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**Testimony of the
Ute Indian Tribe of the Uintah and Ouray Reservation**

**Before the U.S. House of Representatives
Committee on Natural Resources
Subcommittee on Indigenous Peoples of the United States**

**Oversight Hearing
Reviewing the Broken Promises Report:
Examining the Chronic Federal Funding Shortfalls in Indian Country**

December 3, 2019

INTRODUCTION

Chairman Gallego, Ranking Member Cook and Members of the Subcommittee, thank you for the opportunity to provide this testimony for your oversight hearing entitled “*Reviewing the Broken Promises Report: Examining the Chronic Federal Funding Shortfalls in Indian Country.*” The Ute Indian Tribe appreciates your review and assessment December 2018 *Broken Promises Report*. The Tribe asks that the Subcommittee and Congress take action on the findings in this important Report.

The 2018 *Broken Promises Report* was drafted by the United States Commission on Civil Rights as an update to its 2003 report: “*A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country.*” We were dismayed by the testimony of Commission Vice Chair Patricia Timmons-Goodson at the Subcommittee’s hearing. Her testimony was so important that we highlight some of her key remarks here. The Vice Chair testified that:

The Commission’s recent investigation ... reflects that federal efforts during these past 15 years have resulted in only minor improvements, at best, for Native Americans as a group. In some areas, such as housing, conditions have actually worsened in that time span.

Testimony of U.S. Commission on Civil Rights Vice Chair Patricia Timmons-Goodson before the House Natural Resources Committee’s Subcommittee on Indigenous Peoples of the United States at p. 1 (Nov. 19, 2019) (citations omitted).

The Vice Chair continued:

Today, Native Americans ... experience dramatically lower quality of life ... compared with non-Native Americans. [A]s elaborated in our report, the basic needs of safety, shelter, and healthcare have not (and are not) being met.

Id. at 3. If the failure to meet basic needs was not enough, the Vice Chair also set out specific examples that we encounter in our daily lives, for example:

Native American women are 10 times more likely to be murdered & four times more likely to be sexually assaulted than the national average. It is painful that statistics reflect that 1 in 3 Native American women will be raped in their lifetimes. [And,] Native Americans are killed in police encounters at a higher rate than any other racial or ethnic group.

Id. at 4. (citations omitted). She also noted that:

The rate of posttraumatic stress disorder among Native children is the same rate as veterans returning from Iraq and Afghanistan, and triple the rate of the general population. Native Americans experience suicide rates that are 1.6 times greater than the national average. The rate of alcohol-related deaths for Native Americans is six times greater than the rate for all races.

Id. at 4. (citations omitted). Significantly, the Vice Chair determined:

The lack of federal funding streams burden Native American communities in life-and-death ways in which other communities are not burdened.

Id. at 7 (emphasis added).

The conditions we face in Indian Country are a national crisis. There is no other way to describe it. If any one of these conditions, not to mention the cumulative effects of all of them, were happening anywhere else in the United States, Congress would immediately surge funding and resources to address these issues. In contrast, the United States and Congress has utterly failed to fulfill its treaty, agreement and trust responsibilities to the Ute Indian Tribe and tribes across the country.

The United States and Congress must affirm and fully support their treaties, agreements and promises made to Indian tribes. The United States, every member of Congress, and the Federal agencies have a trust responsibility to Indian tribes. Through treaties and agreements, we ceded vast acres of lands and resources for support, protection and assistance from the Federal government. While the United States got what it wanted, Indian tribes have been forced to fight for more than 100 years to obtain funding for these programs and services, and prevent attacks on our lands and resources by the United States, states, individual non-Indians and even some Members of Congress.

Many of the conclusions of the 2018 Report would be addressed by Senator Warren and Representative Haaland's draft bill entitled "*Honoring Promises to Native Nations Act*" would help address many of the conclusions of the 2018 Report. We hope that the Subcommittee's focus on the Report will help build support for the draft bill and help us turn the corner on this history and ongoing failure of the Federal government.

In addition to this testimony, the Ute Indian Tribe also provided extensive comments on Senator Warren and Representative Haaland's draft bill. We ask that Members of the Subcommittee refer to those comments for additional information about the failure of federal programs and proactive measures needed to affirm tribal sovereignty, self-determination and jurisdiction. In our testimony below we provide additional information on important issues raised at the hearing.

FAILURE TO FUND INDIAN PROGRAMS

The budgeting process and funding across the federal government's Indian programs present serious barriers to meeting the dangerous, severe and imminent threats facing Indian tribes. Many of these threats were set out by the Vice Chair. We strongly support the conclusions of the Vice Chair, the Report and the views expressed at the hearing. We only need to look as far as the President's proposed FY 2019 budget to see the ongoing problem. The President's FY 2019 budget represents a \$2 billion decrease in Indian funding from the FY 2018 enacted budget.

The testimony from the witnesses at the Subcommittee's hearing succinctly outlined how these funding shortfalls and budgetary processes have severe negative consequences to Indian people's public safety, health care, and economic welfare. To ensure that the federal government meets its trust responsibility, there must not only be additional funding, but the federal budget for Indian affairs must be developed in full consultation with tribal governments and providing tribes with increased flexibility over budget allocations.

As the Tribe noted in its comments on the draft *Honoring Promises* bill, one of the most important services in Indian Country that is impacted by underfunding is health care and Indian Health Service ("IHS") facilities. Consistent funding shortfalls at IHS results in tribal members being forced to delay preventative care, delay needed surgeries, or pay out of pocket for urgently needed medical care. The federal government must make common sense changes in the budgetary process to ensure access to health care services throughout the year.

One of the most important changes would be providing advance appropriations as discussed in IHS's testimony. In addition, meaningful funding increases are needed to support health facilities construction, and provide for additional hiring and retention of medical providers. These changes are needed to provide necessary services to patients at IHS facilities such as our Uintah and Ouray Service Unit.

SECURE FUNDING NEEDED FOR SPECIAL DIABETES PROGRAM FOR INDIANS

The Special Diabetes Program for Indians (“SDPI”) is an example of a program that has a proven record of success and that must continue to receive adequate funding. The consistent rise of diabetes among tribal and community members within Indian Country, including the Uintah and Ouray Indian Reservation, requires serious action. As the testimony from IHS and the National Congress of American Indians (“NCAI”) noted, SDPI has been critical for developing local initiatives to treat and prevent diabetes and has served as a comprehensive source of funding to address diabetes issues in tribal communities by providing grants to 301 organizations in 35 states.

Despite the importance of SDPI to our communities and the positive impacts SDPI has in preventing chronic conditions and ultimately lowering health care costs, Indian tribes must continually urge Congress to fund SDPI under the duress of its pending expiration. While SDPI was temporarily extended as part of the Continuing Resolution passed in September 2019, it would have otherwise expired at the end of FY 2019. Important programs like SDPI and the treaty and trust responsibilities that they represent should not be subject to annual budget politics.

The Subcommittee’s assessment of the *Broken Promises* Report must be used to support efforts in Congress to take action on the *Honoring Promises* draft bill and provide certainty that SDPI will continue. We also ask that SDPI funding be available for “638 contracting” under Public Law No. 93-638 the Indian Self Determination and Education Assistance Act. And, importantly, SDPI should include funding for construction of new facilities, such as establishing a new Diabetic Wellness Center to expand the services currently offered by our Uintah and Ouray Service Unit to diabetic patients.

AFFIRMING AND STRENGTHENING TRIBAL CONSULTATION

The Ute Indian Tribe strongly supports the witness who testified before the Subcommittee for the fulfillment of the trust responsibility. Current efforts by federal agencies to comply with existing consultation policies varies from agency to agency and, in many cases, does not happen at all. A March 2019 Governmental Accountability Office (“GAO”) report entitled “Tribal Consultation - Additional Federal Actions Needed for Infrastructure Projects,” outlined a number of factors that prevent effective consultation. Some of the factors outlined by GAO include agencies’ processes for initiating consultation, lack of respect for tribal sovereignty and the government-to-government relationship, and tribal resources to participate in consultation.

Our prior comments on Senator Warren and Representative Haaland’s draft *Honoring Promises* bill as well as testimony for the Subcommittee note that one way to support a consultation process that respects treaty rights, tribal sovereignty, and self-determination would be to incorporate aspects of Congressman Grijalva’s Requirements, Expectations, Standard Procedures for Executive Consultation with Tribes (“RESPECT”) Act. The RESPECT Act would provide an accountable and enforceable process that broadly covers all federal actions, rulemakings and policies that may have an impact on the lands or interests of an Indian by requiring all federal agencies to follow a consistent consultation process set out in law.

Moreover, to ensure true tribal consultation, we recommend that the Subcommittee investigate establishing “free, prior and informed consent” or “FPIC” as the standard for tribal consultation in the United States. FPIC is the international standard for consultation on projects that will impact indigenous peoples, including Indian tribes. FPIC incentivizes agencies to include tribes early and throughout the process, and to ensure a level of fairness that would result in voluntary consent. Implementing a FPIC process shows tribes that their interests and rights will be protected in any development process as FPIC honors and respects treaty rights, tribal sovereignty, and self-determination. Current United States’ policies for tribal consultation do not ensure tribal voices are heard before actions are taken that impact tribes.

SECURING TRIBAL JURISDICTION

As noted above by the Vice Chair of the U.S. Commission on Civil Rights and in testimony from the GAO, NCAI, and others, Indian Country suffers from the nation’s highest rates of crime and victimization. These statistics are due in large part to federal laws and policies that create uncertainty regarding tribal authority and criminal jurisdiction. All governments must be able to secure their lands and communities, and provide for the safety of people on those lands. However, our underlying authority is challenged in nearly every dispute. Federal laws and policies create this uncertainty.

Of course, legislation such as the Violence Against Women Act (“VAWA”) and the Tribal Law and Order Act (“TLOA”) represent positive steps in support of tribal governments and should be reauthorized or made permanent. However, there is more that Congress can and should do. Congress should affirm our ability to exercise full criminal jurisdiction over our lands and the people who reside on or enter them, no matter the circumstances.

As significant part of affirming tribal authority is restoring tribal lands. Over more than 100 years federal laws and policies have sought to reduce, checkerboard, and diminish tribal lands. These laws and policies resulted in jurisdictional patterns and complexities on our lands that no other government faces. Securing tribal jurisdiction should include expanding the fee-to-trust process and providing tribes with a first right of refusal for any lands that become available within the boundaries of an Indian reservation.

ELIMINATION OF THE OFFICE OF SPECIAL TRUSTEE

We do not support the Bureau of Indian Affairs’ (“BIA”) testimony before the Subcommittee that would strength and expand the Office of the Special Trustee (“OST”) in response to the findings of the *Broken Promises* Report. BIA testified that the President’s budget includes \$105.1 million in funding for OST and described the Administration’s plan re-align the Land Buy-Back Program from the Office of the Secretary to OST. The Buy-Back is responsible for expending what remains of the \$1.9 billion Trust Land Consolidation Fund authorized by the *Cobell* settlement agreement.

We do not support continued funding for OST and expanding its authority. We recommend that OST be sunset and its duties absorbed into the BIA. Congress already twice ordered the sunset

of OST in the American Indian Trust Fund Management Reform Act of 1994¹ and the Indian Trust Asset Reform Act of 2016² (“ITARA”).

OST was created in response to the growing realization that the United States grossly mismanaged individual Indians’ and tribes’ trust assets for decades. However, rather than focusing on the federal government’s trust management, OST primarily sought to minimize the United States’ liability for its management of trust assets. Real improvements would come by returning these functions to BIA where the focus is serving tribes and not limiting United States liability. In addition, many of the accounting functions of OST can now be done by improvements in trust management software.

This should include the return of appraisal function to BIA. As part of its functions, OST, through its Office of Appraisal Services, is charged with the responsibility of providing appraisals, appraisal reviews, and appraisal consulting of real property interests on trust and restricted lands. The appraisals issued by OST are consistently deficient because the appraisal formula used for appraisals of trust or allotted lands is complex and is subject to a great deal of regional variance and adjustment.

A major issue with OST’s appraisals is that they do not account for improvements on the lands being appraised and utilize comparables that are drawn from noncomparable economic inputs associated with surrounding non-Indian lands. In order to issue adequate appraisals, improvements must be accounted for and similar comparables must be utilized. The appraisal functions of the OST, along with all of its other functions, should be placed back within the BIA where they can be more effectively carried out.

Conclusion

The Vice Chair for the United States Commission on Civil Rights provided striking testimony that should be heard by all Members of Congress. There is a national crisis in Indian Country and the United States is failing in its responsibilities to address this crisis. We appreciate the Subcommittee’s focus on the *Broken Promises* Report and ask that the Subcommittee work to advance the Warren and Haaland’s draft *Honoring Promises* bill to help address the crisis we face.

Federal Indian programs and services are the modern-day implementation of the treaties and agreements that the United States entered into with Indian tribes. The United States was founded on these treaties and agreements and these commitments are a solemn and sacred obligation that must be upheld to ensure the integrity and moral responsibility of this great nation.

Thank you for your consideration of our testimony.

¹ 25 U.S.C. § 4042(c).

² P.L. 114-178. 130 Stat. 432 (June 2016).