

STATE OF COLORADO,  
Denver, CO, May 22, 2000.

Re: Intergovernmental Agreement between the State of Colorado and the Southern Ute Indian Tribe Regarding Air Quality regulation.

Hon. BEN NIGHTHORSE CAMPBELL,  
Russell Senate Office Building,  
Washington, DC.

DEAR SENATOR CAMPBELL: On December 13, 1999 I signed an historic agreement between the State of Colorado and the Southern Ute Indian Tribe in which the State and the Tribe agreed to establish a single, cooperative air quality authority for all lands within the Southern Ute Reservation. This cooperative arrangement, negotiated by Attorney General Salazar, my office and the Colorado Department of Public Health and Environment ("CDPHE"), is the first of its kind in the United States between a state and a tribe to regulate air quality. Because the arrangement is unique, statutory authority or clarification is needed at both the State and federal levels to accommodate the agreement. The General Assembly sent to me a bill to accomplish the changes necessary at the State level that I signed into law on March 15, 2000. I am writing today to ask you to sponsor legislation achieving a clarification to existing federal law assuring that the agreement in its contemplated framework can move forward. I have attached a draft of the legislation we believe is needed to clarify that the agreement can work as well as a copy of the intergovernmental agreement signed in December.

#### BACKGROUND

As you know, the Southern Ute Indian Tribe's Reservation consists of approximately 681,000 acres, located mainly in La Plata County. The Reservation is a checkerboard of land ownership. About 308,000 surface acres are held in trust by the United States for the benefit of the Tribe ("trust lands.") The remaining 378,000 surface acres are owned in fee by non-Indians or individual Tribal members ("fee lands"), or consist of national forest land. In 1984, Congress enacted Public Law 98-290, which confirmed the exterior boundaries of the Reservation. P.L. 98-290 also clarified that the Tribe has jurisdiction over the trust lands and Indians anywhere in the Reservation, and the State has jurisdiction over non-Indians on the fee lands.

Oil and natural gas production takes place throughout the Reservation. These facilities are stationary air pollution sources. Historically CDPHE's Air Pollution Control Division has issued permits to non-Indian owned sources located on fee lands. Recently, the Tribe petitioned EPA for the right to issue all permits within the exterior boundaries of the Reservation including the facilities historically regulated by the State of Colorado. In 1998, the EPA issued regulations implementing provisions of the Clean Air Act allowing Indian tribes to be treated in the same manner as States to administer certain air quality programs. In July 1998, the Southern Ute Tribe applied to the EPA for treatment as a state for all lands within the Reservation. On the basis of PL 98-290, the State objected, arguing that it had jurisdiction over the non-Indian sources on the fee lands.

To avoid a potentially long and costly fight in the federal courts about which governmental entity has jurisdiction over the fee lands, the Tribe and the State have now agreed to establish a single, cooperative air quality authority for all lands within the Reservation. On December 13, 1999, the Tribe and the State entered into an Intergovernmental Agreement (copy attached) which provides that a joint Tribal/State Commis-

sion will establish air quality standards. The Tribe will receive a delegation of authority from EPA to administer the air quality programs, but the delegation is contingent upon and shall last only so long as the Agreement and Commission are in place.

#### TRIBAL AND STATE LEGISLATION

The Agreement provided for legislation by both the Tribe and the State approving the Agreement and enacting substantive law necessary to carry out the Agreement's provisions. On January 18, 2000, the Tribe adopted its legislation. On March 15, 2000, I signed HB 1324, which adopted and codified the Agreement and HB 1325, which established the State's authority to establish the Commission and otherwise implement the Agreement.

#### FEDERAL LEGISLATION

The Agreement envisions a delegation by the EPA to the Tribe to administer Clean Air Act programs, contingent upon the existence of the Joint State/Tribal Commission. This is a unique arrangement and is not clearly specified within the Clean Air Act. Parties have argued to me that clarifying legislation by Congress is necessary to resolve any uncertainty about the EPA's power to delegate authority to run an air pollution program to the Tribe and for the Commission to act under such a delegation. The Commission also will set the standards and rules of the air quality program that the Tribe will administer. The Commission will serve as the administrative appellate review body for enforcement and other administrative actions. The Agreement provides that the Commission's final review is final agency action, and further judicial review would be in the federal courts. The existence of such federal jurisdiction should also be clarified by Congress.

Enclosed is a draft of the proposed federal legislation and a legislative history for your review. These draft documents would accomplish the limited but necessary changes to make the Agreement fully operational. The bill is set up to add a section to P.L. 98-290 to narrow the application of the revisions only to the Southern Ute Indian Tribe and the State of Colorado, so that other states or tribes would not be affected.

#### NEXT STEPS

The full operation of the Agreement is conditioned upon passage of federal legislation no later than December 13, 2001. I recognize that this may be difficult but from the State's perspective the sooner the Agreement could be operational the better since EPA will be regulating the affected entities until the Joint Commission and Tribe take over. We would like to be helpful and I offer a meeting between you and your staff and representatives of the Governor's Office, the Colorado Department of Public Health and Environment and the Colorado Attorney General's Office at your earliest convenience discuss this issue.

Thank you for taking the time to consider this request. Please feel free to contact Britt Weygandt in my office for any assistance you may need. Her extension is (303) 866-6392.

Sincerely,

BILL OWENS,  
Governor.

#### STATEMENTS ON SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 231—RELATIVE TO THE DEATH OF THE HONORABLE HERMAN E. TALMADGE, FORMERLY A SENATOR FROM THE STATE OF GEORGIA

Mr. DASCHLE (for himself, Mr. LOTT, Mr. CLELAND, and Mr. MILLER) submitted the following resolution; which was considered and agreed to:

S. RES. 231

*Resolved*, That the Senate has heard with profound sorrow and deep regret the announcement of the death of the Honorable Herman E. Talmadge, formerly a Senator from the State of Georgia.

*Resolved*, That the Secretary of the Senate communicate these resolutions to the House of Representatives and transmit an enrolled copy thereof to the family of the deceased.

*Resolved*, That when the Senate adjourns today, it stand adjourned as a further mark of respect to the memory of the deceased Senator.

#### SENATE RESOLUTION 230—EXPRESSING THE SENSE OF THE SENATE THAT CONGRESS SHOULD REJECT REDUCTIONS IN GUARANTEED SOCIAL SECURITY BENEFITS PROPOSED BY THE PRESIDENT'S COMMISSION TO STRENGTHEN SOCIAL SECURITY

Mr. CORZINE (for himself and Mr. LIEBERMAN) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 230

Whereas Social Security was designed as a social insurance program to ensure that Americans who work hard and contribute to our Nation can live in dignity in their old age;

Whereas for ⅔ of seniors, Social Security is their primary source of income, and for ⅓, Social Security is their only source of income;

Whereas in fiscal year 2001, the annual level of Social Security benefits for retired workers averaged approximately \$10,000;

Whereas \$10,000 per year is insufficient to maintain a decent standard of living in most parts of the country, especially for seniors with relatively high health care costs;

Whereas in 2001, President George W. Bush's Commission to Strengthen Social Security (referred to in this resolution as the "Commission") produced 3 proposals for Social Security reform that included individual accounts and significant reductions in the level of guaranteed benefits;

Whereas the proposed changes to guaranteed benefits could reduce benefits to future retirees by 45 percent;

Whereas the Commission proposals also suggested reducing benefits for early retirees, forcing many Americans to delay retirement; and

Whereas the Commission justified proposed cuts in guaranteed benefits by pointing to long-term projected shortfalls in the Social Security Trust Fund, however, the Commission's proposals to divert payroll tax revenues from the Trust Fund into private accounts would substantially accelerate the

date by which the Trust Fund would become insolvent: Now, therefore, be it

*Resolved*, That it is the sense of the Senate that Congress should reject the reductions in guaranteed Social Security benefits proposed by the President's Commission to Strengthen Social Security.

Mr. CORZINE. Mr. President, today, along with Senator LIEBERMAN, I am submitting a resolution expressing the sense of the Senate that Congress should reject the reductions in guaranteed Social Security benefits proposed by the President's Commission to Strengthen Social Security.

The central purpose of Social Security is to ensure that Americans who work hard and contribute to our Nation can maintain a decent standard of living in their old age. The program provides a critical safety net. Only 11 percent of American seniors live in poverty, but without Social Security that figure would be 50 percent.

It is hard to overstate the importance of Social Security in protecting seniors' retirement security. For two-thirds of the elderly, Social Security is their major source of income. For one-third of the elderly, Social Security is virtually their only source of income.

Despite its critical importance for seniors, the level of Social Security benefits generally is quite modest. In fiscal year 2001, the average benefit for retired workers was about \$10,000 per year. This clearly is insufficient to maintain a decent standard of living in most parts of the country, especially for seniors with relatively high health care costs.

Unfortunately, even the modest level of guaranteed benefits under current law is now at risk. Last year, the President's Commission to Strengthen Social Security, appointed by President Bush to help promote his goal of partially privatizing Social Security, proposed a set of options for changes in the program that included significant reductions in the level of guaranteed benefits.

The Commission's report included a proposal in which guaranteed benefit levels would be reduced by changing the way that benefits are adjusted over time. The details of this change are complicated, but the bottom line is not: compared to current law, the proposal could reduce the benefits provided to workers who retire in the future by about 45 percent. The Commission's report also suggested changes that would reduce benefits for those who retire early, which could force many Americans to delay their retirement.

The Commission justified proposed cuts in guaranteed benefits by pointing to long-term projected shortfalls in the Social Security Trust Fund. And it is true that as the baby boomers begin to retire, they will put significant new demands on our budget. However, the Commission's proposals for private accounts actually would make the Trust Fund's financial problems worse. By proposing to divert payroll tax revenues from the Trust Fund into private

accounts, the Commission would only accelerate the date by which the Fund would become insolvent.

Proponents of privatizing Social Security like to argue that the returns for assets held in private accounts are likely to be high. That may be true for some fortunate seniors, but others will suffer with the inevitable fluctuations in the market. In any case, we need to remember why we have Social Security in the first place, to provide a floor to ensure that seniors can live out their lives in dignity. The real question for the Congress is where to set that floor. And, in my view, \$10,000 a year for the average beneficiary is, if anything, too low.

It is important to keep Social Security's long-term problems in perspective. According to estimates by the Social Security Administration, the present value of the Trust Fund's unfunded obligations amounts to \$3.2 trillion over the next 75 years. By contrast, the 75 year cost of last year's tax cut, if made permanent, has been estimated to be \$7.7 trillion. In other words, the long-term cost of the tax cut is more than twice as large as the long-term deficit in Social Security.

There is simply no excuse for making dramatic cuts in guaranteed Social Security benefits, as the President's commission has proposed.

So, I hope my colleagues will support this resolution and join in rejecting the cuts in guaranteed benefits proposed by President Bush's commission.

#### AMENDMENTS SUBMITTED AND PROPOSED

SA 3040. Mr. REID (for Mr. DASCHLE (for himself and Mr. LEAHY)) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 3041. Mr. WYDEN (for himself, Mr. MURKOWSKI, Mr. BENNETT, and Mr. SMITH, of Oregon) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3042. Mr. ROCKEFELLER (for himself, Mrs. CARNAHAN, and Mr. BOND) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3043. Mr. ROCKEFELLER (for himself, Mr. ALLEN, Mr. SPECTER, and Mr. WARNER) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3044. Mr. ROCKEFELLER (for himself, Mr. HAGEL, and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3045. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr.

DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3046. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3047. Mr. CRAIG submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3048. Mr. SMITH of Oregon submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3049. Mr. CRAIG proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3050. Ms. LANDRIEU (for herself and Mr. KYL) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3051. Mr. FITZGERALD submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3052. Mr. MURKOWSKI proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3053. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3054. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3055. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3056. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra; which was ordered to lie on the table.

SA 3057. Mr. KYL (for himself and Mr. HELMS) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3058. Ms. COLLINS (for herself and Ms. SNOWE) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3059. Mr. BINGAMAN proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3060. Mr. BINGAMAN proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3061. Mr. BINGAMAN proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.