



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

**U.S. House of Representatives Committee on Appropriations  
Subcommittee on Interior, Environment and Related Agencies  
Fiscal Year 2020 Appropriations**

**March 7, 2019**

Thank you for the opportunity to testify before the Subcommittee on Interior, Environment and Related Agencies regarding Fiscal Year (FY) 2020 Appropriations. My name is Luke Duncan. I am the Chairman of the Ute Indian Tribal Business Committee.

Our testimony is focused on funding for new tribal schools through the Bureau of Indian Education (BIE), Native American Housing Block Grants administered by the Department of Housing and Urban Development (HUD), the Bureau of Indian Affairs (BIA) Office of Justice Services (OJS), and Indian energy programs within BIA and the Department of Energy's Tribal Energy Loan Guarantee Program.

**NEW FUNDING NEEDED FOR INDIAN EDUCATION**

The Ute Indian Tribe asks that the Subcommittee prioritize funding to fulfill the Federal government's treaty and trust responsibilities to provide for Indian education. The Bureau of Indian Education (BIE) must be funded to support new school construction and operation, and authorized to support tribal bonding and loan guarantees for new school construction by Indian tribes. The Subcommittee's appropriations laws must remove the moratorium on BIE funding for new schools or create a new source of funding for tribally controlled schools.

These would not be additional BIE run schools. These would be tribally controlled and managed schools that are funded pursuant to the Federal government's treaty and trust responsibilities. The Tribally Controlled Schools Act and its Tribal School Construction Demonstration Program already provides much of this authority. In addition to this existing law we need the moratorium in appropriations acts removed, the tribal cost share removed and to provide funding for operations and maintenance. Congress and this Subcommittee have a responsibility to restore tribal sovereignty and self-determination to Indian education.

Tribal self-determination has long been recognized as the most successful and effective federal Indian policy. Congress originally enacted this policy through the Indian Education and Self-Determination Act of 1975. While the Act provides many opportunities for tribal self-determination, its main focus was Indian education. The Act was intended "to facilitate Indian control of Indian affairs in all matters relating to education." 25 U.S.C. § 2011(a). In addition, regulations implementing the Act provide that Tribes should "fully exercise self-determination and control in planning, priority-setting, development, management, operation, staffing and evaluation in all aspects of the education process." 25 C.F.R. § 32.4(a)(3).

Yet, despite the Self-Determination Act's focus on education, Congress allowed tribal self-determination to be eliminated in most federal education laws and policy. Today BIE struggles to fund and operate 183 BIE and tribally operated schools that only serve about 8% of tribal

youth. About 92% of tribal youth are educated in state schools according to federal and state standards.<sup>1</sup>

As a result, a non-profit policy paper found that “Federal funding of State public schools enriches State school budgets and is ... effectively an unlawful delegation of Federal treaty and trust obligations to States.”<sup>2</sup> Just as important, tribal youth in BIE and state schools are taught according to “Federal and State (not Tribal) curriculum, academic standards, accreditation requirements, truancy laws, assessment, and other education policies.”<sup>3</sup> The Federal government must stop funding states to educate tribal youth according to non-tribal standards!

The Subcommittee can start to correct this problem by funding construction and operation of tribal schools needed to educate tribal youth. The funding is available. Congress must simply prioritize the funding as was done for Department of Defense (DOD) schools. In 2015, the Minneapolis Star Tribune found that:

DOD launched a \$5 billion construction surge in 2010 to renovate or replace 134 of its 181 schools by 2021. Seventeen new schools have been completed, 23 are under construction and 37 are in the design phase. In contrast, the Interior Department has requested just \$3.2 million in replacement school construction funding for one Indian school in 2015.<sup>4</sup>

We all know the funding is available. It is a matter of priorities and living up to the treaties and agreements with Indian tribes upon which the United States was founded.

The Ute Indian Tribe currently runs the Uintah River High School on our Uintah and Ouray Reservation in Fort Duchesne, Utah. This is Charter School run through the state school system. The School provides our tribal youth with positive cultural experiences, small class sizes and teaching designed to provide for the educational success of our youth.

Our students deserve the best schools available. We also need schools for our elementary students. We ask the Subcommittee and Congress to live up to its treaty and trust responsibilities and fund construction of tribal schools through direct funding, bonds and loan guarantees. We also ask the Congress stop sending our tribal education dollars to the states. Tribes need that funding to hire teachers and staff to run our schools.

Only by making these changes will Congress meet the requirements it established in 1975 in the Indian Education and Self-Determination Act. As we approach the 50-year anniversary of this seminal law, the Subcommittee and Congress must take action to fulfill the law’s most important provisions. We need to make these changes to restore tribal self-determination over the

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<sup>1</sup> PATHKEEPERS FOR INDIGENOUS KNOWLEDGE, EDUCATION SOVEREIGNTY: RESTORING SELF-DETERMINATION IN NATIVE AMERICAN EDUCATION 5 (2016).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 3.

<sup>4</sup> Star Tribune Editorial Board, *Separate but Unequal: Indian Schools a Nation’s Neglect*, Star Tribune, April 2, 2015, <http://www.startribune.com/part-1-indian-schools-a-nation-s-neglect/283514491/>.

education of our youth. For 200 years, the Federal government has tried to assimilate and teach our students according to federal and state standards. This has failed. It is time for Indian tribes to education our tribal youth according to tribal standards. That is the definition of self-determination.

### **FUNDING INCREASES NEEDED FOR NATIVE AMERICAN HOUSING**

We understand that this Subcommittee does not directly oversee funding Native American Housing Block Grants under the Native American Housing Assistance and Self-Determination Act, but ask that Subcommittee members weigh in with the full Appropriations Committee to properly fund Native American housing.

First, almost \$4 million is needed on our Reservation to build rental units, apartment complexes, and home ownership homes to meet our need. Without proper funding our people are forced to live in crowded and unsafe, conditions.

Second, a large number of our Mutual Help Homeownership Program homes are thirty to forty years old. They are in dire need of repair and maintenance. Without additional funding, maintenance issues continue to grow and renovations become unaffordable. This undercuts the purpose of the Mutual Help Homeownership Program—providing Native Americans an opportunity for affordable homeownership.

Third, special funding is needed to repair homes damaged by methamphetamine use. We have about 32 damaged units that cost about \$20,000 each to repair. Generally, the home must be stripped down to the studs, washed with a solution, and ventilated. The heating and cooling system often needs to be cleaned and sealed during the stripping process, and, in extreme cases, the heating and cooling system needs to be replaced. In some cases, the home is a total loss and costs about \$100,000 to rehabilitate.

### **STAFFING AND OPERATING NEW JUSTICE CENTER**

We thank the Subcommittee for providing start-up and staffing costs for our new tribally constructed Justice Center. We appreciate the \$1.4 million that you appropriated in FY 2018 for the opening and operation of new tribally constructed justice centers and detention buildings.

The Ute Indian Tribe asks that funding be increased in FY 2020 to levels necessary to address law enforcement on our Reservation. The BIA's Office of Justice Services (OJS), which operates our detention program using federal employees, advises us that it needs a total of \$4,844,000 to full operate our detention areas in compliance with federally mandated standards. This includes \$2,675,464 for the adult wing and \$2,169,422 for the juvenile section.

As you may recall, the Ute Indian Tribe spent more than \$36 million of our own tribal funds to construct and equip a replacement jail and courthouse to serve our Reservation. We were forced to do this after waiting more than a decade on BIA's priority construction list after our BIA jail was condemned. We took action in consultation with BIA and the Subcommittee.

More than three years after the completion of our state-of-the-art facility only two of our detention pods are open because of inadequate funding for staffing. As a result, BIA continues to pay county jails to house tribal detainees almost an hour away. Instead of paying county jails, BIA should be fully funding our tribal Justice Center.

BIA also needs full authority to enter into leases to operate justice facilities constructed by Indian tribes. The Ute Indian Tribe asks that the Subcommittee include language in the FY 2020 appropriations bill that returns full unilateral leasing authority to the BIA. The Subcommittee already gave the Indian Health Service (IHS) this authority and it is time to give that same authority back to BIA.

We also need a funding solution for addiction treatment in justice centers. IHS has a small amount of funding, the Substance Abuse and Mental Health Services Administration and the Department of Justice have small competitive grant programs, and Medicare and Medicaid regulations prohibit the use of its dollars for court ordered treatment. Meanwhile, BIA's OJS, which operates or funds on-reservation detention programs, has no treatment dollars at all. We ask that FY 2020 appropriations for Medicaid and Medicare allow tribes to access this funding by including this language: "except persons receiving addition services pursuant to an order of a tribal court."

### **SUPPORT FOR INDIAN ENERGY DEVELOPMENT**

The Ute Indian Tribe asks that the Subcommittee protect funding for the Department of Energy's (DOE) Tribal Energy Loan Guarantee Program. This Program was finally funded in 2017 more than 10 years after it was originally authorized. Since then DOE has been busy staffing the Program and making funding available to support Indian energy development. The Tribal Energy Loan Guarantee Program is the only Program in the Federal government that helps tribes overcome barriers and secure capital for large commercial scale energy projects.

The President's proposals to cut funding for this Program undermine his goal of energy dominance. There are vast energy resources in Indian Country that cannot be developed because of barriers to investment capital for tribes. Unlocking these resources should be a focus of the President's energy dominance agenda. We need the Tribal Energy Loan Guarantee Program and more programs like it to support commercial scale energy projects on Indian reservations.

Funding must also be provided for BIA programs that support Indian energy development. This includes energy programs such as the Office of Indian Energy and Economic Development and the Indian Energy Service Center, as well as local BIA Agency real estate and environmental positions. The \$4.5 million provided in FY 2016, to establish the Indian Energy Service Center was a good start, but additional funding is needed to fully staff the Center. The Service Center provides needed support for permitting, but front line staff in our BIA Agency are also needed.

Thank you for the opportunity to testify on these important funding issues.