a detrimental disparity between these Five Tribes and all other Indian tribes regarding the restricted property allotments of their tribal members. The 1947 Act established a one-half minimum blood quantum requirement to maintain the restricted status of former allotment lands based on a tribal member's Certificate of Degree of Indian Blood. This one-half degree blood requirement imposed only on the Five Tribes is arbitrary and unjust. All other tribes, including the 33 other tribes in Oklahoma, are excluded from this requirement.

As one of the affected Five Tribes, The Muscogee (Creek) Nation seeks to protect the rights of our tribal members by supporting the amendments to the Stigler Act. The tribal members in Eastern Oklahoma should have the same rights regarding our Indian land as the other 6.7 million Native Americans in the United States. We strongly support H.R. 2606 in order for our tribes to preserve our lands, the same as the other 573 tribes in the United States who own land.

Tribal members and land are the basis for our jurisdiction, and jurisdiction is the basis for our sovereignty. Without amendment, the Stigler Act will continue to systematically destroy the land base of the Five Tribes by converting restricted Indian land into state land, without the consent of tribal members of the Five Tribes.

I want to clarify some possible misconceptions of H.R. 2606:

- It will not be retroactive.
- Only land that is currently held in restricted status will be eligible to maintain its Indian land status.
- Title to many of these allotted lands can be brought up to date to current ownership with the passage of these amendments.

- Members will be able to probate the estate of their ancestors without the fear of losing the restricted status of their family lands because of blood quantum.
- Leasing, right-of-way and other economic development will be easier with clear title and ownership of the lands.
- There will be no loss of state or county income from property taxes. That portion of the Stigler Act, in particular Sec. 6 (a), is not being amended which sets out the taxable status of restricted land for Five Tribes.

The land base of the Five Tribes is an integral part of the culture and the heritage of all tribal members in Eastern Oklahoma. It contains our homesteads, our family cemeteries, our traditional century-old churches, and our ceremonial grounds. It is our hope for providing for our citizens now and in the future.

It has been almost 117 years since The Muscogee (Creek) Nation allotted its tribally-owned land base to individual members, pursuant to Congressional Order. Restrictions were enacted at that time with the purpose of keeping allotted lands in the hands of tribal citizens. The Stigler Act defied that intent. Today, no original allottees are living and only 133,399 acres of the 2.993 millions of acres of land originally allotted to Muscogee (Creek) citizens remain, a tiny fraction of what was once our protected individual land base. If not resolved quickly, we could lose everything: our land, our history, our stability, and our sovereignty.

I am grateful to those on this Committee who are working to rectify this egregious injustice; to help our tribes have equal status with all other tribes. Though we can't get back what we lost, you can help us preserve what remains.

In closing, I ask your permission to submit for this hearing record, the statement of the InterTribal Council of the Five Civilized Tribes, of which The Muscogee (Creek) Nation is a member. The statement elaborates on the points I have raised today and is consistent with my remarks. Thank you for allowing me to appear before you today and I am prepared to respond to any questions you may have.

The (1) Map displaying total number of restricted fee and unrestricted fee acres within the jurisdiction of the Five Civilized Tribes in 1916 (2) Map displaying total number of restricted fee and unrestricted fee acres within the jurisdiction of the Five Civilized Tribes in 2015 (3) Resolution 15-19 adopted by the Intertribal Council of the Five Civilized Tribes on July 10th, 2015 have been retained in the Committee files.

#### **Attachment**

PREPARED STATEMENT OF HON. BILL JOHN BAKER, PRINCIPAL CHIEF, CHEROKEE NATION; PRESIDENT, INTER-TRIBAL COUNCIL OF THE FIVE CIVILIZED TRIBES

Mr. Chairman, I am Bill John Baker, Principal Chief of the Cherokee Nation, and President of the Inter-Tribal Council of the Five Civilized Tribes. I am pleased to provide testimony today on H.R. 2606, the Stigler Act Amendments of 2018, on behalf of the Inter-Tribal Council of the Five Civilized Tribes (Inter-Tribal Council). The Inter-Tribal Council is an organization comprised of the tribal governments of the Muscogee Creek Nation, Seminole Nation, Choctaw Nation, Chickasaw Nation and the Cherokee Nation. Together our tribes represent more than 650,000 tribal citizens throughout the United States, or about a quarter of the entire population of Indian country.

I am here today to support H.R. 2606, which amends an archaic law enacted in 1947 that unfairly burdens citizens of the Five Tribes. This law has led to devastating land loss, which is inconsistent with modern federal policy and practice toward Indian tribes to increase tribal land holdings and restore tribal homelands. It is time to amend this Termination Era law that originates from a less enlightened time when federal policy was designed to dramatically diminish tribal homelands. So today, I am here on behalf of our Five Tribes to respectfully ask you to remedy this longstanding injustice.

I believe it is critical to first briefly examine the history of the lands of the Five Tribes, which is unique to all of Indian country.

Unlike the reservations of other tribes, the United States did not hold title to the Five Tribes lands. Instead, at the insistence of our tribal leaders at the time of our removal from our ancestral homelands, the United States deeded fee simple title to those lands to each Tribe, in exchange for huge tribal cessions of lands in the southeastern portion of the United States. Perhaps foreseeing the struggles to come, the leaders of the Five Tribes did not want the United States to have any ownership interest in their new lands, which were located in an area that would one day become the state of Oklahoma.

Because of this fee simple ownership, the United States had considerable difficulty forcing the Five Tribes to break apart their remaining tribal lands into indi-



vidual allotments during the tribal land allotment era in the late nineteenth century. Despite these difficulties, Congress was ultimately successful in enacting a series of laws to force the Five Tribes to allot their lands. Due to the fee simple ownership of the tribe, tribal allotments were also held in fee simple by the individual Indian instead of held in trust by the United States as was common with other tribal allotments nationwide. There were, however, special restrictions on the owners' disposition of their allotments put in place by Congress. These restrictions prevented the tribal citizens from alienating, conveying, leasing, mortgaging or putting other liens or encumbrances on their allotments. The stated purpose of these restrictions was to keep allotted lands in the hands of tribal citizens.

Almost immediately after the restricted fee allotments were issued to the citizens of the Five Tribes, however, non-Indian interests were intent upon removing those restrictions and obtaining the lands that belonged to the citizens of the Five Tribes. In the early parts of the twentieth century, several laws were passed by Congress to produce this result, by removing restrictions based on the degree of Indian blood quantum of the individual owner. The most recent such law was the 1947 Act, also known as the Stigler Act, an uncodified law which prevents an Indian from inheriting land in restricted fee if he or she has a blood quantum that is below one-half degree of Indian blood. When restricted fee land is passed to heirs with less than one-half blood quantum, then all of the restrictions against alienation that have protected the property and its owner are stripped away forever.

With this background in mind, I would like to turn to the modern issues facing the Five Tribes, and how this legislation helps address those challenges.

The antiquated blood quantum requirement contained in the Stigler Act is unique to the Five Tribes. In no other tribe in the United States do the lands of tribal citizens lose their restricted status due to the blood quantum of the individual Indian. While these provisions of the Stigler Act were unusual enough at the time they were drafted, they are indefensible today and defeat the goals of modern federal policy. In an era where there is broad support for tribal self-determination, and where federal dollars are devoted to increasing and protecting tribal land bases, it is time to put an end to the blood quantum based distinctions. The proposed amendments will bring some measure of parity to the citizens of the Five Tribes, and allow our citizens the opportunity to pass on their restricted Indian land to their children and grandchildren in restricted status. It is hard to overstate what this will mean to our citizens, who treasure their restricted allotments and the link they represent to both their family and their Nation.

I would like the Committee to take note of what these amendments will not do. These amendments will not create new restricted Indian land. It will only allow the current restricted fee land to remain in restriction regardless of the blood quantum of the Indian. The bill is narrowly tailored only to reform the most problematic and archaic legal obstacles to the preservation of restricted land, and does not in any way impact the ability of state courts, acting as federal instrumentalities, to approve conveyance of surface or mineral interests, to approve oil and gas leases, or to administer an estate that contains restricted property.

Included at the end of this testimony are two maps. The first map shows the number of restricted acres within the Five Tribes in 1916. At that time, the Five Tribes had more than 15 million acres of restricted land. The second shows that same area in 2015, when only a tiny fraction of that original acreage remained—just over 380 thousand acres. It is this fraction of remaining restricted fee land that we are seeking to protect with these amendments. This tiny fraction continues to diminish every year that this issue burdens the citizens of the Five Tribes.

The technical amendments to the law are straightforward, and their impacts are limited to the Five Tribes and their citizens. Section 2 provides new language that clarifies that lineal descendants by blood of an original enrollee whose name appears on the Final Indian Rolls of the Five Civilized Tribes may maintain their land in restricted fee, regardless of the degree of blood of the land owner. This would include the estates of Indians who died prior to the enactment of the amendments, unless the estate had been subject to a final order determining the decedent's heirs or had been conveyed previously by deed or other approved method. The amendments also clarify that an owner of restricted fee property can have the restrictions lifted from his or her property if that is the desire of the individual tribal citizen. The rest of the language makes small, technical changes necessary to eradicate the one-half blood quantum requirement from the various places it appears.

In conclusion, while these amendments are limited and straightforward, the impact they will have on the Five Tribes and our citizens is enormous. For decades, the citizens of the Five Tribes have lived under a special set of laws that apply to only their lands. Even as the federal government has tried to enlarge and consolidate the land holdings of other tribes, grandparents in the Five Tribes have had to

struggle with the knowledge that they are the last generation that will have the privilege of holding their family allotment as restricted Indian land.

The purpose of the Stigler Act was to move Indian land from tribal ownership to non-Indian ownership, and the law has been devastatingly successful in accomplishing that goal. While H.R. 2606 will not reverse 70 years of land loss, it would certainly help prevent even more of our tribal land from falling out of restricted status, and provide much-needed parity to the owners of restricted allotments within the Five Tribes.

I urge the Committee to favorably recommend this important legislation. Thank you for this opportunity to testify.

The CHAIRMAN. Thank you.  
Vice Chairman Yankton.

**STATEMENT OF HON. DOUGLAS YANKTON, SR., VICE-  
CHAIRMAN, SPIRIT LAKE TRIBE**

Mr. YANKTON. Good afternoon, Chairman Hoeven and Committee members.

My name is Doug Yankton, I am an elected Vice-Chairman of the Spirit Lake Tribe, previously known as the Devils Lake Sioux Tribe. The Spirit Lake Tribe is a tribe that is in northeastern North Dakota and our reservation consists of approximately 245,000 acres of trust and fee land.

As a representative of the Spirit Lake Tribe and our community, the most important responsibilities we have is to ensure the laws impacting our community foster community safety while protecting and preserving our inherent sovereign and jurisdictional authority. The Spirit Lake Tribe has gone on record to formally request the repeal of 60 Stat. 229, an Act that previously conferred criminal jurisdiction over on-reservation misdemeanor crimes to the State of North Dakota.

I am here today to request your support in passing S. 2788, a bill to repeal the Act previously conferring jurisdiction on the State of North Dakota over offenses committed by or against Indians on the Devils Lake Indian Reservation. The Spirit Lake Tribe has timely submitted formal written testimony on this matter.

I would like to take this opportunity to briefly summarize the written testimony submitted to the Senate Committee on Indian Affairs, provide examples relevant to our concerns and highlight the impact that repeal will have.

The Spirit Lake Tribe went on record in April of 1944 requesting assistance to address criminal activity on what was then referred to as the Devils Lake Sioux Indian Reservation. At that time, there was no real law enforcement present on the reservation and no established tribal court.

In response to the request for assistance, the United States Congress passed 60 Stat. 229, an Act which authorized the State of North Dakota to exercise jurisdiction on the Devils Lake Indian Reservation. Despite enactment of 60 Stat. 229, the State of North Dakota has provided minimal law enforcement or prosecution services for on-reservation crimes. In more recent years, the State has been virtually nonexistent. The Spirit Lake Tribe passed Resolution A05-10-033 on December 1st, 2009, requesting repeal of the statute.

The Spirit Lake Tribe has spent more than 70 years developing our tribal judicial system infrastructure, and we now have the BIA

law enforcement services, some tribal enforcement officers, a victim assistance program, Fish and Wildlife officers, tribal court, tribal prosecutors, juvenile presenting officers and public defenders. Additionally, we have incorporated diversionary programs and services into our justice systems to better meet the needs of our court-involved individuals and to address community safety.

The State of North Dakota has, for the most part, respected tribal criminal jurisdictional authority. There have, however, been a few instances where the State relied on the statute to pursue criminal charges against enrolled members for on-reservation activity, in conflict with existing tribal jurisdiction. The most troubling exercise of this authority came about during a period of jurisdictional conflict between the State and our tribal fish and wildlife departments regarding on-reservation authority. While the two departments worked through the regulatory conflicts, a fish and wildlife and other officers were charged with a crime by the State for impersonating a State Game and Fish officer.

After meeting with State officials, the charges were ultimately dropped by the State. However, this is one example of the authority granted by the State of North Dakota under the statute that has been selectively used in a manner that interferes with our sovereignty. Such instances have been rare as the Spirit Lake tribe has worked to foster a good working relationship with the State, but it demonstrates how the Act at times can interfere with the government-to-government relationship.

In written testimony submitted today, we have outlined the impact that the repeal would have. Namely, repeal of the Act would not disrupt or otherwise alter any existing Federal and tribal jurisdictional authority on the Spirit Lake Reservation. Repeal of the Act would renew extraordinary jurisdictional authority previously granted to the State of North Dakota which has rarely and inconsistently been exercised by the State in more than 70 years since its enactment. Repeal of the Act would align the State jurisdiction on the Spirit Lake Reservation with the authority being exercised by the State in all other reservations.

I am pretty much out of time here, but I would like to thank the Committee for the opportunity to provide this oral testimony. As a tribal leader, I urge you to please pass S. 2788. Thank you for your time.

[The prepared statement of Mr. Yankton follows:]

PREPARED STATEMENT OF HON. DOUGLAS YANKTON, SR., VICE-CHAIRMAN, SPIRIT LAKE TRIBE

My name is Douglas Yankton, elected Vice-Chairman of the Spirit Lake Tribe, previously known as the Devils Lake Sioux Tribe. The Spirit Lake Tribe is located in northeastern North Dakota and our reservation consists of approximately 245,000 acres of trust and fee land. As a representative of the Spirit Lake Tribe one the most important responsibilities we have is to ensure the laws impacting our community foster community safety while protecting and preserving our inherent sovereign and jurisdictional authority. The Spirit Lake Tribe has gone on record to formally request the repeal of 60 Stat. 229, an Act that previously conferred criminal jurisdiction over on reservation misdemeanor crimes to the State of North Dakota. I am here today to request your support in passing "S. 2788, a bill to repeal an Act previously conferring jurisdiction on the State of North Dakota over offenses committed by or against Indian on the Devils Lake Indian Reservation."

As a background on this matter, in April of 1944, following a referendum vote, the Devils Lake Sioux Tribal Council passed Resolution No. III. The referendum oc-

curred prior to the formal ratification of the Constitution and Bylaws of the Devils Lake Sioux Tribe. Resolution No. III sought to continue state jurisdiction over misdemeanor crimes occurring on the Reservation. At the time there were community safety concerns and a significant lack of tribal justice system resources, including lack of law enforcement and no formally established tribal court. After the Tribe passed Resolution No. III, it was relied upon by the U.S. Congress to pass 60 Stat. 229 (1946). 60 Stat. 229 is a federal law that applies only to the Spirit Lake Reservation and it delegates authority to the State of North Dakota to prosecute crimes on the Spirit Lake Reservation regardless of who commits the crime.

Since the 1944 referendum vote and 1946 federal law, the Spirit Lake Tribe has established BIA agency law enforcement, tribal law enforcement, a Fish and Wildlife Division and most importantly a Tribal Court. The Spirit Lake Tribal Court has been operational for decades and exercises both criminal and civil jurisdiction. The Tribal Court is staffed with a Chief Judge, Associate Judge, and a Clerk of Court within each of its three divisions. The Spirit Lake Tribe also funded a Tribal Prosecutor, a Juvenile Presenting Officer, and a Public Defender. The Tribe has further enhanced the tribal justice system through the establishment of a Traditional Diversionary Court and the establishment of a Law and Order Committee. The tribal justice system is served by Bureau of Indian Affairs law enforcement and also includes direct services for victims through the Spirit Lake Tribe Victim Assistance Program.

With the great strides that the Spirit Lake Tribe has made in the past seventy plus years, there is no need for the State of North Dakota to prosecute crimes occurring on the reservation beyond what is permitted by federal laws generally applicable to Indian Country as a whole. In recent decades the state of North Dakota has not provided a consistent law enforcement or judicial presence relevant to on reservation crimes. The state of North Dakota has instead, relied upon this archaic law to selectively prosecute a very minimal number of crimes and to further justify their involvement in reservation crimes beyond what is typically exercised by other states or by the state of North Dakota on other reservations. Due to the significant changes to our tribal justice system infrastructure and the lack of involvement by the state of North Dakota relevant to on reservation crimes, the Tribal Council passed Resolution A05-10-033 on December 1, 2009 requesting the U.S. Congress to repeal 60 Stat. 229.

If the Congress repeals 60 Stat. 229 the state of North Dakota would no longer have concurrent misdemeanor jurisdiction on the Spirit Lake Reservation but would retain criminal jurisdictional authority otherwise permitted by federal law that is consistent with jurisdictional authorities reflected across much of Indian Country. The repeal of 60 Stat. 229 would not have a negative impact on the state of North Dakota. In fact, the state of North Dakota would continue to have jurisdiction over crimes occurring on the reservation in accordance with existing federal law. Furthermore, the repeal of 60 Stat. 229 would not create an jurisdictional gaps or otherwise interfere with the exercise of tribal, federal or state jurisdictional authority as it stands under existing law.

To be clear, S. 2788 only repeals 60 Stat. 229, which is specific to the Spirit Lake Tribe, formerly known as the Devils Lake Sioux Tribe. A repeal of the Act would in no way impact or otherwise limit the applicability of the Major Crimes Act 18 U.S.C. § 1153, Assimilative Crimes Act 18 U.S.C. § 13 nor the General Crimes Act 18 U.S.C. § 1152, all of which serve to establish federal criminal jurisdiction within Indian Country, including the Spirit Lake Reservation. A repeal of the Act in question would not alter any current common law impacting criminal jurisdiction in Indian Country. Existing precedent pertaining to jurisdictional authority, established by cases such as *Oliphant v. Suquamish*, 435 U.S. 191 (1978)(finding that tribal courts generally lack criminal jurisdiction to criminally prosecute non Indians in tribal courts) or *United States v. Lara*, 541 U.S. 193 (1994)(finding that tribes have the inherent authority to prosecute member and non-member Indians pursuant to the Indian Civil Rights Act as amended; also finding that the exercise of said authority is concurrent to the exercise of federal criminal jurisdiction), would not be altered in any manner. The Spirit Lake Tribe and justice system officials within the Spirit Lake Tribe would continue to exercise inherent criminal jurisdiction in a manner that is consistent with existing tribal law and the Indian Civil Rights Act, as we have been doing for decades. See 25 U.S.C. § 1301-1304.

In conclusion, the Spirit Lake Tribe requests that you pass S. 2788 to formally repeal 60 Stat. 229 thereby supporting tribal efforts to move forward with criminal justice system enhancements while preventing unnecessary interference with tribal sovereignty by the state of North Dakota. S. 2788 is an important step to reinforcing existing current federal policy aimed at fostering tribal self-determination. On behalf of the Spirit Lake Tribe, I would like to thank you for the opportunity to pro-

vide this testimony and for your consideration the request for a formal repeal of 60 Stat. 229.

The CHAIRMAN. Thank you, Vice Chairman.  
Chairman ENOS.

**STATEMENT OF HON. BARNEY ENOS, JR., COUNCILMAN, GILA  
RIVER INDIAN COMMUNITY**

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

I am Barney Enos, Jr., Councilman from District 4 of the Gila River Indian Community. Thank you for the opportunity to testify today on behalf of the Community in support of H.R. 4032, the Community's trust accounting legislation.

H.R. 4032 is necessary to enable the Community to obtain the full benefits of the settlement the Community reached with the United States to resolve claims for mismanagement of the Community's trust resources. The Community filed its trust accounting case in 2006. In particular, the claims that the Community was most eager to resolve, and which this legislation addresses, claims related to undocumented Federal rights-of-way and claims related to the United States' failure to protect our reservation territorial boundaries.

As part of its trust obligations, the United States has a duty to ensure that tribal trust property is protected, preserved and properly managed. Among other duties, the United States must maintain adequate records with respect to the trust property.

In our lawsuit, the Community alleged that the United States failed in these duties to document many of the BIA roads, electrical transmission lines and irrigation infrastructure that crossed the reservation. In fact, approximately 3,600 acres of undocumented rights-of-way affect allotted and tribal trust land on the Community's reservation. Rent either has not been collected or cannot be accounted for by the United States.

Rather than litigate, the Community entered into settlement negotiations with the United States. The settlement discussions resulted in a global settlement that included a \$12.5 million payment from the United States for damages and this settlement legislation.

Although restitution was important, what is most important to the Community is fixing the problem of undocumented Federal rights-of-way on the reservation. The lack of documentation for these rights-of-way is an obstacle the Community deals with on a daily basis. For example, the Community has a housing shortage, and efforts to solve this problem have been slowed by the lack of documentation for existing BIA roads and electrical transmission lines. We also experience difficulty rehabilitating Federal canals, even though our canal rehabilitation project received funding from the Arizona Water Settlements Act of 2004. Due to the lack of documentation for many of these canals, the BIA has taken the position that additional payments need to be made to gain access to these canals.

However, the Bureau of Reclamation, which oversees the canal rehabilitation project, has taken the position that our water rights settlement funds cannot be used to acquire rights-of-way for existing infrastructure. These contrary Federal positions have caused

delays and have frustrated the implementation of the Arizona Water Settlements Act.

H.R. 4032 solves these problems by approving a process to establish and confirm all of the Federal rights-of-way on the reservation through surveys conducted by the BIA that, once complete, will remove longstanding barriers to housing development and implementation of the Community's water settlement.

H.R. 4032 also settles a dispute involving the northwest boundary of the reservation along the Salt River by fixing it in order to avoid any dispute with landowners to our north. Due to a number of surveying errors in the late 1800s and a lack of diligence to correct those errors in the early 1900s, northern lands of the Community's reservation were settled by non-Indians. As a result, the Community has a valid title dispute between the Community and other parties, including the City of Phoenix.

As part of the global settlement, the Community agreed to a fixed boundary, rather than the midpoint of the Gila River, in order to avoid any future title dispute. In exchange for losing the lands at issue, the Community identified BLM disposal lands that were contiguous to the reservation and that included a number of highly significant cultural resources and cultural sites throughout the land. The Community has been working with the BLM to navigate the disposal lands process to purchase lands using settlement funds and transfer the culturally sensitive lands to the Community.

I would emphasize that because of the cultural significance of these lands, the Community has no plans to develop these lands and has agreed to a ban on any gaming eligibility as a condition to placing these lands into trust.

In May, the BLM issued the Notice of Realty Action. Once purchased and transferred, H.R. 4032 authorizes placing these lands into trust on behalf of the Community. Only Congress can change the boundary and place these lands into trust. As such, H.R. 4032 is a critical part of the Community's global settlement with the United States.

H.R. 4032 is a non-controversial, bipartisan piece of legislation that is absolutely critical to achieve the settlement terms that the Community agreed to in exchange for settling its Federal trust accounting case against the United States.

Thank you for allowing me to testify. I am happy to answer any questions you may have.

[The prepared statement of Mr. Enos follows:]

PREPARED STATEMENT OF HON. BARNEY ENOS, JR., COUNCILMAN, GILA RIVER INDIAN COMMUNITY

Good afternoon Chairman Hoeven, Vice Chairman Udall , and members of the Committee. Thank you for the opportunity to provide testimony on behalf of the Gila River Indian Community ("Community") regarding H.R. 4032—the Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act.

H.R. 4032 is critical legislation that is necessary to enable the Community to obtain the full benefits of the settlement the Community reached with the United States resolving federal litigation that originated in 2006. Importantly, this legislation will provide a process to document and legitimize existing Federal rights-of-way on the Community's lands that, once complete, will remove longstanding barriers to housing development and implementation of the Community's water settlement. In

addition, this legislation settles a dispute involving the northwest boundary of the Reservation by resolving any potential disputes with land owners to our north, in exchange for placing Federal disposal lands that are culturally important to the Community into trust after the Community purchases these lands from the United States. H.R. 4032 is the product of a great deal of effort, and compromise, by the Community and the United States to successfully settle litigation and provide benefits to the Community that only legislation can accomplish.

## **I. Background**

### *A. The Community's Trust Accounting Case*

On December 29, 2006, the Community brought a lawsuit against the United States in the United States District Court for the District of Columbia for an accounting of all of its trust assets and trust funds. *Gila River Indian Community v. Kempthorne, et al.*, Case No. 1:06-CV-02249-TFH ("Gila River Trust Case"). The Community's suit against the United States sought, among other things, a reconciliation of the Community's non-monetary trust assets for the alleged mismanagement of these resources by the United States. The Community's suit included breach of trust claims against the United States for failing to document Federal rights-of-way across the Reservation, and the United States' failure to accurately survey the Reservation's Northwestern boundary resulting in illegally patenting of lands to non-Indians.

#### **1. Failure to Document Rights-of-Way on the Community's Reservation & Trespass**

By various Acts of Congress, commencing with statutes adopted more than a century ago, Congress authorized the Secretary of the Interior to collect income from tribal trust property and to deposit such trust income in the United States Treasury and other depository institutions for the benefit of the tribes.<sup>1</sup> By subsequent statutes, Congress directed that interest be paid on tribal trust funds, and required that such trust funds be invested.<sup>2</sup> Pursuant to this statutory authority, the United States assumed control and management over trust property of the Community. Interior has approved leases, easements and grants of interest in trust lands of the Community, and as the Community's trustee, the United States has assumed responsibility for the collection, deposit and investment of the income generated by trust land of the Community.

As part of its trust obligations, the United States has a duty to ensure that tribal trust property and trust funds are protected, preserved and managed so as to produce a maximum return to the Community consistent with the trust character of the property. Among other duties, the United States must maintain adequate records with respect to the trust property; maintain adequate systems and controls to guard against error or dishonesty; provide regular and accurate accountings to the Community; and refrain from self-dealing or benefiting from the management of the Community's trust property.

In the Gila River Trust Case the Community alleged that the United States failed in these duties to the Community. While the United States controls all the books and records of accounts affecting trust funds and trust property, the United States never rendered an audit or accounting to the Community for its trust property or monies. The Community further alleged that the United States failed to establish any effective system or provision for regular or periodic accounting for the trust property and funds. As a result, the United States kept the Community, as the trust beneficiary, uninformed as to the trust property it owns, what income the trust property produced, and what disposition was made of the income. In the Gila River Trust Case the Community alleged that the United States' mismanagement of the Community's trust property and funds resulted in losses to the Community as the trust beneficiary.

The United States has provided the Community with records pertaining to various rights-of-way through the Reservation. Based on the records received from the United States, it became apparent that many of the roads across the Reservation do not have legally established rights-of-way. Based on the best information available, as provided by the United States, a total of 3,600 acres of undocumented rights-of-way affect allotted and tribal trust land, which has been in Federal use and possession since 1930. With respect to these 3,600 acres, no documentation of rights-of-way can be found; indeed, such documentation may never have existed. Rent either has not been collected or cannot be accounted for by the United States.

<sup>1</sup>See e.g., Act of March 3, 1883, ch. 141, 22 Stat. 582, 590.

<sup>2</sup>See e.g., Act of February 12, 1929, ch. 178, 45 Stat. 1164 (codified as amended at 25 U.S.C. § 161b (1930)); Act of June 24, 1938, 52 Stat. 1037 (codified as amended at 25 U.S.C. § 162a (1994)).

In addition to the United States' breach of trust for failure to document rights-of-way across the Reservation, failure to collect rent, and failure to account for the Community's and allottees' trust assets, the Community alleged that the United States was also liable for the Community's and allottees' trespass claims for rights-of-way for federal projects that were not legally documented and as a consequence resulted in loss of rent due to the Community and allottees.

These claims arise as a matter of federal common law.<sup>3</sup> To determine the United States' potential liability with respect to these claims, the Community again examined when each undocumented right-of-way came into use and looked at the current market value of the land at that time and how rent would have been calculated. In particular, the Community looked at the date each undocumented right-of-way began in order to determine which, if any, federal regulations applied to calculate the appropriate compensation. For instance, beginning in 1929, the first set of comprehensive regulations governing right-of-ways provided guidance on calculating appropriate charges which included an appraisal of the value of the land and any damage which would result therefrom.<sup>4</sup> The 1968 regulations further provided that consideration for any right-of-way granted or renewed "shall be not less than the appraised fair market value of the rights granted, plus severance damages, if any, to the remaining estate."<sup>5</sup> Current statutes for right-of-ways require the company to make payment to the Secretary for the benefit of the Tribe, of full compensation for such right-of-way, including all damage to improvements and adjacent lands.<sup>6</sup> Together, these statutes and regulations make clear that had the United States documented these rights-of-way as it was required to do, it should have collected rent based on the fair market value of the land for the benefit of the Community and affected allottees.

## 2. Failure to Accurately Survey the Reservation's Northwestern Boundary

In 1867, William Pierce conducted the first significant survey of the area surrounding the confluence of the Salt and Gila Rivers. Pierce was retained to survey a baseline 36 miles to the east of the initial point—which was located at the intersection of the Salt and Gila Rivers—and a meridian 96 miles north of the initial point. The two lines surveyed by Pierce constituted the Gila and Salt River base and meridian and were used in later surveys of the area.

In 1868, Wilfred Ingalls surveyed township lines in the Phoenix area. This work resulted in the first approved Government Land Office (GLO) plat maps. Ingalls also conducted the first GLO survey of the Salt River channel ("Ingalls Survey"). As a result of the Pierce and Ingalls surveys, a map of Township 1 North, Range 1 East—within which the land at issue in this letter is located—was produced.

The Community's Reservation was first created by statute in 1859 and was subsequently expanded by a series of Executive Orders. President Rutherford B. Hayes signed one of these Executive Orders on June 14, 1879, which established the northwesterly corner and expanded the northern boundary of the Community's Reservation to the Salt River as follows:

Beginning at the northwest corner of the old Gila Reservation; thence by a direct line running northwesterly until it strikes Salt River 4 miles east from the intersection of said river with the Gila River; thence down and along the *middle of said Salt River* to the mouth of the Gila River; thence up and along the middle of said Gila River to its intersection with the northwesterly boundary line of the old Gila Reservation; thence northwesterly along said last described boundary line to the place of beginning. (Emphasis added).

In 1895, the United States employed Lewis Wolfley to survey the northern boundary of the Reservation. Wolfley was erroneously instructed to establish the boundary at the "left bank" of the Salt River—the Reservation side of the river. This error would be the first in a series of errors committed by the government with regard

<sup>3</sup>See *Oneida Cty., N.Y. v. Oneida Indian Nation of New York State*, 470 U.S. 226 (1985) (tribal property rights are protected by federal common law). In *Oneida County*, the Supreme Court read *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339 (1941), as holding that "Indians have a common-law right of action for an accounting of all rents, issues and profits against trespassers on their land." *Oneida County*, 470 U.S. at 235-36; see also *United States v. Milner*, 583 F.3d 1174, 1182 (9th Cir. 2009) (citing *United States v. Pend Oreille Pub. Util. Dist. No. 1*, 28 F.3d 1544, 1549 n. 8 (9th Cir.1994)) (Federal common law governs an action for trespass on Indian lands.).

<sup>4</sup>See DEPT OF THE INTERIOR, REGULATIONS CONCERNING RIGHTS OF WAY OVER INDIAN LANDS, at § 78 (1929) (available at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/T-22078.pdf>).

<sup>5</sup>33 Fed. Reg. 19803, 19807 (Dec. 27, 1968) (codified at 25 C.F.R. § 161.12 (1968)).

<sup>6</sup>See 25 U.S.C. § § 314, 319.



to surveying and marking the northern boundary of the Reservation. In 1898, following its completion, the Wolfley survey was rejected by the federal government because the northern boundary of the Reservation had been marked at the left bank of the Salt River, rather than the “middle of the . . . Salt River” as called for in President Hayes’ Executive Order of 1879. As a result, the GLO Commissioner ordered the Surveyor General to have the northern boundary resurveyed.

Between 1910 and 1912, Guy P. Harrington was assigned to survey the entire Reservation for the purpose of preparing the land to be divided into individual allotments. Harrington surveyed 23 full or fractional townships within the Community. On July 29, 1919, the GLO sent a letter (“The 1919 Letter”) to the Surveyor General for Arizona approving certain portions of Harrington’s survey, providing detailed instructions for correcting certain problems with the survey, and containing directives for new work to be performed on land since added to the Reservation.

The GLO, in order to prevent further encroachment on the Community’s land, instructed the Land Office in Phoenix to cease the disposal of land immediately adjacent to the Reservation. In The 1919 Letter, the GLO explained that the encroachment upon the Community’s land resulted from the failure to timely survey the Reservation’s boundaries in the wake of President Hayes’ 1879 Executive Order.

To remedy these prior mistakes, the GLO ordered the Surveyor General to resurvey the area once more, with specific instructions to set the Reservation’s northern boundary at the middle of the old channel of the Salt River as it existed on June 14, 1879. This project was assigned to Harrington, one of the men responsible for the partially approved and partially rejected (as erroneous) 1910–1912 surveys. Harrington was furnished with a copy of the Ingalls Survey and instructed to interview old settlers in the area. Although Harrington allegedly made a “concerted” effort to establish the position of the river as it existed in 1879, he completed the survey in just two months. The Commissioner accepted the new Harrington survey on November 3, 1920 (“Harrington Survey”).<sup>7</sup>

However, in performing his survey Harrington ignored the directives of the GLO contained within the 1919 Letter. As a result Harrington, *inter alia*, inaccurately surveyed the mid-point of the Salt River and failed to take into account the northerly accretion of the river.<sup>8</sup> Thus, the Community believes that as a result of the Harrington Survey errors and the further northward movement of the Salt River since that time, the Community has lost land on the northern portion of its Reservation due to accretion.

As a result of the foregoing, the Community alleged the northern boundary of the Reservation is actually located north of the boundary inaccurately relied upon by the City of Phoenix and others. The Community further contended that the United States, in accepting the erroneous and fixed boundary, and issuing patents for land based on the Harrington Survey, transferred the Community’s Reservation lands to various parties in violation of the law, including, but not limited to, the Non-Inter-course Act, 25 U.S.C. § 177.

In addition, since the time of the Harrington Survey the middle of the River has moved north and the United States, as trustee, failed to adequately protect and enforce the Community’s boundary. This resulted in potential boundary disputes with the City of Phoenix<sup>9</sup> and private individuals who own land adjacent to the Salt River in Maricopa County, which the Community asserted encroaches on land rightfully granted to and owned by the Community.

#### *B. Gila River Trust Case Settlement Agreement*

Rather than litigate the case in Federal Court, the Community entered into settlement negotiations with the United States. The settlement discussions resulted in a global settlement that includes the Joint Stipulation of Settlement, BLM land transfer, BIA letter, and settlement legislation (H.R. 4032) discussed below.

<sup>7</sup> By 1919 when the Harrington Survey was conducted and over time since then the middle of the Salt River has moved northward. Also, in June 1914, C.R. Olberg oversaw a table-top survey of the northern boundary of the Reservation. This survey accurately depicted the location of the middle of the main channel of the Salt River but was not used by Harrington.

<sup>8</sup> “Accretion” is the “[t]he gradual accumulation of land by natural forces. . . .” *Accretion*, BLACK’S LAW DICTIONARY (7th Ed. 1999). The doctrine of accretion provides that the grantee of land bounded by a body of water gains ownership of any land that is uncovered by the gradual and imperceptible movement of the body of water. *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 325–326 (1973), overruled on other grounds by *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 371 (1977).

<sup>9</sup> For example, due to the United States’ survey errors the City of Phoenix constructed a wastewater treatment plant, which has been and is currently discharging effluent and the materials contained within such effluent onto land rightfully granted to and owned by the Community. Moreover, the City of Phoenix is causing twice-treated effluent to enter the Reservation through recharge of the aquifer underlying the Community’s northern boundary.

### 1. Joint Stipulation of Settlement

The Joint Stipulation of Settlement is a settlement agreement between the Community and the United States that resolves and settles the Community's claims in the Gila River Trust Case. Under the Joint Stipulation of Settlement the Community waived its claims against the United States through the date of entry of the Joint Stipulation for its failure to provide a historical accounting, the United States' mismanagement of the Community's non-monetary trust assets or resources, the United States' mismanagement of the Community's trust funds and the United States' failure to perform trust duties related to the management of trust funds and non-monetary trust assets or resources. In particular, the Community waived its claims against the United States for its failure to document Federal rights-of-way (roads, electric, and irrigation) across the Reservation. The Community also waived its claims against the United States related to the boundary dispute for the Northern boundary of the Reservation.

Under the Settlement, the Community explicitly retained all future claims of any kind, as well as its claims related to water rights, federal law hunting, fishing, trapping and gathering rights, federal laws of general application for the protection of the environment and the Community's claims related to the United States' failure to perform investment duties for the Lower Colorado River Basin Development Fund.

In exchange for waiving these claims and dismissing the Gila River Trust Case with prejudice, the United States paid the Community \$12,500,000.00 (Twelve Million and Five Hundred Thousand Dollars). Further, pursuant to the Settlement the Community accepted as accurate the balances of all of the Community's trust fund accounts based upon the most recent Statements of Performance issued by the Office of the Special Trustee. The United States will continue to provide periodic Statements of Performance as it has been doing since 1995.

The Community and the United States approved the Joint Stipulation of Settlement and filed the fully executed Joint Stipulation of Settlement with the D.C. District Court on June 22, 2016. The Court granted the Joint Stipulation of Settlement that same day by minute order. On March 20, 2017 the Community and the United States filed a Joint Stipulation to Dismiss the Gila River Trust Case with prejudice.

### 2. BLM Land Transfer

As part of the overarching global settlement, the Community pursued the transfer of approximately 3,400 acres of BLM land to the Community as replacement for lands lost due to the Community agreeing to a fixed boundary along the Salt River. As part of its authority under the Federal Land Policy and Management Act (FLPMA) BLM completed the Lower Sonoran Resource Management Plan Record of Decision ("Lower Sonoran RMP") for management of over 930,200 acres of Federal lands in Maricopa, Gila, Pima, Pinal and Yuma Counties in central and southern Arizona.<sup>10</sup> The Lower Sonoran RMP identified lands for disposal and provided legal descriptions for such lands available for disposal.<sup>11</sup>

During the public comment period of the Lower Sonoran RMP process, the Community requested that a number of parcels of BLM land be considered for disposal in the Lower Sonoran RMP.<sup>12</sup> BLM made a determination that certain parcels met the requirements in 43 U.S.C. 1713 and included such parcels in the final Lower Sonoran RMP, some of which included the lands the Community had requested and identified for disposal.<sup>13</sup> BLM's identification of such lands for disposal as part of the Lower Sonoran RMP explicitly allowed for the sale of such parcels.<sup>14</sup>

During the settlement negotiations, and as an essential component of the overall settlement, the Community met with BLM officials and indicated the Community's continued interest to purchase the specific parcels that were contiguous to the Reservation and that included a number of highly significant cultural resources and cultural sites throughout the tracts.<sup>15</sup>

<sup>10</sup>DEPT OF THE INTERIOR, LOWER SONORAN RECORD OF DECISION & APPROVED RESOURCE MANAGEMENT PLAN, at V-VI (2012) (Letter from Emily Garber, Field Manager) (available at [https://eplanning.blm.gov/epl-front-office/projects/lup/11856/40127/42156/01-LSDA\\_ROD-ARMP\\_FINAL\\_2012-09-19\\_web-with-Links\\_sans-map-pages.pdf](https://eplanning.blm.gov/epl-front-office/projects/lup/11856/40127/42156/01-LSDA_ROD-ARMP_FINAL_2012-09-19_web-with-Links_sans-map-pages.pdf)).

<sup>11</sup>See *id.*, at Appendix C.

<sup>12</sup>See Letter from Gila Governor Williams Rhodes to Emily Garber, Field Manager, BLM (July 30, 2009) and Letter from Gila Governor William Rhodes to Emily Garber, Field Manager, BLM (April 27, 2010).

<sup>13</sup>See Lower Sonoran RMP, *supra* note 12 at Appendix C.

<sup>14</sup>See also 43 C.F.R. 2710.0-6.

<sup>15</sup>See Gila River Indian Reservation and Lands to be Taken into Trust Status Map included as an attachment to this testimony. The Map identifies the BLM disposal land that is of cultural significance to the Community. There are approximately 3,185 acres located in the Estrellas

In June of 2015 the BLM agreed to work with the Community to transfer the identified BLM disposal land to the Community. Since that time the Community agreed to provide funds in a Contributed Funds Agreement in order to facilitate the BLM perform the necessary work to effectuate the land transfer. In coordination with the Office of General Office, Tribal Historic Preservation Office, Cultural Resources and Community Department of Environmental Quality, the Community worked with BLM to finalize the Notice of Realty Action, which was published in the Federal Register on May 29, 2018. Public scoping was completed over the summer and work is being done to complete the necessary cultural and environmental review needed to finalize the transfer. Upon completion of the environmental and cultural review and issuance of a Finding of No Significant Impact, the Community will purchase the BLM land using funds from the settlement. H.R. 4032 authorizes the land, once transferred after the Community purchases the BLM lands, to be placed into trust on behalf of the Community.

### 3. BIA Letter

As part of the settlement negotiations, the Community and the United States discussed the need for federal legislation and the Administration's support of such legislation, in order to provide non-monetary relief regarding the undocumented rights-of-way on the Reservation, the northwesterly boundary of the Community's Reservation and the BLM land transfer. The Bureau of Indian Affairs issued a letter agreeing to work with the Community in a good-faith manner to prepare, introduce, and support the Community's legislative proposal in the 114th, 115th and 116th Congresses.<sup>16</sup>

### 4. Settlement Legislation

As discussed more fully below, federal legislation was needed to effectuate the benefits under the Settlement. Specifically, the Community needed to have a mechanism to legally establish the Federal rights-of-way on the Reservation. Since the rights-of-ways all traverse some allottee lands, allottees would have to have consented to the rights-of-ways, and the United States was unable to provide the consent itself on behalf of allottees. Congress, through federal legislation, however, can provide the legal basis to establish the Federal rights-of-ways in an efficient manner. Thus, H.R. 4032 is an innovative solution to solve the thorny problem of undocumented Federal rights-of-way that plagues much of Indian Country. The legislation also importantly establishes the Northwest Reservation boundary and authorizes and directs the placement of the BLM lands into trust status for the Community, all of which requires Congressional action.<sup>17</sup>

## II. H.R. 4032: Settlement Legislation

In addition to the Settlement Agreement that was filed in Federal court, federal legislation is also necessary for the Community to effectuate the settlement terms agreed to by the Community and the United States. Importantly, H.R. 4032 will:

- (1) establish, ratify, document, and confirm the Federal electrical, irrigation, and road rights-of-way and easements that exist within the exterior boundaries of the Reservation as of the date of the enactment of the Act;
- (2) establish a fixed location of the northern boundary of the Reservation and to provide for the Secretary of the Interior to ensure that the northern boundary is resurveyed and marked in conformance with the public system of surveys;
- (3) authorize and direct the Secretary to place certain lands into trust for the benefit of the Community;
- (4) substitute the benefits provided under this Act to the Community, its members and allottees for any claims that the Community, its members and allottees may have had in connection with alleged failures relating to the northern boundary of the Reservation and the documentation and management of Federal rights-of-way on the Reservation; and

that are contiguous to the Northwest portion of the Reservation and approximately 200 acres adjacent to the southern boundary of the Reservation. See also Letters from Maricopa County and City of Phoenix included as attachments to this testimony.

<sup>16</sup> See BIA Letter included as an attachment to this testimony.

<sup>17</sup> Section 210 of the Gila River Indian Community Water Rights Settlement Act of 2004 explicitly provides that "[t]he Community may seek to have legal title to additional land in the State located outside the exterior boundaries of the Reservation taken into trust by the United States for the benefit of the Community pursuant *only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Community.*" Gila River Indian Community Water Rights Settlement Act, Pub. L. 108-451, 118 Stat. 3523 (2004) (emphasis added).

(5) authorize the funds necessary for the United States to meet the obligations under this Act.<sup>18</sup>

*Section 5. Land Into Trust For the Benefit of the Community*

H.R. 4032 provides the mechanism to place the Lower Sonoran lands, approximately 3,400 acres of BLM disposal land, into trust on behalf of the Community once the lands are transferred through the FLPMA disposal process. As discussed above, the Community is working with the BLM to finalize this process and expects that the process will be completed later this year. The Community will use the Settlement funds to purchase the disposal lands from the BLM for fair market value. Once the transfer is finalized, H.R. 4032 authorizes and directs the Secretary to place such lands into trust status for the benefit of the Community.

Given the cultural significance and remoteness of these lands, the Community does not plan to develop these lands. Rather, the Community plans to protect these lands in order to preserve the documented cultural properties such as plant, animal and raw material resource gathering areas, sites of ideological and religious significance (i.e. rock art, rock shelters, and shrine sites) and trail systems and transportation routes that entail ideological and religious significance with historic and pre-historic Community settlements.<sup>19</sup>

While the Community has no plans to develop the lands, H.R. 4032 provides an explicit prohibition of gaming on the Lower Sonoran BLM disposal lands that shall be placed in trust in order to clarify that no gaming will take place on these lands. In particular, Section 5(d) provides that “Class II and class III gaming under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not be allowed at any time on the land taken into trust under subsection (a).”

*Section 6. Establishment of Fixed Northern Boundary*

Section 6 of H.R. 4032 establishes the Northwestern boundary of the Reservation along the Salt River to settle the boundary dispute by the Community relinquishing land that is currently part of the Reservation in order to avoid a title dispute with the City of Phoenix and private land owners.<sup>20</sup> The Community’s Northwestern boundary of the Reservation will be modified to be a fixed and permanent boundary as established by the Harrington Survey, as shown on the plat and described in the field notes. Subject to available appropriations, the modified Reservation boundary will be surveyed and clearly marked. The Secretary of the Department of the Interior will be required to publish the modified survey in the Federal Register. This shall constitute a final resolution of the Community’s Northwest Reservation boundary dispute.

*Section 7. Satisfaction and Substitution of Claims*

Section 7 confirms that the benefits provided to the Community, its members, and allottees are equivalent to or exceed the claims the Community, its members, and allottees may possess as of the date of enactment of the Act.

*Section 8. Federal Rights-of-Way*

Section 8 of H.R. 4032 establishes, ratifies and confirms all of the rights-of-way on the Reservation. The specific location and dimensions of the rights-of-way will be determined through surveys conducted by the Bureau of Indian Affairs, or its subcontractor. The legislation provides specific language to allow for cancellation of rights-of-way pursuant to 25 CFR 169.404–409 or by written request by the Community. However, once the rights-of-way are established, ratified and confirmed, all other rights-of-ways or easements on the Reservation shall be considered valid only to the extent that they have been established in accordance with applicable Federal statute and regulation specifically governing rights-of-ways or easements on Indian lands. During the House consideration of H.R. 4032, between the legislative hearing and the Full Committee mark-up, the Community worked with Interior and the Committee to incorporate some technical revisions. These technical revisions were inserted to address Interior’s request to conform to current terminology for rights-of-way regulations and to properly conform to Interior’s documentation and record-

<sup>18</sup> See H.R. 4032, Section 3.

<sup>19</sup> See Gila River Indian Community Council Resolution GR-006-17 Designating Komatke Do’ag/Vii Alh also known as the Sierra Estrella Mountain Range, as a sacred place and traditional cultural property of the Gila River Indian Community (January 18, 2017) included as an attachment to this testimony.

<sup>20</sup> See Gila River Indian Reservation and Lands to be Taken into Trust Status Map included as an attachment to this testimony. The Map shows where the Northwestern boundary at issue is located.

Section 9 of H.R. 4032 provides six (6) years after enactment of the Act, for the Bureau of Indian Affairs to complete a survey of each of the Federal rights-of-way established under the Act and to publish those rights-of-way surveys to be published in the Federal Register. The Bureau of Indian Affairs is authorized to complete the surveys itself or contract with the Community or a third party to complete the surveys.

H.R. 4032 is a non-controversial, bi-partisan piece of legislation that is absolutely critical to achieve the settlement terms that the Community agreed to in exchange for settling its federal trust accounting case against the United States. The legislation represents a compromise and savings to the United States' resources that would otherwise have been required if the Community further litigated the Gila River Trust Case. The Community worked closely with the United States to address technical revisions to the legislation that were incorporated and ultimately passed by the House. Moreover, the legislation provides a groundbreaking solution to the problem of undocumented Federal rights-of-way that is not unique to the Community and which could serve as a template for other tribes that are experiencing similar problems. Finally, H.R. 4032 provides certainty and eliminates the possibility of further litigation regarding the Northwestern boundary of the Reservation while restoring culturally significant lands to the Reservation.

## Attachments

This map shows the Northern Border Lands at Issue area in Arizona. The map includes labels for Northern Border Lands at Issue, Southern Mountain Park, Gila River Memorial Airport, and various towns like Chandler, Gilbert, and San Tan Valley. A legend indicates BLM Lands for Trust Status: 3,195.94 acres (shaded gray) and 199.90 acres (shaded black).

## Maricopa County

Denny Barney  
Supervisor, District 1

March 23, 2017

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The Honorable Paul Gosar  
United States House of Representatives  
2057 Rayburn HOB  
Washington, DC 20515

Dear Congressman Gosar:

Maricopa County was recently contacted to discuss potential federal legislation pertaining to the Gila River Indian Community taking land into trust as part of a settlement agreement with the Federal Government. Maricopa County Government Relations staff met with Mr. Jason Hauter and Mrs. Katie Brossy from Akin Gump to discuss the legislation in detail. Since this meeting, relevant county departments have been consulted and have found no issue with the proposal as presented.

I would like to personally thank you for contacting us on this topic as it is of interest to the citizens of Maricopa County.

Sincerely,



Denny Barney  
Chairman, Maricopa County Board of Supervisors

January 31, 2018

**City of Phoenix**  
OFFICE OF THE CITY COUNCIL

Chairman Doug LaMalfa  
Subcommittee Indian, Insular and  
Alaska Native Affairs  
House Natural Resources Committee  
1324 Longworth House Office Building  
Washington, D.C. 20515

Ranking Member Norma Torres  
Subcommittee Indian, Insular and  
Alaska Native Affairs  
House Natural Resources Committee  
1324 Longworth House Office Building  
Washington, D.C. 20515

Re: Support of H.R. 4032— Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act

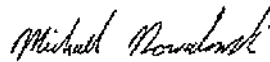
Dear Chairman LaMalfa, Ranking Member Torres and members of the Subcommittee,

We write in support of H.R. 4032—the Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act. As Councilmen for the City of Phoenix with districts that border the Gila River Indian Community's ("Community") reservation boundary we are familiar with the Community and its issues and work to cooperate with the Community to address common problems.

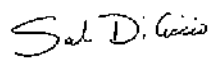
One of the purposes of this legislation is to resolve a boundary dispute along the Salt River caused by the ambulatory nature of the current boundary. Under current law this boundary is "the middle of the Salt River" and this has caused confusion regarding where the Community's property ends and where Phoenix's and other private land owners' property begins. H.R. 4032 would amend the current boundary so it would be fixed to remove any uncertainty and remove any potential for future title disputes.

Thank you for your consideration of H.R. 4032. We look forward to seeing this important piece of legislation pass. Please do not hesitate to contact us if you have any questions.

Sincerely,



Michael Nowakowski  
City of Phoenix District 7 Councilman



Sal DiCiccio  
City of Phoenix District 6 Councilman



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Washington, DC 20240

JUN 28 2016

The Honorable Stephen Roe Lewis  
Governor, Gila River Indian Community  
Post Office Box 97  
Sacaton, Arizona 85147

Re: Gila River Indian Community's Proposed Legislation

Dear Governor Lewis:

Through settlement discussions relating to the Community's trust accounting and trust mismanagement case, *Gila River Indian Community v. Jewell*, No. 06cv02249-TFH (D.D.C.), the Bureau of Indian Affairs (Bureau) understands that the Community would like to seek the passage of federal legislation that establishes, ratifies, and confirms the electrical, irrigation, and roads-related rights of way (ROWs) on the Gila River Indian Reservation that the Community believes are, or may be, undocumented. The proposed legislation also would clarify the northwestern boundary of the Reservation; provide for the satisfaction and substitution of certain allottee claims relating to the electrical, irrigation, and roads-related ROWs; and take certain land located in Pinal County, Arizona, into trust for the Community's benefit. See draft legislation from June 22, 2016, appended hereto.

As the primary office within the Department of the Interior that would be impacted by the legislation, the Bureau will work with the Community, its counsel, and its other representatives in a good-faith manner to support the Community's legislative proposal in the 114th, 115th, and 116th Congresses.

Please contact me if you have any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Black".

Michael Black  
Director, Bureau of Indian Affairs





# GILA RIVER INDIAN COMMUNITY SACATON, AZ 85147

## RESOLUTION GR-006-17

**A RESOLUTION DESIGNATING *Komatke Do'ag/Vii Alhá* ALSO KNOWN AS THE SIERRA ESTRELLA MOUNTAIN RANGE, AS A SACRED PLACE AND TRADITIONAL CULTURAL PROPERTY OF THE GILA RIVER INDIAN COMMUNITY**

**WHEREAS**, the Gila River Indian Community Council ("the Community Council") is the governing body of the Gila River Indian Community ("the Community"); and

**WHEREAS**, the Community Council on January 6, 1982, adopted Ordinance No. GR-01-82 codified at Title 15 of the Gila River Indian Community Code in which "it is...declared as a matter of Community policy and legislative determination, that the public interests of the Pima-Maricopa people and the interests of all other persons living within the jurisdiction of the Gila River Indian Community require that the Community adopt a means whereby all sites, location, structures, and objects of sacred, historical or scientific interest or nature will be protected from desecration, destruction, theft, or other interference."; and

**WHEREAS**, the Community Council has always held the preservation of historical, archaeological, cultural, and religious sites as a high priority and recognizes the need to protect the cultural heritages of the *Akime! O'Odham* (Pima) and the *Pee Posh* (Maricopa); and

**WHEREAS**, the U.S. Department of Interior, National Register of Historic Places defines Traditional Cultural Properties as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that:

1. Are rooted in the community's history; and
2. Are important in maintaining the continuing cultural identity of the Community.

**WHEREAS**, the Community recognizes certain locations to be sacred places or Traditional Cultural Properties based on the unique cultural and spiritual beliefs of the *Akime! O'Odham* and the *Pee Posh*; and

**WHEREAS**, all of (but not limited to) the places referenced in the oral traditions of the *Akime! O'Odham* and the *Pee Posh* are culturally and spiritually significant to the continuing life ways of the *Akime! O'Odham* and the *Pee Posh*; and

WHEREAS, the mountain range *Komatke Do'ag* (Pima language)/ *Vii Alhá* (Maricopa language), also known as the Sierra Estrella Mountains (English and Spanish languages), figures prominently in oral traditions of both the *Akimel O'Odham* and *Pee Posé*; and

WHEREAS *Komatke Do'ag/Vii Alhá* retains traditional religious and cultural importance to the continuing life ways of the *Akimel O'Odham* and *Pee Posé*; and

WHEREAS, the Community's Cultural Resource Standing Committee supports and concurs with the acknowledgement and recognition of the *Komatke Do'ag/Vii Alhá* Mountain Range in its entirety is a sacred place and a Traditional Cultural Property.

NOW THEREFORE BE IT RESOLVED, that the Community Council hereby does acknowledge and recognize that *Komatke Do'ag/Vii Alhá* mountain range in its entirety is a sacred place or Traditional Cultural Property and must not be altered from its natural state in order to maintain its physical and spiritual integrity.

BE IT FURTHER RESOLVED, that the Community Council hereby strongly opposes any alteration of the *Komatke Do'ag/Vii Alhá* mountain range for any purpose that would be a violation of the cultural and religious beliefs of the Community, and that would have a negative cumulative effect on the continuing life ways of the people of the Gila River Indian Community.

BE IT FINALLY RESOLVED, that the Governor, or in his absence the Lieutenant Governor, is hereby authorized to sign and execute such documents as are necessary to effectuate this resolution.

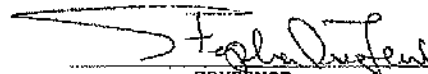
#### CERTIFICATION

Pursuant to authority contained in Article XV, Section 1, (a) (7), (9), (18), and Section 4 of the amended Constitution and Bylaws of the Gila River Indian Community, ratified by the tribe January 22, 1960, and approved by the Secretary of the Interior on March 17, 1960, the foregoing resolution was adopted on the 18<sup>th</sup> of January 2017, at a regular Community Council meeting held in District 3, Sacaton, Arizona at which a quorum of 12 Members were present by a vote of: 12 FOR; 0 OPPOSE; 0 ABSTAIN; 5 ABSENT; 0 VACANCY.

ATTEST:

GILA RIVER INDIAN COMMUNITY

  
COMMUNITY COUNCIL SECRETARY

  
GOVERNOR

The CHAIRMAN. Thank you to all the witnesses. We will now turn to five-minute rounds of questioning.

I would like to start with Director LaCounte. Director LaCounte, in regard to S. 2788, how would this bill affect the work of BIA law enforcement on the reservation, including intergovernmental or interagency coordination?

Mr. LACOUNTE. The effect would be no problem at all for us. It would also allow the tribe the opportunity to take on some of those responsibilities if they so chose to. We are not pushing that or anything, but it would allow that to happen. It would just really make things much clearer and right on the Spirit Lake Reservation.

The CHAIRMAN. Vice Chairman Yankton, again in regard to 2788, what steps will the tribe's justice and public safety systems be tak-

ing in order to be prepared for administering law enforcement, and are you getting enough support for your law enforcement efforts from the Federal Government, specifically BIA?

Mr. YANKTON. I don't know if you what to get into that right now. That could be a long story.

The CHAIRMAN. You can give us the short version.

Mr. YANKTON. I think if this was to repeal, we as a tribe would look more to probably wanting to implement more tribal police officers to work alongside with the BIA. But even there, there was a little friction in the past, depending on who is the chief of police, depends on the type of services and what we could work through.

But I think ultimately the goal here is to keep that identity as a sovereignty. I don't mean any disrespect to my ancestors. The well-being of why they wanted the protection for policing on our reservation back then was because we had absolutely nothing. The BIA was not even in existence.

Back in the 1940s when they enacted this, they wanted the protection of the State to police us. Seventy years later, I think we are very well capable of working with the BIA and providing that policing protection within our boundaries today.

The CHAIRMAN. Chief Floyd, you mentioned that lifting the blood quantum requirement would make leasing and economic development easier. Can you elaborate on that in terms of economic development?

Mr. FLOYD. Yes, Mr. Chairman.

Essentially, the process will be easier in that presently, like in the example of the Muscogee Creek Nation, we have several hundred cases waiting to be probated. Citizens are either reluctant or fearful to have it probated because they would be lost out of restricted status. We do not the clear title of the lands showing all the heirs.

If the Stigler Act amendments are passed, then members of the nation would be more willing to come forward to have their land probated. We would have a better record of the ownership, the heirs and the partitions of all the land. It would make the job of oil and pipeline companies and others who want to do business with the tribe easier because their work would be easier. They would have a better, clearer title than we have at present.

The CHAIRMAN. Councilman Enos, in regard to the Gila River Indian Community, do you have plans as far as how you would develop the lands or any portion of the lands once they are reacquired?

Mr. ENOS. Chairman, currently the plans for the acreages that we would be acquiring are merely for that of protection and preservation. The cultural significance, the matters that are present there with respect to the [phrase in Native tongue], those that have gone before us in the Community, are of great importance. So are our efforts and our need to develop and take those lands further. There is just nothing there right now. Our efforts are to protect and preserve and just conserve.

The CHAIRMAN. At this point, I will turn to Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman. Thank you to the Vice Chairman for allowing me to go first.

First off, I want to say to all of the tribal representatives here, you have made incredibly compelling cases for the legislation. I find some regret that you have to come here, given the fact that you are all sovereign and that you have the ability to run your own business. But I hope the Chairman and Vice Chairman can move these bills quickly.

I want to applaud you, Mr. LaCounte. I don't know the last time someone came over the BIA saying, yes, yes, yes. We are very excited about that. It is rare indeed but I think this is a level of cooperation on all these bills that we need if we are going to move them forward. I want to thank you for that.

As you can see, Mr. LaCounte, from our earlier discussion, one of the priorities that we have for Indian Country in the next many years is going to be public safety. We are very concerned about inadequate staffing, very concerned about jurisdictional challenges, very concerned about the level of crime, whether it is violent crime or misdemeanor crime occurring in Indian Country, especially in North Dakota, but really, across the Country.

Can you give me a sense, coming into the next budget year, can you give me a sense of what you are requesting as Acting Director of BIA to improve the quality of law enforcement in Indian Country within the Department of the Interior, within OMB. We need advocacy in those areas where you have primary jurisdiction?

Mr. LACOUNTE. I am not prepared to give you a sense of what that is. It is embargoed, I am sorry.

Senator HEITKAMP. Well, I think it goes back to our frustration here which is that we can't keep doing what we are doing and getting a better result. It is just not going to work. We need advocacy within the Department of the Interior, within OMB. We need advocacy to actually correct these problems.

I have had these conversations with former Attorney General Jeff Sessions, I have had these conversations with Director Wray, I have had these conversations with your predecessor. I continue to experience a lot of frustration about the lack of a plan and the lack of an appropriate assessment of how you can work in a cooperative, sovereign-to-sovereign relationship with people like Vice Chairman Yankton to provide that safety net, that security. We know it is not there right now, whether it is trying to access DEA, whether it is trying to make sure there is enough FBI agents, or whether it is just making sure your officers are trained and ready and available.

I think a good example of the challenges we have right now is down at Standing Rock. I think there are maybe 12 officers, sworn officers that belong there. Maybe we have seven. We obviously have this unique challenge which I am sure you are familiar with in terms of continuing staffing concerns. This is not acceptable.

We are not going to solve these problems of murdered and missing indigenous women, of rampant drug crime, of rampant crime in Indian Country without a plan. I am just curious about whether there is an intention on BIA's part to collaborate and to come up with a plan for improved law enforcement moving forward.

Mr. LACOUNTE. Certainly, we did plan to do that.

Senator HEITKAMP. Do you agree that you are inadequately staffed right now?

Mr. LACOUNTE. Yes.

Senator HEITKAMP. For the job you have been given?

Mr. LACOUNTE. Yes.

Senator HEITKAMP. Can you agree that when you are a leader in an organization that is inadequately staffed, one of the critical things is to ask for the right level of staffing, the right level of commitment in terms of resources to do your job?

Mr. LACOUNTE. Yes.

Senator HEITKAMP. Thank you. I don't mean to browbeat you. I am not going to be around here that much longer, but this is an enormous frustration for me. Because if we cannot protect people, we are not doing our job. That is fundamentally, exactly where we should be.

If think that BIA has a unique role in making sure you are collaborating with all available resources, whether it is tribal resources, whether it is State and local drug task force resources, what that looks like and making sure we are covering all the jurisdictions you have responsibility for. And recognizing you are Acting, I know that is another frustration, the musical chairs that go with not having that consistent leadership, that leads to not only planning but also implementation of a plan.

The consistent problem that I hear over and over again, whether it is from the elders or whether it is from tribal council, is that there is not adequate public safety personnel on the reservations to do the job that needs to be done to protect indigenous people.

I will not beat you up any more, but please know it is critically important that BIA assume some leadership on this issue.

The CHAIRMAN. Senator Lankford.

Senator LANKFORD. Mr. Chairman and Vice Chairman, thank you very much.

Chief Floyd, again, it is good to see you here. Thanks for coming and articulating the issues so well today on the Stigler Act. This is an anomaly that sits out there nationwide of how the Five Tribes in Oklahoma are treated differently than every other tribe in the Country. It is an area that has to be resolved. It is interesting this is the situation that has already had a House vote that was unanimous.

The Administration and the Department of the Interior have already stepped forward and said, we fully support this. Now it is going through the Senate process as well, so it is building good momentum.

But this is not the first time this has been discussed. How many years has a Stigler Act-like bill come up before this Congress? Do you know how many times it has come up?

Mr. FLOYD. I do know that the latest, most recent was about ten years ago. It did not pass at that time. Reading through the history of this Act, it reads like a very complex novel sometimes. It is woven with a lot of other things that have occurred in Indian Country throughout the years. I think with this approach and with the support of the House, we have made progress with the simplicity of this amendment.

Senator LANKFORD. Because this is different than previous versions?

Mr. FLOYD. It is, yes, sir.

Senator LANKFORD. You articulated some of those differences that are out there but do you want to articulate a couple of them again? How is this different than previous versions of the Stigler Act?

Mr. FLOYD. I think one is that there have been folks who have said it would be retroactive and they would have to go back, it could be creating additional land. It will not do that. It is not retroactive. It only goes forward from this point.

It does allow for families to, as is our culture, to pass things on and does allow, with the removal of the blood quantum, for them to probate their lands and have that moved to heirs. As I mentioned before, just having a clear title of restricted lands makes it easier to do business with any entity outside the nation.

Senator LANKFORD. Can I ask you to clarify, because this will be an issue that will come up, the best that you understand at this point, for families that have chosen not to probate, they have that property but the person who had ownership passed away some years ago. They still have it but have not gone through the probate. How would that be affected?

If they did not choose to probate it, are they staying in restricted, or it still has to go back to the original owner when they passed away, if the blood quantum was lost at that point? That deals with this issue of retroactive-non-retroactive and where it stands in the process.

Mr. FLOYD. First of all, the Stigler Act applies to practically every family in the Five Civilized Tribes, including my own so I will give a personal example. I had a brother pass away. He has 160 acres of restricted land. His daughter, who is sole heir, is less than half.

So at the present time, the royalty checks on minerals go uncashed. They go into an account. The family has no access to the money from surface lease. Until such time as it gets resolved through probate, nothing really moves. It is as if time stands still.

This will allow things to proceed in an orderly fashion so that the resources go from the accounts to the individuals who deserve a share.

Senator LANKFORD. It is your understanding, then, that as far as it not being retroactive, in that situation, that that land, whenever this passes, is lost on restricted status or because it has not gone through probate, it would be exempted out?

Mr. FLOYD. As it stands today, without the amendments, the land would be lost from restricted status. With the passage of the amendments, it can be passed to the sole heir of the family.

Senator LANKFORD. We will follow up when we get a chance to talk about that more on it. I do want to ask you about the grim dilemma that is in Oklahoma about fractionated land, because you have a situation where you have multiple owners and it is very difficult to be able to manage. We have some communities where a property lays empty and becomes dilapidated, but there are a hundred different owners out there. Trying to track down everyone just to figure out how to do maintenance on that facility becomes very, very difficult. It is also very, very difficult in oil and gas leases or any other surface rights that may come up.

This does not address that issue about fractionation. How do you think that gets resolved, do you think, in the days ahead? Because that is an issue with this. How do you think it gets resolved?

Mr. FLOYD. One of the problems, Senator, I see that we face, as told to me by own realty department, is we have one case that there are 127 heirs to the property. If a company wanted to come and lease the minerals, we would have to identify all 127 and get their permission. We find in cases, I am not saying in this particular case, but we find cases where individuals are reluctant to name all the heirs because those who do come forward may get larger portions than those who do not.

By having the amendments pass, we can then go in and accurately record who the rightful owners are of the property and their heirs. When companies come in to do business, their job will be made much easier, because we would have a certified title that we could give them of the individuals who rightfully are due resources from either the mineral lease or the surface lease.

Senator LANKFORD. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Vice Chairman Udall.

Senator UDALL. Thank you, Mr. Chairman.

Mr. LACOUNTE. as you know, members of my staff visited the Pine Hill BIE Schools at the end of August. They reported a number of very troubling safety and facilities issues on the campus. The library and kindergarten building are closed due to black mold. The gym and other buildings have roof and ceiling issues. There is no security fencing around the campus, even though it is a residential campus located near other high traffic community buildings like the post office.

Many of these issues were the subject of a 2016 DOI Office of Inspector General report, but they are still unresolved. Based on the weekly status reports I requested of BIA and BIE, the Bureaus are working with the tribal school board to develop a school site project plan to address these health and safety problems.

Mr. LACOUNTE. is this school site project plan still on track to be in place before the end of the month?

Mr. LACOUNTE. Could you repeat the last question?

Senator UDALL. Yes. Is this school site project plan still on track to be in place before the end of the month?

Mr. LACOUNTE. The plan is in place right now.

Senator UDALL. Now, okay.

Mr. LACOUNTE. After our meeting with you, I stepped up and, Senator, I didn't want to put my fate in others' hands. I would also like you to know when I walked back to my office that day, they handed me your second letter. That is when it arrived in my office.

But the plan is in place. I am going to see it through. I am committed to seeing that through.

Senator UDALL. Thank you very much for doing that. We really appreciate your commitment to that.

What assurances can you give me that completing and implementing this plan will fully address the issues at Pine Hill after so many years of inaction?

Mr. LACOUNTE. I will give you the same assurances I gave you on the GAO high risk. I am going to see it through. I will see this through as long as they allow me to serve in this capacity.

Senator UDALL. Terrific. If you are getting all that done, I hope you are going to be serving there for a while. I appreciate it.

It is reassuring to hear that the BIA and BIE seem to be taking the facilities issues at Pine Hill more seriously now, but I know that there are other BIE schools dealing with unresolved health and safety issues. Some of these issues likely just need follow-up through the maintenance staff, but you and I know that there is a serious issue with getting BIE contracting and project management done efficiently.

Are BIA and BIE going to work with other BIE schools to develop a school site project plan similar to what you did on Pine Hill?

Mr. LACOUNTE. I am quite certain I can commit to that as well. I think this unfortunate incident outlined some breakdowns in communication that needed addressed. I was pleasantly surprised when I started making noise myself that people fell in line and wanted to participate.

We generally do a weekly meeting with all the players. There are a lot more players than one would imagine, but working together, and everybody understands the importance of this. I do believe that.

Senator UDALL. Thank you very much for that.

What actions are you taking to improve the efficiency and quality of work coming out of BIA's contracting officers and project managers?

Mr. LACOUNTE. I cannot really speak to that. They are a part of the DSAM, the Deputy Secretary for Administration, but I communicate with them. I encouraged them, as I committed to you, that I would seek another contracting officer to handle this particular situation.

I think it woke them up, in that not only did I get one, I got one directly from them. I did not have to bring one from another BIA location. They paid attention to that. We have a new CFO who is very committed to the quality in the contracting officers. He is looking at their credentials.

He actually just provided me, just yesterday, a list of every contract we have concerning BIE schools and tribally-operated schools. We are committed to it and I know that he is very committed to it.

Senator UDALL. Thank you very much for your answer. Thank you for your commitment to these issues.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Cortez Masto.

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

Senator CORTEZ MASTO. Thank you, Mr. Chairman and Ranking Member Udall, for having this hearing.

I agree with the comments I heard earlier. I don't think any of the legislation we are talking about today is unreasonable at all. I want to thank Mr. LaCounte for your support and BLM's support of the legislation.

While we have you here, I have a quick question for you. I know, and we have been talking about this, that the Administration's



budget proposal was about \$18 million to begin the process of the reorganization within the Department of the Interior. Is that reorganization still going forward, to your knowledge?

Mr. LACOUNTE. The reorganization of the Department, minus the Bureau of Indian Affairs, the Bureau of Indian Education, and the Office of the Special Trustee, are moving forward.

Senator CORTEZ MASTO. So, those three agencies you just identified are not part of the reorganization?

Mr. LACOUNTE. At this time, they are not.

Senator CORTEZ MASTO. Have you made the tribal communities aware of that?

Mr. LACOUNTE. Yes.

Senator CORTEZ MASTO. Okay, because I just came from northern Nevada and meeting with some of the tribal communities and they had no idea. In fact, they were concerned they had not been consulted at all.

So what I am hearing right now is they are not part of a reorganization, none of that is taking place. Whatever the chain of command moving forward from the top all the way down to those agencies that impact our tribal communities, there is no reorganization, no change in the chain of command?

Mr. LACOUNTE. There is not.

Senator CORTEZ MASTO. Okay. That is good to know. Thank you very much.

Vice Chairman Yankton, let me ask you very quickly, I appreciate the legislation. Is it true that currently, now, there is concurrent jurisdiction for law enforcement both by your tribe and tribal law enforcement along with the State law enforcement? Is that what is happening right now?

Mr. YANKTON. Right now, the current law does give the State and counties authority to come in and exercise their law.

Senator CORTEZ MASTO. But have they been?

Mr. YANKTON. No.

Senator CORTEZ MASTO. That was my question. Even though the jurisdiction was transferred to the State, literally, my understanding is there has been no law enforcement with that transfer. Is that correct?

Mr. YANKTON. Probably not for the last 40, 50 years.

Senator CORTEZ MASTO. And that is one of the reasons to put together your own tribal court, tribal law and law enforcement to move forward and make this change?

Mr. YANKTON. Yes. Mind you, we really would also still be receptive to doing memoranda with the different State law departments, highway patrol, county, city. I think the more the merrier when it comes to policing no matter what area you are in. We just need to learn to know what those boundaries and jurisdictions and laws are because we are a federally-recognized tribe.

Senator CORTEZ MASTO. I appreciate that. Coming from Nevada, and the former States Attorney there, that is exactly what some of our local jurisdictions did. We entered into MOUs with the tribal communities for law enforcement purposes. I so appreciate that comment.

I also know that, and this is a concern I have with BIA and more resources that are needed and the support for law enforcement

across our tribal communities. I see it lacking in the State of Nevada. I think it is a resource issue. You have identified it.

I look forward to whatever proposals and budget proposals that you have moving forward and what your needs are. I am hoping you come forward, Director LaCounte, and let us know, because we want to be supportive of our communities. I look forward to working with you on that as well.

I have no further questions. Thank you very much.

The CHAIRMAN. Thank you, Senator.

At this point, I would like to thank all of our witnesses. We appreciate you being here and presenting testimony today.

Members may have follow-up questions which they can submit for the record. We would ask that you respond in a timely way. The hearing record will be open for two weeks.

With that, our thanks to you. We are adjourned.

[Whereupon, at 4:36 p.m., the Committee was adjourned.]

## A P P E N D I X

PREPARED STATEMENT OF HON. GARY BATTON, CHIEF, CHOCTAW NATION OF OKLAHOMA

Halito!

Good afternoon, Mr. Chairman, Mr. Vice Chairman, Senator Lankford, and Members of the Committee. My name is Gary Batton. I am the elected Chief of the Choctaw Nation of Oklahoma, on whose behalf I offer this testimony in support of prompt approval by the Senate of H.R. 2606, the House-passed legislation known as the Stigler Act Amendments of 2018.

### **Background on the Choctaw Nation.**

The Choctaw Nation's jurisdictional boundaries encompass approximately 11,000 square miles of land, including 10½ counties in southeastern Oklahoma. That covers an area larger than Maryland and Rhode Island combined. Of the worldwide total of about 194,000 enrolled Choctaw citizens, about 109,000 live within Oklahoma, and of those, about 44,300 reside within the Choctaw Nation.

Because of our large, mostly rural geographic area, checkerboard land ownership, and commingling of tribal and nontribal communities, our challenges in land management are a bit more acute than those confronting other tribal governments exercising jurisdiction over a contiguous tribal land base. But the Choctaw Nation is making the most of every opportunity.

The Choctaw Nation was designated as the first tribal Promise Zone in 2014. More recently, the Choctaw Nation secured thirteen separate Opportunity Zone designations in census tracts within its jurisdictional boundaries, pursuant to authorities enacted in the Tax Cuts and Jobs Act of 2017. We earned these distinctions due to the many challenges we face in our region, and due to the proven leadership and capacity of Choctaw Nation to efficiently use resources in ways that can make a difference and leverage federal investments in southeastern Oklahoma for all residents through partnership and collaboration.

### **Background on H.R. 2060 and the Stigler Act**

On September 12, 2018, H.R. 2606 was placed on the suspension calendar and passed by voice vote of the House of Representatives. H.R. 2606 would amend the Act of August 4, 1947 (also known as the Stigler Act) to lift certain unique restrictions placed upon Indians who are members of five of the 38 tribes in Oklahoma. The Choctaw Nation of Oklahoma is one of the five tribes who are located in eastern Oklahoma (a/k/a the "Five Tribes").

About 120 years ago Congress enacted the Curtis Act which attempted to break up the tribally-owned lands of the Five Tribes, allotting them to individual members of the Five Tribes, and opening up some of the lands of the Five Tribes to non-Indian ownership. For the next several decades, most of the allotted lands were held by individual Indians subject to restrictive protections designed to preserve the Indian land base by sharply limiting alienation (sale or transfer) and taxation without federal approval.

In 1947, Congress enacted the Stigler Act in order to remove the protections of federal restrictions during probate proceedings if heirs and devisees of an allotment have less than one-half degree Indian blood quantum. On a prospective basis affecting only future probate proceedings, H.R. 2606 would eliminate this provision that terminates Indian land status.

### **Choctaw Nation Experience with Stigler Act Authority**

The Stigler Act's 50 percent blood quantum threshold can no longer be met by many citizens of the Choctaw Nation who remain actively identified with their Choctaw families and community and who want to maintain the protections of federally restricted status for the surface and subsurface interests in lands they own. The Stigler Act's termination clause has led to the wholesale loss of federal land

protections in the past six decades, and the consequent loss of Indian land interests in the Choctaw Nation.

The Choctaw Nation bears a disproportionate share of the harm being caused by the Stigler Act termination threshold, because the Choctaw Nation has more federally restricted allotted lands than any one of the other four tribes in eastern Oklahoma. Originally 6,952,960 acres were allotted to Indian individuals within the Choctaw Nation. As of early 2016, after a century of staggering losses of Choctaw Indian lands, the number of allotted lands in Choctaw Nation was reduced to 135,263 acres. Since the beginning of 2017, at least forty Choctaw citizens who are heirs of allottees lost their restricted interests in an additional 2,800 acres as a consequence of the Stigler Act threshold not being met in the probate proceedings of the growing number of elderly Choctaw citizens who are passing on.

#### **Why Choctaw Nation Supports H.R. 2606.**

Federal land restrictions are of incredible value to the Choctaw Nation and to our Choctaw citizens. First, they help slow the loss of what little is left of Indian land ownership in Choctaw's part of Indian Country. Second, federal land restrictions maintain without question the well-settled territorial aspects of tribal jurisdiction. Third, such federal land restrictions typically are an eligibility requirement for federal assistance in the form of program funding, grants, loans and loan guarantees.

Choctaw Nation has long sought the relief that would be provided by H.R. 2606. H.R. 2606 is a streamlined, simple technical amendment that would fix the core of our main problem with the Stigler Act. H.R. 2606 only applies to the five tribes in eastern Oklahoma because the Stigler Act it would amend only applies to our five tribes. None of the 568 other federally recognized tribes or their members suffer the same penalty that is imposed on our five tribes by the Stigler Act.

In order to maintain the protections of federal restrictions on Indian land title, the Choctaw Nation seeks parity with all other tribes outside of eastern Oklahoma. The Stigler Act denies us that parity. H.R. 2606 would restore that parity and repeal the termination clause that is in the Stigler Act today.

Fixing the Stigler Act is long overdue. We urge the Committee to move quickly during the remaining days of this session to favorably report H.R. 2606 to the Senate floor for prompt enactment as passed by the House, without amendment. Any change to H.R. 2606 at this late stage of the process poses a real and substantial threat to enactment of this relief this year or in the foreseeable future.

#### **Conclusion**

The Choctaw Nation appreciates everything that Senator Lankford has done to get H.R. 2606 to the finish line at this hearing today, and everything that he, Chairman Hoeven, Vice Chairman Udall, and other members of this Committee are doing every day to advance the interests and concerns of the Choctaw Nation and all Indian tribes. Your continued support in these matters plays a crucial role in the Choctaw Nation's efforts to live out our foundational values of faith, family and culture.

Thank you for joining in our mission to help the Choctaw Nation and all of Indian Country not only survive but thrive. We are pleased to provide this written testimony and thank you for the opportunity to do so.

Yakoke (Thank you).

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#### **PREPARED STATEMENT OF HON. BILL ANOATUBBY, GOVERNOR, CHICKASAW NATION**

Chairman Hoeven, Vice Chairman Udall, and honorable members of the Committee:

My name is Bill Anoatubby, and I am Governor of the Chickasaw Nation. I support the comments offered today by other leaders of the Five Tribes, but I offer as well this brief statement on behalf of the Chickasaw Nation and its citizens, who live throughout our treaty territory, the State of Oklahoma, and the United States. Thank you for this opportunity to address you on this matter.

H.R. 2606 presents Congress with the opportunity to amend the Stigler Act and remedy a longstanding and unjustifiable complication to Chickasaw citizen allotment title and land management. As others have highlighted, the Stigler Act's requirements and procedures apply only to allotment lands held by citizens of the Five Tribes—that is, citizens of either the Cherokee Nation of Oklahoma, the Chickasaw Nation, the Choctaw Nation of Oklahoma, the Muscogee (Creek) Nation, or the Seminole Nation of Oklahoma. Allotments held by no other Tribe's citizens, whether in Oklahoma or elsewhere in Indian country, are subject to these unique complications.

We, the leadership of the Five Tribes, previously sought comprehensive reform and update of the Stigler Act of 1947. More than a decade ago, we succeeded in

moving reforms through the House of Representatives, but the initiative fell short of enactment into Federal law. More recently, we renewed our efforts on a far narrower basis than the prior comprehensive initiative, and we come before you again with passage of a productive bill in the House, H.R. 2606, which is now presented to you for your consideration. If advanced by this Committee, approved by the Senate, and enacted into law, H.R. 2606 would reform the most odious and archaic legal obstacle to the preservation of Five Tribe citizens' allotted lands—specifically, it would strike from law the termination-era requirement that Federal law protections of American Indian and Tribal interests be contingent upon an allottee's being of  $\frac{1}{2}$ -“Indian blood.” H.R. 2606, once enacted, would strike that requirement with prospective effect only and, thus, not create any new parcel of restricted or Tribal trust land. Nor would it change other procedural requirements that apply to Five Tribe allotment lands. It would, instead, allow presently restricted lands to remain in protected status subject to the desire of the owners rather than by application of an anachronistic and likely unconstitutional blood-quantum requirement.

By narrowly amending the Stigler Act in this manner, H.R. 2606 would end an archaic and unnecessary provision of federal law and end one problematic aspect of Congress's prior distinct and disparate treatment of Five Tribe lands, bringing the rules into greater parity with what applies to allotment lands held by other American Indians. We accordingly strongly commend this narrow measure for your favorable action.

On behalf of the Chickasaw Nation and its citizens, I ask that you support passage and enactment of H.R. 2606.

Thank you again for the opportunity to address you on this matter.

