

**Testimony of Nathan Small, Chairman of the Fort Hall Business Council
Shoshone-Bannock Tribes
Ft. Hall Indian Reservation, Idaho**

**House Natural Resources Subcommittee on Indian, Insular and Alaska Native Affairs
Legislative Hearing on H.R. 4506, the Jobs for Tribes Act
January 17, 2018**

Good afternoon, Chairman LaMalfa, Ranking Member Torres, and Members of the Subcommittee. My name is Nathan Small and I am the Chairman of the Fort Hall Business Council, which is the governing body of the Shoshone-Bannock Tribes (Tribes) located on the Fort Hall Indian Reservation (Reservation) in southeast Idaho. I am honored to testify today to express the Tribes' support for H.R. 4506.

This bill would assist us and the rest of Indian Country as we continue to work to revitalize our Reservation economies to ensure that the needs of our communities are met through the following: helping to increase access to capital for tribal government enterprises and Native entrepreneurs; attracting investments in tribal communities; creating more opportunities for tribal businesses and creating more jobs; fostering commerce and business relationships between tribes in the United States and indigenous communities in other countries in the Western Hemisphere; and ensuring improved support for tribes and Native businesses from various federal agencies.

The Tribes rely upon the federal government to uphold its treaty obligations and trust responsibilities to provide for public safety, health, and education, to protect our natural resources and the environment, and the continued exercise of our treaty rights. At the same time, the Tribes have a long history of seeking, establishing and successfully partnering with the private sector to develop economic enterprises and needed infrastructure on the Reservation. While we have been successful in many of our endeavors as described below, we have faced much adversity and many barriers to building our Reservation economy and H.R. 4506 would help alleviate some of these challenges and struggles.

Background on the History of the Shoshone-Bannock Tribes

The Shoshone-Bannock Tribes are a federally recognized Indian tribe organized under the Indian Reorganization Act of 1934. The Shoshone and Bannock people are comprised of several related bands whose aboriginal territories include land in what are now the states of Idaho, Wyoming, Utah, Nevada, Colorado, Oregon, and parts of Montana and California. In 1867, President Andrew Johnson by Executive Order designated the Fort Hall Indian Reservation for various Shoshone and Bannock bands that occupied the area since time immemorial. On July 3, 1868, the Shoshone and Bannock Tribes concluded the Second Treaty of Fort Bridger, which was ratified by the United States Senate on February 24, 1869. Article 4 of the Fort Bridger treaty promises that the Reservation would be a "permanent home" to the signatory tribes. In signing our Treaty, our people reserved the right to exercise off reservation hunting, gathering and

fishing rights. Although the Fort Bridger Treaty called for the Reservation to be approximately 1.8 million acres, various “surveying errors” in 1873 reduced its actual size to approximately 1.2 million acres.

One of the United States’ purposes in setting aside the Reservation was to protect the Tribes’ rights and to preserve for us a home where our tribal relations might be enjoyed under shelter of authority of the United States. Subsequent cession agreements with the U.S. reduced the Reservation to the present day size of 544,000 acres. Of the 544,000 acres, 98% of the land is tribal land or held by the U.S. in trust for the benefit of the Tribes or its individual members. Our Reservation is blessed with an extensive biodiversity including rangelands, croplands, forests, streams, three major rivers (the Snake, Blackfoot, and Portneuf), reservoirs, springs, and wetland areas, an abundance of medicinal and edible plants, wildlife (elk, deer, moose, bison, big horn sheep, etc.), various species of fish, birds, and other animal life. The Reservation lands are mountainous and semi-desert, and overlay the Snake River aquifer, a large groundwater resource. The culture and continued existence of the Shoshone and Bannock peoples depend on these resources.

The Reservation is the largest reservation in Idaho and is named after a trading post that was an important stop in the 1800’s along the Oregon Trail and California Trail. The Reservation is situated in the counties of Bannock, Bingham, Power, and Caribou in southeastern Idaho with the city of Pocatello on its southern border and the city of Blackfoot on its northern border. We have approximately 100,000 acres of irrigated and dry farm lands, and 340,000 acres of rangeland. Our current membership stands at 6,000 members, with 67% of our tribal citizens residing on the Reservation. The Tribes provide police, fire, and emergency medical services for the entire Fort Hall community, and we strive to have a cooperative relationship with our neighboring communities during emergency situations.

Tribes’ Efforts to Develop Infrastructure and Improve Economy on Reservation

The United States has incurred legal treaty and trust obligations to support infrastructure development on our Reservation to help deliver basic services to our citizens and foster economic development in our communities. Part of this obligation includes providing direct and significant federal investments to build reservation infrastructure to help deliver basic services to tribal citizens and to foster economic development in our communities. Proposed drastic funding cuts to federal programs will only serve to exacerbate the \$50 billion backlog in Indian Country’s infrastructure. The only way to truly address the staggering infrastructure backlog on our Reservation and throughout Indian Country is for Congress and the Trump Administration to develop a long-term plan to provide sustained funding to address these needs as well as the enactment of bills like H.R. 4506 and to reform the U.S. Tax Code to provide tribal governments with the same “access to capital” tools as other governments, including full tax-exempt bond authority and direct access to the Low-Income Housing and New Markets tax credit programs, among others.

Past and current federal laws and policies have wreaked havoc on tribal economies, ignored tribal infrastructure needs, and suppressed Indian economic development. While the current federal policy supporting Indian self-determination has enabled some tribes to make headway

towards reaching the ultimate goal of economic self-sufficiency, many barriers remain. As noted above, barriers range from the most basic, such as a lack of fundamental infrastructure, to the more complex, such as a general lack of understanding of tribal court systems and jurisdiction in Indian country.

In addition, tribal government enterprises and individual Indian entrepreneurs have long lacked the access to capital that many non-Indian small businesses have. One study estimated that the equity investment gap in Indian Country in 2008 was \$44 billion, and this gap has only grown over time. Both Indian businesses and non-Indian businesses seeking to initiate or continue commercial activity in Indian country also face difficulty in staffing their operations because generational poverty and unemployment have resulted in an untrained workforce on a number of reservations. In addition, the status of Indian lands, which are held in trust by the United States, creates barriers to investment and business. The trust status of Indian lands force tribal governments to obtain federal agency approval for many decisions. These same federal burdens are not present outside of Indian country.

Tribes' Economic and Infrastructure Accomplishments

Despite the barriers described above, the Tribes, through perseverance, hard work, determination, and political stability have been able to develop our economy, develop our infrastructure, and create jobs. A 2013/2014 study about the economic impacts of the five tribes of Idaho reported:

. . . that the Shoshone-Bannock Tribes have experienced a rapid growth spurred not only by gaming operations but also through the expansion of our farming operations and tribal enterprises. An updated economic impact study of the Tribes indicated that our economic activity adds more than 4,400 jobs and \$400 million annually to the eastern Idaho economy. The Tribes directly employ 1,277 people in both our governmental operations and business enterprises, making us the fourth largest employer in southeastern Idaho. An additional 1,431 jobs are created by the Tribes through activities such as agriculture, tourism, and construction. The study also found that the 110,000 acres of agricultural lands owned by the tribes and individual Indians on the Reservation produces an estimated \$125 million annually in direct crop revenues and results in the creation of over 900 jobs including the multiplier effects. Another surprising statistic uncovered by the study is that approximately 40% of visitor traffic to the Tribes' three casinos comes from out of state, representing new money to the region that might not otherwise have been captured. Despite these high numbers, the Tribes still experience a 17% unemployment rate and poverty and workforce issues.¹

Further, out of absolute necessity and for the good of our people, the Tribes have undertaken innovative and complex methods to finance many of our Reservation's infrastructure needs, incurring significant debt in the process. As an example of the difficulties we encountered to secure capital, the Tribes were able to open our new \$47 million 164,000 square feet Hotel and

¹ <https://www.sde.idaho.gov/indian-ed/files/curriculum/Idaho-Tribes-Economic-Impact-Report.pdf>

Event Center in 2012 after many years of struggle to find financing. The Bank of Albuquerque approved a \$33 million loan secured with a guarantee under the Indian Guaranteed Loan Program for the project. We went through a long, difficult journey to secure the financing despite the fact that the Tribes have stellar credit. We had to jump through endless hurdles to keep the financing in place. Even with a sizeable guarantee on the loan, the lender kept coming back for a double guarantee to the point that we felt like we are practically signing our lives away. With the Hotel and Event Center open, it has not only been an economic benefit for the Reservation and for southeastern Idaho, bringing in hundreds of millions of dollars, but it has also been an anchor for the Fort Hall community and a place where are general membership meets and has gatherings.

The Indian Guaranteed Loan Program, which was established by the Indian Financing Act of 1974 (P.L. 93-262), has been a bright spot for us in accessing capital. The program helps Indian businesses obtain loans from private lenders that would otherwise be unwilling to make such loans on commercially reasonable terms. In addition to our Hotel and Event Center, the Indian Guaranteed Loan Program has assisted us with our new state-of-the-art Justice Center, which opened in 2010. It houses our police department, juvenile and adult detention, and tribal courts under one roof. Over a decade ago, the BIA informed the Tribes that it must vacate its justice facilities due to their poor condition. After years of unsuccessful efforts to find federal funding for construction of a new justice facility, we committed \$4 million of our own funds and took out a \$15.9 million loan to construct the new facility, which was also secured with the help of the Indian Guaranteed Loan Program.

In another example, the Tribes prioritized building a facility dedicated to serving the early childhood needs of our Native youth. The Tribes combined HUD planning (\$60,000) and construction grants (\$100,000) with Tribal government funding (\$2.4 million) to construct a consolidated childcare Head Start facility to serve our youngest children in need. Our Tribal early childhood system seeks to provide vital early childhood services to all Indian families who live on or near the Reservation. In 2011-13, the Tribes' Early Childhood Program provided comprehensive services to over 900 children living on and near the Reservation. Of these children, 113 were identified as needing early childhood special education. While the Tribes' Early Childhood Program is providing special needs, child developmental health services and culturally competent care to many on our Reservation, many more children are not being served due to the lack of funding and direct access to federal programs.

We also resorted to unique financing for the renovation of the Old Hospital Building to restore a condemned building to provide administrative offices for the Tribes' Fish & Wildlife Departments and programs. The Old Hospital Building was built in 1923 and provided medical services for the tribal community until after WWII. The BIA then used the building and later the Tribal Fisheries program, until 2006, when it was condemned due to sewage issues. However, the building was sound and located in a central location, and the Tribes needed the office space. The Tribe paid for the renovation costs of \$1,300,000, and we now lease the building to the Bonneville Power Administration (BPA). Thirteen programs are currently operating in the restored building.

Continuing Unmet Infrastructure and Economic Needs

Despite considerable work on infrastructure projects, there are still significant unmet infrastructure needs on our Reservation. The current gas, power, telecommunication, sewer, and storm water systems are operating at maximum capacity. Future economic growth, housing development, and tribal services expansion depend on a modern and reliable infrastructure framework.

Currently, the system for infrastructure growth is piecemeal, resulting in costly and inefficient development. This system is not in the best interest of the Tribes. Funding for infrastructure should be directly connected to the Tribes' 25-50 year growth plan – a system that would promote long-term planning and results in savings for the Tribes and the federal government. Long-term planning and sufficient resources would enable the Tribes to create the infrastructure systems needed to support community building and economic development activity

Below is a brief description of some of these needs and our pending efforts to secure funding and financing for these projects:

- The Wellness Center & Sports Complex requires a new gas mainline.
- The tribal fire station requires a new gas mainline and an upgraded water system. The current water system does not provide enough volume or pressure to fight fires.
- The potable water system for the reservation relies on a community water system due to the aquifer underneath the reservation being largely contaminated by Ethylene Dibromide (EDB). The water system for the reservation needs to be upgraded.

Need to Address Serious Housing Shortage. Like much of Indian Country, the Reservation has faced a severe housing crisis for decades. Addressing the serious housing shortage and other housing needs on the Reservation is a top priority of the Tribes.

The housing crisis facing Indian Country is the single largest infrastructure need facing Native Nations. A recent report acknowledges that it would take approximately 33,000 new units to alleviate overcrowding in reservation homes and additional 35,000 to replace existing housing units, which are in grave condition. To meet the total need of approximately 68,000 housing units on Indian lands (new and replacement), the total cost exceeds a staggering \$33 billion.

The most recent census data for the Reservation shows an American Indian population of 4,841 with 1,121 households. There are 236 households that are overcrowded, 101 pay more than 50% of their income for housing costs, and we face a housing shortage of 668 units. *Our Tribal Housing Needs Assessment completed in 2017, which surveyed over 320 Tribal Members on and off the reservation, indicated the need for at least 30 to 40 new homes as well as a high need for affordable rental multi-family complexes. In addition, the current housing stock is old and needs to be renovated.* In 2017, the Shoshone Bannock Tribes began a housing venture to purchase fee lands to sell to tribal members for homeownership. While this program is still in its infancy, it shows the dedication the Shoshone-Bannock Tribes leadership has addressing the housing shortage on the reservation.

The trust status of Indian lands complicates home ownership in Indian Country. The Tribes have worked to improve mortgage default laws, hired new foreclosure prevention counselor to mitigate these processes, educated lenders about providing loans on Tribal leased lands, and provided financial responsibility and financial education courses to our Tribal members to help them in securing a home. Several federal agencies (HUD, USDA and the VA) provide loan guarantees for mortgages; however, the uncertainty and conflicts inherent in placing homes on trust land, causes significant delay in the mortgages approval process.

Need to Improve Transportation/Roads. The Tribal Transportation Department submitted an application for the TIGER Grant in early 2017. Included in the grant application is an I-15 Exit 80 Master Plan. One of the projects identified is the Exit 80 Master Plan will design and reconstruct the functionally-obsolete Exit 80 interchange with Interstate 15, which is a critical interstate route into the Fort Hall community. Other components of the project rehabilitate existing roads, design, reconstruct and expand the critical Ross Fork and Eagle Roads into complete boulevards. We hope to construct a gateway to the Fort Hall area that will include streetscapes, shared use paths, and bike lanes. This new transportation project will contribute to an economic revitalization for key tribal community facilities and businesses, and compliment the current Fort Hall Casino Expansion Project. We estimate that it will take \$25 million in funding to implement the Exit 80 Master Plan. The Tribes have sought out valuable partnerships with the Idaho Department of Transportation. The regional community supports the Master Plan and is actively cooperating with the Tribal Transportation Department in these efforts.

For decades, the Tribal Transportation Department has worked hard to maintain roads in the face of a shortage of federal road maintenance funds, falling behind each year in various areas of maintenance needs on our roadways. The Reservation has extensive areas of agricultural lands, which results in intense use of reservation roads by heavy farm machinery and the watering of the roads due to agricultural sprinklers. There is a constant need to fix potholes and road damage, which takes a majority of our road maintenance budget. Many of our roads have lacked funding for basic road maintenance services such as crack sealing, chip sealing and shoulder work that would lengthen the life of the road surface and contribute to a safer roadway.

Need for Wellness and Sports Complex. The Tribes have worked to promote an active lifestyle as a means of preventative health care. Tribal health is best approached with a proactive effort to encourage physical activity. To accomplish this goal, we have prioritized construction of a Wellness and Sports Complex for more than a decade with little progress toward construction. To finance this project, the Tribes are considering the use of current and future tribal gaming revenues to incentivize private-sector funding, which we hope to combine with the federal New Markets Tax Credit program (NMTC) that encourages private equity capital into low-income communities.

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 Tribes agreed that, when natural flows from the Blackfoot River are not available, the Reservation water supply would then come from storage in the Blackfoot Reservoir and Grays Lake. However, the Tribes have been unable to fully implement and exercise these water rights.

The Tribes' Grays Lake water right is 100,000 acre-feet. This amount of water is the *potential* storage amount for Grays Lake, but grazing practices hinder the storage capacity because Grays Lake is drawn down annually to accommodate for established grazing rights. Section 7(c) of the 1990 Agreement directed \$5 million in funding to the BIA (the appropriation has since grown to approximately \$8 million), to buy out grazing rights and to purchase lands to enhance storage supplies for the Fort Hall Irrigation Project (FHIP), located on the Reservation.

To finally accomplish the goals of the 1990 Agreement, the cost estimate is approximately \$8 million to complete the Grays Lake land acquisitions. The BIA has successfully purchased approximately 4,183 acres of lakebed interests from seven separate landowners at a cost of \$8,180,000. However, 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 up to the meander line of Grays Lake will improve water storage and water management to control the water levels and will significantly benefit the Tribes and the water users of the Fort Hall Indian Irrigation Project.

Agricultural Capacity Needs on the Reservation. Approximately 110,000 acres of our Reservation are used for farming potatoes, wheat, barley, beets, and alfalfa – to name a few of our crops. A sizable percentage of the acclaimed “Idaho grown potatoes” are grown on our Reservation and 5 of the top 10 growers in Idaho farm our lands.

However, the Tribes lack the capital and trained personnel to effectively farm our vast agricultural lands. In an effort to grow and build capacity, the Tribes partnered with established farmers on a pilot project for wheat and potatoes. The program trained Tribal members and the profits and expenses were shared as a joint venture. Our goal was to use the revenue to purchase equipment needed (irrigation equipment, pumps, etc.) to farm our own lands. Unfortunately, historically low prices resulted in lower than expected revenues. The Tribes did build some farming capacity, and would like to further expand our agricultural operations to improve and diversify economic opportunities on the Fort Hall Reservation.

Under the BIA's leasing practices starting in the 1970's, the lessees were typically non-Indians. Our lands and the crops were undervalued in these leases, and the leases were negotiated at lower rates – resulting in significant lost revenue for the Tribes over the decades. Our land value ranges from \$150-\$300 per acre depending on soil conditions and can yield a profit of \$800 per acre from farming. As you can see, if we could farm our own lands, then we could make great strides in revitalizing the economy on our Reservation. Further, we own our own fresh pack and rail spur and seek ways to develop our agricultural economy from “the ground to the market.”

Benefits of H.R. 4506

H.R. 4506 would improve federal inter- and intra-agency coordination, improve access to capital and reduce barriers for tribal government enterprises and Native American entrepreneurs that would, in turn, help spur economic development in Indian Country. We support the bill in its entirety but would like to highlight below a few of the provisions in the bill that are of particular interest to us.

Title I

Title I of H.R. 4506, captioned the “Indian Community Economic Enhancement Act of 2017”, would define/elevate the position of the Director of Native American Business Development in the Department of Commerce to report directly to the Secretary of Commerce and advise the Secretary and the rest of the Commerce Department on its trust and treaty responsibilities to Indian tribes. The provision mandates that the Departments of the Treasury, Commerce, and Interior collaborate together and with Indian tribes to develop new and modify existing programs and initiatives to improve access to capital, encourage outside investment, and train Native entrepreneurs, among other goals.

As we experienced when constructing our Hotel and Event Center, our Justice Center, our Fish and Wildlife Building, and our facility for our Early Childhood Program, there is very limited capital available for tribes for infrastructure or economic development projects. Therefore, we believe the provisions above are very much needed given the Department of the Treasury and the Department of Commerce do not work with tribes on a regular basis and seem, at best, to forget about the needs of Indian country even though the mission of both agencies is to foster economic stability across the country, which includes Indian country.

We also support the provision in Title I that would require the GAO to prepare an Indian Economic Development Feasibility Study to assess the impacts of existing federal programs that provide access to capital and incentivize investment in Native American communities and compare the data with impacts of the same programs outside of Indian Country. This study will shine a spotlight on the unfair treatment of tribal governments under the U.S. Tax Code and will hopefully bolster efforts to reform the Tax Code to ensure that tribes have equal access to tools for economic development long-enjoyed by state, local and territorial governments.

The recently enacted Tax Cuts and Jobs Act of 2017 failed to include any tax provisions or reforms to help tribal governments and Native economies. The Tax Code provides significant tools for state and local governments to meet their infrastructure needs and to incentivize private sector investments in state and local infrastructure. These same tools are not directly available to Indian tribes. These legal and policy barriers coupled with chronic underinvestment on the part of the United States in Indian Country infrastructure have resulted in a more than \$50 billion unmet need for infrastructure on reservation lands.

While we support this GAO study, Indian Country cannot wait for the results. Indian Country must be included in the reauthorization of the Farm Bill and in any national infrastructure revitalization package Congress enacts in 2018. We encourage all members of this Subcommittee to work with your colleagues to ensure that any such infrastructure package includes both significant and direct investments in Reservation infrastructure projects as well as reforms to the Tax Code that will provide tribal governments with full tax-exempt bond authority and direct access to allocations from the New Markets and Low-Income Housing Tax Credit programs, among many others.

The Low-Income Housing Tax Credit (LIHTC) program is a sad example of the disparity that prevents tribal governments from meeting our community infrastructure needs. Congress enacted

the LIHTC Program in 1986 to incentivize private market investment in affordable rental housing. The LIHTC gives states the authority to competitively issue tax credits to developers who construct, rehabilitate, and acquire rental housing for lower-income households. In 2014, the annual expense credits for the LIHTC program was \$6.7 billion, making the program one of the 10 largest corporate tax programs administered by the United States. The IRS and state Housing Finance Agencies administer the LIHTC. All 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands have HFAs that receive LIHTC allocations. Indian tribes are the only sovereign under our federalist system to not receive a direct LIHTC allocation. As a result, Indian tribes are forced to apply for LIHTCs through state-developed programs. However, state governments owe no treaty or trust obligations to Indian Country. To my knowledge, the Idaho Housing and Finance Association, the State of Idaho's LIHTC administrator, has not allocated a single dollar in tax credits to develop a housing project on Indian lands in our state.

Finally, with regard to Title I of H.R. 4506, the Tribes support the amendments to the Buy Indian Act in Section 104 of Title I. These provisions will increase federal procurements by the BIA and IHS from Native businesses and mandate the collection of data on procurements by the Department of the Interior and the Department of Health and Human Services. These provisions would breathe new life into a law that was enacted more than a century ago, help the federal government better meet its treaty and trust obligations to Indian tribes, and help Native businesses on reservations grow and create more jobs.

Title II

The Tribes support Title II, which would establish a Native American Business Incubators Program within the Office of Indian Energy and Economic Development at the Department of the Interior. Native entrepreneurs face obstacles not seen outside of Indian lands, including remoteness, lack of basic infrastructure (roads, connectivity, housing, etc.), regulatory uncertainty, and inability to access capital, to name just a few.

The Small Business Administration (SBA) reports that small businesses (companies with 500 or less employees) represent 99.7% of all employer firms outside of Indian Country. Small businesses contribute to local economies by bringing job opportunities, offering basic goods and services, and bringing growth and innovation to the communities where they are established. Countless studies have shown that spending money locally reaps substantial economic benefits to communities by recirculating revenue within the local economy.

In Indian Country, we have too few entrepreneurs, and our citizens often have to drive off-Reservation to obtain the most basic goods and services. As a result, the few dollars that come onto the Reservation almost immediately go off-Reservation before our community earns any benefit from that scarce dollar.

The Native American Business Incubators Program would address this long-standing problem. The Program would create a one-stop shop for Native entrepreneurs, which would help them develop business plans, access capital, navigate tribal and federal regulations, and attract outside investment. This would reduce the risks for Native entrepreneurs and help them overcome

barriers in their efforts to develop successful businesses that would create jobs in their communities.

Title III

The Tribes have long sought to develop relationships with indigenous communities in other countries to share cultural and traditional knowledge and explore the exchange and sales of products, especially traditional foods and goods. The Tribes strongly support the provisions in Title III that would facilitate commerce and foster relationships between tribes and indigenous peoples in the Western Hemisphere and require federal agencies to support the development of business and trading relationships amongst tribes and other indigenous communities.

Conclusion

The Shoshone-Bannock Tribes applaud your efforts to create jobs and improve the economic conditions in Indian country. We stand ready to work with you to move these and other policy initiatives that would improve the quality of life in Indian Country.