

**STATEMENT OF  
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**BEFORE THE  
UNITED STATES HOUSE OF REPRESENTATIVES  
COMMITTEE ON NATURAL RESOURCES— SUBCOMMITTEE ON NATIONAL  
PARKS, FORESTS, AND PUBLIC LANDS**

**September 14, 2022  
Regarding**

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

Chairman Neguse, Ranking Member Fulcher, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the views of the U.S. Department of Agriculture (USDA).

The USDA is committed to fulfilling the Federal trust responsibility to Federally recognized Indian Tribes. We acknowledge many of the lands administered by the Forest Service are the ancestral homelands to American Indians and Alaska Natives and contain cultural and natural resources of significance to their people, such as sacred religious sites, burial sites, wildlife resources, and sources of Indigenous foods and medicines.

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

The USDA Forest Service is actively engaged with Tribes in the identification, protection, and management of areas of significance to American Indians and Alaska Natives. There is no single Federal authority that governs either the preservation or protection of resources that have religious, medicinal, or cultural significance for American Indians and Alaska Natives. Instead, Federal policy towards Tribal resources and places, and by extension identities and values, comprises a suite of treaties, Federal laws and regulations, court decisions, executive orders and memoranda, interagency agreements, and agency-specific direction.

The **Federal Land Policy and Management Act** and the **National Forest Management Act** direct the Forest Service to consult with and coordinate land use for National Forest System lands with Indian Tribes. Proposed Federal actions that may affect Tribal cultural resources are

subject to **National Environmental Policy Act (NEPA)** review. Implementing regulations and agency procedures require consultation with Indian Tribes during the NEPA review process.

Several statutes and implementing regulations establish policies and processes intended to preserve and protect Tribal resources:

- **American Indian Religious Freedom Act of 1978 (AIRFA).** AIRFA establishes as policy that the United States will protect and preserve for American Indians, Alaska Natives, and Native Hawaiians their freedom to exercise their traditional religions. Specific aspects of such freedom identified in the law are access to sacred sites; use and possession of sacred objects; and worship through ceremonials and traditional rites.
- **Archaeological Resources Protection Act of 1979 (ARPA).** To protect archaeological resources on Federal and Indian lands from looting, vandalism, and unregulated excavation, ARPA establishes criminal and civil penalties for unpermitted disturbance of archaeological resources, including their excavation, removal, damage, or defacement.
- **National Historic Preservation Act of 1966 (NHPA).** The NHPA requires Federal agencies to consider the impact of their undertakings on historic properties. Amendments to the NHPA in 1992 clarified that properties of traditional religious and cultural importance to Indian Tribes and Native Hawaiian organizations may be determined eligible for inclusion on the National Register of Historic Places and that Federal agencies are required to consult with Indian Tribes and Native Hawaiian organizations in meeting their responsibilities under NHPA.
- **Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).** NAGPRA requires Federal agencies and Federally supported museums to return Native American human remains and funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, or culturally affiliated Indian Tribes and Native Hawaiian organizations.

Other statutes and implementing regulations establish policies and processes more specific to the management of Tribal cultural resources. The **Tribal Forest Protection Act of 2004 (TFPA)** provides the authority for the Forest Service to enter into an agreement or contract to carry out projects on National Forest System (NFS) or U.S. Department of Interior (DOI), Bureau of Land Management (BLM) lands to protect adjacent Indian forest land, range land, or Tribal communities. Indian Tribes may submit requests to the Secretary of Agriculture and the Secretary of the Interior to enter into cooperative agreements or contracts. Forest Service officials may provide advice and information to Indian Tribes in advance of the Indian Tribes' submitting proposals for stewardship contracts or other instruments, contracts, or agreements. Forest Service officials may assist Indian Tribes in developing proposals that are consistent with the selection criteria set forth in the Act. Line Officers may only accept proposals from a representative of the governing body of an Indian Tribe, such as a Tribal council or Tribal chairman. An Indian Tribe may submit a proposal on behalf of a Tribal member who owns an allotment that meets the qualifications for a project.

In addition, the **Cultural and Heritage Cooperation Authority (CHCA)** authorizes the Forest Service to utilize NFS land for the reburial of human remains and cultural items,

including human remains and cultural items repatriated under NAGPRA; authorizes and ensures access to NFS land, to the maximum extent practicable, by Indians and Indian Tribes for traditional and cultural purposes; and allows NFS lands to be temporarily closed from public access for traditional and cultural purposes; and prevents the unauthorized disclosure of information regarding human remains or cultural items reburied on NFS land.

Additional statutes and implementing regulations provide for the Forest Service to enter into agreements and contracts with and/or provide grants to Indian Tribes to manage Tribal resources. The **Infrastructure Investment and Jobs Act (IIJA)** makes additional funds available for states and Indian Tribes to implement restoration and wildfire mitigation and risk reduction projects on Federal lands pursuant to Good Neighbor Authority or the Tribal Forest Protection Act of 2004. Others include:

- **Good Neighbor Authority (GNA).** The GNA provides for the Forest Service to enter into cooperative agreements and contracts with states, counties, and Indian Tribes to perform forest, rangeland, and watershed restoration services on NFS lands, including hazardous fuels, fish and wildlife, and insect/disease activities.
- **Healthy Forests Restoration Act of 2003 (HFRA) and implementing regulations (36 CFR 223).**  
Section 604 of the HFRA, “Stewardship End Result Contracting Projects” and implementing regulations provide for the use of contracts and agreements to achieve land management goals, or end results, by combining restoration services and forest product harvesting into a single project, for the national forests and public lands that meet local and rural community needs.
- **Interior and Related Agencies Appropriations Act of 1992 (P.L. 102-154).** P.L. 102-154 provides the authority for the Forest Service to enter into Challenge Cost-Share Agreements with public and private agencies, Indian Tribes, organizations, institutions, and individuals to develop, plan, and implement projects of mutual interest and benefit to all parties.
- **Native American Tourism and Improving Visitor Experience (NATIVE) Act (Public Law No. 114-221).** The NATIVE Act directs Federal agencies to support Indian Tribes, Tribal organizations, and Native Hawaiian organizations in showcasing their history, culture, and continuing vitality; enhancing or maintaining their distinctive cultural features; and providing authentic and respectful visitor experiences; assisting in interpreting the connections between Native Americans and the national identity of the United States; and enhancing efforts to promote understanding and respect for diverse cultures in the United States, as well as the relevance of those cultures.
- **TFPA/638 Authority.** The 2018 Farm Bill provided the Forest Service authority to enter into contracts with Tribes under the Indian Self-Determination and Education Act to “perform administrative, management, and other functions of programs” of the TFPA for projects that protect Indian trust lands and resources from threats such as fire, insects, and disease and/or involve a feature or circumstance unique to the proposing Tribe (i.e., legal, cultural, archaeological, historic).

- **Watershed Restoration and Enhancement Agreement Authority (Wyden Amendment).** The Wyden Amendment provides the authority for the Forest Service to enter into Cooperative and Participating Agreements with Federal, Tribal, state, and local governments; private and nonprofit entities; and landowners to conduct activities on public or private lands for the following purposes: protection, restoration, and enhancement of fish and wildlife habitat and other natural or cultural resources; reduction of risk for natural disaster where public safety is threatened; or a combination of both.

H.R. 8108 and H.R. 8109 include new requirements on conveyances and land uses and planning directed toward the preservation and protection of Tribal interests on lands managed by the Forest Service, consistent with the nation-to-nation relationship between the United States and federally recognized Indian Tribes.

### **H.R. 8108, Advancing Tribal Parity on Public Land Act**

H.R. 8108 does not allow for USDA and the DOI to dispose of NFS land or public land under the Federal Land Policy and Management Act, Forest Service Facility Realignment and Enhancement Act, and “Small Tracts Act” in instances where the Secretary of Agriculture determines through consultation with any “interested Indian Tribe” that there would be an impact to either the rights of any “interested Indian Tribe” or access to a reservation. As defined in the bill, an “interested Indian Tribe” will have either historic, precontact, cultural, or religious connection to a cultural site located on the tract of public land; a former reservation located on the tract of public land; or treaty rights or other reserved rights associated with the tract of public land. Further, even when there is not a determination of such Tribal interest, prior to conducting a sale of the tract to dispose of public land, USDA and DOI would be required to notify all Indian Tribes of the availability of the tract for sale and offer interested Tribes right of first refusal to acquire that land. If there is an Indian Tribe who submits a bid to purchase the tract, USDA and DOI are required to sell the tract to the interested Indian Tribe. Under HR 8108, a tract of public land acquired by an interested Indian Tribe shall be held in trust by the Secretary of the Interior.

As expressed in Order No. 3403, the policy of the United States is to restore Tribal homelands to Tribal ownership and to promote Tribal stewardship and Tribal self-governance. The Administration is committed to supporting consolidation of Tribal landholdings within reservations, including Tribal acquisition of Federal lands and private in-holdings, consistent with applicable law. Further, the Administration is committed to facilitating Tribal requests to have lands placed into trust status, including for conservation, protection of sacred sites, cultural or religious use, or exercise of subsistence or treaty reserved rights.

H.R. 8108 extends the authorities provided to state and local governments under the Federal Land Policy and Management Act, the Forest Service Facility Realignment and Enhancement Act, and the “Small Tracts Act” to allow the consideration of Tribal interests. The consideration of Tribal interests increases USDA’s opportunity for consultation and coordination with Indian Tribal Governments, as outlined in EO 13175.

USDA supports the overarching goals of HR 8108 to the extent they increase consideration of Tribal interests and looks forward to working with the Subcommittee and bill sponsors to ensure the new authorities do not result in any unintended impacts related to conveying land out of Federal ownership.

### **H.R.8109, Tribal Cultural Areas Protection Act**

H.R.8109 establishes a “Tribal Cultural Areas System” (System) with the purposes of preserving opportunities for Tribes to undertake traditional practices, permanently protecting culturally significant sites and enhancing opportunities for Tribes to engage in the preservation and management of cultural sites. Under the bill, any Tribal cultural site located on public land is eligible to be designated or removed by Congress as a Tribal Cultural Area based on recommendations by USDA and DOI. The bill also establishes a process for Tribes to petition for areas to be included by Congress in the System, would require USDA and DOI to approve such petitions for qualifying areas absent a contrary "public interest" determination, and would create USDA and DOI management requirements for these areas pending congressional action regarding road construction, motorized vehicle use, grazing and vegetation management.

H.R. 8109 requires USDA or DOI to manage the Tribal Cultural Areas to preserve cultural sites in consultation with Indian Tribes and may only authorize new or existing uses consistent with the purposes of the Act. The bill requires a management plan for each of the Tribal Cultural Areas that is to be developed by USDA and DOI in consultation with Indian Tribes, appropriate state and local government entities, and members of the public. Management plans are to consider recommendations from Indian Tribes for incorporating traditional, historical, and cultural knowledge. H.R. 8109 would not permit new roads and would withdraw public land in Tribal Cultural Areas from mineral development. H.R. 8109 also includes a voluntary grazing permit or lease donation program and prohibits, with certain exceptions, USDA and DOI from issuing new grazing permits in Tribal Cultural areas. The bill requires USDA and DOI to ensure access to a Tribal cultural area by members of an interested Indian Tribe for cultural and religious purposes and allows for the temporary closure of the area to protect the privacy of cultural, religious and food and medicinal gathering activities. H.R. 8109 also allows for USDA and DOI to contract with Indian Tribes to perform administrative or management functions within a Tribal Cultural Area through contracts entered into under the Indian Self-Determination and Education Assistance Act.

H.R. 8109 requires Federal lands and waters under USDA and DOI jurisdictions to be managed "in a manner that seeks to protect the treaty, religious, subsistence, and cultural interests of federally recognized Indian Tribes." The Act would also address the management of Tribal cultural and natural resources and places, and within designated or recommended Tribal cultural areas, and would prioritize the preservation of sites important to Tribes, as well as Tribal values. In doing so, it seeks to protect Tribal cultural sites, including sacred sites, within designated or recommended Tribal cultural areas.

The Act also supplements E.O. 13007 direction to accommodate sacred sites, presents guidance for Tribal engagement in the management of sacred sites and cultural sites, including recognition

and consideration of Indigenous Knowledge. Further, the Act complements the reburial, temporary closure, and confidentiality provisions of the Cultural and Heritage Cooperation Authority provided to the Forest Service in the 2018 Farm Bill.

In summary, we support the overarching goals of HR 8108 and 8109 to fulfill the Trust responsibility to Federally recognized Tribes and would like to continue to work with the committee and bill sponsors to consider the implications the provisions would have, if enacted, for delivery of the many special uses and other activities that occur on NFS lands including the development of renewable energy, carbon storage and other Administration priorities and unintended impacts related to the management of and activities conveying land out of Federal ownership.

This concludes my statement. I would be happy to answer any questions.