



Rocky Mountain Tribal Leaders Council

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RE: Response to Chairman Huffman and Representative Neguse.

Thank you Chairman Huffman and Acting Chairman Neguse. There is no short answer to your question, “Why is this issue so unifying?” for Tribal Nations. As my fellow witnesses and I explained at the May 15 hearing, there isn’t a soundbite that articulates the significance of the grizzly bear to tribal cultures in North America. Amidst the great diversity that exists among tribes and traditional lifeways, the grizzly is universally significant to the people whom established a relationship with this sacred being prior to contact and extirpation. When I speak of extirpation, I refer not only to the Euro-extirpation of the grizzly, but also to the extirpation of our people. If you trace the extermination of the grizzly with Euro-westward expansion, it parallels the decimation of tribal people post-the Louisiana Purchase. We see ourselves in the grizzly and the grizzly within us. Our fates were and remain intertwined. Look no further than California, where the only grizzly that remains today is on the state flag. Before first the Spanish and then the “Bear Flaggers,” California had arguably the largest population of grizzlies and Native people in what became the lower 48. In the three decades that proceeded the US taking dominion over the territory in 1846, both the grizzly and Native people fell victim to extermination. From an estimated population of 150,000 in 1846, by the 1880 census only 16,277 California Indians survived.¹ The grizzly fared even worse. This sacred being that had survived a million years before Commodore John Sloat declared “henceforth California will be a portion of the United States,” was wiped out within the next sixty, some 10,000 or more slaughtered.² As indigenous people of this continent, we do not forget these acts. It would behoove non-indigenous people to at least acknowledge them, and to appreciate how they influence our points of reference.

At the last count, over 200 tribes have now signed the Grizzly Treaty. Why? Because we remember. Because we are survivors. Because we recognize that no matter how loudly the proponents of removing Endangered Species Act (ESA) protections from the grizzly and opening trophy hunts for their heads and hides repeat what “a great conservation success story” the “recovery” of the grizzly bear is, it is actually *not* a recovery at all. It is merely a modest step toward recovery. There is immense hubris in the claim; in the era of Lewis and Clark, some 100,000 grizzly bears ranged from the Missouri River to the Pacific Coast.³ Now, in the era of Zinke and Bernhardt, there may be 700 grizzly bears in Greater Yellowstone and possibly 1,700 in the contiguous US in total. How can a loss of 98,300 grizzlies in 215-years be described as “a great conservation success story”? The plight of the grizzly bear did not begin in 1975 with the 136 that evaded extinction in Yellowstone. The population of the giant panda in China

approximates the grizzly bear in the lower 48 states, yet there is no clamor to open trophy hunts on the giant panda. The black rhino is listed as “critically endangered,” though there may be ten times as many black rhinos as there are Yellowstone grizzlies, and no credible scientific authority considers the pathway to recovery for the black rhino is to expose the species to multiple trophy hunting seasons managed by independent authorities.⁴ The Grizzly Treaty, and now H.R. 2535 that embodies the tenets of the Grizzly Treaty, specifically the reintroduction program to return the grizzly to sovereign tribal lands within the grizzly’s historic range, is the only viable course for actual grizzly bear recovery.

For Tribal Nations, the grizzly issue represents far more than debates over the validity of the “Chao2 estimator” or the credibility of the “mark-resight” counting techniques. As a people, we are not much for lines on the ground, but if there must be one, it may as well be a red line, which the grizzly issue is. Tribal sovereignty, treaty rights, spiritual and religious freedoms, and the form and continued existence of the federal-Indian trust responsibility are embodied by the grizzly issue. As the Rocky Mountain Tribal Leaders Council has stated before, Tribal Nations want to be partners not plaintiffs with the federal government on grizzly recovery and other threatened and endangered species, but at the May 15 hearing on H.R. 2535 it was apparent why we are continually forced to be the latter. Our objections to delisting and trophy hunting the grizzly, and our support for H.R. 2535, were summarily dismissed as unscientific by Ranking Member McClintock (from California). These comments were jarring not only to me, but my fellow tribal witnesses.

Spirituality informs the indigenous worldview, which includes our Traditional Ecological Knowledge (TEK). The US Fish and Wildlife Service (USFWS) describes TEK as “Native Science”⁵ gained “over hundreds or thousands of years through direct contact with the environment,”⁶ and further expounds how TEK “encompasses the world view of indigenous people which includes ecology, spirituality, human and animal relationships, and more.”⁷ Our TEK is the very definition of “the best available science.” Our people applied their TEK for millennia prior to contact, a period during which the biomass was at its apex, which stands in stark contrast to what we presently face. Indigenous TEK contributed to USFWS’s decision to list the polar bear under the ESA⁸ but was evidently not deemed significant enough to warrant mandated government-to-government consultation during the grizzly delisting process in Greater Yellowstone. “The idea that TEK has guided modern biology (or Western science) should encourage conservation biologists to investigate TEK more thoroughly,”⁹ remains the prevailing finding of the USFWS, and though our TEK was incorporated by the likes of Rumphius, Linnaeus, Darwin and Merriam,¹⁰ it is apparently insufficient for our people to have a partnership role in the recovery of the grizzly bear, or the implementation of H.R. 2535, in the view of the minority on this committee.

There is great irony and no small amount of hypocrisy to this attitude. The minority on this committee and the majority on the Senate Environment and Public Works Committee both seek to gut the ESA at a moment when a multitude of scientists contributed to a UN report which warns that some one-million species are facing extinction.¹¹ Since the Industrial Revolution, the decimation of 83% of the mammals on earth has been accelerated, resulting in the once-unimaginable reality that 96% of existing mammals on earth are either humans or livestock.¹² Republican Members of Congress reflect the Trump Administration’s extreme skepticism on climate change, which may only alter when Trump Tower is a rotting edifice in a swamp that was once New York if sea levels rise by over six-feet and 187-million people are displaced, as has been projected.¹³ However, those opinions will not change before the White

House has directed the National Security Council to “strip references” to climate change in speeches; has directed the USGS to alter climate change models to reflect the president’s position; and gerrymandered the National Climate Assessment.¹⁴ In the words of Princeton University professor Michael Oppenheimer, “Nobody in the world does climate science like that.”¹⁵ In view of that summary, it is bewildering that the Ranking Member can deride the positions of some 200 Tribal Nations on the grizzly bear for lacking scientific basis. And in addition, it is simply wrong.

The positions of Tribal Nations on what constitutes “the best available science” standard in “wildlife management” and its origination also stand in stark contrast to the status quo. What exists today, from an indigenous perspective, is the continuation of a colonial paradigm, and is a significant motivational factor in our stand on the grizzly bear. Chief Justice John Marshall configured de Vitoria’s framework from the Doctrine of Discovery to define the federal government’s relationship to Indian tribes. In *Johnson v. McIntosh* (1823), a seminal case in U.S. jurisprudence and Indian affairs, Chief Justice Marshall established “a landlord-tenant relationship between the government and Indian tribes.” Through colonial expansion, Marshall argued that the immigrants acquired ownership and title to Indian lands and relegated Indians to a right of occupancy, which, though providing a residue of title to Indians, rendered that status as at best precarious, given that the federal government, in tandem with its appointees in territorial and then state administrations, now had a clear precedent by which to quiet title through the Court. Marshall’s successor, Chief Justice Roger Taney, then ensured that the Jacksonian doctrine prevailed, and consequently the Taney Court enabled the North American Model of Wildlife Conservation to emerge. Between 1836 and 1842, Taney presided over five Supreme Court decisions that reaffirmed Marshall’s opinion from *Johnson v. McIntosh*, that the Doctrine of Discovery granted title to all lands to the colonial power and relegated Indian land rights to that of occupancy only. In the last of those cases, *Martin v. Waddell* (1842), Taney opined that responsibility for “wildlife” was to be vested in the states under a public trust status for future generations, and that no individual could make claims of ownership to game and fish. Taney’s opinion on behalf of the Supreme Court led to the establishment of the North American Model of Wildlife Conservation, and the status quo that exists today, which has entirely disenfranchised Tribal Nations. In founding the Boone and Crockett Club, the likes of Teddy Roosevelt, George Bird Grinnell and Madison Grant molded the North American Model of Wildlife Conservation to become an articulation of their idea of conservation, which revolved around “big game hunting.”¹⁶

It is Madison Grant who fashioned the Boone and Crockett Club into attaining what Stewart Udall, Secretary of the Interior under JFK and LBJ, considered “national policy” on contemporary wildlife management and land stewardship, which Udall said was born of “the Boone and Crockett wildlife creed.”¹⁷ In 1915, Grant proposed evolving from “game preservation” to “scientific management” of wildlife and promoted theories that became accepted under the mantle of the Public Trust Doctrine. As the Club published the first document that outlined what became known as wildlife management, Grant spent his spare time writing *The Passing of the Great Race*. It was, said Teddy Roosevelt, in a testimonial for the publication, “a capital book” that “all Americans should be sincerely grateful” that Grant had written.¹⁸ *The Passing of the Great Race* has justifiably been called “the bible of scientific racism.” The patriarchs of the Boone and Crockett Club, the fathers of today’s wildlife management practices, were also patriarchs of the American eugenics’ movement led by General Francis A. Walker. What Teddy Roosevelt identified as “the facts our people most need to realize” in *The Passing of the Great Race* amounted to Grant’s code for the survival of what he dubbed the “master race,” or the

“white man par excellence,” as he defined the white American “aristocracy” he theorized were descended from “the Teutonic Nordics.”¹⁹

Grant advocated a doctrine which was to be based upon the passage of anti-miscegenation laws, sterilization programs, and race segregation, all underpinned by the theory of eugenics. Grant’s proposition for managing people was what he advocated for wildlife; the removal of the inferior, “those who are weak or unfit.”²⁰ The “worthless types” and “race bastards” were to be “deprived of the capacity to procreate their defective strain.”²¹ By convincing the racially pure to abandon the “sentimental belief in the sanctity of human life” the “master race” would be secured and returned to dominate.²² Madison Grant used what still prevails as the theory of wildlife management to articulate the salvation of American “aristocracy,” represented by the elites of the Boone and Crockett Club, in the face of the population onslaught from his “race bastards.”²³ Said Grant, “The laws of nature require the obliteration of the unfit, and human life is valuable only when it is of use to the community or race.”²⁴ I enter for the record a copy of *The Passing of the Great Race*. Among Grant’s acolytes were Eugene Fischer and Hans Günther. Fischer was the Third Reich’s principal eugenicist who proposed and implemented a sterilization program that resembled Grant’s in *The Passing of the Great Race*.²⁵ Fischer wrote the foreword to Grant’s *Conquest of a Continent*, which, for indigenous people of this continent, may be even more offensive than *The Passing of the Great Race*.²⁶ Not without good reason was *The Passing of the Great Race* a common defense exhibit at Nuremberg.²⁷ And not without good reason do tribal people believe that it is time for Grant’s legacy to end. We can do better than this – and our people did, for millennia. H.R. 2535 provides us with the opportunity to do so again.

A consequence of what former Secretary of the Interior Udall described as “national policy” on wildlife management from “the Boone and Crockett wildlife creed,” is that state game and fish departments are directed and staffed by many who openly profess to being trophy hunters. For tribal people, the grizzly issue is not a hunting issue, it is a killing issue, as Northern Cheyenne Sun Dance Priest, Don Shoulderblade, has articulated: “This is not a hunting issue, it is a killing issue. We come from a subsistence culture where there is ceremony and great respect accorded those beings you ask to offer their lives so that you might live. That is what you call a hunting tradition, not a killing tradition.”²⁸ The archaeological record demonstrates that our ancestors have subsistence hunted in what is now called Yellowstone for over 400 generations. The case of Luke R. Ellsbury, a Wyoming Game and Fish Department “bear management expert” serves as sufficient example for the Rocky Mountain Tribal Leaders Council’s disquiet at the prospect of state management of grizzly bears. It is not unreasonable to assume that a Wyoming Game and Fish Department large carnivore biologist and “bear management specialist” would be able to tell the difference between a black bear and a grizzly. However, on September 22, 2014, Mr. Ellsbury, WGFD’s “bear management specialist,” pled guilty to shooting a grizzly bear twenty-three feet from Highway 14/16/20 west of Cody, Wyoming, because he mistook the grizzly for a black bear.²⁹ WGFD retained Mr. Ellsbury as a “bear management specialist” after this incident.³⁰

I will conclude with another popular fable that has been propagated by “the Boone and Crockett wildlife creed,” which was introduced to the hearing on May 15 by Mr. Brain Nesvik. Mr. Nesvik has claimed numerous times in Yellowstone regional media that Wyoming “sportsmen” have shouldered the financial burden of grizzly recovery in Greater Yellowstone through hunting license fees. Over the last four years, Mr. Nesvik and former Wyoming governor Matt Mead have vacillated on the actual amount,

which on the low end they estimate at \$35-million and on the higher scale, some \$45 million. According to Mr. Nesvik's testimony, that figure has now risen to over \$50 million. As Senior Advisor to the Rocky Mountain Tribal Leaders Council, I would respectfully urge this committee to seek audited, financial disclosures to support Mr. Nesvik's contention that "Wyoming sportsmen" have bankrolled grizzly recovery to the tune of \$43 million or more since 1975, as an unsubstantiated bar chart is insufficient to establish the facts. What we know to be fact is that \$43 million is eclipsed by the estimated \$200 million in sales tax Wyoming has collected from Yellowstone's tourist masses since 1995. As I emphasized in my testimony, study after study has shown that at the top of the list for Yellowstone visitors is seeing a grizzly alive, not dead. What we also know to be fact is that numerous peer reviewed studies exist which conclude that trophy hunters – who comprise a small percentage of hunters – have not funded predator recovery, and certainly not grizzly recovery. *Wildlife Conservation and Management Funding in the US* (2014) by Dr. Donald Molde and Mark Smith found that nationwide hunters contribute only 6% of the total for habitat conservation and the recovery of endangered species, and that trophy hunters have contributed a fraction of that. Scholarly consensus shows that approximately 95% of federal, 88% of non-profit, and 94% of total funding for wildlife conservation and management comes from the non-hunting public.

Thank you, Chairman Huffman and Representative Neguse. I hope this summary serves to provide an insight into why the grizzly issue is so unifying to Tribal Nations.

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