UTE INDIAN TRIBE
P. O. Box 190
Fort Duchesne, Utah 84026
Phone (435) 722-5141 • Fax (435) 722-5072

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

United States House of Representatives Committee on Natural Resources
Subcommittee for Water, Oceans, and Wildlife

Legislative Hearing including "House Resolution 320"

November 16, 2021

Chairman Huffman, Ranking Member Bentz, and distinguished Members of the Subcommittee for Water, Oceans, and Wildlife, thank you for the opportunity to submit testimony for the legislative hearing on November 4, 2021, that included House Resolution 320, recognizing the critical importance of access to reliable, clean drinking water for Native Americans and Alaska Natives and confirming the responsibility of the Federal government to ensure such water access. The Ute Indian Tribe (Tribe) strongly supports House Resolution 320 and asks that Congress take action to secure access to reliable and clean drinking water for Indian tribes.

We are a large land base tribe with an extensive drinking water system. Our Uintah and Ouray Reservation (Reservation) in eastern Utah includes over 4.5 million acres, about the size of New Jersey, and is the second-largest Indian reservation in the United States. Our testimony offers a small glimpse of the water issues we face and the necessary support of Congress to resolve them.

An important first step is the passage of House Resolution 320 and Congress' recognition of the critical importance of our access to clean drinking water. As noted in the Resolution, access to drinking water must be provided independently of any water rights issues. The Resolution highlights and confirms that the responsibility of providing basic water service to Indian tribes is a requirement of the United States federal trust responsibility to tribes.

Providing access to reliable, clean drinking water is an essential human need. In Indian Country, the lack of tribal access to reliable water sources is an everyday occurrence. According to Indian Health Services (IHS), over 31% of Native American homes need sanitation facilities improvements involving water, sewer, or solid waste systems. According to IHS' Sanitation

Deficiency system, 13% of tribal homes lack basic access to safe drinking water, as compared to less than one percent of homes in the United States as a whole. Moreover, according to the U.S. Water Alliance, Native American households are 19 times more likely than Caucasian households to lack indoor plumbing, while African American and Latino households are twice as likely as Caucasians to lack indoor plumbing.

Providing and improving the drinking water systems, water storage, and other water infrastructure needed by Indian tribes should be a national emergency. Like many tribes, we lack much of the basic water infrastructure needed to provide for our members, and the infrastructure we do have needs serious repairs and upgrades. The United States has both a treaty and a trust responsibility to provide the funding and technical support for tribes to develop and run these systems. Yet, the few federal programs supporting tribal water and sanitation infrastructure are so underfunded that there is a decades-long backlog.

Part of the problem may be that there is no true lead agency for tribal water infrastructure. Most of this funding comes from a portion of the State and Tribal Clean Water Revolving Fund that the Environmental Protection Agency (EPA) oversees. This funding is then utilized by sanitation and wastewater program within the IHS not only to fund and support sanitation but also drinking water systems. Meanwhile, the Bureau of Indian Affairs (BIA) oversees some irrigation projects and dam safety. The United States cannot fulfill its obligations to provide reliable drinking water systems and other water infrastructure in Indian Country with programs and funding spread across so many different agencies.

Water Resources Management is Vital to Health and Security on our Reservation

The Ute Indian Tribe consists of three bands: Uintah, White River, and Uncompahgre Bands. Our ancestral homelands stretch from the Colorado Front Range to the Wasatch Front in Utah—from present-day Denver to Salt Lake City. Through a series of treaties and agreements, we agreed to reside and establish a homeland on our Reservation in northeastern Utah, approximately 150 miles east of what is now Salt Lake City.

The delivery of safe drinking water to our members is one of our highest priorities. The vast majority of our members live on our Reservation and are provided water for domestic, commercial, municipal, and industrial (DCMI) purposes by our Ute Tribal Water System (UTWS). Based on 2005 data, our UTWS provides water to upwards of 3,850 users between the system and its external connections. The COVID-19 pandemic and isolation of our elders and members in their homes have highlighted our vital need to provide clean drinking water across our Reservation.

Despite the vital importance of our UTWS, the last time the system was comprehensively rehabilitated was in 1981, and the last sanitary system survey of our UTWS occurred in 1982. The United States and Congress must do better. We have ceded millions of acres of land and resources in treaties and agreements with the United States. In return, the United States promised to secure our homeland and provide programs and services to the Tribe. It is time to make good on these promises and provide adequate funding for tribal water systems and other infrastructure needs.

The state of Utah is recognized as the second most arid state in the country. This includes our Reservation and requires careful and considered management of our water resources for drinking, irrigation, and all of life. In his 1905 Annual Report, the Commissioner of Indian Affairs described the conditions on our Reservation and bluntly stated, "The future of these Indians depends upon [water]… for without water their lands are valueless, and starvation or extermination will be their fate."

Our Reservation lies entirely within the drainage of the Upper Colorado River Basin. We have a multitude of streams flowing through the Reservation, including: the Duchesne River and its tributaries, Rock Creek, Lake Fork River, Yellowstone River, Uinta River, and Whiterocks River, among the rivers that flow south from the Uintah Mountains through the western part of the Reservation to the Green River, which together with its tributaries, including the White River, flows through the eastern part of the Reservation then on to the mainstem of the Colorado River.

As a part of our Reservation, we maintain Indian-reserved water rights by the diversion of 549,685 acre-feet per year in the Upper Colorado River Basin. Priorities for these rights are dated to 1861 for all historically and practicably irrigable lands of the Uintah Valley portion of the Reservation, including municipal and industrial water rights, and to 1882 for all lands served on the Uncompahgre portion of the Reservation, through which the Green River and its tributaries flow and border. We own the highest priority water right to natural flows from all rivers within the exterior boundaries of the Reservation.

In 1916, the United States initiated litigation in federal court to protect our reserved water rights and enjoin various private irrigation companies from interfering with our Tribal members' use of our waters. A portion of our Indian reserved water rights was recognized through this successful litigation and resulted in the issuance of two federal decrees in 1923 for our reserved water rights on the Lake Fork and Uintah Rivers and their territories, where the majority of Tribal members reside. Agreement on the remaining portion of our Indian water rights was reached by agreement with the state and the Federal governments in 1965 when we agreed not to develop some of our Indian water rights so that the state could proceed to construct and complete the Central Utah Project.

The Central Utah Project (Project) is a massive federal project that diverts and stores water from our region and Reservation to provide water to the Wasatch Front, including Salt Lake City and Provo. As a part of this Project, the United States promised to construct a water storage facility in the Uintah Basin that would provide the Tribe with the necessary water resources to develop and use our reserved water rights on our Reservation. This storage has still not been built.

Investments Needed for Safe Drinking Water Infrastructure

The delivery of safe drinking water to our Tribal members is of the highest priority for our Tribe. The vast majority of our members live on the Reservation and are provided with water for DCMI purposes by our UTWS. Our UTWS service area covers roughly 175 square miles, including the towns of Whiterocks, Fort Duchesne, Randlett, Ouray, and other rural areas. We also operate a high school for our Tribal members in Fort Duchesne, Utah. Through external

connections, our UTWS is also the sole water supplier to the Ballard Water Improvement District, the Ouray Park Improvement District, and the Independence region of the Johnson Water Improvement District.

Our UTWS diverts and treats water from Whiterocks River and Uriah Heap Springs, which is delivered by gravity through nearly 60 miles of pipelines and numerous valves, hydrants, and water meters. Each spring subsystem on the UTWS has its own water treatment facility. Whiterocks typically takes 100 gpm through treatment, while Uriah Heap Springs takes about 700 gpm through its system. The Whiterocks River Springs subsystem serves 115 connections with an average daily demand of 63 gpm. Uriah Heap Springs has 815 connections and an average daily demand of 700 gpm.

In 2010, we asked an engineering firm to evaluate the conditions of the water collection systems at Whiterocks River and Uriah Heap Springs. They found that multiple improvements for environmental health and better water management within our UTWS were needed. Deteriorated conditions included vegetation growth and poor surface drainage in the spring areas, root intrusion, sediments, and cracking in collection pipes, a lack of water meters in the system, a need for increased water quality monitoring in the system, and unmonitored spillage of untreated spring water into local canals. Though customer water meters have since been installed and a new Uriah Heap Springs treatment plant was built, not all recommended improvements have been fully implemented.

In 2014, another engineering firm observed or was made aware of the following concerns related to our UTWS:

- Continued poor surface drainage and vegetation in spring collection fields;
- Insufficient fencing around springs that could allow livestock to contaminate water sources;
- Rusted, leaking, or overflowing water storage tanks;
- Freezing or burst water pipes in the winter throughout the system;
- Vandalism of UTWS structures; and
- A strong need for a hydraulic model to understand water flow within the system.

Despite these issues and our requests for support, IHS has not been able to fund and install the spillage meters needed at both Whiterocks River and Uriah Heap Springs for several years, and individual water meters are not read. As a result, both users and external connections only pay a flat monthly water rate, regardless of use. Although we appreciate the technical support that IHS has provided, most of its limited infrastructure or construction funding goes towards drilling domestic water wells for individual Tribal members. As a result, our UTWS has continued to suffer from a lack of maintenance, rehabilitation, and expansion funding.

Due to chronic underfunding for our UTWS, we have had difficulty maintaining, providing, and ensuring that our Tribal members have access to safe drinking water. Since 2018, we have made a concerted effort to improve our internal monitoring and auditing procedures related to the water quality delivered by our UTWS. However, the lack of consistent and available

funding sources to rehabilitate, improve, and expand access to our UTWS remains a significant and serious issue for the majority of our Tribal members. Furthermore, some of our Tribal members must rely on relatively shallow individual wells or developed springs for their water supply.

Investments Needed for Water Storage

The need for water storage on our Reservation has been clearly and repeatedly documented for over 100 years. Indeed, it is well known that irrigation and other related tribal water projects cannot be successful in an arid environment without water storage infrastructure. The Federal government has acknowledged, on many documented occasions, its obligation to manage water projects through storage facilities, yet we continue to face water storage deficits on a regular basis.

It is unbelievable that our Reservation homelands were established in this arid region, and we still lack a water storage facility to support our municipal, irrigation, and water development needs. Meanwhile, the Central Utah Project serves the non-Indian residents of Utah—one of the largest water storage and delivery projects in the United States. Because of these documented water shortages, the Tribe has sought to develop viable, environmentally sound storage facility options that will regulate the flows of Reservation streams and provide an ample and dependable water supply for the Tribe. Storage, combined with the natural flow, is the only way the Tribe can fully develop its irrigation system, provide for our members, and put our reserved water rights to use. We ask that the Federal government make good on its commitment to provide the water infrastructure promised and needed for our homelands.

The ability to store water is vital to our Uintah Indian Irrigation Project (UIIP). The UIIP is one of 16 Indian Irrigation Projects that the BIA is directed to manage in support of the Federal government's trust responsibilities and to create economic development opportunities on our Reservation through agriculture. Our water users pay annual operations and maintenance fees, but chronic underfunding of the UIIP has resulted in layers of problems. Current problems are well documented and include decades of deferred maintenance and the need to repair and replace diversion structures, canals, laterals, and ditches to bring the deteriorated infrastructure up to current standards. As noted, the UIIP lacks the basic storage that irrigation systems rely on to regulate the natural flows of the rivers and the rehabilitation and betterment of our Project.

We ask that the Biden Administration honor and fulfill the United States' treaty and trust responsibilities to support our critical need for water storage infrastructure. Storage infrastructure is needed to support and provide for the Tribe's Reservation homelands in Utah. Actions are needed to improve BIA's management of our water irrigation projects and to secure funding that will enable us to get the full economic benefit of our Indian reserved water rights.

Additional Impacts from COVID-19 Pandemic and Specific Funding Needed

The COVID-19 pandemic has highlighted and exacerbated our need to provide Tribal members access to safe and reliable drinking water—which is paramount in maintaining proper hygiene and health. IHS has already documented that families with access to reliable, safe drinking

water and sewage systems require appreciably fewer medical services and place fewer demands on IHS and the tribal primary health care delivery system. For every dollar IHS spends on sanitation facilities to serve eligible existing homes, at least a twentyfold return in health benefits is achieved.

Despite these clear health benefits and the additional impacts from the COVID-19 pandemic, we are still waiting for Congress to provide the funding levels for the needed improvements to our UTWS and Tribal water systems throughout Indian Country. Congress knows this. We all know this. The shortfalls in IHS funding are well-known. This is not only a funding shortfall but also a failure to fulfill the United States' treaty and trust responsibilities.

The American Recovery Plan Act (Act) provided some of the funding needed but still only scratches the surface. More importantly, we are still in the middle of the COVID-19 pandemic and have many demands for the funding provided. Do we use funding in the Act to invest in water infrastructure, support Tribal members and businesses still suffering from the economic slowdown, or invest in broadband infrastructure to support the education of our youth?

The Infrastructure Investment and Jobs Act (IIJA) will also provide needed funding. But, again, this funding is addressing a chronically underfunded need. Indian Country needs the level of funding provided in the IIJA year after year to support the water infrastructure needs in our communities.

While we wait for stable annual funding to support Tribal water infrastructure, we are still working hard to provide our members with a safe and clean drinking water supply. We recently investigated and identified (1) the need to develop groundwater wells and associated facilities to provide culinary/domestic water to an area of our delivery system known as the Farm Loop Road area located north of our Whiterocks Tribal Community; and (2) the need for a supplemental supply to the existing Whiterocks River and Uriah Heaps Springs water systems. Our members on Farm Loop Road are representative of those who experience poor water quality from their domestic wells and seasonal water shortages.

We conducted project feasibility studies for these two projects, as well as their economic feasibility. Not surprisingly, the cost per residence in the targeted isolated, rural Reservation area can run as high as $132,000 per residence for groundwater development. When the residential improvements are combined with the development of the supplemental water supply project, we can bring our costs down to $12,609 per connection. However, that still leaves us with an overall cost to improve access and make water supply improvements of $12,500,000—in just one area of our UTWS on our large Reservation.

Some sources of funding are specifically limited to loans to eligible water systems. One example is the EPA Drinking Water State Revolving Loan Fund which has a 2% Drinking Water Infrastructure Tribal Set-Aside. In addition, this funding is not available where there is no existing water system as in the example above for our Farm Loop Road residential area.

We also run into problems because a project's cost efficiency is often used by funding

sources, including IHS, as a measure of a project's economic feasibility. If the cost per household is used as a measure for Tribal funding, the highest cost per household served in Utah is $40,500. As described above, the estimated cost for some of our very rural, Reservation Tribal households can be as high as $132,000 per residence for groundwater development. Yet, the IHS Phoenix District office, which includes our Reservation, has a cap on the cost for a system identified as "deficient" at about $58,000 per Tribal home served. IHS told the Tribe that if we exceed their cap, then the project cannot be funded. As a result, the Tribe receives $0 benefit from IHS, even though the Tribe offered to make up the difference. None of these caps or cost limitations are consistent with the Federal government's trust responsibilities.

Some other funding sources, such as the U.S. Bureau of Reclamation WaterSMART Grants—Water and Energy Efficiency Grants, require a 50/50 cost share, with tribes located in the western states eligible for funding of tribal projects that conserve water and/or provide hydropower development. Many tribes are not able to fund the 50% share of the costs under this program. And, more importantly, this cost share is not consistent with the United States' debts owed to Indian tribes and the trust responsibility.

A final example of existing funding sources is the Water Infrastructure Improvements for the Nation Act—Assistance for Small and Disadvantaged Communities Drinking Water Grant. The grants target public water systems in small and disadvantaged communities to meet Safe Drinking Water Act requirements. However, with a 2% tribal allotment under the program funding, there is only a total allotment of $875,000 for tribes across the United States. States, cities, and towns covering much smaller areas have higher water infrastructure budgets than this.

Conclusion

Improvements in our water infrastructure can save lives and increase the life expectancy of our Tribal members. The Ute Indian Tribe needs Congress to provide significant funding to finally meet these obligations, particularly during the global COVID-19 pandemic we all face today. While the root cause of the lack of tribal access to water resources varies, the overriding issue is the chronic underfunding of tribal water infrastructure to meet the Federal government's treaty and trust obligations to Indian tribes.

Significant investments in drinking water and storage infrastructure will help to ensure that our water system meets water quality standards and would also provide a vital economic boost for the economy in response to the COVID-19 pandemic. Investments in water storage infrastructure will help ensure that our irrigation project needs will be met. We have done the feasibility studies, and we know what is needed. Even IHS knows what is needed. We need to modernize our Tribal water delivery system, firm up water supplies to our Reservation Tribal members, and ensure quality water supplies are available that satisfy health-based drinking water standards.

Recent funding passed by Congress is an important first step. However, these funding levels are needed year after year to address drinking water deficiencies in Indian Country. Thank you for your consideration of our testimony.