May 21, 2010

Honorable Barack Obama
The President
The White House

Dear Mr. President:

We are writing to you to express our deep disappointment and opposition to your Administration's plan, under its Fiscal Year 2011 Budget Proposal, to eliminate Abandoned Mine Land (AML) funding for "certified" Indian tribes. Our tribal AML Programs provide funding for reclamation of abandoned coal and non-coal mine lands and critical infrastructure projects in those areas of our three Tribes most impacted by the adverse effects of mining, and provide substantial employment, training, environmental stewardship and other economic development opportunities in Indian Country. Importantly, the AML funds you propose to take away from us are derived from fees assessed on tribally owned coal, fees which limit the amount our tribes are able to charge for coal royalties and production taxes, and which thus represent foregone income to our tribes. Moreover, inexplicably, your Administration's proposal to eliminate AML funding for our tribes was finalized without any consultation with us, in clear contravention of your directive to federal agencies, pursuant to Presidential Memorandum of November 5, 2009, for "meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications."

1977 Surface Mining Control and Reclamation Act (SMCRA) and the 2006 Amendments.

Pursuant to the 1977 Surface Mining Control and Reclamation Act (SMCRA), and the 2006 Amendments to SMCRA, the certified Crow, Hopi, and Navajo AML Programs receive mandatory funding from the United States Treasury for AML Reclamation and Public Facility Projects, projects which address critical needs of our tribal members. The 2006 Amendments to SMCRA required over ten years of Congressional debate and represent a hard-won compromise among affected parties, including our three tribes.

The proposed Budget would require legislation restructuring the AML Title IV Program under SMCRA and would undermine the objectives of the 2006 Amendments. The Office of Surface Mining's proposal will in effect penalize our three tribes for our diligence in achieving AML certification by siphoning off tribally designated funds, *derived from fees on our own coal*, to be spent on projects outside of Indian Country. Funding crucial AML Reclamation and infrastructure projects in areas of Indian Country impacted by mining was a clear Congressional goal of the AML program under the 2006 Amendments.

Failure of Federal Agencies to Consult and Collaborate with the Crow, Hopi and Navajo Tribes.

Based on our government-to-government relationships, we appreciate your Presidential Memorandum of November 5, 2009, reaffirming President Clinton's Executive Order 13175 "Consultation and Coordination With Indian Tribal Governments," 65 Fed. Reg. 218 (Nov. 6, 2000), and further directing all federal agencies to develop formal policies for consultation and collaboration with Indian tribes. It is therefore perplexing for your Administration to concomitantly propose the elimination of crucial funding for AML Reclamation and Public Facility Projects in Indian Country without any consultation or collaboration with our three tribes before the budget proposal was finalized.

The Office of Surface Mining (OSM) recently informed our three tribes by letter that OSM would "be preparing legislation to implement the proposals contained in the President's FY 2011 budget" and inviting us to a so-called "consultation." However, in discussions with OSM Director Pizarchik at the "consultation" meeting on May 12, 2010, in Denver, Colorado, OSM made it clear that the so-called "consultation" was only to provide information. Indeed, as the letter from OSM expressed, "we will not be consulting with you on the outcome that the President's budget calls for . . . ." We appreciate Director Pizarchik's willingness to meet with us to discuss this difficult subject, but the consultation occurred after-the-fact. Moreover, the Office of Management and Budget also never consulted with our three tribes before it gushingly approved eliminating our AML funding. This is not meaningful consultation and collaboration, and it flies in the face of your 2009 directive to all federal agencies to properly implement Executive Order 13175.

Trust Responsibility.

The Federal government has an established trust responsibility to ensure that funds generated from tribal resources remain in Indian Country for the benefit of tribes and tribal members. Not only will the proposal to eliminate funding for our tribal AML Programs siphon off all the Reclamation fees collected on coal held in trust for our tribes, those fees additionally reduce the potential royalties and production taxes we are able to assess for the extraction of our coal, and thus represent lost income to our tribes. As such, your proposal is clearly inconsistent

if not an outright breach of the fiduciary responsibility of the Federal government in regard to our coal resources.

We, the Crow, Hopi, and Navajo, urge you, through our government-to-government relationships, to abandon your plan under this year's budget proposal, and in any other fiscal year, to eliminate crucial AML funding to certified tribes. Furthermore, in accordance with your Presidential Memorandum of November 5, 2009, Executive Order 13175 and long-standing federal Indian law and policy, we ask that you direct the Office of Surface Mining, as well as all other federal agencies and departments, to consult and collaborate with affected Indian tribes and tribal programs in advance of submitting any draft agency or department budgets impacting those tribes and programs. Your time and attention to this vital matter is truly appreciated.

Respectfully,

Cedric Black Eagle, Chairman
The Crow Nation

LeRoy N. Shingoitewa, Chairman
The Hopi Tribe

Dr. Joe Shirley, Jr., President
The Navajo Nation