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2401 12th Street NW Suite 200 N Albuquerque NM 87104

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay
Owingeh

Picuris

Pojoaque

Sandia

San

Felipe

San

Ildfonso

Santa Ana

Santa Clara

Santo

Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

Written Testimony of Paul Torres
Chairman of the All Pueblo Council of Governors

“Identifying Indian Affairs Priorities for the Trump Administration”

Senate Committee on Indian Affairs
Oversight Hearing
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Thank you Chairman Hoeven, Vice Chairman Udall, and members of the Committee for this opportunity to provide testimony on Identifying Indian Affairs priorities for the Trump Administration. The All Pueblo Council of Governors in New Mexico thank you for your dedicated work as champions of Indian Country in the United States Senate.

My name is Paul Torres and I am the Chairman of the All Pueblo Council of Governors (APCG), which is comprised of tribal leaders (Governors) from the 19 New Mexico Pueblos and the Pueblo of Ysleta Del Sur in El Paso, Texas. I also serve as the Governor of the Isleta Pueblo. The APCG is the oldest Native American group of tribal leaders, constituted and formed in 1598. Collectively, the leadership of the APCG is respectful of the historic relationship between the Pueblos and the U.S. Government. In the spirit of cooperation, based on respect and full consideration of the sovereign status of tribes, the leadership of the Pueblos wishes to establish a meaningful relationship with the new Administration. In order to maintain trust and good will, the All Pueblo Council of Governors offer these statements of concern and policy considerations for the benefit of the Trump Administration.

Introduction. The history of the Pueblos has its beginnings over 10,000 years ago. Many still occupy their traditional homelands, with their original governmental structures sound, their languages, ceremonies, and their belief systems still intact. They have a long and varied history dealing with foreign governments such as Spain and Mexico. Unlike other tribes in the United States, Pueblo land status is unique and falls under the 1848 Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1948). The leadership of the All Pueblo Council of Governors stands committed to strengthening their relationship with the United States Government. We look forward to working with the new Administration to collectively tailor an approach that recognizes and acknowledges tribal sovereignty, assures a continuous government to government relationship, allows tribal economies to achieve their full economic potential, is respectful of traditional belief systems and draws on the intellectual capacity, talent and contributions of Pueblo People to the growth and development of this great country.

1. Government-to-Government Consultation

The U.S. Constitution acknowledges that Indian Nations, Tribes, and Pueblos are separate distinct governments within our federalist system. The historic roots of the government-to-government relationship between the Pueblos and the United States Federal Government are symbolically embodied in the “Lincoln Canes.” President Lincoln gifted the canes to the Pueblos in 1863 as a formal acknowledgement of their inherent right to self-governance. Passed down through the generations, the canes serve as revered symbols of tribal sovereignty, governing power, and authority over tribal land, natural resources, and residents.

Establishing a strong federal government-to-government relationship with all tribes was formalized in modern times by a number of Republican Presidents including President Nixon, who supported and signed off on major Native American legislation, and President Ronald Reagan through his Native American policy positions. Presidents George W. Bush and his father George H.W. Bush affirmed government-to-government consultation requirements.

Of critical importance are long-standing Executive Orders requiring regular and meaningful consultation between the Administration and all federally recognized tribes on matters that have tribal implications. The Executive Orders on consultation seek to ensure respect for and the strengthening of the tribal-federal relationship, and to reduce the imposition of unfunded federal mandates upon Indian tribes. These orders require federal agencies to meaningfully consult with Indian tribes prior to formulating policies that could affect tribal governments or tribal communities. These Executive Orders have provided the Pueblos opportunities for dialogue with federal agencies on issues that directly affect tribal communities and are pertinent to the federal government’s trust responsibility - a legal and moral obligation by the federal government to tribes. While not perfect, the consultation process is key to forging a strong government-to-government relationship. We urge the Trump Administration to reaffirm and strengthen the practice of meaningful tribal consultation and communication long carried out by prior administrations and Presidents intent on recognizing and respecting the American Indian and Alaska Native people of America.

2. Federal Trust Responsibility – an Obligation to Indian Tribes

The United States Constitution, treaties, federal statutes, executive orders, Supreme Court precedent, and other agreements set forth the federal government’s recognition of Indian tribes as sovereign nations with inherent powers of self-governance over their communities and tribal members. They also establish the federal government’s trust responsibility to protect the interests of Indian tribes and communities. The federal workforce and annual budgeting process help fulfill these unique obligations to Indian tribes by carrying out the federal government’s commitment to work with tribes on a government-to-government basis by ensuring the effective administration and funding of Indian Country programs.

Federal Indian Budget. The Trump Administration recently released its budget blueprint for Fiscal Year 2018 in which the President proposes to cut approximately \$54 billion in discretionary non-defense spending. These across-the-board cuts are alarming because the majority of programs serving Indian Country fall under the category of discretionary spending and are not exempted under the President’s proposed plan. These programs exist across the

federal government in agencies such as the Bureau of Indian Affairs, Indian Health Service, Department of Agriculture, Forest Service, and the Environmental Protection Agency, among many others. Budget cuts to these programs pose an immediate and unacceptable risk to the health, safety, and welfare of our people, lands, and natural resources. When combined with the fact that Indian tribes are more reliant on federal funds than most other communities, it becomes clear that any comprehensive cuts to the federal budget without specific carve-outs for Indian Country programs will necessarily have a disproportionate impact on tribes. We, therefore, urge the Trump Administration to exempt Indian Country programs from any proposed budget cuts to fulfill the federal government's trust obligations to Indian tribes.

Providing sufficient federal funding to meet the critical needs in Indian Country is a chronic and well-documented challenge. The Pueblos support a budgeting process that allocates federal funds based on need, rather than a specific formula. Such an approach would be responsive to the range of needs and internal capacities of federal agencies administering Indian programs. Needs-based federal funding also would provide agencies such as the Indian Health Service, Bureau of Indian Affairs, and the Bureau of Indian Education with the resources necessary to begin to recover from years of underfunding and program cuts.

Federal Hiring Freeze and Proposed Workforce Reduction. Endemic vacancies in the workforce pose a constant challenge to federal programs serving the complex needs of Indian Country. The Indian Health Service, in particular, struggles to recruit and retain qualified medical and administrative staff at its facilities, despite the continual increases in the number of Native patients using their services. The federal hiring freeze and proposed federal workforce reduction threaten to severely diminish the already strained ability of these programs to provide high quality services to our people—services that the federal government is obligated to provide as part of its treaty and trust responsibilities to Indian tribes. The Pueblos, therefore, urge the Trump Administration to adopt measures that ensure the federal hiring freeze and proposed federal workforce reduction will not apply to programs serving Indian tribes.

3. Infrastructure - a Requirement for Economic Advancement

Deficiencies in Infrastructure Limit Development and Housing Opportunities. Many Pueblos are economically distressed rural communities. Infrastructure development is key to developing, diversifying, and sustaining tribal and rural economies. However, most tribal lands have conditions that require intense overhauling - roads are often unimproved, utilities are insufficient, and internet and broadband barely exists. In addition, other types of infrastructure critical to creating vibrant tribal communities, including residential construction, are deficient or lacking. The result is a severe housing shortage on tribal lands.

Limited Access to Capital Restricts Economic Development. Tribal business transactions have become increasingly sophisticated and often involve non-native partners, investors, and lenders. However, limited access to capital and financing remains one of the most significant barriers to Pueblo economic development. Tribes across the country spend an incredible amount of time and resources defining, developing, and defending programs, but programs alone do not transform economies and communities the way economic investment does. It is important to create investment funds, resources, and models that are mutually

advantageous to tribes and investors for economic advancement, stability and diversification. The opportunity for a decent income, a desirable job, a comfortable living and a chance to provide for family is a desire of all Americans.

Build-Out of Digital Infrastructure Can Bridge the Urban-Rural Divide. In this modern technological age, a great digital divide exists and needs to be filled in order for tribal governments to function, for schools to provide sound educational opportunities, and for tribal communities to maintain consistent communication beyond tribal boundaries by acquiring technological information, data and research. Digital infrastructure allows remote access to high school, secondary and post-secondary education on-line courses, as well as medical care technology, which may otherwise be difficult, if not impossible, to access in many rural communities. Better access to digital infrastructure such as broadband, Internet services, and digital platforms, is also essential for business development, which will be key for economic participation and competition by the Pueblos.

The Pueblos are Major Contributors to the Southwest Economy. Pueblo governments and Pueblo owned business enterprises are collectively among the largest employers in the state, providing thousands of jobs in many rural areas of New Mexico. Most recent job figures put the number of jobs provided by tribal governments and enterprises at nearly 18,000 statewide in various industries. Non-Indians hold nearly 75% of these jobs. Some of the Pueblos have become regional economic engines. In the case of most tribal enterprises, these jobs stay in the community. Many tribal members also spend their money off reservation, pay federal taxes, and in many instances pay other taxes such as property and state income taxes. Pueblo members engaged in off-reservation commerce also pay gross receipts and other taxes. All this contributes to tribal, state and local economies. The Pueblos struggle with uniquely burdensome federal restrictions and regulations, poor infrastructure and other challenges that limit their economies from flourishing. Pueblo leadership, therefore, places a high priority on economic development and diversification and the creation of well-paying sustainable jobs for our people.

Tax Policy. Pueblos are functioning governments with a unique place in the federal legal system. This causes complications, not the least of which occur in the tax arena. Any legislation addressing tax reform should address these issues by clarifying how tribal governments will be treated, thereby eliminating the disparate treatment of tribal governments and reducing confusion.

What the Pueblos Support

In order to continue and enhance their contribution to the tribal, state and national economic landscape, the Pueblos support infrastructure and tax reform such as: funding for on-reservation infrastructure projects that promote sustainable job creation initiatives and that attract investment to Indian Country; strengthened housing for Pueblo communities provided under the Native American Housing and Self Determination Act of 1996; the provision of direct access to federal Low Income Housing Tax Credits; clarification of the treatment of Indian tribes and Pueblos as other governments for purposes of federal tax provisions such as tax-exempt bonds, pensions, charities, the child adoption tax credit and other provisions; and tax and infrastructure policies that encourage investment on tribal lands.

4. Ensure Affordable, Accessible Quality Healthcare

Native Americans have some of the worst health statistics in the country. The Indian Health Service (IHS) is the primary source of healthcare for Native Americans. However, the IHS has never been fully funded, and as a result, services are rationed, limited, inconsistent, unreliable and sometimes taken at “your own risk.” In addition, many tribes now pursue P.L. 93-638 contracting and/or compacting of services from IHS. This trend is an indicator that tribes believe healthcare can be better provided by other delivery mechanisms in addition to IHS. To promote and provide reliable and quality health system and services, it will be important for this Administration to develop policies that significantly improve the IHS budget and also allow for other forms of healthcare delivery to tribal communities.

Preserve the Indian Health Care Improvement Act. The Indian Health Care Improvement Act (IHCIA) provides the basic program, structure, management, and budget formulation for the Indian Health Service (IHS). The IHCIA was permanently enacted by cross reference in Section 10221 of the Affordable Care Act (ACA). Although the ACA was the legislative vehicle through which the IHCIA reauthorization was passed, the IHCIA predates and is independent from the ACA. Woven throughout the ACA are other provisions that directly pertain to Indian health, including Medicare Part B billing (Section 2902), tax exclusions for Indian health benefits (Section 9021), and payer of last resort provisions for Indian health programs (Section 2901). The IHCIA also allows IHS and tribal health programs to collect Medicare and Medicaid reimbursements for services provided to Native patients at non-IHS facilities. Because the IHS has been historically underfunded at only 43% of need, these third-party payments are a critical source of supplementary financial assistance for the delivery of Indian healthcare services. The Pueblos urge the Trump Administration to preserve the IHCIA and protect Indian-specific provisions of the ACA in the course of any effort to repeal or amend the ACA.

Maintain Medicaid Expansion to Protect Indian Health Benefits. Pueblo leaders are concerned that a number of the ACA-related proposals would sunset Medicaid expansion, which has provided desperately needed funding to supplement woefully underfunded Indian healthcare providers, including IHS and tribally-run facilities. Due to funding limitations, many IHS facilities have had to reduce direct access to specialty care providers, intensive care, inpatient care, and emergency room services. Medicaid expansion and Marketplace coverage allow Native patients to access these services at private or non-IHS facilities at reduced cost. The Pueblos urge Congress to maintain increased patient access to critical services through Medicaid expansion.

Additional congressional proposals would cap Medicaid funding by moving to a block grant or per capita allocation formula rather than a Federal Medical Assistance Percentage (FMAP) formula, which could transfer or shift Medicaid funding responsibilities from the federal government to state Medicaid programs. Under FMAP, the federal government covers 100% of Medicaid costs for Medicaid-eligible services “received through” an IHS or tribal healthcare facility, including through the Purchased/Referred Care (PRC) system. The 100% FMAP program alleviates state costs associated with the provision of Medicaid services, helps tribes with service delivery and data collection management, and improves patient access to

critical care.

The increase in reimbursements through Medicaid expansion has strengthened the internal capacity of our Pueblos to meet the healthcare needs of communities. For example, Santo Domingo Pueblo has expanded access to diabetes care, dental health programs, and behavioral health services, while also adding over thirty employees to the local workforce. Taos Pueblo also recently opened a residential substance abuse and mental health treatment center focused on the needs of Native youth, and the Pueblo of Jemez Comprehensive Health Center was designated as a full-service Federally Qualified Health Center (FQHC) capable of receiving special Medicare and Medicaid reimbursement. The Pueblos urge Congress to maintain Medicaid expansion in those states that have chosen to participate to protect Indian health benefits and advance the delivery of desperately needed services in Indian Country.

Exempt the IHS from Federal Budget Sequestration. Access to and the delivery of quality healthcare in Indian Country is further complicated by annual cuts to the IHS budget due to sequestration. All other critical healthcare agencies, such as Veterans Affairs, were exempt from the full effect of funding reductions during the federal budget sequestration of 2013—except for the IHS. The disruption in federal funding has resulted in a loss of over \$219 million and counting from the IHS budget. This translates into immediate and long-lasting negative health impacts through lost resources for primary and preventative healthcare services, staff recruitment and training, and other programs serving our communities. The Pueblos recommend that the IHS be given parity with other healthcare agencies through an exemption from sequestration, as well as any freezes of the federal budget.

What the Pueblos Support

The Pueblos understand that the new Administration has made it a priority to repeal and replace the ACA to revise its terms and improve affordability. However, they caution that repealing or amending the ACA might do unintentional but catastrophic harm to Indian healthcare delivery and access. To this end, the Pueblos respectfully request the Administration to exempt the Indian Health Care Improvement Act Reauthorization of 2010 from repeal efforts, preserve Indian-specific provisions of the ACA, consider Indian health care programs and services as mandatory spending programs, and exempt them from the potential return of sequestration to the federal budget, and to consider funding increases to Indian health programs and services and policy initiatives that provide alternatives for quality health care.

5. Land Base, Water and Natural Resources - Important Tribal Assets

Continuation of the Land-into-Trust Program. As sovereign tribal nations, the Pueblos exercise an inherent right to self-governance that is strengthened by our ancestral connections with the land. The ability of the federal government to take land into trust on behalf of tribes is, therefore, essential to our self-determination. Trust lands enable us to provide a homeland for our people as well as a base from which to offer essential governmental services, such as, housing, education, healthcare, and economic development opportunities. Trust lands also facilitate the expression of our identity as Pueblo people by protecting the natural and cultural resources that form the bedrock of our traditional practices. We urge the new Administration

to continue to support the land-into-trust program as a means of strengthening tribal governments, economies, and communities across our great country.

Wise Stewardship of Natural Resources. The stewardship of land, minerals, water and other natural resources is key to both the economic well-being of Pueblo people and to their cultural survival. Every day the Pueblos strive to balance these interests.

The vast majority of federal lands are carved out of the ancestral homelands of Indian tribes. The historical and spiritual connection of tribes to federal lands was never extinguished. Courts acknowledge that Indian 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 is working 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.

The Pueblos ask the Trump Administration to partner with them in strengthening these rights and access to ancestral homelands and sacred places located on federal lands. If the Administration considers transferring lands out of federal control, we respectfully ask that the Pueblos be provided the right of first refusal to ancestral homelands and sacred places. Pueblos and other tribes are proven stewards and managers of their lands and forests. Protection of and access to natural resources is important not only to the Pueblos but to all Americans.

Affirming Tribal Water Rights and Water Quality. The Pueblos have been engaged in major court battles to secure tribal water rights as provided under federal law. The federal government must remain committed to supporting tribal water claims. Pueblo water rights are not mere claims on paper, but reflect a long term, historic Pueblo presence, cultural identity and willingness and desire to live on their traditional, ancestral lands. The settlement of these rights also provides stability and economic benefits to surrounding communities. For these reasons, water, land and air must remain protected from contamination that results from mining and extraction activity including uranium mining, oil and gas production and transportation. All such activity that would affect tribal interests should be advanced only with tribal consultation and consent.

Preservation of Bears Ears National Monument. In keeping with our traditional role as stewards of the land, the All Pueblo Council of Governors has worked closely with federal, state, and local governments to protect important landscapes and cultural sites in the southwest, including the area now known as the Bears Ears National Monument in Utah. Our ancestral ties to the Bears Ears cultural landscape extend to time immemorial and can be traced through the ancient roads, dwellings, petroglyphs, and ceremonial features that continue to enrich the region today. However, these sites are under constant threat by erosion, vandalism, looting, and indiscriminate damage through off-road vehicle use, as well as the general degradation of wildlife and plant habitats that are significant to our traditional practices. We

urge the Trump Administration to preserve the designation of Bears Ears as a National Monument to support the permanent, long-term protection of the land and its invaluable cultural and natural resources.

Protecting Tribal Cultural Patrimony. Disturbing and unsettling occurrences at national and international auction houses as well as in the art world have led to outrage and condemnation by many tribes throughout the United States, including the Pueblos. These occurrences include the illegal trafficking in and the selling of Native American cultural property - items considered sacred, sacrosanct, used in worship, and should never to be given away or sold. These items are not works of art; they are integral parts of a Pueblo's living cultural identity and spiritual practices.

We remain grateful to the leadership of the Senate Indian Affairs Committee for your support of the PROTECT Patrimony Resolution, H. Con. Res. 122 (Dec. 2016). The Resolution puts in place greater deterrents to prevent the theft and illegal trafficking of our sacred items, both domestically and abroad, and promotes the protection of our identities as Pueblo People by better ensuring that items of cultural patrimony remain within our communities. However, a significant amount of work remains to be done on this important issue. We look forward to working with you and the Trump Administration on strengthening the implementation of the Native American Graves Protection and Repatriation Act (NAGPRA), and advancing the Safeguard Tribal Objectives of Patrimony Act (STOP Act) during the 115th Congress.

What the Pueblos Support

In the Pueblo worldview, we are stewards of the earth's natural resources - land, water, air, and minerals. The Pueblos support policy and legislation that provide protection of natural resources, includes funding to support management of these resources, and policy that requires Federal-Tribal collaboration when natural resources and cultural properties are affected in any way. The Pueblos 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. In addition, the Pueblos seek support for pending federal legislation that would clarify existing laws and condemn the trafficking of sacred items. The Pueblo leadership asks the new Administration to support Congressional proposals to protect cultural patrimony.

6. Pueblo Destiny Lies in the Control of Education

High Standards Are Critical. Pueblo leaders wish to create a highly skilled, well-educated, workforce within their respective tribal communities. With a pool of qualified workers, the Pueblos believe they will be able to attract business and economic development possibilities, create well paying job opportunities, and assure that tribal members enjoy a prosperous future that comes with being well educated.

Education System. The Pueblos of New Mexico have always supported sound educational programs that comply with state and federal accountability standards. We emphasize the importance of high quality instruction, effective professional teacher development and the development of appropriate, culturally sensitive curriculum, including Native language

retention and instruction. In addition, Pueblo leaders support comprehensive oversight of the flow of funds and the implementation of policies that effectuate meaningful educational change. It is important to foster the advancement of higher education, but also to consider re-introducing vocational education, which in many school districts has been eliminated or severely limited. Vocational education can provide skills that contribute to employment opportunities and sustainable incomes. In addition, Science, Technology, Engineering and Mathematics (S.T.E.M.) curriculums must be incorporated into tribal school systems.

Protecting and Preserving Native Languages. The Pueblo worldview is contained in their languages. In addition to maintaining tribal life ways, the Pueblos have established various programs and methods in order to retain 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. 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.

What the Pueblos Support

The Pueblo leadership supports policies that provide educational opportunities and resources in order to begin cultivating the next generation of Native students who are able to achieve academic success, perform proficiently on standardized tests, and graduate. A number of Pueblos are taking over the operation of Bureau of Indian Education (BIE) schools located on tribal lands. Operating and maintaining schools requires considerable resources. It is important that the new Administration provide adequate funding to support tribal schools and initiatives like S.T.E.M. The Pueblo leaders also urge the new Administration to realize the value of Native languages and support funding for programs that prevent the further loss of language, traditions, and culture.

7. Appointment of Native Americans to Key Trump Administration Positions

Pueblo governments and their communities can be severely affected in many different ways by the actions of the U.S. government through policy or the enactment of federal law. Therefore, it is extremely important that the voice of the 20 Pueblos be heard and considered, especially with regard to appointments to key positions within the Administration that will affect the Tribes, Pueblos and Indian Nations in this country. Equally important is the appointment of Native Americans to key positions within all federal agencies across the Administration. The 20 Pueblos respectfully ask that the President seriously consider Native American professionals for appointment to the following key positions:

- Special Advisor to the President on Native American Affairs, The White House
- Deputy Director for Tribal Affairs in the White House Office of Intergovernmental Affairs and Public Engagement
- Deputy Secretary, Department of the Interior (DOI)
- Assistant Secretary for Indian Affairs, DOI
- Director, Bureau of Indian Education, DOI

- Solicitor, Office of the Solicitor, DOI
- Director, Indian Health Service, HHS
- Director, Administration for Native Americans, HHS

We also respectfully request that the Trump Administration maintain “Office of Tribal Relations” / “Native American Programs” (OTR) officials in each department / agency of the government to help facilitate access by tribal government leaders to the federal programs designed to benefit tribal, state and local governments. Agencies that have OTRs include, among others, USDA, Justice, Commerce, Veterans Affairs, the EPA, Treasury, Health and Human Services, Energy, Labor and Homeland Security. As with the above listed positions, many qualified Native Americans currently serve or could serve in these positions.

Finally, because federal laws and the development of federal jurisprudence have a disproportionate impact on the daily lives of Indian Country residents, we ask that the Administration make it a priority to strongly consider appointing Native Americans to serve as judges in the federal court system.

Conclusion

Federally recognized tribal governments are and have for centuries been acknowledged as distinct political and sovereign entities recognized in the U.S. Constitution, treaties, federal laws and regulations, and federal court decisions. Prior to contact with other nations, Indian tribes exercised powers of self-government over their territory, residents, and visitors. Their sovereignty pre-dates the Constitution and is derived from the fact that they owned all the land that is now the United States, including the state of New Mexico. The U.S. Constitution acknowledges the sovereign status of Indian tribes in the Treaty Clause, in the 14th Amendment as "Indians not taxed," and in the Commerce Clause. Separate sovereign tribal groups are a vital part of the fabric of this great nation. Working together, with a common understanding of history, with mutual respect and recognition of the obligations of the relationship forged by President Lincoln, as symbolized by the Lincoln Canes, and with an optimistic view of the future, the Pueblos look forward to successfully working with the Trump administration.