

Testimony of Kurt Riley

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"The Trump Administration's Bias Towards the Oil and Gas Industry during the Government Shutdown"

House Natural Resources Committee - Democratic Issues Forum

January 24, 2019

1. **Greetings.** I am here at the request and direction of Governor Brian Vallo, from the Pueblo of Acoma, who directed me to share these comments on the effect of the partial government shutdown upon oil and gas activity in New Mexico. I have also been directed by leadership of the All Pueblo Council of Governors to share these comments on their behalf. The All Pueblo Council of Governors represents the 20 Pueblo Governors in New Mexico and Texas.
2. Currently, I serve as the co-chair for the All Pueblo Council of Governors – Natural Resources Committee, as well as the acting chair for the Ten Southern Pueblo's Governor's Council. I just ended my term as the Governor for the Pueblo of Acoma, having previously served as the Governor for the past three years, and as the 2nd Lt. Governor for a year prior. In December, through our Pueblo's traditional process of appointment, Brian Vallo was selected as Acoma's new Governor. Governor Vallo sends his apologies that he could not personally attend today's forum, but hopes the Committee will listen intently to the impacts the Pueblo of Acoma, as well as what other Pueblos, are suffering from during this time.
3. The Pueblo of Acoma, along with the All Pueblo Council of Governors, has previously expressed grave concerns about continued oil and gas development surrounding Chaco Canyon. Chaco Canyon is an important and sacred place woven within many Pueblos' history, culture, and worldview. Last summer, I visited Chaco Canyon with Acoma children, as they retraced parts of our people's journey at places like Mesa Verde, Hovenweep, the Aztec Ruins, and other ancestral Puebloan villages and sites. These places are sacred; containing the history of who we are, and they have direct value, meaning, and a purpose in our continued existence as Pueblo people.
4. Emanating from Chaco Canyon is a rich cultural landscape containing the footprints and fingerprints of our Ancestors. These are often recognized by archaeologists through pot sherds, village sites, or other man-made features. We as Pueblo people value these things and consider them our cultural resources. But not all cultural resources are archaeological in nature, as there are natural features which no archaeologist can identify that have equal value to us. Together, these features, both archaeological and natural, create a cultural landscape that ties us as Pueblo people directly to Chaco Canyon, and far beyond.

5. Oil and gas development in the San Juan Basin, the Greater Chaco Region, has reached break-neck speed. Despite the Bureau of Land Management (BLM) already leasing nearly 91% of available federal land, and having not completed its Resource Management Plan Amendment, the guiding document meant to regulate horizontal drilling and multi-stage fracturing technology; the BLM continues to push for oil and gas development to the detriment and possible destruction of Pueblo cultural resources and sacred sites. This already disastrous process is only made worse during this government shutdown.
6. For example, the BLM has not announced any extensions of time for commenting on current or forthcoming Scoping Periods or Protest Periods for its prospective March and June 2019 Lease Sales. According to the BLM New Mexico State Office, we are scheduled to be in the Protest Period for the March 2019 Lease Sale that began on January 18. Apparently, we have also passed the scheduled Scoping Period for the BLM New Mexico's June 2019 Lease Sale, despite no documents being available.
7. The BLM must postpone all of its Scoping Periods, Protest Periods, and Lease Sales commensurate with the lapse in federal appropriations. It will be inexcusable for the BLM to proceed with business as usual once the government is funded. It is in this period that tribal consultation must occur, yet there is no one for us to consult with!
8. The Pueblo of Acoma was deeply concerned when it learned that during the federal lapse in appropriations, it was reported by media and confirmed by the BLM New Mexico's Director of Communications, that federal workers are processing Applications for Permits to Drill (APDs). This includes new applications in the San Juan Basin. This critical period, which starts several clocks for data gathering and permit approval, is what the BLM has told us is the critical phase in which Section 106 consultation under the National Historic Preservation Act is to occur and where pueblos and tribes can protect their cultural resources. The federal workers have reportedly been paid, though we have not confirmed, by using fees associated with the APDs.
9. As more and more applications are being processed, this means more and more new oil and gas development WILL NOT be subject to future regulations in the Resource Management Plan Amendment which is in its final drafting stages, but is likely further delayed due to the shutdown.
10. While we are mindful of the hardship caused by the shutdown on individuals, it is also affecting important cultural properties of the Pueblo as well. We cannot help but protest what appears to be an intentional bias in the favoring of oil and gas development over other

interests. It is hardly an emergency involving the safety of human life or protection of property, for the BLM to continue oil and gas development activity.

11. For perspective, and as evidence of the lack of a uniform direction from Washington, the BLM Utah Office is doing the right thing – as it is using its limited funds for tribal consultation. Acoma received word of this through a direct email from the BLM Utah's Deputy State Director on January 18. This stands in stark contrast with the BLM New Mexico Office that is using its limited funding to issue permits without the necessary Section 106 work.
12. Federal law, primarily the National Environmental Protection Act and the National Historic Preservation Act, do not contemplate the processing of oil permits, or any other federal undertakings, in a vacuum. The BLM cannot reasonably justify the processing of oil and gas permits alone, while not being able to simultaneously fulfill its other duties under federal law.
13. Not only does this present potential violations of federal law, a breach of the trust responsibility of the BLM to the Pueblo of Acoma and other pueblos and tribes; but the very real possibility that these actions will result in the destruction of irreplaceable cultural resources in the Greater Chaco Region.
14. In addition to the immediate risk and harm to our cultural and natural heritage, the ongoing partial government shutdown is causing significant disruptions in access to and the provision of healthcare, social support, economic development, and other governmental services in our communities. Further, many pueblo members are furloughed federal employees or contractors feeling the intense stress of over a month of uncertainty on their financial and job security.
15. These and other detrimental impacts of the ongoing shutdown on the health and well-being of Pueblo Country are highlighted in an official statement of the All Pueblo Council of Governors, which I hereby attach for the record and for your consideration.
16. Thank you for the opportunity to participate in this critical discussion and to submit written testimony for the record. We look forward to the swift resolution of the shutdown and the restoration of the full panoply of federal programs and services serving our Pueblo.

**Statement of the All Pueblo Council of Governors
on the Detrimental Impacts of the Partial Government Shutdown on Pueblo Country
January 24, 2019**

Today is the 33rd day of the partial shutdown of the Federal Government. The All Pueblo Council of Governors (APCG) urges the President and Congress to immediately end the shutdown as it continues to detrimentally impact the well-being of our Pueblo people and infringes upon federal trust obligations to our 20-member sovereign Pueblo governments.

First and foremost, the Federal Government must uphold its fiduciary responsibilities to our Pueblos and all tribal nations. The federal appropriations process ensures that the government's obligations to Pueblos, tribal nations, and native communities is carried out via necessary funding for critical programs and services that serve American Indian and Native Alaskans. The disruption in services and federal support caused by the shutdown disproportionately impacts the ability of our leaders to ensure the health, safety, and welfare of our communities and resources. During this time, we have families and individuals living paycheck to paycheck who cannot meet financial obligations as a result of the shutdown, and who are devastated while our Federal Government, the bearer of the highest responsibility and trust to fulfill the supreme laws of the land, is held unaccountable in failing to meet obligations to our sovereign nations and people. The President and the Members of Congress should all be held accountable to fulfill constitutional and legal commitments to tribes regardless of current political issues not directly affiliated with federal Indian relations.

Close to 800,000 federal workers have been furloughed or are working without pay throughout the United States. According to Congresswoman Deb Haaland, New Mexico is the second highest impacted state and among the five states with the largest presence of federal agencies. Within New Mexico, a high number of federal employees and contractors work on behalf of Indian Country, and a very high percentage are Pueblo and Native people secured by income and benefits of employment at the Bureau of Indian Affairs, Indian Health Services, Bureau of Land Management, National Park Service, Environmental Protection Agency, Army Corps of Engineers, Commodity Distribution, Law Enforcement, and other federal agencies not fully operational as a result of the lapse in appropriations. Additionally, our tribal members that are federal contractors are ineligible for unemployment benefits that have been made available to the State of New Mexico.

Among the federal agencies impacted that serve as the biggest conduits for funds for tribes dependent on direct funding, grants and contracts are: Department of Interior (76% furloughed), Department of Agriculture (66% furloughed), Housing and Urban Development (95% furloughed), Department of Transportation, Department of Homeland Security, Department of Justice, Environmental Protection Agency, and Health and Human Services. Throughout our State, we continue to feel impacts to critical tribal operations in a rippling effect from federal, regional,

local to tribal communities. All areas of life from healthcare, education, housing, child welfare, public safety, transportation, natural and cultural resource preservation of our Pueblos are, or will be, imminently affected.

Healthcare

The mission of the Indian Health Service (IHS) is to provide Pueblo and tribal citizens with access to high quality and comprehensive medical services. Unlike other federal healthcare agencies, such as Veterans Affairs, the IHS must balance the delivery of services with years of under-resourcing, the lingering effects of sequestration under the Budget Control Act of 2011, and now the disruption of critical services and employee paychecks due to the government shutdown. The sum is manifested in negative health outcomes for pueblo and tribal patients who depend on the IHS for care and in lost wages for those employed by the agency who are furloughed or expected to work without pay due to their status as "essential" employees. Overworked and underpaid employees are often stressed employees, which can have a dangerous impact on their work.

At this time many New Mexico IHS facilities and local clinics are in serious danger of being closed, creating a danger for our community members who have great difficulty accessing the medical care they need, or otherwise are forced to travel sometimes hundreds of miles round trip to receive physical health and behavioral health services. According to statements released by Indian Health Service Headquarters, fiscal year 2019 funding ended on December 21, 2018. IHS Direct Services and 638 contracts were funded out of the past, now expired, congressional continuing resolution. Current IHS, tribal and urban Indian facilities (I/T/Us), as well as healthcare related ISDEAA programs, are considered and designated as "excepted programs," authorized to continue working while furloughed or uncompensated. Albuquerque Area IHS officials have stated that IHS will continue to provide direct patient care and provide referrals for Purchased and Referred Care, i.e., care that takes place outside of tribal programs.

I/T/Us are currently operating on carry-over funding, reserve funding or collections from third party revenues. Continued I/T/U operations may be dependent on these reserve funds and ability to collect 3rd party reimbursements from Medicaid, Medicare, and private insurance. This may prolong negative effects of the shutdown. In addition, administrative and support staff who collect these funds on behalf of I/T/Us may be among those staff that are furloughed. This group of individuals are full time employees of IHS and are eligible for back pay as a result of the recently passed bill signed by the President on January 16. Contracted medical staff and non-IHS full time employees will not be paid unless the individual I/T/U continues to pay these contracted staff from carry-over, reserve, or 3rd party funds.

If the shutdown continues into the foreseeable future, tribes will need to closely monitor IHS and the Department of the Interior's ability to accept, process, review and implement ISDEAA contracts. All processing of 638 contracts under consideration are currently on hold. These processes can take up to 60 days, which will delay the funding of these contracts further. In some cases these impacts are life-threatening for our community members, with impact to mental and emotional well-being impossible to assess, however real and impending. Now more than ever it is clear that full advance appropriations for the IHS would promote greater stability in services, medical personnel recruitment and retention, and facilities management.

Natural and Cultural Resources

APCG has been a vocal advocate for the protection of the Greater Chaco Region and for an approach to oil and gas production that respects this priceless cultural landscape. Oil and gas development in the San Juan Basin, the Greater Chaco Region, has reached break-neck speeds. Despite the BLM already leasing nearly 91% of available federal land, and having not completed its Farmington Field Office Resource Management Plan Amendment, the BLM continues to push for oil and gas development to the detriment and possible destruction of Pueblo cultural resources and sacred sites. This already disastrous process is only made worse during this government shutdown for the public, tribes, and our Pueblos. For example, the BLM has not announced any extensions of time for commenting on current or forthcoming oil and gas Scoping Periods or Protest Periods for its prospective New Mexico March and June 2019 oil and gas lease sales. According to the BLM New Mexico State Office, the protest period for the March 2019 lease Sale was scheduled to begin on January 18. The scheduled scoping period for the BLM New Mexico's June 2019 Lease Sale too has passed, despite no posted notice of sale to the public, let alone notification to tribes.

APCG via the Pueblo of Acoma was deeply concerned when it learned that during the federal lapse in appropriations, it was reported by media and confirmed by the BLM New Mexico's Director of Communications, that federal workers are processing Applications for Permits to Drill. This includes new applications in the San Juan Basin. This critical period, which starts several clocks for data gathering and permit approval, is what the BLM has told us is the critical phase in which Section 106 consultation is to occur and where tribes can protect cultural resources.

Federal law, primarily the National Environmental Protection Act and the National Historic Preservation Act do not contemplate the processing of oil permits, or any other federal undertakings, in a vacuum. The BLM cannot reasonably justify the processing of oil and gas permits alone, while not being able to simultaneously fulfill its other duties under federal law. Not only does this present potential violations of federal law, a breach of the trust responsibility of the BLM to tribes and Pueblos; but the very real possibility that these actions will result in the destruction of irreplaceable cultural resources in the Greater Chaco Region.

Additionally, critical water negotiations are at a standstill as key federal participants, members of the federal negotiating teams are furloughed. This is especially impactful when state legislatures are in session. Since the Department of Justice and Bureau of Indian Affairs attorneys are in most cases furloughed, cases in litigation are also suspended even though some courts are open. Attorneys for the U.S. are not available.

Other Pueblos are feeling natural resource maintenance impacts resulting from the shutdown. In 2011, the Pueblo of Santa Clara was devastated by the Las Conchas Fire. The fire caused significant damage to forestlands, the Santa Clara Creek, and most of the Santa Clara Canyon, leaving a 25.9 mile burn scar across the Pueblo's traditional lands. The burn scar destabilized the land and left the community vulnerable to flash floods and mudslides. The Pueblo has received five Presidential Disaster Declarations involving infrastructure damage from catastrophic floods and has worked diligently alongside our federal partners at the Federal Emergency Management Agency, U.S. Army Corps of Engineers, Bureau of Indian Affairs, Bureau of Reclamation, and particularly the U.S Forest Service's Collaborative Forest Restoration Program (CFRP) to protect the people and land from future natural disasters. Regularly carrying out grant funds from CFRP are used toward hazardous fuel reduction projects and prescribed burns to reduce the threat of wildfires, activities necessary for effective land management and risk mitigation.

Because of the government shutdown, however, the U.S. Forest Service, for example, is no longer able to fulfill its grant obligations and the essential public safety activities funded under the CFRP are now on hold. In the interim, vegetation is now accumulating on Pueblo forestlands that could serve as a hazardous fuel in the event of an unprescribed burn or other harmful event. Outside of the USFS, the effects of the shutdown also impact the Bureau of Indian Affairs branch of Forestry & Wildland Fire, who under the United States' trust responsibilities to tribal communities assist with various forest projects, including but not limited to the ones previously mentioned. Due to many BIA employees being currently furloughed, personnel department-wide now face delays in the implementation of critical management projects. The government shutdown has caused the possible delay or missed opportunity for activities whose success is dependent on being able to implement work under particular conditions and within a set time frame.

Education

The Bureau of Indian Education is forward funded and to varying degrees safe to operate schools. However, other sources of support will have an impact including, but not limited to, nutrition programs, social workers, environment and safety, and roads and maintenance.

Housing and Utilities

The majority of homes within our Pueblos are now HUD homes. Nearly 96% of these federal employees are on furlough. General operations and administration including processing of loans, grants for programs and individuals financing home construction inherited by tribes are impacted. Essential landlord duties of administration and operations and maintenance of homes will be curtailed. Nearly 100% of Tribal Housing Authorities are tribal employees that could soon be furloughed if HUD programs on reservations shut down, leaving daily home and property management emergencies the responsibility of tribal governments. In the Pueblo of San Felipe,

the shutdown has frozen funds for programs causing many homes within the Pueblo unable to connect to the electric grid as service-line agreements are processed by shuttered federal agencies. The problem is made worse by furloughs in the Bureau of Indian Affairs that would normally provide support to the Pueblo in these and other cases. The Albuquerque BIA office is almost completely non-functional.

Harming Our Most Vulnerable

Those individuals contracted to support the most vulnerable demographics of our communities, including youth and elders, are heavily impacted by the shutdown. Those agencies and programs impacted include foster care services, BIA/tribally-funded and/or contracted social services, health and safety to families, children and court advocates, the EPA General Assistance Program, SNAP, food commodity programs, LIHEAP-energy assistance, WIC support, and child care services for working single moms. The day-to-day livelihood of many of our Pueblo members are dependent upon these programs and services.

Urgent Action is Needed to Reopen the Full Federal Government

This shutdown will disproportionately exacerbate disparities in health and welfare outcomes for all generations of our communities following the reopening of the government. The All Pueblo Council of Governors urges the President and Congress to act immediately in fulfilling their trust responsibility to tribal nations to ensure the continued well-being and longevity of our people, communities, and life-affirming natural and cultural resources. The prosperity of our Pueblos and the entire country depends on the swift restoration of a fully operational federal government.

Thank you,

Paul Torres, Chairman
All Pueblo Council of Governors