The SHOSHONE-BANNOCK TRIBES

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October 28, 2026

Senator John Thune
Majority Leader
United States Senate
Washington, DC 20510

Senator Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Mike Lee
Chairman
Senate Energy & NR Committee
Washington, DC 20510

The Honorable Martin Heinrich
Ranking Member
Senate Energy & NR Committee
Washington, DC 20510

The Honorable Shelly Moore Capito
Chairman
Senate Envr & Public Works Committee
Washington, DC 20510

The Honorable Sheldon Whitehouse
Ranking Member
Senate Envr & Public Works Committee
Washington, DC 20510

The Honorable Lisa Murkowski
Chairman
Senate Committee on Indian Affairs
Washington, DC 20510

The Honorable Brian Schatz
Ranking Member
Senate Committee on Indian Affairs
Washington, DC 20510

Dear Leaders Thune and Schumer and Senators Lee, Heinrich, Capito, Whitehouse, Murkowski, and Schatz:

On behalf of the Fort Hall Business Council, the governing body of the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Reservation, I write to express our strong opposition to the Bipartisan American Affordability and Jobs Act (BAAJA) and respectfully request that you oppose this bill as currently written.

BAAJA would pave the destruction of tribal cultural resources and the public lands to which we have deep connections. As drafted, the bill is a direct attack on tribal sovereignty and would rewrite how the United States consults with Tribal Nations, cloud how our sacred places are

protected, and limit access to the judicial system when federal agencies fail to uphold their trust and treaty responsibilities. Unacceptably, the bill was negotiated without any government-to-government consultation with Tribal Nations and without a public hearing or other opportunity for public input.

Congress and the federal agencies have obligations to protect and preserve our tribal historical and cultural resources. The U.S. Constitution, U.S. Supreme Court decisions, numerous treaties, federal laws, and executive orders charge the federal government with treaty and trust responsibilities to tribal governments, including the protection of tribal cultural resources both on and off Indian reservations. Further, the federal government manages tens of millions of acres in Idaho and the surrounding states that since time immemorial are part of our ancestral homelands.

The bill's changes to the National Historic Preservation Act (NHPA) are particularly alarming. The current law plays a pivotal role in protecting our sacred sites, burial grounds, and cultural places. BAAJA would weaken NHPA and harm Tribal Nations in numerous ways, including:

- **Making Tribal Consultation Optional and Redefining Sacred Places (Sec. 2301):** BAAJA does not create a new statutory Tribal role in the Section 106 process. *Under NHPA, Section 106 federal agencies must already consult directly with Tribal Nations* before approving undertakings that could harm culturally significant places. Thus, instead of writing Tribal consultation into law, *BAAJA would weaken the current statute by making consultation optional in the early stages of review.*

  Early consultation matters. Tribes often maintain confidential records about sacred places, cultural resources, and other key information to protect the resource. Sec. 2301 would give agencies autonomy to determine which historic properties are at risk and whether they could be harmed without tribal input. *Early consultation is paramount to prevent harm by identifying resources that could be affected before plans, designs, or project decisions.*

  Additionally, under BAAJA, agencies would only have to consider a Tribes' input if received within 30 days of a request. The flexibility in the current process is important to prevent irrevocable impacts. For complex undertakings, tribes often need additional time to coordinate with stakeholders and federal agencies to effectively respond. This set timeline also causes undue burdens on tribes, contrary to what is directed under § 302707. Understaffed tribes already face a mountain of correspondence to sort through and prioritize for a response. *Silence from a tribe should not be interpreted as a concession that an undertaking has no impact on tribes. Silence does not mean consent.*

  Moreover, because the Shoshone-Bannock Tribes do not currently operate a Tribal Historic Preservation Office (THPO) Program, we rely on the Idaho State Historic Preservation Officer (SHPO) to fulfill certain historic preservation responsibilities. Complex projects could require additional time to coordinate with/through the SHPO for

a response. *Insufficient time to respond will lead to irreparable harm and the destruction of our historical and sacred sites!*

In a major breach of Tribal sovereignty, the bill would also — for the first time in statute — define Tribal sacred places of traditional religious or cultural importance, limiting them to only "identifiable" locations where a significant "event" occurred. It would also discount visual, audible, and atmospheric harms unless they "significantly" diminish a site. Cumulative harms would not count at all. As mentioned, tribes often keep locations confidential for safekeeping. Likewise, our ancestors that went before us taught, and our elders continue to teach, to leave historical sites undisturbed and to rebury any associated artifacts that may have been uncovered for the future generations. These sites are often unidentifiable to the untrained eye. *If Congress elects to define places of traditional religious or cultural importances in statute, a tribe's ability to protect them will be compromised.*

- **Enabling a Federal Takeover of Tribal Historic Preservation Officers (THPOs; Sec. 2301):** BAAJA would allow the U.S. Department of the Interior to review each THPO at least every two years. THPOs that miss newly imposed federal deadlines could lose federal funding, and if not resolved within two years, the Interior Secretary could take over their functions entirely. As mentioned, complex projects may need additional time, especially since THPO staffs are small and constantly addressing backlogs of undertakings. This paternalistic provision violates tribal sovereignty and tribal self-government. It hearkens back to historical federal termination policies. Currently, the Shoshone-Bannock Tribes are in the process of developing a THPO program. The new statute would undermine our future THPO's ability to assist federal agencies in satisfying their obligations under the NHPA.

Other concerns include, but are not limited to:

- **Weakening Tribal Authority Over Our Water (Sec. 1202):** Under Section 401 of the Clean Water Act (CWA), Tribal Nations can hold authority to certify, condition, or deny permits for projects that could impact their waters. BAAJA would significantly weaken that authority, requiring a strict standard of "clear and convincing evidence" to deny certification. This stacks the deck against Tribes trying to protect their water from being polluted. For pipelines or transmission, a Tribe would now only have nine months to act, after which it would lose its say entirely. This provision would shamefully weaken one of the few tools we have to protect our water. The Tribes are happy to host you at sites where undertakings have CWA implications so that you can see firsthand where undertakings (past, current, and proposed) pose a risk of polluting our water.
- **Turning Public Lands into Toxic Waste Dumps (Sec. 2215):** BAAJA would let hard rock mining companies claim as many 5-acre "mill sites" as they need to dump their toxic mining waste, even on land with no minerals. Hardrock mining is already one of the

country's top sources of toxic pollution, and occurs within our homelands. This provision would give private companies, many of which are foreign-owned, unfettered power to destroy public lands that have historical and cultural significance to tribes so they can dump their waste as cheaply as possible to maximize their profits. Sec. 2215 would also foster unaddressed CWA implications as toxic chemicals leach out of tailing piles contaminating watersheds and groundwater.

- **Limiting Our Access to the Courts (multiple sections):** BAAJA would drastically cut the statute of limitations to challenge permit approvals under NHPA, the National Environmental Policy Act (NEPA), the CWA, and the Endangered Species Act (ESA) from generally six years to just 150 days. Tribal Nations often do not even learn that a project threatens a sacred site or their community until construction begins. And even if a court finds that an agency violated federal law by approving a project by failing to consult with Tribes or ignoring potential environmental harm, a court could not pause the project with a preliminary injunction while the case proceeds.

  Even more, if a Tribe sues and wins, the court could only send the decision back to the agency to correct the deficiencies, while construction moves forward. But, if NEPA and the NHPA are designed to provide information for decision makers before a decision is made on a project, then allowing that project to move forward while the federal agency corrects the deficiencies under NEPA or NHPA renders the whole process moot.

- **Locking in Harmful Projects (Sec. 1401):** BAAJA would bar federal agencies from revoking, suspending, or amending permits held by private developers, except in a narrow set of circumstances. A project that is approved over a Tribe's objections, after inadequate consultation, or under one administration could not be revisited by a future administration. Protections for specific federal lands could be revoked by an administration and energy or mining projects would be locked in on those lands before protections could be restored by the next administration.

BAAJA is not about improving the permitting process to ensure that the proper decision is reached by a federal agency in a timely manner. It simply enables federal agencies to ignore harms and lessons learned from the past that drove Congress to pass existing environmental laws. BAAJA will allow agencies to rubberstamp private companies' energy and mining projects regardless of the destruction of our cultural resources or the impacts to our natural resources. For these reasons, we request your assistance in ensuring that the Senate does not pass this bill as written.

Respectfully Submitted,

Donna Thompson

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