SOUTHERN UTE INDIAN TRIBE

February 13, 2012

The Hon. Don Young
Chairman
Subcommittee on Indian and Alaska Native Affairs
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Re: Comments of the Southern Ute Indian Tribe on the American Indian Empowerment Act of 2011 (H.R.3532).

Dear Chairman Young:

I am submitting these comments on behalf of the Southern Ute Indian Tribal Council in response your Subcommittee's February 7th, 2012, hearing regarding H.R.3532, the American Indian Empowerment Act of 2011, and ask that they be included in the record of that hearing. As an initial matter, I would like to thank you for introducing this ambitious piece of legislation, as you said, "...to spark a long-overdue discussion of blazing a new path in federal Indian policy." For far too long, our federal trustee has only served to delay important tribal projects and we view H.R.3532 as a strong statement in favor of removing federal impediments to tribal land management and resource development. We wholeheartedly support your efforts to help Indian Country manage our own lands as we see fit, without undue interference from the federal government.

Consistent with your desire to support tribal self-determination, we applaud the voluntary nature of H.R.3532. Even in this era of self-determination, we have too often seen the federal government dictate policy to tribes rather than allow tribes to choose their own path. If a tribe chooses to do so, H.R.3532 would provide a powerful tool for that tribe to assume greater control over its lands, including (subject to certain restrictions) the preemption of federal laws governing such land by the tribe's own laws. Rarely have we seen such a bold statement of tribal authority in proposed federal legislation and we are encouraged that this bill shows the potential for such policies in the future.

Although we are in favor of the spirit, purpose, and authorities in H.R.3532, we cannot say that, if adopted, we would be entirely comfortable taking advantage of the benefits offered by the current draft of the bill. In addition to some of the clarifications proposed by those who testified at the February 7th, 2012 hearing, there are some additional, more significant issues that you

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might consider addressing as the legislation evolves. For example, our reservation is governed by a jurisdictional regime that is premised, to some extent, on the presence of trust land. If such trust land were eliminated, the delicate and complex jurisdictional situation established by existing federal law would be threatened.

Therefore, we propose including additional language to H.R.3532 that would protect the existing jurisdictional arrangement which, in some instances, may depend upon the continuing existence of trust land, if a tribe were to receive restricted fee patents for those lands. Such language could simply consist of the following revisions (or similar changes) to section 2(b) of the current draft (new language underlined):

> (b) ATTRIBUTES OF RESTRICTED FEE TRIBAL LANDS.—Any land held by a federally recognized Indian tribe subject to a restriction imposed by the United States against alienation and taxation, shall be deemed, for all purposes, to be—
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> (1) Indian country as defined in section 1151 of title 18, United States Code; ~~and~~
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> (2) the Indian lands of that Indian tribe subject to the provisions of the Act of June 30, 1834 (25 U.S.C. 177; 4 Stat. 730)~~.~~; and
>
> (3) subject to the same criminal and civil jurisdictional status as if such lands were held in trust for that Indian tribe by the United States.

In addition, we believe the scope of sections 2(c) and 2(d) of the bill should be clarified to eliminate any confusion as to whether those sections apply only to the lands taken out of trust status under the bill, or all tribal lands "subject to a restriction imposed by the United States against alienation and taxation …".

Lastly, while it appears the intent behind section 2(c) is to make the granting by tribes of easements, rights-of-way, and leases substantially easier, that section only references and liberalizes the Act of August 9, 1955 (commonly known as the "Long-term Leasing Act"). As presently drafted, the bill does not make clear whether tribes would also be free to enter leases without being subject to various other restrictions governing the granting of rights to use tribal lands, such as the requirement of federal approval for any encumbrance of tribal land longer than seven years. See 25 U.S.C. § 81. Similarly, the bill does not explicitly address leasing or development of tribal sub-surface (mineral) interests and does not make clear whether other federal laws, such as the Indian Mineral Leasing Act, 25 U.S.C. § 396, *et seq.*, would continue to restrict tribal autonomy in that arena. We urge you to clarify and broaden this section to ensure that tribes have greater authority to manage their lands and other resources without the present-day impediments imposed by federal law and regulations.

In conclusion, we are committed to working with you to develop a final legislative product that will further our mutual goals of encouraging tribal self-determination and eliminating federal impediments while addressing the more specific concerns such as those raised in this letter. Once again, we thank you for your strong commitment to tribal communities and commend you

for your continued leadership on this important topic. In the weeks ahead, we look forward to working with you to refine and clarify H.R.3532

Sincerely,

Jimmy R. Newton, Jr., Chairman
Southern Ute Indian Tribe