

**Testimony of Arthur “Butch” Blazer, President
Mescalero Apache Tribe**

**Before the Senate Committee on Indian Affairs
Oversight Hearing on “The 30th Anniversary of Tribal Self-Governance: Successes in Self-
Governance and an Outlook for the Next 30 Years”**

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Introduction

Good afternoon Chairman Hoeven, Vice Chairman Udall and Members of the Committee. My name is Arthur “Butch” Blazer. I am President of the Mescalero Apache Tribe (Mescalero Apache or Tribe). Thank you for this opportunity to testify on the past success and the future of the Tribal Self-Governance program.

Background: the Mescalero Apache Tribe

Long before the first European settlers came to this land, our Apache ancestors roamed the Southwestern region, from Texas to central Arizona and from as far south as Mexico to the peaks of Colorado. Our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/Three Sisters Mountains, and Oscura Peak, protected our Nation and nourished our people. We traveled the rough Apacheria through mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our ancestral homelands, the Mescalero Apache Tribe entered into the Treaty with the Apaches with the United States on July 1, 1852. The Treaty promised the Tribe a permanent homeland on small portion of our aboriginal territory. The Mescalero Apache Reservation (Reservation) was later established by a succession of Executive Orders in the 1870’s and 1880’s. Our Reservation spans 720 square miles (460,405 acres) across south-central New Mexico and is home to approximately 5,000 tribal citizens and 200 non-Indian residents.

The original Reservation boundaries encompassed lands that are now held in federal ownership, including the Lincoln National Forest (LNF) and Bureau of Land Management (BLM) lands bordering our Reservation. The Mescalero Apache people have maintained strong ties to these ancestral homelands. We continue to gather plants important to our traditions and conduct ceremonies on adjacent and nearby federal lands. To strengthen our ties to these lands and to exercise input into their management, the Tribe has entered into Memoranda of Understanding (MOUs) with federal agencies, including the U.S. military and U.S. Forest Service (USFS).

Indian Self-Determination and Tribal Self-Governance

While the Mescalero Apache Tribe did not initially embrace Indian Self-Determination or Tribal Self-Governance, we have entered into a number of Self-Determination contracts with the Bureau of Indian Affairs (BIA) over the years, including agreements to operate our tribal forestry program and tribal court system.

Our leadership, like many treaty tribes, believes that the Treaty our ancestors signed with the United States, ceding vast areas of our ancestral homelands, compels on the United States sacred

obligations to provide for the general health and welfare of our people. Far too often, the United States has directly abrogated or ignored these solemn treaty promises.

Congress enacted the Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) and later the Tribal Self-Governance Demonstration of 1988 (TSG) to offer tribal governments greater control over federal programs and services designed to meet the United States' treaty and trust obligations to Native communities. While these mechanisms sometimes ask Indian tribes to do more with less, the programs have improved over the years—thanks in large part to Supreme Court decisions that force the government to fully fund contract support costs, and congressional appropriations that have implemented those decisions.

Expand Indian Self-Determination and Tribal Self-Governance to USDA

USDA administers a wide range of programs and activities that directly impact Indian tribes and tribal lands. Many USDA programs lend themselves well to tribal management under contracting and compacting authority. My testimony today focuses on expanding Self-Determination and Self-Governance authority for tribal governments to enter agreements with USDA-Forest Service. However, as noted below, we also urge Congress to consider extending Self-Determination and Self-Governance authority to a wide range of USDA programs.

Regarding federal forests, USDA has acknowledged that the vast majority of federal forest lands are carved out of the ancestral homelands of Indian tribes. The historical and spiritual connection of tribes to federal lands was never extinguished. Treaties, federal court decisions, Executive Orders, laws, and regulations affirm the retained right of Indian tribes to hunt, fish, gather, and access sacred places and exercise Native religion on off-reservation federal lands.

As noted above, the Mescalero Apache Tribe's initial Reservation and ancestral homelands include the Lincoln National Forest and nearby BLM lands. Evidence of our connection to LNF is found throughout the Forest, from rock art to mescal pits to the Apache Trail, which was a prime route for water in the Sacramento Mountains. These Mountains are home to the Mountain Spirit Dancers—holy beings that ensure our well-being. In addition, the Tribe has invested significant resources in Ski Apache, a resort owned and operated by the Tribe pursuant to a special use permit. Ski Apache is located on LNF lands bordering our Reservation.

Because of these historic ties and investments, the Mescalero Apache Tribe and many Tribal Nations similarly situated hold considerable interest in co-managing these nearby federal lands. One method of enhancing tribal control and management of such lands would be to enhance the Tribal Forest Protection Act to authorize USDA-Forest Service to enter into Self-Determination contracts or Self-Governance compacts with Indian tribes.

Mescalero Apache Forest Management Practices on Tribal and Federal Lands

For centuries, the Mescalero Apache Tribe has managed our forests holistically to promote the growth of food and medicinal plants, to manage the wildlife in our forests, and to protect our lands from invaders. We view our forest as a dynamic living entity. It provides water, food, shelter and a means of employment and revenue for Tribal citizens. Today, the Mescalero forest remains one of the best-managed, healthiest forests in the Southwest.

Operating on a shoestring budget, the Tribe's Division of Resource Management and Protection has been able to provide high quality forestry services on the Reservation. While the local BIA agency oversees the overall management of the forest on the Reservation, many of the projects, such as thinning for hazardous fuels reduction and timber marking, are completed by the Tribe.

The progressive working relationship with BIA Forestry and the implementation of ISDEAA contracts to take on some forestry services has allowed the Tribe to ensure continued success in forest management.

The Tribe has treated approximately 42,000 acres, out of a total Reservation land base of 460,405 acres, through commercial harvest. Through funding allocated under the Interior Department's National Fire Plan and other federal programs starting in 1999, the Tribe has treated an additional 59,094 acres through hazardous fuels reduction projects.

While the Tribe has worked hard to maintain a healthy forest on our Reservation, for many years Tribal leadership has been concerned about the very dense forest conditions in LNF, which borders our Reservation on three sides. Due to the unhealthy condition of the LNF, we have seen the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and have watched as large swaths of USFS lands die around us.

Lessons Learned from the Little Bear Fire of 2012

The Little Bear Fire of 2012 provided a prime example of the benefits of strong tribal government forest programs, and the need to strengthen tribal government management of federal lands.

The Little Bear Fire started modestly on June 4, 2012. Lightning in the White Mountain wilderness in LNF sparked the initial small fire. Over the first five days, LNF deployed relatively few assets to contain what it thought was a non-threatening forest fire. Firefighters worked only day shifts, air tanker resources were not utilized and helicopter water drops were minimal. On the fifth day, the fire jumped the fireline and high winds turned the fire into an inferno. That evening the fire blazed through the Ski Apache Resort, and crossed onto Tribal lands.

Within two weeks, the Little Bear Fire burned 35,339 acres in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire also destroyed more than 255 buildings and homes in the region and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages, exceeded \$100 million. It could have been much worse.

In 2008, the Tribe completed an important, cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Little Bear Fire away from the steep, densely forested terrain of the North Fork of the Rio Ruidoso, and prevented complete devastation of the Village of Ruidoso source waters.

A comparison of the impacts of the Little Bear Fire on the healthier tribal forests and much less healthy LNF provides ample justification to authorize USDA-FS to engage in Self-Governance contracting / compacting authority with Indian tribes to manage federal forests.

Ski Apache: Mescalero Apache Investments in the LNF

Since 1960, the Tribe has leased approximately 860 acres of LNF lands under two special use permits to establish, manage, and operate Ski Apache. Ski Apache is located on the northern border of the Reservation.

Over the past 58 years, the Tribe has made significant improvements to the Resort. Recently, the Tribe invested \$15 million to triple the ski lift capacity at Ski Apache. In 2014, the Tribe invested more than \$2.6 million for non-ski, year-round recreation at Ski Apache, including

several world-class zip lines. Ski Apache employs up to 350 people during the ski season and contributes millions of dollars to the local economy.

Ski Apache incurred more than \$1.5 million in damages from the Little Bear Fire. Because of the volume of trees that were burnt, there existed a real danger of flooding that could have destroyed buildings, completely re-shaped the existing ski runs, and taken out access roads. Due to additional investments and work conducted by the Tribe, major flooding was avoided.

The Forest Service gave little consideration to the importance of Ski Apache or the overall local economy in its response to the Little Bear Fire and in its forest management plans. Closure of Ski Apache for a single season would devastate the economies of both the Village of Ruidoso and the Tribe. Despite the importance of Ski Apache, even after the Fire, LNF prioritized other areas for fire rehabilitation efforts instead of Ski Apache.

Under the current arrangement, the U.S. Forest Service administers the lands that encompass Ski Apache and has the legal responsibility to respond to emergencies. However, it has been the Tribe that has acted as the primary first responder in many emergency situations.

At the same time, the Tribe, as a permittee, is solely responsible for rehabilitation and all related costs. When it came to the Little Bear Fire, the Tribe first had to gain approval from LNF before taking such action. Ski Apache quickly submitted a request to LNF to begin rehab efforts. It took LNF months to respond. While, LNF committed to cleaning piles of burned trees, it took over 18 months for that action to occur. If the Tribe had not taken the initiative to protect our assets, they would have been lost in the Little Bear Fire.

These delays would be avoided if the Tribe had an active Self-Determination/Self-Governance agreement with the Forest Service. To protect our investments and our sacred places, the Tribe has a considerable interest in taking on a greater management role of the LNF and preventing future wildfires and resulting flooding that would devastate the Resort.

USDA – Forest Service Programs

Congress enacted the Tribal Forest Protection Act of 2004 in response to devastating wildfires that crossed from federal onto tribal land in the summer of 2003. TFPA provides a tool for Tribes to propose work and enter into stewardship contracts and other agreements with the Forest Service or Bureau of Land Management to reduce threats on federal lands adjacent to Indian lands. The Forest Service alone shares approximately 2,100 miles of contiguous boundaries with Indian tribes. The TFPA authorizes the Secretaries of Agriculture and Interior to give special consideration to tribally-proposed projects on federal land bordering Indian trust land.

From 2004-2008, only 10 TFPA contracts and agreements were awarded. These contracts and agreements covered 23,230 acres and 51.5 miles of boundary. USFS-tribal TFPA stewardship contracts have been limited in scope, focusing on hazardous fuels reduction and invasive species treatment. This disappointingly slow implementation of the TFPA continues to thwart the Act's intent, leaving tribal forests more vulnerable to catastrophic wildfire, disease and infestation from adjacent federal public lands. TFPA partnerships should be aggressively expanded.

A case in point of the positive but limited impact of the TFPA is the stewardship contract that the Mescalero Apache Tribe entered into with the USFS.

Through the "16 Springs Stewardship Contract" in 2006 with LNF, the Tribe conducted hazardous fuel treatment and reduction of more than 6,300 acres of LNF lands mostly located

along the shared boundary between our Reservation and LNF. Due to the Tribe's efforts, these USFS lands are much healthier now than they were before. Added benefits of the stewardship contract included strengthening connections with our ancestral homelands, the resulting improved relationship between Mescalero forest personnel and LNF staff, and gaining a better understanding of the management constraints placed on the LNF.

However, the stewardship contract ended far too early. Many thousands of additional acres of dense forest within LNF remain untreated and continue to threaten the lives and property of Tribal members and the general public. Another major drawback of stewardship contracts is the contracting tool itself. We were required to enter into a "goods for services" contract, which does not recognize tribal sovereignty or the federal-tribal government-to-government relationship.

Authorizing USDA to enter into Self-Determination contracts and Self-Governance compacts with Indian tribes will improve on the TFPA, providing stability and consistency to tribal government's ability to access and implement the program. Because the LNF and other nearby federal lands are part of our ancestral homelands, the Tribe must be able to offer meaningful input into the management of these lands that goes before and beyond NEPA. Tribes need to have a greater presence in the development of forest management strategies.

To accomplish this goal, we urge Congress to take the TFPA to the next level—and expand the program to authorize Self-Governance-type contracts and compacts between Indian tribes and the U.S. Forest Service and BLM. Several recent bills include the authorization needed, including Sen. Daines' bill, S. 3014, the Tribal Forestry Participation and Protection Act (114th Congress), H.R. 2936, the House-passed Resilient Federal Forests Act (115th Congress), and Section 8403 of the Agriculture and Nutrition Act of 2018 ("the 2018 Farm Bill") as introduced by House Agriculture Committee Chairman, Rep. Michael Conaway (R-TX).

While the Mescalero Apache Tribe supports these provisions that would authorize Self-Determination/Self-Governance agreements with the USDA, we ask that bill text or report language be added to strengthen this proposal.

The TFPA Self-Governance program should carefully limit the agency's ability to reject tribal requests to compact or contract. The program should also ensure that the work produced by the tribal-run program is incorporated into the agency's decision-making process. As with ISDEEA programs, the program should convey Federal Tort Claims Act protection to the tribe and tribal employees. And finally, the program should be fully funded—including the provision of all contract support costs.

Once tribes are able to enter into contracts and compacts with USDA-FS, tribal governments and tribal government priorities will truly become a part of the agency decision-making process, which impacts the exercise of tribal treaty rights, protection of Native sacred places, and protection of tribal investments on federal lands.

USDA Food Assistance Programs

Another area that lends itself to tribal Self-Determination and Self-Governance authority is the USDA's food assistance programs. The mission of USDA's Food Nutrition Service (FNS) is to improve food security and reduce hunger by providing children and low-income individuals access to food, a healthy diet, and nutrition education. FNS administers 15 Federal nutrition assistance programs.

States (and in some cases local county governments), the District of Columbia, and at least some U.S. territories can directly manage FNS programs. FNS conveys a number of policy options that enable state agencies to adapt SNAP and other FNS programs. State agencies have developed innovative methods of integrating multiple human services programs, including using the same caseworkers for multiple programs to developing shared IT and eligibility systems. State and local governments also integrate SNAP with Medicaid, TANF, and other federal programs. This flexibility helps local governments better target benefits to those most in need, streamline program administration and field operations, and coordinate SNAP activities with those other federal need-based programs.

As a result, States have flexibility to adapt their organizational structure to administer SNAP, which allows the States to serve the unique needs of their populations. States may opt to centralize or to decentralize their administrative responsibilities for SNAP, including deciding whether to administer the program at the State, county, local, or regional level.

SNAP is by far the largest of the food assistance programs administered by USDA. FNS legal authority does not permit Indian tribal governments to directly manage SNAP or a variety of other FNS programs. *(Note: tribes are eligible to administer the Food Distribution Program on Indian Reservations, the Commodity Supplemental Food Program, and the Women, Infants, and Child program).*

Section 4004 of the 2014 Farm Bill, required USDA to review the feasibility of extending Tribal Self-Determination and Self-Governance to SNAP and several other USDA food assistance programs. USDA released its Final Report, “Feasibility of Tribal Administration of Federal Nutrition Assistance Programs”, in July of 2016.

<https://fns-prod.azureedge.net/sites/default/files/ops/TribalAdministration.pdf>.

The Report found that nearly all tribes participating expressed interest in administering federal nutrition assistance programs as an expression of sovereignty and to provide direct service to tribal citizens in need of food assistance. Tribes responded that the ability to provide flexibility in the management of nutritional quality of the food provided and culturally appropriate programming and service delivery were also critical. It also found that the great majority (70%) of tribal governments had the needed experience to take on this authority. Tribal government experiences stemmed from longstanding Self-Determination and Self-Governance agreements with Interior agencies as well as administration of federal assistance programs offered by the Departments of Health and Human Services, Education, HUD, and other agencies.

The U.S. Constitution acknowledges that Indian tribes are separate distinct governments, on par with the Foreign Nations and the Several states. The USDA’s food assistance programs should acknowledge the governmental status of Indian tribes. Tribes should be afforded the ability to directly manage all federal nutrition and feeding programs. Elected tribal leaders and tribal program directors are best able to ensure that food security needs in their reservation, rural, and very remote communities are met. Allowing tribes to take over these functions from the federal government will improve efficiency, reduce regulatory burdens, and support tribal self-governance and self-determination.

This can be accomplished by either adding language modeled after the ISDEAA and TSG to authorize USDA to enter into contracts and compacts with federally recognized Indian tribes to active bills that seek to amend the ISDEAA (S. 2515 for example) and / or to the 2018 Farm Bill.

Conclusion

We urge Congress to expand Self-Determination and Self-Governance authority to a wide array of USDA programs. Doing so will increase consistency and efficiency for tribes with all USDA agencies and programs and ensure tribal administration and control of the delivery of the wide array of these essential government functions.

The Mescalero Apache Tribe believes that expanding contracting and compacting authority to USDA agencies and programs holds the potential to strengthen tribal sovereignty. Authorizing USDA-FS to enter into compacts and contracts with Indian tribes, like the Mescalero Apache Tribe, that have deep connections to federal forests will improve access and connection to tribal ancestral homelands, help protect tribal assets on federal lands, and better protect Indian reservation lands.