



UTE INDIAN TRIBE

P. O. Box 190
Fort Duchesne, Utah 84026
Phone (435) 722-5141 • Fax (435) 722-5072

July 27, 2020

The Honorable Paul Tonko
The Honorable John Shimkus
Subcommittee on Environment and Climate Change
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

**Re: Tribal Views for Oversight Hearing on “There’s Something in the Water:
Reforming Our Nation's Drinking Water Standards”**

Dear Chairman Tonko and Ranking Member Shimkus:

The Ute Indian Tribe appreciates the Subcommittee on Environment and Climate’s attention to drinking water issues. Your July 28, 2020, oversight hearing entitled “There’s Something in the Water: Reforming Our Nation’s Drinking Water Standards” addresses an important part of the Safe Drinking Water Act (SDWA) and drinking water programs within the Environmental Protection Agency (EPA). We appreciate your consideration of our views expressed in this letter and ask that this letter be made a part of the hearing record.

We also believe that our letter may assist the full Committee as it examines issues following a July 8, 2020 hearing entitled “Addressing the Urgent Needs of Our Tribal Communities.” For the Ute Indian Tribe, and many other tribes, providing clean drinking water is not just a question of meeting water quality standards, but also obtaining the funding, resources, technical assistance and infrastructure needed to provide clean water. Even if EPA were able to review and revise all of the drinking water standards according to the timelines set out in the SDWA, meeting those standards would still be an issue across Indian Country due to lack of resources and infrastructure issues.

In Indian Country, we need an approach under the SDWA and in EPA programs that supports tribal water infrastructure and provides technical support in a way that ensures that tribes will be able to meet drinking water standards. Even if this is not the type of “reform” that the Subcommittee had in mind for drinking water standards, reforms are needed in all of these areas so that we can provide the clean and safe drinking water that the SDWA requires.

Introduction

The Ute Indian Tribe consists of three bands: the Uintah, White River, and Uncompahgre Bands. Our ancestral homelands stretch from the Colorado Front Range to the Wasatch Front in Utah—from present-day Denver to Salt Lake City. Through a series of treaties and agreements we agreed to reside and establish a homeland on our Uintah and Ouray Reservation (Reservation) in northeastern Utah. Our 4.5 million-acre Reservation is the second largest in the United States. Our Reservation is approximately 150 miles east of Salt Lake City.

The delivery of safe drinking water to our members is one of the highest priorities for the Ute Indian Tribe. The vast majority of members live on our Uintah and Ouray Reservation (Reservation) and are provided water for domestic, commercial municipal, and industrial (DCMI) purposes by our Ute Tribal Water System (UTWS). Based on 2005 data, our UTWS provides water to upwards of 3,850 users between the system and its external connections. The COVID-19 pandemic and the isolation of our elders and members in their homes has highlighted the vital need of our ability to provide clean drinking water across our Reservation.

Despite the vital importance of our UTWS, the last time the system was comprehensively rehabilitated was in 1981, and the last sanitary system survey of our UTWS occurred in 1982. The United States and Congress must do better. We ceded millions of acres of lands and resources in treaties and agreements with the United States. In return, the United States promised to secure our homeland and provide programs and services to the Tribe. It is time to make good on these promises and provide adequate funding for tribal water systems and other infrastructure needs.

Water Resources Management is Vital to Health and Security on our Reservation

As you may know, the State of Utah is recognized as the second most arid State in the country. This includes our Reservation and requires careful and considered management of our water resources for drinking, irrigation and all of life. In his 1905 Annual Report, the Commissioner of Indian Affairs described the conditions on our Reservation and bluntly stated, “The future of these Indians depends upon [water] . . . for without water their lands are valueless, and starvation or extermination will be their fate.”

Our Reservation lies entirely within the drainage of the Upper Colorado River Basin. We have a multitude of streams flowing through the Reservation, including: the Duchesne River and its tributaries, Rock Creek, Lake Fork River, Yellowstone River, Uinta River, and Whiterocks River, among the rivers that flow south from the Uinta Mountains through the western part of the Reservation to the Green River, which together with its tributaries, including the White River, flows through the eastern part of the Reservation then on to the mainstem of the Colorado River.

As a part of our Reservation, we maintain Indian reserved water rights by diversion of 549,685 acre-feet per year in the Upper Colorado River Basin. Priorities for these rights are dated to 1861 for all historically and practicably irrigable lands of the Uintah Valley portion of the Reservation, including municipal and industrial water rights, and 1882 for all lands served on the Uncompahgre portion of the Reservation, through which the Green River and its tributaries flow

and border. We own the highest priority water right to natural flows from all rivers within the exterior boundaries of the Reservation.

The United States initiated litigation in federal court in 1916 to protect our reserved water rights and enjoin various private irrigation companies from interfering with our tribal members' use of our waters. A portion of our Indian reserved water rights was recognized through this successful litigation and resulted in the issuance of two federal decrees in 1923 for our reserved water rights on the Lake Fork and Uinta Rivers and their territories, where the majority of tribal members reside. Agreement on the remaining portion of our Indian water rights was reached by agreement with the State and the Federal governments in 1965 when we agreed to not develop some of our Indian water rights so that the State could proceed to construct and complete the Central Utah Project.

The Central Utah Project is a massive federal project that diverts and stores water from our region and our Reservation to provide water to the Wasatch Front including Salt Lake City and Provo. As a part of this Project, the government promised to construct a water storage facility in the Uinta Basin that would provide the Tribe with the necessary water resources to develop and use our Reserved Water Rights on our Reservation. This storage has still not been built.

Investments Needed for Safe Drinking Water Infrastructure

The delivery of safe drinking water to our Tribal members is of the highest priority for the Tribe. The vast majority of our members live on the Uintah and Ouray Reservation and are provided with water for domestic, commercial municipal, and industrial (DCMI) purposes by our Ute Tribal Water System (UTWS). Our UTWS service area covers roughly 175 square miles, including the towns of Whiterocks, Fort Duchesne, Randlett, Ouray, and other rural areas. We also operate a high school for our tribal members in Fort Duchesne. Through external connections, our UTWS is also the sole water supplier to the Ballard Water Improvement District, the Ouray Park Improvement District, and the Independence region of the Johnson Water Improvement District.

Based on 2005 data, our UTWS provides water to upwards of 3,850 users between the system and its external connections. Our UTWS diverts and treats water from Whiterocks and Uriah Heap Springs, which is delivered by gravity through nearly 60 miles of pipelines and numerous valves, hydrants, and water meters. The last time the system was comprehensively rehabilitated was in 1981, and the last sanitary system survey of our UTWS occurred in 1982.

Each spring subsystem on the UTWS has its own water treatment facility. Whiterocks typically takes 100 gpm through treatment, while Uriah Heap takes about 700 gpm through its system. Whiterocks Springs subsystem serves 115 connections with an average daily demand of 63 gpm. Uriah Heap has 815 connections and average daily demand of 700 gpm.

In 2010, we asked an engineering firm to evaluate the conditions of the water collection systems at Whiterocks River and Uriah Heap Springs. They found that multiple improvements for environmental health and better water management within our UTWS were needed. Deteriorated conditions included vegetation growth and poor surface drainage in the spring areas, root intrusion,

sediments, and cracking in collection pipes, a lack of water meters in the system, a need for increased water quality monitoring in the system, and unmonitored spillage of untreated spring water into local canals. Though customer water meters have since been installed and a new UriaH Heap treatment plant was built, not all recommended improvements have been fully implemented.

In 2014, another engineering firm observed or were made aware of the following concerns related to our UTWS: continued poor surface drainage and vegetation in spring collection fields; insufficient fencing around springs that could allow livestock to contaminate water sources; rusted, leaking, or overflowing water storage tanks; freezing or burst water pipes in the winter throughout the system; vandalism of UTWS structures; and a strong need for a hydraulic model to understand water flow within the system.

Despite these issues and our requests for support, the Indian Health Service (IHS) has not been able to fund and install spillage meters needed at both springs for several years, and individual water meters are not read; as a result, both users and external connections pay only a flat monthly water rate regardless of use. Although we appreciate the technical support that IHS has been able to provide most of its limited infrastructure or construction funding goes towards drilling domestic water wells for individual tribal members. As a result, our UTWS has continued to suffer from a lack of maintenance, rehabilitation, and expansion funding.

Due to chronic underfunding for our UTWS, we have had difficulty maintaining, providing, and ensuring that our tribal members have access to safe drinking water. Since 2018, we have made a concerted effort to improve our internal monitoring and auditing procedures related to the quality of the water delivered by our UTWS. However, the lack of consistent and available funding sources to rehabilitate, improve, and expand access to our UTWS remains a significant and serious issue for the majority of our tribal members. And some of our tribal members must rely on relatively shallow individual wells or developed springs for their water supply.

Additional Impacts from COVID-19 Pandemic and Specific Funding Needed

The COVID-19 pandemic has highlighted and exacerbated our need to provide tribal members access to safe and reliable drinking water—which is paramount in maintaining proper hygiene and staying healthy. IHS has already documented that families with access to reliable safe drinking water and sewerage systems require appreciably fewer medical services and place fewer demands on the IHS and tribal primary health care delivery system. For every dollar IHS spends on sanitation facilities to serve eligible existing homes, at least a twentyfold return in health benefits is achieved.

Despite these clear health benefits and the additional impacts from the COVID-19 pandemic, Congress is still not providing the funding levels for needed improvements to our UTWS and tribal water systems throughout Indian Country. Congress knows this. We all know this. The shortfalls in IHS funding are well-known. This is not only a funding shortfall, but also a failure to fulfill the United States treaty and trust responsibilities.

While Congress fails to meet its obligations, we are still working hard to provide our

members with safe and clean drinking water supplies. We recently investigated and identified (1) the need to develop groundwater wells and associated facilities to provide culinary/domestic water to an area of our delivery system known as Farm Loop Road area located north of our Whiterocks Tribal community, and (2) the need for a supplemental supply to the existing Whiterocks and Uriah Heaps water systems. Our residents on the Farm Loop Road are representative of those who experience poor water quality from their domestic wells and seasonal water shortages.

We conducted project feasibility studies for these two projects as well as their economic feasibility. Not surprisingly, the cost per residence in the targeted isolated, rural Reservation area can run as high as \$132,000 per residence for the groundwater development. When the residential improvements are combined with the development of the supplemental water supply project, we can bring our costs down to \$12,609 per connection. However, that still leaves us with an overall cost to improve access and make water supply improvements of \$12,500,000—in just one area of our UTWS on our large Reservation.

Some sources of funding are specifically limited to loans to eligible water systems. One example is the EPA Drinking Water State Revolving Loan Fund which has a 2% Drinking Water Infrastructure Tribal Set-Aside. In addition, this funding is not available where there is no existing water system as in the example above for our Farm Loop Road residential area.

We also run into problems because a project's cost efficiency is often used by funding sources, including IHS, as a measure of a project's economic feasibility. If the measure of the cost per household is used as a measure for tribal funding, the highest cost per household served in Utah is \$40,500. As described above, the estimated cost for some of our very rural, reservation tribal households can be as high as \$132,000 per residence for the groundwater development. Yet, the IHS Phoenix Area, which includes our Reservation, has a cap on the cost for a system identified as "deficient" at about \$58,000 per tribal home served. IHS told the Tribe that if we exceed their cap then the project cannot be funded. As a result, the Tribe receives \$0 benefit from IHS, even though the Tribe offered to make up the difference. None of these caps or cost limitations are consistent with the Federal government's trust responsibilities.

Some other sources of funding, such as the U.S. Bureau of Reclamation WaterSMART grants—Water and Energy Efficiency Grants, require a 50/50 cost share, with tribes located in the western states eligible for funding of tribal projects that conserve water and/or provide hydropower development. Many tribes are not able to fund the 50% share of the costs under this program. And, more importantly, this cost share is not consistent with the United States' debts owed to Indian tribes and the trust responsibility.

A final example of existing funding sources is the Water Infrastructure Improvements for the Nation Act—Assistance for Small and Disadvantaged Communities Drinking Water Grant. The grants target public water systems in small and disadvantaged communities to meet Safe Drinking Water Act requirements. However, with a 2% tribal allotment under the program funding, there is only a total allotment of \$875,000 for tribes across the United States. States, cities and towns covering much smaller areas have higher water infrastructure budgets than this.

Conclusion

Improvements to our UTWS can save lives and improve the health outcomes for our tribal members. The United States and Congress have obligations based on treaties, agreements and the federal government's trust responsibility meet these basic needs. Like many tribes, the Ute Indian Tribe needs Congress to provide significant funding under the SDWA and for EPA programs to finally meet these obligations. In the era of COVID-19 nothing is more important.

Significant investments in drinking water infrastructure will help to ensure that our drinking water system meets water quality standards and would also provide a vital economic boost for the economy in response to the COVID-19 pandemic. The Ute Indian Tribe has done the feasibility studies and we know what is needed. Even IHS knows what is needed. We need to modernize our tribal water delivery system, firm up water supplies to our Reservation Tribal residents, and ensure quality water supplies that satisfy health-based drinking water standards. It is time for Congress to act on these needs.

Providing clean and safe drinking water requires that we address everything from infrastructure to technical resources to water quality standards. The Ute Indian Tribe asks that the Subcommittee and the full Committee embrace a wholistic approach to the reforms and solutions we need in Indian Country and for the United States to fulfill its treaty and trust responsibilities.

Thank you for your consideration. Sincerely,



Luke Duncan, Chairman
Ute Indian Tribe Business Committee