

**Statement of
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**House Committee on Natural Resources
Subcommittee on National Parks, Forests, and Public Lands**

**H.R. 8108, Advancing Tribal Parity on Public Lands Act
H.R. 8109, Tribal Cultural Areas Protection Act**

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Introduction

Aanii (Hello)! Good afternoon, Chairman Neguse, Ranking Member Fulcher, and members of the Subcommittee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department's testimony on H.R. 8108, Advancing Tribal Parity on Public Lands Act, and H.R. 8109, Tribal Cultural Areas Protection Act. H.R. 8108 would generally prohibit the Federal Government from conveying areas important to Indian Tribes out of Federal ownership, allow Indian Tribes first right of refusal on sales of public land, and provide for greater Tribal involvement in land tenure adjustments. H.R. 8109 would establish a Tribal Cultural Areas System to provide increased protection for important cultural sites.

The bills under consideration align with the Administration's efforts to strengthen opportunities for Tribal engagement in the management and co-stewardship of Federal lands. In January 2021, President Biden established his commitment to strengthen nation-to-nation relationships in his Presidential *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*. Consultation and collaboration are essential for Tribal governments to shape decisions for the protection of sacred sites and traditional cultural properties, conservation of native plants and wildlife, recreation, and other uses and values.

Furthermore, President Biden built upon this commitment in announcing that the Department and the Department of Agriculture created the "Tribal Homelands Initiative." Through joint Secretarial Order 3403, the two Departments codified a policy to facilitate agreements with Tribes to collaborate in the co-stewardship of Federal lands and waters. Moreover, the Departments have also entered into the multi-agency *Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Tribal Treaty Rights and Reserved Rights*, which will increase collaboration with Tribes to ensure stewardship and access to sites, and invite Indigenous Knowledge into management, treatment, and protection procedures. The Administration recognizes and affirms that the United States' trust and treaty obligations are an integral part of each Department's responsibilities for managing Federal lands.

We appreciate the work on the bills under consideration today. A review of each of the bills follows.

H.R. 8108, Advancing Tribal Parity on Public Lands Act

H.R. 8108, Advancing Tribal Parity on Public Lands Act, would prohibit the disposal of land managed by the Bureau of Land Management (BLM) or the U.S. Forest Service if the Secretary of the Interior (Secretary) or Agriculture determines through consultation with interested Tribes that it would impact the rights and interests of any interested Indian Tribes or impair access to a reservation. Under the bill, the Secretaries are required to notify all interested Indian Tribes of the availability of a tract of public land for sale and must sell the tract to a Tribe that submits a bid at fair market value. If more than one Indian Tribe submits a bid and an agreement between the Indian Tribes cannot be reached, the bill prohibits the Secretaries from selling the tract for five years. Any tract acquired by an interested Indian Tribe will be held in trust for the benefit of the Tribe.

The bill amends various public land laws to address Tribal involvement in land tenure adjustments. The bill amends the Federal Land Policy and Management Act (FLPMA) to add the interests of Indian Tribes to the list of considerations for land exchanges and adds interested Indian Tribes to the list of entities to be notified of a public land conveyance. In addition, H.R. 8108 amends the Federal Land Transaction Facilitation Act (FLTFA) to include sacred sites and land that affects the exercise of treaty or other reserved rights to the definition of “exceptional resources”; include Tribal governments as authorities who can document resources; require notice to all interested Indian Tribes of inholdings with a landowner with desire to sell; and include treaty and trust obligations and the preservation of Native American culture and religion when prioritizing acquisitions. The bill also amends the Recreation and Public Purposes (R&PP) Act to add Indian Tribes to the list of entities to which land can be sold or leased for recreational and other public purposes.

The bill further amends Title II of FLPMA by requiring the Secretary to provide inventory data on public land boundaries to Tribal governments and ensure opportunities for meaningful public involvement in the development of land use plans. Additionally, the bill amends Title III to require at least one member of each advisory council to be a representative of an interested Indian Tribes.

Finally, H.R 8108 allows for certain Tribal consultation meetings to be closed to the public at the request of the Indian Tribe or government and authorizes the Secretary to keep certain information determined to be sensitive by a Tribe or Tribal government confidential.

Analysis

H.R. 8108 provides additional avenues for the BLM to transfer lands to Indian Tribes under various authorities and for those lands to be held in trust for the benefit of Tribes. Currently, BLM administers 245 million surface acres of public land. Under FLPMA, the BLM conducts sales, exchanges, and acquisitions of public land when they are in the public interest and consistent with publicly approved land use plans. Where the public lands are concerned, BLM engages in legally required consultation with Tribes. The BLM's land tenure objectives include improving management of natural resources through consolidation of Federal, Tribal, State, and private lands; preserving open space and traditional landscapes; and preserving archaeological, historical, and paleontological resources.

The Bureau of Indian Affairs (BIA) administers and manages over 55 million acres of surface land held in trust by the United States for the benefit of American Indians, Indian Tribes, and Alaska Natives. The Indian Reorganization Act (IRA) provides the Secretary with the discretion to acquire trust title to land or interests in land for Tribes. Congress may also authorize the Secretary to acquire title to particular land and interests in land to be held in trust under statutes other than the IRA.

The new authorities provided under H.R. 8108 would give the Department more flexibility in responding to Tribal requests and considerations. The Department supports the bill and recommends minor modifications to provide for more effective implementation.

Retention of Important Cultural Sites in Federal & Tribal Management

The Department is supportive of additional tools from Congress for ensuring important cultural sites, treaty rights, and reserved interests of Indian Tribes are protected. Section 2 of H.R. 8108 aims to prevent the disposal of cultural sites by requiring the Secretary to make a determination through consultation with any interested Indian Tribe that the disposal of the tract would not impact the rights and interests of any interested Indian Tribe and would not impair access to a reservation. As written, the bill requires Secretarial signature on that determination. The Department supports the goal of this section to ensure cultural site and protection and would like to work with the sponsor on amending this language to include the Secretary's designee in order to facilitate timely action.

Section 2 also requires the Secretary to sell an available tract of land to an interested Indian Tribe if the Tribe submits a bid to buy the tract for fair market value not later than 60 days after receiving notification of the tract's availability for sale. Under FLPMA, the BLM retains management of most public land and is authorized to oversee the sale of certain public lands when the sales are in the public interest and consistent with publicly approved land use plans. These land sales are at the discretion of the Secretary and are made at fair market value in accordance with Federal law. Under current BLM policy, sales are generally conducted under competitive bidding procedures to ensure a fair return to taxpayers. Typically, these sales are widely advertised through public notices, media announcements, and on appropriate BLM websites.

Further, Section 2 limits the Secretary's ability to offer parcels for sale for a period of five years if an agreement between competing Indian Tribes cannot be reached. We recommend modifying this section to allow the Secretary to offer the parcel for sale on the open market at the end of a one-year period if the interested Indian Tribes cannot come to an agreement.

Increased Consultation & Confidential Information

The Department recognizes the importance of incorporating meaningful input from Tribes during the BLM's land use planning process. Lands available for conveyances are typically identified through land use planning. During the land use planning process, the BLM engages in formal Tribal consultation to ensure that the cultural values, religious beliefs, traditional practices, and legal rights of Native Americans, which could be affected by BLM actions on public lands, are considered. Tribal consultation regarding activities on public lands has four essential elements: identifying appropriate Tribal governing bodies and individuals from whom to seek input;

talking with appropriate Tribal officials and/or individuals and asking for their views regarding land use proposals or other pending BLM actions that might affect traditional Tribal activities, practices, or beliefs relating to particular locations on public lands; treating Tribal information as a necessary factor in defining the range of acceptable public-land management options; and creating and maintaining a permanent record to show how Tribal information was obtained and used in the BLM's decision-making process.

We support the requirements of Section 4 that allow for Tribal consultation meetings regarding land conveyances to be closed to the public at the request of the Indian Tribe or Tribal government. Section 4 also allows for information designated as sensitive by an Indian Tribe or Tribal government to be protected as confidential and withheld from public disclosure or publication.

Amending Federal Land Laws for Tribal Parity

The Department supports the goals of amendments proposed in the bill to increase Tribal participation and eligibility in public land laws. The amendments to FLTFA will help the BLM appropriately prioritize treaty and trust obligations during acquisitions to include lands with sacred sites and that affect the exercise of treaty or other reserved rights. Under the R&PP Act, the BLM regularly transfers public land to local governments and nonprofits for a variety of public purposes. This helps States, local communities, and nonprofit organizations obtain lands, at no or low cost, for important public purposes such as parks, schools, hospitals and other health facilities, fire and law enforcement facilities, courthouses, social services facilities, and public works. Including Tribes as one of the entities eligible under the R&PP Act is long overdue, bringing parity to Tribes, and the Department supports this provision.

We defer to the Department of Agriculture regarding the bill's provisions affecting lands managed by the U.S. Forest Service.

H.R. 8109, Tribal Cultural Areas Protection Act

H.R. 8109, Tribal Cultural Areas Protection Act, establishes a "Tribal Cultural Areas System" designation on land under the jurisdiction of the Secretary (other than Indian land) to preserve opportunities for Indian Tribes to undertake religious, cultural, spiritual, medicinal, or traditional practices within Tribal cultural sites; to permanently protect the religious, cultural, spiritual, scenic, ecological, medicinal, and traditional values of Tribal cultural sites; and to enhance opportunities for Indian Tribes to engage in the preservation and management of Tribal cultural sites on public land. The bill specifies that Congress would have the sole authority to designate a Tribal cultural area on public land for inclusion in the Tribal Cultural Area System.

The bill requires the Secretary to provide recommendations on sites for designation to Congress within three years, in consultation with interested Indian Tribes, State Historic Preservation Officers, and Tribal Historic Preservation Officers. The bill also requires the Secretary to establish criteria for making the recommendations and provides a framework that Federal agencies must consider when developing the criteria. H.R. 8109 also requires that areas recommended for designation be managed in a manner to preserve Tribal cultural sites and

values and withdraws those land from public land laws, mining laws, and mineral leasing, mineral materials, and geothermal leasing laws until Congress acts on the recommendation.

For each Congressionally designated Tribal cultural area, the bill directs the Secretary to prepare a comprehensive management plan within three years of designation and to establish a Tribal Commission within 180 days of designation that will provide management guidance and recommendations. The Tribal commission would consist of one representative designated by each interested Tribe and would not be subject to the Federal Advisory Committee Act.

The bill also provides management prescriptions for Congressionally designated Tribal cultural areas and requires those areas to be managed to preserve Tribal cultural sites. For example, within the Tribal cultural areas, new or existing uses would be authorized in consultation with the applicable Tribal commission. New roads would be prohibited, requirements for temporary roads and road maintenance would be applied, and motorized vehicle use would be restricted to designated roads with limited exceptions. The bill also allows existing grazing to continue in a manner consistent with the purposes for which the Tribal cultural area was established and, if inconsistent, grazing permits or leases would be modified or terminated. The Secretary would be authorized to accept donations of valid existing grazing permits or leases, including portions of a lease or permit in common allotments, for termination and then ending of grazing on the allotment.

Further, H.R. 8109 allows for vegetation management if necessary to protect, maintain, or enhance or restore a Tribal cultural area. While Congressionally designated Tribal cultural areas would be subject to valid existing rights, they would be withdrawn from public land laws, mining laws, and mineral leasing, mineral materials, and geothermal leasing laws. The bill requires the Secretary to ensure access for members of an interested Indian tribe and allows the Secretary to close the area to the general public for the least amount of time necessary to protect the privacy of cultural, religious, and traditional food, medicinal, and material gathering activities. Finally, the bill requires the Secretary to ensure adequate law enforcement presence.

The bill allows for contracts with Tribes or Tribal organizations to perform administrative or management functions for a Tribal cultural area and allows the Secretary to provide technical and financial assistance to improve the capacity of Indian Tribes to develop, enter into, and carry out administrative and management activities.

Analysis

The Department supports the goals of H.R. 8109 to provide further protection for and Tribal involvement in the protection of important Tribal cultural sites. The Department also notes that it currently manages a variety of special designations to conserve the most special areas on public land. This includes areas designated legislatively by Congress or administratively through the President, the Secretary, or local land use planning processes. These areas offer the American people exceptional opportunities for a wide range of traditional uses, hunting, solitude, wildlife viewing, fishing, history exploration, and scientific research. These areas are managed by respecting the ties that Native and traditional communities have to public lands, as well as being welcoming of diverse interests and uses.

Some National Monuments, National Conservation Areas, and Areas of Critical Environmental Concern offer a similar level of protection to that contemplated in H.R. 8109, depending on the language included in the enabling legislation or land use plan for those units. Currently, some protection of Tribal cultural areas is possible under existing law, regulation, and policy, such as the identification of Traditional Cultural Properties (TCPs) and nomination of TCPs to the National Register of Historic Places. The Department acknowledges the value in the bill's provisions that provide protections more explicitly tied to Tribal cultural sites than in other special designations. The bill also provides greater protection from development or other land uses deemed incompatible than what currently exists under the National Historic Preservation Act.

We would also like to work with the sponsor and the Committee on several technical issues. For example, the Department would like to work with the sponsor on a number of definitions including "historic property." This term has a specific definition in the National Historic Preservation Act (NHPA) that overlaps, but is not the same as, "historic property" as defined in Section 2 of H.R. 8109. As currently drafted, the definition of "historic property" combines elements of the same term under the NHPA and elements from the definition of "sacred site" in Executive Order 13007, *Indian Sacred Sites*. A term specific to this bill would provide more clarity for implementation.

In Section 5, the Department recommends clarification as to whether comprehensive plans for Tribal cultural areas should be understood to be land use plans, such as those identified under Section 202 of FLPMA for the BLM, or implementation-level activity plans, such as those defined in planning regulations. The Department notes that requiring the completion of such plans within three years of designation could result in a rushed process that would make meeting the requirements for improved collaboration and Tribal involvements difficult to achieve.

We look forward to continued discussion with the sponsor and the Committee on the best way to achieve the goals of this bill in light of existing special designations and cultural resource protections.

Conclusion

Thank you for the opportunity to provide testimony on these bills. I look forward to your questions.