



**Testimony of the Honorable Irene C. Cuch
Chairwoman, Ute Tribal Business Committee
Ute Indian Tribe of the Uintah and Ouray Reservation**

**To the Subcommittee on Indian and Alaska Native Affairs
Natural Resources Committee of the
U.S. House of Representatives**

**Legislative Hearing on H.R. 4027, to Clarify Authority Granted Under the Act Entitled
“An Act to Define the Exterior Boundary of the Uintah and Ouray Indian Reservation
in the State of Utah, and for Other Purposes”**

March 20, 2012

Good morning Chairman Young, Ranking Member Boren, and Members of the Subcommittee. My name is Irene Cuch. I am the Chairwoman of the Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation. The Tribe’s 4.5 million-acre Reservation is located in the State of Utah and is the second largest in the United States.

Thank you for the opportunity to testify today on H.R. 4027, a bill to Clarify Authority Granted Under the Act Entitled “An Act to Define the Exterior Boundary of the Uintah and Ouray Indian Reservation in the State of Utah, and for Other Purposes.” I ask that my written testimony be made a part of the Subcommittee’s hearing record.

H.R. 4027 is a bipartisan bill that is needed to: promote oil and gas development, tribal self-determination and energy development; provide funding for public schools; increase the Nation’s domestic energy supplies; and ensure the protection of an environmentally and culturally significant area.

The Tribe respectfully requests that the Subcommittee take quick action on H.R. 4027 and support its passage by the full Committee, the House of Representatives and the Senate—with the goal of enacting the bill into law this year. The Tribe asks for your support in this effort and thanks Congressman Matheson and Congressman Bishop for their work in sponsoring and seeking action on this important bill.

Over the past year, I have had a couple of opportunities to testify before the Subcommittee on the importance of energy development to the Tribe. Oil and gas has been developed on our Reservation since the 1940’s. Today, the Tribe leases nearly 400,000 acres for oil and gas development, with some 7,000 wells producing 45,000 barrels of oil a day and about 900 million cubic feet of gas per day. The Tribe’s oil and gas development is the primary source

of revenue to fund our tribal government and the services we provide to our members through 60 tribal departments and agencies. The Tribe also invests in tribal businesses and is a major employer and engine for economic growth in northeastern Utah.

The bill before the Subcommittee today, H.R. 4027, is about the Tribe's ongoing efforts to manage oil and gas development on the Reservation. H.R. 4027 is needed to further clarify a law that Congress originally passed in 1948 and was first clarified by an amendment in 1955. H.R. 4027 would amend the law one more time to ensure that the United States and the State of Utah have the authority necessary to complete an exchange of subsurface mineral estates within the Tribe's Reservation.

The 1948 Act returned an area known as the "Hill Creek Extension" to the Tribe. Because the State already owned surface lands and subsurface minerals in the southern part of the Hill Creek Extension, the 1948 Act provided a process for the State to exchange its lands in the Hill Creek Extension for "vacant, unappropriated" lands. However, the 1948 Act did not address the State's existing mineral estates. Therefore, in 1955, Congress amended the 1948 Act to allow the State to exchange its subsurface minerals as well as its surface lands.

However, the 1955 Act did not specifically designate which "vacant, unappropriated" minerals would be available to the State to exchange for its subsurface minerals. Without this clarification, the Bureau of Land Management (BLM) has refused to process a 2006 application the State submitted to exchange its minerals.

H.R. 4027 will clarify and specify the minerals that may be selected for exchange by the State and allow the BLM to process the State's application. The exchange will allow the State to acquire Federal minerals in the northern part of the Hill Creek Extension where energy development is already occurring, in exchange for the State's existing minerals in the southern part of the Hill Creek Extension, which the Tribe is protecting for its significant wilderness and cultural values. Finally, H.R. 4027 also resolves problems with the cost and uncertainty of mineral appraisals often required in such an exchange.

Legislative History of the Hill Creek Extension

The Hill Creek Extension was returned to the Tribe through a 1948 Act of Congress, Pub. L. No. 80-440, 62 Stat. 72 (1948). The Hill Creek Extension includes approximately 510,000 acres, some of which was repurchased using tribal funds. H.R. Rep. No. 80-1372, at 2 (Feb. 12, 1948). The Department of the Interior strongly supported the return of the Hill Creek Extension to the Tribe, in part, to settle grazing rights between Indians and non-Indians. *Id.* Interior also noted that the Tribe continued to live and graze stock in a land area larger than the area to be returned by the Act. *Id.*

When the Hill Creek Extension was returned to the Tribe in 1948, the State of Utah already owned parcels of land and minerals in the southern part of the Hill Creek Extension. The State obtained these parcels and minerals when it became a state in 1896. Utah Enabling Act, ch. 138, 28 Stat. 107 (1894). These lands and other similar lands throughout the State were granted

to the State by the Federal government to be managed by the State to provide financial support for Utah public schools. *Id.* After passage of the 1948 Act, these State parcels were enclosed within the exterior boundaries of the Tribe's Reservation. To ensure that the State and the Tribe would be able to enjoy the full benefit of their respective lands, Congress recognized that the 1948 Act needed to include procedures for the State to relinquish its lands inside the southern part of the Hill Creek Extension and select lands in exchange.

To protect the State's interests, in Section 3 of the 1948 Act, Congress authorized the Secretary of the Interior to assist the State in relinquishing state-owned lands located within the reserved area to the United States for the benefit of the Ute Indian Tribe and to make selections from the "vacant, unappropriated, nonmineral public lands" located outside of the reserved area in lieu thereof. Act of March 11, 1948, Pub. L. No. 80-440, § 3, 62 Stat. 72, 77-78 (1948). To ensure the Tribe similarly benefitted, Section 3 further provided that "[t]itle to any lands and rights acquired hereunder shall be taken in the name of the United States in trust for the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah and such land or rights shall be exempt from State or local taxation." *Id.*

While Section 3 of the 1948 Act was intended to provide for the interests of the State and the Tribe and provide a process for resolving their overlapping interests in land, the Act did not address mineral interests held by the State and ultimately prevented the Tribe from gaining complete ownership of the Hill Creek Extension. In support of amendments to the 1948 Act, in 1955 Interior wrote to Congressional Committees then considering amendments to the 1948 Act and described the problem. The Assistant Secretary of the Interior wrote:

Under the present law, ... if the State-owned lands are mineral in character the State must either reserve the minerals when exchanging its lands for nonmineral lands outside the reservation, or select nonmineral lands that are equal in value to the mineral lands relinquished. The first alternative involves the disadvantage of retaining State ownership of minerals underlying Indian lands, which may not return their full value to the State. The second alternative unnecessarily restricts the exchange authority by requiring the selection of nonmineral lands in exchange for mineral lands.

H.R. Rep. No. 84-1479, at 2 (July 27, 1955).

Thus, with the support of Interior, in 1955, Congress passed legislation to clarify that the State may also exchange its subsurface minerals and to promote the policy of consolidating tribal ownership in the Hill Creek Extension. The Act of August 9, 1955, Pub. L. No. 84-263, 69 Stat. 544 (1955) clarified that if the State relinquished lands containing subsurface minerals, the State could select in lieu lands that contained minerals of equal value. The 1955 Act amended Section 3 of the 1948 Act, by striking out the first sentence of Section 3 and inserting the following:

The State of Utah may relinquish to the United States for the benefit of the Indians of the said Ute Reservation such tracts of school or other State-owned lands, surveyed or unsurveyed, within the said reserved area, as it may see fit (reserving to said State, if it so desires, such rights as it may possess to any

minerals underlying such State lands as may be relinquished), and said State shall have the right to make selections, including mineral lands and the minerals therein (including oil and gas) if the lands relinquished are mineral in character and rights to the minerals in such lands are relinquished along with the lands, in lieu thereof outside of the area hereby withdrawn, equal in value, as determined by the Secretary of the Interior, to the lands relinquished, from the vacant, unappropriated public lands, within the State of Utah, such lieu selections to be made in the manner provided in the enabling Act pertaining to said State, except as to the payment of fees or commissions, which are hereby waived. Valid rights and claims of individuals initiated under Federal law with respect to any lands so selected and prior to such selection shall not be affected by such selection.

Act of August 9, 1955, Pub. L. No. 84-263, 69 Stat. 544 (1955).

However, as mentioned earlier, the 1955 Act did not specifically define which “vacant, unappropriated” minerals would be available to the State to exchange for its subsurface minerals. Thus, additional legislation is now needed to clarify and define the minerals that may be selected for exchange by the State.

Tribal Management of the Hill Creek Extension

As described above, the land in question is an area of the Tribe’s Reservation known as the Hill Creek Extension. The Hill Creek Extension was returned to the Tribe in 1948 and includes some of the original Uncompahgre Reservation. The Uncompahgre are one of the three bands making up the Ute Indian Tribe.

The Hill Creek Extension is generally divided to the north and south by the Uintah County and Grand County line. The northern part of the Hill Creek Extension is in Uintah County and the southern part is in Grand County. In the northern part, the Tribe is working through its own energy company, Ute Energy LLC, and with its energy industry partners to develop oil and gas resources. Proven mineral development fields in the northern part of the Hill Creek Extension offer reliable sources of energy and access to existing transportation corridors.

In contrast, the southern part of the Hill Creek Extension is one of the most remote and undeveloped places on the Reservation and in the United States. The Tribe owns most of the surface and mineral lands in the southern part of the Hill Creek Extension and is actively protecting the area for wilderness values and cultural uses. The Tribe has been protecting the area since it was returned to the Tribe as a part of the Hill Creek Extension in 1948.

The Tribe extensively manages the environmental and cultural resources of the southern part of the Hill Creek Extension. The Tribe has designated the southern part of the Hill Creek Extension as a sacred protected wilderness and cultural area and access is generally limited to tribal members. The area is a complex of interrelated and essential places of religious and cultural significance to the Tribe. All the lands and elements of the environment within this landscape are related. These places are interconnected in a living landscape which is utilized by

the Tribe's members for hunting, fishing, and procurement of medicinal and food plants during appropriate seasonal rounds. The area is also utilized for its spiritual influence. The Tribe has always recognized this and is protecting the southern part of the Hill Creek Extension in its pristine state. Preservation of this important landscape will insure its continued use by future generations of practitioners of our religion.

The Tribe maintains a number of historical sites in the southern part of the Hill Creek Extension, including cliff dwellings. The Tribe is in the process of inventorying these sites and uses some areas for cultural and spiritual purposes. The Tribe also manages the wildlife in the area, including a wild buffalo herd and a herd of genetically pure, wild Spanish Barb horses. The Tribe keeps domestic animals out of the area. The Tribe protects this area so that we can practice our subsistence hunting and fishing, gathering, and to teach our youth cultural and other tribal activities.

Since 1948, the Tribe has passed a variety of resolutions preventing development in the southern part of the Hill Creek Extension. Tribal resolutions have issued moratoriums on development, prohibited the issuance of rights-of-way, and sought protection of threatened and endangered species in the southern part of the Hill Creek Extension. The Tribe manages the area to minimize disturbance of wildlife and to allow tribal members to use the area for cultural and spiritual purposes.

I have attached to my testimony a 1966 resolution passed by the Tribe's Business Committee which expresses some of these management decisions. Resolution No. 66-71 rescinded any previously granted requests to survey for roads in this area and issued a moratorium on development in the southern part of the Hill Creek Extension, the Grand County portion, until a formal plan was approved by the Business Committee. Consistent with this resolution, and ever since the return of the lands in 1948, the Tribe continues to maintain the southern part of the Hill Creek Extension in a wild and pristine state.

The Need for H.R. 4027

H.R. 4027 would resolve a land management and energy development issue that stems from the 1948 Act and its 1955 amendment. H.R. 4027 will finally make clear what Federal minerals the State may exchange for its existing mineral estate in the southern part of the Hill Creek Extension.

Because of difficulties in exchanging its subsurface minerals, the State of Utah, through its School and Institutional Trust Lands Administration (SITLA), still owns about 20,000 acres of mineral lands in the southern part of the Hill Creek Extension. As with its other lands throughout the State, the purpose of SITLA is to promote the development of mineral resources on its lands to provide funding for Utah public schools. In this case, however, the Tribe owns the surface lands above SITLA's mineral estate and is opposed to development of these minerals.

The Tribe and SITLA worked cooperatively to ensure that the Tribe's and the State's interests in these lands and minerals were fulfilled. In 2006, SITLA and the Tribe entered into

Letter of Intent to seek an exchange of the State's minerals in the southern part of the Hill Creek Extension for Federal minerals in the northern part of the Hill Creek Extension.

The Letter of Intent also provides that SITLA would utilize Ute Energy LLC, the Tribe's energy development company, to develop the mineral resources. This agreement expands the energy resources to be developed by the Tribe and ensures that the Tribe receives some of the revenues from mineral development on its Reservation.

Thus, based on the authority provided in the 1948 and 1955 Acts, and working cooperatively with the Tribe, the State filed an application in 2006 with the BLM to exchange the State mineral estate in the southern part of the Hill Creek Extension for Federal minerals in the northern part of the Hill Creek Extension. The State's application furthered the Tribe's interest in protecting the southern area of the Hill Creek Extension while also promoting energy development in the northern area—where development is already occurring. The BLM's Central Office, however, refused to process the State's application claiming the 1948 Act and its 1955 amendment required the State to select unappropriated subsurface minerals geographically outside of the entire Hill Creek Extension.

The Tribe and the State reject BLM's reasoning. The only requirement of the 1948 and 1955 Acts are that the State select "vacant, unappropriated" minerals. The Acts do not require the minerals to be outside of the Hill Creek Extension. We have pointed this out to the BLM, explaining that Section 1 of the 1948 Act explicitly withheld Federal minerals from the return of the Hill Creek Extension to the Tribe. Thus, despite being within the Hill Creek Extension geographically, these Federal minerals are available as "vacant, unappropriated" minerals for selection by the State. Nevertheless, the BLM maintains that it lacks the authority to process the exchange.

To enable the State's application to move forward, H.R. 4027 would provide the BLM with the legal authority it claims to lack by clarifying the existing 1948 and 1955 Acts and providing BLM with explicit authority to approve an exchange of State minerals for Federal minerals within the Hill Creek Extension. In keeping with existing law, H.R. 4027 does not require BLM to approve the land exchange; rather, it merely clarifies the exchange process that was originally contemplated in the 1948 and 1955 Acts.

H.R. 4027 also takes care of modern concerns with mineral appraisals. Since the passage of the 1948 and 1955 Acts, mineral appraisals have become known as an expensive and unreliable undertaking. The cost of mineral appraisals can delay and even prevent the implementation of land exchanges. In addition, the Tribe is opposed to any of the ground disturbing activities that would be necessary to appraise the State's minerals located in the southern part of the Hill Creek Extension.

H.R. 4027 resolves these concerns and eliminates the need for mineral appraisals by providing both the United States and the State an equal share of any minerals developed. This process of equitably dividing the royalties will ensure that the Federal government does not receive any less funds than it would have received if it has developed its mineral interests in the

northern part of the Hill Creek Extension on its own. Thus, H.R. 4027 allows for a value-for-value exchange, without all of the costs and problems associated with mineral appraisals.

Conclusion

I would like to thank Chairman Young, Ranking Member Boren and members of the Subcommittee for the opportunity to present this testimony on behalf of the Ute Indian Tribe of the Uintah and Ouray Reservation. I would also like to thank the bill's sponsors for their hard work in getting us to this point in the legislative process. The Tribe is ready to work with the Subcommittee in support of quick action on H.R. 4027 and seek its passage by the full Committee, the House of Representatives and the Senate. As I mentioned above, the Tribe hopes that Congress will complete its work on H.R. 4027 and pass it into law this year. H.R. 4027 will be a significant step in ensuring that the southern part of the Hill Creek Extension is protected for the use of the Tribe's members, our children and grandchildren.

This concludes my prepared statement. I am happy to respond to any questions the Subcommittee may have.

Towaok (Thank You)

Ute Indian Tribe of the Uintah and Ouray Reservation, Resolution No. 66-71

Resolution No. 66-71

Uintah and Ouray Agency
Fort Duchesne, Utah

March 28, 1966

WHEREAS, in 1962 an advisory committee on Ute Tribal Commercial Recreation Program conducted a study and submitted a report recommending that the Ute Tribe of the Uintah and Ouray Reservation systematically develop a commercial recreation program, and


WHEREAS, wild areas be established and maintained in a primitive condition as an appeal to paying clientele, and

WHEREAS, these areas also be stocked with wildlife originally native to the area or otherwise biologically proper and safe for the area, and

WHEREAS, it was recommended by the above referred to advisory committee that any road through the upper Hill Creek area from north to south would curtail, if not destroy, this unique area for outdoor recreation and its biological value,

NOW, THEREFORE, BE IT RESOLVED BY THE UINTAH AND OURAY TRIBAL BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE, that the above statements, as expressed, are the policy of the Tribe; that previous granted permission to survey for a through road in this area be rescinded; and all future development of facilities in the Grand County portion of the Reservation covering Indian owned lands be held in abeyance until a formal development plan for outdoor recreation is prepared and approved by this committee.


Francis Wyasket, Chairman


Thomas G. Appah, Vice-Chairman


(not present)
Frank B. Arrowchis, Member


Maxie Chapoose, Member


Howell Dan Appawoo, Member

C E R T I F I C A T I O N

I, hereby, certify that the above resolution was adopted by the Uintah and Ouray Tribal Business Committee under authority of the Constitution and By-Laws or Corporate Charter of the Ute Indian Tribe and at a meeting held in Fort Duchesne, Utah, on the 28th day of March 1966, at which time a quorum was present and by a vote of four for and none against.


Edna L. Hartman, Secretary
Uintah and Ouray Tribal Business
Committee