

TESTIMONY OF
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BEFORE THE
SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

**SUBCOMMITTEE ON THE EFFICIENCY AND EFFECTIVENESS OF FEDERAL PROGRAMS
AND THE FEDERAL WORKFORCE**

OVERSIGHT HEARING ON
**“THE BAKKEN: EXAMINING EFFORTS TO ADDRESS LAW ENFORCEMENT,
INFRASTRUCTURE, AND ECONOMIC DEVELOPMENT NEEDS”**

SEPTEMBER, 2014

My name is A.T. Stafne and I am the Chairman of the Assiniboine and Sioux Tribes of the Fort Peck Reservation. I would like to thank the Subcommittee for the opportunity to share our unique perspective as an Indian Nation bordering the unprecedented oil development of the Bakken. Unfortunately, our Reservation has been burdened by the negative impacts of rapid development without realizing any of its benefits. While the oil industry extracts millions in profits from the region, our Reservation has witnessed dramatically rising social ills, such as increased criminal activity, including the use and movement of methamphetamine and the abuse of prescription drugs. This surge in crime has reversed the downward trend our Tribal police worked so hard to achieve through years of effective policing techniques, task force and multi-jurisdiction collaboration, and education campaigns. The meth epidemic is back and we lack the resources to fight it.

To be clear, our Tribal leadership does not oppose responsible development of natural resources. We have been an oil-producing tribe since the 1950s and income derived from our natural resources has funded essential services to our membership. We have provided detailed recommendations for Congress to encourage responsible, sustainable, and culturally sensitive development in Indian Country to the Senate Indian Affairs Committee, *see Fort Peck Tribal Executive Board Testimony on Hearing on Energy Development in Indian Country, February 16, 2012*. We encourage you to review that testimony as you consider ways to promote development across Indian Country.

But the focus of this hearing is on resources—for law enforcement, infrastructure and economic development—for which the Fort Peck Reservation has been deprived for decades. Senators Tester and Heitkamp know this all too well. Essential government services and infrastructure were inadequate well before the boom and have been further weakened by the dramatic increase in demand. Yet time and time again we are asked to be magicians and perform the impossible. We cannot. Our law enforcement and public health programs are simply stretched too thin. We need resources, personnel, and the facilities to house them. Despite the federal government's promotion of Bakken development, it has done little to help the ailing communities surrounding the Bakken.

I urge the Department of Homeland Security to work with tribes by promptly providing DHS funds and equipment to our Bakken affected communities using instruments akin to our self-determination contracts to ensure our immediate receipt of the resources we so desperately require. They are long overdue and the clock is ticking.

I further urge Congress, especially its appropriators, to educate your colleagues and help them connect the dots; if tribes must continue to use our limited resources to subsidize underfunded federal programs to meet the most basic needs of our members, then we will not be able to invest in economic development or build our reservation's infrastructure -- we simply won't have the resources. We have exhausted our funds doing your job, fulfilling your trust responsibility. It is hard for me, as Chairman, to look my constituents in the eye and tell them we don't have money to help them start a business,

patch a pothole, repair a leaky roof, get treatment for a loved one, or build a wellness center to keep their families healthy.

Our sparsely populated Reservation spans 2.1 million acres adjacent on the north and west of the Bakken. Despite this close proximity to the Bakken, our Reservation remains one of the most impoverished communities in the country. Nearly half of the people living on the Reservation are below the federal poverty level. Recent U.S. Housing and Urban Development (HUD) data shows that nearly 1,600 Indian families residing on our Reservation have household incomes from less than 30% of Median Family Income to 80% of Median Family Income. Roosevelt County, where most of our Reservation is located, has the poorest health in the state of Montana. Moreover, our review of recent data suggests that the average age of death of Fort Peck Tribal members in the past two years is 51 years of age. Tragically, the poor quality of life depicted through these statistics exists only 50 miles from the epicenter of the nation's largest oil producing region.

This situation continues to worsen as we approach yet another fiscal year without a full-year federal budget, forcing us to operate our programs under last year's spending levels. When Congress delays in approving a budget, government agencies—and tribes operating federal programs under the Indian Self-Determination and Education Assistance Act—are unable to effectively plan their activities.

Over the past few years we have endured sequestration, months without a Congressionally-approved budget, and a government shut-down. In these instances, Indian Country and its neighbors throughout rural America are disproportionately affected. In the government shut-down alone, communities across our region lost millions of dollars. This cannot continue. Congress must fulfill its Constitutional obligations to the American people.

And Congress must remember the special trust responsibility owed to American Indians. The Bakken region, which is now pumping millions of dollars into the nation's economy, was once Indian land. In exchange for federal commitments to provide for the essential needs of our people, our ancestors ceded vast swaths of the Great Plains. The

same region that has served as the nation's bread basket for nearly a century and a half. Now it has also become its fuel station. We fulfilled our promises and removed ourselves to reservations, now Congress must fulfill yours. Congress can begin to live up to its mandatory trust responsibility by securing Indian services funding - as an entitlement - not subject to the broken federal budgeting process. Indian services should never be subject to mandatory spending cuts or sequestration when the BIA and IHS have historically been and remain severely underfunded. The latest sequestration further imposed problems of furloughs, hiring freezes, and loss of institutional knowledge through retirement buy-outs upon agencies that were already struggling.

You have indeed heard other Tribal leaders make this same plea. Indeed, some of my testimony today is duplicative of what you have heard me or other Tribal leaders say at hearings over the last two years. However, it bears repeating, lest we become the miner's canary for rural America.

A. DRUGS AND THE NEED FOR ENHANCED LAW ENFORCEMENT.

Methamphetamine and prescription drug abuse are increasing. Through effective policing techniques, our Tribal law enforcement, along with our state, federal, and local partners, were seeing a reduction in methamphetamine use in our region. But over the last two years, meth has returned with a vengeance. The growing transient population working in the Bakken has created an easy source of meth that has made its way onto our Reservation.

We have seen a wave of children born with methamphetamine addiction. These infants must be placed off-reservation in foster families that are trained to deal with their special-needs. We lack the resources to raise these children on the Reservation among their families. We require additional policing, counseling and education funding to battle drugs and break up drug distribution to combat the terrible effects these drugs are having in our communities.

Our Tribes have provided law enforcement and correctional services on our Reservation since 1996 under Indian Self-Determination Contracts with the Secretary of Interior. Our budget to operate this program, in many respects, reflects the needs and

demographics of our Reservation in 1996, at a time when the Bureau of Indian Affairs operated these programs. As you drove into Sidney this morning you may have noticed the significant changes the communities in this region have seen since the 1990s. No community has gone unaffected.

Our law enforcement department has 18 police officers and 3 criminal investigators. We have dedicated 2 FTEs to drug enforcement out of necessity, even though we could hardly spare the personnel in other areas. For decades we have forged positive relationships with neighboring law enforcement agencies and governments in our region. We were one of the first Indian tribes in the nation to enter into a cross-deputization agreement with state, county and city law enforcement agencies. Under this agreement, first ratified nearly fifteen years ago, Tribal officers are deputized to enforce state and local law on the Reservation, and state and local officers are authorized to enforce Tribal law. Our revolutionary agreement has been the model in Indian Country for effective policing.

We continually work to maximize the limited resources that have existed in our area for years. We jointly operate emergency dispatch—911—with Roosevelt County, pooling our resources to eliminate duplication of services.

But we cannot face the new challenges of rapid development on our doorstep through creativity alone. We desperately need additional funding if we are to succeed. Ideally, we could immediately use six drug enforcement agents to help with the rising workload. According to the President’s budget request: “Drug use and distribution is a major factor in violent crime and seriously impacts the health and economic vitality of Indian communities. The abuse of prescription drugs is quickly becoming a crisis in Indian Country along with the illegal methods involved in obtaining these drugs.” This reality is borne out at Fort Peck. Our law enforcement estimates that nearly 80% of criminal conduct on the Reservation has a drug component, with assaults and burglaries arising predominantly out of drug use and addiction. We suspect that communities like Williston and Sidney are seeing corresponding statistics. Yet unlike states,

municipalities, and counties, the ability of Tribes to raise revenue for these crucial functions through taxes has been dramatically eroded by the courts.

To combat rising meth use, we have launched a media campaign and are targeting young people so that they understand the harm caused by meth use, but we lack resources. The BIA's own statistics are alarming: over a five-year period, drug related arrests in Indian Country increased nearly ten-fold from 443 arrests in FY 2008 to 4,289 arrests in FY 2013. After years of stagnation, Congress has finally started to increase appropriations for BIA law enforcement, tribal prosecutors, and tribal courts. But these programs still have not kept pace with the need. Drug cases worked in Indian country have increased five-fold from FY 2008 – FY 2013 (from 606 to 3,364 cases), and have increased 110% since FY 2011.

How can the Federal government expect us to combat rising crime rates with stagnant resources? It's simply not possible.

With oil and gas development coming to our region, the Administration's FY 2015 funding request of \$350 million for law enforcement and Tribal Courts (an increase of \$1.6 million or four-tenths of one percent (0.004%) is inadequate for us to address current policing, drug enforcement and tribal prosecution needs. The reemergence of meth use and growing prescription drug abuse is a public safety issue that will quickly overrun our Reservation and harm surrounding communities unless met with resources to combat it. We urge Congress to invest in Tribal law enforcement, drug enforcement and tribal court needs in ways that reflect our great challenges and limited resources needed to address this difficult social problem.

We have completed a modern adult detention facility and will soon move from the BIAs wholly unsatisfactory facility. However, at current funding levels proposed by the Administration, Indian country correctional facilities, including our new 42,000 sq. ft., 88-bed facility, can only be staffed at 40-50% of capacity. At the same time, there are no additional BIA funds for patrol officers, criminal investigators, prosecutors, probation officers or funds to provide temporary housing for the personnel we hire.

B. INDIAN EDUCATION.

The President's FY 2015 budget acknowledges that many Native communities exhibit above average rates of crime, high percentages of single-parent households and below average literacy rates. As a result of these and other conditions, such as overcrowded homes and high unemployment rates, "many students enter school unprepared." The Administration adds that "improving education and literacy in tribal communities is essential to improvement of community life, the promotion of economic development, improved employment opportunities and improved standards of living." We could not agree more.

To realize these goals, however, Congress must increase the President's FY 2015 budget for Indian Education. It adds just 0.007% to last year's BIE budget, which certainly does not even account for inflation. Congress should more than double the \$14.7 million proposed increase for Indian Education.

This month a young woman from our Tribes will be admitted to practice law by the Montana Supreme Court. She is the newest member of the Tribes' legal team. We are extremely proud of this young woman and her accomplishments.

But we are saddened by the fact that with a population approaching 14,000, she is only the 7th Tribal member to ever be admitted to the practice of law. Even fewer of our members have become doctors or engineers or accountants. Professions such as these need a strong educational foundation so that young tribal members can aspire to whatever profession they choose.

Our Tribal college, Fort Peck Community College, has achieved great success in educating our residents for jobs that exist in our area. For example, through cooperative arrangements with Rocky Mountain College and Montana State University, FPCC has educated dozens of teachers who now teach in our Reservation schools. We can do so much more with increased resources. Now is not the time to consider cuts to Tribal higher education funding; the federal government must be our partner and build a better future by investing in our Tribal colleges and our youth so they can achieve more.

C. BUILDING INFRASTRUCTURE FOR TODAY'S NEEDS AND TOMORROW'S.

Federal appropriations for rural water systems, transportation systems, and health and public safety facilities can and so often do make the difference between the success and failure of our Tribal initiatives. Adequate infrastructure will determine whether conditions on our Reservation improve or deteriorate. It is only with community stability that we can create an environment for future economic development on our remote reservation.

First, we urge Congress to support Rural Water Development Construction and Operation and Maintenance to ensure efficient construction of the Assiniboine and Sioux Rural Water System and the Dry Prairie Rural Water System. We thank the Senate for its support for \$55 million in “additional funding” for ongoing rural water projects included in the proposed Energy and Water Development appropriations measures. We hope that Congress will ultimately agree on the Senate’s wisdom in proposing this increase for FY 2015, and encourage your further efforts on this issue. With our share of additional funding—anticipated at \$14 million (\$3.249 million in the President’s FY 2015 budget request and \$10.7 million as the Assiniboine and Sioux/Dry Prairie share of the \$55 million)—we can complete the interconnection between the Tribes’ system and Dry Prairie’s at Porcupine Creek near Nashua in 2015 and begin to deliver treated water from Fort Peck to as far north as St. Marie and Plentywood in Dry Prairie’s service areas. Without this funding for ongoing water projects in FY 2015, construction funding for our Projects would be cut by two-thirds over FY 2014 enacted levels and leave us with only enough money to pay our overhead: No new construction would occur in 2015. As Senator Tester has pointed out, it will merely allow us to put gas in the truck.

Similarly, operation, maintenance, and replacement (“OM&R”) funding for the Tribes’ system needs continued support from the Senate. BIA has obligated only \$1.7 million of the \$2.5 million appropriated in FY 2014. Without justification, BIA has withheld \$800,000 in FY 2014 appropriations (Pub. L. 113-76) within the Construction Program Management subactivity to fund ongoing operation, maintenance and replacement duties we perform under our Indian Self-Determination contract. The BIA

has grossly underestimated our OM&R funding needs for FY 2015 by \$1.1 million (requesting only \$750,000). The \$750,000 figure is not supported by the BIA's own expert research. We ask that you pressure the BIA to immediately obligate the remaining \$800,000 to our ISDA contract to meet our FY 2014 contractual obligations, and add \$1.05 million to BIA's "Construction Program Management" line-item to provide \$1.8 million for required OM&R activities in FY 2015.

Moreover, should Congress pass H.R. 4420 and S. 715 this session, it will ensure the timely completion of authorized rural water projects that will provide adequate construction funds to better ensure the timely and cost-effective completion of our joint rural water systems project. Due to the careful and coordinated construction planning by the Tribes, Dry Prairie and the Bureau of Reclamation, project construction continues to operate under budget. This status, however, will not continue after 2015 if federal appropriations for rural water construction remain at inadequate levels.

Second, we urge you to increase Tribal Highway, Safety and Transit Funding in the Next Long-Term Highway Bill (MAP-21 Reauthorization). We are disappointed by the Senate EPW Committee's approval of S. 2322, the "MAP-21 Reauthorization Act of 2014," in May. The bill locks in a \$14 million cut to the Tribal Transportation Program MAP-21 made in 2012, authorizing \$450 million each year for six years (with no adjustment for inflation), down from \$464 million in the final years of SAFETEA-LU. Motor vehicle crashes continue to be the leading cause of death among Native Americans 0-19 years and nearly four times the national rate in the IHS Billings Area. Road surfaces, shoulder widths, signage, rurality and lack of access to trauma centers all contribute to the high fatalities Native American communities experience. This places a terrible strain on our already underfunded and inadequate IHS health care system.

As Congress considers a multi-year highway reauthorization bill, we ask that Congress: (1) restore the \$14 million reduction and provide an annual inflation adjustment to the Tribal Transportation Program (TTP) in parity with funding for the Federal-Aid Highway Program; (2) restore the Obligation Limitation Deduction exemption to the Tribal Transportation Program. The "ob limit" deduction has

withdrawn approximately \$300 million over the last 10 years from the IRR Program and TTP Program to the detriment of Indian country; and (3) enact sensible, no-cost streamlining measures to improve the delivery of program and funding to tribes (i.e., make tribes, like States, direct recipients of all USDOT discretionary and competitive grants, facilitate the transfer of State Federal-Aid and highway safety and FHWA ERFO funds to tribes).

Third, We urge Congress to provide special block grant funds to address the health and wellness, transportation, housing, law enforcement, environmental and employment training needed for well-planned and coordinated economic development in Indian Country, rural America, and in particular, communities in and around the Bakken.

The Fort Peck Tribes are working tirelessly to address the dire conditions that exist, especially among young people. American Indians in Montana have a diabetes rate that is 2.5 times higher than non-Indians. Forty-five percent of children screened at schools on our Reservation in 2007 were overweight or obese. The physician-to-patient ratio on our Reservation is 1 to 4,010. These figures are in addition to the increased crime and illicit drug use on the Reservation, which exist without any economic benefit, that I have mentioned already. We appreciate Senator Tester's recent acknowledgement concerning the "plague of diabetes" that continues to rampage through Indian country. It is killing our members and must be addressed.

To counter these conditions, the Tribes and its Health Promotion and Disease Prevention Program (HPDP) have raised \$7.5 million to build a \$22 million 60,000 sq. ft. "Fort Peck Wellness Center," a much needed healthcare and fitness center to address the physical, emotional, mental and spiritual wellness needs of our members while promoting the culture and traditions of the Assiniboine and Sioux Tribes.

But construction costs in our region are very high due to the competition in the Bakken and our contribution comprises roughly one-third of the estimated \$22 million construction costs to build and open the facility that would include space for 20 exam/counseling rooms, 13 offices for health/wellness service providers, physical and occupational therapy space, gym, weight and cardio room, pool, cultural and conference

space, administrative offices, and equipment storage. Without increased federal appropriations for construction grants, loans, loan guarantees or other innovative financing programs, the Tribes will be hard pressed to build and open this much needed facility.

Fourth, Congress must increase FY 2015 Appropriations to Interior Department's Office of Facilities Maintenance and Construction ("OFMC") for Indian Country facilities like schools, detention facilities and other critical governmental facilities. Nearly 3 years ago the Tribes entered into an Indian Self-Determination contract with the BIA in anticipation of operating a new jail that the Tribes have now completed through funding under the American Reinvestment and Recovery Act. However, we anticipate receiving only a fraction of the amount necessary to operate and maintain the new facility from OFMC. The Indian Self-Determination Act requires that the BIA fund operations and maintenance (O&M) for the new facility, but OFMC provides only a few dollars per square foot per year, which amounts to well less than half of the actual O&M needs.

Without funding to operate and maintain facilities, those facilities deteriorate and fall into disrepair. Once again, it falls to the tribes redirect our limited resources to make up for the shortfalls of the Federal government. When Congress appropriates fund to build infrastructure, it must ensure that there are resources necessary to operate them. These facilities are precious and must be maintained because we cannot replace them. The federal government must not remain indifferent to insufficient maintenance funding.

D. BRINGING DEVELOPMENT ACROSS RESERVATION LINES.

We believe that proper investments in building capacity on our Reservation and other communities surrounding the Bakken will promote responsible and sustainable economic development. However, Congress can ensure that this development does not stop when it reaches Indian Country.

First, Tribes need a real source of capital for economic development. Grants and loans are necessary and serve good purposes, but they alone do not have the capacity to produce measureable change in the conditions of Indian Country. Incentives for business investment in Indian Country, such as Accelerated Depreciation and the Indian

Employment Tax Credit, are important and should be made permanent. But they are also not enough.

Tribes also need the flexibility to pool federal funds from multiple agencies, like EDA, SBA and Rural Development, to carry out Tribally-designed economic development programs without conflicting rules and restrictions. The 477 model under the Department of Health and Human Services could become the model for federal funding as could proposed amendments to NAHASDA should Congress find the resolve to pass the legislation this year. We encourage you to establish a pilot project on our Reservation to allow us to pool funds from various sources to address growing needs relating to the Bakken.

Second, Congress must eliminate the problem of dual taxation in Indian Country. The Fort Peck Tribes were one of the first Tribes in the country to institute a severance tax on oil and gas development on our Reservation. However, the 1989 U.S. Supreme Court decision in *Cotton Petroleum Corp. v. New Mexico*, 490 U.S.163 (1989), has allowed States to tax certain activities by non-Indian companies on Indian and tribal trust lands. When *Cotton* is applied to allow States to impose taxes in addition to Tribal taxes, economic activity on tribal lands is discouraged. Tribal and State taxes are owed for energy development activities in Indian Country where only State taxes must be paid for energy development elsewhere. This double taxation creates a serious disincentive to energy and mineral development on Tribal lands and is inconsistent with well-established federal policies designed to promote Tribal economic development and self-sufficiency.

Our Tribal government has long urged Congress to overturn the poorly-decided *Cotton* decision and to bar State taxation of commercial activities on Indian and tribal trust lands, but Congress has repeatedly failed to act. Therefore, the only way we could avoid the disadvantage *Cotton* creates was either to forego our right to tax energy development on Reservation lands altogether or seek to enter into an innovative tax sharing agreement with State of Montana.

As an example of our Tribes' leadership in this area, the Fort Peck Tribes reached an historic tax-collection and tax-sharing agreement with the State of Montana in 2008.

While we are pleased with this agreement and believe it presents a model for other Tribes to follow, we also continue to believe it is a poor substitute for Congressional action. Simply put, the *Cotton* case was wrongly decided. I ask Congress once again to pass legislation returning full taxing authority to Tribal governments for commercial activities on Indian and tribal trust lands.

In conclusion, I would like to thank Senator Tester for his recent response to the National Northern Border Counternarcotics Strategy Report and commitment to “continue working to bring more attention and resources to the northern border and the Bakken so our communities are safe and our quality of life is strong.” For decades, the Fort Peck Tribes and its partners in the region have been leaders in enhancing communication and collaboration to address the “dearth of resources” in Indian Country confirmed in the report by the Office of National Drug Control Policy resources. Now we need Congress to fulfill its responsibility to supply those resources to make our communities safe.

I thank the Committee for the opportunity to present this testimony.