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United States Senate

COMMITTEE ON INDIAN AFFAIRS

WASHINGTON, DC 20510-6450

February 23, 2016

The Honorable Mike Enzi
Chairman
Committee on the Budget
United States Senate
Washington, D.C. 20510

The Honorable Bernie Sanders
Ranking Member
Committee on the Budget
United States Senate
Washington, D.C. 20510

Dear Chairman Enzi and Ranking Member Sanders:

This letter is in response to the Budget Committee's request for the Committee on Indian Affairs (Committee) to submit a views and estimates letter. The Committee has reviewed the President's FY 2017 Budget Request and prepared a views and estimates letter for the Budget Committee to consider when preparing the FY 2017 Budget Resolution. We appreciate the opportunity for the Committee to express its views.

INTRODUCTION AND BACKGROUND

The Committee understands the budgetary concerns of a federal deficit and the limited budgets that are facing our Nation, and more specifically how those budgets affect Indian country. The Committee continues to exercise its oversight and legislative responsibilities to ensure that the agencies and applicable federal programs are achieving the greatest possible efficiencies and investments when utilizing federal resources.

As the Budget Committee moves forward with its FY 2017 Budget Resolution, it is important that the Committee highlight the significance of the United States' trust, treaty, and other mandated responsibilities to the 567 federally recognized tribes carried out through various federal departments, programs, and services. These unique obligations are rooted in American history and based on the U.S. Constitution, treaties, federal laws, and Supreme Court decisions.

The U.S. Constitution recognizes that the United States and tribes have a special relationship, described by many as a trust responsibility between the trustee

and the beneficiary. This trust responsibility stems from tribes ceding hundreds of millions of acres of their homelands to the United States in exchange for promises to maintain public safety, protect tribal sovereignty, and provide a variety of programs and services to Indian people, including education, housing and health care.

Indeed, the entire Title 25 of the United States Code, including the Snyder Act of 1921, the Indian Reorganization Act of 1934, the Indian Self-Determination and Education Assistance Act of 1975, the Indian Education Amendments Act of 1978, the Native American Education Improvement Act of 2001, and the Tribal Law and Order Act of 2010, is dedicated to implementing that responsibility. Other federal laws also define the obligations for the United States to provide various programs and services to Indian country. Acting in a government-to-government capacity, the federal government is able to fund tribal programs and services, similar to how the United States interacts with and funds a local or state government.

Tribal governments have continued their efforts to grow and prosper, yet many tribal communities continue to face many obstacles. Tribes experience various socio-economic ills, where they rank well below the national average in measures for health care, education, income, housing, and public safety. Services such as basic infrastructure, access to clean drinking water, road maintenance, and broadband capabilities, are severely lacking in Indian country.

This letter sets forth recommendations for addressing some of the disparities experienced in Indian country by helping them move closer to self-governance and self-determination.

ACHIEVING SELF-DETERMINATION

For more than forty years, the federal government has empowered tribes through self-determination. The Indian Self-Determination and Education Assistance Act of 1975 (ISDEAA) authorized tribes, through contracts or self-governance compacts, to assume operation of critical federal programs that are intended to benefit Indians.

Nearly every one of the 567 tribes in the Nation is a party to at least one ISDEAA contract or self-governance compact with the Indian Health Service (IHS) in the Department of Health and Human Services and/or the Bureau of Indian Affairs (BIA) in the Department of the Interior. Through these contracts and self-governance compacts, tribes are able to operate health care programs, social welfare programs, schools, public safety programs, and irrigation programs, to name a few. The tribal communities are better able to operate these programs than the federal

government because they understand the needs of the local community and can tailor the programs to better address those needs.

A critical component of the self-determination policy is the federal government's obligation to provide the full amount of funding to a tribe that the United States would have if it were to continue to operate the program, including the administrative costs associated with operating a federal program. These administrative costs, also known as "contract support costs," include auditing, accounting, and insurance. Three Supreme Court decisions have upheld the federal government's obligation to fully fund contract support costs.

Based on estimates from the Administration, fully funding contract support costs for FY 2017 will require an estimated \$800 million for the IHS and \$278 million for the BIA. Since there is no basis in the law for treating tribal contractors any differently from other government contractors, the Committee believes the budget should fully accommodate the payment of contract support costs.

In FY 2018 and following fiscal years, for both the IHS and the Bureau of Indian Affairs, the Administration proposes reclassifying these contract support costs as a three-year mandatory appropriation, with sufficient increases to fully fund the estimated need for the program. While we support funding the costs, the Committee is still reviewing the reclassification and the effects of such proposal upon other BIA and IHS services.

ECONOMIC DEVELOPMENT

Some of the Indian reservations are among the poorest communities in the United States. Tribal economic development can provide a foundation upon which to create a strong and growing economy.

The high levels of unemployment has motivated tribes to start businesses such as financial services firms, construction companies, and other businesses which in turn will help create jobs and build a strong workforce. Several tribes have invested their resources from economic development into their land and people to overcome the obstacles of living in poverty. Yet, many challenges remain including remote locations, lack of infrastructure (such as broadband), and a lack of markets.

Energy development on Indian lands offers significant opportunities to enhance and grow tribal economies. The Committee recognizes the importance of developing affordable, reliable energy in Indian country to improve the tribal economics and the standard of living.

The Department of Energy aims to “maximize the development and deployment of energy solutions for the benefit of American Indian Tribes and Alaska Natives.” More specifically, the DOE Office of Indian Energy seeks to provide tribal communities with the resources and skills to secure electrical power and service.

The funding request for FY 2017 for all combined DOE Indian energy policy and programs amounts to \$22.93 million, which is \$6.93 million over the FY 2016 enacted level, which the Committee supports.

The Committee continues to support providing tribal communities and Alaska Natives with the technical assistance they need to bring electrical power and service to their communities. However, the Committee wants to ensure that such technical assistance and support be energy source neutral, allowing tribes to develop an energy strategy that works best for their communities.

For FY 2017, the Administration has asked for significant increases within certain portions of the tribal programs at the United States Department of Agriculture (USDA), the Department of the Treasury (Treasury), and the Department of Housing and Urban Development (HUD) that would increase economic development in Indian country.

Department of Agriculture. The overall USDA budget request for discretionary spending is approximately \$25 billion. This is a decrease of approximately \$1 billion from FY 2016. Funding for USDA programs in which tribes were eligible to participate in FY 2016 was \$229 million. The FY 2017 request for the same programs is \$240 million, of which an increase of \$18 million is being requested for the Indian Land Acquisition Loan program. The Indian Land Acquisition Loan program request is increased above the FY 2016 level of \$2 million to a total of \$20 million dollars for FY 2017.

The USDA is also requesting \$250,000 in FY 2017 for a new Deputy Director position within the Tribal Programs office. One of the primary concerns from Indian country is a lack of communication and outreach by the USDA to Indian Country regarding their eligibility in USDA programs. The funds requested would add personnel to address outreach concerns and provide resources for tribes to acquire fee lands within their communities.

Small Business Administration. The President’s FY 2017 Budget Request for the Office of Native American Affairs within the SBA requested level funding for FY 2017 at \$2 million. The Budget Request zeroed out the entrepreneurship program of

this Office in favor of more innovative small business development projects. However, the Budget Request provides for approximately \$5 million for the SBA Office of Entrepreneurial Development for Native American outreach. This increase has steadily risen from \$4.7 million in FY 2015.

Department of the Treasury. The Department of the Treasury's primary program for tribal communities is the Native American Community Development Financial Institutions Assistance (NACA) program within the CDFI Fund. The NACA program assists Indian country in building institutions that can access and bring credit to rural and underserved tribal communities. The FY 2017 request for Native American CDFI's remained steady at \$15.5 million.

The need for capital and credit in Indian country is great and the current levels of the NACA funding to meet that need are exhausted quickly, long before the end of the fiscal year. The Committee expects that funding level to be reevaluated once the Department of the Treasury releases its overdue "Access to Credit and Capital in Native Communities" report.

Indian country can also benefit from two additional programs which offer tax incentives that bring private development to tribal communities with minimal cost and a significant return on investment. The \$5 billion New Market Tax Credit program and Low Income Housing Tax Credit programs help provide incentives to induce private development in Indian country. Granting tribes access to specific amounts within these programs will help to bring investment into Indian country with minimal cost.

HOUSING AND INFRASTRUCTURE

There is a clear need for housing and renovations throughout Indian country. Many homes lack infrastructure, including complete plumbing facilities, electricity, and telecommunications. Moreover, many tribal on-reservation homes are considered to be inadequate when compared to the nationwide average.

The FY 2017 Budget Request for the Department of Housing and Urban Development (HUD) for the Native American Housing Block Grant is \$700 million, \$50 million above the FY 2016 level of approximately \$650 million.

The Committee recommends \$675 million for the Native American Housing Block Grant for this fiscal year. The Committee understands the great need for safe and affordable housing throughout Indian country. However, it has been years since the HUD has provided the Committee with an updated representation of Indian

country's housing needs. The Committee would recommend requests for significant increases for housing needs to be validated with this data from the HUD.

TRIBAL PUBLIC SAFETY AND JUSTICE PROGRAMS

The Department of Justice (DOJ) provides coordination and engagement, on public safety in Indian country. The Department also provides prosecution and investigations of crime in Indian communities.

The DOJ requests \$420.3 million in total resources for public safety initiatives for tribes to combat the high rates of serious crimes within many tribal communities that rival the rates of major metropolitan cities. It has been reported that 39% of Native women are victims of domestic violence.

The BIA provides programs that cover the range of Federal, state, and local government services, including law enforcement, detention services, and administration of tribal courts, for Indian tribes. The FY 2017 Budget Request for public safety is \$341,281,000 – a decrease of nearly \$7 million from FY 2016.

While funding is not the only issue for public safety in Indian country, low levels of staffing are a significant contributing factor to the high rates of crime. The Federal Bureau of Investigation has federal law enforcement responsibility on nearly 200 Indian reservations. There may only be one or two officers patrolling land areas sometimes as large as, if not larger than some states, such as Connecticut. The Committee supports sufficient funding in both the Department of Justice and the BIA that will enhance public safety programs in Indian country.

EDUCATION

The Bureau of Indian Education (BIE), a division of the Department of the Interior (DOI) under the Assistant Secretary for Indian Affairs, is responsible for education services for approximately 48,000 Indian children at 183 elementary and secondary schools on 64 reservations in twenty-three states.

The FY 2017 Budget Request for the BIE activities is \$1.05 billion – this includes an increase of \$60 million over FY 2016 enacted levels. In addition to educational programs and service activities, the BIE is requesting an increase of \$12 million for education construction which brings the construction request to \$138.2 million.

The deteriorating and dangerous conditions of some of these schools have been the subject of more than one Governmental Accountability Office study. The Committee also supports funding the BIE Replacement School & Facility Construction, at a level that is sufficient to address the school construction needs in Indian Country.

In June 2014, the DOI issued Secretarial Order 3334 that began a major restructuring of the BIE. The budget should continue to reflect and assist tribes that need technical support, when transferring the administration of a BIE-operated school to tribal control. However, the Committee has concerns that unknown and perhaps costly requests will be made by the BIE during its restructuring process. BIE should have a long-term budget that considers certain roles and duties transferred from the BIA to the BIE.

HEALTH CARE SERVICES

The Indian Health Service (IHS) is responsible for providing health care services to approximately 2.2 million Indians. Health care services are delivered through a network of over 679 hospitals, clinics, and health stations on or near Indian reservations in 35 states. These facilities may be managed by the IHS, tribal, or urban Indian health programs, and are principally located in rural primary care settings. According to the IHS, the agency has approximately 15,369 employees.

The FY 2017 Budget Request seeks \$5.185 billion in discretionary budget authority, an increase of \$377.4 million above the FY 2016 enacted level of \$4.808 billion. According to the Administration, this request would fully fund employee pay costs and inflation, and would partially fund population growth. The request would also fund increases for priority programs, including Contract Support Costs (CSC).

Specifically, the FY 2017 Budget Request includes an increase of \$159 million in funding for current services (i.e., funding for fixed costs such as federal and tribal pay costs, medical and non-medical inflation, and population growth) and an additional \$185.4 million in program increases over FY 2016 levels. Program increases include funding for staffing and operating five newly-constructed facilities; hospital and health clinic programming, leases, maintenance and other costs; mental health programming; alcohol and substance abuse programming; purchased/referred care; urban Indian health programming and implementation; maintenance and improvement costs to address the maintenance backlog at Federal and Tribal health care facilities; and four health care facilities construction projects.

The \$185.4 million in program increases also includes an approximately \$82 million increase for CSC above FY 2016 enacted levels. According to the Administration, this amount represents an “estimate of additional funds needed to ensure the full CSC need is funded for each Tribe...and will be adjusted to reflect the amount necessary to fund the full CSC need when updated information is available.”¹

The FY 2017 Budget Request includes a request for mandatory funding of \$10 million for the Behavioral Health Professions Expansion Fund and \$15 million for the Tribal Crisis Response Fund. The Committee is still reviewing this proposal and the effects the proposal has upon the larger budget as well as other IHS services.

Indians continue to face devastating health disparities, which are repeatedly reflected in statistics. The population IHS serves has long experienced poor health rankings compared to other Americans, such as a life expectancy that is 4.2 years less than the national average. Indians die at higher rates than other Americans in numerous categories, ranging from chronic liver disease and cirrhosis, diabetes mellitus and unintentional injuries, to assault/homicide, intentional self-harm/suicide and chronic lower respiratory disease. This population also continues to experience disproportionately high rates of alcohol and substance abuse. One of the more disturbing statistics is that suicide is the second leading cause of death among Indian youth.

These health levels highlight the great importance of IHS’ work. The Committee supports efforts to address mental and behavioral health, substance and alcohol abuse, screening and prevention, and the many other factors that can impact an Indian person’s health, particularly including access to quality health care services delivered by qualified medical professionals in safe facilities. The Committee also supports efforts to address the significant water and sewer infrastructure needs in Indian country, as well as medical inflation, population growth, pay costs and communication gaps across agencies within the Department of Health and Human Services.

TREATY PROTECTED NATURAL RESOURCES

Access to land and its natural resources is the foundation of all tribal communities. This right is guaranteed to tribes through numerous treaties and federal laws. The protection and enhancement of these natural resources are critical to the future of tribes, but they are also an obligation of the United States to protect. The

¹ Indian Health Service, Dep’t of Health and Human Services, *Fiscal Year 2017 Justifications of Estimates for Appropriations Committees*, at CJ-4 (2016).

Committee supports sufficient funding for the Administration to reinforce the stewardship of trust resources, including adequate amounts for wildfire prevention and management.

Access to stable and secure water rights and supplies has long been acknowledged as a basic component of maintaining a tribe's reservation homelands. The Bureau of Reclamation (BOR) manages the Ak Chin Indian Water Rights Settlement Act, the Aamodt, Crow, Navajo-Gallup Water Supply, Taos Pueblo, and other ongoing settlement operations and maintenance. The FY 2017 President's Budget requests \$106.2 million for these water settlements, which is a decrease of \$6.2 million over the FY 2016 enacted \$112,483,000. The decrease is from completed discretionary funding requirements for the Taos Water Settlement. The Committee supports sufficient funding for Indian water settlements administered by the Bureau of Reclamation.

CONCLUSION

We appreciate the Budget Committee's consideration of the Committee's views on these important matters and your efforts to ensure the federal government is fulfilling its trust and treaty responsibilities to tribal governments and their members across the Nation.

Sincerely,



John Barrasso, M.D., Chairman