



**United States Senate - Environment and Public Works Committee
Hearing: "From Yellowstone's Grizzly Bear, etc."**

October 10, 2018

Testimony of the Rocky Mountain Tribal Leaders Council, the Great Plains Tribal Chairman's Association, and the Blackfoot Confederacy.

Chairman Barrasso, Vice Chairman Carper, and distinguished members of the Senate Environment and Public Works Committee, we appreciate this opportunity to submit testimony on this significant matter to Indian Country and we thank Ranking Member Carper for the invitation to do so.

The Rocky Mountain Tribal Leaders Council (RMTLC) serves tribal nations located in Wyoming, Montana, Idaho, and Alberta, specifically the Northern Arapaho, Eastern Shoshone, Blackfeet Nation, the Chippewa-Cree, the Confederated Salish & Kootenai Tribes, the Crow Tribe, the Fort Belknap Indian Community, the Fort Peck Tribal Executive Board, the Little Shell Tribe of Chippewa Indians, the Northern Cheyenne Nation, the Shoshone-Bannock Tribes of Idaho, and the Piikani Nation of the Blackfoot Confederacy.

The Great Plains Tribal Chairman's Association (GPTCA) is composed of the 16 Tribal Chairmen, Presidents, and Chairpersons of the federally recognized sovereign Indian Tribes within the Great Plains Region of the Bureau of Indian Affairs (the states of North Dakota, South Dakota and Nebraska), which includes the Cheyenne River Sioux Tribe, Crow Creek Sioux Tribe, Lower Brule Sioux Tribe, Oglala Sioux Tribe, Rosebud Sioux Tribe, the Yankton Sioux Tribe, Sisseton-Wahpeton Oyate, Flandreau Santee Sioux Tribe, Standing Rock Sioux Tribe, Santee Sioux Tribe, Spirit Lake Sioux Tribe, the Ponca Nation of Nebraska, the Omaha Tribe, the Winnebago Tribe of Nebraska, Turtle Mountain Chippewa, and the Three Affiliated Tribes (Mandan, Hidatsa & Arikara).

The Blackfoot Confederacy is comprised of the Piikani Nation, Siksika Nation, Blood Tribe (Kainai) and the Blackfeet Tribe. The Blackfoot Confederacy has held a government-to-government relationship with the United States since the ratification of the 1851 Fort Laramie Treaty, a relationship that was further strengthened with the signing of the 1855 Lame Bull Treaty. In common with the Blackfoot Confederacy, many of the tribal nations represented in this testimony have a treaty relationship with the United States, several of which include territory within what is now categorized as Greater Yellowstone. These treaties are enshrined within Article VI of the US Constitution and are, per the Constitution, analogous to the Supreme Law of the Land.

The Department of Interior (DOI) recognizes the majority of the thirty-one tribes represented by this submission as “Associated Tribes of Yellowstone,” which, in part, explains why a number of these tribes were plaintiffs in *Crow Tribe et al v. Zinke*, following which the grizzly bear in Greater Yellowstone was returned to Endangered Species Act status. Tribal plaintiffs prevailed in that case without our core complaints being heard, namely DOI’s failure to engage in “thorough and meaningful consultation” with impacted tribal nations, as federally mandated, and violations of the American Indian Religious Freedom Act claimed under the Religious Freedom Restoration Act. Any attempt by the EPW Committee, its members, or individual senators who do not sit on the committee to legislatively nullify the Court’s ruling in *Crow Tribe et al v. Zinke* - to once again strip ESA protections from the grizzly bear - will, in addition to defying the Court, suborn the federal-Indian trust responsibility. Given that the Constitution states, “all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land,” the rights of Indian tribes cannot be treated as “temporary and precarious,” as would be the case if *Crow Tribe et al v. Zinke* was legislatively subverted. The deleterious consequences of such an action upon our religious and spiritual freedoms, treaty rights, ancestral lands and sovereignty would render such an act unconstitutional. What impact, we ask, would that course have in respect to the integrity of the US Constitution?

Greater Yellowstone consists of the ancestral and treaty lands of tribes represented in this testimony. The grizzly bear is integral to the religious and cultural practices of these tribes. The area where the State of Wyoming intended to hold its grizzly trophy hunts is, in fact, a virtual matrix of sacred sites with fundamental ceremonial significance to this alliance of tribes. As we have stated repeatedly throughout this process, tribal nations wish to be partners with DOI, the US Fish and Wildlife Service (USFWS), and the states; we have no desire to be plaintiffs, but have, so far, been left with no choice but to litigate due to the flagrant violations committed by DOI/USFWS throughout this disturbing episode. These violations, though never satisfactorily addressed, have been cited in numerous tribal resolutions and declarations, public comment submissions, and even alluded to in testimony to the US Senate Committee on Indian Affairs. It is not necessary to recount each here as they are a matter of record, though, by way of example, it may suffice to recall Secretary Ryan Zinke’s testimony before the House Natural Resources Committee (HNRC) on June 22, 2017. When questioned by Congressman Wm. Lacy Clay on tribal nations’ opposition to the grizzly bear delisting process, Secretary Zinke was asked, “And will you commit to consult with affected tribes prior to any delisting announcement?” To which Secretary Zinke replied, “I will commit to that. I think it’s not only a right, it’s the law. But two things, it’s the right thing to do.” However, approximately two-hours after concluding his testimony to the HNRC, Secretary Zinke announced the delisting from the ESA of the grizzly bear in Greater Yellowstone. The Secretary was correct in one respect: meaningful government-to-government consultation with tribes is “not only a right, it’s the law,” he just chose to violate his oath, his word, and the law.

Irrespective, in the spirit of partnership and cooperation, we again offer our collective hand to Secretary Zinke and invite him to sit down with us on a government-to-government basis and discuss the implementation of the historic grizzly treaty signed by over 200 tribes, *The Grizzly: A Treaty of Cooperation, Cultural Revitalization and Restoration* that was initiated by the Piikani Nation of the Blackfoot Confederacy. Chairman A.J. Not Afraid of the Crow Nation presented the treaty to the Senate Committee on Indian Affairs in March 2017, while Secretary Zinke was present. The treaty contains the solutions to this ongoing issue. The future of the grizzly bear - and tribal, federal, and state cooperation - rests within the grizzly treaty. We respectfully urge the members of this committee to encourage Secretary Zinke to honor the trust responsibility and engage us in productive dialogue.

In its letter of March 20, 2018, the Rocky Mountain Tribal Leaders Council informed Chairman Barrasso of tribal nations' principal objection to grizzly bear delisting, namely the states' reinstatement of grizzly trophy hunts, and offered the tribal alternative outlined in the treaty. To quote from that letter:

“Should the Service retain serious concerns about ‘grizzly bear populations and their lost historical range’ (USFWS release, 12/6/2018), it should give serious weight to *The Grizzly: A Treaty of Cooperation, Cultural Revitalization and Restoration*, with respect to formulating future grizzly bear management plans. Central to the treaty are the grizzly reintroduction articles. Instead of trophy hunting the grizzly, tribal nation treaty signatories advocate relocating grizzlies from the GYE to sovereign tribal lands in the grizzly’s historic range where biologically suitable habitat exists among tribes that seek to explore and participate in such a program. The same quota of grizzlies that would be hunted per season by the states, could easily be trapped and relocated to lands under sovereign tribal authority and jurisdiction, removing any possible rationalization for reinstating trophy hunts.

This plan provides for cultural and environmental revitalization for participating tribal nations, as the grizzly is sacred to a multitude of tribes. Both the physical and cultural environments of tribes have been incomplete since the federal and respective state governments eradicated the grizzly. As outlined by a multitude of tribal organizations and in numerous individual tribal resolutions, returning the grizzly bear to participating tribal nations offers to provide great economic potential to communities most at need for economic impetus and investment. Several tribal nations are already working on eco-tourism plans centered upon grizzly re-introduction. Tribal management plans would feature Traditional Ecological Knowledge (TEK) and offer vocational opportunity for tribal members in the field of grizzly biology and management. If trophy hunting seasons are opened upon the grizzly bear, the Service will have empowered the states to not only kill the sacred grizzly bear, but to also kill economic and cultural revitalization for tribes across the western United States in the grizzly’s historic range. The tribal reintroduction plan fulfills the criteria of the ESA, which the current GYE delisting rule and state organized trophy hunts do not.”

This is a viable alternative worthy of not only discussion and exploration, but active participation. No individual tribal reintroduction program would be pursued that set either the tribe or the grizzly bear up to fail. This course of positive, cooperative and beneficial action is surely a better use of taxpayers’ dollars than perpetual litigation. As tribal nations, our recent experiences with the delisting process of the grizzly bear in Yellowstone reflects upon some of the proposed changes to the Endangered Species Act. Though DOI and USFWS officials consistently refused to answer questions about the influence of extractive industry companies in the Service’s delisting decision making, it became evident that the removal of protections from the grizzly was coveted by energy companies; lifting protections from the grizzly would result in the relaxation of stringent land leasing criteria on the lands the grizzly occupies. In July 2016, the Oglala Sioux Tribe petitioned for a Congressional investigation into conflicts of interest involving USFWS officials who were central to grizzly delisting. Former Acting USFWS Director, Matt Hogan, advanced grizzly delisting in his position as Assistant Regional Director of the Mountain-Prairie Region. Hogan, who was once trophy hunting behemoth Safari Club International’s chief lobbyist to Capitol Hill, consistently refused to answer questions about his apparent association with Anadarko Petroleum Gas. Anadarko, which made one of the largest settlements in history with the DOJ in 2014, including \$1 billion for uranium spills that polluted water on the Navajo Nation, is known throughout Indian Country for that catastrophe.

Anadarko describes itself as “one of the largest landowners and leaseholders in the state of Wyoming.” Before entering the ranks of the USFWS, Hogan was Legislative Director for former Secretary of the US Army,

Congressman Preston M. Geren III, who retired from Anadarko's board of directors in 2014. Like all of Wyoming's Congressional Delegation, Chairman Barrasso is familiar with Anadarko, and may, in the interests of transparency, be able to compel Hogan to reveal what ties he has to the multinational energy giant. Chairman Barrasso's former campaign manager, Joe Milczewski, is presently Government Relations Manager at Anadarko Petroleum, and Anadarko has supported Senator Barrasso through financial contributions to Political Action Committees. Anadarko was among the first to support the Chairman's proposed *Endangered Species Act Amendments of 2018* in a letter dated June 8, 2018. Hogan was barely more forthcoming when tribes inquired as to the rationale behind USFWS engaging multinational oil and gas services group, Amec Foster Wheeler, for the peer review of its grizzly delisting rule. In response, Hogan said only, "The peer reviewers were selected by an independent, third-party contractor, not by the Service." That "independent, third-party contractor," Amec Foster Wheeler, appointed Halliburton executive Jonathan Lewis as CEO in the same timeframe as USFWS contracted the company.

It is clear from Chairman Barrasso's proposed amendments to the ESA that a far greater emphasis would be placed upon the input of energy companies, with considerable influence being accorded extractive industry executives in ESA listing and delisting decisions. This approach is consistent with that enacted by Secretary Zinke at DOI, where vast swathes of public lands have now been opened to extractive industry, including large-portions of Bears Ears National Monument, which contains numerous sacred and historic sites to tribal nations in the Four Corners region. Clearly, the objectives of energy companies are not oriented toward conservation or endangered species protection, quite the contrary. Irrespective of Jonah Energy's PR campaign, nobody can seriously consider that constructing some 3,500 gas wells over 10-years in critical greater sage grouse habitat on the boundary of Greater Yellowstone is going to contribute to the preservation and perpetuation of the species. Nevertheless, the project was recently approved by the BLM. Some 96% of that development will take place on public lands, potentially yielding a projected \$17-billion in revenue, with the State of Wyoming being the beneficiary of a billion-plus in royalties. Should these proposed amendments to the ESA become law, this scenario is likely to become the norm. If such circumstances had prevailed in prior decades, it is highly unlikely that species recovered by the ESA that are integral to tribal cultures, such as the bald eagle, grey wolf, humpback whale, green sea turtle and California condor, would now exist anywhere outside of zoos or taxidermy displays. The same can be said of the grizzly bear if *Crow Tribe et al v. Zinke* is legislatively reversed.

The disregard of the federal-Indian trust responsibility by the USFWS in the grizzly delisting process coupled with the uncertainty surrounding the ESA, has prompted tribal nations to move forward with the formulation of a Native American Endangered Species Act (NA-ESA) as a counterweight. Sovereign tribal lands hold several T&E species and vital habitat, and it is time for tribal people to have a greater input into the management and protection of these species. In the present political climate, for some species an NA-ESA may be the only viable path to survival. As tribal nations, our sovereignty is consistently compromised by the USFWS and the states in respect to wildlife management, including USFWS's administration of the ESA on tribal lands. A NA-ESA would enhance tribal sovereignty, provide vocational opportunity for tribal members, and enable the melding of contemporary biological discipline with tribal Traditional Ecological Knowledge in management policies and practices. The NA-ESA would, in essence, be a framework document that could be adopted and amended according to the criteria of individual tribal nations, be they cultural or economic, as opposed to a "one-size fits all" imposition.

Throughout this testimony, we have emphasized the absolute necessity for the federal-Indian trust responsibility to be honored. We will not compromise our sovereignty, our religious and spiritual freedoms, or our treaty rights.

Cultural preservation is not up for negotiation. To date, both the House and the Senate have ignored tribal nations' appeals to intercede and stop National Historic Preservation Act (NHPA) violations by the USFS and BLM in Wyoming that literally threaten to obliterate 10,000-years of tribal history in the region. The lands where Wyoming intended to hold its trophy hunt for the sacred grizzly contain myriad sacred and historic sites to over 30 tribes. The precedent for leasing and energy development in such lands has been set by the BLM with approval of Jonah Energy's NPL project near Pinedale, which is entirely consistent with both Secretary Zinke's policy at DOI of opening more public lands to extractive industry, and these proposed amendments to the ESA that provide industry with disproportionate influence in the process. This triumvirate increases the urgency for action to ensure that the BLM and USFS follow the law.

These agencies are required under NHPA to undertake a Section 106 review; they must undergo a review process for all federally funded and permitted projects that will impact sites eligible for listing under NHPA. In this section of Greater Yellowstone, neither has initiated a Section 106 review for a single cultural or historic site, let alone the hundreds that are on those lands. The Rocky Mountain Tribal Leaders Council, the Piikani Nation of the Blackfoot Confederacy, and the Great Plains Tribal Chairman's Association all raised this matter with the State of Wyoming, the BLM and the USFS in letters submitted during the last week of April 2018. No responses were forthcoming from either BLM State Director (Wyoming), Mary Jo Rugwell, or USFS Regional Forester, Brian Ferebee (Rocky Mountain Region). For these agencies to ignore over thirty tribal nations for undisclosed reasons threatens irreparable harm to our sovereignty, in addition to the cultural catastrophe that will befall us if these sites are not cataloged and protected. The law must be adhered to, and this situation remedied forthwith.

In his address to the Senate before the cloture vote to advance the nomination of Judge Kavanaugh, Majority Leader McConnell reassured the American people that "facts matter," which was a welcome if not contradictory departure from what has become the norm in Washington, DC since January 2017. The actions of this committee in respect to the issues cited herein and the preservation of a viable Endangered Species Act as opposed to one in name only, will be among the first tests of if Leader McConnell was right, that "facts matter," or whether facts only matter if they are politically beneficial to the majority party.

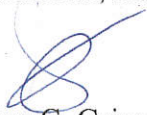
Thank you.

Respectfully submitted:



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