

Written Testimony of Governor Brian D. Vallo, Pueblo of Acoma
Oversight Hearing
"From Languages to Homelands: Advancing Tribal Self-Governance and Cultural
Sovereignty for Future Generations"
Senate Committee on Indian Affairs
December 9, 2020

On behalf of the Pueblo of Acoma (Pueblo), please accept this written testimony for the Senate Committee on Indian Affairs' (Committee) oversight hearing titled "From Languages to Homelands: Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations."

The Pueblo appreciates the opportunity to present information on this important topic to the Committee and your staff. For millennia, the Acoma people have worked to fulfill our inherent responsibility to maintain, live by, and protect our culture. This work is both internal, ensuring that we are keeping our language and culture alive, and external, protecting our traditions, cultural resources, and land from encroachment and desecration. The Pueblo is grateful for the opportunity to share our experiences with you. We hope that you will use this information to galvanize your efforts to uphold your trust responsibilities to Indian Country.

We would also like to take this opportunity to thank Vice Chairman Udall for his years of advocacy on behalf of the Pueblos of New Mexico and other tribes throughout the United States. Through not only his position as a Senator but also as a leader on this Committee, he has fought hard for Indian Country. We understand that this is his last Committee hearing, and we extend to him our sincere gratitude for his service.

I. Cultural Preservation

a. Tribal Cultural Heritage Items

The Pueblo has provided testimony to this Committee many times, explaining the problem of trafficking in tribal cultural heritage items, both domestically and abroad. The current federal laws often used to protect these items, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013, 18 U.S.C. § 1170, and the Archaeological Resources Protection Act (ARPA), 16 U.S.C. §§ 470aa–470m, have important limitations that leave many tribal cultural heritage items unprotected. Further, once a tribal cultural heritage item is exported—even if NAGPRA or ARPA prohibits it from being trafficked domestically—it is very difficult to stop trafficking and to bring it home. The Pueblo sees its sacred items set for sale domestically and abroad, and we are painfully aware of how current federal law falls short.

With regard to stopping domestic trafficking, the Pueblo has worked alongside the New Mexico congressional delegation to secure funding each year to support the Department of the Interior's (DOI) prosecution of crimes under NAGPRA and other related laws. But more must be done. Amending NAGPRA and ARPA to do away with loopholes would make prosecution and deterrence much more feasible.

With regard to international trafficking, the Safeguard Tribal Objects of Patrimony (STOP)

Act of 2019, S. 2165 and H.R. 3846, is one bill that works to close current gaps in federal law. In 2016, Congress through the PROTECT Patrimony Resolution, H.Con.Res.122, acknowledged these issues. In 2018, the Government Accountability Office released a report, GAO-18-537, that also acknowledged this problem. The Resolution supported the development of legislation and the report noted the need for explicit restrictions on the export of such items. The STOP Act addresses these issues.

Among other things, the STOP Act puts into place the elements necessary—an explicit export prohibition and an accompanying export certification system—to utilize already-existing international mechanisms to stop illegal trafficking of tribal cultural heritage items that NAGPRA or ARPA prohibit from being trafficked domestically. The STOP Act is a narrow bill designed to close one particular gap in federal law. It has broad support within Indian Country and bipartisan support within Congress, and it was generated with significant input from federal agencies with the necessary expertise in this area. In fact, many of the Members of this Committee are cosponsors of the bill.

The Committee held a hearing on the STOP Act on June 24, 2020, and on July 29, 2020, ordered the STOP Act to be reported favorably. During the markup before the Committee, the Committee adopted an amendment that incorporated expert feedback from tribal representatives, agency officials, art dealers, and others to ensure the STOP Act accomplishes its goals.

The House Natural Resources Subcommittee on Indigenous Peoples of the United States held a hearing on the STOP Act on September 19, 2019, and the House Natural Resources Committee is ready to accept and move the Senate-passed version of the bill.

We celebrate the strides the STOP Act has made. We ask the Committee to usher the STOP Act across the finish line.

b. Sacred Sites

The Pueblo has been heavily involved in fighting to protect sacred landscapes. This includes ensuring that development decisions are only made when sufficient cultural resource analysis has taken place pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.*, and the National Historic Preservation Act (NHPA), 54 U.S.C. §§ 300101 *et seq.* It also includes ensuring that sacred landscapes are properly considered when the federal government makes land management decisions pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*

Tribes are inherently sovereign governmental entities to which the United States owes a trust responsibility. Despite this status, the United States has stripped tribes of legal title to most of their aboriginal territory, often relocating tribes entirely off their homelands. This means many tribes have important interests tied to land to which they do not have legal title—including, for example, interests related to cultural resources. Without legal mechanisms in place, tribes often lack a voice in important federal decision making processes affecting land to which we have sacred ties. NEPA and the NHPA, when implemented correctly, provide tribes a seat at the table, and FLPMA requires the federal government to consider these issues when making public land use decisions.

The Pueblo has utilized these and other tools to fight to protect its sacred sites. One such example is the sacred landscape of the Greater Chaco Region. For over 2,000 years, Pueblo people lived in Chaco Canyon, eventually moving outward into the land the Pueblos currently occupy. Their time in Chaco Canyon, movement outward across the landscape, and continued interaction with Chaco Canyon after departure have both resulted in a dense concentration of cultural resources—including vast pueblo structures, shrines, other sacred sites, and natural formations with culturally relevant modifications and meanings—and a sacred interconnected landscape.

Yet, this sacred landscape has been riddled with oil and gas development, including on federal lands. A portion of the Greater Chaco Region is recognized as a National Historical Park and UNESCO World Heritage Site—called the Chaco Culture National Historical Park. Chacoan Outliers Protection Act of 1995, Pub. L. No. 104-11 (May 18, 1995) (designating certain outlying sites as "Chaco Culture Archaeological Protection Sites"); Pub. L. No. 96-550, Tit. V (Dec. 19, 1980) (creating Park) (now codified at 16 U.S.C. §§ 410ii–410ii-7). But much of the Greater Chaco Region is not protected, and further, many of the cultural resources in these unprotected areas have not been surveyed and documented.

The Pueblo has joined together with others to protect the Greater Chaco Region through all mechanisms available. It has engaged through NEPA and the NHPA in DOI's efforts to amend the FLPMA resource management plan (RMPA) that guides development decisions in the area—although COVID-19 has now made meaningful tribal consultation on the RMPA impossible. The Pueblo has also worked closely with DOI and Congress to secure funding for a tribally-led cultural resource study of the Greater Chaco Region, appropriated in the FY 2020 appropriation legislation, which the Pueblo hopes will inform DOI's development decisions. However, DOI provided only half of the funding appropriated by Congress to the Chaco Heritage Tribal Association (CHTA), an organization representing Pueblos and the Hopi Tribe, and thus additional funding is needed to complete the study the Pueblos believe DOI requires. Therefore, we urge Congress to appropriate additional funding for the CHTA's study.

The Pueblo has also worked alongside a long list of stakeholders to permanently protect a critical area of the Greater Chaco Region. It has advocated for the Chaco Cultural Heritage Area Protection Act, S. 1079 and H.R. 2181, which would withdraw from future mineral development federal land within an approximately 10-mile withdrawal area surrounding the Chaco Culture National Historical Park, including its outliers. The bill would explicitly preserve the rights of tribes and allottees to develop on their land. In the interim, and while the tribally-led cultural resource study remains pending, the Pueblo and other stakeholders have worked alongside the New Mexico Congressional delegation to secure a moratorium via the FY 2020 appropriation legislation to prevent DOI from carrying out mineral leasing in the withdrawal area pending completion of the study. Pub. L. No. 116-94, Div. D, Title IV, Sec. 442 (2019); *see also* 165 Cong. Rec. 11281 (Dec. 17, 2019). We urge Congress to maintain this moratorium in future appropriation legislation.

c. Tribal Historic Preservation Officers (THPOs)

Sacred sites are a vital part of our heritage, marking the paths of our existence and shaping our worldviews as Pueblo People. In most, if not all situations, the only way to identify these sacred

sites, which may exist miles from our present villages, is through Native eyes. We must be involved in Section 106 and NEPA decision-making processes from the outset. Otherwise, there is a heightened risk that outside evaluators will misidentify sacred sites and contribute to the loss of irreplaceable aspects of our cultural identity. We urge the Committee to work with tribal leaders on identifying ways to strengthen meaningful tribal involvement in these critical review processes.

In recent years, an increasing number of tribal governments have established THPOs equivalent to state programs under the NHPA to lead these activities. Federal funding, however, has not kept up with this expansion. It is thus difficult for tribal governments to meet their preservation compliance duties and responsibilities, which include working with non-tribal governments on site identification, conducting surveys, compiling data and samples, documenting best practices, and assisting in museums and research centers that preserve and share tribal material culture. The expansion of THPO positions across Pueblo and Indian Country is a positive development in advancing tribal self-governance and cultural sovereignty. Additional federal support for the THPO program is needed, however, to facilitate this invaluable work.

d. Wildlife and Wild Spaces

In the Pueblo worldview, we are stewards of the earth's natural resources—land, water, air, minerals, and wildlife. Acoma supports policy and legislation that provides for the protection and management of all these cultural and natural resources, as well as a requirement for federal-tribal collaboration when these resources are affected in any way. We support a policy that requires in-depth collaborative efforts to arrive at mutual outcomes where natural resources on or near tribal lands could be destroyed or diminished.

The effective management and conservation of our natural resources is not limited to the waters, soil, and trees that form the rich landscape of Pueblo Country. We must also account and appropriately care for the diversity of wildlife that is meaningful to our culture and essential to maintaining our ecosystems' equilibrium. Further, each species possesses its own inherent value and should be protected by the federal government. The Bureau of Indian Affairs Endangered Species Program provides tribes with the technical assistance and financial resources to protect endangered species on tribal lands through natural resources restoration and management, as well as economic development. This program, along with those housed within the Department of Fish and Wildlife Services, will only continue to gain in importance as wildlife habitats are disrupted and the effects of climate change threaten species' welfare.

e. Climate Change

Climate change poses an existential threat to our Pueblo beliefs, culture, and identity. Acoma is designated as a National Trust Historic Site. As such, our Pueblo itself is recognized as a finite, irreplaceable resource. The surrounding land and its natural resources form the essence of who we are as Pueblo People across generations: our origin stories are rooted in its geographic features, our contemporary life finds sustenance in its flora and fauna, and our future generations will shape their identity and dreams in the light of its plateaus. This intimate relationship is replicated in tribal communities across the country. For all of us, climate change poses a disconcerting and tangible

threat to the continued existence of our traditional practices and unique cultural identities.

Across Pueblo Country, we have experienced the harmful effects of major wildfires, droughts, and floods. Invasive species, drought conditions, disappearing tree lines, intense wildfires, and accelerated rates of erosion are also taking an increasing toll on our agricultural and natural resources. The ecosystems and well-being of our environment are being dramatically affected – and sometimes permanently altered – with each new occurrence. We need only look to our sister Pueblo, the Pueblo of Santa Clara, to see the fundamental changes wrought by natural disasters heightened by climate change on the Santa Clara Creek and Canyon ecosystems. It will take generations for Santa Clara's traditional homeland and spiritual sanctuary to recover from the devastation and, because of climate change, it is not clear how that future will unfold.

Our Earth Mother is our homeland; it is the place we have been entrusted with since time immemorial. We devote the resources we can to the healing of our land to protect our community, and, through cultural practice, we care for the vast landscapes beyond our Pueblo, the oceans, air, water, and the sacred core of the Earth, however, we do not have the resources to do it alone. The federal government must take steps to effectively manage the meta-factors that drive climate change—such as worldwide deforestation, fossil fuel consumption, and greenhouse gas emissions—before it is too late. Acting on climate change today is a moral and legal imperative, essential to all of us as Pueblo People and Americans during a period of what now appears to be almost inevitable rapid climate change.

Two critical but underutilized and underfunded federal programs can help tribes in this existential battle. The DOI Tribal Climate Resilience and Cooperative Landscape Conservation Programs equip tribes with tools to manage resource stressors, develop adaptive management plans, and engage in intergovernmental coordination. Access to these resources is limited, however, by federal funding. Prioritization of these programs would help us protect our homelands for future generations.

II. Language and Arts

a. Esther Martinez

The Pueblo worldview is contained in our languages. In addition to maintaining tribal life ways, we have established various programs and methods in order to revitalize and preserve what are considered some of the most ancient and distinct languages in America. Some Pueblo languages are so unique they are not spoken anywhere else in the world. The Esther Martinez Native American Languages Preservation Act is a singular piece of legislation benefitting indigenous people and communities. It has empowered tribes to make significant strides in revitalizing Native languages across the United States. Biennial evaluations by the Department of Health and Human Service, where Esther Martinez programs are housed, show that grantees increase the abilities of more than 4,000 youth and adults to speak a Native language on a yearly basis. These same grantees train 170-280 Native language teachers each year.

The Esther Martinez Act is also a potent tool for tribally-driven programs to address the

impacts of historical trauma on their communities. Native language instruction and the implementation of culturally based education programs are proven to be critical factors in fostering community resilience and Native student confidence and success in later years. For example, students in language immersion programs demonstrate substantial improvement in their academic performance and testing. Data shows that Native students excel in S.T.E.M related subjects largely attributable to their language skill set. Native languages offer a unique thought process and a way to interpret the world and its interactions.

Our Native languages are the adhesive that holds our cultural, religious and traditional beliefs together and enables those beliefs to be passed on. As communities that have faced prolonged and insidious efforts to eradicate our Native identities, the support offered by the Esther Martinez Act should be maintained and expanded going forward. Acoma urges this Committee to reauthorize the Esther Martinez Act to strengthen indigenous cultural expression and facilitate the transmission of Native languages to current and future generations.

b. Durbin Feeling Native American Languages Act of 2020

Acoma Pueblo supports S. 4886, the "Durbin Feeling Native American Languages Act of 2020," that would amend the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages. The amendment would require the Administration for Native Americans (ANA) to conduct a survey of Native languages. Key data to be collected would include information on language vitality, current language revitalization/maintenance practices, and unmet needs for advancing these efforts, among other topics. Critically, the survey would have to be designed in close consultation with tribal leaders and linguists to ensure that data collection is completed in a culturally-sensitive manner and with guarantees of ongoing tribal input on covered topics. The survey would be conducted every five years and result in a comprehensive report to Congress on the status of Native languages in America.

To our knowledge, there is no federal entity engaging in regular and compendious data collection or reporting on Native languages. S. 4886 would fill this informational gap. Access to linguistic data—collected as it will be in a tribally-driven and culturally sensitive manner—would help tribes in shaping their language revitalization programs. It would also serve as a beneficial tool for ensuring that federally funded Native language initiatives are receiving the necessary funding and support to carry out their missions. We look forward to working with the Committee on advancing this valuable piece of legislation.

c. Administration for Native Americans

Since its establishment in 1974 pursuant to the Native American Programs Act, the ANA has served as a valuable resource in helping Native communities achieve their goals in self-sufficiency and cultural preservation. The ANA provides discretionary grant funding for community-based projects, as well as training and technical assistance. The beauty of ANA grants lies in the control that is given to tribal applicants in identifying an area of need within their community and developing a plan of action to address it with federal funding. The singular focus on community-based and community-driven projects that promote the exercise of self-determination and cultural flourishing makes the ANA unique within the federal system.

Acoma has over a decade of experience working with the ANA. Our first award was a planning grant in 1996 to establish a community-based language initiative known as the Acoma Language Retention Program. The Program's focus was on re-strengthening the link between the Keres language and Acoma cultural practices through an ambitious plan for language revitalization aimed at younger generations in the community. The community identified the widening disconnect between the number of knowledgeable Keres speakers, particularly among Acoma youth, and the level of engagement with our traditional cultural practices as a critical issue. ANA provided financial support enabling us to establish its first language program tasked with finding solutions to this issue.

The ANA was available to us as a resource throughout the grant process. Critically, they limited their assistance to the technical aspects of the grant, such as data analysis and reporting final outcomes. It was left to Acoma to decide what was appropriate in carrying out the Program's goals. ANA operates on the understanding that tribal grantees have a specific vision for their communities and know what will work best for them. It does not dictate how federal funds should be used. Instead ANA grants are founded on and seek to advance the expression of our sovereignty by focusing on project outcomes and facilitating the realization of grantees' self-determination goals. While other federal funding sources include self-determination as one of many factors to be considered in a grant application and implementation process, the ANA is one of the rare federal partners that makes it the determinative factor in a grant award.

The first generation of children to participate in two-week summer language and culture immersion programs we subsequently developed with ANA grant funds are now adults and parents. Many have become key participants in the socio-cultural traditions of the Pueblo. Those of us from the community have observed how those children have grown up and been shaped by the availability of Keres cultural programming. Now, the children of that first generation of beneficiaries have the opportunity to participate in Keres language classes, both in the community and in some local schools, are following in the footsteps of their parents and relatives in being integrated into the cultural practices and linguistic tradition of our community. We have been made stronger from the inside because of it. The benefits of that original ANA short-term planning grant continue to translate into long-term positive gains for our community.

We have also been able to share the strength and beauty of our community with others pursuant to an ANA Social and Economic Development Strategies (SEDS) grant for the planning and development of the Sky City Cultural Center and Haak'u Museum. Acoma Sky City is the heart of our community. We have lived at our mesa-top home for at least 1000 years, making it the oldest continuously inhabited community in the United States. Acoma religious, cultural, and social life revolves around Sky City, both on a daily basis and during times of ceremony. ANA funding has been instrumental in preserving this cultural resource for present and future generations. We encourage Congress to maintain strong support for the ANA to help tribal nations achieve their long-term linguistic and cultural goals, critical to the fulfillment of our inherent responsibility.

d. Indian Head Start

Indian Head Start has been a vital part of Head Start since its inception in 1965, and it is currently the most important and successful federal program focused on the needs of Native youth

and families in early childhood education. Currently, Indian Head Start and Early Head Start serves 22,379 children in more than 200 separate programs across 26 states. Our programs are unique in that they tend to be located in rural communities that are often affected by hardships such as poverty, high rates of crime, limited or non-existent transportation networks, and limited financial and qualified personnel resources. Indian Head Start strives to address these challenges through a focus on the whole individual—through education, health, language, and culture—as well as on the whole family and community, creating a vibrant and safe learning environment for our Native children.

Indian Head Start is founded on a three-generational approach provides an array of services tailored to meet the needs of children, parents, and (increasingly) grandparents. For example, programs may offer family nutrition or literacy workshops for parents and guardians. For Indian Head Start, this model is especially important given the critical role the program fills in addressing the unique needs of Native children, parents, and communities. Indian Head Start supports Native parents by providing access to job assistance trainings, healthcare services, and a reliable source of safe and nurturing early childhood education. Native children are empowered with self-esteem, high quality educational services, safe space, and nutritional meals to support their healthy development.

Further, through the integration of culturally and linguistically appropriate classroom practices, Indian Head Start enables Native communities to take the lead in preserving, revitalizing, and reclaiming their heritage. This is achieved most commonly through the integration of elders into the classroom. Elders are teachers and role models in their communities who impart tradition, knowledge, culture, and lessons—all of which have been proven to be key contributors to Native student resiliency and success in later life. Further, for many communities, elders represent the last stronghold of tribal languages and traditions that were very nearly lost during the boarding school and termination eras of federal Indian policy. Through Indian Head Start we have been able to make tremendous strides in sowing the seeds of language revitalization and educational success for present and future generations.

III. Co-Management of Public Lands

The stewardship of land, minerals, water and other natural resources is key to both the economic well-being of Pueblo People and to our cultural survival. Every day, Acoma and sister Pueblos strive to balance these interests.

The vast majority of federal lands are carved out of tribal ancestral homelands. The historical and spiritual connection of tribes to federal lands was never extinguished. Courts acknowledge that tribes retain rights to hunt, fish, and gather on federal lands. Federal laws acknowledge the continued right of tribes to access federal lands to pray, conduct ceremonies, and gather medicinal plants. Federal laws and executive orders also require federal land managers to consult with tribal governments prior to taking action that would affect the integrity of federal lands. For example, the Pueblo of Laguna worked with the Department of Agriculture and the Forest Service as a Cooperating Agency in the preparation of an Environmental Impact Statement for the Cibola National Forest Plan Revision. Such beneficial partnerships better ensure that tribal interests are taken into consideration in the development of the federal land resource and management plans.

In addition, there are existing federal laws that can facilitate the successfully co-management of public lands to the advance of tribal sovereignty. For instance, the Tribal Forest Protection Act (TFPA), Pub. L. 108-278, provides authorities to tribal governments to co-manage federal lands

bordering or adjacent to tribal lands to better protect trust and federal environmental resources from fire, disease, and other threats. It also advances tribal and federal interests in the development of land resource and management plans. Empowering tribal governments as caretakers to protect tribal, trust, and federal resources through co-management arrangements is a smart, cost-saving policy. Yet, efforts to implement the TFPA's beneficial provisions have been impeded. We recommend that Congress direct the Interior to prioritize TFPA implementation within the U.S. Forest Service to facilitate more beneficial partnership under this existing law.

IV. Government-to-Government Tribal Consultation

All interactions between the federal government and tribes lay over the sacred government-to-government tribal consultation obligation. For without adherence to this obligation, the federal government cannot support our work to advance our tribal self-governance and cultural sovereignty for future generations.

The United States has a duty to consult with tribes when it undertakes any action that affects us, even when those actions are aimed at aiding our exercise of sovereignty. This duty grows from our status as sovereign governments, the government-to-government relationship the United States carries on with each tribe, and the trust obligations it owes.

In furtherance of its obligations, the Executive Branch has taken on a duty to consult with tribes on federal policies that have tribal implications. Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 9, 2000). Each agency was called on to create its own consultation policy. President Barack Obama, Memorandum for Heads of Executive Departments and Agencies, re Tribal Consultation (Nov. 5, 2009) (setting forth process for implementing Exec. Order No. 13175). DOI, for example, enacted a tribal consultation policy under this mandate. Dep't of Interior, *Department of Interior Policy on Consultation with Indian Tribes*; see also DEP'T OF INTERIOR, Sec. Order No. 3317, DEPARTMENT OF THE INTERIOR POLICY ON CONSULTATION WITH INDIAN TRIBES (2011). Further, in many situations, such as under the NHPA, tribal consultation is also statutorily mandated.

We urge the Committee to continue to engage in open and honest dialogue with tribes as it pursues legislation and policies that affect us. And we ask that you help those Members and Committees of Congress less steeped in this sacred duty to understand their tribal consultation obligations.

We also strongly recommend continued support for tribal advisory committees at federal departments and agencies as a highly effective means of advancing the government-to-government relationship and providing substantive feedback on agency programs and policies affecting Pueblos and Indian Country. Tribal advisory committees are not a substitute for tribal consultation. They do, however, offer a vital source of ongoing discourse on the development and implementation of federal policies impacting tribal communities and people. They serve to strengthen the government-to-government relationship and, when done right, streamline the provision of federal programs and tribal services to the long-term benefit of our communities and families. It must continue as a driving force within the federal government going forward.

Dá'wá'éh; Thank you.