LEGISLATIVE SUMMARY SHEET
Tracking No. 0166-22

DATE: September 16, 2022

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES CONGRESSIONAL BILL H.R. 8109 TITLED "TRIBAL CULTURAL AREAS PROTECTION ACT"

PURPOSE: The purpose of this legislation is support H.R. 8109 titled "Tribal Cultural Areas Protection Act." Supporting H.R. 8109 assists the Navajo Nation in protecting and preserving the San Francisco Peaks because the San Francisco Peaks is one of the Navajo Nation's sacred mountains, *Dook'o'ooslíid*; medicine men of several tribes collect herbs for healing ceremonies. This legislation would also authorize the Speaker of the Navajo Nation Council, President of the Navajo Nation, and their designees, to advocate the Navajo Nation's support of the Tribal Cultural Areas Protection Act.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: A Johnson
Website Posting Time/Date: 5:04pm; 09-20-22
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Eligible for Action: 09-26-22

Resources & Development Committee
Thence
Naabik'íyáti' Committee

PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL—Fourth Year, 2022

INTRODUCED BY

Daniel E. Tso

Primary Sponsor

TRACKING NO. 0166-22

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES CONGRESSIONAL BILL H.R. 8109 TITLED "TRIBAL CULTURAL AREAS PROTECTION ACT"

WHEREAS:

A. The Navajo Nation established the Naabik'íyáti' Committee as a Navajo Nation Council standing committee and as such empowered the Naabik'íyáti' Committee to coordinate all requests for information, appearances and testimony relating to proposed county, state and federal legislation impacting the Navajo Nation. 2 N.N.C. §§ 700 (A), 701 (A)(6).

B. The Navajo Nation established the Resources and Development Committee as a standing committee of the Navajo Nation Council. 2. N.N.C. § 500(A). The Committee exercises oversight authority over cultural resources. 2 N.N.C. § 500(C).

C. The Navajo Nation has a government-to-government relationship with the United States of America, Treaty of 1868, Aug. 12, 1868, 15 Stat. 667.

D. On June 16, 2022, Arizona Representative Raul M. Grijalva, along with seventeen (17) cosponsors, introduced to the 117th Congress H.R. 8109 titled the "Tribal Cultural Areas Protection Act." *See* H.R. 8109 attached hereto as **Exhibit A**.

E. Rep. Grijalva introduced the Tribal Cultural Areas Protection Act because "efforts to commercially develop or transfer ownership of public land often ignore the rights and protections of Indian Tribes and have resulted in – (A) the desecration of sacred sites; (B) the diminishment of Tribal treaty rights; and (C) the mismanagement of sacred sites, including the looting of sacred objects and burial sites and the diminishment of harvests of traditional native plants used in religious ceremonies and for other purposes." H.R. 8109 at §3(4).

F. On June 15, 2021, the Navajo Nation authorized the Navajo Nation President and Navajo Nation Speaker "to affirm [the Navajo Nation's] position of protecting and preserving the San Francisco Peaks, a sacred mountain and cultural property, for the Navajo people and other Indigenous relatives." Naabik'íyáti' Committee Resolution NABIJN-12-21.

G. Supporting H.R. 8109 assists the Navajo Nation in protecting and preserving the San Francisco Peaks because the San Francisco Peaks is one of the Navajo Nation's sacred mountains, *Dook'o'ooslíid*; and, medicine men of several tribes collect herbs for healing ceremonies. "Protection of the San Francisco Peaks will preserve its cultural and historic legacy and maintain its diverse array of natural and religious significance and values for the benefit of Native Americans and all Americans". Naabik'íyáti' Committee Resolution NABIJN-12-21.

H. The Navajo Nation finds it in the best interest of the Navajo People to support passage of H.R. 8109 titled "Tribal Cultural Areas Protection Act."

THEREFORE, BE IT RESOLVED:

A. The Navajo Nation hereby supports H.R. 8109 titled "Tribal Cultural Areas Protection Act" attached hereto as **Exhibit A.**

B. The Navajo Nation hereby authorizes the Speaker of the Navajo Nation Council, President of the Navajo Nation, and their designees, to advocate the Navajo Nation's support of the Tribal Cultural Areas Protection Act.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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117TH CONGRESS
2D SESSION

H. R. 8109

To establish the Tribal Cultural Areas System, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2022

Mr. GRIJALVA introduced the following bill; which was referred to the Committee on Natural Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To establish the Tribal Cultural Areas System, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Tribal Cultural Areas Protection Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) EXISTING USE.—The term "existing use", with respect to a Tribal cultural area, means a use

that is occurring within the Tribal cultural area on the date on which the Tribal cultural area is designated for inclusion in the System.

(2) FORMER RESERVATION.—The term "former reservation" means land that is within the exterior boundaries of the last reservation that was established by treaty, Executive order, or Secretarial order for an Indian Tribe.

(3) HISTORIC PROPERTY.—The term "historic property" means a historic or precontact site, building, structure, or object that has religious, medicinal, or cultural significance to an interested Indian Tribe.

(4) INDIAN LAND.—The term "Indian land" means land of an Indian Tribe or an individual Indian that is—

(A) held in trust by the United States; or

(B) subject to a restriction against alienation imposed by the United States.

(5) INDIAN TRIBE.—The term "Indian Tribe" means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation individually identified (including parenthetically) on the list published by the Secretary under section 104

of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131).

(6) INTERESTED INDIAN TRIBE.—The term "interested Indian Tribe", with respect to a tract of public land, means an Indian Tribe with—

(A) historic, precontact, cultural, or religious connections to a Tribal cultural site located on the tract of public land;

(B) a former reservation located on the tract of public land; or

(C) treaty rights or other reserved rights associated with the tract of public land.

(7) MANAGEMENT PLAN.—The term "management plan" means the management plan developed for a Tribal cultural area under section 5(d)(3)(A).

(8) NATIONAL FOREST SYSTEM.—The term "National Forest System" has the meaning given the term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)).

(9) NATIVE KNOWLEDGE.—The term "Native knowledge" has the meaning given the term in section 219.19 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(10) NEW USE.—

(A) IN GENERAL.—The term "new use", with respect to a Tribal cultural area, means—

(i) a use that involves surface disturbance and is not occurring in the Tribal cultural area on the date on which the Tribal cultural area is designated for inclusion in the System; and

(ii) a use that is occurring in the Tribal cultural area on the date on which the Tribal cultural area is designated for inclusion in the System, but that is being modified so as—

(I) to create a surface disturbance;

(II) to significantly expand or alter impacts of the use on the land, water, air, cultural resources, or wildlife of the Tribal cultural area; or

(III) to be inconsistent with the purposes for which the Tribal cultural area is—

(aa) designated under section 5; or

(bb) recommended under section 8.

(B) EXCLUSION.—The term "new use", with respect to a Tribal cultural area, does not include a use that—

(i) is categorically excluded from the requirements of title I of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.);

(ii) is carried out to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(iii) is necessary to maintain a road, trail, structure, or facility within the Tribal cultural area that is—

(I) in existence on the date on which the Tribal cultural area is designated for inclusion in the System; and

(II) identified in the management planning documents of the applicable land management agency as a road, trail, structure, or facility intended for continued use; or

(iv) the Secretary concerned determines to be necessary for the control of fire, insects, or diseases, subject to such

terms and conditions as the Secretary concerned determines appropriate.

(11) PUBLIC LAND.—The term "public land" means—

(A) land under the jurisdiction of the Secretary (other than Indian land); and

(B) National Forest System land.

(12) RESTORATION.—The term "restoration" has the meaning given the term in section 219.19 of title 36, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(13) SACRED SITE.—The term "sacred site" means a specific, discrete, narrowly delineated site on public land that is identified by an Indian Tribe as sacred by virtue of the established religious significance of the site to, or ceremonial use of the site by, an Indian Tribe.

(14) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(15) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) the Secretary, with respect to public land described in paragraph (11)(A); and

(B) the Secretary of Agriculture, with respect to public land described in paragraph (11)(B).

(16) SURFACE DISTURBANCE.—The term "surface disturbance" means any new disruption of soil or vegetation that would require restoration to return the soil or vegetation to natural appearance or ecological function.

(17) SYSTEM.—The term "System" means the Tribal Cultural Areas System established by section 5(a).

(18) TRIBAL COMMISSION.—The term "Tribal commission" means the Tribal commission established for a Tribal cultural area under section 6(a).

(19) TRIBAL CULTURAL AREA.—The term "Tribal cultural area" means a Tribal cultural site that has been designated for inclusion in the System.

(20) TRIBAL CULTURAL SITE.—The term "Tribal cultural site" means—

(A) a historic property; and

(B) a landform, landscape, or location that—

(i) is or may be important to the customs, practices, objects, places, religions, or ceremonies of an Indian Tribe;

(ii) is or may be important to an Indian Tribe for the undertaking of religious, cultural, spiritual, traditional subsistence, or other traditional practices;

(iii) contains unique or important traditional Tribal food, medicinal, or material gathering areas; or

(iv) is connected through features, ceremonies, objects, histories, or cultural practices to other sites or to a larger sacred landscape, as determined by an Indian Tribe.

(21) TRIBAL ORGANIZATION.—The term "Tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

SEC. 3. FINDINGS.

Congress finds that—

(1) the Federal Government manages more than 640,000,000 acres of public land that was carved out of the ancestral homeland of Indian Tribes;

(2) Indians Tribes and members of Indian Tribes—

(A) have maintained historical, religious, and spiritual connections to land now designated as public land;

(B) continue to exercise treaty rights on public land; and

(C) use public land to pray, conduct ceremonies, visit burial sites, gather plants, and undertake other traditional cultural activities;

(3) treaties, Executive orders, court decisions, and Federal laws and regulations—

(A) acknowledge the rights of Indian Tribes and members of Indian Tribes on public land; and

(B) require public land managers to consult with Indian Tribes prior to taking action that would impact those rights; and

(4) efforts to commercially develop or transfer ownership of public land often ignore the rights and protections of Indian Tribes and have resulted in—

(A) the desecration of sacred sites;

(B) the diminishment of Tribal treaty rights; and

(C) the mismanagement of sacred sites, including the looting of sacred objects and burial sites and the diminishment of harvests of traditional native plants used in religious ceremonies and for other purposes.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the preservation of Tribal cultural sites located on public land is in the public interest;

(2) through their unique history and traditional knowledge, Indian Tribes have an important role in managing Tribal cultural sites on public land; and

(3) Tribal cultural sites on public land should be permanently protected for the benefit of Indian Tribes.

SEC. 5. TRIBAL CULTURAL AREAS SYSTEM.

(a) ESTABLISHMENT.—In order to preserve Tribal cultural sites on public land, there is established the Tribal Cultural Areas System.

(b) PURPOSES.—The purposes of the System are—

(1) to preserve opportunities for Indian Tribes to undertake religious, cultural, spiritual, medicinal, or traditional practices within Tribal cultural sites;

(2) to permanently protect the religious, cultural, spiritual, scenic, ecological, medicinal, and traditional values of Tribal cultural sites; and

(3) to enhance opportunities for Indian Tribes to engage in the preservation and management of Tribal cultural sites on public land.

(c) AREAS INCLUDED.—

(1) ELIGIBLE CULTURAL SITES.—Any Tribal cultural site located on public land is eligible to be designated by Congress as a Tribal cultural area for inclusion in the System.

(2) DESIGNATION.—A Tribal cultural site may be designated as a Tribal cultural area for inclusion in the System only by an Act of Congress.

(3) SECRETARIAL RECOMMENDATION.—In determining whether to designate a Tribal cultural site as a Tribal cultural area for inclusion in the System, Congress shall take into consideration the recommendations of the Secretary concerned under subsections (a)(6) and (d)(3)(C)(ii)(I) of section 8.

(4) REMOVAL.—A Tribal cultural area may be removed from the System only by an Act of Congress.

(d) MANAGEMENT.—

(1) IN GENERAL.—Subject to valid existing rights, the Secretary concerned shall manage Tribal cultural areas—

(A) to preserve Tribal cultural sites within each Tribal cultural area;

(B) in consultation with the applicable Tribal commission; and

(C) in accordance with—

(i) this Act; and

(ii) any other applicable laws (including regulations).

(2) USES.—

(A) IN GENERAL.—In accordance with this Act, the Secretary concerned shall only authorize new uses or existing uses within a Tribal cultural area that the Secretary determines, in consultation with the applicable Tribal commission, are consistent with—

(i) the purposes described in subsection (b);

(ii) the preservation of Tribal cultural sites within the Tribal cultural area; and

(iii) this Act.

(B) NEW USES.—

(i) IN GENERAL.—If the Secretary concerned determines under subparagraph (A) that a new use is consistent with the requirements of clauses (i) through (iii) of that subparagraph, before authorizing the new use, the Secretary concerned shall request agreement from the applicable Tribal commission.

(ii) APPROVAL.—If the applicable Tribal commission agrees to the new use for which the Secretary concerned requests agreement under clause (i), or does not respond to the request by the date that is 60 days after the date on which the Secretary concerned makes the request under that clause, the Secretary concerned shall authorize the new use.

(iii) DENIAL.—If the applicable Tribal commission denies agreement for a new use by the date that is 30 days after the date on which the Secretary concerned makes the request under clause (i), the Secretary concerned shall—

(I) consult with the applicable Tribal commission to determine spe-

cific measures to eliminate or mitigate potential adverse impacts to the Tribal cultural area resulting from the new use; and

(II) authorize the new use, subject to the measures determined under subclause (I).

(3) MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 3 years after the date on which a Tribal cultural area is designated for inclusion in the System, the Secretary concerned shall develop a comprehensive plan for the management of the Tribal cultural area in accordance with paragraph (2).

(B) REQUIREMENTS.—In developing a management plan under subparagraph (A), the Secretary concerned shall—

(i) closely collaborate with the applicable Tribal commission in accordance with subparagraph (C);

(ii) consult with—

(I) Indian Tribes;

(II) appropriate State and local governmental entities; and

(III) members of the public;

(iii) at the request of an interested Indian Tribe identified under section 9(a)(1), include the interested Indian Tribe as a cooperating agency in the development of the management plan; and

(iv) to the maximum extent practicable, incorporate Native knowledge.

(C) INCORPORATION OF RECOMMENDATIONS.—

(i) IN GENERAL.—In developing a management plan under subparagraph (A), the Secretary concerned shall carefully and fully consider incorporating the traditional, historical, and cultural knowledge and Native knowledge of the applicable Tribal commission, which shall be submitted to the Secretary concerned as written recommendations.

(ii) CONSULTATION.—If the Secretary concerned determines that a specific recommendation submitted to the Secretary concerned under clause (i) is impracticable, infeasible, or not in the public interest, the Secretary concerned shall consult with the applicable Tribal commission to determine

specific measures to modify, or otherwise address, the recommendation.

(iii) WRITTEN EXPLANATION.—If, after consultation under clause (ii), the Secretary concerned determines not to incorporate a specific recommendation submitted to the Secretary concerned under clause (i), the Secretary concerned shall provide to the Tribal commission a written explanation of the reason for the determination by the date that is 30 days after the date on which the determination is made.

(4) ROAD CONSTRUCTION.—

(A) IN GENERAL.—No new roads shall be constructed within a Tribal cultural area.

(B) TEMPORARY ROADS.—No temporary roads shall be constructed within a Tribal cultural area, except as necessary—

(i) to meet the minimum requirements for the administration of the Tribal cultural area;

(ii) to protect public health and safety;

(iii) to respond to an emergency; and

(iv) for the control of fire, insects, or diseases, subject to such terms and conditions as the Secretary concerned determines to be appropriate.

(C) EFFECT.—Subject to appropriations, the Secretary concerned shall maintain existing roads determined by the Secretary concerned, in consultation with the applicable Tribal commission, to be necessary for authorized existing uses and the administration of the Tribal cultural area.

(5) MOTORIZED VEHICLES.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the use of motorized vehicles in a Tribal cultural area shall be permitted only on roads designated by the management plan for the use of motorized vehicles.

(B) EXCEPTION.—The use of motorized vehicles shall be permitted in a Tribal cultural area on roads not designated by the management plan for the use of motorized vehicles in cases in which the use is—

(i) necessary—

(I) for administrative purposes;

(II) to respond to an emergency; or

(III) for traditional cultural purposes, including the exercise of rights secured by treaty, statute, Executive order, or other Federal law; or

(ii) determined necessary by the applicable Tribal commission.

(C) SAVINGS CLAUSE.—Nothing in this paragraph authorizes the use of motorized vehicles on public land (as defined in section 10(d)(1)) within a Tribal cultural area if the use is otherwise prohibited on the public land.

(6) GRAZING.—

(A) IN GENERAL.—Subject to subparagraph (B), the grazing of livestock in a Tribal cultural area established before the date on which the Tribal cultural area is designated for inclusion in the System shall be permitted to continue.

(B) REQUIREMENT.—

(i) CONSISTENCY REQUIRED.—Grazing permitted under subparagraph (A) shall be—

(I) subject to—

(aa) a determination by the Secretary concerned, in consultation with the applicable Tribal commission, that grazing may be carried out in a manner consistent with the purposes for which the Tribal cultural area is established;

(bb) such reasonable regulations, policies, and practices as the Secretary concerned determines necessary; and

(cc) applicable law (including regulations); and

(II) carried out in a manner consistent with the purposes described in subsection (b).

(ii) MODIFICATION.—On a determination by the Secretary concerned that grazing within a Tribal cultural area is inconsistent with the purposes for which the Tribal cultural area is established, the Secretary concerned shall modify or terminate the grazing permit or lease, as determined appropriate by the Secretary concerned.

(C) VOLUNTARY GRAZING PERMIT OR LEASE DONATION PROGRAM.—

(i) DONATION OF PERMIT OR LEASE.—

(I) ACCEPTANCE.—The Secretary concerned shall accept the donation of any valid existing permits or leases authorizing grazing on public land, all or a portion of which is within a Tribal cultural area.

(II) TERMINATION.—The Secretary concerned shall terminate any grazing permit or lease acquired under subclause (I).

(III) NO NEW GRAZING PERMITS OR LEASES.—Except as provided in clauses (ii) and (iii), with respect to each grazing permit and lease donated under subclause (I), the Secretary concerned—

(aa) shall not issue any new grazing permit or lease within the grazing allotment covered by the grazing permit or lease; and

(bb) shall ensure a permanent end to livestock grazing on the grazing allotment covered by the grazing permit or lease.

(ii) DONATION OF PORTION OF GRAZING LEASE.—

(I) IN GENERAL.—If a person holding a valid grazing permit or lease donates less than the full amount of grazing use authorized under the permit or lease, the Secretary concerned shall—

(aa) reduce the authorized grazing level to reflect the donation; and

(bb) modify the permit or lease to reflect the revised level of use.

(II) AUTHORIZED LEVEL.—To ensure that there is a permanent reduction in the authorized level of grazing on the land covered by a permit or lease donated under subclause (I), the Secretary concerned shall not allow grazing use to exceed the au-

thorized level established under that subclause.

(iii) COMMON ALLOTMENTS.—

(I) IN GENERAL.—If a grazing allotment covered by a grazing permit or lease or portion of a grazing permit or lease that is donated under clause (i) or (ii) also is covered by another grazing permit or lease that is not donated, the Secretary concerned shall reduce the grazing level on the grazing allotment to reflect the donation.

(II) AUTHORIZED LEVEL.—To ensure that there is a permanent reduction in the level of livestock grazing on the land covered by a grazing permit or lease or portion of a grazing permit or lease donated under clause (i) or (ii), the Secretary concerned shall not allow grazing to exceed the level established under subclause (I).

(7) VEGETATION MANAGEMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), vegetation management within a Tribal cultural area may be permitted—

(i) if necessary to protect, maintain, or enhance a Tribal cultural area (including the enhancement of traditional food or material gathering); and

(ii) for restoration purposes.

(B) REQUIREMENT.—Vegetation management permitted under subparagraph (A) shall be—

(i) subject to—

(I) such reasonable regulations, policies, and practices as the Secretary concerned determines necessary; and

(II) applicable law (including regulations); and

(ii) in a manner consistent with the purposes described in subsection (b).

(e) VALID EXISTING RIGHTS.—The designation of a Tribal cultural area shall be subject to valid existing rights.

(f) WITHDRAWAL.—Subject to valid existing rights, all public land within a Tribal cultural area, and all land and interests in land acquired by the United States within a Tribal cultural area, shall be withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(g) TRIBAL CULTURAL AND RELIGIOUS USES.—

(1) IN GENERAL.—Nothing in this Act diminishes any Tribal rights regarding access to public land for Tribal activities, including spiritual, cultural, medicinal, and traditional food gathering activities.

(2) TRIBAL USES AND INTERESTS.—

(A) ACCESS AND USE.—In accordance with applicable law, and subject to section 10(d)(3), the Secretary concerned shall ensure access to a Tribal cultural area by members of an interested Indian Tribe for traditional cultural and religious purposes.

(B) TEMPORARY CLOSURE.—

(i) IN GENERAL.—In carrying out subparagraph (A), the Secretary concerned, in consultation with the applicable Tribal commission, on request of an Indian Tribe or applicable Tribal commission, may

temporarily close to the general public the use of 1 or more specific portions of a Tribal cultural area to protect the privacy of cultural, religious, and food and medicinal and materials gathering activities by members of the Indian Tribe.

(ii) REQUIREMENTS.—

(I) IN GENERAL.—Any closure under clause (i) shall be made so as to affect the smallest practicable area for the minimum period of time necessary.

(II) ACCESS.—Access by members of an Indian Tribe to a portion of a Tribal cultural area closed under clause (i) shall be consistent with the purpose and intent of Public Law 95–341 (commonly known as the "American Indian Religious Freedom Act") (42 U.S.C. 1996 et seq.) and other applicable law.

(h) FEDERALLY SECURED RIGHTS; INDIAN LAND.—

(1) FEDERALLY SECURED RIGHTS.—Nothing in this Act alters, modifies, enlarges, diminishes, or abrogates rights secured by treaty, statute, Executive

order, or other Federal law of any Indian Tribe, including off-reservation reserved rights.

(2) INDIAN LAND.—Nothing in this Act affects any Indian land.

(i) LAW ENFORCEMENT.—

(1) IN GENERAL.—The Secretary concerned, in coordination with the applicable Tribal commission, shall ensure adequate law enforcement presence with respect to law enforcement matters under the jurisdiction of the Secretary concerned to maintain the integrity of a Tribal cultural area.

(2) NO EFFECT ON JURISDICTION.—Nothing in this Act limits or otherwise affects the civil or criminal regulatory jurisdiction, including law enforcement, for issues under the jurisdiction of an Indian Tribe.

SEC. 6. TRIBAL COMMISSION.

(a) IN GENERAL.—To ensure that the management of a Tribal cultural area reflects the expertise and traditional, cultural, ecological, and historical knowledge and Native knowledge of members of interested Indian Tribes, not later than 180 days after the date on which the Tribal cultural area is designated for inclusion in the System, the Secretary concerned shall establish for the Tribal cultural area a Tribal commission.

(b) DUTIES.—Each Tribal commission shall provide guidance and recommendations on the development and implementation of the management plan for, and policies of, the applicable Tribal cultural area.

(c) MEMBERSHIP.—

(1) COMPOSITION.—Each Tribal commission shall consist of the representatives designated by each interested Indian Tribe with a historical association with the land within the boundaries of the Tribal cultural area for which the Tribal commission is established (with a maximum of 1 representative per interested Indian Tribe).

(2) PROCESS.—The Secretary concerned shall conduct government-to-government consultation with each interested Indian Tribe with a historical association with the land within the boundaries of the Tribal cultural area for which the Tribal commission is established to determine whether the interested Indian Tribe may designate a representative to be a member of the Tribal commission under paragraph (1).

(d) EXEMPTION.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to any Tribal commission.

SEC. 7. SELF-DETERMINATION CONTRACTS.

(a) IN GENERAL.—The Secretary concerned may contract with 1 or more Indian Tribes or Tribal organizations to perform administrative or management functions within a Tribal cultural area through contracts entered into under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 et seq.).

(b) TRIBAL ASSISTANCE.—The Secretary concerned may provide technical and financial assistance to an Indian Tribe in accordance with section 103 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5322) to improve the capacity of the Indian Tribe to develop, enter into, and carry out activities under a contract under subsection (a).

SEC. 8. AGENCY RECOMMENDATIONS.

(a) INITIAL AGENCY RECOMMENDATIONS.—Not later than 3 years after the date of enactment of this Act, the Secretary concerned, in consultation with interested Indian Tribes, shall—

(1) establish criteria for recommending Tribal cultural sites for designation as Tribal cultural areas for inclusion in the System, using the factors described in subsection (b);

(2) solicit recommendations for Tribal cultural sites on land under the jurisdiction of the Secretary

concerned to be designated as Tribal cultural areas for inclusion in the System from—

(A) any interested Indian Tribe;

(B) any applicable State Historic Preservation Officer; and

(C) any applicable Tribal Historic Preservation Officer;

(3) review designations in local land management plans to identify Tribal cultural sites that meet the criteria established by the Secretary concerned under paragraph (1);

(4) consider any other relevant information, including oral histories, traditional knowledge, Native knowledge, and traditional ecological knowledge, regarding Tribal cultural sites on public land that may qualify for designation as a Tribal cultural area;

(5) consider and evaluate Tribal cultural sites, including Tribal cultural sites identified under paragraphs (2) through (4), for designation as a Tribal cultural area for inclusion in the System; and

(6) make recommendations to Congress regarding Tribal cultural sites that the Secretary concerned determines should be designated as Tribal cultural areas for inclusion in the System.

(b) FACTORS.—The factors that the Secretary concerned shall consider in establishing criteria for recommending a Tribal cultural site for designation as a Tribal cultural area for inclusion in the System under subsection (a)(1) shall include—

(1) the importance of the potential Tribal cultural area to an Indian Tribe or members of an Indian Tribe for traditional cultural activities, including praying, conducting ceremonies, visiting burial sites, gathering plants, and undertaking other traditional cultural activities;

(2) the past or present cultural, traditional, and historical affiliations of an Indian Tribe to the potential Tribal cultural area;

(3) the existence of rights secured by treaty, statute, Executive order, or other Federal law; and

(4) recommendations made by 1 or more Indian Tribes.

(c) ONGOING AGENCY RECOMMENDATIONS.—As a part of any update or revision of a local land management plan, the Secretary concerned shall identify, evaluate, and make recommendations regarding any Tribal cultural sites on land covered by the local land management plan that would be suitable for designation as Tribal cultural areas for inclusion in the System.

(d) ADDITIONAL AREAS.—

(1) IN GENERAL.—One or more interested Indian Tribes may submit to the Secretary concerned a petition to recommend the designation of a Tribal cultural area for inclusion in the System.

(2) CONTENTS.—A petition under paragraph (1) shall contain—

(A) a description of the cultural significance and history of the proposed Tribal cultural area;

(B) a map showing specific boundaries of the proposed Tribal cultural area; and

(C) a list of interested Indian Tribes that possess cultural, religious, historic, or precontact connections to the proposed Tribal cultural area.

(3) APPROVAL PROCESS.—

(A) IN GENERAL.—Not later than 18 months after the date on which a petition is submitted under paragraph (1), the Secretary concerned shall approve or deny the petition.

(B) FAILURE TO MEET DEADLINE.—

(i) IN GENERAL.—Subject to clause (ii), if the Secretary concerned does not approve or deny a petition submitted under

paragraph (1) by the deadline described in subparagraph (A), the petition shall be considered to have been denied by the Secretary concerned.

(ii) EXTENSION.—The Secretary concerned and the 1 or more Indian Tribes that submitted the petition may mutually agree to extend the deadline for responding to the petition under subparagraph (A).

(C) APPROVAL.—

(i) IN GENERAL.—The Secretary concerned shall approve a petition submitted under paragraph (1) unless the Secretary concerned determines that—

(I) the proposed Tribal cultural area does not meet the criteria established under subsection (a)(1); or

(II) approving the petition—

(aa) would violate Federal law; or

(bb) is not in the public interest.

(ii) RECOMMENDATIONS.—On approval of a petition submitted under paragraph (1), the Secretary concerned shall—

(I) recommend that Congress designate the proposed Tribal cultural area for inclusion in the System; and

(II) manage the proposed Tribal cultural area in accordance with subsection (e).

(D) DENIAL.—Not later than 60 days after the date on which the Secretary concerned, as applicable, denies a petition submitted under paragraph (1) or fails to meet the applicable deadline described in subparagraph (B), the Secretary concerned shall provide to the 1 or more interested Indian Tribes that submitted the petition—

(i) a written response detailing the reasons why the Secretary concerned denied the petition; and

(ii) an opportunity to correct any deficiencies in the petition.

(e) MANAGEMENT OF RECOMMENDED AREAS.—

(1) IN GENERAL.—Until Congress determines otherwise, the Secretary concerned shall—

(A) manage each recommended Tribal cultural area—

(i) in a manner so as to preserve the Tribal cultural sites and cultural values of the area; and

(ii) in accordance with—

(I) paragraphs (4) through (7) of section 5(d); and

(II) subsections (g) through (i) of section 5; and

(B) only allow such uses in the recommended Tribal cultural area as are consistent with preserving Tribal cultural sites and cultural values of the area, as determined by the Secretary concerned after consultation with interested Indian Tribes.

(2) WITHDRAWAL.—Subject to valid existing rights, until Congress has determined otherwise, the Secretary concerned shall withdraw all public land within a recommended Tribal cultural area from—

(A) all forms of entry, appropriation, or disposal under the public land laws;

(B) location, entry, and patent under the mining laws; and

(C) operation of the mineral leasing, mineral materials, and geothermal leasing laws.

(3) CONSULTATION.—The Secretary concerned shall consult with interested Indian Tribes with an interest in a recommended Tribal cultural area not less frequently than twice each year to discuss—

(A) the protection and management of the recommended Tribal cultural area; and

(B) proposed new uses of the recommended Tribal cultural area.

SEC. 9. TRIBAL COORDINATION.

(a) SELECTION.—

(1) IN GENERAL.—Not later than 180 days after the date on which a Tribal cultural area is designated for inclusion in the System, the Secretary concerned, in consultation with the Director of the Bureau of Indian Affairs, shall identify 1 or more interested Indian Tribes with an interest in the management of the Tribal cultural area.

(2) INTERESTED INDIAN TRIBES.—An interested Indian Tribe may petition the Secretary concerned to be identified as having an interest in the management of a Tribal cultural area under paragraph (1).

(b) CONSULTATION.—

(1) IN GENERAL.—The Secretary concerned shall consult with the applicable Tribal commission

not less frequently than twice each year, unless otherwise mutually agreed, concerning the protection, preservation, and management of the applicable Tribal cultural area, including—

(A) any proposed new uses within the Tribal cultural area; and

(B) any necessary management actions within the Tribal cultural area.

(2) TRIBAL MANAGEMENT PROPOSALS.—The Secretary concerned shall consider any proposals for management actions within a Tribal cultural area submitted by the applicable Tribal commission.

(3) CONSIDERATION.—If the Secretary concerned determines that a proposed management action submitted to the Secretary concerned under paragraph (2) is impracticable, infeasible, or not in the public interest, the Secretary concerned shall consult with the applicable Tribal commission to determine specific measures to modify, or otherwise address, the proposed management action.

(4) WRITTEN EXPLANATION.—If, after consultation under paragraph (3), the Secretary concerned determines not to implement a proposed management action submitted to the Secretary concerned under paragraph (2), not later than 90 days

after making such a determination, the Secretary concerned shall provide to the applicable Tribal commission a written explanation of the reason for the determination.

SEC. 10. EFFECT.

(a) ENVIRONMENTAL REQUIREMENTS.—

(1) DEFINITION OF FEDERAL ENVIRONMENTAL LAW.—In this subsection, the term "Federal environmental law" means—

(A) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(B) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and

(C) any other applicable Federal environmental law (including regulations).

(2) EFFECT.—Nothing in this Act alters or abridges the application of any Federal environmental law.

(3) ENVIRONMENTAL ANALYSES.—Nothing in this Act authorizes the Secretary concerned, an Indian Tribe, or a Tribal organization to waive completion of any necessary environmental analysis under applicable Federal environmental law.

(4) RETENTION OF NEPA RESPONSIBILITIES.—The Secretary concerned shall make any decision re-

quired to be made under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) or other applicable Federal environmental law with respect to any activity to be carried out on public land under this Act.

(b) APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.—Nothing in this Act alters or abridges the application of subchapter II of chapter 5, or chapter 7, of title 5, United States Code (commonly known as the "Administrative Procedure Act"), to this Act.

(c) FISH AND WILDLIFE.—Nothing in this Act—

(1) alters or abridges the application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); or

(2) affects—

(A) the jurisdiction or responsibilities of a State with respect to fish or wildlife; or

(B) the jurisdiction of any Indian Tribe with respect to fish or wildlife.

(d) PUBLIC ACCESS.—Except as otherwise provided in this Act, nothing in this Act affects public access to land within a Tribal cultural area or a recommended Tribal cultural area.

(e) WATER RIGHTS.—

(1) IN GENERAL.—Nothing in this Act—

(A) constitutes an express or implied reservation by the United States of water or water rights for any purpose; or

(B) modifies or otherwise affects any water rights existing on the date of enactment of this Act, including any water rights held by the United States.

(2) STATE WATER LAW.—The Secretary concerned shall follow the procedural and substantive requirements of the applicable State and Federal law to obtain and hold any water rights not in existence on the date of enactment of this Act with respect to any Tribal cultural area.

(f) SPECIAL MANAGEMENT AREAS.—

(1) DEFINITION OF PUBLIC LAND.—In this subsection, the term "public land" includes—

(A) a unit of the National Park System;

(B) a unit of the National Wildlife Refuge System;

(C) a component of the National Wilderness Preservation System;

(D) a designated wilderness study area or other area managed for wilderness characteristics;

(E) a National Conservation Area;

(F) a National Monument;

(G) a National Volcanic Monument;

(H) a National Recreation Area;

(I) a National Scenic Area;

(J) an inventoried roadless area within the National Forest System;

(K) a component of the National Wild and Scenic Rivers System; and

(L) any other area identified as National Conservation Lands.

(2) EFFECT.—The designation of a Tribal cultural area for inclusion in the System shall not diminish the protections granted to, or the management status of, any public land or any portion of public land.

(3) CONFLICT OF LAWS.—If there is a conflict between the laws (including regulations) applicable to an area described in paragraph (1) and this Act, the more restrictive provision shall control.

(g) NONDISCLOSURE.—

(1) IN GENERAL.—The Secretary concerned shall not disclose to the public information regarding the nature or location of any sacred site if the Secretary concerned determines, in consultation with

any interested Indian Tribe, that such a disclosure may—

(A) risk harm to the cultural resources of the sacred site;

(B) cause a significant invasion of privacy; or

(C) impede the use of the sacred site for traditional cultural activities by an Indian Tribe or members of an Indian Tribe.

(2) FREEDOM OF INFORMATION ACT APPLICABILITY.—

(A) IN GENERAL.—Information described in paragraph (1) shall be exempt from disclosure under section 552 of title 5, United States Code.

(B) APPLICABILITY.—For purposes of subparagraph (A), this subsection shall be considered a statute described in section 552(b)(3)(B) of title 5, United States Code.

○

TRIBAL CULTURAL AREAS PROTECTION ACT

SECTION-BY-SECTION SUMMARY

***Bill Summary*:** The proposed Tribal Cultural Areas Protection Act would establish a national Tribal Cultural Areas System, to be made up of culturally significant sites on public lands. Currently, Indian tribes have only limited ability to influence the protection and management of lands they have used since time immemorial. The Tribal Cultural Areas System would include lands with cultural values that would be managed to preserve cultural resources while allowing for traditional tribal cultural uses. Indian tribes would play an important role in recommending and sharing traditional knowledge regarding the management of tribal cultural areas. What follows is a section-by-section summary of the proposal.

Section 1. Short title; table of contents. The short title of the bill is the "Tribal Cultural Areas Protection Act." Includes a table of contents.

Section 2. Definitions. This section defines the various terms used in the bill, including terms like "tribal cultural site," "new use," and "interested Indian Tribe."

Section 3. Findings. This section establishes findings, including that America's public lands were carved out of the ancestral homelands of Indian tribes, that tribes and tribal members maintain a strong historical and spiritual connection to cultural sites on public land, and that many cultural sites on public land are desecrated by mismanagement.

Section 4. Statement of policy. This section declares that it is the policy of the United States that the to preserve tribal cultural sites, and that, based on their history and traditional knowledge, tribes should play an important role in managing cultural sites on public land.

Section 5. Tribal cultural areas system. This section establishes a tribal cultural areas system, and directs the management of lands in the system.

Sections 5(a)-(c) establish the tribal cultural areas system, and establishes purposes of the system, which includes preserving sites with important cultural value, and maintaining the opportunity of tribes and tribal members to continue to undertake traditional cultural practices, and provides that only Congress can add or remove lands from the system.

Section 5(d) directs management of designated tribal cultural areas, including: requirements that the areas be managed to preserve their cultural values, that the appropriate tribal commission be consulted on management and proposed new uses of a tribal cultural area, and that the appropriate Secretary develop a management plan, in collaboration with the applicable tribal commission, for each tribal cultural area; provisions on new and temporary roads, motorized vehicles, vegetation management, and grazing; and authorization for voluntary lease retirement.

Sections 5(e)-(i) describes the effect of tribal cultural area designation, including: no effect on valid existing rights; a mineral withdrawal; provisions on tribal use of, and access to, tribal cultural areas; protections for tribal rights; and maintenance of existing law enforcement jurisdiction.

Section 6. Tribal commission. This section requires the appropriate Secretary to establish a tribal commission for each tribal cultural area designated by Congress. Each commission will include representatives of each Indian tribe interested in the area and will provide land management agencies with guidance and recommendations on the management of each tribal cultural area.

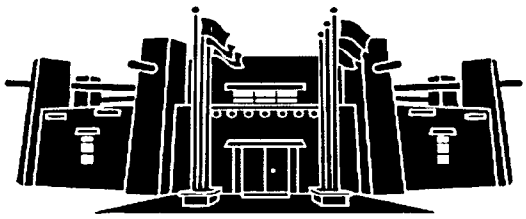
Section 7. Self-determination contracts. This section authorizes the appropriate Secretary to contract with tribes under the Indian Self-Determination and Education Act to carry out administrative or management functions within tribal cultural areas. The section provides that such contracts will not alter implementation of the National Environmental Policy Act or other Federal environmental law and that the appropriate Secretary shall retain all decision-making authority over Federal lands.

Section 8. Agency recommendations. This section requires Federal land management agencies to identify, after considering tribal and public input, potential tribal cultural areas and recommend tribal cultural area designations to Congress. The section provides tribal nations with the authority to propose tribal cultural areas to land management agencies, and details a process for responding to such proposals. The section also directs management of recommended tribal cultural areas, including that the areas will be withdrawn from energy and mining laws, and requires the appropriate Secretary to consult with interested Indian tribes on the management of such areas.

Section 9. Effect. This section provides that the establishment of a tribal cultural area will not: affect existing water rights, reserve new water rights, affect public access, alter state fish and wildlife management, or diminish existing public land designations. The section also provides protections for confidential information regarding the nature and location of sacred sites.

Section 10. Tribal coordination. This section requires the applicable Secretary to identify Indian tribes with an interest in a tribal cultural area and to regularly consult with the tribes regarding management of the area. The Secretary is required to consider tribal proposals for management and respond in writing if any tribal management proposal is rejected.

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Honorable Seth Damon
Speaker
24th Navajo Nation Council

MEMORANDUM

TO: Honorable Daniel E. Tso
Littlewater, Pueblo Pintado, Torreon, Whitehorse Lake, Baca/Prewitt, Casamero Lake, Ojo Encino, Counselor Chapters

FROM: Mariana Kahn
Mariana Kahn, Attorney
Office of Legislative Counsel

DATE: September 16, 2022

SUBJECT: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE, AND NAABIK'ÍYÁTI' COMMITTEE; SUPPORTING UNITED STATES CONGRESSIONAL BILL H.R. 8109 TITLED "TRIBAL CULTURAL AREAS PROTECTION ACT"

As requested, I have prepared the above-referenced proposed resolution and associated legislative summary sheet pursuant to your request for legislative drafting. Based on existing law and review of documents submitted, the resolution as drafted is legally sufficient. As with any action of government however, it can be subject to review by the courts in the event of proper challenge. Please ensure that his particular resolution request is precisely what you want. You are encouraged to review the proposed resolution to ensure that it is drafted to your satisfaction.

The Office of Legislative Counsel confirms the appropriate standing committee(s) based on the standing committees powers outlined in 2 N.N.C. §§301, 401, 501, 601 and 701. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. §164(A)(5).

If the proposed resolution is unacceptable to you, please contact me at the Office of Legislative Counsel and advise me of the changes you would like made to the proposed resolution.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION

LEGISLATION NO: _0166-22__ **SPONSOR: Daniel E. Tso**

TITLE: An Action Relating to Resources and Development Committee, and Naabik'íyáti' Committee; Supporting United States Congressional Bill H.R. 8109 Titled "Tribal Cultural Areas Protection Act"

***Date posted*: September 20, 2022 at 5:04PM**

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7586

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. *§374 et. seq.*