

**Nathan Small, Chairman, Fort Hall Business Council, Shoshone-Bannock Tribes
House Interior and Related Agencies Appropriations Subcommittee (5/10/2018)**

My name is Nathan Small. I serve as Chairman of the Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Reservation (Reservation), located in southeastern Idaho. My testimony focuses on the following: (1) serious concerns with DOI's proposed reorganization and its request for FY19 funding for its reorganization; (2) the need for EPA to require clean up the Eastern Michaud Flats Superfund Site; (3) concerns with HHS Centers of Medicare and Medicaid Services' work requirements that would negatively impact the IHS system; (4) the need to protect IHS funding for the Community Health Representative Program and Health Education program; (5) the need to protect the Special Diabetes Program for Indians; (6) the need for a replacement adult substance use and disorder inpatient residential treatment facility and adult transitional safe and sober housing; (7) the need to increase BIA funding for tribal survey and mapping activities; and (8) the need to address water storage in Grays Lake.

The Tribes deeply appreciate the bi-partisan efforts of this Subcommittee to protect and increase funding for essential programs for tribal governments so that the federal government can better meet its solemn treaty and trust obligations. We thank the Subcommittee for funding increases for IHS and BIA in the FY18 Omnibus despite the Trump Administration's request to reduce/eliminate funding at these agencies. We extend special thanks to Rep. Mike Simpson, the Tribes' Representative, for his efforts on the House Appropriations Committee to improve funding for tribal programs and for his friendship with the Shoshone-Bannock people.

For FY19, we respectfully request that the Subcommittee consider continuing increases in funding for critical tribal programs to make up for the severe chronic underfunding and to address the staggering backlog of deferred maintenance and unmet tribal needs. The Trump Administration's FY19 budget request, recommending significant decreases and the elimination of essential tribal programs, shows an unfortunate lack of understanding of the unique political status of Indian tribes and the federal government's fiduciary obligations to tribes incurred when tribes ceded millions of acres to build this country through historical federal policies of forced removal of American Indian people from their lands. Now, more than ever, the United States needs your leadership in the face of yet again another disheartening Trump Administration budget proposal, which includes cutting funding at DOI by 15% and at EPA by 25%.

Concerns about Proposed DOI Reorganization

The Tribes have serious concerns about DOI's proposed reorganization. DOI has requested FY19 funding for its reorganization but has yet to provide information on how the reorganization would impact tribes and has yet to engage in consultations with tribes about its proposed reorganization. DOI bears a primary responsibility to provide tribes with federal services. We are worried that DOI, in violation of its duties to tribes, is going ahead with its reorganization without engaging in meaningful tribal consultations, and without properly considering negative impacts of the reorganization on tribes or that DOI has already made up its mind on its reorganization and that any future consultations will be meaningless. ***We urge the Subcommittee to direct DOI to cease its reorganization efforts until it has engaged in meaningful government-to-government consultations with tribes about its reorganization plan and to direct DOI to provide all relevant details to tribes about its proposed reorganization.***

Need to Clean Up Eastern Michaud Flats Superfund Site on Reservation

The Tribes and the U.S. signed the Fort Bridger Treaty of 1868 (Treaty) ratified by the Senate on February 16, 1869. This Treaty was part of the “Great Peace Commission” that was a massive effort of the U.S. from 1868-69 to gain Indian land throughout the American West and to negotiate treaties to secure landownership for the expanding US. Under the Treaty, the Tribes agreed to settle on the Reservation as our “permanent home.” However, the Tribes reserved the following off reservation rights: “the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and so long as peace subsists among the whites and Indians on the borders of the hunting districts.” Article IV. Subsequent to the Treaty, the Tribes ceded hundreds of thousands of acres to the U.S. to facilitate settlement of large portions of the Reservation in a series of cession agreements; however, the Tribes expressly reserved specific usufructuary rights for lands remaining in the public domain, including retained priority rights to hunt, fish, gather, graze, and cut timber for personal use.

For almost 70 years, the health, environment, and safety of Tribal Members have been subjected to toxic contamination caused by the J.R. Simplot Company (Simplot), a large phosphate manufacturing company, and the FMC Corporation from their mining and processing of phosphates on the Reservation and our ceded lands for many decades. Simplot continues to process phosphates at its Pocatello Don Plant, which is located adjacent to the Reservation within our ceded lands where we have vested treaty property rights to hunt, gather, and graze livestock. In 1976, the Idaho Department of Health and Welfare found elevated levels of arsenic, lead, and cadmium in monitoring wells down-gradient from the Simplot and FMC plants. In 1987, the EPA detected arsenic, cadmium, and selenium in monitoring wells in the deep confined aquifer which runs under the area. The EPA also discovered heavy metals in the sediments of its toxic waste dump site. In addition, elevated contaminant levels were found in soils both on-site and off-site. In all, 2,530 acres of land surrounding the plants were found to have “contamination levels of concern.” The findings above culminated in EPA’s designation of the area in 1990 as the Eastern Michaud Flats (EMF) Superfund Site and its listing on EPA’s National Priority List as one of the most contaminated Superfund Sites in the country.

The EMF Site is a continuing source of chemical and radioactive contamination, introducing dangerous airborne, surface, and groundwater contamination into our ecosystem and into the regional ecosystem. Contaminants from the Site move off the private property boundary via groundwater and air and enter the Reservation, impacting our health, our land, and water resources. The groundwater moves generally north-northeast under the EMF Site, and discharges into springs and into the Portneuf River, which flows past the Simplot Don Plant and onto the Reservation. Thousands of mammals, reptiles and birds that have come into contact with the Site have died. The Site has also affected the Bottoms area, our sacred hunting grounds. The Tribes have fought for decades to require Simplot and FMC to clean up their Superfund site on and next to the Reservation, which has contaminated our lands and watersheds to the point that we cannot eat the fish we catch or swim in our streams and lakes. Simplot and FMC still have not cleaned up the EMF site. ***We respectfully request the Subcommittee’s assistance in working with the EPA, which has a treaty obligation to protect the health of Tribal Members and to protect our lands and water sources, to require cleanup of the EMF Site.***

Further, the Tribes oppose H.R. 4448, the Blackrock Land Exchange Act, which would mandate the transfer of over 718 acres of BLM land, which is adjacent to the Reservation and part of the Tribes' ceded lands. This bill would allow Simplot to increase the footprint of the EMF Site and eventually create an even larger Superfund site, increasing the environmental contamination of the Reservation, its neighboring communities, and the Portneuf River. H.R. 4448 would negatively impact the Tribes' treaty rights, the environment, our health, and our cultural resources. Instead, the federal government should be working toward the goals of clean air, clean water, and the protection of cultural resources that protect us, and uphold our treaty rights.

Negative Impacts to IHS from HHS Centers for Medicare and Medicaid Work Requirements

The Centers for Medicare and Medicaid Services (CMS) recently took a position that IHS beneficiaries are subject to CMS work and "community engagement" requirements. This position is contrary to treaties and other federal laws that acknowledge the political governmental status of tribes and requiring quality health services for American Indians. Specifically, Section 1911 of the Social Security Act authorizes IHS and tribally operated programs to bill the Medicaid program to provide supplemental federal funding to IHS. Mandatory work requirements will create a barrier to access to Medicaid for American Indians; and, faced with these requirements, American Indian Medicaid enrollees will no longer participate in the Medicaid program. This will deprive IHS of much-needed Medicaid resources and jeopardize the IHS system. *We urge the Subcommittee to clarify through legislation that IHS beneficiaries are not subject to CMS work and "community engagement" requirements.*

Protect IHS Community Health Representative Program and Health Education Program

The FY19 President's budget request proposes eliminating funding for the IHS Community Health Representative (CHR) Program and the IHS Health Education Program. CHR's and Health Educators are trained in a wide variety of general and advanced medical topics, including health promotion and disease prevention, and are programs wholly operated by tribes through P.L. 93-638 contracts with IHS. Their assistance is part of the backbone of the Fort Hall community. Without the CHR Program, our elders or disabled individuals who need assistance getting to health care appointments, which is often 50 miles away, or help with follow up from doctor/hospital visits, changing bandage or wound dressings, picking up prescriptions, etc. The Health Education Program helps in the reduction and management of chronic and communicable diseases and disabling conditions. The bottom line is that we need more CHR's and Health Educators, not less of them. *We respectfully request that the Subcommittee protect this important funding.*

Protect Funding for Special Diabetes Program for Indians

The Trump Administration's FY19 budget requests transfer of the Special Diabetes Program for Indians (SDPI), funded at \$150 million, to the discretionary line item rather than the mandatory spending that it is currently. We are concerned that the Administration has made this request so that it can seek reductions/elimination in funding for SDPI in the future. Diabetes is a complex and costly chronic disease that requires long-term lifestyle changes for prevention and treatment. The Indian health care system is funded at about 59% of need and is overburdened. At a rate of 2.8 times the national average, American Indians have the highest prevalence of diabetes. 14% of the Fort Hall community suffers from diabetes. The federal investment in SDPI has shown significant improvements and is advancing the quality of our health care. *We respectfully request that the Subcommittee maintain SDPI as mandatory spending.*

Need for Replacement Substance Use Treatment Facility and Adult Transitional Housing

Unfortunately, the Fort Hall community suffers from high rates of alcohol, methamphetamine, and opioid abuse. Due to these high rates of substance abuse, our community has recently experienced an increase in violence and deaths associated with substance abuse. The Tribes have been addressing these issues in a variety of ways, including treatment and recovery. However, in December 2017, the Tribes' primary residential treatment facility, the Four Directions Treatment Center, had to suspend inpatient services after their old facility was condemned. The treatment center now has to refer patients in need of in-patient services to other facilities, including out-of-state facilities. Further, due to the high cost of treatment and limitations on Purchased/Referred Care (PRC) funding, our treatment center can only refer 10-15 patients even though our average is approximately 25 patients in need. The Reservation is also in need of transitional safe and sober housing for adult males and females who successfully complete treatment programs. A safe and sober home is a primary factor to maintaining a healthy and sober lifestyle, along with access to other services as needed. *We respectfully request the Subcommittee's assistance in working with IHS to develop a long-term solution for a residential treatment facility and transitional safe and sober housing on the Reservation.*

Need for Adequate BIA Funding for Tribal Survey and Mapping Activities

The Tribes' Survey & Mapping Program provides critical cadastral surveys for individual and Tribal allotments on the Reservation to determine land boundaries and to provide surveys and legal descriptions for home sites and gift deeds or partitions of land parcels. The Tribes maintain contracts with the BIA for these activities from the BIA's rights protection funding; however, funding for these critical surveys has been chronically deficient with the Tribes having to supplement salaries for 1.5 full time employees. While the Tribes' survey program has been successful in completing 57 survey requests within the last year, but with over 50 individual survey requests submitted per year, there remains a 3-year backlog of work. *We respectfully request additional funding of \$175,000 for the Tribes to help eliminate the backlog of survey requests, provide services for new survey requests, and to protect the history and ownership of the Tribes and its Reservation boundaries.*

Need to Address Water Storage in Grays Lake

Congress enacted the 1990 Fort Hall Water Rights Agreement (P.L. 101-602) to solidify the Tribes' water rights in a number of water sources in the upper Snake River Basin. The Agreement states that, in low water years, the Reservation water supply would come from storage in the Blackfoot Reservoir and Grays Lake. However, the Tribes have been unable to fully implement and exercise these water rights because Grays Lake is drawn down annually to accommodate for established grazing rights. The 1990 Agreement directed \$5 million in funding to the BIA to buy out grazing rights and to purchase lands to enhance storage supplies for the Fort Hall Irrigation Project (FHIP). Although tBIA has purchased approximately 4,183 acres of lakebed interests from seven separate landowners, the remaining landowners restrict the BIA from effectively managing the water level and prevent full implementation of the 1990 Agreement. Securing the remaining lakebed interests will improve water storage and water management and will significantly benefit the Tribes and the water users of FHIP. *We respectfully request that the Subcommittee provide \$8 million to the BIA to complete the Grays Lake land acquisitions and finally accomplish the goals of the 1990 Agreement.*