



February 8, 2017

Emergency Management in Indian Country: Improving FEMA's Federal-Tribal Relationship with Indian Tribes

Committee on Indian Affairs, United States Senate, One Hundred
Fifteenth Congress, First Session

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STATEMENT

OF

ALEX AMPARO
ASSISTANT ADMINISTRATOR
RECOVERY DIRECTORATE
FEDERAL EMERGENCY MANAGEMENT AGENCY
U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE

THE

COMMITTEE ON INDIAN AFFAIRS
U.S. SENATE
WASHINGTON, D.C.

“EMERGENCY MANAGEMENT IN INDIAN COUNTRY: IMPROVING FEMA’S
FEDERAL-TRIBAL RELATIONSHIP WITH INDIAN TRIBES”

Submitted

By

Federal Emergency Management Agency
500 C Street, SW
Washington, D.C. 20472

February 8, 2017

Introduction

Good afternoon, Chairman Hoeven, Vice Chairman Udall, and members of the Committee. I am Alex Amparo, Assistant Administrator with the U.S. Department of Homeland Security's (DHS) Federal Emergency Management Agency (FEMA). Thank you for this opportunity to meet with you today to discuss ways in which FEMA is improving relationships with federally recognized Indian tribes.

FEMA is committed to our partnership and collaboration with federally recognized Indian tribes, and to providing support in their preparation for, protection against, mitigation of, response to, and recovery from all hazards and disasters. FEMA has a strong tradition of engagement with federally recognized Indian tribal governments (tribal governments). However, since the passage of the Sandy Recovery Improvement Act (SRIA) in 2013, the agency has dedicated additional resources to ensuring that tribal governments are fully woven into the fabric of our mission.

Today, I can tell you that FEMA recognizes the unique relationship between Indian Country and the Federal Government, and the unique conditions that affect Indian Country. We work side-by-side with our tribal partners on all aspects of our mission, and we continue to posture ourselves to better support our tribal partners at any time. To reinforce how we recognize these important relationships, I would like to specifically outline FEMA's approach as described in: 1) FEMA's Tribal Policy; 2) FEMA's Tribal Consultation Policy; and, 3) FEMA's Tribal Declaration Pilot Guidance.

FEMA's Tribal Policy

The U.S. Government has a unique nation-to-nation relationship with federally recognized tribal governments based on the Constitution of the United States, treaties, statutes, executive orders, and judicial decisions. In 2016, FEMA updated its agency-wide tribal policy. The policy outlines a framework for nation-to-nation relations with federally recognized tribal governments that recognizes tribal sovereignty, self-governance, and the general trust relationship, consistent with applicable authorities.

Key principles of our policy include:

- A. Recognizing the unique nature of each tribal community and the need to work with all members of tribal communities, FEMA commits to building strong and lasting partnerships with tribal governments to assist in preparing for all threats and hazards, including those unique to tribal communities.
- B. FEMA will respect and support the unique status of sovereign tribal governments by engaging in meaningful dialogue that will assist tribal communities with any emergency management needs, which fall under the authority of FEMA.
- C. FEMA acknowledges the inherent sovereignty of tribal governments, the general trust relationship with the federal government, and the nation-to-nation relationship between the U.S. Government and tribal governments as established by the U.S. Constitution, statutes, treaties, court decisions, executive orders, regulations, and policies as the foundation of this policy.

In updating this policy, FEMA conducted tribal consultation in 2016, to facilitate tribal feedback on the proposed policy revisions. FEMA held 23 separate events nationwide consisting of 18 regional in-person listening sessions, two national webinars, and three tribal association conference presentations during the tribal consultation period reaching more than 300 tribal participants. FEMA received more than 100 comments in-person and through email, which the agency adjudicated to finalize this revised policy.

For FEMA, this consultation effort on the updated FEMA Tribal Policy represented a significant outreach. To accomplish this FEMA developed structures throughout the agency to support improving our relationships with federally recognized Indian tribal governments. In 2014, FEMA hired a National Tribal Affairs Advisor, Milo Booth (Tsimpshian from the Metlakatla Indian Community in Metlakatla, Alaska), to lead the Tribal Partners Branch (TPB) at FEMA headquarters. In 2016, Margeau Valteau (Navajo from Window Rock, Arizona) joined the TPB as a tribal specialist.

FEMA tribal liaisons, located in our regional offices, are the first resource and point of contact for tribal nations that have questions or require technical assistance on agency programs. Following the federal recognition of the Pamunkey Indian Tribe in 2016, FEMA added a Regional Tribal Liaison to FEMA Region III giving each FEMA regional office at least one tribal liaison supporting tribal affairs. While these tribal liaisons are a critical piece to our outreach and work with tribal governments, it is important to know that all FEMA employees who administer our various programs are available to assist in delivering programs and resources to Indian Country.

In addition to Tribal Affairs staffing, FEMA's Emergency Management Institute (EMI) provides training to tribal governments and their employees to develop their emergency management capabilities. During fiscal year 2016, EMI delivered 55 tribal courses to 763 tribal attendees and 94 other partners. The tribal curriculum courses are delivered by a team of instructors who are selected for their extensive experience working with and for tribal governments in emergency management and the majority of the instructors are tribal members. In addition to providing tribal curriculum courses on the EMI campus in Emmitsburg, Maryland, EMI also provides these courses off-site, traveling out to Indian Country to reach tribal communities directly. EMI currently has planned 21 courses on their 2017 schedule, and will likely increase course deliveries as the year progresses.

FEMA's Center for Domestic Preparedness (CDP) provides training to tribal emergency responders. In fiscal year 2016, CDP hosted its first Tribal Training Week and trained 157 tribal emergency responders from 46 tribal nations. During the week, CDP conducted five courses followed by an operational Integrated Capstone Event full-scale exercise. In 2016, 793 tribal first responders completed courses at the CDP, a 245 percent increase from 2015. This year CDP will host the 2017 Tribal Nations Training Week from March 19 to 25.

Exercises

In addition to providing training, FEMA also coordinates exercises with tribal nations to examine and validate capabilities critical to their readiness.

In September 2015, in Great Falls, Montana, more than 100 people came together to simulate the response to crude oil train derailment on the Blackfeet Nation. FEMA's National Exercise Division coordinated the exercise, Montana Operation Safe Delivery, along with Blackfeet Nation, the State of Montana, and FEMA Region VIII staff. This is one of three in a nationwide series of exercises and the only one to take place on a tribal nation. The goal of the exercise was to examine and confirm the capabilities needed to respond to, reduce the effects of, mitigate the consequences of, and recover from a train derailment involving crude oil. The two-day seminar and tabletop exercise brought together all seven tribal nations in Montana to participate in and learn from a simulated volatile incident.

In June 2016, FEMA Region X conducted a four-day functional earthquake and tsunami exercise, Cascadia Rising. At least 24 tribes in Washington, Oregon, and Idaho participated in various ways ranging from tsunami evacuation drills to full integration in the local Emergency Operations Center. During Cascadia Rising, FEMA exercised its internal capacity to respond to multiple direct disaster declarations from tribal governments.

Tribal participation continues to improve our discussions about pre-landfall hurricane preparedness as well. For the third year in 2016, tribal emergency managers participated in FEMA's annual hurricane preparedness video teleconference with FEMA leadership and state emergency management directors in hurricane-prone areas.

By both providing staff resources at the national and regional level, as well as mission critical training opportunities for tribes, FEMA gains a better understanding of the unique circumstances that affect tribal governments and identifies creative solutions to these unique challenges to better partner with tribal governments and emergency management professionals to serve the needs of disaster survivors.

FEMA Tribal Consultation Policy

FEMA's Tribal Consultation Policy governs precisely how we engage Indian tribes in meaningful consultation. It was developed and issued pursuant to E.O. 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments* and Presidential Memorandum, *Tribal Consultation* (74 Fed. Reg. 57881) that direct agencies to engage in regular and meaningful consultation and collaboration with tribal officials in the development of federal policies that have tribal implications, and to strengthen the government-to-government relationship between the United States and Indian tribes.

The current consultation policy was signed in August 2014, and outlines the specific roles and responsibilities for various FEMA officials, as well as a detailed outline on how consultation is achieved and when it takes place. As a result of this policy, if a tribal government was not consulted on an existing policy or action by FEMA that they determine affects their community or has tribal implications, they may contact the National Tribal Affairs Advisor and request to be a consulting party. Much like how the FEMA Tribal Policy was updated, we anticipate updating the FEMA Tribal Consultation Policy in 2017. We look forward to engaging our tribal partners during the comment period to ensure that our update reflects the evolving needs of Indian Country.

Underlying FEMA's work and mission is the whole community approach that reinforces that FEMA is only one part of our nation's emergency management team. We must leverage all of our collective team resources in preparing for, protecting against, responding to, recovering from, and mitigating against all hazards. Tribal nations are critical components in our whole community, and our commitment to addressing their needs is evident in our strategic priority to be survivor-centric in mission and program delivery. To further survivor-centric outcomes, FEMA leadership adopted a "cut the red tape" posture to focus on the needs of survivors and to develop and execute programs and policies with survivors' perspectives in mind. FEMA recognizes that the consistent participation and partnership of tribal governments is vital in helping FEMA achieve its mission, so an ongoing dialogue with tribal governments and periodic updates of our policies is key to ensuring these goals are met.

FEMA's Tribal Declaration Pilot Guidance

On January 29, 2013, President Obama signed into law the Sandy Recovery Improvement Act of 2013 (P.L. 113-2) (SRIA), one of the most significant pieces of legislation impacting disaster response and recovery since the Post-Katrina Emergency Management Reform Act of 2006.

Section 1110 of SRIA, "Tribal Requests for a Major Disaster or Emergency Declaration under the Stafford Act" authorized federally recognized Indian tribal governments (tribal governments) the option to request a Stafford Act emergency or major disaster declaration independent of the state if they chose to do so. As amended, the Stafford Act now better reflects the sovereignty of tribal governments and acknowledges FEMA's nation-to-nation relationship with tribal governments. This new authority also requires the President to "consider the unique conditions that affect the general welfare of Indian tribal governments" when issuing regulations to implement this new authority. FEMA developed a phased implementation to ensure consideration of the unique needs of tribal governments, which are further outlined below.

In consultation with federally recognized tribal governments, we are working thoughtfully and deliberately to develop regulations that best reflect the unique situation of tribal governments. Therefore, FEMA began implementing the new authority in three phases: (1) use of adapted state regulations; (2) implementation of pilot guidance; and (3) final rulemaking.

Immediate Use of Regulations

Immediately after SRIA's enactment, FEMA used existing state declaration regulations and criteria to process declaration requests from tribal governments. Since the passage of SRIA, there have been eight major disasters declared in Indian Country: The Eastern Band of Cherokee Indians (North Carolina), the Navajo Nation (Arizona, New Mexico, and Utah), the Standing Rock Sioux Tribe (North Dakota and South Dakota), the Karuk Tribe (California), the Santa Clara Pueblo Tribe (New Mexico), which has received two disaster declarations, the Soboba Band of Luiseno Indians (California), and the Oglala Sioux Tribe of the Pine Ridge Reservations (South Dakota). Through these declarations, Public Assistance, Individual Assistance, and Hazard Mitigation Grant Program funding is being provided directly to the tribal governments.

On February 14, 2013, the Eastern Band of Cherokee Indians (EBCI) submitted a request for a declaration due to severe weather which resulted in flooding, road damage, and landslides in the EBCI Qualla Boundary and associated lands. A Major Disaster Declaration was signed on

March 1, 2013, as the first direct federal to tribe disaster declaration under SRIA. The tribe's existing relationship with the state of North Carolina and the FEMA Region IV Tribal Liaison was strengthened and additional connections with FEMA were created during the event. These connections allowed less turmoil for the tribe when performing multiple processes and mission support in an environment of inexperienced applicants. Lessons learned included clarification and guidance regarding policies and procedures on tribal declarations and the need for more cultural awareness by FEMA staff.

In August 2015, the President declared a disaster for the Oglala Sioux tribe as a result of severe storms, straight line winds, and flooding. As part of the assistance made available through the disaster declaration, FEMA and the Oglala Sioux Tribe completed a permanent housing construction mission that delivered 196 manufactured homes, and repaired an additional 107 homes on the tribe's Pine Ridge Indian Reservation. The housing mission was part of the first ever Presidential major disaster declaration for Individual Assistance granted directly to a tribal nation. The agency hired 25 local tribal members to assist in that effort and their roles were vital in the success of the mission. In addition, following the disaster, eleven tribal members joined the FEMA Reservist program.

FEMA gathered critical information, best practices, and process challenges that have informed the development of the *Tribal Declarations Pilot Guidance* that serves as a comprehensive resource for tribal governments on Stafford Act declarations, disaster assistance, and related requirements.

Pilot Guidance Development

FEMA's disaster declaration regulations were developed to evaluate states' capacity and their need for supplemental disaster assistance. Since these parameters may not be indicative of a tribal nation's ability to respond and recover from a disaster, FEMA augmented its procedures and criteria to reflect the capacity and needs of tribal governments. Before entering the rulemaking process, FEMA intends to utilize the pilot period to inform the development of regulations, ultimately leading to final regulations which reflect the unique needs of tribal governments.

Tribal participation and input was critical to the development of the Tribal Declarations Pilot Guidance. In 2013, FEMA initiated tribal consultation to inform the development of the first draft guidance. FEMA hosted 26 listening sessions nationwide. FEMA sent written correspondence from the FEMA Administrator to all 567 federally recognized tribes, and issued advisories to national and regional tribal organizations and associations to advise them of the consultation. FEMA regional and headquarters leadership presented at numerous tribal conferences to provide an overview of the declaration process and to solicit feedback.

In 2014, FEMA conducted 60 listening sessions around the country, from Northern Alaska to Montana, Oklahoma to Florida, and to Maine with 540 participants and 220 tribes represented. Through these listening sessions, FEMA gathered more than 1,000 comments on the first draft guidance as well as strengthened relationships with tribal governments. We learned more about the challenges that tribal communities face, the response and recovery capabilities of tribal governments, and their understanding of Stafford Act assistance. FEMA regions have been

extremely proactive in meeting consultation requests of Native Alaskan Villages and Indian tribal governments. For instance, FEMA Region X senior staff flew to Alaska to consult with the Aleut Communities of St. Paul and St. George Islands.

The second draft of the guidance was posted to the Federal Register for a 90-day public comment period that ended in April 2016. In addition to posting in the Federal Register, FEMA conducted additional consultation over the 90-day period with over 500 tribal officials representing 178 federally recognized tribal governments through participation in 54 listening sessions nationwide. Nearly 800 comments were received and adjudicated. The final Tribal Declarations Pilot Guidance is a culmination of all of the interaction and feedback through consultation with tribal governments that has occurred over the past several years. In total, FEMA received over 2,000 comments and conducted 140 listening sessions nationwide.

The pilot guidance describes the process by which tribal governments will use to request Stafford Act declarations, during the pilot period, and the criteria FEMA will use to evaluate direct tribal declaration requests and make a recommendation to the President. It is the culmination of over three years of tribal consultation and development of multiple drafts of the guidance. The guidance incorporates key changes based on comments FEMA received from tribes. These changes include the establishment of a Public Assistance minimum damage amount for tribal declarations of \$250,000; the addition of historic preservation as a demographic factor that may influence the impacts of a disaster; expansion of eligibility under the Individuals and Households Program to include non-enrolled tribal community members, when requested by the tribal government; and modifying and adding definitions of terms.

The extensive consultation FEMA conducted with tribal governments in the development of the Tribal Declaration Pilot Guidance was not only valuable in informing what the pilot would look like, but also was invaluable to improving our understanding of the needs and unique characteristics of Indian Country. Additionally, it serves as a good example of FEMA's commitment to improving our relationships with tribal governments.

Additional Ongoing Initiatives to Support Tribal Governments

The Federal Insurance and Mitigation Administration (FIMA) supports tribal governments by providing direct assistance and support in the development of FEMA approved Hazard Mitigation Plans and guidance in the development of projects for Hazard Mitigation Assistance (HMA) grants. Hazard mitigation planning enables tribal governments to identify risks and vulnerabilities associated with natural disasters, and develop long-term strategies for protecting people and property from future hazard events. FIMA currently uses regional and headquarter resources to provide outreach and technical assistance to tribal governments in support of these activities. FIMA developed guidance documents, outreach materials and provided training opportunities to educate tribal governments in developing hazard mitigation plans and grant applications, and provided technical assistance to tribal governments applying for, and developing HMA Grants for projects including development of hazard mitigation plans. FIMA also developed resources to assist tribal governments with accessing the eGrants System, and applying directly to FEMA for HMA Grants. In the past two years a portion of the Pre-Disaster Mitigation Grant funds have been set-aside for tribal applications. Tribal nations occupy three of

the ten non-FEMA positions on the External Stakeholders Working Group that was formed to increase engagement and transparency with external (non-federal) partners.

In 2016, FIMA conducted tribal consultation on the Tribal Mitigation Planning Guidance that guides agency officials in the interpretation of regulatory requirements in their review and approval of tribal mitigation plans. The underlying regulatory requirements for tribal mitigation planning in 44 CFR Part 201 have not changed. The goal of this update was to simplify and streamline the document, introduce a set of Guiding Principles for Tribal Mitigation Plan Review, and to improve alignment with similar state and local guidance on mitigation planning.

Conclusion

The development and update of FEMA's Tribal Policy, Tribal Consultation Policy, and Tribal Declaration Pilot Guidance shows just part of our commitment to supporting federally recognized tribal governments in their preparation for, protection against, mitigation of, response to, and recovery from all hazards and disasters. The agency continues to seek feedback from our tribal partners and to improve how we can engage and work with them.

We look forward to our continued collaboration to further support tribal governments as they build their emergency management capabilities. Thank you.



THE NAVAJO NATION

RUSSELL BEGAYE, PRESIDENT
JONATHAN NEZ, VICE PRESIDENT

Testimony of Russell Begaye
President
The Navajo Nation

Before the
Senate Committee on Indian Affairs

**Oversight Hearing on “Emergency Management in Indian Country: Improving FEMA’s
Federal-Tribal Relationship with Indian Tribes”**

Held on Wednesday, February 8, 2017

Yá’át’ée’h Chairman Hoeven, Ranking Member Udall, and Members of the Committee. My name is Russell Begaye. I am the elected President of the Navajo Nation. Thank you for this opportunity to present testimony to discuss the Navajo Nation’s experience in working with Federal Emergency Management Agency (FEMA). I want to talk about two request for declarations that we worked on during my administration: a request for emergency declaration relating to the Gold King Mine spill in August 2015 and a request for a major disaster declaration concerning the Shiprock Flooding that occurred in August of 2016. Unfortunately, both of these requests for declarations were denied. We hope to provide testimony that will prevent tribes in similar situations from being denied federal emergency management resources in times of need.

Gold King Mine, August 2015

As this Committee is aware, on August 5, 2015, the U.S. Environmental Protection Agency (“USEPA”) and its contractors triggered a release of at least three million gallons of toxic mine waste in the waters directly upstream of the Navajo Nation. The toxic waste flowed into the Animas River and the San Juan River. The San Juan River runs approximately 250 miles along the northern border of the Navajo Nation. Thirteen Navajo Chapters were affected. Upon notice of the spill, the Navajo Nation took action immediately to shut down all intakes into the Shiprock, Upper Fruitland-Cambridge and Hogback irrigation canal systems. The Navajo Nation Department of Emergency Management (“DEM”) identified livestock watering points in the affected area. Our teams worked with the BIA to haul water and set up water tanks at these

watering points. The Navajo Nation DEM provided ranchers and farmers information about safe water intake for livestock and for preserving crop fields. The Navajo Nation's EPA monitored water quality at eleven strategic points along the San Juan River. The Nation's DEM activated the Emergency Operations Center ("EOC") to coordinate the Nation's response to this toxic spill. In all, approximately 200 Navajo Nation DEM and Navajo EPA employees and volunteers assisted in the response to this disastrous federal EPA-triggered spill. No federal FEMA employees were ever on the ground.

The Nation submitted its FEMA application for an emergency application on October 2, 2015. FEMA notified the Nation on October 20, 2015 that it denied our application for an emergency declaration. FEMA's justification for the denial was that the agency determined that "the vast majority of the response and recovery efforts for this event fall under the authorities of other federal agencies." The "other federal agency" referred to by FEMA was the USEPA, the agency responsible for causing the emergency situation, and with a strong self-interest in minimizing the response in order to minimize potential liability for its actions. Despite this strong conflict of interest, the Obama administration designated USEPA as the lead federal agency for spill response. We believe the designation of the USEPA as the lead agency blocked assistance from other federal agencies including FEMA and the U.S. Department of Agriculture ("USDA"). For example, in discussions with FEMA staff, we were informed that FEMA's "federal mission" does not include livestock and crop fields, and livestock and crop fields were the most affected by the toxic spill. FEMA staff also informed us that USDA assistance for livestock and crop fields are provided under major disaster declarations, not under emergency declarations. When we reached out to the USDA we were informed their regulations prohibited them from assisting us here because the livestock and crop fields were impacted by an emergency, not a major disaster. As you know, the USEPA recently declared that they are not legally responsible for the spill – just days before the Obama administration left office. The bottom line is that the USEPA caused this spill, and our Navajo people who have suffered greatly as a result of the spill have yet to be compensated for their damages.

In addition to the above roadblocks, we were also informed that FEMA does not generally get involved in emergency assistance when an actual or potentially liable party is involved, as was the case with the Gold King Mine spill.

In regards to FEMA and other agencies lack of involvement in the Gold King Mine spill, we ask whether FEMA applies this policy selectively because it is our understanding that FEMA provided assistance during the BP oil spill that occurred in the Gulf of Mexico where many federal departments became involved and there were liable parties. Why did President Obama's FEMA engage in the BP-caused Gulf of Mexico spill, yet shy away from the USEPA-caused Gold King Mine spill? We ask the Committee to explore the difference in assistance and response between these two cases.

FEMA's denial of an emergency declaration also effectively denied the Nation assistance for its people through counseling services. We received many requests from the local chapters and individuals for counseling services. We would have applied for counseling services assistance from the U.S. Department of Health and Human Services ("DHHS") for those affected by the spill as well as responders to the spill. However, when we requested this assistance from DHHS, it informed us that it can only provide this service if an emergency declaration is made and approved by FEMA. We request this policy be reviewed – our people should not be denied access to federal counseling services that would normally have been available under different political circumstances.

Our Navajo DEM is made up of only 3 employees. When a disaster occurs, they must take the lead in organizing the response. This is a lot of work and yet at the same time, they have to make assessments, develop all the documentation, and submit all the required documents to FEMA. As such, our resources are stretched thin. Comparable State emergency departments are made up of 50 or more people. I imagine that a smaller Tribe than the Navajo Nation, who has limited or no resources will have even greater difficulty in getting any type of declaration approved by FEMA. I therefore urge Congress to review FEMA funding for Tribes so that our people can be better served in the event of a disaster. Our emergency response teams should have the same resources as State teams, and Congress can help ensure this parity.

Because the USEPA caused this spill, it effectively prevented FEMA from taking the lead and engaging with the Navajo Nation. The USEPA then denied our claims a year-and-a-half after the spill and only days before the Obama administration left office. I find it appalling that a federal agency can cause a spill, testify before this Committee that it takes full responsibility, then prevent FEMA from engaging, then finally deny liability. This should never be allowed to happen again.

Shiprock Flooding, August 2016

From August 3-5, 2016, flooding occurred in northwest Shiprock, New Mexico on the Navajo reservation. Three hours after the rainstorm reached its peak, residents in the affected area began calling public rescue agencies who responded immediately. Individuals and families were evacuated to the Shiprock Chapter ("Chapter") House. Red Cross had supplies and bedding set up in the Chapter House. The local emergency response team, entitled the Shiprock ALERT Team, set up a command post in the Chapter House. DEM provided technical assistance to the Shiprock ALERT Team. In the early morning of August 6th, breakers and water lines were shut down; roads were cleared of flood debris so that residents and rescuers could travel in and out of the area. A loader and bar screen was used to clear flood debris from the demolished houses. Trash bins were donated so that debris could be quickly removed, thus reducing risks to public

health. Donations were being continuously received at the Chapter and distributed to affected residents. Temporary housing was found for those whose homes had washed away. Public meetings were held at the Chapter House to keep the community regularly informed. The Nation's Division of Health staff assisted affected residents by providing them with safety and health information and monitoring them for days.

The primary area where flooding occurred was approximately three square miles. Twenty-seven homes were affected and all were surveyed for damage by DEM and FEMA. Ten were deemed to be affected but habitable, two had minor damage and five sustained major damage. Ten homes were destroyed. Eleven vehicles were destroyed and five of these washed away. The damage to the affected families was documented and estimated at \$967,516. Five months after the flooding seven families have been re-settled, nine families continue living in temporary homes, three have been provided trailers by the Navajo Nation, one person is homeless, one family purchased their own home, and one family is renovating their home to make it habitable.

The Navajo Nation submitted its FEMA major disaster declaration application on September 21, 2016. On October 12, 2016, FEMA denied our application because FEMA "determined that the impact to individuals and households from this event was not of such severity and magnitude as to warrant supplemental federal disaster assistance." The Nation appealed FEMA's denial on November 9, 2016. Our appeal emphasized the individual assistance factors applied by FEMA pursuant to 44 CFR 206.48(b): (1) concentration of damages, (2) trauma, (3) special populations, (4) voluntary agency assistance, and (5) insurance.¹ On November 28, 2016, FEMA notified the Nation that its appeal was denied. The denial simply reaffirmed FEMA's original conclusion that the "impact to individuals and households from this event is not of the severity and magnitude as to warrant supplemental federal assistance."

The original FEMA denial stated only that the impact to the individuals and families was not severe enough and the magnitude was not sufficient enough. In our appeal, we gave more details about the impact experienced by the affected individuals and families in accordance with the factors applied by FEMA for individual assistance. Nonetheless, FEMA denied our appeal on the same basis of insufficient severity and magnitude.

The Nation requests clearer guidance from FEMA to Indian tribes who apply for individual assistance. Because FEMA did not explain how and why it reached the conclusion that it did, we can only speculate about the basis of their conclusion with questions such as the following. Was the 3 square-mile area not of sufficient magnitude? Given the census population numbers we included for the Shiprock community, were 21 families not sufficient to warrant a declaration? Were the estimated total damage costs of \$967,516 not severe enough or of sufficient magnitude? The Nation does not know what thresholds apply under each factor that FEMA

¹ The 6th factor applies primarily to states.

considers in deciding whether a major disaster event qualifies for federal assistance. In addition, the Nation wonders whether the scope of the disaster response might have worked against a declaration decision because the locally-based Shiprock ALERT Team functioned as the primary responder, not the Nation's DEM. Shiprock ALERT Team was right there in the community and could respond immediately and coordinate services for rescue, repair, and aid. Because the affected area was a residential area, the flooding did not impact any government operations or facilities. This experience with unclear guidance from FEMA about its individual assistance determinations leads us to request that FEMA provide clear guidance for Indian tribes with respect to applications for individual assistance.

The Nation also recommends that FEMA consider a class of disaster relief that would allow for assistance for individuals who have disaster damages that are localized in scope even if tribal government functions and facilities are not affected. Given the limited resources of all types for Indian tribes, even a localized disaster event will greatly challenge the internal resources of most Indian tribes.

Other Declarations

Prior to my Presidency, there were two other Navajo Nation declarations approved by FEMA. One declaration was for a freeze that occurred across the Navajo Nation around December 2012 to January 2013. The Nation had filed a request for a major disaster declaration and FEMA approved the declaration. This declaration was filed shortly after the Stafford Act was changed to allow Indian tribes to file declarations for themselves rather than go through the state. Navajo was one of the first few tribes to file pursuant to this new law.

The other declaration was made as a result of severe storms, flooding and mudslides that occurred in New Mexico from July through September of 2013, but this assistance did not come from Navajo's own declaration. Initially, from our understanding, Navajo was denied assistance from FEMA because the cumulative amount of Navajo's documented damages did not exceed the \$1 million threshold. In the alternative, the Nation filed as a subgrantee of the State of New Mexico under their declaration since their cumulative damages would then exceed the \$1 million threshold. The tribal threshold has since been reduced to \$250,000, which now makes it easier for tribes to receive assistance.

If you need further information on these declarations, we can provide it upon your request.

Conclusion

FEMA recently published a Tribal Declarations Pilot Guidance dated January 2017. We provided comments to the draft of this guidance. However, at this time, we are working to see if any of our comments were incorporated into that Guidance. When the flooding and the Gold King Mine spill occurred, we did not have this guidance and we had to rely on specialized expertise and navigate the complex maze of federal regulations. Since it is in the pilot phase, we shall see how this will help us out in the future.

The Nation places a spotlight on the difficulties Indian tribes confront when attempting to apply for emergency declaration assistance, especially when federal guidelines and regulations require criteria that do not apply to an emergency event such as the toxic spill that contaminated the San Juan River and yet caused damage to vitally important tribal resources. As a result, many of the individual farmers and ranchers affected by the toxic spill remain uncompensated almost two years after the event. The fact that farmers have not been compensated for their EPA-caused losses and the fact that FEMA was prevented from engaging is absolutely unacceptable. I commend this Committee for focusing on tribes' difficulties in obtaining disaster assistance from the federal government.

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Written Testimony of J. Michael Chavarria Governor of the Santa Clara Pueblo

“Emergency Management in Indian Country: Improving FEMA’s Federal-Tribal Relationship with Indian Tribes”

Senate Committee on Indian Affairs Oversight Hearing February 8, 2017

Thank you Chairman Hoeven, Vice Chairman Udall, and members of the Committee for this opportunity to provide testimony on the critically important topic of natural disasters in Indian Country. Our Pueblo thanks you for your dedicated work on behalf of Indian tribes across the nation, particularly in the southwest.

My name is J. Michael Chavarria and I am the Governor of the Santa Clara Pueblo, located in north-central New Mexico. Because of wildfires and subsequent intense flooding, the Santa Clara Pueblo has had five Presidential Disaster Declarations (or PDDs) in the last five years. Indeed, in a report issued after the fire, the U.S. Army Corps of Engineers observed, “*The Village of Santa Clara Pueblo is in imminent threat of large damaging floods with extreme life safety risk.*” My testimony shares our experience with disaster relief and its impacts, as well as the lessons we have learned in overcoming challenges related to emergency management. It concludes with our top five recommendations for improving FEMA’s relationship with Indian tribes. Thank you.

Background on the Las Conchas Fire and its Impact

In the summer of 2011, the Santa Clara Pueblo was devastated by the Las Conchas Fire, which was then the largest wildfire in New Mexico history. We estimate that over 16,000 acres of our forestlands were burned, which—when combined with the lands we lost in the Oso Complex Fire of 1998 and the Cerro Grande Fire of 2000—has resulted in the destruction of 80% of our forests and a huge part of our cultural heritage. None of the four fires we have faced in the past decade have originated on our lands, yet we have suffered the repeated and severe consequences of these natural disasters.

Outside of our current reservation, the Las Conchas fire burned thousands of additional

acres of our traditional lands—including the lands of our origin, the P’opii Khanu, which are the forested headwaters of the Santa Clara Creek. The Santa Clara Creek drains the east side of the Jemez Mountains, delivering its waters to the Rio Grande near Española, NM. The Pueblo owns almost the entire watershed, and our tribal village is located on the Creek’s alluvial fan, where the Creek joins the Rio Grande.

The Las Conchas fire scorched the Creek’s upper watershed and most of the Santa Clara Canyon, leaving a 25.9 mile burn scar in its wake. A burn scar refers to land that has been charred and stripped of all vegetation by a wildfire. Because the land is devoid of vegetation, no root systems remain in place to secure the land. As a result, the land is vulnerable to flash floods and mudslides. Our Pueblo has experienced severe flash flooding since the fire.

All five of the Pueblo’s Presidential Disaster Declarations have involved infrastructure damage stemming from catastrophic flash floods. Flooding has wiped out existing water control structures within the canyon, destroyed once-pristine native cutthroat fish habitat, impacted roads, taken away culverts, and damaged the traditional cultural properties of our sanctuary.

Impacts. Santa Clara has had five Presidential Disaster Declarations: three by the request of the State of New Mexico and two by the Pueblo after the Stafford Act was amended. Overall, the ability to directly request Presidential Disaster Declarations has given Santa Clara Pueblo greater control over our own disaster relief efforts. Further, implementation of FEMA’s National Disaster Recovery Framework (NDRF), which facilitates inter-agency collaboration, has been helpful to Santa Clara in assuring a comprehensive and coordinated effort among the federal family.

However, despite the hard work of many dedicated agency staff members, current laws and regulations regarding disaster relief remain a product of a different time, with the effect of slowing the delivery of critically needed resources. The flood disaster relief framework remains broadly tailored to one-time floods on the Mississippi River and, thus, is focused on short-term efforts (and this not only refers to funding, but to how each contract is written and the expectations of the implementing policies). Given the realities of life in the southwestern United States and the increasing effects of climate change, disaster relief policies must be shifted to focus on long-term responses to challenges such as Santa Clara’s post-fire, periodic flooding, which will remain a hazard to our well-being for perhaps a decade as the Santa Clara Canyon slowly recovers. Although significant progress has been made, more work remains to be done to ensure effective responses to natural disasters in Indian Country.

Continued Threat of Catastrophic Floods. Because of the altered hydrology and geomorphic changes to the land, the Pueblo remains in danger of a catastrophic flood, but that danger has been substantially mitigated by the construction of three large gabion structures in the canyon, as well as other water control structures and actions. The severity of the burn scar has led to a dramatic reduction in infiltration rates in the affected area. This has resulted in a four-to-eight-fold increase in runoff and sediment/debris flow along the Creek, substantially increasing the potential for widespread damage. Although it was originally thought that a full-scale dam would be necessary in the canyon, after technological review demonstrated the extraordinary difficulty of building such a structure, the next alternative was the gabion structures.

The graph below contains data from the U.S. Army Corps of Engineers on the hydrology of the Santa Clara Creek pre- and post-fire. As the graph indicates, the worst-case scenario would be a storm of such force that it is generally considered to happen once every 100 years. For the Rio Grande Confluence, such a storm would have flooded 5,640 cubic feet per second (cfs) pre-fire and now, post-fire, would flood 21,450 cfs.

Table 1: Flow Results Summary (cubic feet per second, cfs)
Source: Fire Altered Hydrology for Santa Clara Creek/ USACE Technical Assistance Report

LOCATION	CONDITION	50% CHANCE (2-YR)	10% CHANCE (10-YR)	1% CHANCE (100-YR)
Santa Clara Creek at Dip Crossing	Pre-fire	300	1,900	5,000
	Post-fire	2,650	8,500	20,300
Santa Clara Creek at Rio Grande Confluence (Outlet)	Pre-fire	350	2,260	5,640
	Post-fire	3,100	8,900	21,450

Lessons from the Santa Clara’s Disaster Relief Experiences

Experience as a Sub- and Direct Grantee. Santa Clara Pueblo has experience as both a sub-grantee and direct grantee of Presidential Disaster Declarations. As the Committee is aware, until recently, Presidential Disaster Declarations could only be requested through the states. For tribes, securing a state request for a Presidential Disaster Declaration could be difficult. New Mexico, however, did not fit that mold and it requested two such declarations on behalf of Santa Clara Pueblo. Unfortunately, in those instances it still took up to a year for the Pueblo to receive the requested disaster relief funds from the State, hampering our ability to provide urgently needed immediate relief.

Amendments to the Stafford Act now allow tribes to directly request Presidential Disaster Declarations. The ability to become direct-grantees has given Santa Clara Pueblo greater ability to direct its own disaster relief efforts.

National Disaster Recovery Framework (NDRF). The NDRF has been enormously helpful in coordinating agency responses and providing a more collaborative and effective approach to disaster recovery. In November 2013, Santa Clara Pueblo became the first tribal government to request and receive federal disaster recovery assistance under the National Disaster Recovery Framework (NDRF). FEMA used the NDRF to create a comprehensive federally led strategy for the Pueblo to identify all possible actions that would build the community’s resiliency to future flooding. The NDRF provided the Pueblo with an opportunity to effectively develop recovery strategies for our respective areas. This support system enabled FEMA to extend their resources to the Pueblo and helped to define a series of important core recovery principles, namely:

- Roles and responsibilities of recovery coordinators and other stakeholders;
- A coordinating structure that facilitates communication and collaboration among all stakeholders;
- Guidance documents for pre- and post-disaster recovery planning; and
- The overall process by which communities can capitalize on opportunities to rebuild in stronger, smarter and safer ways following a disaster.

Transitioning Best Practices to Support the NDRF. After the Las Conchas fire, Santa Clara Pueblo recognized the potential for flood impacts on downstream resources and our tribal village. Tribal representatives contacted the southwest Tri-Regional Burn Area Emergency Response (BAER) coordinator and the National Interagency Fire Center (NIFC) to request assistance with emergency post-fire stabilization planning. BAER team members worked with the Pueblo to prescribe and implement treatments in an effort to protect life and property from future flooding.

Subject matter experts have been instrumental in coordinating federal resources to assist the Pueblo in our recovery efforts. During conversations with the Pueblo as part of the NDRF process, an approach was agreed upon to leverage other federal agency staff engaged in the workgroup and incorporate them into the recovery planning process through FEMA's Mission Assignment process. This approach had the two-fold benefit of establishing inter-agency and federal-tribal relationships and effectively integrating disciplines for a common purpose.

The Las Conchas Fire Rehabilitation Workgroup subsequently transitioned to the Las Conchas Team. It was in this support system where Santa Clara Pueblo began to utilize resources from partnering agencies, such as the Recovery Support Strategy (RSS), and investing in building the Pueblo's internal response capacity.

Recovery Support Strategy (RSS). The Recovery Support Strategy is a dynamic, interactive document that provides federal and tribal partners with a detailed vision to help guide the recovery support. The RSS uses Recovery Support Functions to coordinate key areas of national assistance during the NRDF process. Each Recovery Support Function is managed by a Coordinating Agency, which serves to coordinate a range of federal agency resources. The RSS is continually revised as engagement with tribal officials progresses, and as the recovery objectives and priorities of the Santa Clara Pueblo are further refined.

The RSS identifies objectives and support actions; member agencies needed to implement the actions and Recovery Support Functions; and the necessary resources to achieve the recovery objectives so that the Santa Clara Pueblo will be more resilient in the face of future disasters. Given the focused nature of impacts within the canyon and riparian channel, it was decided that a full complement of the Recovery Support Functions would not be required in support of Santa Clara Pueblo, but should instead focus on: (a) community planning and capacity building; (b) watershed stabilization; and (c) natural and cultural resource protection. We have made significant progress in addressing these areas through a targeted, phased-action approach. In terms of the general RSS, our recovery themes focused on the following:

- (i) Focus initially on short-term actions to protect the Village and its people from imminent threats of flooding.

- (ii) Continue to leverage federal and state interagency partnerships and technical support.
- (iii) Regularly assess the natural restoration of the Santa Clara Canyon to strategically plan its long-term recovery in a way that balances the natural recovery processes with man-made designs.
- (iv) Assess all recommended projects for both feasibility and realism to ensure projects are compatible with the Pueblo's long-term management capacity.
- (v) Assure all NDRF partner actions are respectful of Santa Clara's culture and sovereignty.

Through the support of the NDRF and RSS, Santa Clara Pueblo was able to establish a foundation that allows the Pueblo to mold the Framework to fit the Pueblo's unique needs and created a strategic approach to recovery. The RSS has allowed us to prioritize recovery efforts and to help identify agencies to assist us through support from their respective agencies. This has broadened our span of financial resources as well as strengthened collaboration among our federal, state and non-governmental partners.

Tribal Declarations Pilot Guidance. FEMA has consulted with tribal governments to discuss the implementation of direct tribal declarations. Through conference calls, participation in in-person meetings, and written submissions, FEMA heard from tribal leaders, tribal, state and local emergency managers, and other interested participants about how to process declaration requests from tribal governments. Participants also provided recommendations on how FEMA should evaluate requests and make recommendations to the President about whether to grant declarations for impacted tribes. FEMA considered all of this input in the development of this draft guidance.

Participants provided examples of unique circumstances that affect tribal governments, such as extreme remoteness, high unemployment, and the tribal governments' various decision-making structures. Some raised concerns that tribal governments have limited fiscal and staffing capacities even in non-disaster times, which may affect their ability to administer disaster assistance and cover non-federal cost shares. In addition, participants expressed concern about how FEMA would define the incident area and tribal lands for declaration purposes. FEMA also received many comments on the evaluation criteria for Individual and Public Assistance requests and cost share adjustment requests. Finally, tribal officials requested additional consultation and technical assistance to better understand the requirements and implications of direct declarations.

This guidance will be a tool that outlines FEMA's commitment to collaborate with tribes on disaster recovery and prevention efforts. It allows FEMA to actively engage in developing ways to better support tribes by providing critical training and technical services. FEMA Region VI has been a great partner in helping support Santa Clara Pueblo through the process of obtaining and effectively managing our Tribal Declaration.

Overcoming Challenges. The direct grantee process, however, is not without its challenges. It is a new process, and Santa Clara Pueblo has been the first tribe to utilize it in FEMA Region VI. For both the Pueblo and the Region, there is a lot of learning that has to take place. We have been going through that learning process with FEMA and in many ways we feel like we are pathfinders for other tribes, should they be so unfortunate as to face the difficulties we have learned to overcome. The support from FEMA Region VI allowed Santa Clara Pueblo to have access to immediate resources to manage two separate disaster situations for which we sought direct Tribal

Declarations.

As a sub-grantee, receiving funds through the State, the Pueblo must meet a cost-share match of 12.5% while the State has the burden of administering the grant on our behalf. The cost-share match of a direct grantee is 25%, although this can be lowered to 10% once a per capita threshold is met. Santa Clara Pueblo recognizes the barriers the cost-match may pose to tribes and understands how tribes may be reluctant to seek a Tribal Disaster Declaration as a result.

As a small tribe ourselves, our five Presidential Disaster Declarations (PDDs) have been a significant financial burden. The matching funds requirement has drained the Pueblo's financial resources. Due to these tremendous financial responsibilities, the Pueblo has requested that FEMA combine the five PDDs into one so that the Pueblo is in a better position to meet the financial cost share responsibilities. This would also enable the Pueblo to reach the 90/10 cost-share level using the per capita figures. Right now, we are only able to meet that threshold on one PDD while the others are variously administered at 12.5% and 25% cost-share levels. Such variations in financial responsibilities are challenges we must be aware of so as a tribal government to properly allocate funds and move forward with our obligations.

Furthermore, there are variations in administrative cost responsibilities for tribes under a PDD. As a direct grantee the Pueblo is responsible for associated administrative costs, although we do receive 3.37% in administrative funding from FEMA. As a sub grantee, however, funding for management costs is often determined by the State and there is not a guarantee that the tribe will receive any financial support for those costs. This places a significant burden on tribes because they often lack the financial resources to support additional staff and emergency services. Tribes may also face challenges in meeting the \$1 million FEMA threshold. This threshold should be revised to coincide with tribes' financial resources and capacities, and tribal consortiums should be able to apply for relief in order to meet this threshold.

Additionally, we have seen smaller projects receive quick funding responses from FEMA, while larger projects remain mired in time-consuming quality assurance and quality control processes. While clearly important, these processes greatly lengthen the review time during a period when time is of essence in preventing or mitigating a natural disaster. For Santa Clara Pueblo, as we enter the New Mexico monsoon season, we spend every day scanning the skies and read the weather reports, fearing the worst and praying for the best. Receiving funds to support recovery efforts prior to the seasonal impacts of monsoons is imperative in breaking the cycle of continued damage. As our PDD experiences demonstrate, in emergencies project implementation is crucial to protecting lives, securing communities, and preventing repeated damage to key infrastructure.

Finally, the administrative responsibility that comes along with being a direct grantee has challenged the Pueblo. We certainly have proven that we have the administrative capability to administer these programs, but we had to learn through trial and error. As the changes to the Stafford Act allowing tribes to request direct declarations are promulgated, FEMA may best be served by implementing a training program that better communicates the regulatory requirements associated with being a direct grantee. This would better enable tribes to make informed decisions regarding FEMA assistance and would also allow FEMA to familiarize itself with the diverse

capabilities of tribal governments.

As the first tribe in Region 6 to receive direct funding, we know that we are involved in a learning process with our federal partners. Training and capacity building is needed on both sides of the federal-tribal partnership. Tribes need additional training and technical assistance to administer funds successfully and our federal partners could benefit from allowing tribes to conduct training for tribal liaisons to help them become more familiar with working with tribal governments. Together we can work together to build our mutual capacities and identify areas in which disaster relief policy can be adapted to address the unique emergency service needs of Indian Country. In light of these considerations, we therefore recommend the following.

Recommendations

- 1. Emergency Response Fund.** Our experiences with disaster relief highlight the need for tribes to receive assistance as soon as possible following a natural disaster. Empowering tribes to directly request a Presidential Disaster Declaration can be helpful, but standing alone it does not fully address the need for quick funding. For this reason, we recommend the creation of a BIA Emergency Response Fund. The idea behind this fund would be for the BIA to have readily at hand significant funding that can be deployed as necessary to address short- and long-term disaster recovery and disaster mitigation needs.
- 2. Support for the FEMA Tribal Guidance Document.** FEMA developed the Tribal Declarations Pilot Guidance after several rounds of consultation with tribal governments over the course of more than three years. The document reflects the diverse voices of tribal leaders and emergency management officials, among others, and is responsive to their concerns. We support the FEMA Tribal Guidance Document as a tool to be used alongside the NRDF and RSS.
- 3. Maintenance of the Stafford Act Amendments.** The Stafford Act amendments allow tribal governments the **choice** to either request an emergency/major disaster declaration independently of a state **or** to seek disaster assistance through a state declaration. The amended Stafford Act better reflects the sovereignty of tribal governments and acknowledges FEMA's government-to-government relationship with tribal governments. It also promotes tribal self-determination by allowing tribal governments to determine for themselves how they want to seek Stafford Act assistance either independently of a state or through a state declaration. We therefore recommend that these amendments be maintained in the event that the Stafford Act is amended in the future.
- 4. Appropriate necessary funds for implementation of Forest treatments as identified under the Tribal Forest Protection Act (TFPA).** The TFPA authorizes the secretaries of Agriculture and Interior to give special consideration to tribally-proposed Stewardship Contracting or other projects on Forest Service or BLM land bordering or adjacent to Indian trust land to protect trust resources from fire, disease, and other threats. These stewardship agreements are an important tool for fighting the ever-growing threat of wildfires in the West. Empowering tribal governments as caretakers to protect tribal lands by managing adjacent federal lands is a smart policy. Santa Clara urges the Committee to support the expansion of this program going forward.

5. Additional funding for fire prevention treatments on and off tribal reservations. Santa Clara recommends the consideration of alternative fire prevention land management techniques that would allow tribal grantees to render timely responses to emergencies and reduce the threat of catastrophic fires encroaching upon our trust resources. Huge amounts of funds are used annually for fire suppression treatments while those same funds could be used to implement a variety of effective and relatively low-cost fire *prevention* techniques, such as hazardous fuels reduction and fuel breaks. We therefore recommend additional funding for fire prevention activities to protect tribal and federal lands.

Conclusion. I would like to conclude my remarks by thanking the many individuals that we work with at the Federal Emergency Management Agency, the Army Corps of Engineers, the Bureau of Indian Affairs, the Bureau of Reclamation, the U.S. Department of Agriculture, and others, for the long hours that they have committed to addressing what continues to be an existential threat to the Santa Clara Pueblo. Despite working with laws and regulations that can be cumbersome or designed for very different emergency situations, they continue to show commitment and determination, for which I and my people are truly grateful. There is work to be done and there are significant improvements to be made, but at Santa Clara we have hope that after suffering a terrible loss we can secure the safety of our community in the short-term, as well as its cultural and spiritual integrity and prosperity in the long-term.

Thank you for the opportunity to testify on behalf of this important issue. The Pueblo of Santa Clara looks forward to working with you on addressing these complex needs going forward.



The Confederated Tribes of the Colville Reservation



Prepared Statement of Cody Desautel, Natural Resources Director
Confederated Tribes of the Colville Reservation

Oversight Hearing on “Emergency Management in Indian Country: Improving
FEMA's Federal-Tribal Relationship with Indian Tribes”

U.S. Senate, Committee on Indian Affairs

February 8, 2017

Good afternoon, Chairman Hoeven, Vice Chairman Udall, and members of the Committee. My name is Cody Desautel and I am the Natural Resources Director for the Confederated Tribes of the Colville Reservation (“Colville Tribes” or the “CCT”). I appreciate the opportunity to testify on improving FEMA’s relationship with Indian tribes.

My testimony today will focus on three issues: (1) the impact of three major disasters on the Colville Reservation during the past five years, including two massive wildfires; (2) why catastrophic wildfires should be treated differently by FEMA and under the Stafford Act; and (3) the need for FEMA to re-examine its criteria for evaluating disaster declarations for rural tribal communities.

Background on the Colville Tribes and Major Disasters on the Colville Reservation

Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is a confederation of twelve aboriginal tribes and bands from across eastern Washington state. The present-day Colville Reservation is in north-central Washington state and was established by Executive Order in 1872. The Colville Reservation covers approximately 1.4 million acres and its boundaries include parts of Okanogan and Ferry counties. The CCT has more than 9,400 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest, and the second largest in the state of Washington. About half of the CCT’s members live on or near the Colville Reservation. Of the 1.4 million acres that comprise the Colville Reservation, 922,240 acres are forested land, and 660,000 of the forested acres are commercial timber land.

The Colville Tribes has endured three major disasters during the past five years. The first occurred in July 2012, when a major wind storm and flash flood toppled trees, destroyed power lines and tribal infrastructure, and blocked or damaged roads over an area of several hundred thousand acres. Although damage occurred reservation-wide, the community of Keller was most heavily affected by the storm. Homes were lost or damaged, and residents with undamaged homes were left without power for extended periods. The community water infrastructure was damaged by uprooted trees, and rural residents outside of the Keller community were without

power for even longer. The Keller disaster occurred before the tribal amendments to the Stafford Act became law and the CCT worked with the state of Washington to ensure that the state included damage to the Colville Reservation as part of its request for a Presidential Disaster Declaration (PDD). President Obama issued the PDD, which enabled the Colville Tribes and other affected jurisdictions to obtain assistance through FEMA's Public Assistance program.

Two years later, in 2014, four fires, collectively referred to as the "Carlton Complex" fires, burned 256,108 acres in communities near the Colville Reservation. While the Colville Reservation damage was comparatively small and limited to uninhabited rangeland, CCT personnel assisted local governments in the suppression and recovery efforts. The Carlton Complex fire burned more than 300 homes and other structures and affected life and property throughout two watersheds.

Most recently, in 2015, the Colville Tribes endured the most destructive fire on an Indian reservation in recorded history. The North Star and Okanogan Complex fires collectively burned more than 255,000 acres on the Colville Reservation—nearly 20 percent of the total land base. Approximately one-fourth of the commercial timber land on the Reservation burned or was affected, which included 788 million board feet of timber. These two fires were part of the worst wildfire season in Washington state history that saw more than 121 fires ignited during a four-day period from August 10-14, 2015.

The 2015 fires statewide resulted in the deaths of three firefighters, a non-firefighting fatality, 21 injuries, and ultimately burned more than 1 million acres. The Okanogan Complex fire surpassed the 2014 Carlton Complex fire as the largest fire in Washington state history. 2015 marked the first year ever that Washington state officials asked residents to volunteer to assist in fighting wildfires.

For both the 2014 Carlton Complex and the 2015 fires, Washington state Governor Inslee requested, and President Obama issued, PDDs that authorized Public Assistance for both the Colville Tribes and the affected local governments. In both cases, however, FEMA denied the Governor's requests for assistance for homeowners under FEMA's Individual Assistance program. Following FEMA's denial of the Governor's Individual Assistance request for the 2015 fires, the Colville Tribes submitted its own separate request for Individual Assistance for on-reservation residents. FEMA denied that request as well.

Catastrophic Wildfires Should be Treated Differently by FEMA and in the Stafford Act

Currently, neither FEMA nor the Stafford Act adequately addresses the full extent of damage caused by massive, catastrophic wildfires. While FEMA did establish an "Erosion Threat Assessment Reduction Team" to assess post-fire rehabilitation needs, the funding for carrying out most of those activities must be secured from other sources. Funding for immediate landscape stabilization can be charged to the Department of the Interior's Wildland Fire Management program, but longer term Burn Area Rehabilitation funding is extremely limited for Indian tribes nationwide, as are funds for replanting.

In the next few years, the single biggest task will be replanting trees burned during the 2015 wildfire season. Although the Colville Tribes has and continues to seek alternative funding sources, the only dedicated federal source of replanting funds for Indian forests are BIA forestry funds. The BIA has a statutory obligation to replant Indian forest land but its average annual reforestation budget is approximately \$3.2 million for tribes *nationwide*.

The BIA's entire \$3.2 million budget would cover planting of less than 11,000 acres. Relying only on BIA funds would mean the hundreds of thousands of acres of forest land on the Colville Reservation may not be replanted for decades, if ever. In contrast to the obstacles the CCT must endure given the limitations of the BIA's reforestation budget, the U.S. Forest Service is already implementing its plans to replant the 9,095 acres of national forest land affected by the 2014 and 2015 fires.

The CCT has traditionally relied on forest products and stumpage as primary sources of revenue to fund tribal government programs. The long-term damage to the CCT's economy and government will be felt for decades unless replanting can take place soon. The loss of forest lands will also have a lasting cultural impact on the Colville Tribes and its members. The fires devastated big game populations, cultural plants, and culturally significant sites reservation-wide.

FEMA programs do not address the full extent of the damage caused by catastrophic fire events, including fires on non-Indian federal lands. FEMA should provide immediate assistance for fire suppression, stabilization, and landscape rehabilitation. For Indian forest land, FEMA should also provide assistance for replanting in light of the United States' statutory obligations to reforest Indian forest land.

One approach would be to create a separate disaster declaration category for catastrophic fire events, like what was included in Title IX of the House-passed Resilient Federal Forests Act of 2015 (H.R. 2647). That provision would have authorized the President to declare a major disaster for wildfires on federal lands (including Indian trust lands) and authorized FEMA to aid the Departments of the Interior and Agriculture for extraordinary wildfire suppression costs that exceed the 10-year average. The scope and severity of fire events continues to grow and this type of solution is needed to ensure that both Indian and non-Indian communities can fully recover from massive fire events.

FEMA Should Re-examine its Criteria to Ensure Rural Tribal Communities are Treated Fairly

One of FEMA's criteria for evaluating requests for Individual Assistance is concentrations of damages. As stated in FEMA regulations, "High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State." 44 C.F.R. § 206.48(b)(1). The FEMA pilot guidance for tribal disaster declarations did not modify this criterion or otherwise change how FEMA applies it to tribes.

FEMA has never publicly articulated the basis for its denials of the Washington state and Colville Tribes' requests for Individual Assistance for the 2014 and 2015 fires. Based on

discussions with local officials and our congressional delegation, however, we believe that the fact that much of the damage was widespread over a large geographic area was the primary reason for FEMA's denials.

Rural areas like the Colville Reservation are inherently prone to a lower concentration of damages based on population density. However, the economic, social, agricultural, and cultural damages from major disasters often impact rural communities much more severely than in metropolitan areas. This was the case with the affected residents of the Colville Reservation, many of whom lost access to health care and other essentials due to extended road closures. Other tribal members lost their livelihoods when cattle and rangeland burned, which are damages that have persisted and will continue long after the fires were extinguished.

In the 114th Congress, members of the Washington state congressional delegation introduced the "Individual Assistance Improvement Act of 2015" (H.R. 4243), which would have waived the concentration of damages criterion for rural communities in certain instances. Until a permanent legislative or administrative fix can be made, FEMA should amend existing guidance or issue new guidance that makes clear that rural Indian tribes will not be denied assistance based on concentration of damages.
