

TESTIMONY OF TALBERT H. CYPRESS
CHAIRMAN OF THE MICCOSUKEE TRIBE OF INDIANS OF FLORIDA
BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FEDERAL LANDS

JUNE 27, 2024

“Hearing on H.R. 8206: To ensure that Big Cypress National Preserve may not be designated as wilderness or as a component of the National Wilderness Preservation System, and for other purposes”

Good morning, Chair Tiffany, Ranking Member Neguse, and members of the Subcommittee, thank you for the opportunity to appear before you today. I am Talbert H. Cypress, Chairman of the Miccosukee Tribe of Indians of Florida, a federally-recognized tribe located in the heart of the Everglades and Big Cypress National Preserve. I appreciate the opportunity to discuss the importance of the Big Cypress National Preserve to the Miccosukee people and how wilderness designations in this Preserve would fundamentally alter our way of life.

The views expressed herein are those of the Miccosukee Tribe, a sovereign tribe recognized pursuant to the Indian Reorganization Act of 1934.

We support H.R. 8206, which would prevent Big Cypress National Preserve from being designated as wilderness. While wilderness designations are in theory designed as conservation tools, they have developed a troubling history with respect to their impact on Indigenous peoples. Wilderness designations have plagued Indian Country ever since the passage of the Wilderness Act of 1964. The impact of wilderness designations, too often, is to dispossess native people of their lands in the name of conservation. That is because the Wilderness Act is designed to prevent occupancy, permanent improvements, or mechanized vehicle usage on designated lands. As a result, Natives still living on traditional lands have been removed, harassed, and convicted of crimes related to their traditional practices under the Wilderness Act. Big Cypress National Preserve is one of the few places in the nation where Tribal rights reserved by treaty or statute are in conflict with a proposed wilderness designation.

The Tribe supports H.R. 8206, which would prevent the Wilderness Act from being applied in the Big Cypress. The Wilderness Act must not be applied to the Big Cypress National Preserve, *ever*. Big Cypress, occupying an area larger than the State of Rhode Island, was created as the nation’s first multi-use preserve. Congress’s intent was to allow for uses that would be prohibited in typical National Parks. The essential reasons for creating a multi-use Preserve are in complete tension with the limited uses allowed in wilderness areas. By preventing a wilderness designation, we can ensure that Big Cypress will continue to be serve the purposes for which it was created, with

indigenous inhabitants to steward its lands; access for the public to experience its abundance and beauty; and effective management of invasive and exotic species.

Big Cypress is home for Native American People.

There are 15 remaining traditional Miccosukee and Seminole villages in Big Cypress National Preserve, as well as several ceremonial grounds, burial grounds and gathering sites in every park unit within the Preserve. We live here. Our ancestors fought and died here. They are buried here. The Big Cypress is part of us and we are a part of it. The 1974 Enabling Legislation of Big Cypress National Preserve recognizes this history, providing that “members of the Miccosukee Tribe of Indians of Florida and members of the Seminole Tribe of Florida shall be permitted, subject to reasonable regulations established by the Secretary, to continue their usual and customary use and occupancy of Federal or federally acquired lands and waters within the preserve and the Addition, including hunting, fishing, and trapping on a subsistence basis and traditional tribal ceremonials.” Public Law 93-440 (Oct. 11, 1974).

Our ancestors determined that it is the duty of every tribal member to preserve and protect our lands. To that end, we are leading or partnered on multiple projects to protect, preserve, and restore our ancestral lands. We are negotiating a co-management agreement with the National Park Service so that we can police the entire Preserve, protect it from poachers and polluters, and provide support for the enforcement of Preserve regulations. We are also working with the Army Corps of Engineers to rehydrate the Western Everglades, including parts of the Big Cypress National Preserve through the Comprehensive Everglades Restoration Plan (CERP). We are finally in the driver’s seat.

Now, the National Park Service is proposing a 147,000-192,000-acre wilderness designation on top of the Miccosukee Tribe of Indians and Seminole Tribe of Florida’s reserved rights within Big Cypress National Preserve. We have been forced to gather the support of several other tribes and Native non-profits to oppose this taking of tribal rights. Nevertheless, we fear that the National Park Service is now awaiting an opportune political moment to utilize the Wilderness Act to erode Miccosukee tribal sovereignty.

Miccosukee have seen this before.

It should come as no surprise that the Miccosukee experience with federal policy surrounding our homelands has been, historically, negative and rife with prejudice. For example, a 99,000-acre reservation in Monroe County, granted to the Miccosukee, was revoked when Everglades National Park was created. The Tribe no longer has hunting and fishing rights within Everglades National Park and must *get permission* to access historic tree islands within the Park for religious, cultural, or burial purposes. In Everglades National Park, we rely on the charity and good grace of the federal government. We understand and appreciate the trust responsibility that continues to be honored, but we are cognizant of the fact that shifts in society, policy, the law of the land, or even a new Superintendent can threaten our way of life.

This is what is at stake in Big Cypress for Miccosukee. This is what a Wilderness Designation can affect. Wilderness is a threat to tribal sovereignty because the plain language of the statute prohibits “permanent improvement,” human habitation, and requires the federal government to make “the

imprint of man's work substantially unnoticeable.” The Miccosukee experience tells us that we shape the land, we live within it, and we should make it better with our lives for future generations.

This is why we see the Wilderness Act’s statutory framework as being in direct conflict with our way of life: instead of relying on tribal knowledge and resources to ensure that land can continue to be managed and used in accordance with the traditional ways, a wilderness designation seeks to separate land from its Indigenous stewards.

Wilderness isn't always good for tribes or for conservation: Examples of Legal Conflicts in other Park Units.

Placing a legal obstacle between tribes and their rights to use and occupy ancestral lands means that tribal members face an impossible choice: complying with restrictions that impede their ability to use and manage their ancestral lands, or risking prosecution.

This isn't just conjecture. Federal courts have grappled with these very issues before, and the rulings have not come down in favor of tribes. Federal courts have created a “minimum requirements test” that has a very narrow allowance for any deviation from the black letter standards of the Wilderness Act. In *United States v. Gotchnik*, 222 F.3d 506 (8th Cir. 2000), two members of the Bois Forte Band of Chippewa Indians were prosecuted for using motorized vehicles to cross wilderness areas to exercise their treaty-protected rights to tribal fishing waters. They were tried and convicted.

Relatedly, wilderness designations have in some cases been used by environmental groups as tools to prevent agencies from taking actions to save species or adequately manage invasive species. In *Wilderness Watch v. U.S. Fish and Wildlife*, 629 F.3d 1024 (9th Cir. 2010), the U.S. Fish & Wildlife Service built two water tanks on Wilderness lands to help save the Bighorn Sheep population from severe drought in Kofa National Wildlife Refuge. The Ninth Circuit rejected the adequacy of the Service’s analysis and deemed the tanks in potential violation of the Wilderness Act without further justification by the Service.

Negotiations or accords do not reliably yield adequate accommodations for tribes when attempted. The Ramah District of Navajo Nation entered into an agreement with the Bureau of Land Management to access their ancestral lands at El Malpais National Conservation Area attempting to comply with the minimum requirements test set by federal courts related to wilderness lands. This agreement allowed tribal citizens to use a vehicle on the outer perimeter of the area but limited the times of year for potential access, prohibited large gatherings of tribal citizens, and required *permission* from Bureau of Land Management staff to access their ancestral lands. The federal land manager reported that the Ramah Navajo did not request access to El Malpais for their ceremonies for 12 years after this narrow and restrictive agreement was reached.¹

Wilderness designation applied to the Big Cypress threatens all of these harms to Miccosukee and the environment.

¹ Kathryn M. Mutz & Doug Cannon, *El Malpais Area: National Monument, National Conservation Area and the West Malpais and Cebolla Wilderness Area*, 31-32 (Nat. Res. L. Ctr., Univ. Colo. Sch. L. 2005) (quoting Personal communication with Ken Jones, El Malpais NCA Manager (Feb. 11, 2005).

There have been assurances from the National Park Service and from the administration that their application of the Wilderness Act would not affect tribal rights to use and occupancy guaranteed to the Miccosukee and Seminole Tribe in the Big Cypress enacting legislation. But the National Park Service's policies on wilderness state that special management protocols start early in the process of considering an area for designation as wilderness. According to National Park Service Director Order #41, "[t]hroughout the study process, eligible lands continue to be managed to preserve their eligibility for designation by protecting their wilderness character," and we would anticipate that this policy would support many more restrictions on tribal activity in Big Cypress than are in place today in order to create the conditions required for a wilderness designation.

We fear that application of the Wilderness Act to the Big Cypress would prevent motorized access by Miccosukee tribal members to their ancestral lands. We fear that wilderness will prevent continued large gatherings at our sacred ceremonial grounds in the Big Cypress. We fear that wilderness will prevent adequate management of the invasive pythons that permeate Big Cypress wetlands and hammocks. We fear that wilderness will prevent the Miccosukee, the State of Florida, and federal agencies from addressing invasive and exotic flora (e.g. Brazilian Pepper, Melaleuca) which covered more than half the Preserve in the 1990s and have only been pushed back by mechanical means, resulting in an altered ecosystem within the Big Cypress and thwarting the progress made to stop their spread over the last 50 years.

More fundamentally, our concern with a wilderness designation is that it hinders our ability to influence management of these lands, and threatens to obstruct our traditional religious observance and way of life. Our children will not be able to enjoy the fruits of their ancestral lands. They will not see her beauty up close; we will not be able to harvest our medicine, and we will not be able to bury our dead traditionally. Our annual religious festivals will only continue on federal lands if we violate federal law. That is injustice and does not reflect the highest ideals of the United States in the 21st century of fulfilling promises made to sovereign tribes.

This is the sacred land of the Miccosukee, this is our home, this is our responsibility. Don't just force regulation and designations on my people, follow our lead. *Permit* us to guide you to the right path forward in the Big Cypress.

Conclusion

I am optimistic that the Tribe, Congress, and the Park Service can continue to do what's right for our Mother Everglades and our sacred land, the Big Cypress. But designating, or proposing to designate, any part of the Big Cypress as wilderness is not the right answer.

I truly appreciate the opportunity to address this Subcommittee and thank you for the support you have shown to tribes and their sovereignty. I look forward to any questions you may have.