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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**

**Oversight Hearing  
BLM Disorganization: Examining the Proposed Reorganization and Relocation of the  
Bureau of Land Management Headquarters to Grand Junction, Colorado**

**September 10, 2019**

**Introduction**

Chairman Grijalva, Ranking Member Bishop and Members of the Committee, thank you for the opportunity to testify on the proposed reorganization and relocation of the Bureau of Land Management (BLM) Headquarters to Grand Junction, Colorado and the Ute Indian Tribe's (Tribe) ancestral homelands. My name is Tony Small and I am an elected member of the Ute Indian Tribe's Business Committee and serve as Vice Chairman of the Business Committee.

The Tribe offers this testimony on its own behalf and also in support of the inter-tribal comments submitted by over twenty other large treaty tribes from South Dakota, Nebraska Montana, Wyoming, Utah and Idaho. The Ute Indian Tribe worked with these tribes to identify tribal priorities and put forward guidelines and principles for the Department of the Interior to include in its proposed reorganization initiative. Those comments were submitted to Interior about one year ago on September 21, 2018. Since then, Interior only acted on one of the proposals in our comments—removing the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE) and Office of the Special Trustee (OST) from the proposed reorganization.

Interior has not provided any other response or reached out to us or other tribes to schedule consultation on these important matters that impact the daily lives of tribal citizens. Interior's own Policy on Consultation with Indian Tribes (Consultation Policy), issued on December 1, 2011, requires consultation on the proposed reorganization of Interior, the relocation of BLM, and all matters affecting Indian interests. Interior's failure to consult with Indian Tribes on the proposed reorganization and ongoing relocation of bureaus, agencies and offices that administer Indian lands, natural resources, trust assets and interests is unacceptable.

### **Grand Junction Colorado is within the Ute Indian Tribe's Homelands**

The Ute Indian Tribe is a federally recognized tribe. Our 4.5 million-acre Uintah and Ouray Reservation located in northeastern Utah. However, since time immemorial the Uintah, Whiteriver, and Uncompahgre Bands of the Ute Indian Tribe occupied ancestral homelands stretching from present-day Salt Lake City, Utah to Denver, Colorado.

Our ancestral homelands include Grand Junction, Colorado. In 1868, the United States entered into a treaty with the Ute Bands that would become the current Ute Indian Tribe of the Uintah and Ouray Reservation as well as other Bands of Ute Indians. Under that treaty, the Ute Bands ceded portions of their aboriginal lands to the United States while reserving approximately 15.7 million acres of land for the undisturbed use and occupation of the Bands located wholly within the boundaries of what would become the state of Colorado.

In 1874, the discovery of large and valuable mineral deposits on the 1868 Reservation prompted the United States to force the Ute Bands to cede 3.7 million acres of their 1868 treaty lands. Mineral discoveries and the continued increase of white settlers within the remaining reserved tribal lands caused Congress to force the Ute Bands to relinquish additional portions of the 1868 Reservation. In particular, in 1880 Congress forced the Uncompahgre Band to cede its interest in the remaining lands of the 1868 Reservation in exchange for the right to settle upon agricultural lands along the Grand River, near present day Grand Junction, Colorado.

Upon arriving at the Grand River and despite an abundance of water and resources, the United States decided that "better" alternative lands would be more suitable for the Bands in the high wilderness desert of what would become northeastern Utah. At gunpoint and including a period of detainment in present day Grand Junction, the United States forced the Uncompahgre Band out of Colorado further west into what would become Utah. In this high wilderness desert, the President issued an 1882 Executive Order setting apart approximately 1,900,000 acres as a Reservation for the Uncompahgre Band. Over more than a century later, the Uncompahgre Band continues to occupy our Uncompahgre Reservation, despite the fact the United States has not treated our reservation like any other reservation in the United States.

Specifically, for the past century, the United States continues to push actions and policies intended to take and limit our ability to use and benefit from our lands. Initially, non-Indian settlers were encouraged to settle on our lands through now discredited allotment acts and homestead land policies. Then the United States encouraged non-Indian grazing on our lands that took resources intended for our livestock. Finally, despite long-standing agreements between BIA and BLM regarding Indian and non-Indian grazing within our Uncompahgre Reservation, in 1948, BLM sought the approval of the Secretary to take administrative control of the remaining lands within Uncompahgre Reservation.

BLM has unlawfully managed these lands since 1948 for grazing and oil and gas leasing. For example, on December 12, 2017, the BLM conducted an oil and gas lease sale in the Green River District that included 34 parcels within the exterior boundaries of the Uncompahgre Reservation. Despite our protest, BLM continued with the sale and raised millions in lease bonus payments that will be split between the United States and the State. Billions more in royalties will

be made from oil and gas development on our lands and, without intervention from federal authorities, these royalties will be split between the United States and the State. The Ute Indian Tribe has never received any payment from the United States for the BLM's leasing of our lands.

This history, injustice and mismanagement of our lands is brought to the forefront again by the proposed relocation of BLM to Grand Junction, Colorado on lands that should have been reserved and held for the Uncompahgre Band. The United States has failed to fulfill its obligations as a trustee for the Tribe's land and resources. The United States has a trust obligation and statutory duty to restore tribal lands, protect our homelands, and manage our resources in the best interest of the Tribe. Instead, year after year, the Tribe is forced to resolve these issues in court.

The proposed relocation of BLM to Grand Junction, Colorado without any tribal consultation or consideration of the impacts to the Tribe and other large treaty tribes is another stain on this history of broken treaties, agreements, and promises to Indian tribes. The United States' trust responsibility and government-to-government consultation requirements are the modern-day implementation of these treaties and agreements. The United States was founded on these treaties and agreements and has an ongoing obligation to consult with Indian tribes on matters affecting tribal interests. This includes the proposed relocation of BLM into the Ute Indian Tribe's homelands.

### **Inter-Tribal Proposal on Department of the Interior Reorganization**

On September 21, 2018, a coalition of large treaty tribes from across the Great Plains, Rocky Mountain and Western regions submitted an "Inter-Tribal Proposal on Department of Interior Reorganization" to former Secretary of Interior Ryan Zinke. The tribes involved included the Ute Indian Tribe, the Yankton Sioux Tribe, the Winnebago Tribe, the Paiute Indian Tribe of Utah, the Eastern Shoshone Business Council, and other tribes that are members of the Rocky Mountain Leadership Council and the Great Plains Chairman's Association. In the year since the proposal was submitted, Interior has not provided a response or reached out to any of these tribes to engage in consultation.

The Ute Indian Tribe worked with these tribes to develop our inter-tribal proposal as our large treaty tribes will be the most impacted by any reorganization of the Department of the Interior. The reorganization of Interior must be done with prior and meaningful tribal participation and uphold Interior's trust responsibility to tribes. We are not off to a good start.

The large treaty tribes' inter-tribal proposal set forth guiding principles that Interior must consider in any reorganization of the agencies, bureaus and offices involved in managing or overseeing issues related to Indian affairs. These guiding principles provided that any reorganization must: (1) be developed only after true consultation with tribes, (2) respect tribal sovereignty, (3) uphold treaty rights, (4) ensure tribal economic freedom, (5) *not* cut funding, (6) emphasize the trust responsibility, (7) increase funding to the necessary departments and programs to fulfill the unmet needs of tribes and individuals, (8) honor self-determination for tribes, (9) respect nation-to-nation relationships, and (10) respect sacred lands. Furthermore, the inter-tribal proposal clarified that the proposed reorganization would require Congressional approval and

cannot be done under the auspices of an executive order because agency organization is typically defined by statute.

In its ongoing reorganization and relocation of agencies, bureaus, offices and employees, Interior has failed to meet or act on any of the guiding principles set forth in the large treaty tribes' inter-tribal proposal. First and foremost, Interior has not engaged tribes through information sharing or consultation to discuss the tribes' comments. Instead, Interior moved forward with its reorganization efforts, including the proposed relocation of BLM's headquarters, to the detriment of tribal interests and in violation of its trust responsibility.

### **Lack of Tribal Participation in the Planning Process**

Any reorganization or relocation of Interior's component bureaus, agencies and offices will affect the interests of Indian tribes more than anyone else and cannot be done without meaningful tribal participation. This has already not happened. Early on, BIA held listening sessions to gather comments and input from Indian tribes, but agency wide reorganization plans were already developed and underway. Without any notice or consultation, offices, experts and staff that Indian tribes relied on to deliver services and run programs vanished or were relocated. In addition, since these listening sessions were held more than two years ago, there has been no follow up or actual government-to-government consultation.

Listening sessions are not consultation. Interior's Consultation Policy makes clear that "Consultation is a deliberative process that aims to create effective collaboration and informed Federal decision-making. Consultation is built upon government-to-government exchange of information and promotes enhanced communication that emphasizes trust, respect, and shared responsibility." Consultation Policy at 2. These listening sessions did not produce "collaboration" or an "exchange of information."

We appreciate that some tribal comments were heard and that in the spring of 2019, Interior stated that BIA, BIE and OST would not be included in Interior's proposed reorganization. However, even this decision was made without any tribal consultation. While we oppose broad relocation and reorganization of BIA and BIE, both of these agencies should be improved by internal reorganization principles as described in our September 21, 2018 proposal.

Beyond these listening sessions with BIA, there has been no discussion or consultation with Indian tribes on the relocation of BLM's headquarters and its impact on Indian interests. This is a clear and obvious violation Interior's Consultation Policy and the trust responsibility. For all tribes, BLM plays an important role in the management of Indian resources. Interior is required to consult with Indian tribes on its plans for BLM the same as BIA or BIE.

Over this same time period, the Government Accountability Office (GAO) has been studying federal agency consultation policies and the failure of agencies to fulfill those policies and other consultation requirements. In a March 2019 report entitled "Tribal Consultation - Additional Federal Actions Needed for Infrastructure Projects," GAO found that the federal government's process of meaningful consultation is wholly inadequate to ensure appropriate tribal participation in decisions that will affect tribal interest. Specifically, the GAO report identified a

number of factors that hinder effective consultation including agencies' processes for initiating consultation, lack of respect for tribal sovereignty and the government-to-government relationship, tribal resources to participate in consultation, federal officials' knowledge on tribal consultation, and interagency coordination on consultation.

As GAO affirmed, in order to fulfill its trust obligations, any efforts related to the reorganization of Interior, including the relocation of BLM, must be halted until Indian tribes have had a meaningful opportunity to engage in informed consultation and reach an agreement concerning important governance principles, including tribal treaty rights, the federal trust relationship, and nation-to-nation relations. Because both the broader Interior reorganization and the proposed relocation of BLM will affect tribes and tribal interest in drastic ways, the federal government must enter into a process of true consultation with all tribes prior to undertaking any further reorganization measures.

Moreover, it is of paramount importance that any engagement or consultation with tribes on this matter is carried out in a manner that is consistent with the terms of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In 2010, President Obama officially endorsed UNDRIP and the United States maintains an affirmative legal obligation to adhere to its terms and conditions. More specifically, the Department of the Interior's consultation with tribes on these reorganization efforts should include and be guided by the concept of "free, prior, informed consent" (FPIC) which is a cornerstone of UNDRIP.

FPIC requires 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 affirmed and protected in any reorganization effort. FPIC is an effective solution to the many problems of current consultation policies. It would result in consistency, predictability, and participation at a government-to-government level that respects tribal self-determination and protects tribal rights and resources.

Given the failure of Interior to consult with tribes in a manner that adheres to FPIC principles as well as its failure to comply with the findings of the GAO Report, we support efforts by Representative Betty McCollum and other members of the House Committee on Appropriations to freeze or eliminate funding for reorganization until Interior has consulted with tribes. This is a necessary first step to ensure that tribal interests and concerns are addressed in any reorganization of Interior and relocation of BLM.

### **Reorganization and Relocation of BLM will Impact Tribal Oil and Gas Development**

The Ute Indian Tribe is a major oil and gas producer and has been developing oil and gas on the Reservation for over 70 years. The Tribe leases about 400,000 acres for oil and gas development, and has about 7,000 wells that produce 45,000 barrels of oil a day. We rely on oil and gas development to provide essential government services to our members including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. Our tribal government has 60 tribal departments and agencies. The Tribe is a major employer and driver of economic development in the Uintah Basin, generating tens of millions of dollars each year.

While BLM lacks authority under the Federal Land Policy and Management Act (FLPMA) to oversee and manage activities on Indian land, the Secretary has unlawfully sought to delegate many important authorities on Indian lands to BLM. On our Uintah and Ouray Reservation, BLM is responsible for approving Applications for Permits to Drill (APDs) and Communitization Agreements (CAs), and inspecting oil and gas operations. BLM also conducts resource evaluation, mineral appraisals, and production verification and Indian lands. In addition, BLM provides technical assistance to Indian tribes and Indian mineral owners and works with tribes when analyzing impacts of development proposals under the National Historic Preservation Act. Beyond resource development, BLM works with tribes on land transfers, wildlife management, and access to sacred sites.

These functions have been carried out by BLM in direct contravention of BLM's enabling legislation, the Federal Lands Policy Management Act (FLPMA). Under FLPMA, Congress expressly prohibited BLM from exercising *any* authority to regulate tribal lands and limited BLM's role to the management of public lands. Section 1702(e) of FLPMA specifically excludes tribal lands from the definition of public lands, and therefore excludes tribal lands from BLM's administration or control. However, the Secretary unlawfully delegated BIA's authority over oil and gas development in Indian Country to BLM in direct violation of Congress' intent. This unlawful delegation of authority has resulted in tribal lands being managed as public lands, resulting in extreme delays and unnecessary bureaucratic obstacles in the approval of energy and economic development projects on our lands.

To add insult to injury, in addition to its unlawful interference and management tribal lands resource development and tribal economies, BLM has not held any consultation sessions with Indian tribes on its proposed reorganization and relocation. For example, how will reorganizing BLM into "Unified Regions" based on watersheds address Indian interests? Neither Interior nor BLM have provided any explanation. Prior to taking any reorganization or relocation actions, Interior and BLM are required to consult with tribes on how fundamentally changing the regional structure, decision-making process, oversight, and location of the BLM's headquarters will impact tribal resources and interests.

The relocation of BLM's headquarters will also adversely impact tribal interests through the elimination of long-serving career employees that tribes relied on to coordinate their activities with other Interior bureaus and Congress. It has been widely reported that requiring these career employees to uproot their families and move across the country will lead to a drain of expertise and leadership within BLM. Many of those employees have years of experience working with tribes and abruptly losing their expertise will impact Indian interests.

In addition, moving BLM headquarters to Grand Junction, Colorado will impact BLM's relationships with every other federal government branch and agency still in DC. In addition, to the White House and Congress, there are a number of other federal agencies that have authority over public lands, including the U.S. Forest Service, Department of Energy, Army Corps of Engineers, Bureau of Reclamation, and others who will not be relocated. Removing BLM headquarters staff out of Washington, D.C. and away from these other important agencies and branches of government will result in the breakdown in communications on important discussions

and decisions affecting the management of federal lands. The move will also remove BLM from the direct oversight of Congress and open BLM up to the influence of special interest groups.

### **Reorganization of Interior to Support Indian Interests**

Instead of using Interior's reorganization to harm tribal interests, Interior should use the opportunity to recommit itself and its bureaus, agencies and offices to support tribal self-determination, upholding its trust obligation to tribes, and affirming the government-to-government relationship between Indian tribes and the federal government. Without working with tribes to work to resolve jurisdictional and economic issues, any reorganization effort will do little more than perpetuate a broken and ineffective federal system of oversight and control which keeps Tribes dependent on the Federal government.

The most important way Interior's reorganization can support tribal interest is to ensure that reorganization affirms and upholds the political relationship between Indian tribes and the United States. Indian tribes are separate sovereigns that pre-date the formation of the United States. As separate governments, Indian tribes and their members do not fall into the racial categories of the United States. Instead, the unique legal and political status of Indian tribes is set out in the Constitution, hundreds of treaties, laws, executive orders, and court decisions since the founding of the United States.

Affirming the political status of Indian tribes is a fundamental tenant of federal Indian law which is increasingly under attack through legal challenges that serve to uproot the Indian Child Welfare Act, undermine the treaty rights of federally recognized tribes to possess and use eagle under the Eagle Protection Act and delegate our treaty rights to "race based" as opposed to "government to government" classifications. The political status of Indian tribes was upheld by the U.S. Supreme Court in *Morton v. Mancari* which embraced the political and government-to-government relationship between tribes and the United States.

In the wake of these challenges, Interior's reorganization should reaffirm Interior's trust responsibility to tribes and ensure that treaty obligations are protected and upheld. Instead, in recent years, Interior has shifted its trust relationship with tribes away from trust resource management to focus on how to best protect the United States from further liability in the wake of the *Cobell v. Salazar* court settlement. Rather than placing further limits on the government's fiduciary and trust responsibilities to uphold and fulfill treaty obligations to tribes and Indian communities, Interior should work to support and tribal self-governance by seeking to resolve the jurisdictional, social and economic limitations that have and continue to cause the underlying problems that exist in Indian Country.

This reaffirmation of Interior's trust responsibility must apply to non-monetary assets such as land, water, and other natural resources along with the management of tribal monetary assets. Interior's reorganization should be carried out in a manner that is consistent with Congress's intent that that BIA, as opposed to BLM, maintain administration of Indian lands, as BLM's public land management policies contain restrictive and burdensome requirements that should never apply to Indian lands. In exercising its authority over public lands, BLM is required to manage public lands for: multiple use, sustained yield, and to balance competing resource interests, including in part,

historical, ecological, environmental, and archaeological values. Those standards are significantly different from the standards that BIA is required to apply when managing Indian lands in the best interests of Indian trustees and respecting tribal self-determination regarding Indian lands. Allowing the BLM to enforce its public land regulatory regime on Indian lands contradicts the federal government's nearly forty-year-standing policy of self-determination for Indian tribes.

### **Conclusion**

The Department of the Interior's proposed reorganization, including the relocation of BLM's headquarters to Grand Junction, Colorado, will disproportionately impact large treaty tribes. Any reorganization or relocation of BLM must renew and uphold the United States' treaty obligations and trust responsibilities to Indian tribes, and fulfill government-to-government consultation requirements with Indian tribes. Reorganization efforts should take important steps to improve the programs and services that Interior provides to tribes and their members according to the guiding principles set forth in the large treaty tribes' inter-tribal proposal.

These 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.