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The Tulalip Tribes are federally recognized successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied tribes and bands signatory to the Treaty of Point Elliott.

PREPARED STATEMENT OF MISTY NAPEAHI, VICE CHAIR
TULALIP TRIBES

SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

LEGISLATIVE HEARING ON H.R. 6181, THE “SAMISH INDIAN NATION LAND
REAFFIRMATION ACT”

The Tulalip Tribes are the successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied bands signatory to the 1855 Treaty of Point Elliott. As a sovereign government, the Tulalip Tribes has been governing similar to those of other sovereign governments for thousands of years and has had its current government under a constitution approved by the Secretary of the Interior since 1936, exercising its powers to best serve the needs of its tribal community and tribal members.

The Tulalip Tribes’ community is located on a 22,000-acre Reservation bordering on the east to the Interstate 5 corridor, 35 miles north of Seattle. Tulalip has approximately 5,000 enrolled members, but most Reservation residents are non-Indian due to the history of allotments. Today, the Tribes or Tribal members hold approximately 60 percent of the Reservation lands with the balance being in non-Indian ownership. Treaty fishing is a critical part of the economy for the Tulalip Tribes and its economy.

The Tulalip Tribes has never and does not oppose the Samish Indian Nation (“SIN”) having the ability to have the Secretary of the Interior administratively acquire land into trust for its benefit. Rather, the Tulalip Tribes’ objections to the various iterations of bills that have been introduced relating to the SIN over the past decade have focused on issues unrelated to trust land acquisition, specifically attempts to alter longstanding caselaw in the *U.S. v. Washington* treaty fishing litigation.

Despite those concerns, the Tulalip Tribes worked with the Swinomish Indian Tribal Community, the Lummi Indian Nation, and the Upper Skagit Tribe to develop revisions to those bills that would have provided for the SIN to have certain lands legislatively acquired into status. These bills, which included H.R. 2320 in the 115th Congress and H.R. 2961 in the 116th Congress, had been introduced by Rep. Rick Larsen, whose district includes the Tulalip Reservation. Congressman Larsen, however, chose not to sponsor the bill in the current

Congress. The only other member of the Washington state delegation to have ever cosponsored any version of a SIN-related bill promptly removed themselves as a cosponsor of H.R. 6181 last month after being educated by the Tulalip Tribes and other affected tribes about the true treaty-related implications.

H.R. 6181 as Introduced

As introduced, H.R. 6181 would ratify and confirm a November 9, 2018, decision of the Bureau of Indian Affairs' Northwest Regional Director to acquire a 6.7-acre parcel of land into trust for the SIN. While the Tulalip Tribes have no concern with the 6.7-acre parcel being acquired in trust for the SIN, its concern lies with the findings and conclusions in the Regional Director's underlying decision. In finding that the SIN was under federal jurisdiction in 1934, the decision relies heavily on the proposition that the present-day SIN is the successor in interest to the Samish and Nuwaha signatories to the 1855 Treaty of Point Elliott. The Swinomish Indian Tribal Community has appealed that decision, the issues have been fully briefed, and the parties are awaiting a decision from the Interior Board of Indian Appeals.

The U.S. Department of Justice has consistently taken the position, and the federal courts in *U.S. v. Washington* and other cases have held repeatedly, that the SIN is not a successor to the Samish or Nuwaha signatories of the 1855 Treaty of Point Elliot, or to any other treaty signatory. Rather, the courts have held that the Swinomish, Lummi, and Upper Skagit Indian Tribe are the legal successors to the Samish and Nuwhaha tribes that participated in the Treaty. Last year, the Ninth Circuit Court of Appeals reaffirmed that the SIN is not a successor to any tribe or band that participated in the Treaty of Point Elliott in *Snoqualmie Indian Tribe v. Washington*, 8 F.4th 853 (9th Cir. 2021), a case in which the SIN was a party and actively participated. On March 21, 2022, the U.S. Supreme Court denied the SIN's petition for certiorari in that case. This week, on April 25, 2022, the Supreme Court denied a second petition for certiorari filed by the Snoqualmie Tribe, ending the case and rendering the Ninth Circuit's decision final.

If H.R. 6181, as introduced, were to become law, the SIN could argue that Congress' action in ratifying and confirming the Regional Director's decision legislatively changed the underlying facts on the successorship issue and provided a basis to reopen *U.S. v. Washington*. If this were to happen, not only would this upset the settled expectations of the area tribes regarding their respective tribal identities, the SIN could assert treaty rights based on a subsequent change in law. If such an effort were successful, it might also result in modification of the Tulalip Tribes' and other individual tribes' established fishing areas. At a minimum, it would contravene the Department of Justice's longstanding litigation position in *U.S. v. Washington*.

H.R. 6181 has been described by its promoters as necessary to prevent "frivolous" litigation and "meritless" claims. The Tulalip Tribes, however, cannot imagine issues that are more critical and in need of access to the federal courts than the ability of tribes to defend their status as successors in interest to signers of a treaty. As introduced, H.R. 6181 should concern any Indian tribe in any congressional district with a pending legal claim on any issue because it sets a precedent of Congress steamrolling the ability of tribes to obtain judicial review on issues as sacred as tribal identity and treaty rights.

The unusual approach taken in H.R. 6181 of ratifying and confirming an interim administrative decision subject to a pending appeal demonstrates that the intent of H.R. 6181 is to effect longstanding law related to treaty rights. If the SIN's intent were simply to transfer the 6.7-acre parcel of land into trust, or even to secure a SIN-only *Carciari* fix (something no other tribe has obtained), far simpler and more straightforward language could be used. The only reason for H.R. 6181 to be drafted in such a way to explicitly ratify the Regional Director's November 9, 2018, decision into federal law would be to rely on the wrongful findings about successorship and use the change in law to reopen a door long since closed and relitigate the successorship issue and treaty rights. For all these reasons, the Tulalip Tribes and the other concerned tribes have vigorously opposed H.R. 6181 as introduced.

Concerns with the Amendment in the Nature of a Substitute (ANS)

The basis for the Tulalip Tribes' objections to H.R. 6181 is directly tied to our concerns with Rep. Ruben Gallego's amendment in the nature of a substitute.

The draft amendment would reaffirm the applicability of the Indian Reorganization Act to the SIN without altering the "now under federal jurisdiction" requirement in Section 19 of the Act. Except for the Northwest Regional Director's November 9, 2018, decision, the applicability of the Indian Reorganization Act to the SIN has not previously been "affirmed." Accordingly, it could be argued that what is being "reaffirmed" by the amendment is the Regional Director's determination, which incorporates the decision that the SIN was under federal jurisdiction in 1934 as a successor to the Samish and Nuwaha signatories of the 1855 Treaty of Point Elliot--- despite more than four decades of federal court decisions to the contrary.

If the intent is a "clean" *Carciari* fix for the SIN (which, again, no other tribe has obtained), that could be accomplished by clear language that does not implicate the issues presented by H.R. 6181 (as introduced) and invite new rounds of litigation. Because the text of the Gallego amendment as drafted, like H.R. 6181 as introduced, could support an effort to reopen long settled successorship issues in *U.S. v. Washington*, the Tulalip Tribes oppose the amendment in its current form.

The Tulalip Tribes and the other concerned tribes intend to explore potential modifications to the Gallego amendment that would address our concerns. The Tulalip Tribes would appreciate working cooperatively with Rep. Rick Larsen's office, Rep. Ruben Gallego's office, and the Committee, as this effort moves forward.