

# THE PRESIDENT'S FISCAL YEAR 2014 BUDGET FOR TRIBAL PROGRAMS

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## HEARING BEFORE THE COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE ONE HUNDRED THIRTEENTH CONGRESS FIRST SESSION

APRIL 24, 2013

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## **THE PRESIDENT'S FISCAL YEAR 2014 BUDGET FOR TRIBAL PROGRAMS**

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**WEDNESDAY, APRIL 24, 2013**

U.S. SENATE,  
COMMITTEE ON INDIAN AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:30 p.m. in room 628, Dirksen Senate Office Building, Hon. Maria Cantwell, Chairman of the Committee, presiding.

### **OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON**

The CHAIRWOMAN. The Oversight Hearing on the President's Fiscal Year 2014 Budget for Tribal Programs will come to order.

I welcome our witnesses today.

The President's overall request for Indian Affairs of the Department of Interior is \$2.6 billion, which represents a \$31 million increase over the Fiscal Year 2012 enacted level. And the Indian Health Service budget was increased \$124 million for a budget total of \$4.4 billion.

Although we look at these increases, we also much acknowledge the difficult financial times that we are in and on March 1, 2013 sequestration took effect and mandated automatic cuts across the board in Federal programs. Sequestration will have a significant impact on tribal governments and an anticipated cut of \$120 million in programs at the Department of Interior and \$220 million in reductions to programs at Indian Health Services.

At the Indian Health Services, sequestration cuts will reduce the number of patients to be able to be seen, both inpatient and outpatient visits, and at the Department of Interior, tribal schools will be forced to furlough employees and significant cuts will be made to general assistance programs which provide things like food and rent and clothing to some who are in the most need. To me, if we are cutting these valuable programs, there is more that we need to do.

It is important in our discussions here today to acknowledge the unique legal obligations the Federal Government has toward Indian tribes. The trust responsibility is grounded in the United States Constitution and treaties and Federal statutes and the Supreme Court decision. So, it is important that we look at how we fund tribal programs. We understand the tribal programs are acknowledgment of a government-to-government relationship that exists between tribes and the Federal Government.

Despite the budgetary constraints we face, there are some positive highlights in the President's Fiscal Year 2014 Budget. I am pleased to see the Administration focus on the stewardship of natural resources in Indian Country and, in addition, applaud the Administration's constant support for Indian health programs, energy development and public safety.

There are some areas, however, that are not receiving the attention they deserve and hopefully at today's hearing we can illuminate some of these issues.

For tribal communities to thrive for now and into the future, they must be given economic development opportunities and workforce opportunities. I note that this year's budget request contains a decrease in economic development funding for Indian Country, despite a moderate increase in overall education funding. And it contains no funding for school construction.

My colleagues and I have heard at numerous committee hearings of the poor conditions at many of the Bureau of Indian Affairs schools across our Nation. But for the past two years, the Administration has not requested any funding for school construction. In fact, if we compare the two federally-operated systems like the Department of Defense Schools and the Bureau of Indian Affairs, you can see that the spending for the Department of Defense Schools is now \$753 million where the Bureau of Indian education construction remains at \$0. So, I am certain we are going to be asking questions about this today and working with the agency on this issue.

The President's budget request also contains two legislative recommendations. One recommendation is to clarify the Secretary of Interior's authority to take land into trust for tribes and it is familiar as many of my colleagues here have talked about a *Carciere* fix. Since the 2009 Supreme Court decision, the Committee has held numerous hearings and passed legislation out of this Committee both in the 111th and the 112th Congress and I am pleased that resolving this issue will be one of our top priorities and I know it is for the Administration as well.

The second legislative issue is the *Ramah v. Salazar* case. In that case, the court decided that the Government is responsible for full payment of contract support for those tribes who take over the programs for the Federal Government. The courts further stated that it is up to Congress to either fully fund this appropriation or to address this issue legislatively. This is an important issue that impacts every tribe in the Country since every tribe has had at least one self-determination contract with the Indian Health Services or the Department of Interior.

The Administration has proposed a legislative solution. However, this Committee has not conducted oversight on it so I think it is just safe to say we are going to have to drill down on this and have lots of conversation about this issue.

I look forward to hearing from all of the witnesses today, including those on the Second Panel. And I would like to extend a special welcome to John Sirois from my home State of Washington. He is the Chairman of the Confederated Tribes of the Colville Reservation. We will see him on the First Panel.

So, I now would like to turn to my colleague, the Vice Chairman of the Committee, Senator Barrasso, for his opening statement.

**STATEMENT OF HON. JOHN BARRASSO,  
U.S. SENATOR FROM WYOMING**

Senator BARRASSO. Well, thank you, Madam Chairwoman, and thank you for holding this important hearing to examine the President's Fiscal Year 2014 Budget Request for Indian Programs.

This budget represents the Administration's policies with respect to funding for important programs for tribes and their members and addressing an unprecedented Federal deficit. We need to examine and evaluate those policies very carefully. Do the proposed funding levels reflect sound decisions in terms of the priorities and the needs of Indian Country? That is what we need to know.

We need to know what the justifications are for funding certain programs more or less than others, and we need to see if the proposals reflect the need to use American tax dollars in the most effective, efficient and accountable manner.

So I appreciate your leadership, Madam Chairwoman, in signaling the need for greater fiscal responsibility in light of widely-shared concerns over the Federal deficit. All agencies are called upon to control spending. The agencies must also prioritize the use of funding as wisely as possible. Everything cannot be a top priority when funding is insufficient to cover all the needs.

So, Madam Chairwoman, I hope to hear recommendations from all of our witnesses about spending priorities. We will hear from both the agencies as well as the tribes. I want to welcome the witnesses and look forward to their testimony.

Thank you.

The CHAIRWOMAN. Thank you. Further opening statements? Senator Johnson.

**STATEMENT OF HON. TIM JOHNSON,  
U.S. SENATOR FROM SOUTH DAKOTA**

Senator JOHNSON. Thank you, Chairwoman Cantwell, for holding this important hearing.

I would like to welcome Dr. Roubideaux, who has ties to my home State of South Dakota. As Director of the Indian Health Service, Dr. Roubideaux has provided tremendous expertise to help alleviate health disparities affecting Indian Country.

As you know, Madam Chairwoman, many challenging issues face Indian Country. The United States Federal Government has a treaty and trust responsibility to help hold on making these important budgetary decisions. Changes to tribal programs can create both positive and negative impacts on tribal governments, schools and healthcare programs.

I am pleased that the Fiscal Year 2014 includes a number of critical funding increases. There is, however, plenty of work left to be done and I look forward to working with my fellow colleagues on this Committee to further strengthen Indian programs.

I look forward to the testimony today.

Thank you again, Madam Chairwoman, for holding this hearing.

The CHAIRWOMAN. Thank you. Senator Murkowski.

**STATEMENT OF HON. LISA MURKOWSKI,  
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Madam Chairman, and welcome Dr. Roubideaux, Mr. Washburn, thank you, and Mr. Thompson, I appreciate your being here.

Madam Chairman, I just want to state for the record here this afternoon how very disappointed I am with the Administration's decision to alter the operation of Indian self-determination contracts.

Indian tribes fought and won a huge victory in the Supreme Court's *Ramah* decision and rather than delivering justice to tribes in the adequate payment of contract support costs for the operation of Federal Indian programs, the Administration, in my view, has decided to forego justice and hand the issue over to Congress to address in the appropriations process, a decision that dramatically alters the Federal Indian Self-Determination statute without consultation of the tribes nor this authorizing Committee.

Must I remind the Obama Administration that self-determination contracts are the core of our Nation's Federal trust relationship with Indian tribes? Through thousands of contracts throughout the Bureau of Indian Affairs and the Indian Health Service, tribes operate the Federal programs promised to Indians for the removal of their lands. This is a Federal trust relationship that exists in strong budget times and most importantly in difficult budget times as well.

I do understand that Director Roubideaux and Assistant Secretary Washburn will meet with the tribes tomorrow and I look forward to hearing from the tribes after that visit.

But I cannot stress enough to you, Madam Chairman, and to our witnesses, the impact that this decision and this budget proposal will have on the delivery of healthcare to Alaska Natives and to our Native Americans. I think we need to look at this very, very critically. And I appreciate the opportunity to do so.

Thank you.

The CHAIRWOMAN. Thank you. Senator Tester, do you have an opening statement?

**STATEMENT OF HON. JON TESTER,  
U.S. SENATOR FROM MONTANA**

Senator TESTER. It is going to be very, very quick.

First of all, the budget is about priorities and I look forward to hearing from the witnesses today why money was put where as far as priorities go.

Most importantly, though, I want to recognize, this is the second meeting in a row three Montanans are here, Tracy "Ching" King, Bum Stiff Arm and Donovan Archambeaux. Thank you guys for being here. I appreciate it.

The CHAIRWOMAN. Thank you. Senator Franken, did you wish to make an opening statement?



**STATEMENT OF HON. AL FRANKEN,  
U.S. SENATOR FROM MINNESOTA**

Senator FRANKEN. Yes, I do, Madam Chair.

Thank you for holding this hearing. This is always an important hearing.

As we consider this budget, we should remember that Native communities have been under funded for decades. For instance, on other committees that I sit on we often talk about budgets in terms of billions of dollars. Only on Indian Affairs do we get sometimes to levels of like \$100,000 and I find it almost embarrassing.

I hope that as we examine the budget this Committee looks for ways to make up for the sequester cuts that we have been, that have unfairly burdened Native Americans although it is under Education, the Department of Education, and not Indian Affairs. We have seen the impact aid cuts to schools. You were talking about Indian schools. Schools in Indian Country obviously rely on the impact aid because there is no tax base there. It is Federal land and so, no local property tax.

These are also during the sequester included cuts in health benefits under Indian Health Services, Dr. Roubideaux knows that, whereas Medicaid, Medicare and Veterans Health benefits are all exempt from sequestration cuts, as they rightly should be.

Singling out Native American programs for sequestration cuts is unfair and at odds with the Federal Government's trust responsibilities. That is why I was pleased that the President's Fiscal Year 2014 Budget proposes an increase for the Indian Health Service. It does not make up for sequestration but it is a move in the right direction.

I also am happy to see a proposed increase in funding for energy development, natural resources, sciences, public safety and justice and Indian education. These areas are top priorities for tribes and they are vital to tribal economic development and self-determination.

But I am concerned, as is the Chairwoman, by some severe cuts proposed in the President's Budget and the proposal to zero out, eliminate funding, for Indian schools that need to be rebuilt is frankly, in my mind, just sad.

The Bureau of Indian Affairs lists 46 schools in poor condition that need to be rebuilt. With the lack of funding over the years, there is now a backlog of \$1.3 billion in Indian schools construction projects.

One such school, and I have talked to Secretary Washburn about this a number of times, is the Bug-O-Nay-Ge-Shig School at Leech Lake Reservation in my home State of Minnesota. The Bug School is desperately in need of replacement. This is a pole barn. This is a structure that was built to house animals. This structure is so unsafe that when the wind blows at a certain velocity, the kids have to leave the school. This is in Northern Minnesota. So, when it gets down to 30 or 40 below and when the wind is blowing especially hard, the kids have to leave the school.

Despite the many schools that need to be rebuilt, this year, like last year, the President requested that no funding go to rebuilding these schools, leaving thousands of Indian children to stay in crumbling, dangerous buildings. This is just simply unacceptable. No

caring parent would let their children study in a building infested with mold and vermin as the Bug School is. How can we expect Indian children to succeed and Native communities to flourish under these conditions? We simply have to do better.

I hope that my colleagues on this Committee join me in pushing to restore funding for Indian school replacement.

I want to thank all the witnesses for coming today and I look forward to your testimony.

Thank you.

The CHAIRWOMAN. Thank you. Senator Schatz?

**STATEMENT OF HON. BRIAN SCHATZ,  
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you, Chairwoman Cantwell and Vice Chair Barrasso for holding this important oversight hearing on the President's Fiscal Year 2014 Budget Request for Native Programs.

Everyone in this room and members of the Committee have expressed the health and education disparities, the double digit unemployment numbers, the disproportionate substandard housing conditions and levels of homelessness and the many other difficult challenges faced by American Indian, Alaskan Native and Native Hawaiian communities in our Nation. And that is why I am particularly interested in the testimony of witnesses representing tribal governments, tribal organizations and Native communities.

The United States has a duty to uphold its trust responsibilities to Native people, even in challenging times. It is vital for this Committee and this Congress to fully understand the real impacts to Native Americans of the sequester as well as the potential impacts of the Fiscal Year 2014 requests. So, thank you for traveling to Washington, D.C. to contribute your expert testimony.

I also want to welcome our Federal witnesses. In particular, I want to acknowledge Assistant Secretary for Indian Affairs Kevin Washburn. I have read the positive remarks you made during your confirmation hearing before this Committee regarding parity for Native Hawaiians. On September 14, 2012, you stated "The Native Hawaiians are in a very similar situation to the Native Alaskans and American Indians on the mainland. There is every reason to believe that they should also have a government-to-government relationship with the United States. I personally fully support that."

I also want to thank you very much for voicing your support for the passage of Senator Akaka's bill, S. 675, as amended, and for indicating that you would look forward to fully implementing such a bill. I look forward to working with you to ensure fairness and equal treatment under Federal policy and law for Native Hawaiians.

I also look forward to working with the members of the Committee, the witnesses here today and all of the stakeholders to ensure that the special political relationship between the United States and all Native Americans remains strong and that meaningful consultation and the policy of self governance continues to guide our actions.

Thank you, Chairwoman Cantwell.

The CHAIRWOMAN. Thank you, Senator Schatz.

And now we will turn to our witnesses. Again, welcome to all of you, Assistant Secretary Washburn, Director Roubideaux and Deputy Assistant Secretary Thompson.

I think we are going to start with you, Mr. Washburn, and then follow with Ms. Roubideaux. Thank you both very much for being here.

**STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY THOMAS D. THOMPSON, DEPUTY ASSISTANT SECRETARY—MANAGEMENT**

Mr. WASHBURN. Thank you, Madam Chairwoman. By your opening comments I can tell you were a quick study in Indian Affairs and we are grateful to have your leadership of this Committee.

To the members of the Committee who have been here for a while, I want to thank you for the swift confirmation that I received in October. This is my first return trip to the Committee.

And for our new member, I would like to say thank you for taking on this assignment. This is, I think, one of the most important committees in the U.S. Senate because of the trust responsibility to American Indians and Alaska Natives. So, thank you for taking on that role.

I am here with Tommy Thompson, the Deputy Assistant Secretary for Management who is our chief budget person, Monty Russell who is the Acting Director of the Bureau of Indian Education, and Mike Black who is the Director of the Bureau of Indian Affairs. And for certain questions I may call on these gentlemen because they have been here longer than me and they may be able to answer some questions better than I can.

I am here to humbly ask this Committee's support for the President's Budget for the Department of the Interior. It is not a perfect budget. It is, I know that there are parts of it that have not been well received. But it is better than a flat budget. It is an increase, the request, for meeting our trust responsibilities in Indian Country and we hope that we get that increase because we desperately need that increase.

The Budget Request is roughly \$2.6 billion for Indian Affairs in the Department of the Interior and it is about a \$30 million increase over prior, the Fiscal Year 2012 Budget and frankly, because of sequestration, it is about a \$171 million increase over the budget that I am currently living under.

I have to tell you sequestration, as the Chairwoman recognized, has been absolutely brutal. It has not only impacted tribes very directly through their contracts with the Federal Government, it has devastated our ability to provide services to tribes.

We have been working very, very hard to meet the impact of sequestration. We have stopped virtually all hiring. We have stopped virtually all travel that is not absolutely mission critical. We have ended all conferences, including training conferences, unless they are absolutely necessary, and taken numerous other steps to save money. And so, we are trying to meet our budget under sequestration but it is really hampering our ability to meet our very important mission, serving Indian Country.

The budget that we have before you in the green book, this is my first time to this rodeo but I am learning how the process works, there is a lot of good in the budget. It increases our contract support cost funding by \$10 million over the 2012 level. I understand that is not considered fully adequate because, frankly, it only funds about 90 plus percent of what is due, it is not quite funding the full contract support costs that the tribes are entitled to under that law.

However, it does some other good things as well. It increases funding for rights protections, for helping tribes protect their treaty rights, it increases funding for all sorts of law enforcement functions, such as police, both tribal police and BIA police, it increases funding for detention centers and tribal courts.

We also have increases in several smaller areas, smaller increases each of which is not probably worthy of discussion alone but each of which is important. So, we actually, there is a lot more green in this budget increase in black than there is red in the budget.

There are some key places where there are cuts, where there is red in this proposed budget as several of you recognized, school construction being one of the most notable. And, honestly, some of these cuts are more defensible than others. We have heard a lot from Indian Country just in the last few days since we have put the green book out there and we have been getting a heck of a lot of feedback and I have been learning probably more from the feedback than I have from the process of putting the budget together. And I am very, very happy to be before you here today.

It is, as several of you have recognized, you know, a good budget in some ways. It is an increase over past budgets and during these difficult fiscal times, it will be, we think that it may be hard for us to get an increase. But we are desperately hopeful that we will get the increases that we have recognized, or we have asked for, and I will very much look forward to the Committee Members' questions during the rest of the hearing.

Thank you so much for having me and thank you for considering supporting the President's Budget.

[The prepared statement of Mr. Washburn follows:]

PREPARED STATEMENT OF HON. KEVIN WASHBURN, ASSISTANT SECRETARY—INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good afternoon, Chairwoman Cantwell, Vice Chairman Barrasso, and Members of the Committee. Thank you for the opportunity to provide a statement on behalf of the Department of the Interior (Department) on the fiscal year (FY) 2014 President's Budget request that was released on April 10, 2013. The FY 2014 budget request for Indian Affairs programs within the Department totals \$2.6 billion, which is \$31.3 million more than the FY 2012 enacted level.

The FY 2014 Budget Request includes nearly \$120 million in program increases for President Obama's continued initiative of Strengthening Tribal Nations. This initiative continues to support advancing Nation-to-Nation relationships, protecting Indian Country, advancing Indian education and improving trust land management. The budget focuses on these priority areas in Indian Country and honors the Federal Government's obligations to tribal nations in a focused and informed manner.

As the Assistant Secretary for Indian Affairs, I have the responsibility to oversee the numerous programs within the Bureau of Indian Affairs (BIA) and the Bureau of Indian Education (BIE), along with other programs within the immediate Office of the Assistant Secretary for Indian Affairs. The Office of the Assistant Secretary for Indian Affairs, BIA, and BIE programs expend over 90 percent of appropriated

funds at the local level. Of this amount, at over 62 percent of the appropriations are provided directly to Tribes and tribal organizations through grants, contracts, and compacts for Tribes to operate government programs and schools. Indian Affairs' programs serve the more than 1.7 million American Indian and Alaska Natives living on or near Indian reservations.

#### **Protecting Indian Country**

Improving public safety and promoting safer Indian communities is a top priority for the president and Tribal leaders. The BIA Office of Justice Services supports 188 law enforcement programs throughout Indian Country of which approximately 75 percent are tribally operated. The BIA Division of Corrections funds 95 detention programs of which 73 are tribally operated. In addition, there are almost 300 tribal courts. The 2014 request provides programmatic increases of \$19.9 million for Public Safety and Justice programs. These increases will provide \$5.5 million to hire additional tribal and bureau law enforcement personnel and \$13.4 million to staff new tribally operated detention centers in Indian Country. The funding for detention center operations is an important request because, although incarceration is not the answer to all offenses, offenders are more effectively rehabilitated when held in a location closer to his or her community than when removed to a distant location. The budget also includes an increase of \$1.0 million for tribal courts which are expected to see an increase in case loads pursuant to the Tribal Law and Order Act, and now, the new provisions of the recently reauthorized Violence Against Women Act. The budget includes \$3.0 million to address the needs of Indian communities with elevated levels of domestic violence within the BIA Human Services program which will partner with the Law Enforcement program to expand services that help stem domestic violence and care for its victims.

#### **Contract Support Costs**

In response to the *Salazar v. Ramah Navajo Chapter* Supreme Court decision on contract support costs funding, the FY 2014 budget proposes to fund contract support in an account separate from the Operation of Indian Programs account. In total, \$231.0 million is requested for contract support costs, which is an increase of \$9.8 million over 2012. The increase strengthens the capacity of Tribes to manage Indian Affairs programs for which they contract.

The Administration is proposing that Congress appropriate contract support costs funding to Tribes on a contract-by-contract basis. To ensure as much clarity as possible regarding the level of contract support funding, the Administration will provide Congress a contract-by-contract funding table for incorporation into the appropriations act. The Administration proposes this change as an interim step towards a more comprehensive solution. The broader goal is to develop a longer-term solution through consultation with Tribes, as well as streamline and simplify the contract support costs process, which is considered by many as overly complex and cumbersome to both Tribes and the Federal Government. This interim solution will balance funding for contract support costs with direct programs for tribes, such as health care services and law enforcement, and other tribal priorities.

#### **Land and Water Claims Settlements**

The FY 2014 budget request for Indian Land and Water Claim Settlements is \$35.7 million. The budget proposes \$8.8 million for the first year of discretionary funding for the Taos Pueblo Indian Water Rights Settlement authorized as part of the Claims Resolution Act of 2010, P.L. 111-291. A total of \$7.8 million, including a program increase of \$3.4 million, is included for the San Juan Conjunctive Use Wells and San Juan River Navajo Irrigation Project Rehabilitation, both part of the Navajo-Gallup Water Supply Project.

The budget includes \$12.0 million for the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Settlement, the last of five payments to satisfy this requirement. The budget also includes \$6.0 million for the Navajo Nation Water Resources Development Trust Fund. The final payment for the Nez Perce/Snake River settlement was made in FY 2013 and is not included in the FY 2014 budget.

#### **Advancing Indian Education**

The 2014 budget request continues the Department's commitment to Indian education. Education is critical to ensuring a viable and prosperous future for tribal communities and American Indians. It is this Department's goal to improve Indian education and provide quality educational opportunities for those students who attend the 183 BIE funded elementary and secondary schools and dormitories located on 64 reservations in 23 States. BIE funded schools serve nearly 48,000 individual K-12 students and residential borders, which equates to an average daily attendance of approximately 41,000 students due to transfers, absences and dropout rates.

The budget provides \$651.9 million for elementary and secondary school education activities funded by BIE, which is supplemented by over \$200 million from the Department of Education for specific educational purposes. Increases include \$2.0 million for Tribal Grant Support Costs, which funds administrative and indirect costs of operating tribally run schools under contract or grant authorization. The budget includes \$15.0 million to fund a pilot program based on the Department of Education turnaround schools model and concepts. Grants will be awarded to schools that demonstrate the strongest commitment for using the funds to substantially raise the achievement of students. The increases are offset by a \$16.5 million reduction in Indian School Equalization Program funds, which are distributed by formula, usually based on the number of students, to BIE funded schools for operations. Additionally, the Budget funds a \$2.0 million independent evaluation of the BIE to determine future needs and structure of the system.

The FY 2014 budget includes increases totaling \$6.2 million for BIE-funded post-secondary programs. The budget provides an additional \$2.5 million to meet the needs of growing enrollment at BIE-funded tribal colleges. Tribal colleges and universities provide local communities with the resources and facilities to teach community members the skills they need to be successful and overcome the barriers to Indian higher education. To further achieve this goal, the request also provides increases of \$3.0 million for post-graduate scholarships in science fields and \$710,000 for other higher education scholarships and adult education.

#### **Supporting Stewardship of Natural Resources and Science in Indian Country**

The 2014 budget includes programmatic increases of \$32.4 million for science and technical support to Tribes for the sustainable stewardship and development of natural resources. The funding will support resource management and decisionmaking in the areas of energy and minerals, climate, oceans, water, rights protection, endangered and invasive species, resource protection enforcement, and post-graduate fellowship and training opportunities in science-related fields. Of this funding, \$2.5 million will focus on projects that engage youth in the natural sciences and will establish an office to coordinate youth programs across Indian Affairs.

#### **Improving Trust Land Management**

The United States holds 55 million surface acres of land and 57 million acres of subsurface mineral estates in trust for Tribes and individual Indians. Trust management is vital to tribal and individual Indian economic development. The management of Indian natural resources is a primary economic driver in many regions within the country. For example, some Tribes with forestry resources operate the only sawmills in their region and are major employers of tribal members as well as non-tribal members who live in or near their communities.

The 2014 budget includes an additional \$18.4 million in programmatic increases for improving trust land and water management activities. In Trust Natural Resources, BIA requests program increases for the Rights Protection Implementation and Tribal Management and Development programs to support fishing, hunting, and gathering rights on and off reservations. The budget request also provides program increases for the Forestry, Invasive Species, and Wildlife and Parks programs. In addition, the request supports greater BIA and tribal participation in the Landscape Conservation Cooperatives.

Within Trust Real Estate Services, a total of \$7.7 million in program increases is directed toward improving trust land management activities, including a \$5.5 million increase to provide a total of \$7.0 million to continue authorized activities related to the Klamath Basin Restoration Agreement. The 2014 request also provides increases for Rights Protection Litigation Support/Attorney Fees to assist Tribes in managing tribal trust resources and the Real Estate Services program to meet workload demands associated with the Administration's New Energy Frontiers initiative. In addition, the Construction account includes an increase of \$2.3 million for operation and maintenance of the Fort Peck Water System, a new water treatment plant facility.

The 2014 budget continues to propose language to clarify the Department's authority to take Indian land into trust. As in the FY 2013 budget proposal, the President's FY 2014 budget proposal includes *Carcieri* fix language signaling his strong support for a legislative solution to resolve the issue of securing tribal homelands for all tribes.

#### **Improved Management**

Over the last few years, Indian Affairs has taken significant steps to reduce the administrative costs associated with the wide range of services delivered through its programs. The request includes \$13.8 million in savings from reductions to con-

tracts, fleet management, awards, and travel. Indian Affairs has also identified opportunities to reduce costs and improve efficiency through streamlining and consolidations. The 2014 budget request includes a reduction of \$19.7 million to reflect anticipated savings from streamlining and consolidations effected in 2013.

Inherent in any consolidation is the need to identify and eliminate duplicative or overlapping functions and processes, identify more efficient ways to conduct business, and reduce associated positions. In 2013, Indian Affairs will use early retirement and voluntary separation incentives to manage full time employment reductions along with other position management techniques. Such an ambitious undertaking can only be successful with the full support and participation of the Tribes. To this end, Indian Affairs has engaged in extensive consultation with the Tribes to identify strategies to ensure tribal needs and priorities are addressed.

#### **Program Reductions and Eliminations**

The 2014 budget request includes \$72.3 million in program decreases. The request includes a reduction of \$2.6 million for Law Enforcement Special Initiatives reflecting decreased participation in activities such as intelligence sharing. In administrative related activities, the budget reduces \$7.1 million for Information Resources Technology as standardization occurs. The request includes a decrease of \$16.5 million for the Indian Student Equalization Program in education to offset a \$15.0 million increase for a turnaround school pilot program.

The 2014 budget requests \$107.1 million for Construction including \$52.3 million for Education Construction. The request does not include funding for Replacement School Construction, as the program will address improving the physical conditions of existing school facilities through the Facilities Improvement and Repair program. From 2002 through 2012, \$2.0 billion, including about \$300 million in ARRA funding, has been invested in construction, improvement, and repair projects that have reduced the number of schools in poor condition from more than 120 to 63. This includes 42 complete school replacements and 62 major renovations, which are either completed, funded or under-construction. The Construction request also includes \$11.3 million for Public Safety and Justice Construction, \$32.8 million for Resources Management Construction, and \$10.8 million for Other Program Construction.

The budget provides \$5.0 million for the Indian Guaranteed Loan Program, a \$2.1 million reduction while Indian Affairs seeks to improve performance and conducts a results-oriented independent evaluation to determine how to achieve its intended objectives through Indian Affairs or other Federal loan programs. This requested funding level will guarantee \$70.2 million in loans.

The budget proposes to eliminate \$12.6 million in funding for the Housing Improvement Program (HIP). Tribal housing authorities are not precluded from using available funding to provide assistance to HIP applicants.

#### **Conclusion**

This 2014 budget supports the Administration's objectives to strengthen tribal nations through economic development, protect Indian communities through public safety and justice programs and social services, improve Indian education to secure the long-term health and vitality of Indian Country, and improve the constitutionally-based, government-to-government relationship between tribal nations and the United States. The 2014 budget request maintains the President's commitment to meet our obligations to tribal nations while exercising fiscal responsibility and improving government operations and efficiency.

Madam Chairwoman and Members of the Committee, thank you for the opportunity to appear before you today. I am happy to answer any questions you may have.

The CHAIRWOMAN. Thank you,  
Director Roubideaux, thank you very much for being here.

**STATEMENT OF HON. YVETTE ROUBIDEAUX, M.D., M.P.H.,  
DIRECTOR, INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF  
HEALTH AND HUMAN SERVICES**

Dr. ROUBIDEAUX. Thank you, Madam Chairwoman and Members of the Committee.

My name is Dr. Yvette Roubideaux and I am the Director of the Indian Health Service. I am pleased to have the opportunity to provide testimony on the Fiscal Year 2014 President's Budget Request for the Indian Health Service.

The President's Budget Request for the Indian Health Service in Fiscal Year 2014 is \$4.4 billion, an increase of \$124 million or a 2.9 percent increase over Fiscal Year 2012. The request includes priority increases, \$77.3 million to staff and operate newly-constructed healthcare facilities, \$35 million for Purchased and Referred Care Program which is our proposed new name for the Contract Health Services Program, \$6 million for pay increases for Federal and tribal staff, and a \$5.8 million increase for contract support costs for ongoing contracts and compacts. This budget request also includes new appropriations language for both IHS and the Bureau of Indian Affairs.

The budget proposal also includes \$85 million to continue construction at the Kayenta, Arizona facility and to complete construction on the San Carlos, Arizona facility and the Southern California Youth Regional Treatment Center.

Thank you so much for our progress on this budget which has been critical to our progress in accomplishing our agency priorities and our work to change and improve the Indian Health Service. If this proposed budget is enacted, IHS appropriations will have increased by 32 percent since Fiscal Year 2008. The appropriations increases received in the past few years are making a substantial difference in the quality and quantity of healthcare that we are able to provide.

For example, increased Contract Health Service funding is making a difference. Four years ago, almost all of our CHS programs were funding only Medical Priority 1 or life or limb referrals. Now, almost half, 29 out of 66 Federal Contract Health Service programs, are now funding referrals beyond Medical Priority 1. This means more patients are accessing the health services they need, including preventive services such as mammograms and colonoscopies.

The increased funding also means that the Catastrophic Health Emergency Fund, or CHEF, which used to run out of funding for high-cost cases in June, is now able to fund cases through August.

IHS has made considerable progress in adjusting our agency priorities and reforms and the details are available in my testimony. Briefly, we have made several improvements in tribal consultation that have resulted in better decision making and more effective progress on our agency reforms.

IHS is focused on planning for implementation of the Affordable Care Act, insurance marketplaces and Medicaid expansion in 2014. And we continue to make progress on the implementation of the permanent reauthorization of the Indian Health Care Improvement Act.



IHS is also making progress on our internal IHS organizational and administrative reforms including improved budget planning, financial management, performance management, more consistent business practices throughout the agency and system-wide accountability for progress on these agency reforms.

IHS has responded with corrective actions to the findings of the Senate Committee on Indian Affairs' investigation of the Aberdeen Area and we have completed reviews in all other IHS areas.

We have focused on improving the quality of and access to care with a number of customer service and quality improvement strategies including establishment of a patient-centered medical home model within the Indian Health System.

In 2011, we successfully met all of our clinical GPRA indicators which was the first time for our agency in its history. Our system-wide focus on quality improvement has, for example, helped increase receipt of mammograms from the low 40 percent to over 50 percent last year. The Special Diabetes Program for Indians has resulted in improved access to quality diabetes care and has helped to reduce diabetes complications such as end-stage renal disease.

The impact of sequestration on IHS will be significant. However, IHS is committed to continuing our reform efforts regardless of the current fiscal environment.

In summary, we are making progress in changing and improving the Indian Health Service. Thank you so much for your support and your partnership. It has been essential to our progress and efforts to ensure that our American Indian and Alaska patients receive the quality healthcare that they need and they deserve.

Thank you very much. I am willing to answer questions.

[The prepared statement of Ms. Roubideaux follows:]

PREPARED STATEMENT OF HON. YVETTE ROUBIDEAUX, M.D., M.P.H., DIRECTOR,  
INDIAN HEALTH SERVICE, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Good morning Madam Chairwoman and Members of the Committee. It's an honor to testify before you today. I am Dr. Yvette Roubideaux, Director of the Indian Health Service. I am pleased to provide testimony on the FY 2014 President's Budget request for the Indian Health Service (IHS), and to update you on our accomplishments in the past four years in addressing our agency mission to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives (AI/ANs) to the highest level.

#### **Indian Health System**

IHS is an agency within the Department of Health and Human Services (HHS) that provides a comprehensive health service delivery system for approximately 2.2 million AI/ANs from 566 federally recognized Tribes in 35 states. The IHS system consists of 12 Area offices, which are further divided into 168 Service Units that provide care at the local level. Health services are provided directly by the IHS, through tribally contracted and operated health programs, through services purchased from private providers, and through urban Indian health programs.

#### **FY 2104 President's Budget Request**

The FY 2014 President's budget request in discretionary budget authority for the IHS is \$4.4 billion; an increase of \$124 million, or 2.9 percent, over the FY 2012 enacted funding level.

The request includes priority increases: \$77.3 million to staff and operate newly constructed health facilities, \$35 million to fund medical inflationary cost for the Purchased/Referred Care program (the proposed new name for Contract Health Services), \$6 million for pay increases for federal and Tribal staff, and \$5.8 million for contract support costs for ongoing contracts and compacts. In addition, to balance the priorities of all Tribes with the available appropriations, and in accordance with the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter*, the budget

request also includes new appropriations language for both IHS and the Bureau of Indian Affairs to provide a specific amount for contract support costs funding for each Indian Self-Determination and Education Assistance Act contract.

The budget proposal also includes \$85 million for health care facility construction to continue construction on the Kayenta, AZ facility and to complete construction on the San Carlos, AZ facility and the Southern California Youth Regional Treatment Center.

At the Program Level, the budget also includes an estimated increase in third party collections of \$119.5 million for Medicare, Medicaid and Private Insurance. The IHS anticipates this will include an estimated additional \$95 million in collections as a result of the Medicaid expansion and an additional \$5 million in collections from insurance through the Health Insurance Marketplaces included in the Affordable Care Act (ACA).

#### **IHS—A Good Investment**

Over the past few years, we have been working to change and improve the IHS. The IHS budget is critical to our progress in accomplishing our agency priorities and improvements. If this proposed budget is enacted, IHS appropriations will have increased by 32 percent since FY 2008. The appropriations increases received in the past 5 fiscal years are making a substantial difference in the quantity and quality of healthcare we are able to provide to AI/ANs. While the FY 2014 Budget proposes a smaller increase than in previous Budgets, IHS remains a top Administration priority. Most importantly, IHS was one of a few increases within the HHS discretionary budget that is not directly related to implementation of the ACA.

IHS has made considerable progress in addressing our agency priorities and reforms. Our first priority is to renew and strengthen our partnership with Tribes. This priority is based on our belief that the only way we can improve the health of Tribal communities is to work in partnership with them. Over the past few years, we have made several improvements in national, Area, and local Tribal Consultation and communication. These improvements have resulted in better decision-making and more effective progress on our agency reforms.

For example, Contract Health Service (CHS) funding, which we are proposing be renamed the Purchased/Referred Care (PRC) program, is a top priority of IHS and Tribes, and has increased by 52 percent since 2008. This funding is making a difference. Four years ago, most programs were funding only Medical Priority 1, or “life or limb” referrals. Now, the increased CHS (PRC) funding means that almost half (29 out of 66) of Federal CHS (PRC) programs are now funding referrals beyond Medical Priority 1. This means these programs are paying for more than just life or limb care and more patients are accessing the health services they need, including preventive services such as mammograms and colonoscopies. The increased CHS (PRC) funding also means that the IHS Catastrophic Health Emergency Fund (CHEF), which used to run out of funding for high cost cases in June, now is able to fund cases through August.

In addition, our Tribal Consultation for improving the CHS (PRC) program has resulted in the implementation of several of our Tribal workgroup’s recommendations to improve the business of the CHS (PRC) program and the referral process. We have developed training modules for CHS (PRC) staff in federal and Tribal programs, conducted annual best practices sessions, gathered more comprehensive and accurate data on denied and deferred services, conducted more meetings with outside providers, and are currently consulting with Tribes on whether to change the CHS (PRC) funding distribution formula.

Tribal consultation has also helped IHS work more effectively with the Department of Veterans Affairs (VA) to improve coordination of care for AI/AN veterans eligible for both IHS and VA. In 2010, IHS and VA signed an updated Memorandum of Understanding (MOU) and implementation is ongoing at the national, Area and local levels. Tribal consultation was essential to the development of the IHS–VA National Reimbursement Agreement that was signed on December 5, 2012. This agreement, authorized by the Indian Health Care Improvement Act (IHCA), allows VA to reimburse IHS for direct care services provided to eligible veterans who receive services from IHS. The VA and IHS are beginning to implement the reimbursement agreement in federal and Tribal sites.

Our second agency priority is to bring reform to the IHS. The Affordable Care Act is an important part of reform for IHS since the law has many new benefits for AI/ANs. The insurance reforms in the law protect those with insurance, and the State-based and Federally Facilitated Marketplaces, or Exchanges, will make purchasing affordable insurance easier in 2014. The Medicaid expansion, in states that choose to implement this option, will cover more AI/ANs, including parents with income above current Medicaid eligibility thresholds and adults without dependent children,

so more adults will have access to health insurance. And AI/ANs can still use IHS since the Affordable Care Act extends authorizations of appropriations indefinitely. This year, IHS is focused on planning for implementation of the Marketplaces and Medicaid expansion in 2014.

IHS continues to make progress on implementation of the permanent reauthorization of IHCIA included in the Affordable Care Act. Several provisions are already in place, such as Tribal providers being able to be licensed in one State; outside providers not being able to seek payments from patients who have referrals authorized to be paid by CHS (PRC); and third-party reimbursement resources staying at the Service Unit where they were generated.

IHS is also making progress on our internal IHS organizational and administrative reform efforts. We have set a strong tone at the top that we will change and improve, and we have made a number of administrative improvements, including improved budget planning, financial management, performance management and more consistent business practices throughout the agency. We are implementing improvements in human resources, including improving hiring times, supervisor training, and recruitment and retention strategies.

IHS has responded to the findings of the Senate Committee on Indian Affairs investigation of the Aberdeen Area and corrective actions and improvements have been implemented. Improvements in pre-employment background checks, credentialing of providers, reductions in use of administrative leave, improved administrative controls, improved pharmacy security and development of a more consistent, coordinated approach to training and maintenance of accreditation are among the areas of improvement in the Aberdeen Area. The Senate Committee on Indian Affairs also requested that IHS conduct reviews in all other IHS Areas on the same issues investigated in the Aberdeen Area, and those reviews have been completed and corrective actions are in progress. The Agency is establishing an oversight focus to continue accountability and progress to date.

One area where IHS has made significant improvements is in the management and oversight of personal property. Much of the work in the past four years has concentrated on senior level accountability and policy level attention to improving agency-wide property management. National and local systems have been structured to prevent problems and/or to detect fraud, waste or abuse in a timely manner, and to hold individuals personally accountable. We have invested resources in personal property management over the past two years to implement new policies and internal control strategies. Corrective actions are ongoing to ensure that improvements over the past 4 years continue.

Our third agency priority is to improve the quality of and access to care. We have focused our efforts on a number of customer service and quality improvement strategies over the last few years. The Improving Patient Care (IPC) program aims to establish a patient centered medical home model within the Indian health system. In the past four years, IPC has completed two more phases and added 89 sites for a total of 127 participating sites. The IPC program implements a variety of strategies to provide patient centered care including the use of multidisciplinary provider teams, continuous quality improvement strategies, empanelment of patients (i.e., linking patients to specific providers) so that they see the same provider team each time they access the facility, improvements in the process and flow of the outpatient clinic, use of registries, case management and quality measures. In the most recent phase, IPC sites have increased access to care by empanelling 261,180 active patients to a primary care team, compared to 85,079 empaneled patients in the preceding phase. In addition, patient experience of care surveys from IPC sites have shown patients' satisfaction has increased overall from 55 percent in April 2011 to 72 percent in December 2012.

In 2011, the Resource and Patient Management System (RPMS), the IHS' comprehensive health information system, became the first Federally-sponsored Electronic Health Record (EHR) to be certified under the criteria established by the Office of the National Coordinator for Health Information Technology. The RPMS is certified as a Complete EHR for use in both ambulatory and inpatient settings. IHS has also implemented the Electronic Dental Record through a commercial system that interfaces with the RPMS at 134 IHS, Tribal, and urban Indian health programs.

In 2011, the Indian Health Service successfully met all national Government Performance and Results Act (GPRA) clinical performance indicators, an accomplishment never before achieved by the IHS. Improvements in GPRA indicators have resulted from a system-wide focus on strategies to meet targets and increased access to care from recent funding increases. For example, receipt of mammograms by women for many years was in the low to mid 40 percent range, and by FY 2012 it had increased to 51.9 percent. In 2012, 66.7 percent of our diabetic patients re-

ceived follow up nephropathy assessments, demonstrating a 33.4 percent increase over 2008. The Special Diabetes Program, too, has resulted in improved access to quality diabetes care, and has helped drastically to reduce diabetes complications such as end-stage renal disease.

The IHS Domestic Violence Prevention Initiative has resulted in over 151,000 screenings and more than 11,000 referrals for victims of domestic violence to date. Over 19,000 individuals received crisis counseling and related services and over 6,000 professionals were trained on domestic violence prevention at 478 training events. Medical forensic equipment necessary for evidence collection has been provided to 45 IHS and Tribal hospitals. A total of 344 Sexual Assault Forensic Examination (SAFE) kits have been submitted to Federal, State, and Tribal law enforcement.

The Methamphetamine and Suicide Prevention Initiative (MSPI) funding has resulted to date in nearly 5,000 individuals entering treatment for methamphetamine abuse and the delivery of 7,000 substance abuse and mental health encounters via tele-health. More than 7,400 professionals and community members have been trained in suicide crisis response and more than 200,000 encounters with at-risk youth have been provided as part of evidence and practice-based prevention activities.

Our collaborations with other agencies have resulted in expanded access to care for AI/ANs. For example, IHS has partnered with the Health Resources and Services Administration to expand the number of IHS, tribal, and urban Indian health program sites eligible for National Health Service Corps (NHSC) scholarship and loan repayment placement. Such efforts are critical to filling provider vacancies. At the end of the FY 2012, Indian health programs had 588 active sites (IHS federal, tribally-operated sites, and urban Indian health clinics plus dual-funded tribal health clinics). The NHSC programs (Loan Replacement and Scholarships) had placed 305 clinicians/providers.

Our final agency priority is to ensure that our work is transparent, accountable, fair, and inclusive, and this includes more communication about agency progress and activities at the national, Area and local levels. We continue our focus on accountability of our staff and our programs, and IHS has implemented a performance management process that ensures all senior executives at Headquarters, the 12 Area Offices and all federal Chief Executive Officers have performance plans with specific and measurable objectives based on agency priorities. This improved performance management process serves as an important tool to ensure system-wide accountability for progress on agency reform efforts.

The impact of sequestration on IHS will be significant. Overall, the \$220 million reduction in the IHS' budget for FY 2013 is estimated to result in a reduction of 3,000 inpatient admissions and 804,000 outpatient visits for American Indians and Alaska Natives (AI/ANs). The implementation of efficient spending initiatives, e.g., reducing travel and conference spending, has also changed the way IHS conducts its business, and IHS is committed to continuing these efforts regardless of the current fiscal environment.

In summary, we are making progress in changing and improving the IHS. Thank you for your support and partnership—it has been essential to our progress thus far. Although we are in a challenging fiscal environment, the work of the past few years has clearly established that by working together, our efforts can change and improve the IHS to ensure that our AI/AN patients and communities receive the quality health care that they need and deserve.

Thank you and I am happy to answer questions.

The CHAIRWOMAN. Thank you. And it is my understanding that Mr. Thompson is here for consultation or did you wish to make a statement?

Mr. THOMPSON. Just consultation.

The CHAIRWOMAN. Okay, thank you. Well, let us get started.

Director Roubideaux, given that Indian Health Services has requested \$5 million for contract support, however, it is estimated that contract support would require \$138 million, why hasn't the agency requested more funds?

I mean, the court has decided that we should fully fund these, so, you know, we are getting locked in a bunch of words like contract support. Isn't the reality here a lot of people are not getting healthcare that we were obligated to deliver?

Dr. ROUBIDEAUX. Well, the reality is that there is an incredible amount of need. In this difficult fiscal environment, the Administration has chosen to propose this President's budget which helps us reduce the Federal deficit and avoid sequestration if enacted. However, there are difficult choices in the budget. But we are actually very thrilled that the Indian Health Service is a priority and the \$124 million increase is significant.

But difficult choices had to be made and from the consultation that I have had with tribes, there is not one single line item that they want fully funded. They would prefer to have as many budget priorities as we can address with the increases that we have. So, for example, Contract Health Service is a huge priority. That is how we pay for our referrals.

The CHAIRWOMAN. But with sequestration, sorry to interrupt, but with sequestration, I mean that is basically going to be wiped out and nowhere does the request come close to serving it. Or am I missing something here?

Dr. ROUBIDEAUX. Well, actually the President's 2014 Budget gets us back up to where we want to be which is it sort of eliminates the sequestration cuts and then gets us to a higher level. So, for 2012, sequestration cut us on that level. The budget we are requesting in 2014 puts us even higher, so it helps take away the sequestration and continue increases.

The CHAIRWOMAN. I appreciate you reminding me what is in my budget information. But I think I am asking something more directly. Do you think that represents full contract support?

Dr. ROUBIDEAUX. Well, the contract support costs that we have in our budget justification, we have shown that the total need for 2014 is \$576 million. So, by us funding it at \$477 million, that means there is an approximate \$100 million shortfall after, if our President's budget is enacted.

The CHAIRWOMAN. Mr. Washburn, could you explain to me what you think is going on as far as school construction?

Mr. WASHBURN. Well, I am told that we have, you know, we have a lot of buildings that we already have responsibility for and not all of which are we properly caring for. We have got a lot of buildings that are currently listed in poor condition.

We have improved over the years. We have, in the last 10 years or so the Department has been able to improve a lot of these buildings. So, the number in poor condition has fallen dramatically. But the general sense is, I think, that we should not be building more buildings if we cannot take care of the ones we already have. And so, the general sense is to try to protect the budget for repairs to school buildings.

But there has been a decision to zero out construction of new buildings. We have a needs list of new buildings that was created in 2004 that identified 17 schools as the most severe and 14 of those schools have been replaced, have been rebuilt and replaced.

There are still three schools on that list that deserve attention and I am, you know, confident that they are in a similar condition or worse to the one Senator Franken mentioned, the Bug O Nay Ge Shig School in Northern Minnesota. And we are not going to be making progress on that issue this year if this budget is passed. But it is something that we care about and I will, you know, we

will be talking about it a lot as we formulate our 2015 budget request.

The CHAIRWOMAN. So, none of those schools that are on the list that are your top priorities will get funded this year? And where is the school that Senator Franken is referring to? Where it is on the list?

Mr. WASHBURN. Well, the list that we have, we have a list of 17 schools which we have completed 14 of those. Those were the 17 most serious schools and this list was created in 2004 so almost 10 years ago. Over 10 years we have taken 14 of these most serious schools off that list by improving them or actually rebuilding them.

There are still these three schools left. Two of them are in Arizona and one is in Maine that are on that priority list to taken care of those. We have just had—

The CHAIRWOMAN. But you have not requested any funds, right, for increase in repairing either, right? Is that correct?

Mr. WASHBURN. That is correct.

The CHAIRWOMAN. So, how would you fix anything?

Mr. WASHBURN. Well, I will say, I will tell you that we do spend tens of millions of dollars each year, you know, trying to keep all of the schools going and we will not be building new schools—

The CHAIRWOMAN. But you do not have any money for improvements or repairs.

Mr. WASHBURN. Well, we do have money for improvements and repairs. We just do not have money for construction of new schools. We have even got construction money. It is just not for new schools. And so, we will be trying to patch these schools and keep them operating, you know, in the substandard condition that they are in. I understand that and I do not feel good about it, but it is, these are difficult budget times.

The CHAIRWOMAN. Well, I want to get on to my other colleagues but I will just give you my impression. First of all, we need to spend a lot more time on this issue. I have felt like the school construction issue is the big black hole and mystery question, you know, for all times. It does not need to be this complicated. You either have a list and you adhere to it and here is how much money every year goes to it and we get it done, or you tell us what is not going to get done or you come to Congress.

But I feel like there is, it is too opaque for us. And even in your testimony now I feel like you have said two different things. So, I want to see the list. I think it is unacceptable to have zero funds for school construction. If Senator Franken's school is, in fact, in this case, if that is the state of the school that it is barely able for the occupants to occupy it, I think, you know, I think we have an issue and we need to give them an answer about what to do.

So, we will look forward to talking to you more about this.

Senator BARRASSO.

Senator BARRASSO. Thank you very much, Madame Chairwoman.

Just to agree with you and your comments, I think you are exactly right and I welcome the opportunity to work together to delve into this further and possible additional hearings or how to deal with the question that you raise because I think it is very timely, very appropriate and important for our future. So, thank you, Madam Chairwoman.

Mr. Washburn, I have a question. The Bureau of Indian Affairs Irrigation Program delivers irrigation water to 16 irrigation projects around the Country, including the Wind River irrigation project in Wyoming. In 2012, the Bureau of Indian Affairs reported that the total deferred maintenance on these projects is about \$609 million and \$35 million of that is for the Wind River irrigation project.

I have raised the issue of these backlogs with your predecessor, Assistant Secretary Larry Echo Hawk, and former Secretary Salazar. Yet this budget, past budget requests, have not addressed this backlog in any meaningful way. What is your plan for action to address this backlog?

Mr. WASHBURN. Vice Chairman, thank you for raising that. You know, I do not know, I have not really been briefed on this irrigation project issue. I know that one of the issues with sequestration is how can we keep the ditches clear if we cannot afford to keep people, you know, working in those positions. And so that is one of the things that we have, that I have been focused on with regard to irrigation recently.

I was not aware of your concerns about this particular project of this particular area and I would be happy to get briefed on that and speak to you at a time when I know a little bit more.

Senator BARRASSO. Well, that would be terrific. I have a very capable staff who would be delighted to spend some time in that briefing. So I welcome that opportunity.

Mr. WASHBURN. Thank you.

Senator BARRASSO. Dr. Roubideaux, first I want to congratulate you. I know yesterday the President indicated his intent to nominate you for a second term. I do not know the difference between if that means you have been nominated or if he intends to do it at some later date, but congratulations. You do a wonderful job. You have a difficult job, many daunting challenges and issues that you need to deal with. We have talked about those in the past. Obviously, one issue in particular is Contract Health Services that we have visited about.

You know, for at least the last two budget hearings I have raised with you the matter of including morbidity and mortality rates in the distribution formula for Contract Health Services. So, when you return for your confirmation hearing I am going to ask that again so perhaps, and I do not want you to, I know you are not prepared to go into that today, but I will ask about what progress has been made in finding a role for those rates in the distribution formula.

So, thank you and congratulations.

Dr. ROUBIDEAUX. Thank you very much.

Senator BARRASSO. Thank you, Madam Chairwoman.

The CHAIRWOMAN. Senator Johnson.

Senator JOHNSON. Mr. Washburn, I am greatly concerned about the elimination of the Housing Improvement Program, a program that provides housing assistance to those who have no other means. The Bureau justified the program's elimination by stating that individuals can simply apply for HUD Grants. However, no corresponding increases have been added to the HUD Grant Program. Please further explain how the Bureau will address the dire need of housing in Indian Country.

Mr. WASHBURN. Thank you, Senator Johnson. This is one of the most tragic budget decisions that the Administration has made this year which is to zero out the Housing Improvement Program. That program had been funded at about \$12.6 million a year, admittedly not anywhere near the HUD programs which are upwards of \$650 million per year but nevertheless important to a certain group of people, a very vulnerable group of people within Indian Country.

The decision, this budget was scoured very carefully for, I guess, to be reduced. You know, these are tough times and the President and the Administration really worked hard to try to eliminate anything they thought they could eliminate and this one was one of the programs that was targeted, partially in deference to the fact that HUD does have a huge program that, you know, this program represents about 2 percent of the budget of NAHASDA. It is, you know, it is a tiny little program compared to where most of our housing money goes. It targets a slightly different group of people.

The NAHASDA Program is public tribal housing that targets, you know, poor people in Indian Country. The HIP Program targets those who are specially needy who do not have any income to provide. It is not a decision that we would have reached in a year when there was a lot of money available. But it was, I gather that it was in some ways felt it was almost too small to save. Ultimately, a program that is only \$12.6 million does not end up reaching very many people. And so, that was zeroed out and that money was distributed for other purposes within our budget.

Senator JOHNSON. Dr. Roubideaux, the Sanitation Facilities Construction Program provides critical water supply and disposal for individual homeowners and projects. As Chairman of the Banking, Housing and Urban Affairs Committee, it is important to me to find solutions to our critical housing needs. With a tremendous need for water systems in Indian Country, how will IHS continue to work with tribes and other agencies to address the need for this critical infrastructure without a budgetary increase?

Dr. ROUBIDEAUX. Well, the Sanitation Facilities Construction Program is extremely important to the Indian Health Service. We know it does a lot to improve the health status of the communities if they can get access to clean water and sewage disposal and solid waste disposal facilities. We were grateful for the funding received in the Recovery Act that has helped us make progress on our deficiency list. However, there is still a \$2.8 billion need.

One significant step that we have taken recently is to sign an MOU with other Federal agencies, with EPA, HUD, DOI and Department of Agriculture to improve agency coordination in providing safe drinking water and basic sanitation in tribal communities. Indian Health Service is sort of a central point for all of those efforts and other agencies because we are the keepers of the deficiency list and therefore it is essential that we are working closely with all of these other agencies. So, I am happy to talk with you more about some of our specific programs.

Senator JOHNSON. Thank you, Dr. Roubideaux.

The CHAIRWOMAN. Senator Murkowski.

Senator MURKOWSKI. Thank you, Madam Chairman, and thank you for bringing up the issue with Dr. Roubideaux earlier about the shortfall within the contract support costs, \$100 million, particu-



larly after the Supreme Court decision in *Ramah*. It is just not acceptable and I mentioned in my opening comments that this really fundamentally alters Indian self-determination and with no consultation.

I am really very troubled by it. I know that we have got on the Second Panel Mr. Lloyd Miller who will speak more to this. But, Madam Chairman, know that I want to work with you on this. The tribes in Alaska are just fit to be tied. They do not know what to do on this. So, we clearly have a little more work to do.

Ms. Roubideaux, I want to ask you a question here on the annual shortfall reports. It is a statutory requirement to inform Congress and the tribes of the annual shortfall report on past and anticipated contract underpayments. We should receive this report May 15 of every year. That is coming up.

I understand that Fiscal Year 2011's report is now two years late. The reports for 2009 and 2010 were received but they were three years late. What is going on here? We cannot operate unless we have the information. Why has there been such a failure to deliver this information in a timely manner?

Dr. ROUBIDEAUX. Well, actually we have made a number of improvements because before this Administration the contract shortfall reports were not sent to Congress at all and so—

Senator MURKOWSKI. Where are we now? If Fiscal Year 2011 is two years late, what is happening with Fiscal Year 2012?

Dr. ROUBIDEAUX. So, with, in the last four years we have officially sent to Congress the 2003 to 2011 CSC need reports to Congress. The 2012 report is in final clearance in the department and should be coming to the Congress shortly.

Senator MURKOWSKI. So, you think we are going to make our May 15 deadline? That would be great.

Dr. ROUBIDEAUX. We would love to and it is in clearance and we are working very hard. We have made a number of improvements in the way that we are handling the processing of the shortfall reports, doing more of a back and forth with the tribes so that they know their numbers and that they, if there are any changes we let them know and so, as a result, the other thing is that the shortfall reports several years ago were not sent to Congress and were not official agency documents. So now the improvement is that you are getting an official agency document that is consistent, that has the information that has been run by the tribe that gives you the estimated numbers.

The shortfall reports are a historical document in a way because the 2012 report will tell us the shortfall in 2011 and there are a number of factors that—

Senator MURKOWSKI. I understand that but I am also very worried that as we are dealing with these determinations now in your budget in terms of where that shortfall is, if there is a discrepancy in the numbers we need to know in a timely manner what IHS believes those shortfalls to be. So, timeliness is going to be key.

I have got two more questions that I want to get to here.

As you know, as the Ranking Member on the Interior Appropriations Subcommittee, I was able to help secure an additional \$53 million in the IHS joint venture staffing packages for the IHS service hospitals, hugely important to us.

Can you tell me what the status of the transfer of the Fiscal Year 2013 funds provided by the CR that we just moved forward, give me the status of that and then noting in the budget here I am pleased to see \$77 million for the staffing for the new facilities. But when you look into the fine print there, it would appear that the requests for the amount of Fiscal Year 2014 include Fiscal Year 2013 dollars.

So, can you diagram for me how much the facilities in Alaska are expected to receive and the timing of the status of the transfer?

Dr. ROUBIDEAUX. Yes. We will be happy to provide the details to you and your staff at another time. But basically we are very pleased with \$53 million that we received and—

Senator MURKOWSKI. Well, let me just back you up because I, too, am pleased that we have been able to get there. But our concern is the timing of all of this and making sure that we get it quickly. So, when you say that you are going to provide that to my staff, if we could make, set up a meeting to do that very soon I would like to do that.

Dr. ROUBIDEAUX. Absolutely.

Senator MURKOWSKI. I would like to ask you, Assistant Secretary Washburn, this is as it relates to Eisenbeck Road and the residents of King Cove. I appreciate your commitment to travel to King Cove to meet with the residents there, to meet with the many Aleut people who are, of course, so concerned about access to a safe airport so that they have access to some of the same things that you and I would consider to just be the norm.

I know that the residents of King Cove are excited to have you there. In fact, I was just out on the steps with about a dozen young kids from King Cove who have come as part of a close-up program. They know you are coming, they are anxious, they are going to give you good food and make you feel plenty welcome.

Can you tell me when, what your plans are in terms of timing, moving forward on your visit to King Cove? But also, with regards to the meetings that you might be setting up and the further attention to the detail that was outlined in the letter from Secretary Salazar that we worked through on March 21st?

Mr. WASHBURN. Yes, Senator, thank you. And I am very much looking forward to my trip. It sounds like a wonderful community.

Senator MURKOWSKI. It is an amazing community.

Mr. WASHBURN. Thank you. I really look forward to seeing them in their own environment because I have met with them in Anchorage and then here in Washington, D.C.

As we speak, there is a meeting with the Secretary to kind of talk about these issues. I was supposed to be meeting with the Secretary. She wanted to get right on this. She has been in office, what is this, the eighth day, I think, work day in the office? And we had set a meeting for this time and it just, the Committee set the hearing.

And so, I do not want to get out in front of her at all, but I anticipate that it will be the early part of the summer at the latest to get out there and start doing my work. I have been given a clear assignment and I am really looking forward to digging into it.

Senator MURKOWSKI. Well if there is any way that we can help you in advance of that, we certainly stand willing to. But I appre-

ciate the time that you will give the residents of King Cove and I hope that you listen, listen not only with your ears but with your heart.

Mr. WASHBURN. Thank you.

Senator MURKOWSKI. Thank you.

The CHAIRWOMAN. Senator Tester.

Senator TESTER. Thank you, Madam Chair.

Kevin, first of all I want to thank you. In your budget you allocated some money for O&M for Fort Peck. I appreciate that very, very much. Now we will get into the other stuff.

[Laughter.]

Senator TESTER. Look, last year was a tough fire season, particularly in Southern Montana. The Northern Cheyenne Tribe got smoked pretty hard. And a lot of BLM land got smoked pretty hard. And a lot of Forest Service land. It is not your guys' budget.

But I look at the DOI's budget for hazardous, this is DOI's budget but you guys play in this game and you know where I am going. Their budget for hazardous fuels reduction two years ago was \$206 million. Last year, it was \$183 million. This year it is \$96 million. And the drought still continues. The climate change actions that are happening around the world are also happening in Montana. We are still going to have fires. And if it is not in Montana is it going to be somewhere else and it is going to impact some other Indian reservation.

You have got to fight Bureau of Rec and BLM and National Parks Service to name a few within the Interior for the money for Indian Country. What is the thought process for cutting this to less than half in two years?

Mr. WASHBURN. Thank you, Senator. I am getting up to speed on these issues. I will tell you that everywhere I have been when times get tight what you stop doing is doing the preventative type work. You know, I was at the University of New Mexico for three-and-one-half years before I took this job and whenever budgets got tight, as they did around 2009, we stopped doing maintenance on the buildings. Eventually, that is going to come back and bite that school because you have got to keep things up.

And the thing about the hazardous fuels is it is kind of maintenance, it is kind of preventative maintenance. It is actually really good preventative maintenance because what it does is it keeps the fires from being as bad when they happen and sometimes prevents them.

Senator TESTER. Correct.

Mr. WASHBURN. But it is preventative type work and we have been spending so much more on fighting the fires that that money has got to come from somewhere and to some degree, they have been taking it out of the preventative maintenance program.

This is part of the Department of Interior's overall fire program and I do not, I am a little less schooled on that at this point. I am still trying to get a hold of our green book which, as you know, is that thick.

But I am learning about these issues and we do have, you know, people on board who are using their elbows within the Department of Interior to try to ensure that tribes get their part of that because, you know, the forests do not know boundaries and the fires

do not know boundaries and so we all have to be in this together on these.

Senator TESTER. And just so you know, when the time is right on the Interior Subcommittee on Appropriations we will be asking the new Secretary about this because the fact is, you are right, it is preventative maintenance but you spend a little money early it saves a lot of money late.

Yvette, thank you for being here. I appreciate the work all of you guys do and you are in that mix.

Your request for medical inflation is 3.7 percent. And according to the Consumer Price Index, inpatient care inflation is 7 percent, outpatient care is 5 percent. How did IHS arrive at the 3.7 percent figure?

And I will just tell you what my next question is. I think in your opening remarks you said the life and limb was no longer going to be in June, it is going to be in October. It looks to me like we are losing ground, not gaining ground, when inflation is higher than the amount of increase that you are asking and I guarantee you medical inflation is going to be there because it always is.

So, number one, how did you come to 3.7? Number two, well, answer that one first and we'll get to number two real quick. Go ahead. Thanks.

Dr. ROUBIDEAUX. Thank you. During the budget formulation process, the medical inflation rate is set by OMB when we get down to working on the budget. So, we can get you further information on how they calculate that out.

Senator TESTER. So, what you are telling me is maybe I ought to call OMB up and find out how they could, I mean, that is some pretty good new math they are working with there.

Dr. ROUBIDEAUX. We would be happy to provide you with the specifics of that.

Senator TESTER. Yes, okay, that is fine.

I do want to talk about getting sick after June. That is real and you know it. You know it as well as anybody that sits on this side of the dais. Did I hear you correct in your opening that you said that would be extended out into the fall?

You have got enough money here to do that?

Dr. ROUBIDEAUX. There are two things that we talk about. The tribal advocates have used the do not get sick after June as a way to talk about the limited funding that is there. The only piece of the Contract Health Service funding that we use in terms of timing is the CHEF, the Catastrophic Health Emergency Fund. We used to reimburse cases through June. Now, we are reimbursing through August.

The measure to look at with Contract Health Service is how much we are using the medical priorities. So, four years ago only four Federal CHS programs funded beyond Medical Priority 1. Now, 29 of 66 fund beyond Medical Priority 1 and actually in the Billings area I think most if not all of the Federal CHS programs are funding at Priority 3. So, that means there is more, the volume of referrals and the types of referrals of issues that are being funded are greater.

Senator TESTER. Okay.

Dr. ROUBIDEAUX. There is still an incredible need, though.

Senator TESTER. Okay. I was just, and my time has long run out, but first of all I want to thank you guys for the work you do. I know where your heart is and I can also tell you when we do things like sequestration, for when you are looking to shave money and we are telling you every day you have got to shave money, and then when you shave money we holler at you about it. But the bottom line is in Indian Country, there is not a lot of extra money to shave and we all know that. So, when you cut a little bit, it cuts to the bone.

Thank you for the work you do and we just have to do better work as a Congress to try to get this fixed.

Thank you.

The CHAIRWOMAN. Senator Franken.

Senator FRANKEN. Well, I think I kind of said my piece during the opening on the Bug school. And, like Senator Tester, I know where your heart is. And so I do not want to pound it anymore. But I know where my heart is and my heart is with these kids. So, let me not—

Mr. WASHBURN. Thank you, Senator, and I know where your heart is, too.

Senator FRANKEN. Thank you. Let us talk about energy, renewable energy. There is a lot of renewable energy potential in Indian Country. Indian lands make up just 2 percent of the United States but contain 5 percent of America's renewable resources.

I hear from tribes that tapping these resources are a major priority and distributed energy seems particularly promising for tribes that cannot get to the grid. Distributed energy is simply an energy project that is self-contained. They are providing energy for that area that is producing it.

Some tribes are already developing clean energy on their land in Minnesota. White Earth Nation, Red Lake Nation are both developing renewable projects on their reservations. But for many tribes there are still too many barriers to renewable energy.

I was glad to see that the President's budget requested increased funding for tribal energy development at the Department of Interior, but I also know that it is going to require coordination between the Department of Energy and your department.

Mr. Washburn, can you talk about how the Department of Energy is coordinating with the Department of Energy and other agencies to streamline the permitting process and help tribes to access the resources on their land?

Mr. WASHBURN. Thank you, Senator Franken, absolutely. We have been working, you know, this is one of the complications for tribes as they try to develop projects. There are so many different Federal agencies that they have to work with. You know, there is an EIS component, environmental component, sometimes an Endangered Species component, there is land. You know, an energy project does not do any good unless the energy is transmitted, except for the smallest community scale—

Senator FRANKEN. Through distributed energy.

Mr. WASHBURN. Yes, distributed energy. But they have to, you know, there's often all kinds of permitting required, as you know. And one of the things that we have been doing, we are, when I got here, the Department of Interior, my goal was to first get a handle

on things myself within my own department and then to start reaching out better to first, other units within the Department of Interior because the Bureau of Land Management ends up having, sometimes, some approval requirements, permitting requirements, and certainly Department of Energy. And we are starting to coordinate better. It took a little longer than I thought but one of the things we have been doing in my office is having a weekly meeting where we, it is a national conference call where everybody brings their projects that are, you know, in some stage of development and we are trying to figure out what can we use our office to do to keep moving those forward. And they might be wind, they might be solar, they might be biomass, they might be conventional energy programs as well. And so, we have been giving that sustained attention now for several months, weekly meetings. And that is starting to help.

We are interested in starting to have a joint meeting now and then, perhaps monthly, with the Department of Energy because DOE tends to have money for feasible studies and that sort of thing. So, they are very much the front end of a lot of these projects because they grant the tribes money for feasibility and if it looks like it is a thumbs up, if it is a go, it can start to go into development in which case it is often our role becomes important there because we probably have some of the responsibilities to help the tribes develop that and to approve permits.

So, we are gradually, not as fast as I would like, but gradually improving our coordination with Department of Energy and other units.

Thank you for the question.

Senator FRANKEN. Thank you for the answer. I cannot tell you, just the coordination is so crucial there because that has been the barrier, or one of the barriers.

Dr. Roubideaux, I just want to ask you a little bit about oral health and oral health is so important to overall health. In Minnesota, because there are unmet needs in rural Minnesota and in Indian Country in Minnesota, we started a program of dental therapists who serve halfway in between a doctor and hygienist or something.

One-third of American Indian and Alaska Native school children report missing school because of dental pain. That is unacceptable to me. In healthcare law, we provided increased flexibility for tribes to participate in the dental health aid therapist program but, as far as I know, tribes in only two States, Minnesota and Alaska, where the program started, have participated.

What more can we do to support the use of dental therapists and what else could the Federal Government do to increase access to dental care for tribes?

Dr. ROUBIDEAUX. Well, sir—

The CHAIRWOMAN. And if you could, sorry to interrupt, if you could try to be succinct on that because I do want to get to the last question by Senator Begich and then get to the next panel.

Senator FRANKEN. I apologize for going over.

The CHAIRWOMAN. Thank you.

Dr. ROUBIDEAUX. Well, we are very supportive of the work that has been done in Alaska and Minnesota. We are reviewing the

evaluation of those and are working to find ways to help support and improve dental care in the Indian Health Service. I would be happy to provide further details.

Senator FRANKEN. Thank you very much, Dr. Roubideaux.

The CHAIRWOMAN. Thank you. Senator Begich.

**STATEMENT OF HON. MARK BEGICH,  
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Let me quickly fall on that. When you say you are reviewing the impacts, is that something that you are doing through some process that you could share with us in real data?

Dr. ROUBIDEAUX. Yes. The Indian Healthcare Improvement Act required an evaluation and so we have looked to the Kellogg evaluation of the Dental Health Aid Therapist Program and it meets almost all of the requirements of the evaluation. There is one additional requirement and we are forming a work group to look at that.

Senator BEGICH. Okay. And your timetable?

Dr. ROUBIDEAUX. That, as far as I know, is underway or ready to be underway.

Senator BEGICH. Okay. And the other question on that, I will just add to that, that program, the dental aid program, is not actually part of the whole Contract Services reimbursement and all of that. It is its own separate line, is it not?

Dr. ROUBIDEAUX. There is currently no line item or specific funding for the Dental Health Aid Therapy Program. We do try to help fund it through our Dental Centers of Excellence.

Senator BEGICH. So, it is always at risk because it is not part of the main program. Correct?

Dr. ROUBIDEAUX. Right. It is a part of the funding that we give to Alaska for the Dental Centers of Excellence.

Senator BEGICH. Let us assume for a second that the review is positive, as I think it will be. Are you and the Administration prepared to make that part of the overall health care delivery system for Indian Health Services instead of worrying about just some single funding source for it, but part of the overall?

Dr. ROUBIDEAUX. Well, that is a part of our review of the evaluation and—

Senator BEGICH. But that is not the question. Let me stop you. I want to be positive. Let us assume it says this is really good. It is making a difference. It is having good health outcomes. Are you prepared to propose it as a mainstay of the overall healthcare delivery system for Indian Healthcare Services?

Dr. ROUBIDEAUX. Well, I believe to implement it would certainly require more resources than we have to work—

Senator BEGICH. That is not what I am asking you. I understand that. But do you think that it should be part of it? If that is true that it is successful. Yes or no?

Dr. ROUBIDEAUX. I would need to consult with tribes on that matter in all States.

Senator BEGICH. Okay. No answer. Let me try something else. Well, let me just pause that. That is not really an acceptable answer. Because, if it is working, I do not know, seems like people

would want it. But I will just leave it as a commentary. I am not happy with that answer, just so you know.

Dr. Roubideaux, let me ask you also about universal caps that you have proposed for tribal contract support costs. How did you get to the conclusion that that is the best approach when what I understand in some of the court action is that there were four or five other recommendations on how to approach this? Why did you pick that one and then what analysis did you do on the other options, or not options but other recommendations? How did you get to this answer?

Dr. ROUBIDEAUX. Well, the Administration made the choice of that particular Supreme Court option in the context of a difficult budget climate and other tribal priorities needed to be funded, as well as looking at all of the various options. It was a, I cannot speak to the specifics of the final decision on it, but I do know that it was an Administration decision.

Senator BEGICH. Were you involved in that decision at all?

Dr. ROUBIDEAUX. It is an Administration decision.

Senator BEGICH. You work for the Administration. So again, were you involved in that decision to make the determination that was the best approach?

Dr. ROUBIDEAUX. The decision was by the Administration for both the Indian Health Service and the BIA.

Senator BEGICH. Okay, so you did participate. Madam Chairwoman, I am just trying to ask simple questions and it is like I am, I do not know what it is. I am pulling teeth here. But so I just want to assume yes.

I think this is a severe problem in how the funding will happen in the future and I would be interested in that, if this was a decision made, any documentation that shows how you analyzed this compared to the other recommendations that were in the report or the court issue. If you could provide that, I would be very anxious, you or whoever in this Administration that you worked with, I would be very happy to have that.

Dr. ROUBIDEAUX. I would be happy to meet with your staff and you.

Senator BEGICH. Okay, I am accepting that as a yes that that will be brought forward. I do not need more meetings. I just want the information.

Mr. Washburn, I have a question. I want to follow up on the Chairwoman's question on a broader sweep. Do you do, and I think there is a problem not putting more money into capital construction, but do you do a capital kind of lay of the land of what major replacements you need to do and kind of major maintenance and then kind of minor maintenance schedule or is that more of just kind of ad hoc?

And the reason I ask you this, I am not sure, because you are new to this, I think this would be a huge plus that I think we are kind of struggling, you know, we do not have the issue here as much as other States, but it just seems like if there is a capital plan then it gives some planning effort to figure out these things in an appropriate way.

Is there a document that is done like that on an annual basis or every three years or—



Mr. WASHBURN. Well, for schools, education, there is a program that we have and we actually have a negotiated rule-making committee that is composed of tribal leaders, primarily, and some Federal officials, and they are the ones who create a formula for us to determine which schools are in bad shape, basically——

Senator BEGICH. Got you.

Mr. WASHBURN. And they have just finished their work fairly recently. And we have not convened, we have not run the formula to see what the list is going to be because we still have three schools on that old list, the 2004 list——

Senator BEGICH. But that will drive the future list——

Mr. WASHBURN. That will drive the future list. It will help define our priorities. And so if there is money, it will go to those priorities.

Senator BEGICH. Understood. Thank you very much.

Thank you, Madam Chair.

The CHAIRWOMAN. Thank you, Senator Begich.

I would just say, we want to go the next panel, and we thank you for being here and you know, we definitely want to work with you on all of these issues. And we would hope that you would take back to the Administration that, you know, a zero school construction budget and this contract support issue, these are impacting real lives today. And we are not satisfied with where they are.

We appreciate other things about the budget but, you know, we have to be tough because these are people that we represent and without services the health of these individuals or the education opportunities are curtailed. So, we want to get to the bottom of this. So, thank you so much for being here to present to the President's Budget.

So, we are going to call up the next panel, if we could. The Honorable Jefferson Keel, President of the National Congress of American Indians, Ms. Cathy Abramson, Chairperson of the National Indian Health Board of Washington, D.C., the Honorable John Sirois, Chairman of the Business Council of the Confederated Tribes of the Colville Reservation, and Dr. Lloyd Miller, Legal Council for the National Tribal Contract Support Cost Coalition of Washington, D.C.

So, we thank all of you for being here this afternoon for our Second Panel and we appreciate the fast transition everybody is trying to make to get us through our next panel. And whenever you are ready, I think Jefferson Keel, I think we are going to start with you.

**STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT,  
NATIONAL CONGRESS OF AMERICAN INDIANS**

Mr. KEEL. Good afternoon, Madam Chair.

As President of the National Congress of American Indians, I want to thank you, Chairwoman Cantwell, for holding this meeting, Senator Barrasso, thank you for your work, and Committee members for listening to the voices of tribal leaders from across the Nation.

The National Congress of American Indians represents tribal governments and since 1944 we have fought termination efforts to curtail our sovereign rights. As we continue to fight to preserve treaty rights and our tribal ways of life, we urge you to continue

to be guided by the solemn agreements made between our ancestors and to take our current pleas to your heart.

As Congress develops the Fiscal Year 2014 budget, we call on you to make investments in programs that fund trust and treaty obligations, support tribal self determination and promote economic recovery in Indian Country.

We have provided specific recommendations in our written testimony that address many programs in the Federal budget. I want to share with you the very dangerous threats to Indian self determination, tribal economies and well-being due to the reductions from the current sequester and if the Fiscal Year 2014 appropriations bills do not address some of those impacts.

The Committee knows well but I must reiterate the point that the sequester reductions and other cuts to tribal programs undermine Indian treaty rights and obligations, treaties which were ratified under the Constitution and considered the supreme law of the land.

Tribes deliver all the range of services that other governments provide. Federal funds provide much needed investments in tribal physical, human and environmental capital. For many tribes, the majority of tribal governmental services is financed by Federal sources.

Tribes lack parity and tax authority to raise revenue to deliver services. If Federal funding is reduced sharply for State and local governments, they may choose between increasing their own taxes and spending for basic services or allowing their services to take the financial hit. Half of State and local government revenue is from their own taxes while one-quarter is Federal.

On the other hand, up to 60 to 80 percent of the revenue for tribal governmental services come from Federal sources. Not only will reductions to our base programs and TPA, Indian Health Service or caps on contract support costs violate the trust responsibility to the tribes, but it will hurt the regional economies in which tribes are major players.

Economists show that Federal funds to tribes represent high powered spending when they enter our local economies and provide a relatively large economic impact. In Oklahoma, 38 tribal nations have a \$10.8 billion impact on the State every year, supporting an estimated 87,000 jobs or 5 percent of all of the jobs in the State. Interrupting tribal revenue flow will increase unemployment for the region.

Federal cuts disproportionately impact Indian Country. Tribal nations are well prepared to take on additional responsibilities for the management of their resources but need the United States to seek to fill its trust responsibilities in order to do so.

Some of the Administration proposals that we oppose include the elimination of the Housing Improvement Program and Indian school replacement funding. Proposals that we support include the *Carciari* fix, apparent increases for our BIA natural resources which we have been requesting for a long time, investment in tribal public safety and BIA and the Department of Justice, and increase for tribal courts which is a good first step but is far below the amount needed, especially with the historic passage of the Violence Against Women Act.

We have many more recommendations in the Fiscal Year 2014 Indian Country Budget Request which we would ask be included in the record.

Another major issue is contract support costs. NCAI opposes the Administration's unilateral proposal to fundamentally alter the nature of tribal self governance by implementing individual statutory tribal caps on the payment of contract support costs. This funding is essential to the operation of contracted Federal programs administered under federally-issued indirect cost rate agreements.

No change of such a fundamental character should be implemented until there has been a thorough consultation and study process jointly undertaken by the Indian Health Service, the Bureau of Indian Affairs and tribal leaders, and formed by a joint technical working group and coordinated through possibly NCAI. Such a consultation process must be scheduled to permit opportunity for full tribal participation.

While NCAI believes that overall caps on contract support costs should be eliminated, at the very least Congress should maintain in Fiscal Year 2014 and 2015 the status quo statutory language enacted in Fiscal Year 2013 so that tribally developed changes in contract support costs funding mechanisms, if any, can be included in the Fiscal Year 2016 budget.

Again, reductions to tribal trust obligations, public safety, education, healthcare, social services and tribal governmental services are reductions to high powered spending for local economies which will impede economic recovery in addition to causing increased poverty for Indian Country.

The stakes are high for tribal governmental services and programs in the Federal Budget, only some of which are highlighted here. But trust obligations should be protected from further reductions.

I want to thank you for your consideration and we look forward to working with the Committee to ensure that the agreements made between our forefathers are honored in the Federal Budget.

Thank you.

[The prepared statement of Mr. Keel follows:]

PREPARED STATEMENT OF HON. JEFFERSON KEEL, PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS

### **Introduction**

On behalf of the National Congress of American Indians (NCAI), I'd like to thank you for holding this important hearing on the President's Fiscal Year 2014 Budget for Tribal Programs. NCAI is the oldest and largest American Indian organization in the United States. Tribal leaders created NCAI in 1944 as a response to termination and assimilation policies that threatened the existence of American Indian and Alaska Native tribes. Since then, NCAI has fought to preserve the treaty rights and sovereign status of tribal governments, while also ensuring that Native people may fully participate in the political system. As the most representative organization of American Indian tribes, NCAI serves the broad interests of tribal governments across the nation. As Congress debates elements of various budget proposals for FY 2014 and beyond, leaders of tribal nations call on decision-makers to ensure that the promises made to Indian Country are honored in the federal budget. This testimony will address the impact of the sequester, and address specific FY 2014 budget issues including Indian Affairs, contract support costs, natural resources and environment, health care, public safety and justice, and homeland security. In addition to this testimony, NCAI has partnered with national, regional, and issue specific tribal organizations to develop comprehensive recommendations included in the

*FY 2014 Indian Country Budget Request*, and we request for the document to be entered into the record.

### **Sequester**

Although we are submitting testimony on FY 2014, we must comment on the FY 2013 sequestration of discretionary programs. NCAI passed a unanimous resolution that trust and treaty obligations to tribes should not be subject to sequestration. Although the United States, businesses, and workers hoped that an economic recovery was finally taking off, the nation will begin absorbing automatic spending cuts known as sequestration in the next few months, creating an economic drag. The sequester cuts pose particular hardship for Indian Country and the surrounding communities who rely on tribes as employers, where the recession struck especially hard.<sup>1</sup> Tribal leaders urge Congress to protect the federal funding that fulfills the trust responsibility to tribes in the face of difficult choices. The sequester reductions to tribal programs undermine Indian treaty rights and obligations—treaties which were ratified under the Constitution and considered the “supreme law of the land.” At its most basic level, the economic success of the United States is built upon the land and natural resources that originally belonged to tribal nations. In exchange for land, the United States agreed to protect tribal treaty rights, lands, and resources, including provision of certain services for American Indian and Alaska Native tribes and villages, which is known as the federal Indian trust responsibility. Indiscriminate cuts sacrifice not only the trust obligations, but thwart tribes’ ability to promote economic growth or plan for the future of Native children and coming generations.

The 2013 sequester and potential reductions due to the Budget Control Act caps will hurt law enforcement, education, health care and other tribal services, which have been historically underfunded and have failed to meet the needs of tribal citizens.

### **Federal Cuts Disproportionately Impact Indian Country**

In their role as governments, tribes deliver all the range of services that other governments provide. Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. Tribes provide social programs, first-responder services, education, workforce development, and natural resource management. They also build and maintain a variety of infrastructure, including roads, bridges, housing, and public buildings. Yet, tribes need adequate resources to exercise their self-determination and serve as effective governments. Government funds provide much-needed investments in tribal physical, human, and environmental capital.

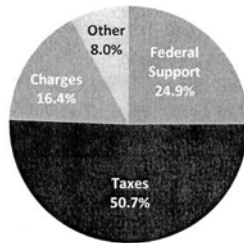
For many tribes, a majority of tribal governmental services is financed by federal sources. Tribes lack the tax base and lack parity in tax authority to raise revenue to deliver services. If federal funding is reduced sharply for state and local governments, they may choose between increasing their own taxes and spending for basic services or allowing their services and programs to take the financial hit. On the other hand, many tribes have limited ability to raise substantial new revenue, especially not rapidly enough to cover the reduction in services from the across the board reductions of the FY 2013 sequestration.

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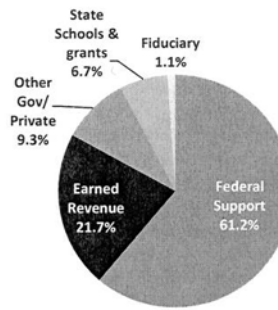
<sup>1</sup> Economic Policy Institute, *Different race, Different recession: American Indian Unemployment in 2010*, November 18, 2010.

Figure 1

Sources of State and Local Government  
General Revenue: 2010



Sources of Reservation Government Revenue,  
MT



Sources: US Census Bureau: 2010 Annual Surveys of State and Local Government Finances and Monetary Contributions of Reservations to the State of Montana; The Bureau of Business and Economic Research School of Business, University of Montana

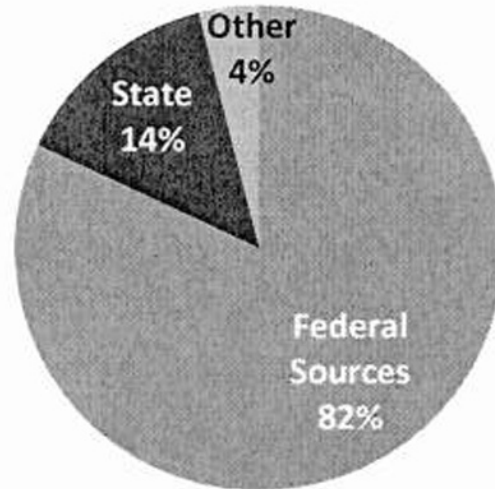
States and localities finance their own areas of spending and state and local taxes provide the majority of the funding for most of their services. The Census of Governments shows that half of state and local government revenue is from their own taxes, while a quarter of their revenues come from the Federal Government. Like other governments, there is much diversity among tribes and regions in the proportion of federal sources of revenue to tribal taxes and tribal enterprise profits. As an example, Figure 1 shows tribal revenue sources for Montana's reservations compared to the average state and local government revenue sources. More than 60 percent of the revenue for tribal governmental services in Montana is from federal sources, 2.5 times higher than for state and local governments.

#### Cuts Will Impact Regional Economies

Not only will reductions to discretionary programs violate the trust obligations to tribes, but cuts will hurt the regional economies in which tribes are major players. A tribal government in Southeast Alaska, representing more than 27,000 tribal citizens, attracted between \$25 million and \$27 million in annual funding to the region to support 200 programs and services that enhance the lives and well-being of tribal citizens, families, and communities. These services affect employment, health, education, and cultural identity. The \$22.5 million in direct expenditures generated an additional \$9 million in indirect and induced economic activity, for an estimated total regional impact of \$31.6 million.<sup>2</sup> Reductions to Bureau of Indian Affairs, Head Start, as well as to Departments of Justice and Education will exact a heavy toll on the region's economy.

<sup>2</sup>McDowell Group, *Contributions of Central Council Tlingit and Haida Indian Tribes of Alaska*, (Juneau, AK), March 2010.

**Figure 2: AK, Tribal Government General Revenue Sources**



In 2009, the five tribes of Idaho provided total employment statewide for 10,676 jobs, including multiplier effects.<sup>3</sup> The tribes report that they “receive Federal Government revenues to support tribal government operations, health services, education, fish and wildlife projects, law enforcement, environmental quality, economic development programs and projects, and other activities. U.S. federal agencies serving as funding sources include the Bureau of Indian Affairs, U.S. Fish and Wildlife Service, U.S. Department of Health and Human Services, U.S. Department of Energy, U.S. Department of Agriculture, Bonneville Power Administration, U.S. Environmental Protection Agency, and U.S. Department of Transportation. Those federal funds represent “high powered” spending when they enter the local economies, and provide a relatively large economic impact.”<sup>4</sup>

In Oklahoma, 38 tribal nations have a \$10.8 billion impact on the state every year, supporting an estimated 87,000 jobs, or five percent of all jobs in the state. Interrupting tribal revenue flow is likely to increase unemployment for the region. In Washington State, a recent economic analysis showed that, in total, \$3.5 billion of the total gross state product can be attributed to the activity on American Indian reservations. Also, tribes paid \$1.3 billion in payroll to more than 27,000 Washington residents, many of whom were non-Indian. Although some tribes have implemented strategies that enhance economic development for their communities to supplement federal sources, that does not supplant the Federal Government’s duty to fulfill its trust responsibility.

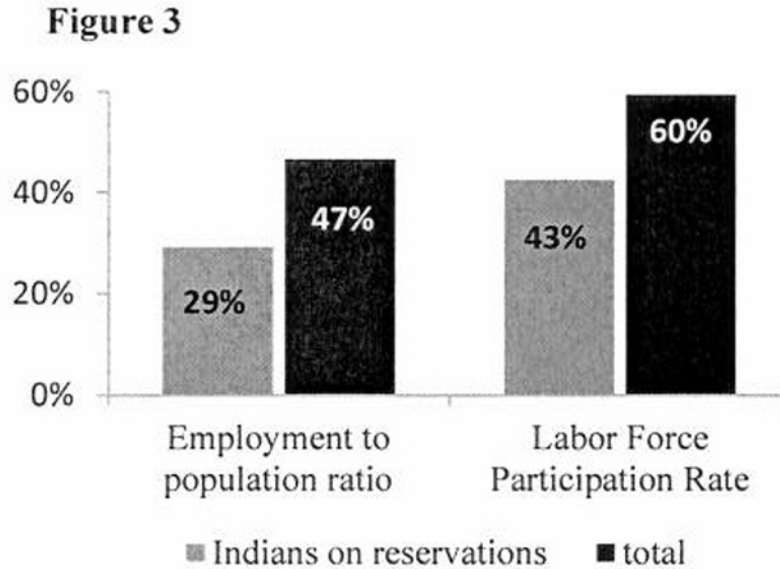
#### **Tribal Economies**

The sequester cuts pose particular hardship for Indian Country and the surrounding communities who rely on tribes as employers, where the recession has struck especially hard. Census Bureau data show that each employed American Indian supported more than three others who were not employed. By contrast, the

<sup>3</sup>Steven Peterson, 2010 Economic Impacts of the Five Tribes of Idaho On Idaho’s Economy, 2010.

<sup>4</sup>Peterson, 2010.

proportion for the entire US population is about one to one. Tribal leaders and planners have been working to address the economic inequity represented in the employment-to-population ratio.



The labor force participation rate—the proportion of able-bodied civilians of working age that are working—also shows much unmet potential for tribal citizens to enter into the economy. Four of ten Indians receive a paycheck, versus nearly two-thirds of total population.

#### **Impact on Employment**

Sequester reductions in FY 2013 and beyond will likely have a greater effect on employment in Indian Country than in other communities. Figure 4 shows industry sector of people who are employed for the entire population compared to the Native population on reservations. A third of Native people are employed in education, health care, and social services delivery. Many of the health, education, and social services in Indian Country receive federal funds, including through the Indian Health Service, Bureau of Indian Education, Impact Aid, and through the Bureau of Indian Affairs.

Figure 4: Industry for the Civilian Employed Population



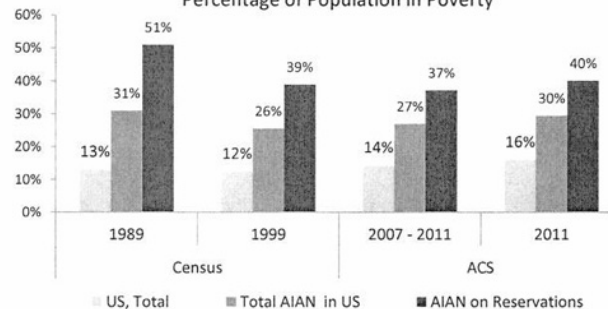
Source: 2006-2010 American Community Survey

The second largest sector employing Indian Country is public administration. One out of five employed American Indians on tribal lands works in public administration, compared to one out of 20 for the entire country.

### Impeding Recovery

Examining the trends in poverty rates on and off tribal lands is informative to the debate on how to address fiscal challenges. From 1990 to 2007, tribes reduced the percentage of tribal citizens in poverty on tribal lands by more than one-third. The poverty rate for all reservation American Indians and Alaska Natives (AIAN) in 1990 was 51 percent (see figure 6). That dropped to 39 percent in 2000, and was recently lowest at 33 percent in the 2008 Census American Community Survey (ACS) estimate. That has gone back up to 40 percent in the 2011 ACS 1-year estimate (see figure 6). The poverty rate for AIAN nationally, on and off reservation lands, was 20 percentage points lower in 1990 than the on-reservation rate, 10 percentage points lower in 2000, and 10 percentage points lower in 2010. So tribes dramatically lowered the gap between reservation and total AIAN poverty, but the recession halted the narrowing of the gap.

Figure 6 Percentage of Population in Poverty



Source: U.S. Census Bureau, 2011 American Community Survey 1 and 3 year estimates, 1990 Census, 2000 Census

Tribes were reversing what were once considered insurmountable challenges, due to increased self-determination, but the recession undermined some of those gains.



Tribes want to continue improving economic conditions so that young Native people will want to return to economies that provide work on their homelands.

#### Specific Recommendations on the FY 2014 President's Budget

With a basic overview of the role of federal funding in Indian Country covered, this testimony will address some specific funding priorities and address components of the President's FY 2014 proposed budget. NCAI, in collaboration with national, regional, and issue specific tribal organizations, has developed comprehensive program recommendations included in the *FY 2014 Indian Country Budget Request*, and we request for the document to be entered into the record.<sup>5</sup> The document addresses many more programs and agencies than are included in this testimony.

#### Bureau of Indian Affairs in Context

NCAI appreciates recent support for some tribal programs over the last few years, especially for the Indian Health Service and law enforcement. However, we must mention that comparing budget increases for the six largest Interior agencies between FY 2004 enacted to FY 2014 Presidents' Request shows that BIA has received the smallest percentage increase.

**Budget Increases for the 6 Largest Interior Agencies FY2004 to FY2014**

	FY 2004 enacted	FY 2014 Request	FY2004- 2014 % Increase	
USGS	\$938.8	\$1,167.0	24.3%	USGS 24.3%
FWS	\$1,303.4	\$1,552.0	19.1%	FWS 19.1%
NPS	\$2,258.6	\$2,636.0	16.7%	NPS 16.7%
BLM	\$999.8	\$1,162.0	16.2%	BLM 16.2%
BOR	\$942.9	\$1,050.0	11.4%	BOR 11.4%
BIA	\$2,305.8	\$2,563.0	11.2%	BIA 11.2%

The increase for BIA from the FY 2004 enacted level to the FY2014 President's requested level is about 11 percent, the smallest percent increase compared to the six largest Interior agencies over that same time period. The Department of Interior's budget overview acknowledges that "the Congress has placed the trust responsibility for Indian matters in the Department of the Interior, primarily within the Bureau of Indian Affairs." The President's budget provides \$11.7 billion in discretionary funding for the Department of the Interior (DOI), an increase of over four percent above the FY 2012 enacted level. The DOI (without BIA) request for FY 2014 is a 5.1 percent increase of \$455,109,000, while the Bureau of Indian Affairs budget would increase by \$31 million, or 1.2 percent, or \$21 million without the indirect cost increase. A \$134 million increase to BIA funding would be needed to be equitable to overall FY 2014 Department of the Interior increases.

#### Changes Proposed to Contract Support Costs

NCAI opposes the Administration's unilateral proposal, in its FY 2014 budget request, to fundamentally alter the nature of tribal self-governance by implementing individual statutory tribal caps on the payment of contract support costs. Contract support cost funding is essential to the operation of contracted federal programs administered under federally issued indirect cost rate agreements. No change of such a fundamental character should be implemented until there has been a thorough consultation and study process jointly undertaken by the Indian Health Service (IHS), the Bureau of Indian Affairs (BIA), and tribal leaders, informed by a joint technical working group and coordinated through NCAI. Such a consultation process must be scheduled to permit opportunity for full tribal participation. While NCAI believes that overall statutory caps on contract support costs should be eliminated, at the very least Congress should maintain in FY 2014 and FY 2015 the status quo statutory language enacted in FY 2013 so that tribally-developed changes in contract support cost funding mechanisms, if any, can be included in the FY 2016 Budget.

<sup>5</sup>National Congress of American Indians. (January 2013). Fiscal year 2014 Indian Country budget request: Supporting tribal economic security and prosperity. Washington, DC: Author.

NCAI further recommends that the Committee either eliminate the current caps (as was the case with the IHS appropriation until FY 1998, and with the BIA until FY 1994), or raise the IHS cap to \$617 million and the BIA cap to \$242 million. Whatever funding levels are fixed in the bill, tribal contractors should not be denied the remedies that every other government contractor possesses, and which the Supreme Court in the *Ramah* and *Cherokee* cases confirmed protect Indian contractors, too.

NCAI also requests that the Committee take firm action to force the disclosure of IHS data that the Secretary has failed to share with Congress and the Tribes, contrary to federal law.

#### **Other Recommendations for Indian Affairs**

*Carcieri Fix:* Language to provide a no-cost economic development and jobs creation solution for restoring land to tribal governments impacted by the Carcieri Supreme Court decision is included in the Department of the Interior general provisions of the President's budget. NCAI urges Congress to retain this language.

*Replacement Schools:* The FY 2014 President's budget does not include funding for Bureau of Indian Education (BIE) replacement school or replacement facility construction. NCAI urges Congress to restore funding for this program. The FY 2013 Continuing Resolution increased Department of Defense school replacement by \$30 million above FY 2012 levels while zeroing out funds for new BIE school construction. Indian Country urges Congress to ensure that dilapidated BIE schools also receive much-needed attention. There must be parity between the two federally-funded school systems. BIE schools are in overwhelmingly horrific conditions across the United States. Rodent infestations, buckling walls, water leaks near electrical outlets, and exposed asbestos, lead paint, and mold are abundant in facilities that serve Native students. Providing safe and secure schools for Native students is a matter of basic equity and a fundamental element of the Federal Government's trust responsibility to tribes.

The President's budget eliminates the *Housing Improvement Program* (HIP) budget. NCAI opposes HIP's elimination because the program serves the neediest of the needy in Indian Country and losing the program altogether would be difficult for tribes to absorb or cover in other ways.

*Natural Resources and Trust Lands:* Federal investment in tribal natural resources management helps to sustain tribal land and people, grow economies, and support continued prosperity. Many of the BIA Trust natural resources programs discussed in this section experienced substantial cuts over the past decade. Further reductions in FY 2013 under the Budget Control Act of 2011 would eliminate jobs, stymie economic activity at a critical time for tribes, and curtail combined tribal, federal, state, and community collaboration as well as the valuable perspective in natural resource management that tribes contribute to the national natural resources and the economy. The most supportive role for the Federal Government is as a resource-provider and enabler-facilitating independent decisionmaking and true self-governance for tribal nations. When tribes are free to make decisions, they have the opportunity to align policy and planning with established tribal priorities.

One of the largest increases in the proposed FY 2014 BIA budget is for sustainable tribal stewardship and development of natural resources. The proposed budget includes increases of \$32.4 million for this initiative. The funding is proposed for resource management and decisionmaking in the areas of energy and minerals, climate, oceans, water, rights protection, endangered and invasive species, resource protection enforcement, and post-graduate fellowship and training opportunities in science-related fields. \$2.5 million of this funding will focus on projects engaging youth in the natural sciences and will establish an office to coordinate youth programs across Indian Affairs. Programmatic changes in Trust Natural Resources include increases of \$9.8 million to cooperative landscape conservation, \$7.7 million to Rights Protection Implementation, \$5.1 million to Forestry, \$3 million to Fish, Wildlife and Parks, and \$2 million to Tribal Management and Development. NCAI supports such increases, but the increases are below the recommended levels for various natural resources programs at BIA included in the *FY 2014 Indian Country Budget Request* which contains expanded tribal justification for each program.<sup>6</sup>

#### **Environmental Protection Agency**

*Tribal General Assistance Program (GAP):* The President requested an increase of approximately \$5 million over FY 2012 appropriations to \$72.6 million for the Tribal General Assistance Program. Program capacity building is a top environmental pri-

<sup>6</sup>National Congress of American Indians. (January 2013). Fiscal year 2014 Indian Country budget request: Supporting tribal economic security and prosperity. Washington, DC: Author.

ority identified by tribes as part of the EPA National Tribal Operations Committee National Tribal Caucus. GAP is unique among federal programs in that it provides a foundation which tribes can leverage to support other greatly-needed programs, such as planning for natural resource management, energy efficiency activities, and small scale renewable energy projects. However, GAP funding has not kept pace with the growth of tribal environmental programs over the years, forcing tribes to perform the increased duties of maturing programs with fewer funds. Furthermore, the average cost for tribes to sustain a basic environmental program was set at \$110,000 per tribe in 1999 and has not been adjusted for inflation since then. Tribal demand for program implementation across various media includes a very pressing need to establish climate change adaptation plans. A \$175,000 per tribe distribution (totaling approximately \$98 million) reflects an equitable adjustment. Tribes request \$96 million for GAP funding in FY 2014. Expanded justification on tribal EPA programs can be found in the NCAI *FY 2014 Indian Country Budget Request*.

#### **Indian Health Service**

NCAI urges Congress to uphold the federal trust responsibility by protecting the IHS budget and developing a long-term plan to fully fund the IHS, including an advanced appropriations scheme. These recommendations parallel the National Indian Health Board's testimony—which NCAI supports—and are high priorities of tribal governments and tribal leaders.

Indian Country recommends that Congress fully fund IHS contract support costs (CSC) in FY 2014, either by eliminating the current caps or raising the IHS cap to \$617 million. The choice of tribes to operate their own health care systems and their ability to be successful in this endeavor depends upon the availability of CSC funding to cover fixed costs. Without full funding, tribes are forced to reduce direct services in order to cover the CSC shortfall. Adequate CSC funding assures that tribes, under the authority of their Self-Determination Act contracts and Self-Governance compacts with IHS, have the resources necessary to administer and deliver the highest quality health care services to their members without sacrificing program services and funding.

NCAI also recommends that this Committee reject the Administration's proposed restructuring of the appropriations Act.

Most importantly, full funding of contract support costs is a contract obligation that the Federal Government must honor by law. The total amount required to fully cover contract support cost requirements in FY 2014 was estimated to be \$617 million.

#### **Public Safety and Justice**

The problems that continue to plague public safety providers on tribal lands are the result of decades of gross underfunding for tribal criminal justice systems; a uniquely complex jurisdictional scheme; and a centuries-old failure by the Federal Government to fulfill its public safety obligations on American Indian and Alaska Native lands. In recent years, a broad representation of tribal leaders highlighted the shortcomings in the current justice system during numerous government-to-government consultations, informal dialogues, conference calls, meetings, and Congressional hearings. At each turn, they emphasized that the current lack of resources for law enforcement on tribal lands poses a direct threat to Native and non-Native citizens alike, and to the future of all tribal nations. These concerns culminated in the passage of the extremely comprehensive Tribal Law & Order Act (TLOA) in 2010.

Highly-functioning law enforcement and basic police protection are fundamental priorities of any government; tribal governments are no different. Tribes have some of the most valuable resources in the nation—natural and human—and tribal lands are prime locations for new business ventures and economic development. Yet, issues of perceived safety on the reservation continue to hinder successful growth of tribal economies. Further, the severe lack of public safety resources has served as a welcome mat for criminal activity on the reservation.

*BIA Office of Justice Services:* The President's budget includes a \$19 million increase for BIA public safety and justice. These increases will provide \$5.5 million to hire additional tribal and Bureau law enforcement staff and \$13.4 million to staff recently constructed tribally-operated detention centers. An increase of \$1 million is for tribal courts, which are expected to see an increase in case loads. \$3.0 million is to meet the needs of tribal communities with elevated levels of domestic violence.

NCAI welcomes these increases, but notes that a \$1 million increase for tribal courts is far below the amount needed. It is well-documented by entities such as the U.S. Commission on Civil Rights and the American Bar Association that tribal courts have been historically underfunded by the Federal Government and that this

underfunding negatively impacts their law enforcement operations. Although there have been federal grants issued—particularly through the US Department of Justice—to address discrete justice and safety concerns, those grants are time-limited and do not support the ongoing and daily operating needs of tribal courts. Enacted in 1993, the Indian Tribal Justice Act authorized an additional \$50 million per year for each of seven years for tribal court base funding. Despite numerous congressional reauthorizations of the Act over the past couple of decades—most recently through FY 2015 in TLOA—not a single penny has been appropriated. The promise of this much-needed base funding must finally be fulfilled.

Further, the method by which BIA supplemental court funding is distributed is seriously flawed and needs to be overhauled. Currently, in order to obtain necessary additional operating funds, a tribal court must undergo—and fail—a court evaluation. This deters tribes from seeking additional funding because they must be assessed as being sub-standard; and this information becomes public, undermining the reputation and credibility of the tribal court. In addition, the innovative tribal courts that achieve success with pilot programs are unable to obtain funding to continue the programs or to allow for replication as best practices by other tribal nations. A confidential evaluation process and award system that allow for under-functioning courts to receive additional funding and also support successful pilot programs should be developed and implemented.

*Department of Justice:* The President's FY 2014 Budget requests \$389.5 million for the Department of Justice (DOJ) public safety initiatives in Indian Country (including \$369.5 million in discretionary funds and \$20 million from the Crime Victims Fund, a mandatory account). This is a significant increase compared to the President's FY 2013 DOJ request, and it demonstrates the Administration's continued commitment to improving the criminal justice system on tribal lands.

This substantial increase in requested funding for Indian Country initiatives within DOJ is due in large part to the new \$20 million set-aside for tribal victim assistance within the Crime Victims Fund. The Crime Victims Fund, administered by the Office for Victims of Crime (OVC) within DOJ's Office of Justice Programs (OJP), was initially established to address the need for victim services programs, and to assist tribal, state, and local governments in providing appropriate services to their communities. The Fund is financed by collections of fines, penalty assessments, and bond forfeitures from defendants convicted of federal crimes, but until now, tribes have only been eligible to receive a very small portion of the discretionary funding from the Fund. Over the past year, OVC and OJP officials have recognized the great need to strengthen victims services on tribal lands and, thus, are proposing this new set-aside to help meet that need. The new tribal funding is requested as part of OVC's Vision 21 Initiative, a strategic planning initiative based on an 18-month national assessment by OJP that systematically engaged the crime victim advocacy field and other stakeholder groups in assessing current and emerging challenges and opportunities facing the field. The initiative focuses on supplemental victims services and other victim-related programs and initiatives in areas like research, legal services, capacity building, national and international victim assistance, and—of course—tribal assistance.

Similar to the President's 2012 and 2013 requests, the Department again proposes bill language for a 7 percent tribal set-aside from all discretionary Office of Justice Programs to address Indian country public safety and tribal criminal justice needs. Under the FY 2014 request, the 7 percent set-aside totals approximately \$102.5 million—more than a \$20 million increase from last year's request and far more comparable to the numbers found in the President's 2012 budget request. Although the details of how these funds will be administered are yet to be determined, the goal is to provide a more flexible grant structure for tribes. To offset this new policy, the Department proposes to eliminate bill language contained in prior years' Appropriations Acts that had specific funding amounts for traditional tribal justice programs—such as tribal prison construction, tribal courts initiative, tribal alcohol and substance abuse reduction assistance, and tribal youth.

The President's DOJ budget requests \$412.5 million for the Office on Violence Against Women (OVW), \$42.7 million of which will be aimed at addressing the high victimization rates of American Indian and Alaska Native women for the crimes of domestic violence, sexual assault, dating violence, and stalking on tribal lands. Of these funds, about \$35.3 million is requested for disbursement through the VAWA Grants to Indian Tribal Governments Program, while \$3.6 million would be funneled to tribal coalitions through the VAWA Tribal Coalitions Grants Program and \$2.3 million would go to tribes under VAWA's Sexual Assault Services Program. Also within these OVW funds, the President has requested that \$500,000 be available for an Indian Country Sexual Assault Clearinghouse that will offer a one-stop shop for tribes to request free on-site training and technical assistance. The FY 2014

budget request also sustains funding for Analysis and Research on Violence Against Indian Women at \$1 million.

This year's DOJ budget also requests a total of \$1.6 million for the Office of Tribal Justice (OTJ) to, among other things, help fund a total of six attorney positions in FY 2014. This request for additional staffing resources was made in recognition of the increased workload and duties of OTJ staff in recent years, particularly since the Tribal Law & Order Act of 2010 established OTJ as a permanent component of the Department. Hundreds of federal cases, in addition to other conflicts needing resolution are generated in Indian country each year, and OTJ serves as the primary point of contact between all 566 federally recognized tribes and DOJ on these matters. OTJ coordinates these complex matters, the underlying policy, and emerging legislation between more than a dozen DOJ components active in Indian country. As such, it is imperative that OTJ has the necessary resources to sufficiently fulfill all of these obligations.

Additionally, the FY 2014 budget request for tribes under the Community Oriented Policing Services (COPS) program to fund tribal law enforcement expenses is \$20 million, the same as the FY 2013 requested amount. This program provides funding and resources to meet the public safety needs of law enforcement and advance community policing on tribal lands. The President requested \$15 million for tribes under the COPS Hiring Program, identical to his FY 2013 request, but substantially lower than his request in FY 2012 (which was closer to \$42 million). These funds are critical for the hiring and retention of tribal law enforcement officers.

DOJ's FY 2014 Budget Request for Indian Country programs is a substantial increase over its FY 2013 numbers, which is particularly encouraging given the current budget climate in Washington, DC. Moreover, DOJ's request provides tribes with more flexibility in how they spend their DOJ grant dollars, demonstrating the Justice Department's continued commitment to tribal self-determination and the improved administration of justice on Indian lands.

#### **Department of Homeland Security**

Tribal government homeland security and emergency management capacity has increased in recent years despite inequitable funding and support by the Department of Homeland Security (DHS). NCAI and the tribes were successful in having DHS create the Tribal Homeland Security Grant Program (THSGP) but it has been severely underfunded. In the FY 2013 budget request, DHS proposed the creation of the National Preparedness Grant Program (NPGP) which would have eliminated the tribal program and placed tribes in competition with states for funding, and asked some tribes to submit grant proposals to states and have the funds managed by state governments. NCAI strongly urged DHS to not implement NPGP until tribal consultation took place but consultation has not occurred.

The DHS is re-proposing the NPGP for FY 2014. The NPGP gives high preference to states with Emergency Management Assistance Compacts (EMAC). While tribes are beginning to develop emergency assistance compacts with surrounding jurisdictions there are currently no state-tribal EMACs. The NPGP also utilizes a complicated process for assessing regional and national capability requirements through the Threat and Hazard Identification and Risk Assessment and capability estimation processes.

The DHS FY 2014 budget document request states that tribes will continue to apply directly to the Federal Emergency Management Agency (FEMA) under a competitive process and that FEMA will ensure a portion of the overall funding is dedicated to tribal nations. However it also states that tribal funding is contingent on tribal governments proving they are contributing to overall national preparedness and the main criteria is that tribes have established memoranda of understanding or the protection of national critical infrastructure and that they have completed their own THIRA.

Tribal concerns persist that tribal funding may be inadequate. However, based on tribal/FEMA relations in the recent past there is a significant possibility of a positive outcome. Tribes, NCAI, and the Federal Emergency Management Agency worked together to secure passage of legislation that authorizes tribes to seek a direct presidential disaster declaration under the Stafford Act. Currently tribes are submitting comments on implementation of the Stafford Act tribal provisions, but FEMA has yet to reach out to tribes regarding tribal eligibility in myriad programs contained in the Hurricane Sandy Relief Act which included the tribal amendments.

#### **Federal Communications Commission**

The FY 2014 budget request of the Federal Communications Commission (FCC) is \$359.3 million. This proposed budget will enable the FCC to support ongoing re-

forms of the Universal Service Fund, maximization of spectrum allocation, ensure consumer protections, and promote public safety communications services.

In August of 2010 the FCC created the Office of Native Affairs and Policy (FCC-ONAP) as the responsible entity for the FCC's consultation and training efforts with tribal nations. However, this office was never provided a dedicated, annual budget to ensure continuity in its consultation efforts on behalf of the FCC. During NCAI's 2013 Executive Council Winter Session in Washington, DC tribal leaders became aware that FCC-ONAP has relied primarily on the FCC's travel budget, which as of March 1, 2013 has been frozen due to sequestration. Unfortunately, the FCC has not mentioned whether it will provide FCC-ONAP with FY 2014 funding.

Reinstatement of an operating budget for FY 2013 and providing a dedicated, annual budget beginning in FY 2014 is crucial to advancing the government-to-government relationship between tribes and the FCC. Numerous proceedings have been initiated since FCC-ONAP's creation in 2010, which have included reforms to universal service programs impacting tribal nations.

Implementation of the Mobility Fund, Tribal Mobility Fund, Tribal Government Obligation Engagement Provisions, Intercarrier Compensation benchmarks, and reforms to the Tribal Lifeline and Link-Up Programs necessitate the continued existence of this office. The FCC is also positioned to increase much needed tribal nation access to commercial wireless spectrum.

### **Conclusion**

Reductions in funding to meet trust obligations to tribal nations—public safety, education, health care, social services, and tribal governmental services—are reductions to “high powered” spending for local economies, which will impede economic recovery in addition to causing increased poverty and hardship for Indian Country.

The stakes are high for tribal governmental services and programs in the federal budget that support the trust responsibility, only some of which are highlighted here, but trust obligations should be protected from further reductions. Tribal programs, as part of the discretionary budget, have already done their part to reduce the deficit through the bipartisan Budget Control Act. Continued cuts will have severe consequences for every tribal citizen. Tribes urge the President and Congress to uphold the solemn promises of the trust responsibility throughout the federal budget in FY 2014 and future years.

The CHAIRWOMAN. Thank you very much.

Ms. Abramson, thank you so much for being here.

### **STATEMENT OF CATHY ABRAMSON, CHAIRPERSON, NATIONAL INDIAN HEALTH BOARD**

Ms. ABRAMSON. Thank you.

Chairwoman Cantwell, Ranking Member Barrasso and Members of the Committee, thank you for having this hearing today. My name is Cathy Abramson and I am Chairperson of the National Indian Health Board and I am a tribal council member from the Sault Ste. Marie Tribe of Chippewa Indians.

The NIHB offers the following comments regarding the President's Fiscal Year 2014 Budget Request.

First of all, I would like to thank Congress for the increases to Indian health that its members have provided over the last several years. As you may know, American Indians and Alaska Native populations suffer disproportionately from a variety of health disparities that include diabetes, heart disease, tuberculosis, alcoholism and suicide. It is the commitments that you and your colleagues have made to improve Indian health in the last several years that are starting to turn these figures around.

There is still much more than can be done for Indian Country's access to healthcare. In my written comments, you will see detailed budget priorities that NIHB has for Fiscal Year 2014 including contract support costs, contract health services and behavioral health programs for American Indians and Alaska Natives.

Today, however, I would like to focus my remarks on the biggest immediate threat to our tribal health and that is sequestration. I thank the Chairwoman and the Members of this Committee for their public acknowledgment of the injustice done to tribal communities by including IHS in the 5.1 percent sequester for Fiscal Year 2103. Because these cuts must be achieved over seven months instead of 12, the effective percentage of reductions is approximately 9 percent. IHS will lose \$220 million in Fiscal Year 2013.

Additionally, the 2 percent rescission further reduces IHS budgets in the amount of \$8 million for a total of \$228 million from the IHS 2013 budget. This combined with the Government rescission since Fiscal Year 2011 means that IHS has lost \$240 million in the last three years alone. As the chart demonstrates, over here, it almost completely erases the gains that IHS, that were made to IHS since 2009.

But these figures do not tell the human stories. The sequestration cuts are literally a matter of life and death for American Indians and Alaska Natives. For example, my tribe, our tribal membership is over 44,000 and we provide services in seven eastern counties of Michigan's Upper Peninsula which represent part of our tribe's original lands.

In 2012, our health division provided 43,000 primary care visits. This includes medical, dental and optical treatment. Our tribe also provided over 11,000 behavioral health visits. This equals 54,500 visits for tribal members.

A 9 percent sequestration cut would be about \$1.5 million for our tribe. This means the elimination of two dentists, four dental technicians, three family practice physicians and three registered nurses. The amount of people we could actually treat would be reduced by 12,400 or 23 percent of primary care visits. It also decreases third-party revenue by over \$700,000.

Currently, we are only funded at 46 percent of identified level of need. A 9 percent cut will increase the unfunded portion 37.8 percent of need and will be detrimental to members and these needed services in order to survive.

The Alaska Native Tribal Consortium announced that it will discontinue the Community Health Aid Training Program as a result of the sequester and they will close the Bill Brady Healing Center that provides alcohol and drug treatment to Alaska Natives.

The Pine Ridge Reservation told NIHB that likely will severely cut behavior health services which will be devastating in a community that suffers regularly from suicide, alcoholism and other substance abuses. Since the beginning of the year there have been 100 suicide attempts in 110 days on Pine Ridge. Because of sequestration, they will not be able to hire two mental health service providers. As one tribal health official told NIHB, we cannot take any more cuts. We just cannot.

Across Indian Country tribal leaders and our health care administrators have to make decisions on how to make the cuts. And they should not have to. NIHB asks you to work with your colleagues in Congress to restore the \$240 million in IHS funding eliminated due to sequestration and rescissions since Fiscal Year 2011 and enact legislation that permanently exempts IHS from sequestration.

Thank you for this opportunity.  
 [The prepared statement of Ms. Abramson follows:]

PREPARED STATEMENT OF CATHY ABRAMSON, CHAIRPERSON, NATIONAL INDIAN  
 HEALTH BOARD

Chairwoman Cantwell, Vice Chairman Barrasso, and Members of the Committee, thank you for holding today's important hearing on the President's FY 2014 budget. My name is Cathy Abramson, and I serve as the Chairperson for the National Indian Health Board (NIHB) and as a Tribal councilperson for the Sault Ste. Marie Tribe of Chippewa Indians. The NIHB, in service to the 566 federally recognized Tribes, offers the following written comments regarding the President's FY 2014 Budget request for the Indian Health Service (IHS).

First, I would like to thank Congress for the increases to Indian Health it has provided. In the last three years, the IHS has received an increase of 29 percent which is enabling Indian Country to live with better health outcomes. As you may know, American Indian/Alaska Native (AI/AN) populations suffer disproportionately from a variety of health disparities including diabetes, heart disease, tuberculosis, alcoholism and suicide. It is the commitments that this Congress has made to improving Indian Health in the last several years that are starting to turn these figures around.

It is critical that even in a time of tough fiscal choices that Congress continue to prioritize Indian Health. This is not only a human issue, but the fulfillment of the federal trust responsibility reinforced by 200 years of legislation, treaty agreements and case law. Furthermore, the dramatic cuts affecting IHS due to the federal sequestration process and rescissions will put the health of AI/AN people at risk and create a health care crisis across Indian Country. NIHB asks you to restore the \$240 million in funding already lost due to sequestration and rescissions and create a permanent legislative exemption for IHS from sequestration.

NIHB appreciates the President's budget request of \$4.4 billion for IHS, but believes that this figure could go much further. To fulfill the total need in Indian Country, appropriations for the IHS would be \$26.1 billion. However, due to the difficult fiscal environment, NIHB supports the recommendation of the National Tribal Budget Formulation Workgroup and requests IHS to be funded at \$5.3 billion.

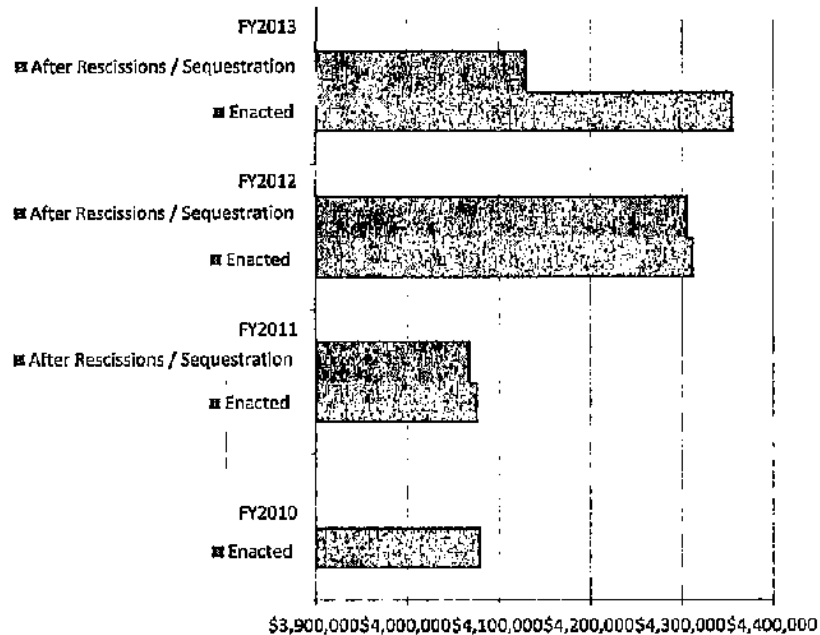
**Sequestration and the 2 percent Continuing Resolution Recession**

On March 1, 2013, IHS became subject the federal sequestration process. As discussed in an oversight hearing on Indian Health before the House Appropriations Subcommittee on Interior Environment, and Related Agencies on March 20, 2013, NIHB and the Tribal community believe that this is a grave oversight that will drastically affect the lives of every AI/AN. Although the American Taxpayer Relief Act reduced the level of the sequester reduction for the IHS from 8.2 percent to 5.1 percent, these cuts must be achieved over seven months instead of twelve, making the effective percentage of reductions approximately 9 percent. The amount reduced out of the IHS budget through the sequester is \$220 million. Additionally the 2 percent rescission enacted by the recently-passed Consolidated and Further Continuing Appropriations Act (P.L. 113-06) further reduces the IHS budget in the amount of \$8 million for a total cut of \$228 million from the IHS' FY 2013 budget. For FY 2013, combined with government rescissions since FY 2011, means that the IHS has lost \$240 million in the last three years alone.

The chart below depicts the actual amount of enacted funding for IHS since FY 2010 compared with the funding eliminated through rescissions and sequestration:



### Indian Health Service Funding FY 2009-2013 (Dollars in Thousands)



As you can see, the increases in IHS that have been made over the last several years have been almost completely erased when accounting for rescissions and sequestration. When accounting for medical inflation rates of between 5 and 7 percent, and population growth of the AI/AN community the IHS is actually operating with slightly less money than it did before FY 2009. In order to reverse the health disparities of AI/AN people, it is critical that not only Congress continue to make increases in IHS funding, but that they restore funding that has been taken away from the IHS through rescissions and sequestration.

Health care provided through the Indian Health Service is not just another discretionary program. These services for AI/ANs are the fulfillment of a federal trust responsibility. Unlike other federal program cuts, the reductions to IHS are not about forcing government to run more efficiently. The sequestration cuts are literally a matter of life and death for AI/AN people and a deliberate abrogation of federal trust reasonability. Other medical service programs such as Medicaid, Medicare, the Children's Health Insurance Program, and medical care for Veterans have been exempt from the full sequester. NIHB strongly believes that the IHS should have the same exemption.

Overall, the White House predicted that the cuts will mean 3,000 fewer inpatient admissions and 804,000 fewer outpatient visits each year, though detailed budget numbers have not been released. The vast majority of programs treating Native Americans, especially those treating the sickest, most needy peoples will cut service. Alaska Native Tribal Health Consortium announced that it will discontinue its Community Health Aid training program as a result of the sequester and they will close the Bill Brady Healing Center that provides alcohol and drug treatment to Native Alaskans.

Seventy-three percent of Direct Services in the Aberdeen Area are implemented by IHS facilities. The automatic cuts will have a greater impact in our region. Already, examples from this area speak volumes of the automatic cuts. The Pine Ridge reservation's behavioral health staff has told NIHB that it will likely have severely cut back behavioral health services, which will be devastating in a community that suffers regularly with suicide, alcoholism and other substance abuse issues. There have been 100 suicide attempts in 110 days on Pine Ridge. Last year there were

563 suicide attempts on this reservation alone. Because of sequestration they will not be able to hire two mental health service providers. As one Tribal health official told NIHB, “We just can’t take any more cuts.” For example, Contract Health Services alone translates to 4,300 fewer approved referrals and 1,700 increase in denials. The proposed cuts will literally deny 6,000 fewer Tribal members ability to receive Priority 1 (Life or limb) services. This is Life or Death.

Across Indian Country, Tribal leaders and health administrators are facing tough decisions on how to make cuts, but they should not have to.

NIHB thanks those on this Committee that have publicly recognized the unjust nature of these cuts. Therefore, NIHB asks you to work with your colleagues in Congress to restore the \$240 million in IHS funding eliminated due to sequestration and rescissions since FY 2011 and enact legislation that permanently exempts the Indian Health Service from sequestration. Now is not the time to completely erase the positive gains made by IHS in the last several years.

#### **Contract Support Costs (CSC)**

In June 2012, the Supreme Court issued a ruling in *Salazar vs. Ramah Navajo Chapter* that held that the U.S. Government must pay each Tribe’s contract support costs even if the full amount to fund this has not been appropriated by Congress. As a result, the Administration has proposed an overhaul of the current Contract Support Cost system. The FY 2014 Budget recommends that the government enter into individual contracts with each Tribe for CSC funds that each Tribe will receive. NIHB stands with the Tribes in opposing this unilateral policy change. The Administration has proposed this change without thorough and specifically focused consultation from Indian Country, which is a violation of a several federal laws and guidelines. While NIHB supports the overall elimination of statutory caps on CSC, this change should only be undertaken with a full comprehensive study by Congress, the IHS, and Tribal advisors. The Administration’s proposal is destructive to Tribal self-governance and NIHB calls for extensive Tribal consultation on CSC. NIHB requests no major policy changes regarding CSC occur without Tribal consultation and a study process jointly undertaken by the Indian Health Service, the Bureau of Indian Affairs, and tribal leaders, informed by a joint technical working group.

FY 2014 Budget requests an increase of \$5.8 million (1.3 percent) for CSC in the total amount of \$477,205,000 for FY 2014. In addition, the Budget requests \$500,000 for CSC associated with new or expanded compacts or contracts. NIHB agrees that it is critical to increase funding for CSC. This funding enables Tribes to receive the essential infrastructure support needed to administer federal programs. Without full funding, Tribes are forced to redirect funds and reduce services in order to cover these costs. This is especially devastating for AI/ANs during a time of difficult budget reductions. CSCs are a critical part of health care delivery for AI/AN people and an affirmation of Tribal self-governance. Without funding this line at the full amount, Congress is abrogating this right to Tribal self-governance, and severely impacting health outcomes for AI/AN people. Therefore, NIHB asks that CSCs are increased by \$109.2 million from FY 2012 levels, as recommended by the National Tribal Budget Formulation Workgroup.

#### **Purchased/Referred Care (formerly known as Contract Health Services)**

The Purchased/Referred Care (PRC) Program (formerly known as the Contract Health Service Program) allows IHS to purchase health care from outside providers when no IHS-funded direct care service is available. NIHB is deeply appreciative of the dramatic increase in funding this program has seen in the last several years. Since FY 2005, funding for CHC has increased from \$498 million to \$845 million, or 69 percent. The FY 2014 Administration Budget requests funding of \$879 million, an increase of \$35 million, or 4 percent, over FY 2012.

However, this increase in funding does not adequately address the rate of medical inflation, nor does it provide adequate funding to meet the needs of the program. Adjusting funding for medical inflationary costs helps maintain the current level of services and offsets the rising cost in providing health care. The increase of \$35 million is the calculated need based on a 3.7 percent medical inflation rate. However, according to the Consumer Price Index, inpatient hospital care is at 7 percent and outpatient hospital care is at 5 percent. PRC is grossly underfunded and IHS cannot purchase the care it needs. Currently, most IHS programs and Tribal health programs are only recommending the most desperate cases to be treated by PRC (e.g. “life or limb” situations) and less urgent or preventative care patients are deferred. As a result, Indian patients are left with untreated and often painful and preventable conditions that, if treated early, would result in better health outcomes at a

lower cost. This is not a fulfillment of the federal Tribal trust obligation, but an outright denial of services to a large portion of the AI/AN population.

For PRC, NIHB requests a \$171 million increase over the FY 2012 for a total amount of \$1.01 billion. NIHB feels that this amount will allow IHS recipients to receive modest gains in access to care. For FY 2011, the estimate of PRC unmet need was over \$800 million and with health care costs rising, this figure is only expected to grow. Without increases to this program or significant reform AI/ANs will continue to live shorter and die sicker than other Americans.

A Government Accountability Office (GAO) study released on April 11, 2013 also noted that IHS losing a lot of funding for PRC by failing to negotiate lower payment rates with nonhospital providers as Medicare and private insurance do. GAO recommends that Congress consider capping rates for nonhospital providers like other federal programs. While NIHB feels that this could enable IHS to provide more services for the amount appropriated by Congress, NIHB expresses concerns about access to care. While GAO did not express immediate concerns about patient access under payment caps, some rural areas served by IHS may only have one specialist or provider. To risk excluding patients from care through payment caps, would again, put the health of AI/ANs at risk. Because the GAO study was relatively limited in scope, NIHB recommends that Congress thoroughly study any issues resulting from access to care before enacting legislation that would cap PRC rates to nonhospital providers.

#### **Definition of Indian in the Affordable Care Act**

AI/ANs must be able to access the new benefits offered under the Affordable Care Act (ACA) (P.L. 111–148). The ACA contains numerous favorable procedural rules, cost-sharing protections, and mandatory enrollment exemptions that apply specifically to AI/ANs.

However, the Act references several different definitions of the word “Indian.” Though HHS has officially stated that these definitions are “operationally” similar but not exactly the same, it is expected that AI/ANs will experience many administrative setbacks before they can fully access ACA programs. This will create enormous potential for confusion and inefficiency in the implementation of the ACA. One consequence will be that certain AI/ANs would face tax penalties for not enrolling in an Exchange though they are already receiving health care from the IHS or a Tribally-administered program.

Officials and HHS have stated that there must be a legislative fix. The NIHB recommends that the definition of “Indian” adopted by the Centers for Medicare & Medicaid Services (CMS) (at C.F.R. § 447.50 and effective on July 2, 2010) in its implementation of the Medicaid cost-sharing protections should be adopted uniformly in its implementation of the ACA for both the health insurance marketplace plans and the Medicaid expansion.

#### **Special Diabetes Program for Indians (SDPI)**

The Special Diabetes Program for Indians (SDPI) is a mandatory spending program which provides grants for diabetes treatment and prevention services to 404 IHS, Tribal and Urban health system programs. Currently this program is authorized at \$150 million per year through September 30, 2014. The SDPI program is subject to a 2 percent sequestration cut as of March 1, 2013. This translates into a \$3 million budget reduction for SDPI and will force SDPI grantees to make difficult choices on how to use SDPI funding to address the primary, secondary and tertiary prevention of diabetes in American Indian and Alaska Native (AI/AN) communities.

SDPI is making a real difference in the lives of people who must manage diabetes on a daily basis. As a result of intensive SDPI program data collection analysis, we are able to demonstrate remarkable outcomes from SDPI programs, including: a decrease in the average blood sugar level from 9.0 percent in 1996 to 8.1 percent in 2010; and a 56 percent increase in weight management activities targeting children and youth. Additionally, end stage renal disease (ESRD) has decreased by 27.7 percent between 1995 and 2006—the lowest for any other ethnic group. Because this program is outcome driven, and focuses on individual grants which enable health professionals to tailor program activities to specific communities and cultural sensitivities, the success of SDPI is only expected to grow.

SDPI is also saving money for IHS and Tribal programs. The cost to treat someone with diabetes is 2.3 times higher than a non-diabetes patient. By engaging in interventions to prevent this disease, costs for health care services also plummet and providing savings for other government programs such as Medicare, and Medicaid. NIHB requests that Congress continue to support reauthorization of SDPI.

### **Advanced funding to Indian Health Service Budget**

Since FY 1998, appropriated funds for medical services and facilities through IHS have not been provided before the commencement of the new fiscal year, causing IHS and Tribal providers great challenges in planning and managing care for AI/ANs.

The lateness in enacting a final budget ranges from five days (FY 2002) to 197 days (FY 2011). Even after the enactment of an appropriations bill, there is an apportionment process involving OMB and then a process within IHS allocation of funds to IHS Area offices. In FY 2010, the Veterans Administration (VA) medical care programs achieved advance appropriations. The fact that Congress has implemented advance appropriations for the VA medical programs provides a compelling argument for Tribes and Tribal Organizations to be given equivalent status with regard to IHS funding. Both systems provide direct medical care and both are the result of federal policies. Just as the veterans groups were alarmed at the impact of delayed funding upon the provision of health care to veterans and the ability of VA to properly plan and manage its resources, Tribes and Tribal Organizations have those concerns about the IHS health system. If IHS funding was on an advance appropriations cycle, Tribal health care providers, as well as the IHS, would know the funding a year earlier and would not be subject to continuing resolutions.

Delayed funding significantly hampers Tribal and IHS health care providers' budgeting, recruitment, retention, provision of services, facility maintenance, and construction efforts. Advanced funding enable IHS and Tribal leaders to make decisions on health care for AI/ANs well in advance, and contribute to greater health outcomes. As a result of these greater efficiencies created by advanced funding, IHS have a cost-savings that would allow the agency to redirect much needed funding into other areas, and build up the overall health of AI/AN patients. Providing sufficient, timely and predictable funding is needed to ensure the Federal Government meets its obligation to provide health care for AI/ANs.

### **Other Programs**

FY 2014 Budget requests \$196,405,000 for the *Alcohol and Substance Abuse*, which is an increase of \$2,108,000 over the FY 2012 enacted level. NIHB supports this increase but believes that federal funding for this program should be \$203.7 million. This funding supports integrated behavioral support to reduce substance abuse in Indian Country, which is one of the most critical health epidemics for AI/ANs.

In a related matter, the FY 2014 Budget request for *Mental Health* is \$79.9 million, an increase of \$185,000 for pay costs and \$4.1 million for mental health staffing at newly constructed healthcare facilities. AI/ANs are at higher risk for certain mental health disorders than other racial or ethnic groups. More funding is needed to increase the incidence of suicidal behavior reporting by health care (or mental health) professionals. NIHB requests \$121 million (or an increase of \$45.8 million over the FY 2012 enacted level) for FY 2014.

### **Conclusion**

In closing, I would like to reiterate my deep appreciation for this Congress' commitment to Indian Health in last several years. With your help, Tribes and IHS have been able to make great strides in Indian Health and these increases will help to ensure that AI/ANs remain a healthy and vibrant people for generations to come.

There is still much work to be done. NIHB recommends that Congress work to restore previous cuts to the IHS by federal budget rescissions and sequestration and establish permanent legislative exemption for IHS from the sequestration process. Cuts of this magnitude will only result in increased disease and sickness for AI/ANs. NIHB also appreciates the President's request for increased funding in these difficult fiscal times. However, in order to address these great inequalities and fulfill the Federal Government's trust obligation to native communities, FY 2014 appropriations for IHS should be at \$5.3 billion.

Thank you again for this opportunity to testify regarding the FY 2014 IHS budget. I look forward to answering your questions.

The CHAIRWOMAN. Thank you very much. Thank you for your testimony.

Mr. Sirois, thank you very much for being here and we look forward to your testimony.

**STATEMENT OF HON. JOHN SIROIS, CHAIRMAN,  
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION**

Mr. SIROIS. [Greeting in native language.]

Good afternoon, Chairman Cantwell, Vice Chairman Barrasso and Members of the Committee, I am really thankful that you are here and spending time and listening to us. On behalf of the Confederated Tribes of the Colville Indian Reservation, I truly appreciate the opportunity to testify here today before you.

[Speaking in native language.] My given name is John Sirois and I am Chairman of the Colville Business Council and I want to also say [speaking in native language]. Thank you for listening. I heard members talking about where our heart is and I wanted to thank you for listening to our hearts here today on these very important issues.

Today, my testimony will focus on economic development. Specifically, I have three recommendations for the Committee to consider when looking at the Fiscal Year 2014 Budget. I worked with and consulted the Affiliated Tribes of Northwest Indians in developing this testimony and will have a written form to give to the Committee as well.

The Colville Indian Reservation is located in North Central Washington and we are slightly larger than the size of Delaware. More than 9,500 members live on or near the reservation and two-thirds of our reservation is covered with commercial timber. So, historically we have survived on revenues to operate our government and governmental services through those timber sales and that timber operation.

I want to acknowledge from the outset as Senator Franken stated that almost every Federal Indian program has been historically under funded for decades and, unlike other Federal discretionary funding spending, funding for Indian programs provide essential governmental services, tangible services like healthcare, law enforcement and housing to tribal communities.

The current budget climate and the imposition of sequestration for the current fiscal year have made a bad situation much worse. This is why facilitating economic development in Indian Country should go hand in hand with protecting funding levels for all Indian programs.

As the Committee evaluates this Fiscal Year 2014 request, I offer three recommendations.

First, increase coordination between Federal agencies to maximize resources and appropriations. The Federal Government's role in economic development in Indian Country is not limited to Indian programs at the Department of the Interior. Many other Federal Agencies outside DOI have economic development programs and activities that tribes may otherwise participate in. Too often, however, these programs are underutilized by Indian Country because they are decentralized, buried within other programs or simply not effectively promoted within Indian Country.

For example, the Bureau of Indian Affairs administers the Indian Guaranteed Loan Program, a successful program that has allowed Indian tribes and Indian enterprises to obtain financing for commercial development. This program makes efficient use of funds and the demand for those loan guarantees under this pro-

gram routinely exceed the available funds that are appropriated. This Fiscal Year 2014 request includes \$5 million for this program, a \$2 million decrease from the Fiscal Year 2012 enacted levels. So, it is not meeting, this year's budget is not meeting two years ago demand.

So, in contrast, the USDA Rural Development has several loan programs that tribes and tribal enterprises are eligible for. The appropriations for these programs collectively total almost \$1 billion. Despite the high level of interest in the BIA Guaranteed Loan Program, these USDA programs are often overlooked because they are not considered Indian programs or they do not have the right connection with the USDA.

In the current budget climate, we believe that existing appropriations for economic development can be leveraged and maximized with more formal coordination with these Federal agencies. You know, sometimes many of these Federal programs fail to launch because they do not have the right outreach and in some cases do not fully understand how to interact with Indian Country. So, we think this would be an excellent opportunity to coordinate.

Number two, continue promoting legislation that eliminates burdensome regulations. Last year, the HEARTH Act was a prime example of doing that, which allows Indian tribes to develop leasing regulations to enter into leases with third parties under those regulations without the need for BIA approval.

This Committee can play a key role in continuing to promote legislation like the HEARTH Act that streamlines administrative processes and eliminates outdated requirements. In that regard, we are very encouraged that Chairman Cantwell and Vice Chairman Barrasso are working to develop the Indian Energy legislation that is coming up for reintroduction in this Congress.

Last year, the Confederate Tribes and ATNI and this membership strongly supported S. 1684, the Indian Tribal Energy Development and Self-Determination Act of 2012. We are particularly supportive of this biomass project and I would love to answer more questions about that project if it is so desired.

And then third, structural reforms. As the Committee is aware, deliberations are underway in both Chambers to overhaul the Internal Revenue Code. Various provisions of the Internal Revenue Code fail to treat Indian tribes like governments. Other provisions valued by the private sector need to be made permanent to improve their usefulness.

We encourage this Committee to collaborate with the Senate Finance Committee and other committees of jurisdiction and to advocate for these and other changes to the Tax Code that will encourage investment in Indian Country.

Apart from tax reform, there are other structural reforms that would promote economic development. One of them is S. 165, the Indian Trust Asset Reform Act of 2013 introduced by Senator Mike Crapo and it is going to be referred to this Committee. It would authorize Indian tribes with natural resources like timber and agriculture to direct the management of those resources to achieve tribally-focused objectives. That is so important moving forward for economic development.

At this time, that concludes my testimony and I would be happy to answer any questions that you have.

Thank you.

[The prepared statement of Mr. Sirois follows:]

PREPARED STATEMENT OF HON. JOHN SIROIS, CHAIRMAN, CONFEDERATED TRIBES OF  
THE COLVILLE RESERVATION

Good afternoon Chairwoman Cantwell, Vice-Chairman Barrasso, and members of the Committee. On behalf of the Confederated Tribes of the Colville Reservation ("Colville Tribes" or the "CCT"), I appreciate the opportunity to testify today on the President's FY 2014 budget request for Indian programs.

My testimony today will focus on economic development. Specifically, I have three recommendations for the Committee to consider as it reviews the FY 2014 request. The Colville Tribes consulted with the Affiliated Tribes of Northwest Indians (ATNI) in preparing this testimony to provide the Committee with a regional perspective on these issues.

**Background on the Colville Tribes**

First, I would like to provide some background on my people and our land. Although now considered a single Indian tribe, the Confederated Tribes of the Colville Reservation is, as the name states, a confederation of twelve aboriginal tribes and bands from all across the plateau region of the Northwest and extending into Canada. The present-day Colville Reservation encompasses approximately 1.4 million acres and is located in north-central Washington State. The Colville Tribes has more than 9,500 enrolled members, making it one of the largest Indian tribes in the Pacific Northwest. About half of the CCT's members live on or near the Colville Reservation, which has more than 800,000 acres of forest land. Forestry and wood products have been the CCT's traditional sources of revenue.

**The FY 2014 Request and Economic Development**

I want to acknowledge at the outset that almost every federal Indian program has historically been underfunded. The current budget climate and the imposition of sequestration for the current fiscal year have only made a bad situation worse. Unlike other federal spending, funding for Indian programs provides tangible services like health care, law enforcement, and housing to tribal communities. I believe I can speak for most tribal leaders when I say that prioritizing these activities is an impossible task because to rank one above another would imply that reductions to some Indian programs are somehow acceptable.

This is why facilitating economic development in Indian country should go hand in hand with protecting funding levels for Indian programs. Vigorous economic development and the creation of new jobs will empower Indian country to chart its own destiny. As the Congress evaluates the FY 2014 request, the Colville Tribes offers three recommendations:

*(1) Increase Coordination between Federal Agencies to Maximize Program Resources and Appropriations*

The Federal Government's role in economic development in Indian country is not limited to Indian programs at the Department of the Interior (DOI). Many other federal agencies outside DOI have economic development programs and activities that tribes are eligible for or may otherwise participate in. Examples include the Office of Native American Programs (Department of Housing and Urban Development), Rural Development (Department of Agriculture), the Economic Development Administration (Department of Commerce), and several programs within the Department of Energy, to name a few.

Too often, however, these programs are underutilized by Indian country because they are decentralized, buried within other programs, or simply not effectively promoted. For example, the Bureau of Indian Affairs (BIA) administers the Indian Guaranteed Loan Program, a successful program that has allowed Indian tribes and Indian enterprises to obtain financing for commercial development. This program makes efficient use of its funds, with the demand for loan guarantees under this program routinely exceeding available appropriations. The FY 2014 request includes \$5 million for this program, a \$2 million decrease from FY 2012 enacted levels.

In contrast, the FY 2014 request includes \$741 million for the Business and Industry Guaranteed Loan Program administered by USDA Rural Development. Indian tribes and tribal enterprises are among the entities eligible for loan guarantees under this program. Despite the high level of interest in the BIA Guaranteed Loan

Program, this and other USDA programs are often overlooked because they are not considered “Indian” programs.

In the current budget climate, we believe that existing resources for economic development can be leveraged and maximized with more formal coordination between federal agencies. This type of coordination should also extend to other program activities that straddle different executive branch departments.

For example, there is a constant need for additional funding for the Criminal Investigations and Police Services account within the BIA’s budget, which funds tribal and BIA police officer salaries. There are occasions when there is only a single tribal officer on duty for the entire 1.4-million-acre Colville Reservation. Repeated requests by the Colville Tribes to renegotiate its law enforcement 638 contract with the BIA have been rejected because of the lack of additional base funding. We understand that the BIA and the Department of Justice have begun to communicate on these issues, and we are hopeful that these two agencies can coordinate their respective resources to ensure that as much money as possible from both departments is available for tribal officer salaries.

I would be remiss if I did not mention that, in the Colville Tribes’ view, DOI’s Office of Indian Energy and Economic Development (OIEED) has proven to be a positive example of a federal agency consolidating economic development functions in a single program. Over the years the Colville Tribes has utilized this program for technical assistance, grants, and capacity building as we have planned and developed renewable energy projects. The Colville Tribes is pleased to see that the FY 2014 request includes an increase for OIEED specifically for tribal energy development activities.

*(2) Continue Promoting Legislation that Streamlines Administrative Processes and Eliminates Burdensome Regulations*

Tribes face a number of barriers in persuading outside investors to do business in Indian country. As a result, Indian tribes in remote areas are often the largest employers in their geographic region. The Colville Tribes, together with our affiliated enterprises, are collectively one of the largest employers in north-central Washington State. Still, businesses are often hesitant to locate their operations on Indian lands because of the administrative burdens, both real and perceived, that accompany federal approval requirements applicable to many activities on Indian land.

Last year Congress enacted the HEARTH Act, which allows Indian tribes to develop tribal leasing regulations and to enter into leases with third parties under those regulations without the need for BIA approval. The HEARTH Act recognizes the policy of self-determination by respecting tribes and trusting their judgments on the types of leases they believe can be appropriately expedited and those that should proceed through the existing BIA approval process.

The HEARTH Act proceeded through this Committee and was the only Indian bill of general applicability to become law in the last Congress. This Committee can play a key role by continuing to promote legislation like the HEARTH Act that streamlines administrative processes and eliminates outdated requirements.

In that regard, the Colville Tribes is very encouraged that Chairwoman Cantwell and Vice-Chairman Barrasso are working to develop Indian energy legislation for re-introduction in this Congress. Last year the Colville Tribes and ATNI and its member tribes strongly supported S.1684, the *Indian Tribal Energy Development and Self-Determination Act Amendments of 2012*. We are particularly supportive of the Tribal Biomass Demonstration Project provisions, which could enable us to secure financing for a planned biomass facility on the Colville Reservation. We look forward to working with the Committee on this important legislation with an eye on enactment this calendar year.

*(3) Structural Reforms as a Means to Promote Economic Development*

As the Committee is aware, deliberations are underway in both chambers to overhaul the Internal Revenue Code (IRC). Indian tribes and individual Indians have much at stake in any broad tax reform initiative. For example, various provisions of the IRC fail to treat Indian tribes like other governments, such as providing the ability to issue tax-exempt bonds to the same extent that state and local governments can.

Other IRC provisions valued by the private sector need to be made permanent to improve their usefulness. The accelerated depreciation and Indian employment tax credit provisions are examples of IRC provisions that are underutilized because Congress extends them only on a year-to-year basis, if at all. Quite simply, because a would-be investor cannot count on these provisions being renewed prior to a deal closing, they are simply not factored into a given transaction. We encourage this Committee to collaborate with the Senate Finance Committee and other committees



of jurisdiction and to advocate for these and other tax provisions that will encourage investment in Indian country.

Apart from taxation, there are other structural reforms that would promote economic development. One of them is the *Indian Trust Asset Reform Act of 2013* (S.165, and its House counterpart, H.R. 409), which was introduced by Senator Mike Crapo and has been referred to this Committee. This bill would establish a voluntary mechanism for Indian tribes to prioritize the management and funding of their trust assets. It would authorize Indian tribes with natural resources like timber and agriculture to direct the management of these resources to achieve tribally focused objectives. These objectives might include managing forests in a manner to maximize fair market value or, on the other hand, rendering forested areas off-limits to encourage off-reservation tourism. Most of the text of S.165 was drafted by this Committee's staff in the 109th Congress after extensive outreach to Indian country. The ATNI Trust Reform Committee updated the bill last fall and ATNI enacted a resolution endorsing it at its 2012 annual conference. We hope the Committee will swiftly take it up in the weeks ahead.

I appreciate the Committee's consideration of this testimony and the Colville Tribes looks forward to working with the Committee on these and other issues. At this time I would be happy to answer any questions the members of the Committee may have.

The CHAIRWOMAN. Thank you very much. And last, but not least, Mr. Miller. Thank you very much for being here.

#### **STATEMENT OF LLOYD B. MILLER, COUNSEL, NATIONAL TRIBAL CONTRACT SUPPORT COST COALITION**

Mr. MILLER. Thank you, Chairwoman Cantwell, Vice Chairman Barrasso, Senator Begich and distinguished Member of the Committee.

My name is Lloyd Miller and today I appear on behalf of the National Tribal Contract Support Cost Coalition. This is a coalition that represents 250 tribes across 11 States administering \$400 million in self determination contracts and self governance compacts. It includes the Northwest Portland Area Indian Health Board and many Northwest, Midwest and Alaska tribes.

Let me get right to the point. The Administration's budget proposal regarding contract support costs asks Congress to surrender its lawmaking function, in particular its Article 1 appropriations power, to the Indian Health Service and the Bureau of Indian Affairs.

Once Congress enacts a final bulk appropriation, once every Member of Congress has had an opportunity to read the appropriation, only after that appropriation is signed by the President would the agencies then submit tables which the agencies propose would then have the force of law without any Congressman, without any Congresswoman, without any Member of the Senate every having read that table, never having vetted that table before this Committee. That is a usurpation of the Congress' power to appropriate funds.

This is an unprecedented and truly shocking overreaction to the Supreme Court's decision in the *Ramah* case. I know this because I was co-class council in the *Ramah* case. I still am today.

The Supreme Court in that case said something quite simple. It said "Consistent with long-standing principles of Government Contract Law, we hold that the Government must pay each tribes contract support costs in full." One of those long-standing principles of contract law is this. When a contractor, any contractor, an Indian contractor, does a job, the contractor is entitled to be paid. That is

it. And if they are not paid, they are entitled to recover damages if they choose to file the lawsuit.

The Administration's proposal is an extraordinary overreaction to this very ordinary rule of law. Instead of trying to comply with the law, the Administration proposes to change the law.

First, it was developed under a complete veil of secrecy. There was absolutely no tribal consultation with the tribes that administer 60 percent of the Indian Health Service and 55 percent of the Bureau of Indian Affairs, tribes that are running these programs under contracts.

I hasten to add that if the Sisters of Providence were operating Indian Health Service hospitals, IHS would not dare underpay the Sisters of Providence for the cost of running that hospital.

If the Corrections Corporation of America were running the BIA detention facilities on our reservations, the BIA would not dare underpay the Corrections Corporation of America for the cost of running that jail.

But when it comes to Indian contractors, somehow that is just fine.

Madam Chair, Senator Inouye called attention to this in a 1987 hearing and he said this will stop and the 1988 amendments were crafted in order to stop precisely this action.

The National Contract Support Cost Coalition offers five recommendations to the Committee.

First, Congress should reject the Administration's proposed rewriting of the appropriations act.

Second, Congress should reject all caps on contract support cost payments and return to the situation that existed in 1997 and before then. It is clear that IHS and the BIA thought that the caps protected the U.S. States from liability and protected them from having to budget to pay the contracts they award. It turns out not to be so. The caps do not work. The caps should be eliminated.

Third, Congress should direct the Administration to engage tribes in true government-to-government consultation. This will take some time. As the President of NCAI mentioned, this cannot be done before the 2015 Budget process is completed and submitted to Congress because that is only a couple of months away before that process starts to close. So, it will take more time than that. It should involve NCAI, it should involve tribal experts. And proposals should only go to an appropriations committee if they have been vetted by this Committee.

Fourth, Congress should force the disclosure of IHS data. The Director of the Indian Health Service testified earlier that the 2012 report is almost ready. It was due a year ago. It is the 2012 report about 2011 data. It was due a year ago. Why is it not here?

And lastly, Congress should demand that the annual budget of the President include the full estimated costs of running these contracts. Congress routinely did that, excuse me, the President routinely did that until 2010 and stopped doing it thereafter. Only thanks to the questioning of this Committee did we hear today the answer from the Indian Health Service on how much they expect contracts to cost post-sequester.

By any measure, the Indian Self-Determination Act has been a stunning success, most importantly, of course, to the Indian citi-

zens served but also for the tremendous growth and maturation of the tribal administrations across Indian Country. Now is not the time to adopt changes that will inevitably drive tribes to retrocede their programs back to the Government and turn back the clock on the absolutely most successful Federal Indian policy every adopted by Congress.

Thank you for the opportunity to testify.

[The prepared statement of Mr. Miller follows:]

PREPARED STATEMENT OF LLOYD B. MILLER, COUNSEL, NATIONAL TRIBAL CONTRACT SUPPORT COST COALITION

My name is Lloyd Miller and I am a partner in the law firm of Sonosky, Chambers, Sachse, Miller and Munson, LLP. I appear here today as counsel to the National Tribal Contract Support Cost Coalition. The Coalition is comprised of 20 Tribes and tribal organizations situated in 11 States and collectively operating contracts to administer \$400 million in IHS and BIA services on behalf of over 250 Native American Tribes.<sup>1</sup> Its work is devoted exclusively to matters pertaining to contract support costs, and, as this Committee is well aware, the payment of contract support costs is essential to the proper administration of federal contracts awarded under the Indian Self-Determination Act.

In 1988 former Chairman Inouye noted that no single enactment has had a more profound effect on more tribal communities than has the Indian Self-Determination Act, and no issue was more critical to its success than the payment of contract support costs. Today we celebrate the fact that, over the course of nearly four decades, Tribes and inter-tribal organizations have taken over control of vast portions of the Bureau of Indian Affairs and the Indian Health Service, including Federal Government functions in the areas of health care, education, law enforcement and land and natural resource protection. Today, not a single Tribe in the United States is without at least one self-determination contract with the IHS and BIA. Collectively, the Tribes administer some \$2.8 billion in essential Federal Government functions, employing an estimated 35,000 people. Contract support cost issues thus touch every Tribe in the United States.

In 1988 this Committee enacted Public Law 100-472, eliminating any possible doubt that self-determination contracts are fully enforceable under the Contract Disputes Act. The Committee did so by adding Section 110 to the Indian Self-Determination Act. In one hearing on this issue, Senator Inouye pointedly noted how the agencies historically had failed to treat tribal contractors on a par with other contractors, and he vowed to press on with amendments which would guarantee real remedies for real contracts. In making this historic change, the Committee explained it was overruling contrary court decisions like *Busby School of the Northern Cheyenne Tribe v. United States*, 8 Cl. Ct. 596 (1985), which had treated these contracts as if they were mere discretionary grants and, on that basis, had denied a Tribe the right to any damages for the agency's failure to pay full contract support costs. S. Rep. No. 100-274, at 34-35 (1987) (discussing *Busby*).

Last year the Supreme Court once again vindicated this Committee's actions, agreeing that, "[c]onsistent with longstanding principles of Government contracting law, we hold that the Government must pay each tribe's contract support costs in full." *Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181, 2186 (2012) (discussing and reaffirming *Cherokee Nation v. Leavitt*, 543 U.S. 631 (2005)). The Court emphasized that "the Government's obligation to pay contract support costs should be treated as an ordinary contract promise." *Id.* at 2188. Two months later, the U.S. Court of Appeals for the Federal Circuit applied this ruling to the Indian Health Service, concluding that "[t]he Secretary [was] obligated to pay all of ASNA's contract support costs for fiscal years 1999 and 2000." *Arctic Slope Native Ass'n, Ltd.*

<sup>1</sup>The NTCSCC is comprised of the: Alaska Native Tribal Health Consortium (AK), Arctic Slope Native Association (AK), Central Council of the Tlingit & Haida Indian Tribes (AK), Cherokee Nation (OK), Chippewa Cree Tribe of the Rocky Boy's Reservation (MT), Choctaw Nation (OK), Confederated Salish and Kootenai Tribes (MT), Copper River Native Association (AK), Forest County Potawatomi Community (WI), Kodiak Area Native Association (AK), Little River Band of Ottawa Indians (MI), Pueblo of Zuni (NM), Riverside-San Bernardino County Indian Health (CA), Shoshone Bannock Tribes (ID), Shoshone-Paiute Tribes (ID, NV), SouthEast Alaska Regional Health Consortium (AK), Spirit Lake Tribe (ND), Tanana Chiefs Conference (AK), Yukon-Kuskokwim Health Corporation (AK), and the Northwest Portland Area Indian Health Board (43 Tribes in ID, WA, OR).

*v. Sebelius*, No. 2010–1013, Order at 6, 2012 WL 3599217 (Fed. Cir. Aug. 22, 2012). In short, it is today beyond any reasonable debate that the payment of contract support costs is a binding contractual obligation due all Tribes that operate BIA and IHS contracts.

In its FY 2014 Budget, I am saddened to say that the Administration has not embraced the rule of law; it has instead sought to change it.

Second, the Administration has proposed a statutory “amendment appropriation,” seeking to cut off all future contract rights. It has done this by proposing to give legal effect to a “table” which each Secretary would someday provide to the appropriators, specifying the maximum amount each tribal contractor would be entitled to be paid. Since each tribal contract is “subject to the availability of appropriations,” the Administration hopes this language will limit what is “available” to the amount in the “table.” The Administration does not propose that a Tribe cut back on its administration of a contracted hospital or clinic, or a police department or detention center. The Administration only proposes to cut off what the government would pay a Tribe to provide those services.

This is an extreme and unwarranted overreaction by the Administration to another loss in the courts. But it is not surprising. For years the agencies have kept their heads in the sand about their contract obligations to the Tribes. They have acted as if these contracts were just another program to be balanced against other programs or activities the agencies felt were important to prioritize, including protecting and growing their internal bureaucracies. They have treated these self-determination contracts as second-class contracts, and the Indian Tribes as second-class contractors.

They would never behave in this fashion if an IHS hospital were contracted out to Sisters of Providence, or a BIA detention center were contracted out to the Corrections Corporation of America. Yet they find it perfectly acceptable to do so when the contract is with an Indian Tribe.

What is perhaps most striking is that the Administration has proposed converting these contracts into second-class contracts only months after the Supreme Court declared these to be “ordinary contract promise[s]” which must be paid in full. It is not honorable—indeed, it is discriminatory—for the Administration now to propose a special limitation applicable to *Indian* contracts only. I am also concerned that it may be confiscatory, and thus unconstitutional under the Fifth Amendment, as well as improper under the Appropriations Clause, because the proposed amendment essentially tells the Tribes they must do their contracted work and must accept less-than-full payment, to be set at the agency’s whim and with no recourse.

It is, of course, the “no recourse” aspect of this new idea that is most troubling. For over 120 years it has been bedrock law that if the government cannot, or will not, pay a contractor, the contractor has recourse through the courts. *Ferris v. United States*, 27 Ct. Cl. 542, 546 (1892). If an overall appropriation is capped (as has been the case with contract support costs), there is always recourse in the courts for those tribal contractors who suffer underpayments.

A judicial remedy for any underpayment permits a cap to withstand legal, and constitutional, scrutiny. But once that relief valve is shut off, the risk of unconstitutional action rises. In *Cherokee Nation v. Leavitt*, the Supreme Court warned that “[a] statute that retroactively repudiates the Government’s contractual obligation may violate the Constitution.” 543 U.S. 631, 646 (2005). The Court also warned against the “practical disadvantages flowing from governmental repudiation.” *Id.*

Consider what it is the Administration is actually proposing. The Administration is not proposing that the Appropriations Act include a line-item specifying the maximum amount of funding available to pay a given contractor. That is what occurred in *Sutton v. United States*, 256 U.S. 575 (1921), and that is one of the options the Supreme Court described in *Ramah*, 132 S. Ct. at 2195 (“Congress could elect to make line-item appropriations, allocating funds to cover tribes’ contract support costs on a contractor-by-contractor basis.”). Instead, the Administration is proposing that the agencies, and not Congress, will specify how much each Tribe would be paid—but just in contract support costs—and the agencies would do so only after the contract support cost appropriation is enacted, and after the agencies have made an assessment about how they wish to divide up that appropriation. They would do all this long after the Tribes had signed their contracts, long after the Tribes had substantially performed those contracts, and long after the Tribes had incurred costs carrying out those contracts.

In essence, the Administration proposes that a Tribe should contract to run a hospital, clinic or detention center for a full year, but that if any shortfall occurs in the required administrative costs—costs that the government, itself, set in the first place—then the Tribe must somehow contribute the unpaid balance. That sort of forced volunteer services may well violate the Appropriations Clause, by effectively

taking away from Congress the power to regulate spending on federal projects. Serious constitutional problems are also implicated when the agency makes an after-the-fact determination that the government is not going to pay for services rendered. These are certainly not the straightforward “line-item appropriations” that the Supreme Court said were possible if Congress wanted to limit the government’s exposure for contract damages.

For the foregoing reasons, the National Tribal Contract Support Cost Coalition respectfully urges this Committee to recommend that the Senate Appropriations Committee reject the Administration’s effort to radically alter both the structure of the annual appropriations bill and the fundamental nature of Indian Self-Determination Act contracts. If a sea change in federal Indian policy is to be considered by Congress, and if the change potentially implicates issues of constitutional dimension, due deliberation should begin with this Committee. Such changes should not be worked through stealth amendments made to appropriations laws.

I testified earlier today before the House Appropriations Subcommittee and offered the following five recommendations which we also hope this Committee will consider forwarding to the Senate Appropriations Committee:

1. Congress should reject the Administration’s proposed restructuring of the annual appropriations Acts.
2. Congress should either eliminate the current earmarking caps on contract support cost payments (as was the case with the IHS appropriation until FY 1998, and with the BIA until FY 1994), or raise the IHS cap to \$617 million and the BIA cap to \$242 million. But whatever funding levels end up being fixed in the bill, Congress should not deny Indian Tribes the very same contract remedies that every other government contractor possesses; which the Supreme Court in the *Ramah and Cherokee* cases confirmed protect Indian contractors, too; and which this Committee put into law 25 years ago.
3. The Administration should be directed to engage Tribes in true and thoughtful government-to-government consultation, consistent with President Obama’s November 5, 2009 Memorandum directing full implementation of Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”), 65 Fed. Reg. 67,249 (2000). In so doing, we recommended that the Administration also be directed to work with the National Congress of American Indians, impacted tribal organizations, and experts in the field. We explained that if legislative changes are jointly deemed necessary, the goal should be the development of a joint federal-tribal proposal. To assure full and adequate consultation, we also urged that the Administration be directed not to bring any proposal back to the Appropriations Committees sooner than the FY 2016 appropriations cycle, to be sure that any federal-tribal proposal has been fully vetted in advance with this Committee and the House Natural Resources Committee.
4. On a related topic, the Coalition requested the Subcommittee’s assistance in forcing the disclosure of IHS data which the Secretary has failed to share with Congress and the Tribes, contrary to federal law. Section 106(c) of the Indian Self-Determination Act requires that an annual shortfall report on past and anticipated contract underpayments be delivered to Congress by May 15. The IHS report on FY 2011 data—two year old data—has still not been submitted to Congress. The 2009 and 2010 Reports were only submitted last Fall, the former report having thus been submitted three years late. Without accurate data, this Committee cannot perform its constitutional oversight function. Without accurate data on appropriations expenditures, the appropriations committees cannot perform their constitutional function. And without accurate data, Tribes cannot know what the agencies are doing with their contract funds. To be clear, all of these contract support cost funds belong to the Tribes. They are not the agencies to keep and spend for themselves. The agencies therefore have a special duty to account promptly and fully on how the Tribes’ funds have been spent. Since the agencies routinely invoke the “deliberative process privilege” under 5 U.S.C. § 552(b)(5) to resist disclosure, we requested the insertion of language waiving that provision for all CSC data not disclosed on or before May 15. Past data errors are a reason to disclose data, not to keep data secret long until after it is useful. The recent withholding of CSC payment data must stop.
5. Finally, we noted that the President’s Budget now routinely omits any mention of the total projected amounts required for IHS and BIA contract payments. Until the FY 2011 Budget, such projections were routinely included in the Budget narrative. The Coalition asked that the Subcommittee direct the Secre-

taries to include this data in future Budget submissions, so that it is plain from the face of the Budget precisely how well—or how badly—the agencies are proposing to honor their contractual commitments to the Tribes.

By any measure, the Indian Self-Determination Act has been a stunning success, most importantly for the Indian citizens served, but also in the strengthening and maturing of modern tribal government institutions. This Committee has had everything to do with bringing about the conditions necessary for that success. Now is not the time to adopt changes that will inevitably drive Tribes to retrocede their contracted activities to the Federal Government, turning back the clock on the most successful initiative the United States has ever launched in Indian affairs. And it is certainly not the time to do so through stealth appropriations initiatives which are not first aired fully before this Committee.

This Committee wrote the Indian Self-Determination Act, and it is for this Committee, alone, to decide whether circumstances warrant weakening its protections for Indian Tribes.

It is a rare privilege to appear here today. On behalf of the over 250 federally-recognized Tribes represented by the National Tribal Contract Support Cost Coalition, I humbly thank the Committee for this opportunity to testify on the Administration's proposed FY 2014 Budget.

The CHAIRWOMAN. Thank you, Mr. Miller. And I thank all of the witnesses today.

I wanted to start with you, Mr. Keel. There is one thing we really did not really hear of about in detail. Well, we heard a little bit about economic development but part of the Administration's proposal is making sure that we fix the land into trust, a *Carcieri* decision. Can you talk about what you think that means for economic development in various parts of Indian Country across the Nation?

Mr. KEEL. Absolutely. Thank you, Madam Chair, for that question. Taking land into trust is absolutely critical to the Indian tribes, not just for economic development but for housing, for a lot of other reasons. But economic development, there are arguments about whether or not a parcel of land taken into the trust comes off of the tax roles of the county or local State tax roles. But the benefit to development of say one acre of land, if you put a business there that creates jobs then that totally overshadows the loss of a few tax dollars to that local area.

But in particular it is more a matter of principle. The Supreme Court's decision was made, actually contained a statement in error, we believe, and needs to be fixed so that the tribes do not have to worry and be concerned about whether or not the Secretary of the Interior can take land into trust for any tribe.

The CHAIRWOMAN. Thank you. Thank you.

Ms. Abramson, you mentioned in your testimony the idea of forward funding, something that the Department of Veterans Services does. How does that help us deliver services in Indian Health Service?

Ms. ABRAMSON. Excuse me, what was that?

The CHAIRWOMAN. Forward funding.

Ms. ABRAMSON. Forward funding?

The CHAIRWOMAN. Okay, maybe that was not in your testimony. [Laughter.]

Ms. ABRAMSON. No. Sorry.

The CHAIRWOMAN. One of the issues is, obviously, making sure that we get a medical home and one of the things that you mentioned were how much the cutbacks were already impacting Indian Country right now, particularly in the area of mental health and mental health services.

Ms. ABRAMSON. Yes.

The CHAIRWOMAN. So, what do you think that Indian Health Services needs to do to adequately assess the need out there for mental health services?

Ms. ABRAMSON. Well, obviously we need more funding and it needs to, I believe that tribes have given consultation, we give recommendations for budgets and IHS just obviously needs to request more funding so that we can go ahead and provide those services.

The CHAIRWOMAN. But do you think there is an accurate assessment of what is going on? Your statistics are shocking, on the number of suicides.

Ms. ABRAMSON. Yes. And this is coming from our tribes. We are gathering information from our various tribes so that they can tell our stories. And this is what NIHB is working along with NCAI, gathering information so we can tell our stories. We are going to continue to do that so that you can hear from us just exactly what is coming from us.

The CHAIRWOMAN. Thank you.

Mr. Miller, you, being intimately being involved in this overall effort, do you have a suggestion on what a solution would be to this issue on contract funding?

Mr. MILLER. Well, first of all I think, as I mentioned in the testimony, it is important to remove the caps. The caps are really a vestige of history. They were placed there at the request of the agencies to try to protect them from liability. It is time to remove them.

Now, once that is done, the agency can make its own choice about whether it pays its contracts just like people every day make a choice about whether they pay their bills. If the agency does not pay its contracts, the remedies that this Committee provided in Section 110 of the Act needs to stay in place. There needs to be a remedy for those tribes who suffer severe enough impacts due to underpayments that they are persuaded to file an action against the United States in the court of law. That is how we deal with contractors.

I do think in the long term there needs to be a planning process. We cannot have a situation where the contract support cost budget within the Indian Health Service is anywhere between \$100 and \$160 million depending on whose math you use, whether it is on the sequester, the 2012 level, whether is it the 2014 level or the sequester.

I have heard a lot of numbers here today and all three numbers can be explained. It is madness. It needs to be a coherent projection provided to the Congress, this Committee and your counterpart in the Senate Appropriations Committee, and then we need to have a plan to close the gap. It is time to comply with the law and stop fooling around.

The CHAIRWOMAN. Thank you. Senator Barrasso?

Senator BARRASSO. Thank you, Madam Chairwoman. I had a series of questions but they have been so well-addressed in the comments by the testimony regarding the Indian Self-Determination Act. And the shortfalls that, I have as high as \$160 million for Indian Health Service and \$22 million for the Bureau of Indian Affairs contracts, I think you clearly, you know, the reference to the Sisters of Providence, I mean that was—

[Laughter.]

Senator BARRASSO. That was good.

The CHAIRWOMAN. I wanted to say, you know, I am sure there are times here that I do not want to pay my Pepco bill but that is not the luxury you get. You know, you have got to pay. Okay? So, you can complain about service but it is the same. It is a contract.

Senator BARRASSO. Yes. I did have a question for Mr. Sirois, and thank you for your comments about the HEARTH Act that we worked closely together on in a bipartisan way, our efforts on energy which we continue to work on.

There are a number of natural resource management programs within the Bureau of Indian Affairs. These programs have received some of the larger increases in the Fiscal Year 2014 Proposed Budget. And I wonder how those will assist, you know, your tribal economy as you talked about economic development.

Mr. SIROIS. Thank you, Vice Chair. There is a number of different ways. You know, we are really grateful that there is some increases in those funding. We are really tied to the forest as well as looking at irrigation for farming.

The hazardous fuels reduction within our forest is one example that really is going to benefit not just the forest, but it is going to put people back to work. When the lumber market went down about four years ago, we lost about 400 jobs in our community and those are, you know, families, 400 families that lost their main source of income. So, putting some of those people back to work is a huge benefit.

Senator BARRASSO. Your written testimony noted that there are occasions when there is only a single tribal law enforcement officer on duty for, you know, a 1.4 million acre reservation. We have a similar situation in Wyoming.

I know that your repeated requests to renegotiate the tribal law enforcement contract with the Bureau have been rejected, I think because of a lack of additional base funding. Do you think that the base funding allocation method needs to be changed, and do you know of other tribes that have the same difficulties with the BIA?

Mr. SIROIS. Certainly. There have been a number of different tribes that have had this problem. And I think, looking at law enforcement, especially for large areas like ours, you know, our original reservation is 1.4 million acres, our ceded reservation that goes to the Canadian border is another 1.5 million. So, we have our natural resources officers patrolling those areas as well. So, it can be a real challenge trying to address drug traffic that is coming down through BC to, you know, a whole host of things that are going on.

I know that a number of other tribes, especially in the Northwest, are having those same problems. Getting enough officers to provide that protection for the community to enact something that we fully supported and pushed for was the Violence Against Women reauthorization. We cannot implement it if we do not have the officers on the ground.

So, it is so important, that part, looking at some way to address that formula would be really helpful.

Senator BARRASSO. Thank you.

Thank you, Madam Chairwoman.



The CHAIRWOMAN. Well, I want to thank all of the witnesses for their testimony today. And obviously we have a lot of work to do here on overall budget agreement within Congress and certainly from this member's perspective do not want to see the continuation of sequestration but a more strategic approach.

Mr. Sirois, I very much appreciate your perspective today of saying let us make sure that we are getting efficiencies out of this program and coordinate and consolidate where possible as a way to save. So, I very much appreciate that.

But for Indian Country, we definitely want to get these issues addressed and, Mr. Miller, I think you said it best. This should not be about everybody having a different number or proposal. We should all look at the same impact and make sure we are describing the same impact and I think that would be certainly helpful for members to understand exactly how these proposals work.

And we have the same situation with housing where I felt like we, you know, had one witness and testimony about how there are all these great programs and then you know the fate that in Indian Country it is not that way. So, I feel like the same thing on school construction.

So, if we can get some common ground on data, we might actually get some common ground on solutions.

Anyway, we are adjourned. Thank you all.

[Whereupon, at 4:17 p.m., the Committee was adjourned.]



## A P P E N D I X

PREPARED STATEMENT OF HON. W. RON ALLEN, TRIBAL CHAIRMAN/CEO, JAMESTOWN S'KLALLAM TRIBE

My name is W. Ron Allen and I am the Tribal Chairman and Chief Executive Officer of the Jamestown S'Klallam Tribe, located in Washington State. The focus of my testimony is the need for Congress to address the chronic underfunding of the Indian Health Service (IHS) Contract Support Costs (\$617 million total), the Bureau of Indian Affairs (BIA) Contract Support Costs (\$242 million total) and to reject the Administration's proposal to limit recovery of contract support costs.

The U.S. Supreme Court recently affirmed that Tribes carrying out federal programs under the Indian Self Determination and Education Assistance Act (ISDEAA) are entitled to full payment of their contract support costs. Tribes are entitled to be paid what the statute and contract promised and to be treated on an equal basis with every other federal contractor. Despite the Supreme Court decision, the Bureau of Indian Affairs and Indian Health Service have refused to negotiate in good faith with the Tribes to reach a final resolution of this issue which has been ongoing for the past twenty years. To further exasperate the situation, the President's FY 2014 Budget Request will fundamentally alter the nature of Tribal Self-Governance by imposing individual statutory caps on the payment of Tribal contract support costs. The Jamestown S'Klallam Tribe opposes the Administration's unilateral proposal, in its FY 2014 budget request.

Contract support cost funding is essential to the operation of contracted federal programs administered under federally issued indirect cost rate agreements. No change of such a fundamental character should be implemented until there has been a thorough consultation and study process jointly undertaken by the Indian Health Service (IHS), the Bureau of Indian Affairs (BIA), and tribal leaders, informed by a joint technical working group and coordinated through NCAI. Such a consultation process must be scheduled to permit opportunity for full tribal participation. While we firmly believe that overall statutory caps on contract support costs should be eliminated, at the very least Congress should maintain in FY 2014 and FY 2015 the status quo statutory language enacted in FY 2013 so that tribally-developed changes in contract support cost funding mechanisms, if any, can be included in the FY 2016 Budget.

### **IHS Contract Support Costs Shortfall**

We appreciate the recent increases provided by Congress for Contract Support Costs (CSC) owed to tribes and tribal organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA) and federal case law. Even so, there remains an ongoing shortfall of CSC, which continues to impose significant hardships on us and on other tribes/tribal organizations and our ability to provide adequate health services to our patients.

However, the President has proposed only \$477,205,000 for IHS CSC, far below the estimated need of \$617 million. In addition, the Administration proposes to limit CSC payments to tribal contractors by submitting a list of contractors to the House and Senate Appropriations Committees, with recommended, individual appropriations for each contractor. This proposed system is wholly unworkable. And—as it is created without any input from ISDEAA contractors—we fear the list will fail to reflect true CSC needs since the Administration has proven itself unable to properly account for contract support costs. The simplest and most fair answer is to fully fund tribal contractors' CSC.

We urge the Congress to reject the President's proposal outright, and fully fund IHS contract support costs at \$617 million.

### **BIA Contract Support Costs Shortfall**

The President proposes \$230 million for Bureau of Indian Affairs contract support costs. This amount is closer to the estimated full need of \$242 million than the IHS proposal, but still falls short of the actual need. Additionally, The President pro-

poses the same system to cap BIA CSC as he did for the IHS. The Jamestown S’Klallam Tribe rejects this misguided proposal, and urges Congress to fully fund the BIA contract support costs at \$242 million, which will erase the need for the Administration’s contortionist attempts to handle CSC shortfalls.

#### **Unreleased IHS CSC Shortfall Reports**

IHS must submit CSC shortfall reports to Congress no later than May 15 of each year, per section 106(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450j-1(c)). Yet, the IHS has failed to submit CSC shortfall reports for FYs 2011 and 2012. Tribes have repeatedly asked the agency to release this data, which is critical for our ability to understand the IHS’s view of the underfunding, and to pursue full payment of CSC, to which the Tribe is legally entitled. The IHS has refused to release these reports time and again, most recently in March of this year.

We ask this Committee to direct the IHS to release the shortfall data for FYs 2011 and 2012 immediately—and to submit future reports on time—as required under the law.

#### **Costs Incurred Approach**

The IHS recently communicated to tribal leaders that it believes that the amount due each tribal claimant is limited to CSC “actually incurred” as opposed to the amount obligated by the contract and statute. This approach would punish the Tribe for fiscal prudence in the face of CSC underfunding and reward the Government for its chronic underfunding of tribal health care. More fundamentally, it treats ISDEAA agreements as cost-reimbursable contracts, for which the price is determined retrospectively, while the ISDEAA requires that Tribes be paid in advance the funds they use to carry out the programs.

IHS’s approach if implemented would be not only unfair and inconsistent with the law, but also wasteful of federal and tribal resources. Re-auditing every contract is not a rational or efficient way to resolve CSC claims, especially since reliable data on CSC shortfalls already exists, on a Tribe-by-Tribe basis, in the form of IHS’s annual reports to Congress. These CSC shortfall reports, required by the ISDEAA and certified as accurate by the agency, should provide the basis for settlement of past CSC shortfall claims, as Senator Begich wrote in a recent letter to President Obama. IHS should be asked to explain to the Senate Committee on Indian Affairs why it resists using the best available data as the starting point for a fair and efficient settlement process.

The Tribal attorneys have begun discussions with IHS and their lawyers about the problems associated with using a cost accounting methodology to fairly and rapidly settle these historic claims. We are hopeful that those discussions will result in the agency changing its mind and returning to using the shortfall reports as starting points for negotiations. We hope that a hearing will help the agency move in that constructive direction.

#### **Future Resolution**

In *Ramah*, the Supreme Court described BIA (and IHS) as facing a “dilemma”: while the ISDEAA requires full payment of CSC, the annual appropriations acts for many years have unjustly “capped” aggregate CSC spending at levels insufficient to fully fund every tribal contractor. Tribes suffering shortfalls can recover the underpayments from the Judgment Fund through contract claims against the U.S., but no one wants an annual cycle of litigation.

The amounts needed for full CSC each year can be estimated with a fair degree of accuracy, as IHS demonstrated for years, based on the previous year’s shortfall report and projected program funding. Removing this “caps” language is a simple way to force the Agency to ensure that the full amount necessary to fund CSC is included in the administration’s budget request.

For many years IHS followed the practice, required by its CSC policy manual, of releasing Tribe-by-Tribe data on direct program costs, indirect cost rates, CSC requirements, and CSC shortfalls as the agency prepared its shortfall reports for Congress each year. In a reversal of this longstanding practice, and in contravention of its own policy manual, IHS now states that it will not release this vital information until after the final reports are cleared for submission to Congress, which can take years. Despite repeated tribal requests—and a pending Freedom of Information Act lawsuit—IHS has yet to release data for fiscal years 2010, 2011, or 2012. This undermines agency transparency and accountability for the expenditure of appropriated public funds. The Senate Committee on Indian Affairs should ask IHS why the agency no longer follows the practices dictated by the ISDEAA, agency policy, and principles of fiscal accountability.

### **Conclusion**

Thank you for allowing us to provide this testimony. We need the involvement of this Committee to help us resolve past CSC claims and to move forward to reach resolution in addressing future CSC issues.

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PREPARED STATEMENT OF HON. KAREN R. DIVER, CHAIRWOMAN, FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

I am Karen R. Diver, Chairwoman of the Fond du Lac Band of Lake Superior Chippewa. We would like to thank the Committee for inviting Tribes to submit testimony on the President's FY 2014 Budget Proposal, and for the Committee's commitment to and leadership in seeking to address the needs of Indian country. The Fond du Lac Band provides health, education, social, public safety and other governmental services to approximately 6,700 Indian people living on or near our Reservation in northeastern Minnesota. These programs are essential to our ability to educate our children, care for our elderly and infirm, prevent crime, and protect and manage natural resources. The federal funds that are provided through agencies like the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) play a critical role in our ability to meet the needs. Because of this, we wish to express our deep concerns about the adverse impact of sequestration on our ability to provide these basic governmental services. We urge Congress to reach solutions on budget matters, and to fully fund the programs that are so critical to Indian country so that the most vulnerable communities are not hurt and the Federal Government fulfills its trust responsibilities to our people.

### **BIA: Public Safety and Justice and Construction**

We support the President's proposal to increase BIA funding for law enforcement as increased funding for law enforcement personnel is essential. We also urge Congress to increase funding for BIA Construction, as the facility that houses our Law Enforcement Department is completely inadequate for that purpose.

#### *Public Safety and Justice*

We continue to face massive unmet needs for law enforcement. We provide law enforcement with a combination of tribal and available federal funds and cooperative agreements with local law enforcement agencies. But methamphetamine, alcohol, illegal prescription drug use, and gang-related activity create huge demands on our Law Enforcement Department. Recently, we have seen a rather large and fast increase in gang activity. The convictions of several Native Mob members in March 2013 appear to have left a void in gang leaders, so, while gang activity has been on the rise over the years, lately gang activity has intensified with gang members trying to make names for themselves by whatever means necessary. The increase in crime is further illustrated by the fact that Fond du Lac had its first homicide since 2000 last year which, though not directly gang-related involved gang members and drugs. Another homicide occurred in Carlton County near the Reservation in 2012 which involved two tribal members and drugs.

We also face an epidemic in prescription drug abuse. Many of our elders and others are the victims of assaults and robberies that are drug-related. Our law enforcement officers must respond to a large number of drug overdoses and deaths, as well as juvenile offenses involving drugs, alcohol, thefts, assaults and burglaries. They also respond to a wide range of other matters, for example, reports involving domestic disputes, disturbances, disorderly conduct, property damage, theft, medical emergencies, fire, neglected children, runaways, suicide threats, as well as numerous traffic-related matters. In 2012, our Law Enforcement Department responded to close to 5,100 incidents and requests for assistance—an increase from 4,900 in 2011.

To address these problems and ensure effective law enforcement coverage 24/7, we need to increase our law enforcement staff but lack sufficient funds to do this. We employ 13 patrolmen, 1 investigator, 1 school resource officer (assigned to the Ojibwe School), a Chief of Police, and 3 administrative staff. To the extent possible we schedule 3 officers per shift, but we do not have sufficient funds to do this around the clock. In fact, to effectively patrol the Reservation we should have 4 officers working each shift and a second investigator, for a total of 20 officers. Fewer officers on duty poses serious safety issues for both officers and the people we need to protect. The large number of calls for police assistance also means that we need more than one investigator.

#### *BIA Construction*

Funding should be increased for BIA Construction. Fond du Lac needs a new facility for our law enforcement department. The Department is still housed in a 6-room

building, which we share with the Band's housing program. It has neither room for investigative interviews, nor office space for specialty positions such as investigators. The evidence room and reception area are all completely inadequate for law enforcement purposes and, with the increased number of calls we are receiving, are becoming more inadequate each day. A new building with a garage, along with a larger evidence room, storage room for record-keeping, and a training room for officers, is essential.

#### **BIE: Education**

We urge Congress to increase funding for Bureau of Indian Education (BIE) Elementary/Secondary School Programs. We rely on BIE funding for the operation of the Band's pre-K through grade 12 Ojibwe School which serves approximately 340 students most of whom are tribal members or descendants of tribal members. Most of our students come from very low income households, illustrated by the fact that more than 90 percent of our students qualify for free or reduced rate lunches. Although the President, in Executive Order 13952 (Dec. 2, 2011) found "an urgent need" for federal agencies to help improve educational opportunities for American Indian students because there has been "little or no progress in closing the achievement gap" between our students and all other students, funding for the BIE Elementary/Secondary School Programs is stagnant and seriously under-funded. The modest funding increases made in FY2012 have been lost as a result of sequester. This is illustrated by the following table:

	ISEP	Tribal Grant Support Costs	School Facility Operations	School Facility Maintenance	Student Transportation
FY08 .....		\$43.373	\$56.504	\$50.745	
FY09 .....	\$375.	\$43.373	\$56.972	\$50.745	\$50.5
FY10 .....	\$391.699	\$43.373	\$59.410	\$50.745	\$50.808
FY11 .....	\$391.142	\$43.373	\$59.263	\$50.746	\$52.798
FY12 .....	\$392.306	\$46.373	\$58.659	\$50.746	\$52.739
FY13 w/sequester .....	\$369.9	\$45.8	\$55.7	\$48.4	\$50.3

\*Numbers in millions

Applying statute-generated needs formulas, we ask that BIE Elementary/Secondary School Program funding be increased as follows:

- *ISEP*. Increase ISEP to \$479,758,000. ISEP is the primary source of school funding, covering salaries for teachers, teacher aides, and administrative personnel. ISEP is critical to our ability to recruit and retain qualified teachers and to cover shortfalls in other budget areas, such as transportation, facilities and maintenance.
- *Tribal Grant Support Costs (TGSC)*. Increase TGSC to \$67,270,000. TGSC helps pay for accounting, insurance, background checks, legal and record-keeping requirements. Inadequate funding of TGSC forces us to use ISEP and other funds to meet these needs.
- *School Facility Operations and School Facility Maintenance*. Increase School Facility Operations to \$61,913,000, and School Facility Maintenance to \$79,137,000. Such funds keep our building in safe condition, pay for preventative and unscheduled maintenance, and cover insurance and increasing utility costs. Past funding has not kept pace with rising costs or the growing backlog of schools needing repair.
- *Student Transportation*. Increase Student Transportation to \$56,212,000. This program has been historically underfunded. Without increased funding, the costs to maintain, repair, and replace buses and cover rising fuel costs must be paid from education program funds which are already over-obligated. Located in a rural area, Fond du Lac relies on buses to provide a safe and reliable means to get students safely to and from school.
- *School Construction and Repair*. Provide an additional \$20,000,000 million for School Construction above current levels to stay ahead of BIE's reported \$70,000,000 million annual deterioration rate. BIE reports a \$3.4 billion school replacement need. Research studies continue to document a link between inadequate facility conditions and poor performance by students. Not addressing these critical infrastructure needs will only jeopardize student and staff safety.

#### **BIA: Trust—Natural Resources Management**

We very much appreciate the funding for BIA Natural Resource programs that Congress has provided in past years and strongly support the proposed increase for

these programs contained in the President's FY 2014 Budget. Natural resources are vitally important to our Tribal members. They provide the foundation for our culture, meet subsistence needs, and provide employment. The Fond du Lac Band's right to access natural resources within and outside our Reservation was reserved by Treaties with the United States in 1837, 1842, and 1854 and reaffirmed by the courts. In connection with these Treaty rights, the Band is responsible for managing natural resources and for enforcing Band conservation laws that protect those natural resources by regulating Tribal members who hunt, fish and gather those resources both within and outside the Reservation.

Base program funding is essential for that work. Fond du Lac routinely partners with state, federal, and tribal organizations to conduct research and management activities. We request that \$2 million be added to our base budget for Resource Management programs, as funds for this program have not been increased since 1991. We also request that Congress provide funding to BIA Tribal Government account as recommended in the President's FY 2014 Budget. This account provides Self Governance funding that is vital to the operation of our Forestry, Fisheries, Wildlife, and Natural Resources Programs.

We urge Congress to increase funding for the U.S. Fish and Wildlife Service's State and Tribal Wildlife Grant Program, and we support the President's proposed funding for Tribal Historic Preservation Offices and the EPA Great Lakes Restoration Initiative. Finally, as a member of the Great Lakes Indian Fish & Wildlife Commission, the Band supports the Commission's request for BIA Great Lakes Area Management funding of \$7.067 million and EPA funding of \$1.2 million to continue its long-standing treaty rights protection and implementation program on behalf of its member Tribes.

#### **BIA: Human Services**

We urge Congress to increase funding for Human Services programs to address the impact that the methamphetamine epidemic has on not only public health and safety, but also on child protection, child welfare and foster care services.

#### **Indian Health Service**

We fully support the President's proposed increase in funding for the Indian Health Service and appreciate the commitment that the Administration and Congress have made to address the funding needs for health care in Indian country. The President's proposed increase is essential to address the high rates of medical inflation and the substantial unmet need for health care among Indian people. Indians at Fond du Lac, like Indians throughout the Nation, continue to face disproportionately higher rates of diabetes and its associated complications, than the rest of the population. Heart disease, cancer, obesity, chemical dependency and mental health problems are also prevalent among our people. All Indian tribes should receive 100 percent of the Level of Need Formula, which is absolutely critical for tribes to address the serious and persistent health issues that confront our communities. The Band serves over 7,000 Indian people at our clinics, but the current funding level meets only 42 percent of our health care funding needs.

As the epidemic of prescription drug abuse grows across the country, the IHS needs resources to expand its treatment and community education capacity. We are especially disappointed with the Pharma-driven position SAMHSA has followed for the past several years regarding Methadone Assisted Therapy (MAT). Many poorly administered MAT programs are pouring unprecedented amounts of cheap, liquid Methadone into Indian communities with very destructive results. In 3013, 2/3rds of the babies delivered by Fond du Lac Nurse-midwives were born to Methadone dependent mothers. Research has shown that methadone users are cognitively impaired, but no research has been done on children born to Methadone users. Meanwhile, thousands of American Indians are falling victim to the chemical slavery now sponsored by SAMHSA. Additional funding for the Methamphetamine, Suicide Prevention Initiative should be made available to tribes and the IHS so that this "new sickness" can be addressed. Best practices in pharmacy inventory and prescription monitoring need to be modeled and replicated throughout Indian Country. Related to this is the fact that more and more government agencies are expecting local units of governments, including Tribes, to address these problems and the increasing number of individuals who become homeless as a result of them, through the operation of supportive housing. But Fond du Lac, like most tribes, lacks the financial resources to establish new program initiatives, like supportive housing, without assistance from the Federal Government. We urge Congress to support programs through the IHS or the BIA that would fund supportive housing for tribes in every area of the country.

Miigwech. Thank you.

PREPARED STATEMENT OF HON. TOM MAULSON, PRESIDENT, LAC DU FLAMBEAU BAND  
OF LAKE SUPERIOR CHIPPEWA INDIANS BEFORE THE HOUSE APPROPRIATIONS  
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES—APRIL 25, 2013

My name is Tom Maulson, I am President of the Lac du Flambeau Band of Lake Superior Chippewa Indians, located in Wisconsin. I am pleased to submit this testimony, which reflects the needs of our Tribal members for Fiscal Year 2014. I would like to thank the Subcommittee for its leadership and commitment to Tribes and the programs that are critical to us.

**Sequestration**

We would first like to express our strong objection to sequestration of discretionary programs. An across the board sequester was proposed not as a sensible policy, but because it was so universally viewed as unreasonable that it was expected to spur Congress and the President to get together on the budget to make sure it never took place. Yet here we are, with a sequester in place for FY 2013—and likely to continue unless Congress and the President can agree otherwise for FY 2014.

The sequester is a terrible policy for the country overall, but it has a special impact on tribes. The United States has both Treaty obligations and a trust responsibility to Indian tribes. The tribes gave up the lands on which this country was built, in return for the solemn promises of the United States to protect tribal treaty rights, lands and resources and to provide various services to tribal members. The United States' promises to the tribes should be kept—and not reduced by sequestration. The indiscriminate cuts from sequestration harm tribes, as we continue our ongoing efforts to promote economic growth and build a better future for our children. Tribal programs should not be subject to sequestration.

**Changes Proposed Regarding Contract Support Costs—For BIA and IHS**

The Lac du Flambeau Band also opposes the Administration's proposal for FY 2014 regarding payment of contract support costs. Here again, this is a matter of the United States keeping its promises. When a tribe enters a contract with the United States under the Self-Determination Act, the United States promises to pay full contract support costs—various costs necessary for the tribe to successfully run the program. The courts have held that if the United States does not fulfill its promise regarding payment of contract support costs, the tribe can file a claim and recover the shortfall. But now, the Administration is proposing a new system—which would impose for the first time caps for each tribe regarding contract support costs. The whole purpose of these new tribal-specific caps is to protect the United States from having to pay full contract support costs. The effect of this provision would be to make it more difficult for tribes that enter contracts or compacts under the Self-Determination Act to succeed, and to penalize tribes that wish to enter new contracts or compacts. The Administration's proposal should be rejected. Congress should fully fund all contract support costs and resolve all prior year contract support cost claims.

**Indian Health Service**

*Purchased/Referred Care*

We want to call particular attention to the need for purchased/referred care (which was previously called contract health care) funding, which is a need that we have expressed to the Subcommittee for several years. This category of health care funding is so important to the basic health and well-being of our communities, where a very significant portion of our health care must be referred out. Despite its importance, historically this category has been tragically underfunded—with funds running out before the year ends. We would like to express our appreciation to the Subcommittee for providing increases to contract health care funding over the past couple of years, and we strongly support the \$35 million increase for purchased/referred care services proposed for the FY 2014 Budget.

*Mental Health*

At Lac du Flambeau there is a rapidly expanding need for resources to address a range of mental health problems. Funding has simply failed to keep pace with our needs—as our mental health funding remains a very small portion of our annual health care funding. We strongly support the Administration's proposal to add \$4.2 million for Mental Health.

**Bureau of Indian Affairs**

The Tribe is disappointed that the BIA's proposed budget for FY2014 is essentially level funding for most programs. The Tribe recognizes the difficult fiscal times the Nation is in and thus, is pleased that the BIA did not propose decreases to many



BIA's programs. The 2014 Budget does include an initiative called "horizontal consolidation"—a \$33.5 million cut that would be imposed by reducing BIA personnel at the Headquarters, Regional and Agency offices through attrition, buyouts and other means. We are concerned that will leave the BIA inadequately staffed to meet its trust obligations of the tribes. We are seeing this with respect to BIA Natural Resource personnel—as key people leave and are not replaced, the level of services to the tribes may decline and key tasks may be delayed or omitted entirely. It is vital that BIA personnel reductions be undertaken with full tribal consultation and sensitivity to the needs of tribes and the BIA's ongoing obligations. We urge the Subcommittee to monitor these changes carefully.

Today we want to focus on the funding needs for the BIA Education, Public Safety and Natural Resource Programs.

#### *Tribal Education Programs*

Education is a top priority for the Tribe. We believe that it is through investment in education that we will be able to restore stability to our Nation's economy. To continue the progress Indian Country has made in participation and control of education programs and schools, it is imperative that funding for tribal higher education programs be increased. We support the Administration's proposed small increase for the BIA scholarship and adult education program, as well as the newly proposed \$3.0 million for post-graduate study in science fields. This funding supports Indian students working for higher education and advanced degrees. Tribal communities have made great strides in educating their youth. Those strides are evident in the fact that more Indian students are attending and graduating from colleges and other post-secondary institutions. However, tribal communities must continue to evolve with other communities. The national and global economy has changed—students must earn college and graduate degrees to remain competitive.

#### *Public Safety*

The Tribe supports the Administration's proposal to increase funding for BIA Public Safety and Justice Programs. Among the many challenges facing law enforcement at Lac du Flambeau is an increasing threat from a range of illegal drugs—including synthetic cannabinoids and others. The rapid growth in the use of these illegal drugs has led our Tribal government recently to declare a state of emergency. We are taking broad steps to address the problem in a multi-dimensional way—including education, prevention and rehabilitation. A key component of this effort is to prosecute those who sell these illegal drugs that are so significantly harming our young people and our communities. This is just one example of the need for an effective law enforcement presence at Lac du Flambeau.

#### *Tribal Natural Resource Management and Development*

Tribes are leaders in natural resource protection and BIA natural resource funding is essential to maintain our programs. Lac du Flambeau has a comprehensive Natural Resources Department and dedicated staff with considerable expertise in natural resource and land management. Our activities include raising fish for stocking, conservation law enforcement, collecting data on water and air quality, developing well head protection plans, wildlife habitat protection and enhancement, conducting wildlife surveys and administering timber stand improvement projects on our 86,000-acre Reservation. In addition to being important cultural and environmental resources for current and future generations, natural resources provide many Tribes and surrounding communities with commercial and economic opportunities. It is with this understanding of the importance of our natural resources, that the Tribe strongly supports the Administration's proposed increase of \$2.0 million for the Tribal Natural Resource Management and Development. Specific proposed increases in Fishing, Wildlife and Parks, Endangered Species, Rights Protection and Cooperative Landscape Conservation are all very important to us. We also support the Administration's initiative to engage Indian youth in the natural sciences.

#### *Conservation Law Enforcement Officers*

One of the critical elements of our Natural Resource program is our Conservation Law Enforcement Officers. These officers are primarily responsible for enforcing hunting and fishing regulations related to the exercise of treaty rights, but they also have a much larger role in law enforcement. They are often the first to respond to emergency situations. These officers play an integral part in protecting our cultural and economic resources, as well as assisting with the most important role of protecting public safety. We urge the Subcommittee to support increased funding for Conservation Law Enforcement for FY2014, as an acknowledgement of the importance of Tribal conservation law enforcement officers to the federal law enforcement family.

*Circle of Flight: Wetlands Waterfowl Program*

We urge the Subcommittee to continue to provide support for the BIA Circle of Flight Program, by providing at least the \$800,000 funding level proposed by the Administration. This program supports Tribal efforts throughout the Great Lakes Region to restore and preserve wetlands and waterfowl habitat within Tribal territories. This program also gives the Great Lakes Region Tribes, States, USFWS, USDA, Ducks Unlimited and other private sector groups an opportunity to work cooperatively in projects that provide wetland protection, flood control, clean water and recreation in the Great Lakes Region. The Subcommittee's strong support of this program over two decades has resulted in tremendous successes in restoring wetlands and waterfowl habitat throughout the Mississippi Flyway.

*Great Lakes Indian Fish and Wildlife Commission*

Related to the Tribe's natural resource needs, we would like to voice our continuing support for the *Great Lakes Indian Fish and Wildlife Commission* (GLIFWC). The Tribe is a member of the Commission, which assists the Tribe in protecting and implementing its treaty-guaranteed hunting, fishing and gathering rights. We urge the Subcommittee to fully support the programmatic funding for GLIFWC in the amount of \$6.367 million from BIA, plus \$1.2 million from EPA to continue its vital treaty-rights protection/implementation programs. GLIFWC has played an invaluable role in providing science and sound management practices for our off-reservation resources. This role could not be filled by any other agency.

**Environmental Protection Agency**

*Tribal General Assistance Program*

The Tribe strongly supports the proposed \$5 million increase for the Tribal General Assistance Program ("Tribal GAP"). This program provides base environmental funding to assist Tribes in the building of their environmental capacity to assess environmental conditions, utilize available data and build their environmental programs to meet their needs. This funding is critical for Tribes in the Great Lakes as our region begins to examine resource extraction issues, in particular mining. While we understand the need for job creation, we believe any action must be done in a way that does not destroy our natural resources, which are the basic foundation of our way of life and economies today.

Great Lakes National Program Office. We continue to support the Great Lakes Restoration Initiative (GLRI) and in particular, the funding set-aside for tribes. The Great Lakes represent three quarters of the world's supply of fresh water. But for us, the indigenous people of Wisconsin, the Great Lakes represent the life blood of our economies and our culture. The protection and preservation of the Great Lakes is necessary to the protection and preservation of the tribal communities that have made the Great Lakes their home since time immemorial.

*Clean Water Program*

The Clean Water Program provides grants to tribes under Section 106 of the Clean Water Act to protect water quality and aquatic ecosystems, and the Tribe supports the proposed \$20.3 million increase in section 106 grants. The Lac du Flambeau Clean Water program monitors, maintains and improves water quality for the tremendous amount of surface and ground water within the exterior boundaries of our Reservation. There are 260 lakes covering 17,897 acres, 71 miles of streams, and 24,000 acres of wetlands within the Reservation. Surface waters cover nearly one-half of the Lac du Flambeau Reservation. Funding to maintain clean waters on our Reservation has already decreased below the minimum required to maintain our program. We ask the Subcommittee to protect funding for this program.

*Air Quality*

In Wisconsin, a major recent change in state law creates the likelihood of a new, large-scale iron-mining, which would have extensive environmental impacts on both the Reservation and the Tribe's ceded territory, where we have Treaty-protected hunting, fishing and gathering rights. To protect our lands and Treaty rights from pollution associated with new iron mining, we will need baseline air quality data which demonstrates the conditions we are seeking to protect. We urge the Subcommittee to support increased funding for Tribal air quality monitoring activities and associated staffing.

*Brownfields*

The 2002 Brownfield Bill authorizes \$50 million for State and Tribal Response Programs. Appropriations have been slightly less than the authorized \$50 million. The 2002 authorization expired in 2006. Like many programs, expired authoriza-

tions have continued to be allocated. Both States and Tribes are competing for the same pool of money. Every year more tribes apply for funding. There is a critical base needed just to operate a program. Both the needs of a state cleanup program and the needs of new tribal cleanup programs cannot be met by the authorized \$50 million or the allocated amounts.

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PREPARED STATEMENT OF THE INTERTRIBAL TIMBER COUNCIL

**ITC Background**

The ITC is a 37 year old association of some 60 forest owning tribes and Alaska Native organizations that collectively manage more than 90 percent of the 18 million acres of BIA trust timberland and woodland. These forests cover about one third of the Indian trust land base and provide thousands of jobs and many millions of dollars in economic activity in and around Indian Country. Beyond their economic importance, forests also store and filter the water and purify the air to sustain life itself. They sustain habitats for the fish and wildlife, produce foods, medicines, fuel, and materials for shelter, transportation, and artistic expression. In short, our forests are vital to our economies, cultures and spiritual well being.

**BIA History of Funding Inequity**

Overall, the ITC supports the Administration's requested FY 2014 funding for BIA Natural Resources Programs as a long-overdue start on moving funding for these programs toward parity with funding provided other federal agencies for similar functions. For years, both the requested and enacted annual appropriations for Bureau of Indian Affairs Natural Resource Programs have, by almost any comparator, been significantly less than those for similar federal functions. Examples of this disparity are:

- BIA TPA Forestry, where two independent reports (IFMAT I, 1993 and IFMAT II, 2003) have documented that BIA Forestry per-acre management support is less than half that for the National Forest System (IFMAT III is due to be released this June). Other recent and specific reviews have shown that BIA TPA Forestry, which is primarily for on-going forest and harvest management, has fallen further and further behind both inflation and increases for other similar federal programs. Funding for management of woodlands is urgently needed. Woodlands are vital to many tribal communities, providing foods, medicines, fuel, grazing, and water. Woodlands are coming under increasing threat from invasive species, wildfire, and climate change.
- BIA funding for Forest Development is needed for site preparation, reforestation, and thinning on 750,000 acres of forest land (4 percent of the Indian forestland base).
- BIA Forest Projects funding for essential forest functions such as management inventories and planning, woodland management, Integrated Resources Management Planning, and Forest Development, has experienced outright budget decline from FY 2005, when it was funded at \$18.5 million, to \$17.3 million in FY 2013 (not including the 5 percent sequester), a decline of \$1.2 million without taking into account 8 years of inflation.
- BIA Endangered Species Act funding has declined from \$3.0 million in FY 1995 to \$1.2 million for FY 2013, without counting 18 years of inflation. Based on BLM's 9 cents-an-acre ESA funding, BIA should be funded at \$5.0 million.
- BIA Cooperative Landscape Conservation in FY 2012 received just \$200,000 for BIA's 52 million acres of trust land. With 10 percent of the Interior Department's total land holdings, BIA CLC should have received \$17.5 million of the Department's \$175 million total CLC funding.

*Trust Settlements and BIA's Continued Inadequate Budget*

Underscoring the funding inequity and insufficiency of BIA's Natural Resources programs are the more than 50 tribal trust fund and natural resource mismanagement law suits that the U.S. settled last year, paying more than \$1 billion to quiet mismanagement claims. While the settlements were confidential and the settlement amounts unattributed to specific resources, the settlements provide clear evidence that the U.S. has been failing to live up to its trust obligations, including for the management of natural resources. Yet federal budgets for those trust programs, including forestry and related activities, have failed—and still fail—to provide funding levels necessary to fulfill the federal fiduciary responsibility to protect the health and productivity of the trust corpus. Despite the U.S. settlements' implicit acknowledgement that it has failed to properly provide for its fulfillment of the trust, BIA

budgets for Forestry and other natural resource trust management programs are being proposed at levels that, even while slightly increased, are still insufficient for the BIA's obligations and less than amounts requested by other agencies for similar functions.

*Insufficient Budgets Thwart Tribal Involvement in Landscape Management*

Climate and natural resource issues cannot be addressed by fragmented approaches to management. Cooperation, collaboration, and active partnerships in landscape-scale approaches are essential. The necessity of broader management that extends beyond property boundaries is increasingly reflected in both public and private practices and policies. Tribes, with a history of holistic natural resource management, traditional knowledge, and contemporary legal and cultural rights and interests in their reservations and extensive surrounding lands, have a primary role to play in landscape-scale management of natural resources and are well poised to play a significant, and perhaps leadership, role in local and regional issues like water, fish and wildlife management and global issues such as climate change. Natural resource management is critical biologically, ecologically and economically. The ITC is now investigating the possibilities of broader, landscape-based forest management, referred to as the "Anchor Forest" program in Washington State, that seeks to coordinate resources and infrastructure across the forested landscape in a manner that sustains and nurtures the forest while also providing for the continuation of local forest dependent communities and economies.

*Insufficient Budgets Pose Resource Management Threats and Undermine Self-Determination*

Federal budgets for tribal natural resources must be sufficient for sustainable management and economic and cultural continuity. Failure to provide adequate funding to manage their resources both on and off their reservations will deprive the tribes of the management capacity needed to sustainably realize the benefits of the land and its resources, diminishing the tribal economy and result in degradation of health and productivity of the trust corpus. Starving tribal natural resource budgets will also hinder the needed and rightful tribal participation in landscape-based management, potentially isolating the tribes at the moment they need to be full landscape participants. Of particular concern is inequity in pay cost increases for tribal programs compared to those provided for BIA staff. Pay cost discrepancies are impeding recruitment and retention of tribal staff. Without adequate budgets to manage natural resources, tribes could be forced to retrocede the Forestry and other natural resource programs they now administer under Self-Determination and Self-Governance, turning them back to the BIA rather than trying to continue to operate financially crippled programs.

*Insufficient Budgets for Natural Resources Negatively Affect Tribal Communities in Untold Ways*

Natural resources have supported the cultures and economies of tribal communities for countless generations, providing foods, fish, wildlife, water, medicines, and products for subsistence and commerce. Unless the health and productivity of natural resources is maintained, the very essence of tribal lifeways will be placed in jeopardy. Sorely needed jobs will disappear, economic opportunities will be lost, and social problems will worsen. Federal budgets must be sufficient for the sustainable management of natural resources and to sustain the economic and cultural continuity of tribal communities.

Today, as the United States completes a historic round of trust mismanagement cases with tribes, it is essential that the Federal Government truly turn the page by stepping up its funding of tribal trust-based programs, including those for natural resources. At the least, an initial step must be to provide tribes and BIA with funds equal to those provided other agencies for similar tasks. To not do so, to continue the insufficient funding practices of the past, will stifle the progress the tribes and the U.S. have made. Tribal economies will suffer, tribal jobs will suffer, and the tribal land base will degrade. Should tribes choose to turn fatally underfunded programs back to the U.S., tribal self-determination will suffer. And over time, tribes may have little choice but sue the U.S. again for its trust failures.

A repetition of past failures must be avoided. Adequate resources must be made available to enable the United States to fulfill its fiduciary obligations for protecting and managing the trust corpus. Funding the BIA and tribal trust and natural resources programs at least at levels provided other federal agencies will help cement the progress made and offer a route to a progressive and promising future.

### **BIA's FY 2014 requested budget for Natural Resources Management**

Against the backdrop of the Federal Government's history of inadequate and inequitable funding, the ITC is very encouraged by the \$32 million increase requested by the Administration for BIA Natural Resources Management programs in FY 2014. While this increase by itself will not correct years of insufficient funding of these programs, FY 2014's proposed increase is significant both as an acknowledgment that additional support is needed and as an initial financial commitment to move BIA Natural Resource Management programs up to adequate and equitable funding.

Within or related to the BIA's FY 2014 requested budget for Natural Resources Management, the ITC makes the following specific comments and recommendations:

- 1.) In BIA TPA Forestry, support the Administration's \$5.1 million increase, and further the increase by \$5 million to begin moving BIA Forestry toward parity with similar federal forestry budgets.

The ITC urges this Committee to support the \$5.1 million FY 2014 increase requested for BIA Forestry, and to further add an additional \$5 million to begin moving BIA Forestry toward parity with other federal forestry budgets. The independent 1993 and 2003 IFMAT reports documented that the BIA Forestry per-acre management funding is far less than half that provided for National Forests and state and private forests, and we believe the 2013 IFMAT report will update and corroborate those findings. IFMAT I and II reports also documented that Indian forestry is the most productive and innovative on federal lands. Tribes tend to keep their saw mills open and their forest products workforce engaged. Yet the long-documented underfunding has taken a toll, as demonstrated in the many recent tribal trust fund and resource mismanagement lawsuit settlements. Supporting the proposed \$5.1 million BIA Forestry increase and supplementing that with an additional \$5 million will start to shore-up the eroded federal trust responsibility, make a needed investment in the single most productive federal timber program, and provide jobs and countless social and economic benefits for tribal communities. In addition, the ITC recommends the full funding of pay cost increases for tribal forestry programs and indirect costs of program administration.

- 2.) Review the upcoming IFMAT III report, the Congressionally required independent review of Indian trust forests and forestry, and the ITC Report on implementation of the TFPA, and consider their recommendations in FY 2014.

With particular regard to the adequacy of the BIA Forestry program, we urge the Committee to review and hold a hearing on the upcoming IFMAT III report, due out in June. The IFMAT report is an independent assessment of Indian forest lands and forestry practices required by Section 312 of P.L. 101-630 to be conducted every ten years. In 1993, 2003, and now in 2013, ITC facilitated the assembly of a blue-ribbon team of forestry experts, referred to as the Indian Forest Management Assessment Team (IFMAT), to independently evaluate the status of tribal forests and forestry. The 2013 IFMAT report will examine eight areas required by statute and will be delivered to the Interior Secretary and the U.S. Congress with Findings and Recommendations. To our knowledge, the IFMAT report is only required independent periodic review of any federal forest lands and will provide valuable insight into both tribal and other forests.

The 2004 Tribal Forest Protection Act (TFPA) was enacted to provide a means for Tribes to propose projects on USFS and BLM lands to reduce threats to tribal resources and rights resulting from hazardous conditions on the lands under agency jurisdictions. Thus far, only eleven TFPA projects have been accepted by the U.S. Forest Service (USFS) and only six have been implemented. The ITC recently completed a cooperative study with the USFS and the BIA to improve utilization of the TFPA authority. The lack of incentives, such as designated funding for TFPA projects for the USFS, was identified as one of several funding-related impediments to utilization of the TFPA authority. We urge the Committee to review this report and work with tribal governments to implement its recommendations.

- 3.) For BIA Cooperative Landscape Conservation, support the Administration's \$10 million request and direct that those funds serve tribally-based activities. The ITC supports the FY 2014 requested increase in BIA Cooperative Landscape Conservation (CLC) to \$10 million. As the principal trustee delegate of the United States, the BIA has responsibility to care for 10 percent of the Interior Department's total 500 million acres. The Indian people's reliance upon their land and resources makes them among the most vulnerable to climate change. Yet there has been little or no funding for substantive tribal participa-

tion in Interior's previous CLC initiatives. Interior's FY 2014 CLC proposal for BIA finally begins to correct that gross disparity. In supporting the \$10 million, we also urge the Committee to assure that all or at least most of that funding be directed to tribal projects on the ground.

4.) For BIA ESA, support the Administration's proposed \$2.7 million budget.

The ITC asks that the Committee support the \$2.7 million requested for BIA ESA funding. On a dollar-per-acre basis, BIA ESA funding has long been far below any other Interior land management agency. Tribal governments and individual tribal members depend on their lands and resources for income, jobs and subsistence. Adequate funding to evaluate proposed activities for ESA-related impacts is needed to fulfill federal trust obligations and enable Indian peoples to benefit from their resources.

5.) Within BIA Natural Resources, support increased funding to combat invasive species.

The ITC supports the \$3.0 million increase in BIA Agriculture and Range to combat and reduce adverse impacts of invasive species.

6.) For DoI Wildland Fire management: Restore DoI hazard fuels funding to \$206 million, and remove BIA/tribal projects from the DoI HFPAS funding formula and set an annual minimum BIA/tribal allocation at 25 percent of the DoI hazard fuel allocation but no less than \$50 million.

Forested tribes and the BIA are also engaged in the Department of the Interior's Wildland Fire program, which is funded through the Department-wide Office of Wildland Fire Management. For FY 2014, the proposed Office of Wildland Fire budget is directly contrary to the goals in the federally sponsored National Cohesive Wildland Fire Management Strategy Phase II report, namely to "Restore and Maintain Landscapes". The FY 14 budget proposes funding runaway suppression costs with a significant increase while cutting by 50 percent the budget for proactive and effective hazardous fuel treatments. Not only is reducing fuel funding likely to ultimately increase suppression costs, it is contrary to the goal of reducing potential wildfire and restoring and maintaining landscapes. We urge the restoration of FY 2014 DoI hazard fuels funding at its FY 2012 level of \$206 million.

Furthermore, the DOI process of allocating these funds through the Hazardous Fuels Prioritization and Allocation System (HFPAS) is severely flawed and discriminates against tribes. During 2012, the ITC and our member Tribes identified systemic problems with the DoI HFPAS model that seriously biased hazard fuels funding against tribal projects and increased threats to tribal forests and communities. The untested HFPAS allocation model was used to allocate hazard fuel funds despite tribal objections and concerns provided to DoI well before funds were allocated. This process was implemented in violation of the DoI Tribal Consultation Policy. Now, after the funds have been diverted, the DoI is just beginning to consult with Tribes on the HFPAS process. We ask this Committee's support in directing the DoI to recognize its duty to protect trust resources and provide stability and equity to a critical component of tribal resource management strategies by separating tribal/BIA funding from the HFPAS process and allocating 25 percent of the Department's annual national fuels funding to the tribal/BIA hazard fuels program, but in no event less than \$50 million, which represents the historical level of support.

7.) Significantly extend or make permanent authority for Stewardship Contracting.

Finally, the ITC asks that the Committee support the extension or permanency of the Stewardship Contracting authority first established in the 1999 Interior Appropriations Act (16 USC 2104 note, Public Law 105-277) (as amended by section 323 of the FY 2003 Interior Appropriations Act (117 Stat. 275)) and originally due to expire at the end of 2013. Stewardship contracting authorizes parties to engage in forest restoration projects on U.S. Forest Service or BLM lands on a "goods-for-services" basis. This effective and inexpensive authority is often essential for tribes, local communities, and others to perform needed forest management activities on USFS or BLM land. For tribes in particular, stewardship contracts can be key in carrying out protective forest health activities on adjacent USFS or BLM land under the Tribal Forest Protection Act (P.L. 108-278).

In closing, the ITC would like to express our appreciation of the leadership provided by this Committee in understanding and protecting the BIA and IHS budgets. Across the great breadth of the federal budget, Indian Affairs funding is only a very

minor fraction, but the United States has a long and well established duty to honor its special relationships to tribes and its fiduciary trust obligations to care for our land and resources. We thank you for your commitment to these historic and enduring responsibilities.

For FY 2014, the Administration's proposed BIA budget reflects recognition of and support for long-needed improvement in management of our trust resources. Investments in improving the health and productivity of our natural resources will have far-reaching economic and cultural benefits for tribal communities.

We believe it is vitally important for Indian Tribes to be substantively engaged as full partners in the dialogue as to how to address fiscal challenges in light of federal trust responsibilities. Our experience with HFPAS and BIA streamlining efforts has been far from satisfactory. We ask this Committee to direct the DoI to recognize its duty to protect trust resources and provide stability and equity to a critical component of tribal resource management strategies.

That concludes the ITC testimony. Thank you.

#### PREPARED STATEMENT OF THE NORTHWEST PORTLAND AREA INDIAN HEALTH BOARD

Established in 1972, NPAIHB is a P.L. 93-638 tribal organization that represents 43 federally recognized Tribes in the states of Idaho, Oregon, and Washington on health care issues. Over the past twenty-one years, our Board has conducted a detailed analysis of the Indian Health Service (IHS) budget. It is used by the Congress, the Administration, and national Indian health advocates to develop recommendations on the IHS budget. It is indeed an honor to present you with our recommendations.

#### Indian Health Disparities

The Indian Health Care Improvement Act (IHCIA) includes a declaration of national Indian health policy for the Congress and this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians, to ensure that the highest possible health status for Indians is achieved and to provide all resources necessary to effect this policy.<sup>1</sup> This declaration recognizes that Congress has a duty to elevate the health status of American Indian and Alaska Native (AI/AN) people to parity with the general U.S. population and to provide the resources necessary to do so.

While there has been success at reducing the burden of certain health disparities, evidence continues to document that other types of diseases are on the rise for Indian people.<sup>2</sup> An analysis of Medicaid data in Washington State indicates that infant mortality among AI/ANs was twice the rate for the Medicaid population as a whole. Compared to the rest of the world, the AI/AN infant mortality rate was higher in Washington State than in Poland, Slovakia, Estonia, Malaysia, Thailand, and Sri Lanka. Contributing factors included deaths due to Sudden Infant Death Syndrome (SIDS) at a rate 3 times higher among Indians compared to the total Medicaid population, deaths due to injuries at a rate 5 times higher among Indians, and a rate of deaths from complications of pregnancy and delivery 50 percent higher than the total Medicaid population.

Medicaid data from Washington State also provided an analysis of the risk factors that lead to poor pregnancy outcomes. Compared to all pregnant women on Medicaid, Indian pregnant women were 2.7 times more likely to have a mental health diagnosis, 3.3 times the rate of alcohol and substance abuse, a 70 percent higher rate of smoking, and a 30 percent higher rate of obesity. According to the most recent reports from IHS, AI/ANs die at higher rates than other Americans from tuberculosis (500 percent higher), alcoholism (514 percent higher), diabetes (177 percent higher), unintentional injuries (140 percent higher), homicide (92 percent higher) and suicide (82 percent higher).<sup>3</sup> A number of factors contribute to persistent disparities in AI/AN health status. AI/ANs have the highest rates of poverty in America, accompanied by high unemployment rates, lower education levels, poor housing, lack of transportation and geographic isolation. All of these factors contribute to insufficient access to health services.

As the Committee understands, it is the historic and persistent under-funding of the Indian healthcare system that has resulted in a lack of access to health care,

<sup>1</sup> 25 USC § 1601.

<sup>2</sup> Please note findings in, *The Health of Washington State: A Statewide Assessment of Health Status, Health Risks, and Health Care Services*, December 2007. Available: <http://www.doh.wa.gov/hws/HWS2007.htm>.

<sup>3</sup> Website <http://www.ihs.gov/PublicAffairs/IHSBrochure/Disparities.asp>. AI/AN data from 2004-2006 are compared with U.S. All Races data for 2005.

and has limited the ability of the Indian healthcare system to provide the full range of medications and services that would prevent or reduce the complications of health disparities. This is why our recommendations are so important to the work of this Committee.

#### **Per Capita Spending Comparisons**

The most significant trend in the financing of Indian health over the past ten years has been the stagnation of the IHS budget. With exception of a notable increase of 9.2 percent in FY 2001 and last year's 14 percent increase, the IHS budget has not received adequate increases to maintain the costs of current services (inflation, population growth, and pay act increases). The consequence of this is that the IHS budget is diminished and its purchasing power has continually been eroded over the years. As an example, in FY 2011, we estimated that it would take at least \$474 million to maintain current services. The final appropriation for the IHS was a mere \$16.5 million increase, falling short by \$454 million. This meant that Tribes had to absorb unfunded inflation and population growth by cutting health services.<sup>4</sup> The IHS Federal Disparity Index (FDI) is often used to cite the level of funding for the Indian health system relative to its total need. The FDI compares actual health care costs for an IHS beneficiary to those costs of a beneficiary served in mainstream America. The FDI uses actuarial methods that control for age, sex, and health status to price health benefits for Indian people using the Federal Employee Health Benefits (FEHB) plan, which is then used to make per capita health expenditure comparisons. It is estimated by the FDI, that the IHS system is funded at less than 60 percent of its total need.<sup>5</sup> The Tribal Needs Based Budget estimates that \$26 billion would fully fund the health care needs of Indian people through the IHS budget.

#### **Recommendation No. 1: NPAIHB Recommends That Congress Restore the \$228 Million Sequestration to the IHS Appropriation in FY 2014**

We respectfully request that the Committee include a recommendation in its Views and Estimates letter to restore sequestered funds to the IHS and include an appropriations amendment to correct this issue. The Budget Control Act of 2011 (BCA) established procedures designed to reduce the federal budget deficit. The BCA triggers a sequestration of discretionary and mandatory spending since the Joint Select Committee on Deficit Reduction and Congress failed to enact legislation to reduce the deficit. This has triggered automatic spending reductions, which include a sequestration of discretionary spending through FY 2021. The BCA includes references to requirements in the Balanced Budget and Emergency Control Act of 1985 (BBECA or P.L. 99-177), at Section 256, "Exceptions, Limitations, and Special Rules," which establishes limitations on the amount of funds that can be sequestered for certain programs (Subsection 256(k)). This section stipulates that IHS health services and facilities funds can be sequestered at no more than 2 percent.

However when the sequestration was carried out, OMB and Congress both interpreted that the IHS appropriation was subject to a full sequestration and that Subsection 256(k) did not apply. This resulted in a \$228 million reduction to the IHS appropriation. Both the Administration and Congress have indicated that they believed the IHS appropriation was protected from a full sequestration and could only be reduced by the 2 percent cap contained in Subsection 256(k).

It is the position of Northwest Tribes that this was a drafting error and unintended consequence. Other federal health care programs were protected up to a 2 percent sequestration in accordance with Subsection 256(k). It does not make sense to have a similar protection not apply to the IHS appropriation. IHS also provides expensive and vital health care services. Most importantly, we emphasize that while deficit reduction may be targeted at discretionary spending and recognize that the IHS appropriation falls into this funding classification however, IHS funding is not "discretionary" by its mere nature. This funding is provided in recognition of the United States federal trust responsibility to fulfill treaty obligations. To sequester this funding abrogates Congress' legal and moral responsibility under the federal trust relationship.

#### **Recommendation No. 2: Maintain Current Services by Funding Inflation and Population Growth**

The fundamental budget principle for Northwest Tribes is that the basic health care program must be preserved by the President's budget request and Congress.

<sup>4</sup>FY 2011 IHS Budget Analysis and Recommendations, Northwest Portland Area Indian Health Board, March 12, 2010; available: [www.npaihb.org](http://www.npaihb.org).

<sup>5</sup>Level of Need Workgroup Report, Indian Health Service, available: [www.ihs.gov](http://www.ihs.gov).



Preserving the IHS base program by funding the current level of health services should be a fundamental budget principle of Congress. Otherwise, how can unmet needs ever be addressed if the existing program is not maintained? Current services estimates' calculate mandatory costs increases necessary to maintain the current level of care. These "mandatories" are unavoidable and include medical and general inflation, federal and tribal pay act increases, population growth, and contract support costs.

Inflation and population growth alone using actual rates of medical inflation extrapolated from the Consumer Price Index (CPI) and IHS user population growth predict that at least \$302 million will be needed to maintain current services in FY 2014. Compound this with the fact that \$77 million of the President's proposed \$124 million increase is directed at staffing ten new facilities, will only leave \$47 million to cover current services. The President's request will fall short by \$255 million.

### **Recommendation No. 3: Fully fund IHS Contract Support Costs**

NPAIHB recommends that Congress fully fund IHS CSC in FY 2014. The choice of tribes to operate their own health care systems and their ability to be successful in this endeavor depends upon the availability of CSC funding to cover fixed costs. Without full funding, tribes are forced to reduce direct services in order to cover the CSC shortfall. Adequate CSC funding assures that tribes, under the authority of their Self-Determination Act contracts and Self-Governance compacts with IHS, have the resources necessary to administer and deliver the highest quality health care services to their members without sacrificing program services and funding. Most importantly, full funding of contract support costs is a contract obligation that the Federal Government must honor by law. The total amount required to fully cover contract support cost requirements in FY 2014 was estimated to be \$617 million in December of 2012 by the National Tribal Contract Support Costs Coalition."

NPAIHB also notes that the IHS FY 2014 Congressional Justification proposes damaging language on contract support costs that is intended to cap contract support cost (CSC) payments to Tribes and tribal organizations. This is a radical and unfortunate reaction to a recent court decision. The proposed language by the Administration is intended to block Tribes and tribal organizations from pursuing any contract claims for underpayments which occur next year. The proposal makes reference to a "table" that has been submitted to the appropriations committees showing each Tribe's and tribal organization's capped amount of CSC for 2014. The tables have not been disclosed with Tribe nor included any form of Tribal consultation. This proposed policy is inconsistent with the President's Executive Order on Tribal Consultation and in violation of the IHS own Tribal Consultation policy.

Thus, we respectfully request that the Committee reject the recommended changes by IHS until the Agency and Administration have consulted with Tribes about the proposed changes. We further recommend that the Indian Affairs Committee convene an oversight hearing on contract support cost issues to address future CSC funding issues in light of the recent *Ramah* decision.

### **Recommendation No. 4: Halt Facilities Construction as a Deficit Reduction Strategy**

The NPAIHB recommends that the Committee recommend in its Views and Estimates letter to the appropriators to place a moratorium on facilities construction funding including staffing packages for new constructed facilities as a deficit reduction measure. Congress must recognize that when new facilities are constructed it carries a liability for a staffing package that must be funded annually. The inequity of facilities construction funding is that it provides a disproportionate share of funding to a few select Tribal communities at the expense of the entire Indian health care system. The significance of facilities funding, both for construction and staffing new facilities, is that it removes funds necessary to maintain current services (pay costs, inflation, contract support costs, and population growth) from the IHS budget increase. While Congress undergoes deficit reduction and the Administration sequestration, it is inefficient to take valuable health care resources to build and staff new facilities at a select few Tribal communities while health services of Indian Country must be reduced to absorb budget cuts. It is more appropriate to maintain the current health care program by directing this funding to fund inflation and population growth in all health care programs.

On behalf of our forty-three in the Portland Area, we thank you for this opportunity to provide our recommendations on the FY 2014 IHS budget.

PREPARED STATEMENT OF ANDY TEUBER, CHAIRMAN/PRESIDENT, ALASKA NATIVE  
TRIBAL HEALTH CONSORTIUM

My name is Andy Teuber, I am the Chairman and President of the Alaska Native Tribal Health Consortium (ANTHC). For the FY 2014 Indian Health Service (IHS) budget we are requesting full funding for contract support costs (CSC). ANTHC also requests that the Administration's proposed statutory language regarding CSC—which would be a statutory “amendment-by-appropriation” effectively cutting-off the future contract rights of tribes—be rejected.

ANTHC is a statewide tribal health organization that serves all 229 tribes and over 140,000 American Indian and Alaska Natives (AI/AN) in Alaska. ANTHC and Southcentral Foundation co-manage the Alaska Native Medical Center (ANMC), the tertiary care hospital for all AI/ANs in Alaska. ANTHC also carries out virtually all non-residual Area Office functions of the IHS that were not already being carried out by Tribal health programs as of 1997.

**Full Funding for Contract Support Costs**

Indian tribes and tribal organizations are the only federal contractors that do not receive full CSC. There is a clear obligation on the part of the Federal Government to fully fund CSC. But more importantly, lack of full funding for CSC has a very real and detrimental impact on our programs that are already substantially underfunded.

CSC is used to reimburse our fixed costs for items that we are required to have but are not otherwise covered by the IHS budget, either because another governmental department is responsible or because the IHS is not subject to that particular requirement. Examples include federally-required annual audits and telecommunication systems. We cannot operate without these things, so when CSC reimbursements are underfunded we have to use other program funds to make up the shortfall, which means fewer providers that we can hire and fewer health services that we can provide to our patients.

The best projection available shows that the CSC shortfall for FY 2014 will be approximately \$140 million. Given these significant shortfalls, IHS's request for only a \$6 million increase in CSC for FY 2014 is extremely disappointing. Our disappointment is particularly acute when we consider that the BIA has requested near full funding for CSC for its programs.

The inadequate IHS request could return us to a situation similar to the one we endured from 2002 to 2009, when there were virtually no increases for IHS CSC appropriations and the CSC shortfall increased by over \$130 million. During that period, as our fixed costs increased every year, all major tribal health programs in Alaska were forced to lay off staff due to lack of funds.

The opposite is also true: when CSC reimbursement increases occur, vacant positions are filled. If ANTHC had full funding of our CSC requirements, we would be able to fill scores of provider and support positions, including enrollment technicians, financial analysts, medical billing staff, professional recruiters, maintenance technicians, security officers, information technology support and professional support staff.

ANTHC respectfully requests that the Federal Government honor its legal obligations to tribes and tribal organizations and fully fund CSC reimbursements by providing full funding for IHS CSC reimbursements in FY 2014.

**Rejection of Administration's Proposal to Cut-off Tribal Contract Rights**

Perhaps more worrisome than the inadequate funding requested by IHS for CSC in FY 2014 is IHS's proposal to give legal effect to a table that the Secretary, HHS, would provide to appropriators—the table would specify the maximum amount that each tribal contractor is entitled to be paid. Since tribal contracts are “subject to appropriations,” this proposal by the Administration could limit the amount that is “available” to tribes to the amount listed in the table.

This proposal to cap CSC is an unnecessary and unfair overreaction by the Administration to recent Supreme Court decisions that directed the Federal Government to pay tribes their full CSC. While the Administration seeks to limit CSC payments to tribes by this proposal, there is no similar proposed limit on the amount of services for which tribes have to perform under their compacts/contracts with the Federal Government. This is another example of how tribal contractors are unfairly singled-out from and treated adversely compared to any other federal contractors.

If adopted, the Administration's proposal would effectively make tribal contracts second-class contracts. While the Federal Government would pay all non-tribal contractors in-full, this proposal would direct tribes to carry-out their full contract responsibilities, yet receive less-than-full payment.

I appreciate your consideration of our recommendations to not accept any new statutory language that would limit the contract right of tribes for CSC and for additional CSC funding to improve the level, quality and accessibility of desperately needed health services for AI/ANs whose health care status continues to lag far behind other populations in Alaska and in this Nation.

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PREPARED STATEMENT OF ANGELA COX, VICE-PRESIDENT OF ADMINISTRATION,  
ARCTIC NATIVE SLOPE ASSOCIATION, LTD.

Chairwoman Cantwell, Vice Chairman Barrasso and other distinguished members of the Committee, thank you for the honor and opportunity to offer this testimony regarding the FY 2014 budget for the Indian Health Service (IHS). My name is Angela Cox. I am an Inupiaq from the northern most Tribe in the United States, and I am the Vice President of Administration for the Arctic Slope Native Association (ASNA). We are an inter-tribal health organization based in Barrow, Alaska and we are controlled by and serve eight federally recognized Tribes situated across Alaska's North Slope.

The anchor for all of our services is the IHS Samuel Simmonds Memorial Hospital in Barrow. Since 1996 we have operated this IHS facility under a self-governance compact with IHS, now compacted under Title V of the Indian Self-Determination Act. The region we serve is quite large, equal in size to the State of Minnesota.

I am here to provide testimony about our *new* IHS hospital, which is in the final stages of completion. This new 100,000 square foot state-of-the-art hospital is replacing the 25,000 square foot hospital which IHS built in 1963. We are excited about our new facility and must pause to thank this Committee's longstanding support of tribes and tribal organizations.

I am particularly proud to say that we contracted for the construction of this hospital under Title V, and that we are completing the project within budget. Next month (May 2013) we will receive our certificate of beneficial occupancy. In five months (September 2013) actual patient services will begin in the new hospital.

But, a brand new hospital is of little use if there is no new staffing. This is one reason why I am here to testify about IHS's proposed FY14 budget. The most significant impacts for ASNA in that budget are staffing for new facilities and contract support costs.

#### **New Hospital Staffing**

Our staffing requirements for the new hospital were developed over the course of several years, and IHS signed our final staffing package in May 2011. The new IHS hospital is four times larger than our existing facility and many more services will be available—assuming we have the staffing—including CT-scan, physical therapy, and optometry, as well as expansions of existing services. Many of the new services are currently only available by flying to Anchorage, which is over 700 air miles south of Barrow. Practically speaking, that means only some patients receive this care, and others simply go without. Providing this care locally will enhance patient health while producing considerable savings over travel and lodging costs in Anchorage.

Our existing staffing package for the old hospital is 116 FTEs (full time equivalent employees). IHS calculated the new hospital staffing package—granted, only at the standard 85 percent-of-capacity formula—to be 256 FTEs. That is a 140 FTE increase in staff. (If IHS were staffing the hospital at the level for which it was designed, based upon IHS's patient need methodology, the staffing would actually be 301 FTEs. As I said a moment ago, 256 FTEs is only 85 percent of full staffing.)

Although we require 140 new FTEs for a total of 256 FTEs, the FY14 budget only requests 49 new FTEs for a total of 165 FTEs. That is only 35 percent of the personnel required to bring the hospital online at 85 percent capacity. In other words, about half of the hospital will be empty and unused. (As a matter of fact, even though we are commencing patient services in current fiscal year 2013, ASNA is not slated to receive any FY 2013 IHS staffing funds.)

It makes little sense for Congress to finance the construction of a high priority new facility, and then to leave the facility half-staffed and unable to provide the care for which it was designed. We support immediate corrective action to staff the Barrow Hospital by adding 140 new FTEs, not a mere 49 FTEs.

#### **Contract Support Costs**

The underfunding of the staffing package is compounded by the underfunding of our contract support requirements. These are the funds which IHS is required, by contract, to pay ASNA for the cost of operating the Barrow Hospital and outlying village clinics.

ASNA's contract support has been underfunded since 1996. Each year since then we have had to redirect health care monies, including FTE staffing funds, to cover for IHS's failure to pay these costs in full. This Committee has always supported efforts to close the national gap in funding all tribal contract support cost requirements, and we thank this Committee for its hard work.

We appreciate that it is extremely difficult to find new funds and to reorder priorities in a "sequester" environment. But with all due respect to the President, the Administration, and to Director Roubideaux, honoring a contract in full is not a choice among priorities; it is a legal obligation.

I say this from direct experience. The Committee is well aware of the recent Supreme Court decision involving BIA contract underpayments, called *Salazar v. Ramah*. What may be less well known is that for 9 years we have been litigating identical claims against IHS. When the Supreme Court decided the *Ramah* case, the Supreme Court also issued an Order reopening our *Arctic Slope* case. A few weeks later, the Court of Appeals said we would be able to recover the unpaid portion of our contracts through the federal Judgment Fund, just like any other government contractor. Just this month, we finally settled our 1999 claim for \$1.4 million plus interest.

The proposed Budget would prevent us from securing justice on our contract claims in FY 2014. It would cap contract payments to ASNA and deprive us of our day in court for any losses. That is its stated purpose. We are shocked that the agency would propose this, particularly after having just lost decades of litigation in the Supreme Court. The answer when you lose a case in the Supreme Court is to honor the ruling, not look for a way to get around it.

I am particularly disappointed to see IHS call its new proposal a Supreme Court "recommendation." The Supreme Court never recommended cutting off our claims. The Supreme Court *vindicated* our claims. The agency has turned the Court's words in order to avoid paying our contracts in the future. The agency and the Department are not proposing to cut off the contract rights of its many non-Indian contractors, and it should not treat Indian contractors any differently.

Worse yet, the Administration has done this in secret, without any consultation whatsoever with the impacted Tribes. We understand the importance of the current fiscal challenges and would like to be part of the solution; this is the value of supporting tribal consultation.

In short, in the wake of the *Ramah* and *Arctic Slope* decisions, contract support costs should be fully funded at \$617 million. However, regardless of funding levels, no new language should be added that would cut off our contract rights under the Indian Self-Determination Act. If any proposal is going to be advanced to alter our contract rights under the Indian Self-Determination Act, it should be done through an open and transparent process that is led by the authorizing committees which wrote the Act, beginning with this Committee.

In my language we end our public statements by simply saying, Quyanapqak, or Thank you very much.

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PREPARED STATEMENT OF PATTY BROWN-SCHWALENBERG, EXECUTIVE DIRECTOR,  
CHUGACH REGIONAL RESOURCES COMMISSION

As Executive Director of the Chugach Regional Resources Commission (CRRC), located in Alaska, I am pleased to submit this testimony reflecting the needs, concerns and requests of CRRC regarding the proposed FY 2014 Budget. As is everyone, we are aware of the ongoing economic problems in the United States, and the growing concern over the federal deficit. While the government is trimming its spending, the Federal Government must still fulfill its legal and contractual spending obligations. The Bureau of Indian Affairs (BIA) not only has a legal and contractual obligation to provide funding for the CRRC, but the CRRC is able to translate this funding into real economic opportunity for those living in the small Alaska Native villages located in Prince William Sound and Lower Cook Inlet.

We have reviewed the President's FY2014 Budget and while we recognize and can appreciate the economic challenges, we urge this Committee to support an appropriations bill before the fiscal year end on September 30, 2013. The CRRC has yet to receive any of its FY2013 funding from the BIA. We are a small Alaska Native nonprofit organization and as such, do not have the capital to carry the projects in the villages for an extended period of time. In order to keep the projects running, we had to obtain a \$100,000 line of credit from the bank. Given the time taken to pass a budget and the Department of Interior's change to an electronic financial reporting system, the operations of CRRC projects and those of other tribal organizations have been placed in jeopardy. The process currently in place that allows this

amount of time to pass before getting the much needed funding to the tribes must be improved.

We describe first, our specific requests and recommendations on the budget, and then why these are so important to us and the Alaska Native Villages and their members who we serve.

## **1. Budget Requests and Recommendations**

### *CRRC Funding*

We are once again very pleased that the BIA has recognized the importance of natural resource funding for CRRC and has requested \$350,000 for CRRC in FY 2014 as part of the Trust-Natural Resources program, Tribal Management/Development subactivity. In its FY 2014 Budget Justification, the BIA recognized CRRC's role in developing the capabilities of its member Alaska Native Villages to better facilitate their active participation in resource use and allocation issues in Alaska. We urge the Committee to support CRRC funding as proposed by the BIA.

### *BIA Trust-Natural Resources Management*

We support the President's overall proposal to increase the BIA's Trust—Natural Resources Management programs, particularly the increases to Fish, Wildlife and Parks, and funding for projects that engage youth in the natural sciences. We urge the Committee to support this funding.

### *U.S. Fish & Wildlife*

The President is proposing a significant increase to the U.S. Fish & Wildlife Service budget. Currently, tribes in Alaska manage migratory birds through the Alaska Migratory Bird Co-Management Council (AMBCC), a regulatory body comprised of state, federal and Native representatives who develop regulations for the spring-summer harvest of migratory birds. The funding for this management program is provided and administered by the U.S. Fish & Wildlife Service; however, this funding is provided by decision of the Region 7 Regional Director on an annual basis and is financially inadequate to address all of the migratory bird issues currently being addressed by the AMBCC. We are recommend that \$1 million of the proposed increase to the USFWS budget be designated to the Alaska Migratory Bird Co-Management Council.

### *Contract Support Costs*

In regards to Contract Support Costs (CSC), the Administration is proposing to cap FY 2014 CSC payments to each Tribe. This action would reverse Supreme Court victories that directed the United States to honor fully Indian Self-Determination Act contracts and agreements. We do not support this proposed cap, nor do we support any amendments to the Indian Self-Determination through the appropriations process without any advance consultation with Indian and Alaska Native tribes.

## **2. Justification for CRRC's Budget Requests**

The importance of adequate funding for these programs is based on the following.

### *Chugach Regional Resource Commission History and Purpose*

CRRC is a non-profit coalition of Alaska Native Villages, organized in 1987 by the seven Native Villages located in Prince William Sound and Lower Cook Inlet in South-central Alaska: Tatitlek Village IRA Council, Chenega IRA Council, Port Graham Village Council, Nanwalek IRA Council, Native Village of Eyak, Qutekcak Native Tribe, and Valdez Native Tribe. CRRC was created to address environmental and natural resources issues and to develop culturally-sensitive economic projects at the community level to support the sustainable development of the region's natural resources. The Native Villages' action to create a separate entity demonstrates the level of concern and importance they hold for environmental and natural resource management and protection—the creation of CRRC ensured that natural resource and environmental issues received sufficient attention and focused funding. The BIA, in its FY Budget Justification, summarizes CRRC's work, stating

Initially, the emphasis of the CRRC natural resource program was on the development of fisheries projects that would provide either an economic base for a village or create economic opportunities for tribal members. In FY 1996, CRRC initiated a natural resource management program with the objective of establishing natural resource management capabilities in the villages to facilitate their active participation in resource use and allocation issues that affect the tribes and their members. The success of these programs from both an economic and a social standpoint have made them an integral part of overall tribal development.

Through its many important programs, CRRC has provided employment for up to 35 Native people in the Chugach Region annually—an area that faces high levels of unemployment—through programs that conserve and restore our natural resources.

An investment in CRRC has been translated into real economic opportunities, savings and community investments that have a great impact on the Chugach region. Our employees are able to earn a living to support their families, thereby removing them from the rolls of people needing state and federal support. In turn, they are able to reinvest in the community, supporting the employment and opportunities of other families. Our programs, as well, support future economic and commercial opportunities for the region—protecting and developing our shellfish and other natural resources.

#### *Programs*

CRRC has leveraged its \$350,000 from the BIA into almost \$2 million annually to support its several community-based programs. Specifically, the \$350,000 base funding provided through the BIA appropriation has allowed CRRC to maintain core administrative operations, and seek specific projects funding from other sources such as the Administration for Native Americans, the State of Alaska, BIA, U.S. Forest Service, U.S. Fish & Wildlife Service, the U.S. Department of Education, the *Exxon Valdez* Oil Spill Trustee Council, the North Pacific Research Board and various foundations. This diverse funding pool has enabled CRRC to develop and operate several important programs that provide vital services, valuable products, and necessary employment and commercial opportunities. These programs include:

#### *Alutiiq Pride Shellfish Hatchery*

The Alutiiq Pride Shellfish Hatchery is the only shellfish hatchery in the State of Alaska. The 20,000 square foot shellfish hatchery is located in Seward, Alaska, and houses shellfish seed, brood stock and algae production facilities. Alutiiq Pride is undertaking a hatchery nursery operation, as well as grow-out operation research to adapt mariculture techniques for the Alaskan Shellfish industry. The Hatchery is also conducting scientific research on blue and red king crab as part of a larger federally-sponsored program. Alutiiq Pride has already been successful in culturing geoduck, oyster, littleneck clam, and razor clam species and is currently working on sea cucumbers. This research has the potential to dramatically increase commercial opportunities for the region in the future. The activities of Alutiiq Pride are especially important for this region considering it is the only shellfish hatchery in the state, and therefore the only organization in Alaska that can carry out this research and production.

#### *Natural Resource Curriculum Development*

Partnering with the University of Alaska, Fairbanks, and the National Oceanic and Atmospheric Administration, CRRC has developed and implemented a model curriculum in natural resource management for Alaska Native students. This curriculum integrates traditional knowledge with Western science. The goal of the program is to encourage more Native students to pursue careers in the sciences. In addition, we are working with the Native American Fish & Wildlife Society and tribes across the country (including Alaska) to develop a university level textbook to accompany these courses.

In addition, we have completed a K–12 Science Curriculum for Alaska students that integrates Indigenous knowledge with western science. This curriculum is being piloted in various villages in Alaska and a thorough evaluation process will ensure its success and mobility to other schools in Alaska.

#### *Alaska Migratory Bird Co-Management Council*

CRRC is a member of the Council responsible for setting regulations governing the spring harvest of migratory birds for Alaska Natives, as well as conducting harvest surveys and various research projects on migratory birds of conservation concern. Our participation in this state-wide body ensures the legal harvest of migratory birds by Indigenous subsistence hunters in the Chugach Region.

#### *Statewide Subsistence Halibut Working Group*

CRRC participates in this working group, ensuring the halibut resources are secured for subsistence purposes, and to conduct harvest surveys in the Chugach Region.

#### **Conclusion**

We urge the Committee to support the \$350,000 included in the BIA's FY 2013 budget for CRRC. We further ask the Committee to support the President's requests

for increased funding for the BIA's Trust Natural Resources Management and to for Fish and Wildlife Service, but to designate \$1 million of the proposed increase to the USFWS budget to the Alaska Migratory Bird Co-Management Council. We also urge the Committee to oppose the Administration's proposal to cap CSC.

We appreciate the opportunity to submit this important testimony.

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PREPARED STATEMENT OF THOMAS "STONEY" ANKETELL, COUNCILMAN, ASSINIBOINE  
AND SIOUX TRIBES, FORT PECK RESERVATION

Chairwoman Cantwell, Vice Chairman Barrasso and Members of the Committee, my name is Thomas "Stoney" Anketell, I am a member of the Executive Board of the Assiniboiné and Sioux Tribes of the Fort Peck Reservation. On behalf of the Fort Peck Tribes and Chairman Floyd Azure, I am pleased to present testimony on the President's Fiscal Year 2014 Budget. We are a large, land-based tribe located in northeastern Montana. The Fort Peck Reservation encompasses 2.0 million acres. Our Native American population is over 8,000 and our Tribal enrollment is over 12,000 members. Many of our members continue to live in poverty.

I will focus my testimony on the following Tribal priorities:

1. *Support* the President's FY 2014 budget request for the BIA Construction account which includes a \$2.3 million increase for operation and maintenance of the Assiniboiné and Sioux Rural Water System (Other Program Construction);
2. *Support* and increase FY 2014 funding of \$1.865 billion for the Indian Health Service (IHS) Services budget for essential health care to Native Americans;
3. *Support* and increase funding of \$365 million for BIA Public Safety and Justice programs;
4. *Oppose* the Administration's unilateral changes to Contract Support Cost (CSC) policies.

#### **Sequestration**

Before I address these issues, I want to address the harmful effects that sequestration is having on our Reservation. If Congress does not find common ground, further reductions to Federal appropriations will occur in Fiscal Year 2014, and wipe out any funding increases Congress may include in the Interior, Environment and Related Agencies Appropriations bill. Already, we have begun to see reductions to our FY 2013 funding, early retirements of BIA and IHS officials, and the consolidation of agency offices. The indiscriminate across-the-board cuts and resulting "streamlining" efforts by federal agencies have harmful consequences to our members. Sequestration as a budget policy does not work. It is a terrible policy, especially for Indian Country.

The United States has a continuing trust responsibility to strengthen and empower tribal governments. Efforts to strengthen tribal governments and grow reservation economies are impeded when the budgets of the federal agencies we interact with are cut, when essential personnel take early retirement and are not replaced, and when the United States asks tribal governments to subsidize federal programs or refuses to honor our contracts and pay us our full amount of funding as required by law.

#### **Operation and Maintenance of the Assiniboiné and Sioux Rural Water System**

The High Plains have historically suffered from poor quality water supplies that have contributed to health problems for Indian tribes and surrounding communities. To correct this problem and to ensure an ample supply of municipal and industrial water, Congress passed the Fort Peck Reservation Rural Water System Act of 2000, Pub. L. 106-382. The Act authorized the construction of a rural water system to serve the Fort Peck Reservation and off-reservation communities with water from the Missouri River.

Since 2000, the United States has invested over \$130 million in construction of water intake, pump stations, and a now operational 30,000 square foot Water Treatment Plant, plus hundreds of miles of pipeline to serve the Fort Peck Reservation and off-reservation Dry Prairie communities. Under the statute, operation and maintenance of the Tribal rural water facilities is the obligation of the BIA to fully fund. Until the FY 2014 budget, the BIA has lagged behind in requesting adequate operation and maintenance funding to cover the operation and maintenance costs for our rural water system. As Congress has appropriated more funding for construction of our system—appropriations for the Bureau of Reclamation—the BIA has

not kept pace and funded our increased operating costs at 100 percent as mandated by the Act.

This year, if the BIA awards us \$750,000 in FY 2013 operation and maintenance funds, we still anticipate a \$182,000 budget shortfall before the end of the fiscal year. To date, we have received about \$175,000 in FY 2013 operating funds from the BIA and the Office of Facilities Management and Construction (OFMC), and only in the last few weeks. With over \$130 million in Federal appropriations invested in the project, we ask the Committee to urge appropriators to support the President's Budget and fund the \$2.5 million we require to properly operate and maintain our rural water system. The President's request for operations funding is less than two percent of the federal investment.

BIA operations funding is critical if we are to interconnect the Assiniboine and Sioux Rural Water System this year with the Dry Prairie Rural Water System, as required under the statute. Furthermore, future Bureau of Reclamation construction funding is dependent upon our ability to safely operate and maintain the Water Treatment Plant, intake, pump stations and existing water lines that we have contracted to maintain under the ISDA. Our ability to safely deliver municipal and industrial water to the Fort Peck Reservation and to Dry Prairie is dependent on operating funds from the BIA Construction account.

#### **Indian Health Service**

Like clean water, the programs and services of the Indian Health Service (IHS) are critical to the health and vitality of our members. The Fort Peck Tribes appreciate the Committee's strong commitment to Indian health and supporting increases to the IHS budget in recent years. We support and urge the Committee to support the President's request for additional funding for IHS Services (Hospitals and Health Clinics) (+\$54.6 million over the FY 2012 enacted amount) to address the urgent health care needs of Indian Country which continues to suffer higher rates of infant mortality, diabetes, heart disease and substance abuse than the general population.

We also encourage the Committee to support an increase in funding within the IHS Facilities account for Maintenance and Improvement (unchanged from FY 2012 at \$53.7 million), Health Care Facilities Construction (unchanged from FY 2012 at \$85 million), Equipment (unchanged at \$22.5 million) and Sanitation Facilities Construction (increased by \$7.7 million to \$207 million). With increases for staffing of health clinics and hospitals, the IHS Facilities budget must keep up to maintain and expand existing facilities and add additional equipment to serve tribal communities. As noted above, without adequate funding, IHS-supported health facilities will deteriorate more rapidly than they can be replaced.

##### *A. Fort Peck Dialysis Center*

Our dialysis center is at full capacity at 41 patients and over 100 pre-renal patients. We have over 1,000 diabetics on the Fort Peck Reservation. Our dialysis machines are old and parts are very expensive. Unless we can expand or build a new dialysis center on the Reservation, we will have to turn away patients from this life-giving care. They will need to travel great distances to reach the nearest dialysis center in Billings, MT, more than 300 miles away. We ask the Committee to support increased appropriations for equipment and facility expansion and to direct the IHS to provide the Rocky Mountain Region Indian tribes detailed information on the dialysis services to Indian patients in the Region.

##### *B. Purchased/Referred Care (formerly CHS)*

The need for Purchased/Referred Care continues to be of great concern to the Fort Peck Tribes in light of the fact that so many of our members require additional health care not provided by the IHS or Tribally operated programs. The Tribes fully support the President's proposal to increase funding for Purchased/Referred Care \$35 million above the FY 2012 enacted amount of \$843.5 million. With rising medical costs, we exhaust our \$5 million CHS allocation long before the fiscal year ends. In too many instances, Tribal members are not referred by IHS officials to private health care treatment because the IHS restricts the use of such funds to life threatening illnesses and injuries. Early detection and prevention can save lives. We urge the Committee to support an increase in FY 2014 funding levels for Hospitals and Clinics and Purchased/Referred Care so that more preventive care and services can be provided to detect and treat illnesses before they are life threatening. This will lower health costs in Indian Country.

#### **Public Safety and Detention**

As the Tribes noted last year, the need for increased funding for law enforcement and Tribal Courts remains a continuing priority for the Fort Peck Tribes. We great-



ly appreciate the increases Congress has provided for public safety programs and justice programs. Our detention facility will be completed in 2014 and the President's budget shows that staffing needs require 46 positions.

We ask the Committee to urge appropriators to support an increase in funding for Tribal courts above the \$1 million requested by the Administration, which did not factor into the FY 2014 budget the enactment of the Violence Against Women Act (VAWA). We recommend the Committee also support the \$5.5 million amount requested by the Administration to hire additional law enforcement personnel. Our two million acre reservation requires additional personnel to respond to domestic violence and other crimes. If both the Law Enforcement and Tribal Courts line items are increased proportionally, Tribal courts would receive additional funding to properly handle the anticipated increased case load work as more law enforcement officers patrol the reservation and enforce tribal laws.

We also support fully funding the programs authorized under VAWA in FY 2014. Funding should be increased in the Human Services line item to prevent domestic and child abuse, as well as the BIA's Public Safety account to permit Indian tribes to exercise the authority conferred under VAWA through stepped up law enforcement and social services work to identify at-risk Native American women and families.

The President's Budget also includes an increase of \$13.4 million for staffing "recently constructed" detention centers. The Fort Peck Tribes, with a grant from the Justice Department, are constructing a new adult detention facility. Under the Tribal Law and Order Act, the BIA, IHS, Department of Justice and the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) are required to work with Tribal governments to facilitate services to incarcerated tribal members and promote best practices. At the local level, however, there do not seem to be adequate resources for BIA and IHS officials to play as active a role in coordinating the substance abuse, mental health and family counseling, education and related services.

We further request that the Committee urge appropriators to support adequate operation and maintenance funding to the BIA or Office of Facilities, Environmental and Cultural Resources Management (OFECRM) within Indian Affairs, to ensure that tribally-constructed facilities, including those partially financed with Justice Department grants, are properly maintained. In the Rocky Mountain Region, facilities that are not properly maintained will deteriorate at a rapid rate. With limited infrastructure on the Fort Peck Reservation, it is important that existing and future facilities last in excess of their planned useful life.

#### **Contract Support Costs**

The Fort Peck Tribes appreciate this Committee's support to fund contract support costs. We strongly support full funding for contract support costs. The President's proposed increases will not close the gap in our contract support cost needs.

We strongly oppose the Administration's proposal to alter the manner in which contract support costs are paid to Indian tribes beginning in FY 2014. Under the Indian Self-Determination Act (ISDA) the United States is required to pay the full amount of contract support costs Indian tribes require to properly administer ISDA contracts.

The United States Supreme Court has held that if the BIA or IHS fails to pay Indian tribes their full contract support cost amount, tribes may file a claim to recover the underpayment. The BIA and the IHS propose to cap each Indian tribe's contract support cost payment for FY 2014 by including a contract-by-contract table in the appropriations bill. The Administration's action would deny us the ability to bring such claims against the agencies that pay less than our full contract support cost amount.

The Administration's proposal was made without any consultation of tribal governments, contrary to the agencies' respective Indian consultation policies and to the President's own statements and memorandum concerning the importance of government-to-government consultation. We therefore ask the Committee to oppose the Administration's proposal. Congress must fully fund all contract support costs and direct the agencies to honor the ISDA and the terms of our contracts and agreements with them.

Thank you for providing the Fort Peck Tribes the opportunity to share our comments concerning the President's proposed budget for FY 2014.

PREPARED STATEMENT OF DAVID Z. BEAN, COUNCILMAN, PUYALLUP TRIBE OF  
INDIANS

Ms. Chairwoman and members of the Committee, thank you for the opportunity to provide testimony on the President's FY 2014 budget for American Indian and Alaskan Native programs. My name is David Z. Bean, Tribal Council Member for the Puyallup Tribe of Indians. The Puyallup Tribe is an independent sovereign nation having historically negotiated with several foreign nations including the United States in the Medicine Creek Treaty of 1854. This relationship is rooted in Article I, Section 8, of the United States Constitution, federal laws and numerous Executive Orders. The governing body of the Puyallup Tribe of Indians is the Puyallup Tribal Council, which upholds the Tribe's sovereign responsibility of self-determination and self-governance for the benefit of the 4,416 Puyallup tribal members and the 25,000 plus members from approximately 355 federally recognized Tribes who utilize our services. The Puyallup Reservation is located in the urbanized Seattle-Tacoma area of the State of Washington. The 18,061-acre reservation is a "checkerboard" of tribal lands, Indian-owned fee land and non-Indian owned fee land. Our reservation land includes parts of six different municipalities (Tacoma, Fife, Milton, Puyallup, Edgewood and Federal Way).

The following written testimony being submitted to the Senate Committee on Indian Affairs documents the Puyallup Tribe's views on the President's FY 2014 Federal Budget. On April 10, 2013, President Obama delivered his delayed FY 2014 Budget to Congress. The Budget proposal focuses on job creation and the beginning steps to reducing the nations projected deficits. Within the budget, \$2.183 billion is provided for the Operation of Indian Programs. This represents an overall increase of \$37.2 million over the FY 2012 enacted level. For the Indian Health Services, \$5.5 billion is provided, an increase of \$116 million over the FY 2012 enacted level. We appreciate the increased funding provided for the operation of Indian programs within the Bureau of Indian Affairs and the Indian Health Services. However, years of inadequate funding, negative effects of inflation, and the impacts of sequestration on the FY 2013 and FY 2014 funding levels will impact the Tribe's ability to fully exercise self-determination and self-governance. As negotiations proceed on the FY 2014 budget and future appropriations, the Committee's support to ensure adequate funding is provided for the operation of Indian programs will be paramount. To preserve increased funding levels realized in recent years and contained in the proposed FY 2014 budget for the Bureau of Indian Affairs and the Indian Health Service, Congress and the Administration should view these increases as new "base funding" and be held harmless from across the board cuts to programs that have been historically underfunded. Specific issues and needs are:

**Department of Interior—Bureau of Indian Affairs**

*Public Safety & Justice*

The FY 2014 Budget request includes \$363.4 million for BIA Public Safety & Justice. This represents a \$19.9 million increase over the FY 2012 enacted level, which is fully supported by the Puyallup Tribe. The \$96.9 million for Tribal and BIA detention and corrections funding is of great importance to the Puyallup Tribe. Within this amount, \$13.4 million increase will be directed to fund staffing, training, operations and O&M costs at newly-constructed tribally operated detention facilities. While this increase is supported by the Puyallup Tribe, it is of concern that current and ARRA funded facilities will remain understaffed and underfunded. The Department of Justice funded 13 tribes for the construction and/or expansion of detention facilities. According to the BIA Greenbook, five new or expanded facilities will become operational by the end of FY 2013, with additional facilities coming on-line in FY 2014. It is estimated that 291 additional staff will be needed to operate these facilities. In FY 2009, the Puyallup Tribe received a Department of Justice ARRA grant, in the amount of \$7.9 million to construct a 28 bed adult corrections facility. The Tribe has addressed all special Terms and Conditions of the Grant Award, completed facility environmental documentation, design, executed final construction contracts and performed the Groundbreaking Ceremony on March 28th, 2013. The Project will be completed and be coming on-line by the end of the 2nd Quarter of Fiscal Year 2014. Over the past four years the Puyallup Tribe has been working closely with national and regional staff of the BIA-Office of Justice Services on identifying the future operating and staffing costs associated with the Puyallup Tribe's new adult corrections facility. We have submitted a P.L. 93-638 contract request to the BIA for Operations and Maintenance funding for the new facility, including Pre-Award, Start-up, Transitional funding, Staffing and O&M funding. We are requesting support from the Committee on our contract request to the BIA for O & M funding for the Tribe's Adult Corrections facility, estimated at \$3.2 million annually.

Further, the Puyallup Tribe requests the Committee support increasing funding for BIA Detention/Corrections by \$32.2 million to reflect actual funding need. In addition, we have submitted a P.L. 93-638 contract request to the BIA for Tribal Court funding, including pre-award and start-up funding. In FY 2012, the BIA was able to fund only one-third of actual need of pre-award and start-up funding requests. We continue to encourage the Committee to support an increase in Tribal Court funding at \$73.2 million, an increase of approximately three times the FY 2012 base funding. Increased funding would be used for judges, prosecutors, public defenders, probation officers, court staff and development of diversion programs designed to reduce recidivism within the tribal judicial system.

#### *Natural Resources Management*

The Puyallup Tribe as stewards for land and marine waters in the Usual and Accustomed fish, shellfish and wildlife areas has treaty and governmental obligations and responsibilities to manage natural resources for uses beneficial to the Tribal membership and the regional communities. Despite our diligent program efforts, the fisheries resource is degrading and economic losses are incurred by Native and non-Native fishermen and surrounding communities. Our resource management responsibilities cover thousands of square miles in the Puget Sound region of the State of Washington with an obligation to manage production of anadromous, non-anadromous fish, shellfish and wildlife resources. Existing levels of support are inadequate to reverse the trend of resource/habitat degradation. For FY 2014, \$9.613 million is provided for BIA Western Washington Fisheries Management, a small increase over the FY 2012 enacted level of \$8.256 million. As the aboriginal owners and guardians of our lands and waters it is essential that adequate funding is provided to allow tribes to carry-out our inherent stewardship of these resources. The Puyallup Tribe will continue to secure increased funding for Hatchery Operations and Maintenance. The President's FY 2014 budget contains \$6.842 million for Tribal Hatchery Maintenance, compared to the FY 2012 enacted budget of \$4.83 million and \$1.85 million for Tribal Hatchery Operations, compared to the FY 2012 enacted budget of \$1.6 million. The Puyallup Tribe supports the President's FY 2014 funding requests for Tribal Hatchery Operations and Maintenance. The Timber, Fish and Wildlife (TFW) Supplemental and U.S./Canada Pacific Salmon Treaty programs has allowed for the expansion of tribal participation in the state forest practice rules and regulations and participation in inter-tribal organizations to address specific treaties and legal cases, which relate to multi-national fishing rights, harvest allocations and resource management practices. We strongly support providing funding for the T.F.W. at the President's FY 2014 request of \$3.082 million and U.S./Canada Pacific Salmon Treaty program funding at \$4.844 million, an increase of \$640,000 above the FY 2012 enacted level. The Puyallup Wildlife Management program has been the lead agency in management activities to benefit the South Rainier elk herd since 2004. The South Rainier elk herd is the primary stock of elk harvested by the Puyallup Tribe. The Tribe has not only established more reliable methods for population monitoring, but has also been proactive in initiating habitat enhancement projects, research and land acquisition to ensure sustainable populations of elk for future generations. Funds that are available to the Tribe have been on a very competitive basis with a limited amount per program via USFWS Tribal Wildlife grants and the BIA Unresolved Hunting and Fishing Rights grant program. The Tribe supports providing base funding to the Tribes Wildlife Management Program in the amount of \$100,000 through the BIA Unresolved Hunting and Fishing Rights program in FY 2014 Appropriations.

#### *Education*

The FY 2014 Budget requests funding of \$802.7 million for the Education program, an increase of \$7.2 million, less than a 1 percent increase above the FY 2012 enacted level. We operate the pre-K to 12 Chief Leschi Schools which include a verified 2011-2012 School student enrollment of 910 + students, including ECEAP and FACE programs. With an increasing number of pre-kindergarten enrollment, Chief Leschi Schools will exceed design capacity in the near future. Additional education facility space will be required. The Puyallup Tribe is concerned and strongly disagrees with the proposed elimination of funding for the Replacement School Construction line item. We do not believe that the underfunded Facilities Improvement and Repair program will be able to address the growing need for new education facilities. Additional, the cost of operation and maintenance of the Chief Leschi School facilities continues to increase in the areas of supplies, energy and student transportation costs. The Tribe will work with Congress and the BIE to increase funding in FY 2014, including; Tribal Grant Support Cost for Tribally Operated Schools—\$23 million above the FY 2012 enacted level; Replacement School Construction—

\$17.8 million; Student Transportation—\$52.796 million; and Elementary and Secondary Programs—\$526.4 million.

*Operations of Indian Programs & Tribal Priority Allocations*

The President's FY 2014 budget is in drastic need for increased funding for the BIA Operations of Indian Programs. Within the Operations of Indian Programs is the Tribal Priority Allocations (TPA). The TPA budget functions include the majority of funding used to support on-going services at the "local tribal" level, including natural resources management, child welfare, other education, housing and other tribal government services. These functions have not received adequate and consistent funding to allow tribes the resources to fully exercise self-determination and self-governance. Further, the small increases "TPA" has received over the past few years has not been adequate to keep pace with inflation. The Puyallup Tribe supports funding for the Operation of Indian Programs at the FY 2014 request of \$2.183 billion and Tribal Priority Allocations at a minimum of \$894 million, an increase of \$15.5 million above the FY 2012 enacted level. We further support an increase in funding for Indian Child Welfare (TPA) by \$45 million; Increase Urban Indian Child Welfare programs by \$15 million; and increase BIA Child Welfare Assistance by \$55 million.

**Department of Health and Human Services—Indian Health Service**

The inadequate funding of the Indian Health Service is the most substantial impediment to the current Indian Health system. The Puyallup Tribe has been operating healthcare programs since 1976 through the Indian Self-determination Act, P.L. 93-638. The Puyallup Tribal Health Authority (PTHA) operates a comprehensive ambulatory care program to the Native American population in Pierce County, Washington. The current patient load exceeds 9,000, of which approximately 1,700 are Puyallup Tribal members. There are no Indian Health Service hospitals in the Portland Area so all specialties and hospital care have to be paid for out of our contract care allocation. The contract care allocation to PTHA has been significantly inadequate to meet actual need since FY 2004 when the Puyallup Tribe subsidized Contract Health with a \$2.8 million contribution. For FY 2013 the tribal subsidy had reached a staggering \$6 million. Given that the PTHA service population is only comprised of 17 percent Puyallup Tribal members, Tribal budget priorities in FYs 2012 and 2013 have made continued subsidies to the PTHA financially difficult for the Puyallup Tribe. The FY 2014 Budget requests \$5.5 billion in discretionary budget authority for the Indian Health Service. This represents a \$116 million increase over the FY 2012 enacted level. For Health Services programs the FY 2014 budget request is \$4.43 billion, an increase of \$112 million over the FY 2012 enacted level. Included within the increases are funding for Contract Support Costs (\$477.2 million—\$100 million short of actual need), Purchase/Referred Care (\$878.5 million), IHS Facilities (\$448.1 million) and Alcohol and Substance Abuse funding (\$196.4 million). The Puyallup Tribe fully supports funding increases for existing IHS programs and will work with Congress to increase funding for IHS and the critical programs administered by this Agency. However, if the Congress and the President do not agree to an alternative to the existing sequestration, any increases to IHS funding in the FY 2014 budget will be eliminated.

**Sequestration**

Finally, it is the Tribe's sincere hope that the FY 2014 bill language remedy the drastic cuts to FY 2013 appropriations implemented under the sequester. As we have already stated, tribal programs have been historically underfunded and this is in spite of the fact that the Federal Government maintains a sacred trust responsibility over Indian affairs. Should sequestration go into effect October 1, 2013, the proposed FY 2014 Interior Department could be reduced to \$10.966 billion, a \$467.6 million decrease below the FY 2012 enacted level for the Interior Department, taking Indian Country and the Nation in the wrong direction. The across the board 5 percent cuts to already underfunded tribal programs will have devastating impacts on Indian Country and reverse or delay tribal efforts, such as my Tribe's, to improve our economies and the health and well-being of our Tribal members.

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PREPARED STATEMENT OF HON. DENNIS SMITH, CHAIRMAN, SHOSHONE-PAIUTE TRIBES, DUCK VALLEY RESERVATION

Chairwoman Cantwell, Vice Chairman Barrasso, and members of the Committee, my name is Dennis Smith. I am the Chairman of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation. On the Tribes' behalf, I am pleased to submit testimony concerning the FY 2014 Budget for the BIA, BLM and IHS.

I am here today with a heavy heart. Earlier this month, my Tribe suffered a great loss. On April 4, 2013, my predecessor, Terry Gibson, walked on. He was only 52 and suffered a heart attack. He was a proud member of the Shoshone-Paiute Tribes and a strong defender of our sovereignty. He worked very hard to improve the health and spirit, education and economic condition of our Tribal members. That is where he devoted his considerable energies, including time here in Washington. We will carry on, but he will be deeply missed.

I will focus my testimony on the following priorities, priorities that were important to Terry:

- Support and build on the President's budget request and increase funding within the Public Safety and Justice, Human Services, Education, Indian Guaranteed Loan and Construction accounts for BIA to adequately staff, operate and maintain juvenile detention facilities, and *support and increase* the President's budget for the IHS Services account so that Indian tribes may better coordinate health, substance abuse, mental health and related programs and services in such facilities under the Tribal Law and Order Act, Violence Against Women Act and related Federal laws.
- *Support* an additional \$1 million above the President's request for the Bureau of Land Management to fund Tribal cultural activities and to protect cultural sites and resources important to the Tribes under the Owyhee Public Land Management provisions of the Omnibus Public Land Management Act, Pub. L. 111-11, and support the President's FY 2014 Budget request to fund our Water Settlement (\$12 million) under the same Act.
- Support an *increase* to Contract Support Costs (CSC) funding within the IHS budget of \$140 million above the President's request;
- *Oppose* the Administration's unilateral proposal to cut off our contract support cost rights under the Indian Self-Determination Act (ISDA)—rights we currently hold in common with every other government contractor in America.

The Duck Valley Indian Reservation is a large, remote and rural reservation that straddles the Idaho-Nevada border along the east fork of the Owyhee River. The Reservation encompasses 450 square miles in Elko County, Nevada and Owyhee County, Idaho. Over 1,700 tribal members, out of 2,000 enrolled members, reside on the Reservation. Tribal members make their living as farmers and ranchers, though many are employed by the Tribes. Since the mid-1990s, we have contracted the duties of Bureau of Indian Affairs (BIA) and Indian Health Service (IHS) under Self-Governance compacts that we negotiated under the ISDA. We also carry out other federal programs on behalf of HUD and the Federal Highway Administration.

We owe it to our members to provide them with a safe community with adequate programs, services and facilities to meet their needs. We are quite different from other communities as we do not have nearby localities to shore up services and programs when Federal appropriations are cut. The obligations of the United States to the Nation's federally recognized Indian tribes are not discretionary acts by the United States; these obligations are a direct product of the trust responsibility arising from our treaties, as well as statutes, executive orders, and Federal court decisions that protect and strengthen tribal governments and our members.

### **Sequestration**

I am very concerned about sequestration because it dishonors the Federal trust responsibility. This year, Indian tribes are taking a hard hit. Our Federally-funded programs—which do not have enough money to begin with—are hit with a 5 percent sequestration cut. This is money we cannot replace. We do not have a tax base, and when our ISDA monies are cut, we lose other matching funds and third party collections. If Congress does not replace sequestration by October 1, 2013, larger cuts will wipe out the President's proposed FY 2014 funding increases, and drop our funding levels below FY 2012 levels. Already we see the early retirement of many Federal agency personnel who are not being replaced. How does the Federal Government honor the trust responsibility when no one answers the phone or returns an email?

1. *Fund the Owyhee Initiative.* The Owyhee Initiative is a joint effort by ranchers, recreationalists, County and State officials, and the Shoshone-Paiute Tribes to protect, manage and appropriately use Bureau of Land Management (BLM) administered lands in Owyhee County, Idaho by designating the lands Wilderness Areas and the waters Wild and Scenic Rivers. In 2009, Congress passed the Omnibus Public Land Management Act of 2009, Pub. L. 111-11. Our subtitle of that Act is the Owyhee Public Land Management (§§ 1501–1508); another is our Water Settlement (§§ 10801–10809). We are about to exhaust non-recurring funding and require \$1 million to support important cultural resource protection activities.

One of the objectives of the Owyhee Initiative is to allow the Tribes to protect cultural and religious sites located on BLM lands in Owyhee County through coordination with BLM and County officials, and to permit the Tribes to gather native plants for food or ceremony and to hunt and fish on these lands as we once did. Section 1506 of the Omnibus Act requires the Secretary of the Interior to coordinate with the Shoshone-Paiute Tribes to implement our Cultural Resources Protection Plan, and to enter into agreements with us to “protect cultural sites and resources important to the continuation of the traditions and beliefs of the Tribes,” and to share in the management of cultural resources. Section 1508 authorizes such sums “as are necessary.” With \$250,000 in non-recurring funding that we received from BLM in 2010, and an additional \$500,000 in non-recurring funding, we purchased equipment (pickup trucks, an ATV, a UTV and two airplanes, a Cessna 150 (2-seater trainer) and a Cessna 182 (4 seater), which we hangar outside Boise, to patrol the wilderness lands and notify BLM when we see activities near sacred sites. We hired a Chief Tribal Ranger (the former Owyhee County Sheriff) and Tribal Cultural Director. Owyhee County and Owyhee Initiative officials support our efforts. Due to lack of funds, our activities have been severely curtailed.

It was Terry’s wish to fund a Reserve Ranger Program for Tribal youth this summer, so that Tribal youth could experience the wilderness areas, be educated about the importance of these lands to the Tribes, let them gather native plants for ceremonies, and enhance their understanding and appreciation of the Shoshone-Paiute people, our traditions and culture. In his last visit here, he asked for help to fund the Youth Ranger Program with FY 2013 funds. The FY 2014 Budget includes a \$1.5 million increase in the Wildlife Management Program and \$1.3 million increase in the Soil, Water, and Air Management to support BLM’s Youth in the Great Outdoors program. The Reserve Ranger Program was Terry’s way to help Tribal youth connect to their roots. Please support additional funding to appropriate programs within the BLM, BIA and Fish & Wildlife budgets to support Shoshone-Paiute cultural programs and activities under the Owyhee Initiative and make Terry’s wish come true.

2. *Duck Valley Juvenile Services Center.* Infrastructure is in short supply on the Duck Valley Reservation. Due to a black mold infestation, we must replace our Tribal government buildings at a total estimated cost of \$15-\$16 million (2012 dollars). We now work out of trailers. To make the project affordable, we have divided the project into six phases. We are also renovating the Duck Valley Juvenile Services Center, a secure, detention and treatment facility, our first youth detention/treatment facility on the Reservation. We were selected by the BIA this year to participate in a pilot project under the Tribal Law and Order Act to design and implement best practices to deliver appropriate services to incarcerated Tribal adults and juveniles. However, both program and construction funds are inadequate. We need help to finance construction to build infrastructure on the Duck Valley Reservation. We oppose the President’s cuts and ask for increases for BIA Construction (cut \$17 million), Federal loans/guarantees, and IHS Mental Health (\$80 million), Alcohol & Substances Abuse (\$196 million) and Purchased/Referred Care programs.

As for construction, very few projects in Indian country can be built or reconstructed with only BIA or IHS construction funds alone. And when they are built, and certificates of occupancy issued, it is critical that staffing, operation and maintenance funds be available to us so that the facilities open and operate and do not sit idle. It is therefore critical that Congress increase funding in the FY 2014 Budget for the BIA’s Public Safety and Justice, Human Services, Education, Indian Guaranteed Loan and Construction accounts, and IHS and other DHHS programs to ensure that agency funds are available to permit Indian tribes to deliver all required program services in a comprehensive manner. This is especially important for juvenile facilities.

We are 140 miles south of Boise, Idaho, and 98 miles north of Elko, Nevada. Poverty and unemployment are widespread. As a result, some of our members struggle with alcohol and substance abuse, including our youth. For over a decade, it has been our goal to construct a secure, juvenile detention and treatment service center on our Reservation, rather than having our young members sent hundreds of miles to non-Indian detention facilities, far from home, family and culturally appropriate treatment. These transports also remove BIA law enforcement officers from the Reservation, which contributes to crime and delayed response times.

Next month, we will put out to bid the renovation of our existing Duck Valley Juvenile Services Center. When built, it will provide a modern and safe 19-bed youth detention and treatment facility so that Tribal youth can be housed on the Reservation. We were selected by the BIA for a pilot program (to provide for a much needed improvement of juvenile treatment service) under the Tribal Law and Order Act to design and implement best practices to deliver appropriate services to incarcerated

Tribal adults and youth. But Federal funding is inadequate to help coordinate Tribal, BIA, BIE, IHS, Justice Department and DHHS's Substance Abuse and Mental Health Services Administration (SAMHSA) stakeholders, and to implement these programs for adult and youth offenders. Secretarial-level Memoranda of Agreements between Justice, IHS and BIA will not work at the project level when there are insufficient funds appropriated to the agencies and Tribes to deliver well-coordinated programs and services.

IHS personnel have not been sufficiently engaged to coordinate substance abuse, mental health and related health services for incarcerated adult and youth offenders. SAMHSA officials are taking a lead with BIA Law Enforcement officials, but a scheduled meeting on the Reservation was postponed due to sequestration cuts. We need additional health resources to recruit, hire and house substance abuse and mental health counselors to treat Tribal youth when the detention facility opens, as well as to house detention and law enforcement personnel. Only by pooling available resources in a coordinated manner can we halt and treat the behavioral issues that contribute to the cycles of substance abuse, crime and recidivism on our Reservation.

We support the President's proposed increases of \$17.8 million for Public Safety and Justice, including \$13.4 million to staff newly-constructed detention facilities; we oppose \$10 million cuts to the Human Services and construction budgets, which could fund more domestic and child abuse programs, especially with enactment of VAWA. We oppose the elimination of the BIA HIP Program (\$12 million cut) as housing is in short supply on the Reservation.

3. *Contract Support Costs.* This Committee understands the importance of CSC to tribal governments. The President's Budget for FY 2014 again provides far too little for CSC funding for IHS. By not paying the full CSC amount, IHS forces us to cut program services or cut staffing to pay our fixed administration costs. This only penalizes the people we serve. At last count, we were underpaid over \$600,000 in CSC funding—a huge sum in lost health care in our small community.

The IHS (and the BIA) would compound the problem for FY 2014. First, IHS has requested only \$477 million when it admits it needs at least \$617 million to honor all contracts. Second, the IHS and BIA propose to individually cap FY 2014 payments of each tribe, meaning we would lose all the damage claims we have under existing law for the underpayments. This irresponsible and radical idea was developed in secret and without any prior tribal consultation whatsoever. We have already accumulated \$3,154,312 in past losses, following the \$4 million settlement of our original claims in the *Cherokee—Shoshone-Paiute* Supreme Court 2005 litigation; why in the world would we agree to allow the government to repeat past travesties?

Over a decade ago, I walked the halls of Congress to increase CSC funding for Indian tribes. We were among the first to file suit against the United States. We won in the Supreme Court, with a ruling that our self-governance compacts are every bit as solid as any other government contract. It is bad enough that tribal contractors are the only government contractors that are regularly underpaid; it would add grave insult to that injury to now cut off all recourse in the courts—especially if the only reason is that we are Indians. This Administration is bound by its obligations to consult with Indian tribes before making policy changes that impact tribes. This Committee should oppose the Administration's CSC proposal and insist that the BIA and IHS consult with Indian tribes first before changing in any manner the means by which CSC funds are paid to tribes. Thank you.

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PREPARED STATEMENT OF HON. JOSEPH PAVEL, VICE-CHAIRMAN, SKOKOMISH TRIBE  
OF WASHINGTON STATE

I am Joseph Pavel, Vice-Chairman of the Skokomish Tribe of Washington State. I would like to thank the Committee for the opportunity to present testimony on the President's 2014 budget regarding American Indian/Alaska Native programs within the Interior Department, Indian Health Service and Environmental Protection Agency. The Skokomish Indian Tribe is responsible for providing essential governmental services to the residents of the Skokomish Indian Reservation, a rural community located at the base of the Olympic Peninsula with a population of over 2,000 people, including approximately 700 Tribal members. The Tribe provides services through various departments—Tribal Administration, Community Development, Information Services, Early Childhood Education (including Head Start), Education, Health Clinic, Housing, Legal, Natural Resources, Public Safety, Public Works, and Tuwaduq Family Services. The Tribal government also works closely with community members to identify needs and prioritize services. Adequate federal

funds are critical to the Tribe's ability to address the extensive unmet needs of our community.

## **I. Bureau of Indian Affairs**

### *Law Enforcement*

We support the President's proposal to increase funding for BIA Public Safety and Justice Programs. The Skokomish Department of Public Safety (SDPS) provides 24/7 law enforcement services for the Tribe. SDPS is responsible for patrolling and enforcing justice both within the Tribe's 5,300-acre Reservation, and throughout the Tribe's 2.2 million-acre Treaty area where the Tribe has Treaty-protected hunting, fishing and gathering rights. SDPS currently has a Chief of Police, 7 full-time officers, and 1 part-time officer. Despite SDPS's best efforts, it cannot meet all of its responsibilities unless staffing is increased.

Officers respond to all manner of calls for police services including a wide range of felonies and misdemeanors. They patrol both land and water in Hood Canal Basin, enforcing Tribal laws, treaty rights, court orders, and federal and state statutes. Staff is stretched thin. In addition to its primary responsibilities in patrolling the Reservation and the usual and accustomed areas where Tribal members make their living fishing and hunting, the SDPS performs other necessary duties. For example, the SDPS officers (who are cross-deputized) assist the Mason County Sheriff's Office and the Washington State Patrol. The SDPS is also tasked with first response in the event of a natural disaster or emergency management situation.

But with only 4 officers available for day-to-day patrol duties, individual officers often work alone. Understaffing exposes both the community members in need of assistance and SDPS officers to undue danger. Unfortunately, this is SDPS's reality. To meet mandated responsibilities, staffing must be increased. Vacancies due to illness, training and other leave force the Chief of Police to handle patrol duties. Budget limitations severely restrict overtime. Often gaps in shift coverage go unfilled relying on an "On Call" response. This gravely increases the risk to the safety of the community and creates service gaps affording opportunities for increased criminal activity. A memorandum of understanding with the Mason County Sheriff's Office helps to fill some of these gaps on an as-needed basis. However, the costs are significant and there are times when a Deputy simply is not available.

The SDPS strives to get the most from every dollar spent and is constantly working to improve in every aspect. An outdated Records Management System (RMS) was recently replaced. The new RMS will provide more succinct statistical crime data and will be instrumental in the proactive deployment of SDPS personnel. A new community policing plan is also in place, as well as a new training plan. But because of limited funds, progress is slow.

Today, the Skokomish Reservation faces many of the same issues as other communities. Domestic violence and substance abuse critically impact the Tribe. The Skokomish Tribe also hosts visitors from the surrounding communities as well as a large tourist trade. This is the avenue through which narcotics are brought into the Reservation. With the drug trade comes many other associated undesirable issues—theft, burglary and poaching, to name a few. There is a sense of helplessness in the community, resulting in crimes often going unreported. SDPS does not have the resources to effectively stem the tide of this illicit activity.

In order for the Skokomish Tribe to ensure safety, service and protection of the community, an immediate and dramatic increase in staff is needed. To properly carry out its responsibilities SDPS needs another 7 officers. Dedicated resources for investigations, community policing and crime prevention alone require a minimum of 3 additional officers. The Tribe simply cannot provide these resources so necessary for the protection of our community without the additional funding assistance of the Federal Government.

### *Tribal Court*

The Skokomish judiciary handles a high volume of cases relative to our community's population. The Court currently has over 262 open criminal, civil, and family court cases. The Skokomish Tribal Court is in the midst of a major restructuring project as a result of the Tribe's unwavering commitment to providing meaningful access to justice for all of its community members. Specifically, the Tribe has recently begun providing public defense services to its Tribal members who are facing criminal charges. In addition, the Tribe has recently recruited a new prosecutor, probation officer, and a pool of Tribal Court judges who are actively working to encourage alternatives to incarceration, while reducing criminal recidivism.

We support the President's proposal to increase funding for Tribal Courts, but the increase proposed is not enough. To protect the tribes from the adverse impacts of sequestration and the demands on our courts, Congress must increase funding sub-



stantially so that the Tribal Court in cooperation with the Public Safety Department can continue its momentum in improving our judiciary to reflect the needs and values of the Skokomish community. This includes fully implementing the Tribe's retrocession from Public Law 280, consistent with the standards for implementation of the Tribal Law and Order Act of 2010, and ensuring that our most vulnerable community members are fully protected through proper implementation of the newly amended Violence Against Women Act.

#### *Natural Resources*

We strongly support the President's proposal to increase funding for Trust-Natural Resources Management programs by \$34.4 million over FY 2012 levels. Increased funding to foster sustainable stewardship and development of natural resources and support fishing, hunting and gathering rights on and off-reservation, is essential to our people who depend on natural resources for their livelihood.

For example, the Pacific Salmon Treaty grant supports the Tribe's federally mandated salmon sampling program. Throughout the entire salmon season, and to ensure proper management of the resources, we must collect scale and coded-wire tag samples from Chinook and Coho, and scale samples from Chum on 20 percent of our catch. This information is used to determine run size and allows fisheries managers to properly structure the fisheries. Current funding levels have been sufficient to achieve this goal; however, with sequestration, we are facing cuts in FY 2013. Without proper funding for this program, it will become very difficult, if not impossible, for the Tribe to ensure the safety of ESA-listed salmon which may result in a loss of a Treaty-reserved resource and our members' ability to support themselves from that resource. We support an increase to the current level of funding for this vital program.

Hatchery cyclical maintenance funds are also invaluable for supporting the Federal Government's investment in tribal hatcheries. Most tribal hatcheries are underfunded and each year brings more decay to the facilities. Here too, adequate funding for hatchery maintenance is imperative to prevent these important pieces of the salmon restoration puzzle from crumbling away. Because of habitat destruction, the only reason we continue to have salmon for Treaty-harvest activities is the operation of salmon hatcheries. The main pillar of this all important Treaty right cannot take a reduction in funding.

Five years ago the Tribe was able to cobble together a wildlife program consisting of one biologist and one technician. The program is partially funded by Timber, Fish, and Wildlife funds of about \$95,000; the Tribe supplements the program with an additional \$35,000. The Tribal program needs additional funding to staff three dedicated wildlife enforcement officers who will not only enforce the Tribe's regulations, but ensure that poaching of the Tribe's wildlife resources does not occur from outside entities who sometimes fail to recognize the Tribe's Treaty rights. Sequestration will make it all but impossible for us to continue to properly manage our resources. We support additional funding in the amount of \$240,000, so we will have stable funding for a complete wildlife program.

#### *Transportation*

The Moving Ahead for Progress in the 21st Century (Map-21) bill was enacted in July 2012. The legislation requires that federal grant funds be awarded through State DOTs. In the past, we had the option of receiving funding through the BIA as a 638-contract. We are finding with our two current Scenic Byways grants that going through the State DOT costs more and the projects take twice the amount of time to complete. The Tribe would like to see an amendment to MAP-21 that reinstates our right to either directly receive funds or have the funds come through the BIA.

## **II. Indian Health Service**

The Skokomish Tribe supports the President's proposal to increase funding for the Indian Health Service. We have a Tribally-operated Ambulatory Health Center located in a relatively remote geographic area and continue to face financial barriers to the effective provision of health care services. Our Contract Health Service (CHS) funds are insufficient to meet needs and we urge that federal funds be increased in light of the rising cost of health care and the serious health issues our patients face such as cancer, diabetes, and heart disease.

Among the problems are the increases we are seeing in oral health costs on the Reservation. Federal funding has not kept pace. Dental problems are common among low income households and drug users. In many instances, when dental problems are finally dealt with they require specialized dental care, which the Tribe lacks resources to provide. Further compounding the problem is if our CHS funding is spent, Tribal members without dental insurance are more likely to forego the nec-

essary specialized dental care. Instead, we are seeing an increase of individuals with oral health issues seeking alternative relief through over-the-counter analgesics or visiting the emergency room of the local hospital. Since emergency rooms are not staffed for dental treatment, Tribal members are given narcotics to control their pain, but the need for treatment still remains. Poor oral health can lead to negative effects on general health. With an already stretched CHS budget here at Skokomish we are in need of funding to address the rise in negative health care costs.

The increase in oral health care problems further confirms the extensive on-going health problems arising from substance abuse. Federal funds are needed not only for drug and alcohol treatment, but also to address the medical and dental needs that the addiction has caused.

In addition, related to mental health, we have identified a need for a youth mental health facility. While there are youth substance abuse treatment facilities, there are no facilities available to treat mental health issues for youth who do not have any substance abuse issues. We urge Congress to direct the IHS to report on its effort to develop a youth behavioral health facility to meet the growing mental health needs of our Native youth.

### **III. National Park Service, Tribal Historic Preservation Programs**

In 1995, Congress began encouraging tribes to assume historic preservation responsibilities as part of self-determination. These programs conserve fragile places, objects and traditions crucial to tribal culture, history and sovereignty. As was envisioned by Congress, more tribes qualify for funding every year. Paradoxically, the more successful the program becomes, the less each tribe receives to maintain professional services, ultimately crippling the programs. In FY 2001, there were 27 THPOs with an average award of \$154,000. Currently there are 141 tribes operating the program, each receiving less \$51,000. We fully support the President's proposal to increase funding for the Historic Preservation Fund.

### **IV. Environmental Protection Agency**

EPA has long lacked sufficient funds for State and Tribal Assistance Grants (STAG). These funds provided grant money for a wastewater treatment plant. We still need approximately \$12 million to fully build our core Reservation plant. The President's FY 2014 budget would reduce funding for some STAG grants with small increases to others. We support an increase in funding for these grants as that would be a tremendous benefit to the tribes.

### **V. Contract Support Costs—BIA and IHS**

We are very concerned that the President's proposed budget would cap contract support costs for tribally contracted services with the BIA and IHS in this and future years. We urge this Committee to support fully funding all contract support costs and to encourage BIA and IHS to resolve all outstanding contract support costs claims.

### **Conclusion**

The Tribe thanks the Committee for the opportunity to present testimony on these important issues.

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PREPARED STATEMENT OF DR. DONNA GALBREATH, MEDICAL DIRECTOR—QUALITY ASSURANCE, SOUTHCENTRAL FOUNDATION

Southcentral Foundation (SCF) is a tribal organization that compacts with the Secretary of Health and Human Services under Title V of the Indian Self-Determination Act. Under SCF's compact we carry out various Indian Health Service programs across our region. SCF acts pursuant to tribal authority granted by Cook Inlet Region, Inc., an Alaska Native regional corporation designated by Congress as an Indian Tribe for purposes of Indian Self-Determination Act activities. Once again, SCF requests that in FY 2014 Congress (1) fully fund our Mat-Su Clinic joint venture staffing requirements, as required by our joint venture contract agreement with IHS since last year, and (2) fully fund SCF's and all other contract support cost requirements at \$617 million, as the Supreme Court and other courts required last year.

For more than 25 years SCF has carried out IHS programs under Self-Determination Act agreements. In accordance with its self-governance compact with the Department of Health and Human Services, SCF currently provides medical, dental, optometric, behavioral health and substance abuse treatment services to over 45,000 Alaska Native and American Indian beneficiaries living within the Municipality of Anchorage, the Matanuska-Susitna Borough, and nearby villages. SCF also provides

services to an additional 13,000 residents of 55 rural Alaska villages covering an area exceeding 100,000 square miles and larger than the State of Oregon. Finally, SCF provides statewide tertiary OB/GYN and pediatric services for 110,000 Alaska Native people. To administer and deliver these critical healthcare services, SCF employs over 1,400 people.

Today I will focus my remarks on two issues, joint venture funding and contract support cost funding.

### 1. Joint Venture Funding

The first issue I need to address concerns our joint venture (JV) contract with IHS. Under Section 818(e) of the Indian Health Care Improvement Act, IHS is authorized to enter into JV contracts under which: (a) a Tribe borrows funds to build a facility to IHS specifications, and (b) IHS agrees “to provide the equipment, supplies, and staffing for the operation and maintenance of such health facility.” The agreements are contracts; they are enforceable as contracts.

Three years ago SCF and IHS entered into a binding joint venture contract. SCF agreed to construct a new 88,451 square-foot Primary Care Clinic in the Mat-Su Valley of Alaska, using borrowed funds from non-IHS sources. In return, IHS agreed that it “shall provide the supplies and staffing for the operation and maintenance of the Facility . . . subject to appropriations by the Congress.” At the same time, IHS only agreed to fund 85 percent of our staffing requirements, explaining that, on average, IHS facilities are only funded at 85 percent of their need. See Art. VIII.A. See also Art. VIII.G (“IHS will staff, operate and Maintain the Facility in accordance with Articles XI through XIV of this Agreement.”); Art. XI (“As authorized by Section 818(e)(2) of P.L. 94-437 (“subject to the availability of appropriations for this joint venture project, commencing on the beneficial occupancy date IHS agrees to provide the supplies, and staffing necessary for the operation and maintenance of the Facility. The IHS will request funding from Congress on the same basis as IHS requests funding for any other new Facility.”)

Last July we received our certificate of beneficial occupancy. IHS, in turn, provided \$2 million of our \$27 million annual staffing requirement. We appreciate IHS’s action, since IHS had not anticipated SCF opening our doors in FY 2012. But now we have been operational all of FY 2013, at an IHS-calculated staffing need of \$27 million. Yet, in FY 2013, IHS’s Budget only requested 50 percent of the Clinic’s staffing requirement (\$13.5 million).

But, we must be perfectly frank with the Committee: the amount and timing of this payment have caused severe cutbacks in Clinic operations. Since we remain \$12 million short in Clinic funding—remember, that is at the IHS 85 percent funding level—SCF has only been able to provide about 50 percent of the medical service capacity, 30 percent of wellness and physical therapy services, only minimal behavioral health services, and nothing in the way of dental, lab, optometry, audiology, OB-GYN, pediatrics, home health care, or specialty clinics. Three-quarters of the Clinic has not been operated this fiscal year, though we expect that to improve when this year’s funds arrive. Once those funds arrive, we will be able to begin to expand existing services as originally intended. Still, most of the Clinic will remain unused.

It appears the President’s Budget request is still insufficient to fully fund SCF’s Clinic with the remaining \$12 million that is due, even two years late, in 2014. The Budget request is insufficient and does not honor the joint venture contract under which we built it. It is legally and morally wrong.

Our message is simple: Before IHS requests, and before Congress funds, discretionary increases in other IHS accounts—even an important account like Contract Health Care (which in recent years has already seen a 40 percent increase)—discretionary increases should be suspended until IHS honors its contracts and pays its staffing packages in full.

### 2. Contract Support Cost Funding

The second problem is the Budget’s inadequate request for contract support cost funding—another contractually required payment to self-governance Tribes like SCF.

The Budget requests an insignificant CSC increase for FY 2014: bringing the total to \$477 million. This is the case, despite projections that the total requirement in FY 2014 is \$617 million. Worse yet, IHS is defying the Supreme Court’s *Salazar vs. Ramah* decision: IHS is imposing a cap on contract payments to each contractor when no caps have ever existed in those payments, reaching back to 1975. This would be a radical change in the law. Worse yet, we don’t even know what those caps will be for us—everything is being done in secret, and won’t be known until

long after the appropriation is finalized and we are already performing our contracts.

If IHS is going to underpay us, we should at least have the right to go to Court to vindicate our contract rights. This is how it has always been. To now cap our contract by statute is to essentially kill the principal of tribal self-governance and convert us into grantees—an enormous step backward in the Nation's dealings with Indian tribes. It is a radical step back, and one we are confident this Committee would never support.

Contract support cost funding reimburses SCF's fixed costs of running its contract with IHS. If IHS fails to reimburse these costs, SCF has no choice but to cut positions, which in turn cuts services, which in turn cuts down on collections from Medicare, Medicaid and private insurers, which in turn cuts off even more staffing and services for our people. The reverse is also true. When in FY 2010 Congress appropriated an historic increase in contract support cost funding (thanks to this Committee's leadership), SCF opened 97 positions to fill multiple healthcare provider teams and support staff.

Our fixed contract support costs are largely "indirect costs." Those costs are set by the IHS Division of Cost Allocation. The remainder of our contract support costs (about 20 percent) are set directly by IHS. These costs include federally-mandated audits, and such items as liability and property insurance, workers' compensation insurance, and payroll and procurement systems. We have to buy insurance. We need to make payroll. We have to purchase supplies and services. We have to track property and equipment. All of these costs are independently audited every year by Certified Public Accountants, as required by law.

SCF's contract support cost shortfall in FY 2014 will be \$8.95 million, including the cost of operating the new Clinic (\$5.1 million) on top of our existing contract support cost shortfall (\$3.85 million). The loss of almost \$9 million in contract support costs, plus the remaining \$12 million in new Clinic staff funding, totals \$21 million. That is well over 150 health care positions.

This Committee has always supported fully funding contract support cost requirements. The Supreme Court agreed with this Committee. Yet, the IHS budget justification reflects the view that these contracts are not binding at all, and are just another priority to be balanced against something else.

No other government contractors are treated this way. IHS only treats its contracts with Indian tribes this way—as optional, discretionary agreements that it can choose to pay or not to pay. We provide a contracted service for a contracted price, but IHS only pays us what it chooses to pay. That is not the law, and this Committee should oppose IHS's effort to rewrite the law.

In fiscal year 2014 IHS should finally pay its contract obligations in full, even if this means forgoing other increases, and even if this means cutting IHS's internal bureaucracy. Either the contract support cost line-item should be fully funded at \$617 million, or the capped contract support cost earmark should be eliminated altogether (as was the case prior to 1998). The Committee should certainly oppose the Administration's shocking new proposal to cap individual contracts. This way, remedies will be preserved by existing statutory law in instances where contractors suffer contract underpayments.

As SCF has said here before, underfunding contract support costs disproportionately balances budgetary constraints on the backs of tribal contractors. Worse yet, it punishes the people being served by forcing reductions in contracted programs. If Congress is going to cut budgets or limit increases, fairness demands that such actions occur in those portions of the budget that are shouldered equally by IHS and the tribes (as sadly occurred with the sequester). Tribes should not shoulder the full burden of a cut.

Again, SCF respectfully calls upon Congress in FY 2014 to eliminate all existing caps on contract payments. Alternatively, SCF respectfully calls upon Congress to provide \$617 million in contract support cost funding. Every Tribe has contracts with IHS to carry out some of the agency's healthcare services, and most are still being penalized for taking that initiative. Closing the contract support cost gap will eliminate that penalty and directly benefit the vast majority of Indian and Alaska Native communities served by IHS.

### 3. Data Disclosure

On a related note, SCF requests that Congress direct IHS to resume promptly disclosing to tribes and to Congress all IHS data on contract support cost requirements and payments. Up until 2011, IHS disclosed such information to the tribes, albeit informally. Then suddenly IHS stopped—because IHS was embarrassed by errors in its data. IHS claims the data is protected from disclosure until it is approved by the Secretary. But, the Secretary then holds the report back from Congress for

years. The fiscal year 2011 data is now one year late, even by IHS's own calculations. The FY 2009 data was two years late. The 2014 Budget keeps secret the agency's projected total CSC requirement.

Contract support cost appropriations belong to the tribes. Tribes have a right to know what is happening to these funds on a timely basis. So does this Committee. We therefore respectfully urge that the Committee eliminate all privileges against disclosure of IHS data if that data is not timely released to Congress under existing law. This way, the Committee can properly hold the agency accountable.

Thank you for the opportunity to testify on behalf of the Southcentral Foundation and the 58,000 Native American people we serve.

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PREPARED STATEMENT OF CHARLES CLEMENT, PRESIDENT/CEO, SOUTHEAST ALASKA  
REGIONAL HEALTH CONSORTIUM

My name is Charles Clement and I am the President and CEO of the SouthEast Alaska Regional Health Consortium (SEARHC). Chairwoman Cantwell, Vice Chairman Barrasso, and members of the Committee, it is a pleasure to provide this testimony to the Committee.

I have been involved in the provision of Alaska Native health care for over 15 years. Prior to my employment at SEARHC I worked for the Southcentral Foundation in Anchorage, Alaska, as the vice president/chief operating officer; vice president—operations; director of information technology/chief information officer; and special assistant to the president. I have been the President/CEO of SEARHC for over a year, and am continually amazed at the positive impact our tribal consortium has on the health of Alaska Natives.

SEARHC is an inter-tribal consortium of 18 federally-recognized Tribes situated throughout the Southeast panhandle of Alaska. Our service area encompasses over 35,000 square miles, an area larger than the State of Maine. With no road system connecting our communities, the challenges to deliver robust health services are considerable.

SEARHC meets these challenges through a network of community clinics anchored in the Mt. Edgecumbe Hospital. Our services include medical, dental, mental health, physical therapy, radiology, pharmacy, laboratory, nutritional, audiology, optometry and respiratory therapy services. We also provide supplemental social services, substance abuse treatment, health promotion services, emergency medical services, environmental health services and traditional Native healing.

We administer over \$42 million in IHS facilities and related programs and services, and average over 115,000 patient encounters each year. These are federal services, which we operate on behalf of the Federal Government, through a self-governance compact and associated funding agreement.

To carry out IHS programs under this contract requires us to incur many fixed costs, including a number of costs mandated by the Federal Government. These costs include substantial annual audit costs, insurance costs, and an array of administrative costs to operate our personnel and financial management systems.

Only a small portion of these contract support costs are covered in the direct service budget which IHS contracts to pay. This is because IHS either does not incur these costs at all (in the case of audit expenses and insurance costs,) or because IHS receives resources to carry-out these functions from other parts of the Government, including other DHHS divisions, and even other departments of the Federal Government. Still, these are mandatory fixed costs which SEARHC must incur every year. Each year the DHHS Division of Cost Allocation, Western Field Office sets these costs for SEARHC, and under our contract and the law, IHS is then required to pay them—in full.

But IHS does not pay these costs in full. It does not even budget to pay them in full. In fact, it is never even clear how much IHS will honor under the contract until the contract is already performed. Even this year—nearly half way through the year—we have no idea what IHS will pay us.

SEARHC has no tax base. Most Tribes have no tax base. Therefore, the only way for SEARHC to make up for the difference is to divert resources that would otherwise support the delivery of services. Every year this shortfall severely impacts our ability to serve the Alaska Native community. What is worse is that in no other area of government contracting does the United States fail to pay its contractors in full.

SEARHC is a member of the National Tribal Contract Support Cost Coalition, and we fully endorse the NTCSCC's testimony. Full funding of contract support costs in FY 2014, at a \$99 million increase above the President's request, would honor

SEARHC's contract and stop the bleeding of direct service funds to compensate for IHS's contract support cost shortfalls.

One final word. It has been nine years since the Supreme Court required the Government to honor its self-determination contracts with tribal healthcare providers. That was the landmark case of *Cherokee Nation v. Leavitt*. It has now been ten months since the Court reaffirmed that decision in the *Ramah Navajo* and *Arctic Slope* cases. In light of those decisions it is stunning that IHS would dare to defy the Court, and dare to overtly discriminate against Indian tribal contractors, by now suggesting a new strategy for avoiding its liability. If IHS devoted a fraction of the time it spends trying to avoid its contract obligations to instead meeting those obligations, we would not be here.

But one thing is clear: We have a deal with Congress and with IHS, and now is not the time to unilaterally change it. Our contracts, and the law under which they are executed, require IHS to pay us for the work we do—not to pay us in part but in “full”. That is what the law says. “Full.” The law also says we can file a claim with IHS if payments fall short. We absolutely oppose IHS's insertion of new appropriations language to unilaterally change our contracts and unilaterally change the law by insulating IHS from any future liability for its underpayments. It is a shocking reaction-in-avoidance to multiple losses in the courts. It is insulting to Indian people and tribal governments. And it is just plain wrong.

I thank you for the opportunity to provide testimony to the Committee on these important matters.

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PREPARED STATEMENT OF FRANK WHITE BULL, TRIBAL COUNCILMAN, STANDING ROCK SIOUX TRIBE

On behalf of the Standing Rock Sioux Tribe, I submit testimony concerning the President's FY 2014 budget for the American Indian/Alaska Native programs within the Department of the Interior and Indian Health Service. I would like to express our appreciation to this Committee for its support of Indian tribes and to focus my remarks on public safety, education, housing, health care, and infrastructure.

The Standing Rock Sioux Reservation encompasses 2.3 million acres in North and South Dakota. The Reservation's population—approximately 8,500 Tribal members and 2,000 non-members—reside in eight districts, and in smaller communities. The Tribe's primary industries are cattle ranching and farming. The Tribe struggles to provide essential governmental services to our members. When the Tribe ceded millions of acres of land to the United States, the government promised to provide us with the means to sustain ourselves on our Reservation. The Tribe strives to provide jobs and improve the standard of living on our Reservation. We operate two modest Tribal casinos; Rock Industries, a small parts-on-demand operation; Standing Rock Propane; Standing Rock Telecommunications; and a sand and gravel operation, which helps the Tribe supplement services and programs for our members. Despite these measures, our unemployment rate remains above 50 percent. In fact, over 40 percent of Indian families on our Reservation live in poverty—more than triple the average US poverty rate of 13.8 percent. The disparity is worse for children, as 52 percent of the Reservation population under age 18 lives below poverty, compared to 16 percent and 19 percent in North and South Dakota, respectively. The federal programs established to aid tribes and their members are essential. We ask the government to honor its commitments by maintaining federal programs enacted for our benefit, so that our members may live at a standard equal to that enjoyed by the rest of the Nation. Our specific recommendations are as follows:

**BIA—Public Safety and Justice**

We strongly support the President's proposal to increase funding for Public Safety and Justice by \$17 million above the 2012 enacted level, and urge the Committee to support an increase by at least that amount. Increased funding is needed to hire more law enforcement officers and to staff detention facilities. Standing Rock has seen first-hand that adequate law enforcement staffing is the key to reducing crime.

Before 2008 at Standing Rock, there were only 7 law enforcement officers to cover the Reservation (an area close to the size of Connecticut), and crime was rampant. Crime decreased as a result of BIA's Operation Dakota Peacekeeper initiative which, in 2008, added 20 law enforcement officers on the Reservation. When that initiative ended, the number of supplemental officers assisting the permanent law enforcement officers was reduced and crime increased. Fortunately, Standing Rock is one of the few Indian reservations where the High Prior Performance Goals initiative (HPPG) has been implemented. In 2009, when HPPG started, the then 12 permanent law enforcement positions were gradually supplemented by an additional 22

positions. These 34 positions currently consist of a Chief of Police, 3–4 Lieutenants, 3 Criminal Investigators/Special Agents, 2 School Resource Officers and 24 police officers.

Although not all 34 positions are filled at all times (due to turnover and training leave), the increase in law enforcement has had a significant positive impact. It facilitated police officer assignment to each Reservation community, which means quicker response time to calls. The increased law enforcement presence and patrols has deterred crime and resulted in our members feeling safer. The data confirms this. When compared to the number of violent crimes (homicide, rape, robbery, assault) that occurred between 2007 and 2009, the additional staffing reduced such crimes by approximately: 7 percent in 2010, 11 percent in 2011, and 15–19 percent in 2012.

These initiatives demonstrate the critical importance of adequate law enforcement staffing. But HPPG is presently scheduled to end after FY 2013. More than 3,000 arrests were made during the 2012 calendar year. Data this year demonstrates that Reservation law enforcement continue to receive more than 900 calls for assistance each month. While the Tribe is fortunate to have 34 law enforcement positions for the Reservation, an analysis of the number of officers needed to provide effective 24-hour coverage indicates there should be more. At current staffing levels, officers typically work 12-hour shifts, 5 days a week, leading to officer burn-out and increased costs for overtime. Only proper staffing levels will ensure the safety of our communities and officers. We strongly support an increase in funding for law enforcement personnel.

Funding is also essential for law enforcement equipment and facilities maintenance. In December 2010, the Tribe successfully completed construction of a secure 18-bed juvenile detention facility on our Reservation so that Tribal youth offenders may remain on the Reservation and receive culturally appropriate services while incarcerated. The Tribe contributed \$2 million of Tribal funds to supplement \$5 million in Justice Department funds to build this facility. Over time this facility will save the BIA a great deal of money that now pays other public authorities to house our youth offenders. Unfortunately, while the BIA, in January 2011 and many times thereafter, advised the Tribe that the facility was to be among those BIA-operated facilities to receive operation and maintenance funding, BIA delays have meant that, to date, the facility is not operational and has received no maintenance funds. As a result, problems have surfaced. Various systems in the building require repair but warranties have expired. The Tribe is taking active steps to remedy these matters using Tribal resources. Once these matters are cured, the BIA must act promptly to assume operation of the facility and secure a share of the operation and maintenance (O&M) funds needed to pay for utilities and routine maintenance. Adequate levels of O&M funding are essential to safely house our youth and safeguard the Tribe's and Federal Government's investment in this facility.

#### **BIA—Tribal Courts**

We support an increase to the modest funding appropriated for the Tribal Courts Program. Our Tribe cannot effectively carry out criminal proceedings, let alone civil cases, with our small BIA allocation, even when heavily subsidized by the Tribe. Our Tribal courts are crowded, cramped and outdated and limit our ability to administer a comprehensive criminal justice system on the Reservation.

#### **Bureau of Indian Education (BIE)**

We further support an increase to FY 2014 funding for BIE programs. As President Obama has stated, education is the key to ending the cycle of poverty and lower wages. Despite this, the Administration's FY 2014 budget would hold constant or otherwise cut funding for programs that are critical to the education of our youth.

Standing Rock relies on BIE funding for three Tribal grant schools—the Standing Rock Community School (K–12), Sitting Bull School (K–8), and Rock Creek School (K–8). The Standing Rock Community School is jointly operated by the Tribe and a state entity, Fort Yates Public School District, which, like other public schools on the Reservation (Cannonball, Selfridge, McLaughlin, McIntosh, and Wapala), depends on federal impact aid to cover the costs of the public school's share of the school operations. The children in the schools on the Reservation are among the most at-risk students in the Nation. At the Rock Creek, Cannonball, Selfridge, and Wapala schools, 100 percent of the students receive free or reduced price school lunches because their families live at or below poverty. At other schools, the percentage of children receiving free or reduced price lunch is comparable—Sitting Bull, 98 percent; McLaughlin, 85 percent; Fort Yates, 80 percent; Standing Rock, 80 percent.

A critical source of funds for the operation of our Tribal grant schools are the Indian School Equalization Program (ISEP) Formula funds. They cover salaries for teachers, teacher aides, school administrative staff and other operational costs. ISEP has not seen any meaningful increase in years, and as a result, it has become more difficult to attract and retain qualified staff. Despite the clear need, the Administration proposes to cut ISEP funding by \$16.4 million, apparently to offset the cost of a new pilot program. We do not object to a new pilot program, but no such program should be created at the expense of existing needs. If the schools serving Indian children are to be effective, ISEP funding should be increased.

The Administration's near flat line funding for virtually all aspects of BIE programs does not account for population growth, increased costs, or inflation. Student Transportation funding, intended to cover the costs of buses, fuel, maintenance, vehicle replacements, and drivers, has stayed at the same level for years. The substantial increases in fuel costs alone make it impossible to cover these costs. For Standing Rock, funds are further strained because we are a rural community, where bus runs for many of our students may take 1½ to 2 hours each way and can include travel on unimproved roads. These factors result in higher maintenance costs and shorter vehicle life. A substantial increase in funds for Student Transportation is long overdue.

The same is true for School Facility Operations and School Facility Maintenance which is nowhere near fully funded. In fact, O&M budgets are currently constrained at 40 percent. With the constraint and the cuts resulting from sequestration, it will be impossible for the schools to operate. We urge this Committee to support an increase, or at least maintain funding for Education Construction and reject the Administration's proposal to cut Education Construction funding by \$18 million. While the Administration claims this will allow it to eliminate replacement school funding and redirect funds to Minor Improvement and Repair (MI&R) programs, its budget contains no comparable increase to MI&R. Without adequate funds for maintenance or facilities repair our schools will deteriorate and pose serious safety risks for our children. Indeed, part of one of our Tribal grant schools, the Rock Creek School, is more than 100 years old and badly needs to be replaced. Federal funds to replace ancient schools—like Rock Creek—are essential. Funding for School Facility Operations and School Facility Maintenance, as well as Education Construction should be substantially increased.

We also urge the Committee to support an increase in funding for Scholarships. Because of the unmet need, the Tribe spends \$1 million in Tribal funds annually to supplement this program and gives grants of \$3,000–\$3,500 to aid our students attending colleges and vocational schools. But even with this, most of our scholarship recipients have unmet financial need varying from \$100 to \$17,000.

#### **BIA HIP (Housing Improvement Program)**

The Tribe opposes the Administration's proposal to completely eliminate funding for HIP. HIP has long played a very important role in providing funds to low income persons who have emergency or other specific needs to make home repairs. While the Administration states that Tribes can use HUD NAHASDA funds to cover these costs, our Tribal members' needs for safe and affordable housing are staggering. Even with both HUD and HIP, there are now over 200 families on the waiting list for housing, 150 families living in overcrowded conditions, and another 300 families in substandard housing.

#### **Indian Health Service**

We support the Administration's FY 2014 requested increase in IHS funding. We depend on IHS to care for our 15,500 enrolled Tribal members, many of whom suffer from diabetes, heart disease and hypertension. With 5 percent cuts due to sequestration, and 2 percent decrease in Medicare reimbursement, we estimate there will be at least \$800,000 in unmet need in FY 2013. Unmet need will be more severe if sequestration recurs in FY 2014.

We recommend Congress prioritize the IHS preventive health care service programs, such as the diabetes grant program, and increase funding for these programs above the Administration's \$150 million, while supporting and protecting the Administration's other IHS funding priorities, especially funding for health care personnel. In many instances, if additional funding for clinical services and preventive health programs can be made available, illnesses and injuries could be treated at their initial stages, or prevented altogether. This is especially important at Standing Rock, where many of our members' health problems could be addressed if timely preventive care were available. We also support the Administration's request for increases in Dental Health (as there is considerable need for dental care) and Pur-



chased/Referred Care (previously known as Contract Health Services), which has been historically underfunded.

### **Infrastructure**

Infrastructure, like safe drinking water, utilities, and well-maintained roads are essential to the well-being of our people. But the primary funding source for road maintenance, the BIA's Road Maintenance Program, has for the last 30 years, been funded at only \$25 million, making it impossible to carry out routine, much less, emergency road maintenance. We strongly oppose the Administration's current proposal to again cut funding for this program.

Equally vital is safe drinking water. Congress authorized the Standing Rock Sioux Tribe's municipal, rural, and industrial (MR&I) water system by the Garrison Diversion Unit Reformulation Act of 1986 and the Dakota Water Resources Act of 2000. Substantial progress has been made on the project: construction is nearly complete for core facilities including a deep water intake and pump station, 13 miles of raw water transmission pipeline, a main storage reservoir, a state-of-the-art water treatment plant, and 49 miles of main transmission treated water pipelines. Three treated water pipeline contracts approach the bidding stage. When completed, they will connect the Reservation's existing water infrastructure to the new facilities so that over 75 percent of the Reservation population will receive clean drinking water. However, further pipeline construction, including to residents currently without treated water supply, is in jeopardy due to the recent dramatic cuts in appropriations. Proposed future appropriations levels threaten to completely stop construction on the project leaving a significant portion of the Reservation's residents without access to safe, clean, and dependable drinking water. We encourage this Committee to support restoring funding to the Dakota Water Resources Act FY 2010 levels, to allow for the completion of this critical project within a reasonable time.

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### **PREPARED STATEMENT OF JULIE ROBERTS-HYSLOP, VICE PRESIDENT, TANANA CHIEFS CONFERENCE**

Members of the Committee, thank you for the honor of presenting this testimony.

My name is Julie Roberts and I am the Vice President of the Tanana Chiefs Conference and the President of Tanana Tribal Council. TCC is a non-profit intertribal consortium of 39 federally recognized Tribes located in the Interior of Alaska. TCC serves approximately 13,000 Native American people in Fairbanks and our rural villages. Our traditional territory and current services area occupy a mostly roadless area almost the size of Texas, stretching from Fairbanks clear up to the Brooks Range, and over to the Canadian border.

TCC is a Co-Signer of the Alaska Tribal Health Compact, awarded under Title V of the Indian Self Determination Act. I will be testifying on two matters. First, I will provide an overview of the Joint Venture Construction Program and specially address TCC's Joint Venture staffing needs. Second, I will explain the impact suffered by TCC and others from the contract support cost shortfall, and how that shortfall will have the most impact for those entities starting to operate replacement or joint venture facilities in fiscal year 2013.

1. TCC requires its full staffing package in FY 2014, which is already one year past what was contractually agreed to in our Joint Venture Agreement.

The Joint Venture Construction Program is authorized in Section 818(e) of the Indian Health Care Improvement Act, Public Law 94-437. The authorization directed the Secretary of HHS to make arrangements with Indian tribes to establish joint venture projects. The program is executed through a JVCP agreement—a contract—in which a tribal entity borrows non-IHS funds for the construction of a tribally owned health care facility, and, in exchange, the IHS promises to lease the facility, to equip the facility and to staff the facility.

In the Conference Report which accompanied the Department of the Interior, Environment, and Related Agencies Appropriation Act, 2010, the conferees explained the importance of the Joint Venture program. That program is a unique way of addressing the persistent backlog in IHS health facilities construction projects serving American Indians and Alaska Natives. The conferees reported, "The conferees believe that the joint venture program provides a cost-effective means to address this backlog and to increase access to health care services for American Indians and Alaska Natives. The conferees are aware that IHS is currently reviewing competitive applications from Tribes and Tribal organizations to participate in the 2010 joint venture program and encourage the Service to move forward with the process in an expeditious manner."

IHS followed the direction of Congress and the Conference Report. In 2010, IHS signed a legally binding Joint Venture Construction Agreement with TCC. In the agreement, IHS agreed to “request funding from Congress for Fiscal year on the same basis as IHS requests funding for any other Facilities.” Given that IHS has requested funding for the various JV projects across the country at different percentages and not in correlation to clinic opening dates, it appears that IHS has not requested funding on the same basis across all facilities.

At the same time, it is a fact that funding for our Joint Venture project in FY 2013 will only be 1/3rd of the total staffing package IHS owes TCC (or around \$10 million). TCC had to invest in new program staffing to be ready to open our doors—including staffing for labs, radiology, facility maintenance and support—which does not include the additional clinical staffing that was added to meet the current demand. The additional staffing cost TCC approximately \$9 million. When added to the \$5.4 million bond payments and the \$600,000 in utility payments, TCC’s total deficit is \$15 million this year. Even accounting for the \$10 million for TCC in this year’s budget, we will still have \$5 million in operational deficit.

According to the agreement with IHS, TCC’s staffing package funding should be \$29.4 million—requiring an increase of \$19.4 million above our FY 2013 funding level. If the President’s proposed \$77 million staffing increases for FY 2014 are supported and applied to the FY 2013 increases, this will make right the wrong TCC experienced. But if, as IHS indicates, they are above the FY 2012 levels, they are woefully insufficient.

Last year IHS justified paying less because it believed we would not be able to staff up fast enough to spend the funds. But we have long been fully operational and the only barrier to hiring staff is IHS’s failure to honor its commitment. This is clear from the fact that, in order to open our doors, TCC invested \$9 million in new staffing and several providers are currently interested in working for us.

IHS has written that our Joint Venture partnership is a model for what can be achieved between Tribal Health Organizations and IHS to improve access to care for American Indian and Alaska Native people. TCC is holding up our end of the Joint Venture agreement. We need IHS, and Congress, to hold up the government’s end. This will require \$19.4 million in FY 2014. This will be one year late, but at least the commitment will finally be honored.

2. The Administration’s contract support cost request will worsen the national CSC shortfall and require further program cuts for Self-Determined Tribes; the burden will fall especially hard on Tribes operating recent new facilities.

Related to the Joint Venture Construction Program is our concern with IHS’s requested funding for contract support costs. These costs are owed to Tribes and tribal organizations like TCC that perform contracts on behalf of the United States pursuant to the Indian Self-Determination Act. “Contract support costs” are the fixed and fully audited costs which we incur and must spend to operate IHS’s programs and clinics. The law and our contracts say that these costs must be reimbursed. The Supreme Court, twice, has so ruled.

The Indian Self-Determination Act depends upon a contracting mechanism to carry out its goal of transferring essential governmental functions from federal agency administration to tribal government administration. To carry out that goal and meet contract requirements, the Act requires that IHS fully reimburse every tribal contractor for the “contract support costs” that are necessary to carry out the contracted federal activities. (Cost-reimbursable government contracts similarly require reimbursement of “general and administrative” costs.)

Full payment of fixed contract support costs is essential: without it, offsetting program reductions must be made, vacancies cannot be filled, and services are reduced, all to make up for the shortfall. In short, a contract support cost shortfall is equivalent to a program cut.

Funding contract support costs in full permits the restoration of Indian country jobs that are cut when shortfalls occur. The FY 2010 reduction in the contract support cost shortfall produced a stunning increase in Indian country jobs. Third-party revenues generated from these new positions will eventually more than double the number of restored positions, and thereby double the amount of health care tribal organizations like ours will provide in our communities.

The problem is that for 2014, IHS has requested only a \$5.8 million increase over FY 2012 levels, up to \$477 million. Yet, the current shortfall is \$140 million, with a total projected \$617 million due all tribal contractors. At that, the IHS projected shortfall does not include contract support costs associated with facilities staffed up in FY 2013 and FY 2014. Against these numbers, a \$5.8 million increase is not just inadequate; it is shameful.

When contract support costs are not paid, we have no choice but to take the shortfall in funding out of the programs themselves. Letting the CSC shortfall increase, on top of underfunding TCC's JV staffing requirements, will end up punishing tens of thousands of Native beneficiaries in Alaska. The government has a legal duty and trust responsibility to provide for the full staffing packages and the full contract support costs which the government, by contract, has committed to pay. We are not expecting a favor; we are expecting the government to hold up its end of the bargain.

It is not only illegal but immoral for IHS (and BIA, too) to structure their budgets in such a way that they cut only tribally-administered IHS and BIA programs—not IHS-administered or BIA-administered programs, but only tribally-administered programs—in order to meet the agencies' overall budget targets. The thousands of Alaska Native patients and clients who we serve should not be punished because those services are administered under self-governance compacts instead of directly by IHS or the BIA.

As I mentioned last year, I am particularly concerned about this issue as we plan for FY 2014. In FY 2014 TCC projects an increased contract support cost requirement of \$6 million associated with the new clinic. As it is, remember that IHS has only committed to staff TCC's clinic at 85 percent of capacity. If none of TCC's contract support cost requirements to operate the new clinic are covered, the resulting \$6 million cut in staffing will drop the clinic to 65 percent of staffing capacity—even if the full JV staffing package is funded, and much less if it is not. This will severely compromise TCC's ability both to administer the new facility and to meet our debt obligations. Worse yet, services to our people will be gravely compromised.

We understand that the dollars required to finally close the gap in contract support cost requirements are large, but this is only because the problem has been allowed to snowball over so many years. Once a budget correction is made to finally close the contract support cost gap inside both agencies, maintaining full funding of contract support costs on a going-forward basis will be much more manageable.

This is why TCC respectfully requests that the IHS appropriation for CSC be increased by \$140 million above the President's recommended level, to \$617 million, and that the BIA appropriation for CSC for FY 2013 be similarly increased to \$242 million.

Whatever Congress chooses to do, the answer is, unequivocally, not to legislatively amend the Indian Self-Determination Act to cut off our rights to compensation for IHS's contract under-payments. Yet that is precisely what the President's Budget proposes—cutting off the rights which currently exist under section 110 of the Act to sue the government when we are not paid.

This is rank discrimination—racial discrimination—and it must stop. No other contractor in the United States performs work for the government only to be told that it has no right to be paid. The very suggestion is ludicrous. Last year the Supreme Court in the *Ramah* and *Arctic* cases said so, and they said that our contracts are just as binding as any other contract. That is the law. The answer to those rulings is not to change the law. The answer is to honor the contracts.

We are shocked to see the Administration unilaterally propose changing the law so radically, and to see the Administration actually suggest that we be paid only what the Administration tells Congress it will pay us, in a secret table it will provide sometime next year. The very suggestion is enough to make us consider turning these contracts back over to IHS. Let's see if IHS can do as good a job for our Tribal people as we do.

The fact is, IHS cannot do this work. All we ask is to be treated fairly, just like other contractors. The government sets our indirect cost rates—not us—and just like other contractors the government should pay those rates in full. If it cannot, or will not, prioritize those payments, then just like other contractors we must continue to be able to vindicate our rights under the Contract Disputes Act. Anything else is un-American, forcing us to do work without paying us what is due.

The Supreme Court has not once, but twice, told the government what to do: honor our contracts. The time is here to do just that.

Members of the Committee, thank you for the honor of presenting testimony today.

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PREPARED STATEMENT OF HON. ARLEN QUETAWKI, SR., GOVERNOR, ZUNI TRIBE

### **Background**

Pre-Public Law 93–638, Indian Self-Determination and Education Assistance Act, the Zuni Tribe, Pueblo of Zuni, acting on a commitment for success, contracted with the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS) to perform

functions previously carried out by the Federal Government. Namely these functions/programs are: Housing Improvement, Law Enforcement, Tribal Courts, Higher Education-Scholarship, Road Maintenance and Social Services/Welfare Assistance and allied health care programs. Performance of these functions by the Tribe was authorized under the authorities of the 1934 Indian Reorganization Act with the promise of self-determination to operate programs fitting tribal needs.

Subsequent enactment of the Indian Self Determination Act the Zuni Tribe believed that the congressional action would assist the tribe in securing tribal economic security and effectively deals with community social issues with sustained Federal commitments. However, since the 1970's the Zuni Tribe continues to experience drastic fund reductions in these contracted programs. Not to mention the challenges the Tribe is facing in receiving proper payments for Contract Support Cost which is a binding contractual obligation due all Tribes that operate BIA and IHS contracts. The Tribe should be provided full funding for Contract Support Costs by both the BIA and IHS consistent with the 2012 Supreme Court decision in the *Salazar v. Ramah Navajo Chapter* case. To do anything less would deliver a strong message that Indian Tribal Self Determination contracts can be manipulated and can be treated as second-class contracts and Indian Tribes are second-class contractors.

The Zuni Tribe understands the United States' fiscal difficulties and challenges at this time and acknowledges the administration is focused in reducing the deficit, however, the Zuni Tribe is requesting the administration keeps its promise to the Indian country by protecting and increasing funding provided under the BIA Tribal Priority Allocations (TPA) process in FY 2014. Protecting and increasing TPA for the Zuni Tribe will assist in effectively administering programs which would otherwise be performed by the Federal Government. Not only will the tribe carry out programs effectively which affects their respective community, it will also continue to be partners in a mutual commitment to strengthen not only the tribal, but national economy as well. Furthermore, it will have a major impact on the health and social well-being of other communities as a whole. This effort has a ripple effect on generation of jobs, and improvement of economies which leads to self-reliance.

The Zuni Tribes request under the Department of Interior (DOI), BIA FY 2014 President's Budget request a total of \$9,240,000 to administer core programs under the TPA categories operated by the BIA and under the authorities of P.L. 93-635 and \$2.0 million for IHS community health programs and contract health programs administer under the IHS direct allocation. The following are the amounts specifically identifying programs and their respective amounts.

#### **Tribal Government-Road Maintenance (TPA) BIA Operated**

This program requires a minimum level of \$1.0 million to carry out the program responsibilities. This funding level will get closer to the 2009-2010 target units under a Level of Services rating of 2 or better for the Zuni Indian Reservation. The Road Maintenance program supports 411.2 miles of Indian Reservation Roads in a remote reservation, approximately 150 miles from a metropolitan area of Albuquerque, New Mexico.

A 2009 assessment of paved routes in the Zuni community shows that at a minimum four miles of pavement overlay, and 20 miles of pavement surface treatment of major traveled routes with high average daily traveled counts. Providing funds for improvement of the Zuni Reservation roads will reduce the potential liability of tort claims from the traveling public in Zuni. Improvements to the above identified miles of roads do not include maintenance of unpaved roads, including school bus routes, ingress and egress to homes for medical service vehicles such as ambulances, transportation services for patients who are on dialysis and need medical care, etc.

If funds are not provided at a bare minimal level the Zuni Tribal Road Maintenance program will continue to incur annual increases of at least ten percent of deferred maintenance backlog on reservation roads and bridges. Since Fiscal Year 2007, this program has been grossly underfunded and range in funding for the past several years in the amount of \$246,642 to a high of \$274,116 in Fiscal Year 2007.

#### **Human Services—Social Services and Indian Child Welfare Act—TPA P. L. 93-638 Tribal Contract**

A minimum level funding for the Tribal Social Services program in the amount of \$260,000 is needed to maintain programs at a current level. A minimum level of \$100,000 is needed for the Indian Child Welfare Act program. These two programs are critical to assist the social-economic programs of the community. Program personnel works with various agencies in and outside the community which includes child care places-foster home placements and domestic violence with the Tribal and

outside courts-judicial systems, the Zuni Tribal Police Department, etc. Once again this program has not been adequately funded for a number of years.

**Human Services—Welfare Assistance—TPA P. L. 93-638 Tribal Contract**

A minimum level of \$300,000 is required to operate this program at a “bare minimum” level. With the isolation of the Zuni Reservation and lack of employment and other full service programs, these funds are needed to deal with socio-economic issues/problems of the community.

**Public Safety and Justice—Community Fire Protection—TPA P. L. 93-638 Tribal Contract**

A minimum of \$250,000 is required to operate this program. Minimum funds requested will allow the program to maintain 3 tribal employees on staff and provide operation expenses that services the community which includes a hospital operation, high school, junior high school, two elementary schools, a community college, BIA agency and tribal infrastructure, two parochial schools and other community facilities.

**Public Safety and Justice Tribal Courts—TPA P. L. 93-638 Tribal Contract**

A minimum of \$580,000 is needed to operate the Zuni Tribal Court. This level of funding will allow the tribal court of access training needs and filling positions that will assist in handling an increasing number of criminal, civil, juvenile and child welfare cases which are referred to the Tribal court for resolution. The number of cases the Tribal court handles range from a low of 4,144 adult cases to a high of 7,000 cases. The children’s court also ranges in a low of 455 to a high of 566 cases.

**Natural Resources—Fish and Wildlife Management—TPA P.L. 93-638 Tribal Contract**

A minimum of \$200,000 is required to operate the Zuni Fish and Wildlife program. This program manages activities associated with cultural and academic biological wildlife management. It also works with the other federal and state agencies including the states of New Mexico, Arizona and other customer base clientele from the private sector.

**Natural Resources—Forestry and Fire Management—BIA Operated**

This program requires a minimum funding level of \$250,000 to maintain program operations.

**Trust Services—Real Estate Services—TPA P. L. 93-638 Tribal Contract**

This program requires a minimum level of funding in the amount of \$200,000 to carry out program responsibilities associated with tribal trust and individual allotments, tribal fee lands and tribal land assignments for the purpose of: Leasing and Permitting, acquiring and disposal of lands and promotion of development of mineral resources and renewable energy resources, maintenance of existing contractual agreement and assurance in recording of all encumbrances in the Tribal Trust Assets Accounting Management System and Land Titles and Records Office. The Program is responsible for land base protection of 537,055.55 acres of land. (Included in the level of fund request is Probate and Rights Protection along with the Real Estate Services.)

The program also promotes and encourages consolidation of fractionate interests of trust allotments by providing estate planning holding outreach efforts to provide information on the American Indian Probate Reform Act.

**Law Enforcement—Zuni Police Department—P. L. 93-638 Tribal Contract**

A minimum funding level of \$2.9 million is required to maintain law and order on the Zuni Reservation, which include the immediate community and the surrounding reservation lands. Over several years the tribal law enforcement program has not received adequate funding for the size of reservation lands and the growing population they are responsible for serving and protecting. There has been an increase in violent crime, gang activities, methamphetamine and other drug uses, not to mention violence in the schools. Other unfunded mandates such as the Adam Walsh Act and the enactment of the Federal Tribal Law and Order Act, Violence Against Women’s Act, Sex Offender registry and other like compliances requirements also requires that funds be provided to meet these mandates.

The Zuni Tribal wage scale grossly lags behind other agencies’ wage scales to maintain law enforcement officers in Zuni. Additional funds are also required to maintain a stable trained staff with proper equitable compensation. It is critical the Department and BIA consider full funding for this critical program.

### **Detention Center P. L. 93-638 Contract Program**

A minimum of \$1.5 million is required to operate the Zuni Tribal detention center. Additional personnel with equitable funding are required to maintain the detention center operations. The Zuni Detention center is a 24-hour 7-days a week operation. Like other organizational programs, the Zuni Tribe needs to bring the wage scale to a comparable level with other agencies to maintain/retain qualified trained personnel. This is a crucial operations that is not only associated with stress-related duties, but requires commitment and dedication of a workforce.

### **Detention Facilities Operations and Maintenance—P. L. 93-638 Contract Programs**

These two programs have traditionally been funding on a formula, square foot basis which does not provide adequate funds to operate and maintain infrastructure. Serious considerations need to be made to adequately fund operation and maintenance programs of facilities. A minimum of \$150,000 is needed for the operations portion of the facility and a minimum of \$50,000 is needed for the maintenance of the facility.

### **Education and Adult Vocational Training Program**

\$1.0 million is requested for the Education Tribal Scholarship program and \$500,000 is requested for the Adult Vocational Training Program. These two programs have been part of the "477" program which is not part of the TPA program considerations. However, these two programs are critical and are abridge to ensuring viable future for the Zuni Community. These two programs will provide scholarship funding assistance to students pursuing college degrees and vocational type training to acquire marketable skills should they seek employment off the Zuni Reservation.

### **Indian Health Service Contract Program**

An increase of \$1.5 million to the IHS contracted programs will assist in administering the following programs the Zuni Tribe has been contracting for over several decades: Audiology, Otitis Media, Client Services, Public Health Nurse for the Detention Center, Wellness Center, Teen Health Clinic and Alcohol and Substance Recovery Program. All these programs assist in working towards promoting healthy and socially acceptable lifestyles. \$500,000 increase in contract health care for the Zuni Service Unit will assist in obtain other critical specialized care which the Zuni Service Unit cannot perform due to staff shortage and recruitment and retention of specialized health care professions.

The Zuni Tribe also requests that funds for be maintained/increased for the Indian Guaranteed Loan program to assist the Zuni Tribe in pursuing economic development ventures which would also assist in economic self-sufficiency and self-determination.

As stated the Zuni Tribe is aware of the national economic conditions, however, in order for the Zuni Tribe to foster self-determination, including, self-governance, we request you seriously consider the Zuni Tribe's funding request.

The Zuni Tribe extends our appreciation for the opportunity to present our funding needs.

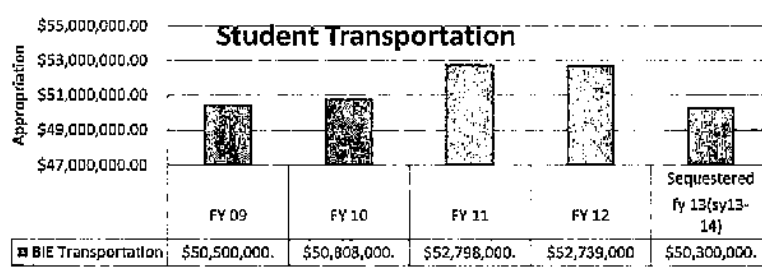
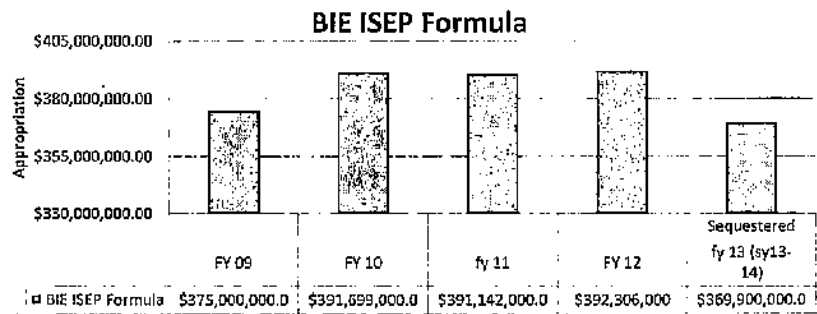
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PREPARED STATEMENT OF TOM MILLER, PRESIDENT, ASSOCIATION OF COMMUNITY TRIBAL SCHOOLS INC. (ACTS); SUPERINTENDENT, HANNAHVILLE INDIAN SCHOOL

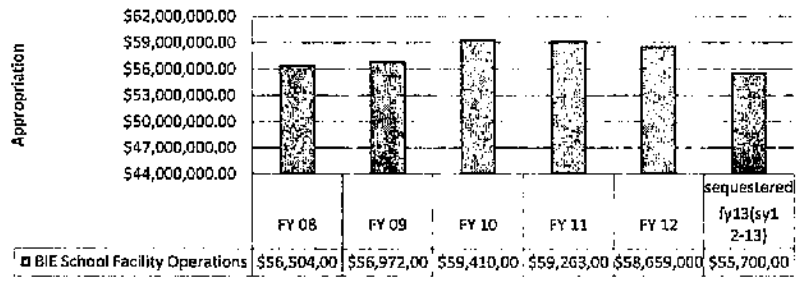
My name is Mr. Tom Miller; President of the Association of Community Tribal Schools Inc. (ACTS) and Superintendent of Hannahville Indian School located on the Potawatomi tribal lands in the upper peninsula of Michigan.

The tribal school movement started in 1966 with Rough Rock Demonstration School. Now, there are over 28,000 students in 125+ tribal elementary and secondary schools. The schools are in the states of Maine, Florida, North Carolina, Mississippi, Louisiana, South Dakota, Minnesota, North Dakota, Michigan, Iowa, Wisconsin, Kansas, Wyoming, Oklahoma, Montana, California, Washington, Idaho, Nevada, Arizona, and New Mexico. ACTS represents a significant number of the over 125+ tribally controlled elementary and secondary schools. ACTS's mission is to "assist community tribal schools toward their mission of ensuring that when students complete their schools they are prepared for lifelong learning and that these students will strengthen and perpetuate traditional tribal societies."

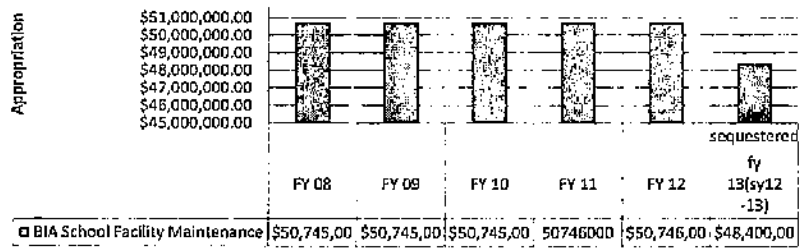
The following charts illustrate the stagnant, and in most cases diminishing revenues over the past 5 years.



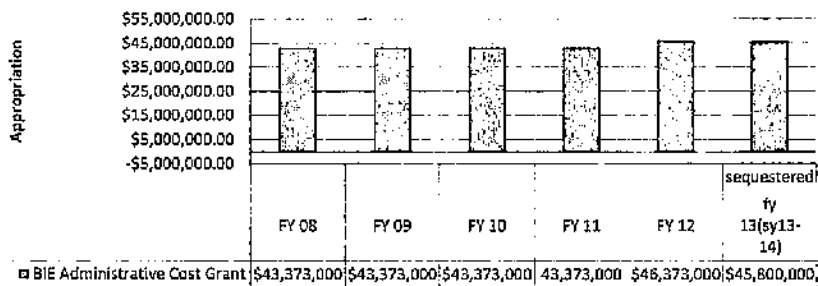
### BIE School Facility Operations



### BIA School Facility Maintenance



### Tribal Grant Support



#### Requested Action

##### Eliminate

- BIE—Elementary/Secondary Programs—ISEP Program Adjustments
- BIE—Elementary/Secondary Programs—Education Program Enhancements
- BIE—Advancing Indian Education Initiative—Pilot Turnaround Model

(These funds are used to control schools and hamper progress, the BIE uses Program Elements to dictate what schools should do to improve and has nothing to do with school improvement; no need for another expensive unproven Pilot Program)

\$ 35,000,000

##### Increase

- BIE—Elementary/Secondary Programs—Facility Maintenance—\$3,000,000
- BIE—Elementary/Secondary Programs—Tribal Grant Support Costs—\$5,000,000
- BIE—Elementary/Secondary Programs—Facility Operations—\$6,000,000
- BIE—Elementary/Secondary Programs—ISEP Formula Funds (restore)—\$16,000,000
- BIE—Elementary/Secondary Programs—Student Transportation—\$5,000,000
- Total—\$35,000,000



*Restore the Construction—Education Construction Activity to the FY 2010 Levels*

The BIA reports a nearly \$ 75,000,000 annual facility deterioration rate and also reports a \$3.4 billion school replacement need. The schools will not be able sustain a cut from Education Construction.

*Eliminate*

The following Administrative Provisions language to allow current schools to expand grade level offerings and allow tribes to apply to operate a Grant School:

“Appropriations made available in this or any other Act for schools funded by the Bureau shall be available only to the schools in the Bureau school system as of September 1, 1996. No funds available to the Bureau shall be used to support expanded grades for any school or dormitory beyond the grade structure in place or approved by the Secretary of the Interior at each school in the Bureau school system as of October 1, 1995.”

PREPARED STATEMENT OF HON. EDWARD K. THOMAS, PRESIDENT, CENTRAL COUNCIL OF THE TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

**Introduction**

GREETINGS FROM ALASKA! My name is Edward K. Thomas. I am the elected President of the Central Council of the Tlingit and Haida Indian Tribes of Alaska (Tlingit Haida), a federally recognized Indian tribe of 27,000 tribal citizens.

I am honored to provide this written testimony on the FY 2014 budget request for the Department of the Interior and Indian program funding.

I commend Congress, and especially this Committee, for holding this hearing and giving tribal leaders an opportunity to provide you our perspective on federal funding for Native American programs. I also appreciate the Committee's efforts to obtain a more transparent budget story from the federal officials at this hearing.

One of the most important legal principles in defining the relationship between the Federal Government and the Indian and Alaska Native Tribes is that of the fiduciary responsibility the United States has to Tribal governments. This hearing, and your appropriations decisions, are very important tools for you to (a) strengthen the Federal Government's Trust relationship to Tribal governments, and (b) bend federal priorities toward Tribal priorities and needs.

**Federal Funding has not Been Based on Needs, Which are Much Greater in Rural Areas**

I have been involved in managing federally-funded tribal programs since 1976, and from that experience, I have concluded that the method of formulating federal budgets for the benefit of needy Native Americans is deficient and ineffective. Each year federal budgets are mostly based upon the previous year's funding; this totally disregards the level of unmet needs in Indian Country. This becomes an even bigger problem when it becomes necessary to reduce overall federal funding.

Our nation's poverty level is at the highest level since 1993. Twenty-two million Americans live in poverty. That is 1 in every 6 Americans. 22 percent of all American children live in poverty. These national poverty levels are much higher in rural, tribal communities.

In rural Alaska, higher energy costs have compounded the already depressed economy in these remote areas. The cost of living in certain parts of rural Alaska is nearly twice that of the average cost of living elsewhere in the United States. Electricity costs are often 4 to 5 times higher. Over the past decade funding for Native American programs has not even kept pace with national inflation rates let alone the dramatic inflationary costs in rural Alaska.

**Non-BIA Agencies Have Received Funding Priority in the Interior Department**

Between FY 2004 and 2012 the Bureau of Indian Affairs (BIA) budget grew 8 percent. Over that same period of time funding for non-BIA programs in the Department of the Interior grew at a much greater rate: Fish & Wildlife by 30 percent; Park Services by 27 percent; Geological Surveys by 18 percent; and Bureau of Land Management by 13 percent. It stands to reason that funding to needy tribal communities could be increased to meet our shortfalls in the FY 2014 budget if these non-BIA agencies were reduced to the 2004 funding levels plus 8 percent.

Under sequestration, the Federal Government insisted that FY 2013 budget cuts be applied “across-the-board” in order to be equitable. But that approach perpetuates the *inequity* of the past decade, when the Executive and Legislative branches have de-prioritized Indian funding in favor of non-Indian programs at the Interior

Department. It would have been far more equitable to apply greater sequester cuts to those Interior agencies which enjoyed greater increases during the past decade. BIA and tribal programs did not equitably participate in funding growths but are forced to equally participate in budget cuts.

While President Obama and Secretary Salazar are to be commended for many of their initiatives toward Indian Country, I must say the President's FY 2014 Interior budget request is extremely disappointing and unfair. The FY 2014 Interior budget request turns the President's priorities for Indian Country upside down.

While he says he supports tribal governments, President Obama's FY 2014 budget requests an increase of \$455.1 million for *non-Indian* programs at Interior. That's an increase of 5.112 percent over last year for Interior's non-Indian programs. Compare that to his \$31.3 million increase for *Indian* programs at Interior. That's only a 1.236 percent increase over last year for Indians. How is this fair? How can this be called equitable? How is this putting the needs of Indian Country first? Our tribal programs provide core governmental services to Indian and Alaska Native families, but we somehow rate less than a fourth of the funding increases that are requested for rocks, critters, fish, water, and parks at Interior? In all fairness, the Congress must correct the Administration's misjudgment and inequitable FY 2014 budget request.

At the very least, I ask that the Congress increase the Indian tribal budget funding levels to match the Administration's budget request of increases for Interior. But beyond that, I additionally ask that the Congress reverse the Administration's budget priorities towards vital tribal programs and instead apply catch up increases that make up for the past decade of disproportionately lower funding to tribal programs in the face of growing unmet needs.

I have attached some charts at the end of my written statement which portray the actual, unfair priorities of the Administration in its FY 2014 budget request. I ask that you push the Administration to produce a fairer FY 2015 budget request, a budget that is currently being shaped within the Administration.

#### **BIA Central Office has Grown at the Expense of Tribal Programs**

Between FY 2002 and 2008 the BIA Central Office budget grew from \$58 million to \$175 million; a \$117 million (301 percent) increase. In the same period, funding for Tribal Priority Allocations (TPA) was reduced from \$752 to \$695 million; a \$58 million (7.6 percent) decrease. I respectfully request that tribal FY 2014 budgets within BIA be increased commensurate to the 5.112 percent increase in the overall Interior FY 2014 budget request but that you strictly apply the increase to tribal government programs and services and not to BIA administrative operations.

#### **Tlingit Haida Tribal Trust Funds Should not Have to Pay for Federal Responsibilities**

The single biggest factor that financially undermines Tribal Self-Determination and Self-Governance is the federal practice of underfunding or putting caps on indirect costs or Contract Support Costs (CSC). The CSC shortfalls and underfunding have cost my Tribe a total \$4,443,438 from 2006 through 2012; an average of \$555,430 per year. During this same period, my Tribal government provided \$214.7 million (\$26.4 million annually) in contractual program services to assist our needy Tribal citizens.

While our people are grateful for the programs designed to help our needy Tribal citizens, we cannot afford to continue to pay this amount of Tribal money to manage these important federal service contracts. Simply put, the difference between the way indirect costs are calculated and the way they are paid by the United States creates an ever-tightening chokehold on my Tribe's ability to administer federal programs. If we follow the law and spend the administrative costs we are required to spend, federal law provides us less and less money to meet these federally-required expenditures. The more we spend, the less we get. The less we spend, the less we get. Both Congress and the federal agencies have caused this crisis. Together we can solve it.

Federal law specifically states that a tribe who contracts for the management of a federal contract is entitled to the same administrative support as the Federal Government itself would have were it to retain the management of that contract. Appropriations legislation that underfunds contract support costs violates this provision of federal law and severely undermines the concept of tribal Self-Determination.

Tlingit Haida diligently tries to abide by federal laws that set our indirect cost rates and to live within other federal appropriations laws that provide us much less than the Federal Government's own audits say we should collect from each agency to manage contracts for them. We were forced to pull more than \$4 million over the past four years out of our modest Trust Fund earnings in order to meet the CSC

shortfall costs we were stuck with by the United States. We cannot continue to afford to pay for these federal responsibility costs going into the future. There are no gaming tribes in Alaska; the economy in rural Alaska is weak to non-existent; and unemployment rates in some of our villages often exceed 50 percent.

#### **Indirect Costs are Fixed Cost Requirements**

If indirect costs were not primarily “fixed” costs, the recurring problem of a shortfall in BIA CSC funding would, perhaps, be survivable. But most of our actual indirect costs *are* “fixed”. For example, typically the most cost-effective way to acquire facility space or equipment is through a long-term lease with locked-in costs. Similarly, package deals for telephone and some forms of transportation offer significant cost savings over time. And obviously, the salary and benefit costs of accounting, administrative, and management staff must be treated as “fixed” or else we cannot hire or keep employees. When federal agencies do not send us 100 percent of the funds required by our federally-set indirect cost rate, we have a shortfall associated with our operation of BIA programs and something has to give.

We refer to tribal CSC funding as a “requirement”—not a “need”. CSC costs are requirements because they are derived from audits conducted by the National Business Center (NBC) on behalf of the Federal Government who sets rates that are used uniformly by all federal agencies with which Tlingit Haida manages a contract or grant. The rates use actual expenditures from prior years to project costs in the future year. Once our federally-established indirect cost rate is set, federal law requires that our Tribe apply that federal rate uniformly to all the programs we administer. In other words, federal law requires us to spend money on administrative costs but will not let us charge all of that spending to the federal grants and contracts.

Another problem is that the Single Audit Act requires a tribal contractor’s cognizant agency (e.g., Department of the Interior) to audit the indirect costs of the tribal contractor and establish an indirect cost rate that must be applied to all programs the tribal contractor administers. If that rate is 25 percent, and a program like Head Start caps administrative cost recovery from its funding at 15 percent, the law requires the tribal contractor to pay the difference from non-federal funds or through a rate increase the following year that will obtain a higher recovery from BIA’s contract support cost fund in future years.

Let me be clear. We would spiral into complete financial disaster as a Tribe if we chose to not spend at the budgeted amounts. Failing to pay certain fixed costs would actually increase our costs (breaking leases, terminating employees, breaching contracts). The P.L. 93–638 language which supposedly protects Tribal contractors against theoretical under-recovery does work with respect to BIA funds, but historical underfunding of CSC has caused our Tribe very serious difficulties in dealing with shortfalls in non-BIA programs for which we must, by law, use the same indirect cost rate. If in year one we don’t spend uniformly on all programs, BIA and non-BIA alike, this will increase the approved rate for the following year because the amounts not collected from the agencies are available to add on to the CSC for the subsequent year. Tlingit Haida, in our efforts to keep our CSC indirect cost rates lower has chosen not to carry all of those costs forward and so has had to pay the shortfalls out of non-federal sources. But Tlingit Haida, and many other tribes, have very few non-federal sources of funding. For these reasons, we have asked that the appropriations committees include the following bill language in the FY 2014 Interior appropriations law. It would provide flexibility to Tlingit Haida and other tribes caught by a crushing, unfunded federal mandate.

#### **Proposed New FY 2014 Bill Language**

“Notwithstanding any otherwise applicable administrative cost limitations, federal funds made available under this or any other appropriations act for fiscal year 2014 to an Indian tribe may, at the option of the tribe, pay for approved indirect costs associated with the administration by the tribe of federal programs under authority other than Pub.L. 93–638, without limiting any claim of the tribe for shortfalls in contract support cost funding pursuant to Pub.L. 93–638, provided that such costs are calculated in conformity with the federally-determined indirect cost rate agreement of that tribe and the relevant OMB circulars.”

[Intent and Effect Of Bill Language: The proposed amendment is intended to apply a tribal contractor’s uniform indirect cost rate established under the Single Audit Act to recover costs required by that uniform indirect cost rate from each federally-funded award or agreement without regard to any otherwise applicable administrative cost cap limitations otherwise governing those awards or agreements. The proposed amendment would expand existing authority to per-

mit a tribal contractor an additional tribal option—it would provide tribal authority to use any federally-funded award to meet up to all of a tribe's approved indirect costs that are calculated in conformity with its federally-established indirect cost rate agreement and the relevant OMB circulars without regard to any otherwise applicable administrative cost cap limitations. This would not require any increase in overall federal funding. The funding level of each award would not be affected. It would simply extend flexibility to a tribal contractor to apply its federally-awarded funds to meet federally-required administrative costs. This would be a huge benefit to tribal contractors, like Tlingit Haida, who are providing services in high-cost areas with few or no financial resources other than federal awards and grants.]

#### **We Endorse the NCAI Position Opposing the Administration's Request to Cap CSC**

We join with NCAI in opposing the President's request to place individual statutory tribal caps on the payment of contract support costs. We have asked the appropriations committees to maintain in FY 2014 and FY 2015 the status quo statutory language on CSC enacted in FY 2013, until there is full tribal consultation on the Administration's proposed new language on individual statutory tribal CSC caps.

#### **Conclusion**

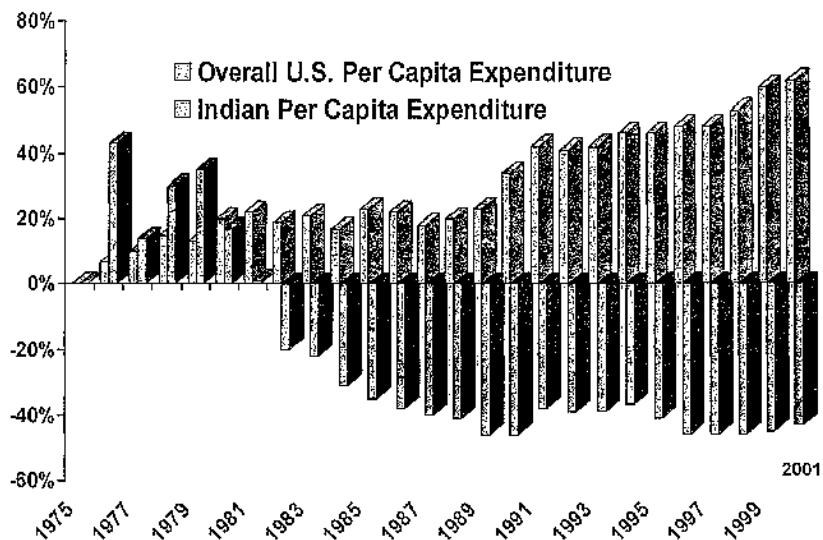
We respectfully request that the Federal Government reimburse the Central Council of the Tlingit and Haida Indian Tribes of Alaska the \$4,163,350 that we spent out of the trust fund pockets of our people to manage federal programs from FY 2006 to FY 2012. This is money that the Federal Government would have spent on administration had it managed those programs themselves.

I very much understand the serious financial challenges facing the Federal Government. It is vitally important that there be a balanced approach in addressing federal budget deficits. But balancing our nation's budget on the backs of the programs serving the needy will not work.

I thank you for the opportunity to share my views with you. I wish you well in your deliberations and I trust you will make the right decisions on the issues of grave concern to our people.

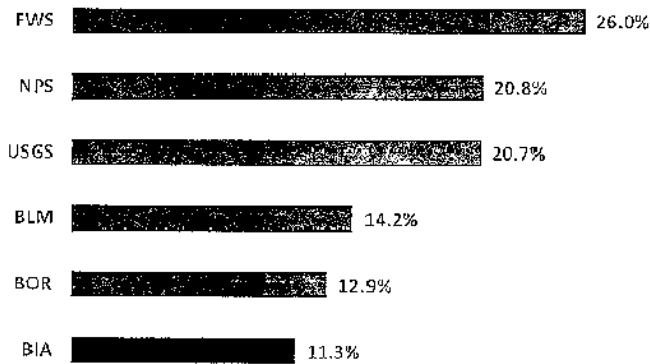
GUNALCHEESH! HOWA! THANK YOU!

### **Overall Per Capita Vs. Indian Per Capita**



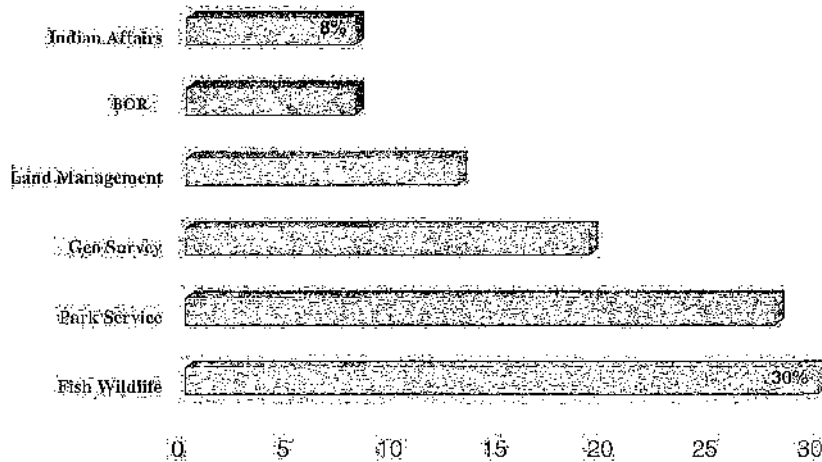
## Trends in Indian Funding

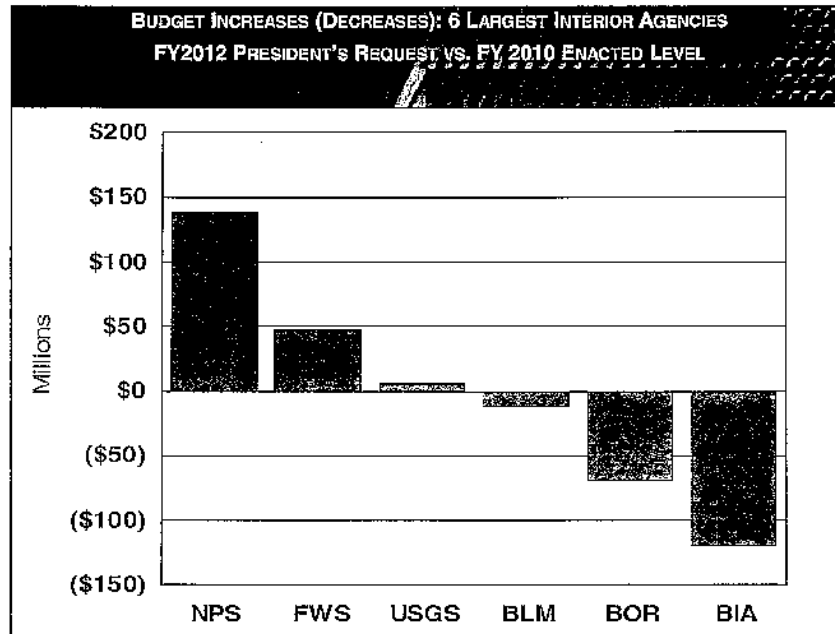
Funding Percent Change for Interior Agencies,  
FY2004 - FY2011



NATIONAL CONGRESS OF AMERICAN INDIANS

## BUDGET INCREASES: 6 LARGEST INTERIOR AGENCY FY2004 TO FY2012





## Impacts on Specific Indian Programs

- Across the Board cuts will be worse than 5.2% compared to FY10:
  - Due to recent year reductions...
  - Indian Housing Block Grant -21%
  - Indian Student Education, -13%
  - Tribal Community Oriented Policing Grants -25%
  - BIA, Operation of Indian Programs - 14%
  - Indian Health Service is subjected to the higher 8.2% cut, not the 2% special rule that the CRS reported in August.

<b>BIA 2002 to 2008</b>				
1	2	3	4	5
	2002	Change	2008	Inflation 16%
<b>TPA</b>	\$752,156	-\$57,662	\$694,534	-7.7%
Other Recurring	\$586,968	\$433,454	\$1,020,422	73.8%
Non-Recurring	\$72,798	-\$	\$	-%
Central Office Ops	\$58,106	\$116,954	\$175,060	201.3%
Regional Office Ops	\$62,679	-\$18,182	\$44,497	-29%
Special Programs	\$267,102	-\$91,414	\$223,467	-33.7%

## **FY 2014 DOI = 4% Increase**

**5.11% all other than BIA**

**BIA - 1.2% increase (\$31 million)**

**• .8% less Indirect Cost (\$10 million)**

**If funded equitably to other DOI**

**Bureaus BIA funding increases should  
be \$134 million instead of \$31 million**

PREPARED STATEMENT OF GLORIA O'NEILL, PRESIDENT/CEO, COOK INLET TRIBAL COUNCIL

Chairwoman Cantwell and Members of the Committee, thank you for the opportunity to submit this testimony as a part of the hearing on the FY 14 Budget for Tribal Programs. My name is Gloria O'Neill and I am the President and CEO of Cook Inlet Tribal Council (CITC), an Alaska Native tribal non-profit organization that serves as the primary education and workforce development center for Native people in Anchorage. CITC has been designated tribal authority through Cook Inlet Region Inc., organized through the Alaska Native Claims Settlement Act and recognized under Section 4(b) of the Indian Self-Determination Act and Education Assist-

ance Act, P.L. 93–638. CITC builds human capacity by partnering with individuals to establish and achieve both educational and employment goals that result in lasting, positive change for themselves, their families, and their communities.

### **Demographics and Expanding Service Population**

CITC's programs serve Alaska Native and American Indian people in the Cook Inlet Region, which includes Alaska's most urbanized and populated communities, and is home to an Alaska Native/American Indian population of more than 40,000, approximately 40 percent of the Native population of the state of Alaska. In Anchorage alone, the Native population is approximately 22,000, about 20 percent of the total Native population in the state. CITC's programs address many of the social, economic, and educational challenges faced by Alaska Native people. For example, Alaska Native students are twice as likely to drop out as their non-Native peers; 33 percent of Alaska's unemployed are Alaska Native people, and almost 20 percent of Alaska Native people have incomes below the federal poverty line—nearly three times the rate of non-Native people.

In-migration from rural, largely Alaska Native communities to the urban areas in the Cook Inlet Region is accelerating as Alaska Native people find it increasingly difficult to make a living in rural Alaska. 59 percent of CITC's participants have been in Anchorage for five years or less; and employment, training, and education are frequently cited as reasons for moving to Anchorage. In contrast, the current Bureau of Indian Affairs funding formula for CITC is based on the population figure of 14,569—from the 1990 Census—which leaves CITC with a funding shortfall to meet the needs of the 40,000 Alaska Native and American Indian people currently residing in our service region.

### **Public Law 102–477 is Essential to Effective Service Provision**

The Indian Employment Training and Related Services Demonstration Act, Pub. L. 102–477, as amended, 25 U.S.C. §§ 3401–3417 (or the “477 program”), currently administered by the Office of Indian Energy and Economic Development in the Department of the Interior, provides a critical foundation for maximizing the effectiveness of CITC's programs. The law allows the consolidation of funding streams from the U.S. Departments of Interior, Health and Human Services, and Labor into a single education, employment and training program. The 477 program enables flexibility on the part of the receiving tribal organization to plan the programming to best fit the needs of the community and minimize administrative redundancy by merging reporting requirements, while still adhering to the Government Performance Results Act's stringent accountability standards. 267 tribes and tribal organizations operate through 63 plans under the 477 program, making this a program of national significance.

### **CITC 477 Programs**

The 477 Program allows CITC to increase effectiveness and innovation, enhance interoperability, and eliminate inefficiency while maximizing program outcomes. CITC's Employment & Training Services Department (ETSD) provides comprehensive services to assist Native job seekers, including job training and placement, TANF, and child care.

CITC is the sole provider of Tribal TANF in Anchorage, and TANF is a key component of our 477 program. Our TANF program is built on an integrated service model that connects participants to the range of programs offered throughout CITC's departments. Through our integrated service model, CITC has reduced case-loads as well as effectively implemented TANF prevention. This type of innovation and interoperability would be impossible without the flexibility provided by the 477 program.

Furthermore, efficiencies gained within the TANF program resulted in a 5-year savings of \$8.4 million—savings that have been re-invested in supportive services and programs that directly benefit TANF participants. 477 allows Tribes and Tribal entities to administer federally funded employment and job training programs as a single program, with a single budget and a single set of reporting requirements.

Over the Past 5 Years CITC 477-supported Programs Have:

- Provided 9,329 job seekers with career exploration, training and job search assistance; 5,905 (63 percent) of these individuals were placed in jobs.
- In 2010, the average hourly wage (AHW) of a job seeker coming to CITC for services was \$9.95—upon leaving CITC their AHW was \$17.23.
- Transitioned 1,989 TANF recipients from welfare to work, entering with no job experience or income, and leaving with an AHW of \$11.53.



CITC has demonstrated that the 477 program is very successful in connecting people to long term, meaningful jobs. In short, the 477 program is a “win-win” for the federal funders and CITC, since it eliminates wasteful inefficiency while maximizing program outcomes.

Nationally, the 477 program, according to the 2012 477 national report, helped Tribes serve over 41,000 people, of whom only 4 percent did not complete their objectives. More importantly, of those who obtained employment:

- Adults gained \$9.25 per hour;
- Youth gained \$6.40 per hour;
- People on cash assistance gained \$7.60 per hour.

The 477 program is critical to our effectiveness, especially in this environment of shrinking funding sources.

In 2011 and again last year, the Tribes sought assistance from the House and Senate Appropriations committees to address two problematic changes to the 477 program that the agencies proposed to the Administration: (1) ending the practice of transferring 477 program funds to participating Tribes and Tribal organizations through PL 93–638 contracts or Self-Governance agreements, as authorized by the Indian Self-Determination and Education Assistance Act (ISDEAA); and (2), a new requirement that 477 Tribes and Tribal organizations report their 477 expenditures separately by funding source number for audit purposes. These changes would significantly undermine the program’s success.

Congressional intervention directing agencies to work their concerns out with Tribes and Tribal organizations resulted in the formation of the P.L. 102–477 Administrative Flexibility Work Group. This group, which included representatives from the Departments of the Interior (DOI), Health and Human Services (HHS), Labor (DOL) and the Office of Management and Budget (OMB), as well as representatives from 10 affected Tribes and Tribal organizations, has met almost weekly for 18 months. In the meantime, the agencies agreed to temporarily allow funds to continue to be transferred through ISDEAA and have suspended the reporting requirements instituted in the March 2009 OMB Circular.

The Work Group has had some successes, including: (1) effective collaboration on interim OMB circular language that has kept the status quo while discussions continue; (2) developing a new draft 477 program guideline for the agencies in reviewing tribal plan proposals; (3) agreeing to certain components of the draft narrative, statistical and financial reporting; and (4) agreement that 477 funds would be transferred through P.L. 93–638 contract(s) or Self-Governance funding agreement(s).

However, in spite of this progress, it has become clear that the agencies continue to question one of the fundamental purposes of the 477 program—to allow tribes and tribal organizations to reallocate their funds within their approved 477 program in order to address local issues and needs in the most effective manner. From our perspective, giving this authority and responsibility to tribes to meet their own needs is exactly the point and strength of the 477 program. It is precisely this flexibility that has allowed CITC to be so successful.

Given this disagreement of fundamental principle, we believe that it is vital that Congress weigh in again in support of the 477 program. Specifically, we have requested that the Appropriations Committees expedite the negotiations by clarifying the intent of the 477 program in the appropriations process by including following language:

Notwithstanding any other provision of law, and notwithstanding any auditing or reporting circular of the Office of Management and Budget or related compliance memoranda, hereinbefore and hereinafter (1) any funds supplied by any Federal department or agency to carry out a plan under Public Law 102–477 (the Indian Employment, Training and Related Services Demonstration Act), as amended, shall be consolidated and made available to the applicable Indian tribe or tribal organization pursuant to an existing contract, compact, or funding agreement under title I or title IV of Public Law 93–638 (the Indian Self-Determination and Education Assistance Act), as amended; and (2) no Indian tribe or tribal organization carrying out such a plan shall be required to separately account for the expenditure of the funds of each Federal department or agency after the date on which the funds are consolidated and paid to the Indian tribe or tribal organization; (3) all funds transferred under an approved Public Law 102–477 plan may be reallocated and rebudgeted by the Indian tribe or tribal organization to best meet the employment, training and related needs of the local community served by the Indian tribe or tribal organization.

We urge this Committee to consider forwarding this language to the Senate Appropriations Committee with a request from this Committee for action in support of the 477.

#### **Contract Support Costs**

Many of the services provided by Tribes and Tribal organizations are provided under contract with the Federal Government. P.L. 93-638, the Indian Self-Determination and Education Assistance Act of 1975, allowed the Federal Government to contract out to Tribes and Tribal organizations the responsibility for running the programs required to meet federal trust obligations. Today under P.L. 93-638, Tribes and Tribal organizations across 35 states run over \$2.3 billion in services on behalf of the government. Every Tribe in the United States runs at least one program for the government under a self-determination contract. CITC runs substance abuse treatment, 477, recovery services, education, job training and placement, and child and family services programs under self-determination contracts. These contracts have allowed Tribes and Tribal organizations to take control of the welfare of our own people.

P.L. 93-638 requires the government to pay Tribes in full for the “contract support costs” the Tribes incur when administering the contracts. The costs, which are fixed and annually established by the government, cover such expenses as federally mandated audits, worker’s compensation and property. When these costs aren’t paid, the programs suffer.

In spite of multiple court decisions clarifying that payment of contract support costs is a binding contractual obligation due all Tribes and Tribal organizations that operate BIA and IHS contracts, the Administration’s budget for FY14 underfunds contract support accounts, and even more outrageously, proposes a new mechanism for funding these costs.

First, the Administration’s budget requests \$140 million less than is needed to honor all tribal contracts with the Indian Health Services, and falls \$12 million short of the amount necessary to honor all BIA contracts. Second, the new mechanism proposed to fund these costs proposes giving legal effect to a yet-to-be-published table specifying the maximum amount each tribal contractor would be entitled to be paid. Since each tribal contract is “subject to the availability of appropriations” this change would in effect cut off all future contract rights. It is important to note that the Administration is not proposing that a Tribe or Tribal organization cut back the services they are contracted to provide, but only to cut the amount the government would pay a Tribe to provide the same services. These changes are extremely troubling and would challenge CITC’s ability to continue providing the quality programs that we currently run.

We oppose the Administration’s proposed restructuring of the payment of these costs, the overall statutory caps on contract support costs, and we are adamantly opposed to changes that would deny Indian Tribes and Tribal organizations the same contract remedies that every other government contractor possesses.

We urge the Committee to make the following recommendations to the Senate Appropriations Committee:

- 1) Congress should reject the Administration’s proposed restructuring of the annual appropriations Acts.
- 2) Congress should either eliminate the current earmarked caps on the contract support cost payments, or raise the IHS cap to \$671 million and the BIA cap to \$242 million.
- 3) Congress should not deny Indian Tribes the same contract remedies that every other government contractor possesses, and that the Supreme Court confirmed, in *Ramah and Cherokee*, apply to 638 contractors.
- 4) The Administration should be directed to engage in true and thoughtful government-to-government consultation, and that to ensure thorough vetting, the Administration should be directed not to bring a proposal back to the Appropriations Committee sooner than FY 2016.
- 5) In an effort to encourage agencies to disclose accurate and timely sh01tfall reports, Congress should insert language waiving the “deliberative process privilege” provided under 5 U.S. C. 552(b)(5) for all contract supp01t cost date not disclosed on or before May 15.
- 6) Congress should direct the agencies to include projections for IHS and BIA contract payments.

### Conclusion

Madame Chair, CITC is grateful for this Committee's interest in and support for the 477 program, and Contract Support Costs. We urge the Committee to act quickly on both issues. These programs are essential to our ability to meet the needs of our people in innovative and efficient ways.

Thank you for your time and consideration.

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PREPARED STATEMENT OF HON. ROBERT SHEPHERD, TRIBAL CHAIRMAN, SISSETON  
WAHPETON OYATE, LAKE TRAVERSE RESERVATION

Chairwoman Cantwell and Committee members, Thank you for giving us the opportunity to present testimony regarding the 2014 budget.

The House Appropriations Committee is listening to testimonies from Indian Country for the next two days. In my testimony submitted to them I reminded them that as a committee they were representing 29 states with a total of 247 Federally Recognized Tribes located within their states. 340 Federally Recognized Tribes, have representation today at the table of this Committee.

As the Senate Committee of Indian Affairs you are well aware of the continuous challenges Indian Country faces. With the proposed 2014 budget and sequestration these challenges have and will only become more difficult to overcome. One of the certain results will be future testimony from Indian Country stating the high increase of death due to suicide, poor health and violence-related causes. That is a fact I can assure this Committee of today.

For our Committee members who are familiar with and work closely with the tribes in your state, I applaud your efforts. To be in proactive support of a nation who is not always popular in their state due to lack of knowledge of what federal obligations entail is a strong reflection that they are in fact working for all people and not a political agenda.

For our Committee members who are in support of the proposed cuts that will affect Indian Country, these proposed changes will only bring drastic effects to all tribes. One of the most significant reminders I can state today is the federal obligation to all federally-recognized tribes and that obligation should be considered as exempt from these cuts and sequestration.

As one of the 567 Federally Recognized Tribes and as one of the few remaining Treaty Tribes, my testimony today is to speak not only behalf of the Sisseton-Wahpeton Oyate and our Great Plains Region but to also remind the Committee of the federal obligations to the federally recognized tribes that are not and cannot be considered as a category or program under discretionary, entitlement nor as a hindrance to the budget.

The Sisseton Wahpeton Oyate is in strong opposition of the Administration's FY 2014 budget proposal. The following components will be drastically affected without any kind of consultation or prior input.

### Sequestration

Trust and treaty obligations to tribes should not be subject to sequestration. The sequester reductions to tribal programs undermine Indian treaty rights and obligations—treaties which were ratified under the Constitution and are considered the "supreme law of the land."

Our treaty specifically binds the United States Government to provide health care to the people of the Sisseton-Wahpeton Oyate. The United States Constitution itself states in Article VI., "This Constitution . . . and all treaties made . . . under the authority of the United States, shall be the Supreme laws of the land." Enforcing the continuation of these services are the Snyder Act of 1921 and the Transfer Act of 1955 for continuation of services and appropriation of funds to provide health services to Indian people for as long as the Federal-Indian trust relationship continues. The Indian Health Care Improvement Act enacted in 1976 is a legal cornerstone for providing health care to American Indian/Alaskan Native people. As chronically underfunded Indian Health Service is, it is unconscionable to not be exempt from the sequestration. In fact, it needs to fall under the exempt categories such as Social Security, Medicaid, CHIPs and Veteran benefits.

Tribal nations provide ongoing contributions of natural resources of the land and water to the U.S. economy. In exchange, the United States agreed to protect tribal treaty rights, lands, and resources, including provision of certain services which is known as the federal Indian trust responsibility.

To agree and suggest such budget cuts without the conversation and consultation is blatant disregard of not only the trust obligations, but it thwarts tribes' ability to promote economic growth or plan for the future of Native children and coming

generations. We have been historically underfunded leading to the domino effect of impoverished reservations, high crime and suicide rates, and inadequate healthcare.

#### **Expected Impact**

Inadequate funding has already resulted in evidence-based poor health and early death. Because of anticipated cuts Contract Health Service will be limited to Priority I, which is life or loss of limb threatening services only. Preventative and primary care also known as “womb to tomb” care will not be available which will only increase the already high early death rate. In South Dakota, the life expectancy for a Caucasian is 81 years of age, for an “Indian” it is 58 years of age.

The expected impacts to our P.L. 93-638 Programs that work with our local Indian Health Service are;

#### *Community Health Representative Program*

An estimated reduction of 1,075 less people served in the areas of diabetes, maternal and child health, health education, transportation, home patient care and monitoring through the Community Health Representative Program. This impact will only increase the already high infant mortality rates and further reduce life expectancy of our tribal members.

#### *Dakota Pride Treatment Center*

The difficult decision to choose between discontinuing youth intervention and aftercare services or transitional services for adults in the halfway house can only be considered as detrimental. Our treatment facility is a 30 day cycle, 12 bed in house, eight bed transitional housing State accredited chemical dependency service program for adults. In addition there is also outpatient treatment, aftercare and prevention services for youth and adults. Currently only outpatient services are available to juveniles.

Knowing the critical challenges and long term effects we have taken the initiative to battle these issues locally with our own resources to promote healthier lifestyles with available grants and tribal resources for example;

- We are working towards building a Community Justice and Rehabilitation center that will include juvenile treatment capabilities for adolescence in-patient and aggressive drug and alcohol preventative measures for our youth. With the rapid increase of serious drugs such as meth coming into the communities we cannot allow any of these services to lapse.
- Our health and fitness center offers preventative programs to community members including non-tribal citizens. A variety of fitness programs, diabetes prevention and nutrition classes are offered.
- Suicide prevention and awareness targeting our high risk youth have been increased by 100 percent.
- In-home health care services through our tribal elderly program, assists with medication, monitoring of vital signs, blood pressure, blood sugar and make referrals to IHS if there are any urgent health issues.

These examples are presented so the Committee Members understand that we are not only bringing problems to the table but we are also working towards solutions.

In closing, I would like to stress to the Committee Members, the federal obligations agreed to by the United States Government, we as Federally-recognized Tribes should be exempt from such budget cuts and sequestration.

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PREPARED STATEMENT OF JAMES E. ZORN, EXECUTIVE ADMINISTRATOR, GREAT LAKES INDIAN FISH AND WILDLIFE COMMISSION (GLIFWC)

#### **Agencies—Bureau of Indian Affairs and Environmental Protection Agency**

1. *BIA Rights Protection Implementation*: \$36,722,000. Great Lakes Area Resource Management: \$7,067,000 (Administration's proposed allocation).

Agency/Program Line Item: Dept. of Interior, Bureau of Indian Affairs, Operation of Indian Programs, Trust-Natural Resources Management, Rights Protection Implementation, Great Lakes Area Resource Management.

Funding Authorizations: Snyder Act, 25 U.S.C. s. 13; Indian Self-Determination and Education Assistance Act, (P.L. 93–638), 25 U.S.C. ss. 450f and 450h; and the treaties between the United States and GLIFWC’s member Ojibwe Tribes.<sup>1</sup>

2. *BIA Contract Support*: At least the \$231,000,000 amount requested by the Administration, provided this amount meets the full contract support funding required by the Indian Self-Determination and Education Assistance Act.

Agency/Program Line Item: Dept. of Interior, Bureau of Indian Affairs, Operation of Indian Programs, Tribal Government.

Funding Authorization: Indian Self-Determination and Education Assistance Act, (P.L. 93–638), 25 U.S.C. ss. 450f and 450h.

3. *EPA Great Lakes Restoration*: \$300,000,000. Tribal Need: \$25,000,000. GLIFWC Need: \$1,200,000 (estimated annual need).

Agency/Program Line Item: Environmental Protection Agency, Environmental Programs and Management, Geographic Programs, Great Lakes Restoration.

Funding Authorizations: Clean Water Act, 33 U.S.C. s. 1268(c); and treaties cited above.

### **GLIFWC’S Goal—A Secure Funding Base to Fulfill Treaty Purposes**

For nearly 30 years, Congress has funded GLIFWC to meet non-discretionary treaty obligations and to comply with associated federal court orders. GLIFWC implements comprehensive conservation, natural resource protection, and law enforcement programs that ensure member tribes are able to exercise their treaty reserved rights to hunt, fish, and gather throughout the ceded territories, and that ensure a healthy and sustainable natural resource base to support those rights. These programs also provide a wide range of public benefits and assure full participation in management partnerships in Wisconsin, Michigan, and Minnesota.

GLIFWC and its member tribes appreciate the Administration’s and Congresses’ strong support of these treaty obligations for the past 30 years and for their continuing recognition of the hard work undertaken to implement the RPI program. They also appreciate this Committees’ request for testimony on the FY 2014 proposed budget. Despite an increase in support for treaty rights protection in FY 2012, GLIFWC’s FY 2012 funding, leveraged with other funding sources, still results in unmet needs of \$2,636,000. Funding at the proposed FY 2014 level would begin to address these unmet needs. For more detail, the three elements of this FY 2014 funding request are:

1. *BIA Great Lakes Area Management*: \$7,067,000. This program falls within the Rights Protection Implementation (RPI) line item, which the Administration proposed at \$36,722,000 for FY 2014. Funds provided to GLIFWC under the RPI program ensure that GLIFWC’s member tribes continue to comply with federal court orders by ensuring effective implementation of tribal self-regulatory and co-management systems.

In previous fiscal years, GLIFWC and other Treaty Commissions testified about chronic underfunding of the Rights Protection Implementation line item and the impacts of that underfunding on GLIFWC’s programs. The increases in the Great Lakes Area Resource Management line item in FY 2010 allowed the Commissions to restore some program cuts that had resulted from previous funding shortfalls. Sequestration will undo many of these restorations. For example, for GLIFWC, sequestration threatens its long-standing fish contaminant and consumption advisory program, fall juvenile walleye recruitment surveys, tribal court and registration station funding, and Lake Superior lamprey control and whitefish assessment programs. Any of these cuts will have a greater impact now, when demand for GLIFWC’s services across the ceded territories is increasing as more tribal members are exercising their rights to put food on their tables during difficult economic times. Funding at the proposed FY 2014 level would protect GLIFWC programs from these cuts.

2. *BIA Contract Support*: At least \$231,000,000, consistent with the Indian Self-Determination and Education Assistance Act’s requirement for full contract support funding. GLIFWC does not support the Administration’s proposal to institute individual statutory caps, in part because there is no funding to cover any shortfalls without undermining service capacity.

<sup>1</sup>Specifically, the Treaty of 1836, 7 Stat. 491, Treaty of 1837, 7 Stat. 536, Treaty of 1842, 7 Stat. 591, and Treaty of 1854, 10 Stat. 1109. The rights guaranteed by these treaties, and the associated tribal regulatory and management responsibilities have been affirmed by various court decisions, including a 1999 US Supreme Court case.

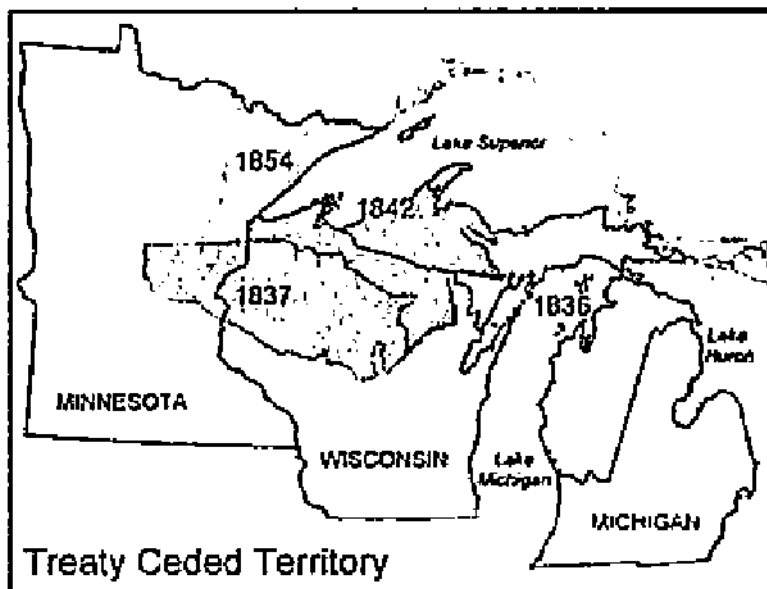
3. *EPA Environmental Programs and Management*: \$300,000,000. GLIFWC supports continued funding for the Great Lakes Restoration Initiative (GLRI) at the Administration's proposed FY 2014 level of \$300,000,000. It also recommends that at least \$25 million be provided to the BIA for tribes, to ensure they are able to undertake local projects that contribute to the protection and restoration of the Great Lakes.

Sustained funding for GLIFWC at approximately \$1.2 million will enable GLIFWC to maintain its protection and enhancement activities throughout the ceded territories. These activities are especially important at a time when state and federal agencies are stepping back from on-the-ground protection work due to budget constraints. Protection activities are imperative—protecting resources from degradation is much more effective and cost-efficient than restoration activities. It makes no sense to let resources degrade, only to spend more money on restoration. The benefits of GLIFWC protection and restoration activities are not only felt by its member tribes, but benefit all communities that use the ceded territories.

Funding provided through the BIA should be made available under the Indian Self-Determination and Education Assistance Act (ISDEAA). In 2010, GLRI funding awarded through the ISDEAA was virtually the only GLRI funding that was available before the 2010 field season. This enabled tribes to begin project implementation much earlier and realize substantial “on-the-ground” ecosystem benefits early.

#### **Ceded Territory Treaty Rights—GLIFWC'S Role and Programs**

Established in 1984, GLIFWC is a natural resources management agency of eleven member Ojibwe Tribes with resource management responsibilities over their ceded territory (off-reservation) hunting, fishing and gathering treaty rights. These ceded territories extend over a 60,000 square mile area that extends to Minnesota, Wisconsin, and Michigan.



Through its staff of 66 full-time biologists, scientists, technicians, conservation enforcement officers, policy specialists, and public information specialists, GLIFWC's mission is to: i) ensure that its member tribes are able to exercise their Treaty-protected rights to meet subsistence, economic, cultural, medicinal, and spiritual needs; and ii) ensure a healthy, sustainable natural resource base to support those rights. GLIFWC is a “tribal organization” as defined by the Indian Self-Determination and Education Assistance Act, governed by a Constitution that is ratified by its member tribes and by a Board composed of the Chairs of those tribes.

### Justification and Use of the Requested Funds

1. *Maintain the Requisite Capabilities to Meet Legal Obligations, to Conserve Natural Resources and to Regulate Treaty Harvests:* Although it does not meet all GLIFWC's needs, sustained funding at the FY 2014 level would go a long way in facilitating continued tribal compliance with various court decrees and intergovernmental agreements governing the tribes' treaty-reserved hunting, fishing and gathering rights. It also enhances GLIFWC's capability to undertake work and participate in relevant partnerships to tackle ecosystem threats that harm treaty natural resources, including invasive species, habitat degradation and climate change.

2. *Remain a Trusted Environmental Management Partner and Scientific Contributor in the Great Lakes Region:* GLIFWC would maintain its role as a trusted environmental management partner and scientific contributor in the Great Lakes Region. It would bring a tribal perspective to the interjurisdictional mix of Great Lakes managers<sup>2</sup> and would use its scientific expertise to study issues and geographic areas that are important to its member Tribes but that others may not be examining.<sup>3</sup>

3. *Maintain the Overall Public Benefits That Derive From Its Programs:* Over the years, GLIFWC has become a recognized and valued partner in natural resource management. Because of its institutional experience and staff expertise, GLIFWC has built and maintained numerous partnerships that: (i) provide accurate information and data to counter social misconceptions about tribal treaty harvests and the status of ceded territory natural resources, (ii) maximize each partner's financial resources and avoid duplication of effort and costs, (iii) engender cooperation rather than competition, and (iv) undertake projects that achieve public benefits that no one partner could accomplish alone, as the Department of the Interior highlighted in its FY 2014 Budget in Brief.<sup>4</sup>

### Other Related Appropriations Concerns

1. *Rights Protection Litigation Support:* Litigation support funds are used to defray costs associated with litigation to affirm and implement treaty reserved rights. Defraying these costs, such as those associated with ongoing negotiations with states in on-going co-management activities preserves base funding for GLIFWC's program costs.

2. *Rights Protection Evaluation and Research Activities:* GLIFWC supports the Administration's proposed \$3.5 million for evaluation and research activities in the Rights Protection Implementation line item, provided this funding goes to RPI tribes and intertribal commissions to carry out the evaluation and research activities that will lead to the development of implementation and management strategies to deal with the many changes that are occurring throughout the ceded territories.

### PREPARED STATEMENT OF ST. FRANCIS INDIAN SCHOOL

St. Francis Indian School is located on the Rosebud Sioux Reservation in South Central South Dakota. Our school is funded as follows for the 566 students enrolled; with our weighted student unit (WSU) at \$5,339.51 per student count. The tables show the 5 percent decrease in funding that was directed by the Bureau of Indian Education for the next school year. As of this year 2012–2013 we were funded at \$8,920,675 but for the 2013–2014 school year we had to cut \$430,479. In all actu-

<sup>2</sup> GLIFWC currently participates on a regular basis in the Binational Program to Restore and Protect Lake Superior, International Joint Commission and SOLEC forums, the Great Lakes Restoration Initiative, and the implementation of agreements to regulate water diversions and withdrawals under the Great Lakes Charter, Annex 2001.

<sup>3</sup> With the requested FY 2014 funds, GLIFWC would: (i) continue a ceded territory wild rice enhancement project; (ii) facilitate tribal input and participation in the implementation of the revised Great Lakes Water Quality Agreement; (iii) continue to participate in the development and implementation of the Lake Superior Lakewide Management Plan; (iv) build upon its long-standing fish contaminant analysis and consumption advisory program by testing additional species, testing in a wider geographic range, and testing for chemicals of emerging concern; (v) enhance its invasive species and animal disease prevention, monitoring and mitigation programs, particularly given the potential impacts of climate change, the recent discovery of viral hemorrhagic septicemia (VHS) in Lake Superior and the potential migration of the Asian Carp into the Great Lakes, and (vi) enhance its capacity to protect ceded territory natural resources by responding to development proposals such as those related to mining.

<sup>4</sup> The FY 2014 Budget in Brief highlights GLIFWC's wild rice restoration and management activities, done in partnership with the states of Wisconsin, Minnesota, and Michigan, as well as GLIFWC's participation in joint fisheries management on Lake Superior. See pages DH-84 and DH-85.

ality if our Administrative Cost Grant was fully funded as well as our Operations and Maintenance at 100 percent, transportation was funded to meet our needs at \$1,000,000 and we didn't have to cut the 5 percent out of programs we should actually be funded at \$9,627,699 per school year to maintain the needs of our students.

2011-2012 Enrollment	Ave. Daily Membership 2011-2012	Weighted Stud. Unit 3 yr rolling ave.	Weighted Stud. Unit amount per student
700	530.40	897.28	\$5,339.51

2012-2013 Funding Source and Amount	Dollar Amount 2012-2013 budget	5% decrease for SY 13-14	Funding for 13-14	Additional funds needed
ISEP Amount per WSU	\$4,791,000	\$ 239,550	\$4,551,450	
Transportation	\$ 749,900	\$ 37,495	\$ 712,405	\$250,100
Administrative Cost	\$ 750,000 (60% funded)	\$ 35,745	\$ 714,255	\$300,000
Family and Child Educ.	\$ 250,000	\$ 0	\$ 250,000	
Title I	\$1,244,500	\$ 62,225	\$1,182,275	
Title II Teacher Quality	\$ 152,300	\$ 7,615	\$ 144,685	
SPED Part B Level I Achievement	\$ 25,729 (as achieved year to year)	\$ 0	\$0	
SPED Part B Formula	\$ 637,371	\$ 31,869	\$ 605,502	
Facilities Operations	\$ 174,852 (43% funded)	\$ 8,743	\$ 166,109	\$78,512
Facilities Maintenance	\$ 100,628 (43% funded)	\$ 5,032	\$ 95,596	\$78,512
Johnson Omalley	\$ 17,195	\$ 860	\$ 16,335	
ISEP Contingency	\$ 26,900	\$ 1,345	\$ 25,555	
TOTALS:	\$8,920,675	\$ 430,479	\$8,490,196	\$707,124

The sequestration 5 percent cuts on our school has had a devastating impact in the areas of:

*Indian School Equalization Program (ISEP):* The impact as such has been that we have had to cut 10 teaching positions and 8 support personnel in the areas of school safety, human resources, teacher mentors/coaches and food services.

Due to those cuts class sizes have to increase which impacts student achievement directly as research has proven that smaller class sizes increases student achievement.

School safety has always been a priority for our schools, with the terrible tragedy that occurred in this year in the elementary school in Newtown, Connecticut, it is vital for us to have hall monitors to aide us in keeping our school buildings safe and giving us the first line of defense in any school safety issue occurs preempting us to lock down or evacuate suddenly.

Our teacher mentor/coaches give on site technical assistance to our teachers and come highly trained for what their job duties are in various subject in reading/math/classroom management techniques, we spent staff development dollars getting them highly trained to assist those teachers in those areas so that we don't have to spend those precious dollars on sending people to training.

The human resource impact is huge in the fact that this individual handles our background checks and drug testing of our staff to be in compliance with our funding agencies requirements and allows our staff to meet those guidelines to be around our students. It gives our stakeholders a peace of mind in that they are comfortable sending their students to us on a daily basis.

The food service staff that are employed for the high school; as we just recently opened a food serving center in that building along with the gymnasium under the ARRA stimulus money to complete our construction project, are necessary to school safety and keeping our elementary students apart from the middle and high school students and their behaviors, which sometimes can be detrimental to our elemen-



tary kids and their social growth. We have to find another avenue to fund the 4 positions at the High School for next year.

Several of our support office staff went from 52 week contracts to 46 weeks to reduce the contracted amount we pay them to reach the 5 percent decrease which will begin this summer of 2013. We will have to use creative ways to keep the community informed during the summer months.

We are asking the supplemental programs for the first time assist in Operations and Maintenance expenditures as we always have done in ISEP general education to keep the maintenance of the buildings falling in to total disrepair and maintaining cleanliness for student use. Further explanation will be forthcoming in the O & M section.

Finally we capped all coaching salaries and reduced them for the upcoming year of 2013–14.

In order for us to continue funding the necessary school operations such as curriculum purchases, textbooks, supplies and materials, common core implementation, MAPS assessment, athletics and offices expenses and Operations and Maintenance purchases and keep from overspending in spite of the 5 percent cuts this is how St. Francis Indian School took action in ISEP.

*Transportation:* Out of the 566 students enrolled this year exactly 414 students ride our transportation system daily, that is exactly 2/3 of our student population that we service. Our drivers cover 6,516 miles weekly or 260,640 in a school year in a 100 mile radius that covers the Rosebud Reservation. Only 3 routes out of 11 are on paved roads while the other 8 go on non-paved side roads or country roads to pick up students. These figures do not reflect our transporting of students for athletic events, student field trips and other educational transportation endeavors. Our last bus purchase was in 2007 at \$60,000 for a new bus and the other busses we operate are becoming too old to operate although we continue to fix them and a great expense to the already stressed transportation budget. We historically spend \$160,000 on gas and diesel our maintenance costs were \$30,000 last year. The cuts are devastating in this area if we are to continue to have transportation services for our vehicles and busses at a safe rate for our students.

*Administrative Cost Grant:* These appropriations have not been sufficient as the BIE has funded this at below 60 percent of what is actually needed to operate our school. The essentials needs such as grant administration, program planning, human resources, insurance, fiscal, procurement and property management, required annual audits, recordkeeping, legal, security and overhead services are paid for out of the Administrative Cost Grant.

The inadequacy of ACG funding was documented in the 2003 GAO report (Expenditures in Selected Schools are Comparable to Similar Public Schools, but Data are Insufficient to Judge Adequacy of Funding and Formulas, GAO–03–955. In that year ACG were funded at 72 percent but as the level of funding eroded year to year since then, the cost of the ACG has not kept up in response to that level of funding needed to operate our school.

The schools have had to make difficult decisions such as delaying purchases of ISEP items as those funds have had to assist in the ACG to pay for audits or other essential priorities to stay in compliance with our grant requirements.

This grant would also have to help the O & M budget as they have never been funded at 100 percent just to keep personnel on to maintain our school buildings or buy priority items such as school boilers to keep our buildings heated.

No institution can or should be expected to operate prudently and productively if only 60 percent of its overhead costs are being met.

*Operations and Maintenance:* This has always been underfunded at only 43 percent of what is actually needed for our school to maintain and operate our school heating and cooling systems as well as stay ahead of repairs from the daily use of the schools systems by our students and staff. Our schools have to cost share with other already stressed budgets to keep these operations going from ISEP and Administrative Cost Grants to get through each school year. The cut has already shown a devastating impact with no other revenue to assist these budgets.

#### Facility Operations

The Facility Operations funding provides funding for 21,430,000 square feet of education space. Expenses for operation of BIE-funded schools include electricity, heating fuels, communications, grounds maintenance, GSA vehicle rental, refuse collection and disposal, custodial services, pest control, water and sewer service and fire/intrusion monitoring, as well as operations program administration.

#### Facility Maintenance

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The Great Plains Tribal Leaders and Tribal Educators as well as St. Francis Indian School oppose taking any funding from the scarce funds going to our Tribal Schools. (ISEP (\$16.5 M). If DOE wants a Pilot Project, let DOE Fund it our Tribal Schools need the ISEP dollars to operate our schools which already have been devastated with the 5 percent cuts for next year. As this is on the agenda for discussion this week we want to go on record opposing this initiative and keep the money with the schools:

**BIE Pilot Program**

—President has proposed a \$15 million for a pilot program based on the Department of Education turnaround schools model and concepts. The increases are offset by a \$16.5 million reduction in Indian School Equalization Program funds.

*Conclusion:* The Obama Administration has the opportunity to correct years of neglect for the tribally operated schools in the BIE school system, and to demonstrate that the promise of Indian Self-Determination extends to the schools for our Native American children for which the Federal Government has sole responsibility. It is ironic that schools were the first BIA programs to be taken over through exercise of Indian self-determination rights, but now, nearly 38 years after enactment of the Indian Self-Determination and Education Assistance Act, tribally-operated schools receive the lowest level of funding by a wide margin. That level of support is so dangerously low that it threatens the ability of these schools to function.

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PREPARED STATEMENT OF BILLY FRANK, JR., CHAIRMAN, NORTHWEST INDIAN FISHERIES COMMISSION

Dear Senator Cantwell:

On behalf of the Northwest Indian Fisheries Commission and our member tribes, I would like to thank you for all of your past efforts to protect, sustain and enhance our natural resources. Not only is the protection and restoration of our natural resources important to our tribes but it is also important for all citizens of the state of Washington. It is because of champions like you that allow us to protect and restore the state's resources which are essential to our tribal communities and their economies.

As you are aware, we have been pursuing our Treaty Rights at Risk initiative for almost two years. The treaty-reserved right to harvest salmon continues to decline due to ongoing loss of habitat. The Federal Government has an obligation to protect these treaty-reserved natural resources. The treaties and the treaty-reserved right to harvest are the supreme law of the land under the U.S. Constitution. For the tribes to fully exercise their treaty rights it will take sustained financial support for us to properly manage the resource. Funding that is provided to tribes allows us to perform the necessary management responsibilities to protect these resources. We are sensitive to the budget challenges that Congress faces. However, we believe the management work that we perform to protect our valuable resources and to help fulfill the trust obligation of the Federal Government continues to be worthy of your support. Without this continued support the treaties will have no meaning as these natural resources disappear.

As you know, the President released his Fiscal Year 2014 (FY14) Budget earlier this month. We are pleased to see the continued strong advocacy of tribal programs, particularly natural resources. If there is any normalcy to the appropriations process this year, we are presented with a great starting point with the President's budget and an opportunity with your continued support. Even with the financial constraints placed on the Federal Government with the overall spending reductions, we feel there is much congressional and agency support in upholding the federal trust responsibility.

We would like the opportunity to comment upon portions of the FY14 Interior, Environment and Related Agencies' budget. We specifically would like to address the budgets of the Bureau of Indian Affairs (BIA) and the Environmental Protection Agency (EPA) and identify our appropriations request as Congress begins to deliberate funding priorities for FY14.

## **Bureau of Indian Affairs**

### *Rights Protection Implementation Sub-activity*

There are several accounts within the Rights Protection Implementation (RPI) Sub-activity which affect our member tribes. These include Western Washington Fisheries Management, U.S./Canada Pacific Salmon Treaty, Washington State Timber-Fish-Wildlife and Salmon Marking. The President's FY14 budget contains \$36.722 million, an increase of \$8.746 million over the FY12 enacted level. We support funding RPI at \$36.722 million. However, there remains a continued, unmet need and we therefore have the following requests.

- Provide \$17.146 million for BIA Western Washington Fisheries Management

Over the past several years, the tribes and the NWIFC have requested an increase of \$12.0 million in the base Western Washington program. The increase in FY10 was very much appreciated, however, we once again ask Congress to address the remaining identified needs of the NWIFC and our member tribes. The President's FY14 budget contains \$9.613 million. We respectfully request \$17.146 million. Funding for this program allows for continued treaty harvest management, population assessment, habitat protection and data gathering for finfish, shellfish, groundfish, wildlife and other natural resource management needs. Funds provide the necessary capacity for the treaty tribes to co-manage the resources with the state of Washington and to meet court required mandates.

- Provide \$3.082 million for BIA Washington State Timber-Fish-Wildlife

The Congressional increase to Rights Protection Implementation in FY10 of \$12.0 million was allocated to all programs within this sub-activity including the Washington State Timber-Fish-Wildlife (TFW) program. The President's FY14 budget contains \$3.082 million. We support funding this account at \$3.082 million. Funding for this program is provided to improve forest practices on state and private lands while providing protection for fish, wildlife and water quality. This will provide the necessary funding to tribal TFW programs to fully participate in the TFW process.

- Provide \$4.844 million for BIA U.S./Canada Pacific Salmon Treaty Implementation

The Pacific Salmon Treaty (PST) Act of 1985 charges the United States Section of the Pacific Salmon Commission with the responsibility for implementation of the PST, a bilateral treaty with Canada. Tribes assist in meeting the Federal Government's obligations in implementing the treaty by participating in cooperative research and data gathering programs. The President's FY14 budget contains \$4.844 million. We support funding this account at \$4.844 million. This will provide sufficient funding to ensure that the tribes can continue to participate effectively in the bi-lateral PST process.

- Provide \$2.4 million for BIA Salmon Marking

Funding for this program is required to meet the 2003 mandate by Congress that required all salmon released from federally funded hatcheries be marked so they could be uniquely identified. This allows tribes to mark salmon at tribal hatcheries and to use these marked fish to scientifically monitor salmon populations and watersheds in Western Washington. The President's FY14 budget contains \$1.171 million. We respectfully request \$2.4 million. This amount is required to fully implement more extensive selective fisheries targeted at these marked fish. This request is also important in part because marking costs are increasing as tribal hatchery production continues to increase.

### *Other BIA Sub-activity Accounts*

- Provide \$6.843 million for BIA Fish Hatchery Maintenance

Tribal fish hatcheries in western Washington are part of the largest fish hatchery system in the world. These hatcheries provide fish that significantly contribute to both non-Indian recreational and commercial harvest, as well as for tribal fisheries. The President's FY14 budget contains \$6.843 million. We support funding this account at \$6.843 million. Funding for this program is provided to tribes nationwide based on the ranking of annual maintenance project proposals. Today, hatcheries also play a large role in recovering pacific salmon, many of which are listed under the Endangered Species Act. A comprehensive needs assessment study was conducted in FY06 by the BIA at the request of Congress which identified a level of need of over \$48.0 million in necessary hatchery maintenance and rehabilitation costs.

- Provide \$2.6 million for BIA Fish Hatchery Operations

Funding for this program is provided to tribal hatcheries to support the rearing and releasing of salmon and steelhead for harvest by Indian and non-Indian fisheries. The President's FY14 budget contains \$1.85 million. We respectfully request \$2.6 million. This increase reflects the needs of the western Washington treaty tribes. Hatcheries are a necessary part of fisheries management because of the lack of wild salmon production due to habitat degradation. Without hatcheries tribes would have very few fisheries and their treaty rights would be rendered meaningless.

- Provide \$230.0 million for BIA Contract Support

Funding for this function is provided to tribal organizations to ensure they have the capacity to manage federal programs under self-determination contracts and self-governance compacts. Historically Indirect Contract Support has been drastically underfunded, yet this is a critical funding source as it directly supports our governmental functions, which allow us to fully exercise our right to self-govern. The President's FY14 budget contains \$230.0 million. We support funding this account at \$230.0 million, assuming this covers 100 percent of need. Direct Contract Support is also an important piece of this funding.

- Provide \$10.0 million for BIA Cooperative Landscape Conservation

Funding for this program will provide the tribal capacity needed to develop adaptation mechanisms to adjust to environmental challenges. The President's FY14 budget contains \$10.0 million. We support funding this account at \$10.0 million, of which \$2.0 million is respectfully requested for the western Washington treaty tribes. This will allow tribes to provide their perspective on climate change adaptation in the form of traditional ecological knowledge necessary to protect their treaty rights.

- Provide \$725,000 for BIA Watershed Restoration

Funding for this program supports our Salmon and Steelhead Habitat Inventory and Assessment Program. The FY12 appropriations provided a total of \$390,000 to western Washington treaty tribes. We respectfully request \$725,000 for the Northwest Indian Fisheries Commission. This will allow us to continue to provide environmental data management, analysis, and reporting support to our member tribes. These services and functions would continue to support our tribes' ability to adequately participate in watershed resource assessments and salmon recovery work.

### **Environmental Protection Agency**

#### *Tribal General Assistance Program (GAP)*

- Provide \$96.375 million for EPA General Assistance Program

This funding has built essential tribal capacities and remains critical to the tribes' ability to sustain their important water quality programs. The President's FY14 budget contains \$72.631 million. We respectfully request \$96.375 million. Funding for this program continues to provide the capacity for tribal environmental protection programs nationwide. This allows tribes to address their most fundamental needs such as inadequate drinking water and basic sanitation.

#### *Geographic Program: Puget Sound*

- Provide \$50.0 million for EPA Puget Sound

The Puget Sound Geographic Program provides essential funding that will help protect, restore and enhance Puget Sound. Tribes will continue to seek funding from this EPA account, in coordination with the Puget Sound Partnership. Such funding will allow the tribes to participate in the necessary scientific work, implementation measures, and policy discussions on issues that affect our treaty rights. The President's FY 14 budget contains \$17.15 million. We respectfully request \$50.0 million. Funding for this initiative allows tribes to participate in implementing the Puget Sound Action Agenda and a wide range of projects aimed at improving the health of Puget Sound by 2020.

Thank you for your attention to our requests.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
HON. JEFFERSON KEEL

At the Committee's oversight hearing on April 24, 2013, entitled, The President's Fiscal Year 2014 Budget for Tribal Programs, Assistant Secretary for Indian Affairs Kevin Washburn testified that one justification for eliminating replacement school construction funding is that due to budget constraints there are currently more buildings than can be properly maintained. He further testified that the Department should not build more buildings if it cannot take care of existing ones.

*Question 1.* What are your views on the Assistant Secretary's rationale for eliminating this funding?

Answer. While Bureau of Indian Affairs' (BIA) focus on routine maintenance is helpful, construction projects other than total replacement do not address the overwhelming concerns for student health and safety across the BIA school system. Additional resources must be available to fund total replacement projects for those schools in disrepair. Furthermore, the current process to piecemeal repair unsafe school buildings complicates the schools ability to gain priority on the school replacement list. Often when single maintenance projects are completed the schools total replacement is delayed or removed from the priority list despite the continued danger within the facility.

Additionally, tribes, federal officials, and congressional members are not able to make educated decisions about what areas are funding priorities due to lacking data. The last index of BIA schools in poor condition was released in 2009 with more than 60 schools. That list is sure to have grown over the last four years. Even more troubling is that the most recent BIA Education Facilities Replacement Construction Priority List, citing schools most in need of repair, was last released in 2004—nearly a decade ago. These outdated lists do not allow Congressional members to make sound decisions about funding, nor do they accurately capture the current environment Native children are experiencing more than 180 days a year.

Despite inadequate data, replacement projects identified in 2004 were expected to be completed in five years. However, lack of funds extended the construction program beyond that timeframe and many still remain incomplete. The funding shortfall has left three schools from the 2004 list under construction, two in design, and one in the planning phase. In a February 28, 2011 letter to Congress, former Assistant Secretary of Indian Affairs, Larry Echo Hawk included the anticipated date for a revised priority list was to be announced in May 2012. To date no list has been released.

It is increasingly difficult to address the needs of the BIA school system without updated School Construction Priority Lists. Eliminating the budget line item will not solve this problem and inevitably permits the government to evade the federal trust responsibility. Federally operated facilities do not have the ability to raise additional outside funds to support these projects and it is the duty of Congress to provide oversight and adequate maintenance and operations funding. Especially when the agency does not provide updated information to Congress regarding the necessary funding to complete a replacement project.

The Federal Government must protect the trust responsibility to Indian education and uphold its sacred obligation to educate Native children. This education must include a safe learning environment. Children must have a safe, structurally-sound facility that is free from distraction. Native students cannot be expected to increase student achievement unless there are adequate conditions in which to learn and eliminating replacement construction does not uphold the Federal Government's responsibility to Indian children.

While tribal leaders and education stakeholders understand the need to focus on repair due to funding issues, we must remain vigilant in the accurate data collection and meeting basic funding needs for federally operated facilities. The Bureau of Indian Affairs should be held accountable and request appropriated funds that adequately fund the program to replace the most deteriorated facilities, so that congressional appropriators understand the need and allocate funding for school replacement construction.

The Indian School Equalization Program (ISEP) funds constitute the primary funding for educational programs for Indian students at Bureau of Indian Education (BIE) elementary and secondary schools. The President's FY 2014 Budget Request includes a proposed \$16.5 Million reduction in funding for the ISEP to fund a pilot program modeled after the Department of Education's Turnaround School Program.

According to the Department, these ISEP funds would be reduced for all schools, including those who are maintaining average or higher achievement, to fund this pilot program. The proposed reduction in ISEP funds would translate into an estimated decrease of approximately \$180 per Weighted Student Unit at each school.

*Question 2.* How do you think this proposed pilot program will improve academic achievement at the BIE schools?

Answer. Utilizing flexible intervention models to create rigorous school turnaround models in the lowest performing schools could be an advantage for Indian students who are some of the country's most at-risk students. These models could help schools and teachers utilize local strategies to better address their unique, cultural needs. However, this new pilot program does not justify a reallocation of funds from ISEP. If the Administration is looking to utilize methods that use unique intervention models to address local concerns, providing tribes more authority in education would be a better solution.

Tribes and their tribal education agencies are in the best position to address the unique needs of Native children. As such, tribes should be granted funds to manage education programs similarly to states and districts. Tribes should be able to operate ESEA title programs in public schools that are located on Indian lands and primarily serve Indian students. The Department of Education would then work with tribes to identify appropriate title programs for tribal administration, and tribes would work with the local educational agency on their respective reservations to implement the title program(s) in qualifying schools.

*Question 3.* Do you think the ISEP funds of the higher performing BIE schools should be reduced to fund this pilot program?

Answer. NCAI does not support the reduction of ISEP funds for a new, unproven, pilot program. Reallocating any ISEP funds to a new priority of the Administration is unacceptable without the full confidence and support of tribes. This FY 2014 budget request priority did not go through meaningful tribal consultation and tribes do not support moving the funds to a new turnaround program until consultation protocol is utilized and Indian Country understands the pilot program.

ISEP is a formula based system of funding that provides the core budget account for BIE elementary and secondary schools by covering teacher salaries, aides, principals, and other personnel. These funds directly impact the lives of our students by paying for the onsite services that have the most impact on Indian children's lives. Tribes could support a new grant initiative if it was not reallocating funds from a widely supported program and tribes had been engaged by the Administration. It is critical that the Federal Government upholds the trust responsibility and works with tribes on a government-to-government basis and the current lack of consultation on this budget issue is a cause for concern.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
LLOYD B. MILLER

On June 18, 2012, in *Salazar v. Ramah*, the Supreme Court held that the government is liable for full funding of the contract support costs for tribal contracts and compacts, pursuant to the *Indian Self-Determination and Educational Assistance Act*. The Supreme Court noted the conflict between insufficient appropriations to pay each tribal contractor in-full and mandates in this Act requiring the agencies to accept every qualifying tribal contract or compact and provide full funding for contract support costs.

The Court made several suggestions for Congress to address this conflict. In the President's FY 2014 Budget Request, the Administration proposes to establish specific amounts for these contract support costs for each tribal contract or compact.

*Question 1.* Does this proposal in any way circumvent the Supreme Court's ruling? Please explain.

Answer. The Administration's proposal circumvents the Supreme Court's ruling in *Salazar v. Ramah*. The core ruling in that case was that government contracts awarded to Indian Tribes under the Indian Self-Determination Act are to be treated identically to all other government contracts. The Administration does not propose to deal with ISDA contracts on an identical basis with other government contracts. To the contrary, the Administration seeks to limit its payments to tribal contractors for carrying out contracts whose operation will cost a fixed amount. In other words, the government now proposes not to pay its contracts in full, and to avoid liability for doing so. In effect, the government seeks free services from the Tribes, amounting to an improper augmentation of the proposed appropriation.

*Question 2.* Could the Administration's proposal make the government more vulnerable or less vulnerable to future lawsuits by tribal contractors? Please explain your answer.

Answer. The Administration's proposal is likely to generate additional litigation as Tribes challenge the legality of the new appropriations formulation, and contest whether it effectively insulates the government from liability for the cost of contract

performance borne by the Tribes to operate government facilities and carry out the government's programs. In contrast, continuing the existing appropriations structure is unlikely to spawn additional new litigation, although it will lead to additional claims for any unpaid contract support costs.

*Question 3.* How much money could this potentially cost the government in the long run?

Answer. It is impossible to estimate the government's liability either in a status quo situation (*i.e.*, continuing with the current appropriations structure) or in shifting to the Administration's proposed structure. Ultimately, the government will likely be held liable for unpaid contract support costs. However, on remand from the Supreme Court, in both the *Ramah* (BIA) and companion *Arctic Slope* (IHS) cases, the government has argued that any liability the government may shoulder in this respect is limited to the amount of the unreimbursed costs the tribal contractor incurred at the time. This is significantly different from the approach taken by the tribal contractors, which is that the government owes the balance of each Tribe's contract support cost requirement, as calculated at the time the contract was awarded (and, typically, as contemporaneously reported to Congress in "Shortfall Reports" as the amount due the contractor under 25 U.S.C. § 450j-1(c)).

The government's approach essentially views the contracts as cost-reimbursable contracts, so that if the agency did not pay in full the amount of the Tribe's contract support cost requirement, and the Tribe therefore did not incur the additional costs that it would have incurred had the funds been paid in full, then the government has no liability for the additional payments it failed to make in the first place. In contrast, the Tribes generally view the contracts as fixed-price contracts, where the amounts agreed upon at the time the contract was awarded, and which would have been paid in full and spent had the government not breached its contract obligations, are the proper measure of damages today. With no court having resolved this issue, it is not possible to project the government's potential liability.

*Question 4.* Is the proposal consistent with the Supreme Court's suggestion in *Ramah* that Congress could provide line item appropriations for contract support costs on a contractor-by-contractor basis? Please explain your answer.

Answer. Although the Supreme Court's opinion in *Ramah* spoke generally of line item appropriations (132 S. Ct. 2194), there is no indication that the Court contemplated a regime under which an appropriation would be improperly augmented by volunteer tribal services—which is the effect of the Administration's proposal.

Nor did the Court appear to contemplate the current proposal, where individual contract caps for FY 2014 are developed based upon projections from two-year-old data (taken from FY 2012), without adjustment for intervening decreased or increased contract requirements caused by changed indirect cost rates or changed direct contract support cost requirements (the two components of contract support costs). Under the Administration's proposal, if a tribal contractor's contract support cost requirement is lower in 2014 than the amount specified in the list—the list which the Administration proposes the Committee will incorporate into law by reference—then that excess sum will lapse to the Treasury because no mechanism is provided for reallocating that sum to other contractors.

Finally, there is no indication in *Ramah* that the Court contemplated an arrangement where a list would be developed after an appropriation level was adopted by Congress. Such a list cannot have the force of law because it would not be in existence at the time Congress adopted the appropriation. Yet, it would appear to be impossible for the agencies to develop the necessary final lists until the agencies know the final appropriations levels. Significantly, the lists the agencies recently submitted to Congress are (in addition to being incomplete) premised upon Congress agreeing with the Administration's overall proposed BIA and IHS funding levels for contract support costs, an assumption which seems risky at best given recent history.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
HON. JOHN SIROIS

### **Economic Development**

In your written testimony you state that economic development programs are underutilized in Indian Country.

*Question 1.* What is the most significant barrier Indian tribes and individual Indians face in utilizing Federal economic development programs?

Answer. In the CCT's view, there are several barriers, but the most significant is the scattershot nature of how economic development programs are situated and administered in agencies and departments outside the Department of the Interior.

The Department of Energy (DOE), for example, has many different programs and activities under its umbrella that Indian tribes are eligible to apply for but are largely unknown or go unnoticed in Indian country. For example, for many years the primary DOE competitive energy grant programs for tribes was administered under DOE's Weatherization program. Prior to the establishment of the Office of Indian Energy Policy and Program, this program largely operated in a vacuum.

In contrast, the economic development programs within DOI are relatively easy to identify and apply for because they are situated under the Office of Indian Energy and Economic Development (OIEED). As noted in our written testimony, the CCT have had success utilizing OIEED programs because its notices of funding availability are easy to locate and track.

### **Indian Education**

The Indian School Equalization Program (ISEP) funds constitute the primary funding for educational programs for Indian students at Bureau of Indian Education (BIE) elementary and secondary schools. The President's FY 2014 Budget Request includes a proposed \$16.5 Million cut for the ISEP to fund a pilot program modeled after the Department of Education's Turnaround School Program.

According to the Department, these ISEP funds would be reduced for all schools, including those who are maintaining average or higher achievement, to fund this pilot program. The proposed reduction in ISEP funds would translate into an estimated decrease of approximately \$180 per Weighted Student Unit at each school.

*Question 2.* How would this pilot program improve academic achievement at the Pascal Sherman Indian School on your reservation?

Answer. Based on the description in the FY 2014 request, we are not sure that the Turnaround Pilot Program (TPP) would benefit Pascal Sherman Indian School (PSIS). The request states that after "an objective review of data by the BIE . . . grants will be awarded to schools that demonstrate the strongest commitment for using the funds to substantially raise the achievement of students."

If Congress were to approve this proposal in the FY 2014 spending bill, much would depend on how BIE implemented the program, what data it considered relevant, and what it considered "achievement" for purposes of making awards. The request also does not describe the type of data BIE would focus on in establishing the pilot program.

The CCT supports innovative approaches to Indian education, including competitive grant programs that give BIE schools the opportunity to develop new approaches to educating Indian students and distinguishing themselves with such approaches.

*Question 3.* Do you think the ISEP funds of the higher performing BIE schools should be reduced to fund this pilot program?

Answer. In the CCT's view, it is counterintuitive to reduce the funds of high performing BIE schools to fund a competitive grant program that is intended to benefit schools that are undergoing restructuring. As the statistics demonstrate, there are very few BIE operated or BIE funded schools that make Adequate Yearly Progress (AYP). Schools meeting AYP would likely not benefit at all from the TPP at all, yet they stand to have their funding reduced under the Administration's proposal.

Conversely, given the high number of BIE operated or BIE funded schools that do not make AYP, it would make more sense to fund the TPP through sources other than the ISEP funds of schools that make AYP or are high performing.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. YVETTE ROUBIDEAUX

### **Forward Funding of the Indian Health Service**

*Background:* Tribes have requested that Congress provide forward funding for Indian Health Service facilities. This forward funding would follow action by the Veteran's Administration to provide forward funding to their facilities in 2009. Providing advanced appropriations for the Indian Health Service would better prepare the agency to budget its resources and allow the Indian Health Service to better address challenges including recruitment and retention of health care providers, planning for maintenance and replacement of facilities, and providing health care to American Indian and Alaska Native patients.



Recently there has been an effort by tribes requesting that Congress provide the Indian Health Service with advanced annual appropriations similar to the manner in which the Department of Veterans Affairs provides forward funds.

*Question 1.* Does the Indian Health Service support advanced appropriations? What would the one-time cost be to implement advance appropriations?

Answer. The IHS is currently reviewing the concept of advanced appropriations, which Congress provided the VA Medical Care accounts in 2009, and plans to consult with Tribes on this proposal during its Tribal budget formulation process this fall.

### **Sanitation Facilities Funding**

*Background:* The Indian Health Services reports that approximately 60 percent of Indian and Alaska Native homes are in need of sanitation facilities. This represents 240,000 Indian/Alaska Native homes. Of the homes in need of sanitation facilities, 30,273 are without potable water. According to the Indian Health Service, the estimated cost to address this need is \$2.9 billion. On April 9, the Indian Health Service, Environmental Protection Agency, the Department of Interior, the Department of Housing and Urban Development, and the Department of Agriculture signed a Memorandum of Understanding to improve the interagency cooperation in providing safe drinking water and basic infrastructure. As part of this Memorandum of Understanding, the Agencies formalized the goal of reducing the backlog of Tribal homes lacking safe drinking water and basic sanitation by 50 percent by 2015. The Indian Health Service reports that the cost to address this backlog is \$2.9 billion, but that of this \$1.64 billion is considered economically and technically feasible to accomplish. Nevertheless, across the four Agencies, the Administration is requesting only \$155 million for water and sanitation needs in FY 2014.

*Question 2.* Is the Agencies' goal to reduce the water and sanitation backlog by 50 percent a realistic goal, given that by the Indian Health Service's own estimation it would require approximately \$820 million to reduce the backlog by 50 percent, and given that the four Agencies have collectively requested only \$155 million to address this need in the FY 2014?

Answer. IHS is committed to working to achieve the United Nations Millennium Development goal of reducing the number of American Indian and Alaska Native Homes lacking access to safe drinking water and basic sanitation by 50 percent by 2015. To help meet this goal, IHS participates as part of the Infrastructure Task Force (ITF) formed in 2003 and effective June 2007 via Memorandum of Understanding (MOU). The ITF combines resources from all participating agencies to fund these needed projects to provide water infrastructure, wastewater infrastructure, and solid waste management services to tribal communities. Additionally, the ITF is leveraging their ability to provide technical assistance and operator training opportunities to the tribes to assist the tribes in providing or sustaining improved access to safe drinking water and basic sanitation to their people. The Indian Health Service, Environmental Protection Agency, the Department of Interior, Department of Agriculture, and the Department Of Housing and Urban Development renewed their commitment to the ITF on April 9, 2013 by signing an updated MOU.

The total required to address all sanitation needs according to the 2013 IHS Sanitation Facilities Construction data is \$2.9 billion and of this total amount \$1.64 billion is considered to be economically and technically feasible. These cost estimates represent approximately 240,000 homes; however, 48,000 of these homes have the highest need, either lacking adequate sanitation services or having no sanitation facilities. The total technically and economically feasible cost to serve homes with these needs is approximately \$540 million.

There has been significant progress toward reaching the ITF goals. In December of 2010 the Infrastructure Task force developed a report entitled "Meeting the Access Goal Progress to Date" and that report states that the baseline need was established as FY 2003 data from IHS. The data showed that there were 44,234 homes without water and/or basic sanitation and the proposed target was to serve 22,118 with water and/or basic sanitation. From 2003 through 2009, 80,941 tribal homes were provided access to safe drinking water and 43,562 tribal homes were provided with basic sanitation. These results were better than anticipated; this is nearly 4 times the goal for safe drinking water and 3.5 times the goal for basic sanitation established in 2003 under the Millennium Development Goal. The ITF has continued to serve additional homes since 2009.

Despite this progress, IHS anticipates exponential growth in the need for sanitation facilities construction appropriations in the future for several reasons, including a continually growing population and increased costs of construction due to inflation and changing environmental laws. Homes are served using a priority system based

on health impact, need and unit cost. Thus, the proposed request may serve a larger percentage of these homes than expected based on the funding levels.

#### **Contract Support Costs and Legislative Recommendation**

*Background:* Tribes are able to contract or compact with the Department of the Interior or the Indian Health Service to take over the operation of programs that were previously administered by Interior or the Indian Health Service. When tribes assume control of these functions of the federal government, tribes have continuously not received the full amount of funds to operate and administer these programs, known as contract support costs.

Several lawsuits have been filed by tribes to recoup funds spent to administer these programs. In the most recent decision, *Ramah*, the Supreme Court held that the government must pay each tribe's contract support costs in full. In *Ramah*, the Court did note, however, that although Congress mandates agencies to enter into self-determination contracts with tribes, Congress has also failed to provide sufficient funding for the agencies to cover all of the contract support costs owed to tribal contractors. The Court made it clear that it is up to Congress to address the Indian Self-Determination and Education Assistance Act mandate by amending the law, or by fully funding this program. To fully fund this program at the Indian Health Service would require \$615 million (the fiscal year 2014 request was \$477 million).

The Indian Health Service has requested an increase of \$5 million for Contract Support Costs, however, it is estimated that fully funding Contract Support Costs would require approximately \$138 million.

*Question 3.* Given the Supreme Court's decision that the government is required to fully fund contract support costs, why has the agency not requested more funding for this program?

Answer. To balance the priorities of all tribes with the available appropriations, and in accordance with the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter* in June 2012, the President's FY2014 Budget proposes new appropriations language for both IHS and the Bureau of Indian Affairs to provide a specific amount for contract support costs (CSC) funding for each Indian Self Determination and Education Assistance Act contract. Funding for CSC must be balanced with funding for direct health care services for tribes. Providing a specific CSC amount on a contract-by-contract basis is an interim approach, and one of the options identified by the Court. The Administration looks forward to working with tribes and Congress to develop a balanced, long-term solution.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
HON. YVETTE ROUBIDEAUX

#### **Contract Support Costs**

On June 18, 2012, the Supreme Court held in *Salazar v. Ramah* that the government is liable for the full funding of the contract support costs for tribal contracts and compacts pursuant to the *Indian Self-Determination and Education Assistance Act*.

In response to this decision, the Administration proposes to set forth specific amounts for these contract support costs for each tribal contract and compact. These amounts would be incorporated by reference into Appropriations Acts.

*Question 1.* Please explain how this proposal would fully fund all of the contract support costs that each tribal contractor is entitled to pursuant to the *Indian Self-Determination and Education Assistance Act* and the Supreme Court decision in *Salazar v. Ramah*.

Answer. To balance the priorities of all tribes with the available appropriations, and in accordance with the Supreme Court's decision in *Salazar v. Ramah Navajo Chapter* in June 2012, the President's FY 2014 Budget proposes new appropriations language for both IHS and the Bureau of Indian Affairs to provide a specific amount for contract support costs funding for each Indian Self-Determination and Education Assistance Act contract. In *Salazar v. Ramah Navajo Chapter*, the Supreme Court found that the current appropriations language did not limit the government's responsibility to fully reimburse tribes for CSC. The Court identified five Congressional options to remedy the situation:

1. Amending the ISDEAA to remove the mandate to contract;
2. Amending the ISDEAA to give flexibility on the amount paid for CSC;
3. Passing a moratorium on the formation of new self-determination contracts, as done before;

4. Making a line-item appropriation, allocating funds to cover tribe's CSC on a contractor-by-contractor basis; and
5. Appropriating sufficient funds to meet the tribes' total CSC needs.

The President's Budget is consistent with the Court's proposed solutions and maintains longstanding policy that funding for CSC must be balanced with funding for direct programmatic funding for tribes, such as health care services and law enforcement, and other tribal priorities. The Administration looks forward to working with tribes and Congress to develop a balanced, long-term solution.

*Question 2.* Please clarify who would determine the contract support cost amounts to be paid on each contract.

Answer. Congress determines the not-to-exceed amounts of CSC for each contract. In accordance with the President's Budget, IHS and BIA have provided Congress with lists identifying CSC amounts for each contract. The not-to-exceed amount reflected for each contract is determined consistent with the IHS CSC Policy, which was created with input provided by tribes and tribal organizations during Tribal consultation. The IHS Office of Finance and Accounting, in coordination with each IHS Area, used the Policy to calculate the specific CSC amounts identified in the list.

*Question 3.* Please describe how and when these amounts would be determined.

Answer. Congress will make the final determination of the not-to-exceed amount for each tribe when an appropriations bill is enacted. The amounts identified by IHS in the list transmitted to Congress were determined consistent with the IHS CSC Policy. The list was transmitted by the Secretary of the Department of Health and Human Services, to the House and Senate Interior Appropriations Subcommittees on June 14, 2013. IHS will provide technical assistance to Congress as they finalize their decision on appropriations for FY 2014.

*Question 4.* Please explain how your agency will consult with tribes on determining the amounts to be paid to the individual contractors.

Answer. Under the President's Budget proposal, the amounts to be paid to individual contractors would not exceed the amounts identified in the list provided to Congress and incorporated into the appropriations act. The amounts in the list were determined consistent with the IHS CSC Policy, which was developed in coordination and consultation with tribes and tribal organizations. As noted above, the proposal for Congress to appropriate a not to exceed amount of CSC on a contract-by-contract basis is an interim approach.

The Indian Health Service provides multiple consultation opportunities to tribes, and the involvement of tribal governments in IHS activities is mandated by Executive Order 13175, HHS policy, and IHS policy. IHS conducts a variety of consultation activities with tribal leaders and representatives of tribal governments, including national meetings, regional inter-tribal consultation sessions, meetings with delegations of leaders from individual Tribes, Area consultation sessions, and tribal advisory workgroups. IHS has been consulting with Tribes on CSC-related issues regarding both appropriations and past claims prior to and since the *Ramah* decision. IHS will continue to engage in consultation with Tribes on these matters.

In his written testimony received by the Committee for the hearing on the President's FY 2014 Budget Request on April 24, 2013, Mr. Lloyd Miller notes constitutional concerns with the Administration's proposal regarding contract support costs.

*Question 5.* What are your views on the constitutional concerns raised in Mr. Miller's testimony? Please be specific in your response.

Answer. Mr. Miller implies that the Administration's proposal is unconstitutional for two reasons. First, he states that it is discriminatory for the Administration to propose a special limitation applicable to Indian contracts only. Second, he states that it may be unconstitutional under the Fifth Amendment because it is "confiscatory."

We do not believe the President's Budget proposal raises constitutional concerns. The Supreme Court identified contract-by-contract appropriations as an option for Congress in the *Ramah* decision. In addition, *Ramah* Navajo Chapter counsel raised this option in their brief and in oral argument before the Supreme Court and did not suggest any concerns with the constitutionality of the approach.

Under the *Indian Self-Determination and Education Assistance Act*, an annual shortfall report on contract support costs is required to be submitted to Congress by May 15th of each year. As Mr. Lloyd Miller notes in his written testimony for the hearing on the President's FY 2014 Budget Request on April 24, 2013, these annual shortfall reports have been lagging. The report with FY 2011 data has still not been submitted to Congress.

*Question 6.* Please describe any problems or obstacles your agency has encountered in collecting accurate, timely data and providing these reports to Congress in a timely manner.

Answer. The Reports to Congress for FY 2011 and 2012 were completed and transmitted to Congress on May 22, 2013. These Reports will be posted on the IHS Website in the near future. IHS identified the need to work with individual Tribes to revalidate the data submitted by Tribes for these Reports, which required additional time for further analysis. The Reports for 2003–2010 were submitted and are available on the IHS website. IHS is currently working on the Report for FY 2013.

*Question 7.* What has your agency done to address these problems or obstacles?

Answer. IHS has updated business practices to centralize data collection efforts from both the IHS Area and Headquarters levels. Streamlining the process for data gathering will assure timely responses. IHS has also instituted particular practices to help with data collection. These practices include: identifying a CSC team lead, increasing CSC Shortfall training efforts to staff, providing CSC training to IHS Areas, and implementing a new verification process of shortfall calculations on a Tribe-by-Tribe basis.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
HON. YVETTE ROUBIDEAUX

The Department of the Interior, Indian Affairs has a New Tribes program which provides resources for regional and agency offices to service and support newly acknowledged tribal governments. These efforts are intended to provide tribes with resources to foster strong and stable tribal governments. Once a tribal government attains Federal recognition, IA formulates a recurring funding level by using the established tribal population. For tribes with a population of 1,700 members or less, a TPA funding level of \$160,000 would be recommended; tribes with populations of 1,701 to 3,000 members, a TPA funding level of \$320,000 would be recommended; and for newly recognized tribes with more than 3,000 members, the funding level would be determined on a case-by-case basis.

*Question 1.* What additional annual resources are provided by the Indian Health Service for newly acknowledged tribal governments, at a facility level, for the area or region, for Purchased/Referred Care, or any other types of funding? What variables are considered by IHS in making such funding decisions? How many quarters or years does it take on average to integrate the needs of New Tribes into the IHS budget and health care system? If a new recognized tribal government has no reservation land base or tribal lands are not located within an established service area, what options are available to tribal members in terms of IHS services or programs?

Answer. Similar to the DOI process described above, the IHS formulates recurring funding to establish health care services for Tribal members residing in a local service delivery area. The required funding amount is calculated from prevailing health insurance costs per capita, less existing resources such as Medicare, Medicaid and private health care insurance, and adjusted to the average level of funding provided by IHS to all Tribes. Funds are requested during the annual budget formulation process. The process—data collection, calculation & verification, budget formulation, and annual appropriation—typically takes three years to complete. In the interim, IHS may provide limited non-recurring Purchase/Referred Care funds for basic services.

*Question 2.* DOI, IA, has requested New Tribes funding for three newly acknowledged tribal governments in FY14: The Shinnecock Indian Nation, Wilton Rancheria and Tejon Indian Tribe. Is there any amount of funding added or allocated to help serve these three Tribes in the IHS FY14 request? If so, what is the amount? If not, can you describe the process needed to determine if additional funds are needed? What services or programs would be available for these three tribes in coming years?

Answer. Funds for new Tribes are requested during the annual budget formulation process when all Tribal priorities as presented during Tribal Consultation are considered. The funding request amount varies as IHS applies the process described above in question one to all newly recognized Tribes.

IHS may provide limited resources during the interim period until additional funds are appropriated.

*Question 3.* Purchased/Referred Care resources, used to purchase essential health care services not available in IHS and Tribal healthcare facilities, have been requested in the amount of \$878,575,000 for FY 14 and proposed allocations are provided for each of the 12 Area Offices and to Headquarters. Will any of these P/RC

funds, if appropriated, be available to tribal members of the three new tribes listed above? Can you please explain the priority of care under the P/RC program and what tier or priority of care is available in each region? Also, can you provide, by Area, the month of the fiscal year when funding has been exhausted since FY10?

Answer. The FY 2014 request includes approximately \$850,000 in the Purchased/Referred Care (formerly Contract Health Services) base budget to address limited health care needs of new federally acknowledged tribes until recurring funds are appropriated for each new tribe. These funds will be used to purchase care or support direct care if the tribe operates a health care program. In addition, tribal members or descendants of tribal members of new federally acknowledged tribes are eligible for direct health care from any IHS or Tribal health care program, consistent with basic IHS eligibility regulations.

To identify ongoing resource needs specific to a new federally acknowledged tribe, IHS works with the tribe to establish a projected user population base and then determines the funding amount to provide health care services for the population on a similar level as all other tribes. These amounts are considered during the budget formulation process and incorporated into the budget request when feasible.

The list of IHS medical priorities is found in the Indian Health Manual on the P/RC website. (Tribal programs that elect to follow IHS procedures may use the priorities in the Indian Health Manual as guidelines.)

There are five levels in the IHS Priority System.

- I) Emergent or Acutely Urgent Care Services,
- II) Preventive Care Services,
- III) Primary and Secondary Care Services,
- IV) Chronic Tertiary and Extended Care Services, and
- V) Excluded Services

Priority levels are determined at the local facility level depending on funds available. There are sixty-six Federal PRC programs. Twenty-nine of these programs report they provide beyond medical priority I level care and the remaining thirty-seven report they provide medical priority I care only.

IHS-managed PRC programs are to maintain a weekly spending plan by prorating their allocations by the appropriate amount of weeks for each allocation to assure funds are available throughout the year to cover a certain level of care. Therefore, funds do not run out in a particular month of the year as they are allocated to be spent throughout the year according to medical priority.

The Catastrophic Health Emergency Fund (CHEF) fund, which is part of the PRC program, provides reimbursement to offset high cost cases (after meeting a threshold) at the local PRC program level. These high cost cases were already paid for by the local facility with PRC funding. When CHEF funds are depleted the PRC program must absorb the entire cost of the high cost case, which limits their ability to fund additional PRC care. CHEF funds were used to reimburse high cost cases on a rolling basis until they were depleted in August during FY 2010, FY 2011, and FY 2012.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO  
HON. KEVIN WASHBURN

**Bureau of Indian Education School Construction**

**Background:** Since 2012, the Department's budget request has included zero funding for replacement school construction. Department of the Interior budget justifications previously stated that Replacement School Construction and Replacement Facility Construction were major activities of the Bureau; however, that language is no longer used in budget documents. In the past decade since 2003, replacement construction funding has gone from \$127 million \$0, even though half of the schools in the Bureau of Indian Education system are listed in poor or fair condition and the current backlog for new construction is at \$1.3 billion. For the past two budget cycles the Department has requested zero funding for school construction, despite half of the Bureau's schools being listed in fair or poor condition. In fact, the Department's budget documents used to state that the Department committed to providing safe schools for Indian students, but that language has now been removed.

**Question 1:** Mr. Washburn, is the Department of the Interior no longer committed to providing safe and secure schools for Indian Students?

**Response:** The Department is committed to providing safe and secure schools for Indian Students. We have reduced the total number of schools in poor condition to only 43 of the current 182 schools. The current budget request recommends funding for repairs and maintenance in order to reduce the number of remaining schools in poor condition.

**Follow-up:** What is the plan for addressing the construction needs at Bureau of Indian Education schools if you are not asking for any funding and you aren't increasing the funding for major improvements and repair?

**Response:** Indian Affairs utilizes annual appropriations designated as improvement and repair funds to target correction of facility deficiencies in schools assessed as being in "poor" condition, based on their facility condition index (FCI). This strategy allows Indian Affairs to establish long term planning and manage resources to increase long term viability and condition of school assets. Because of competing priorities, the President's budget has not recently included new construction; and this year major facilities improvement and repair also remains unfunded.

**Indian School Equalization Program**

**Background:** Indian School Equalization Program funds are base funds provided to each school based on student population. These funds are specified to be used for the education of Indian children. The schools use these funds for many types of activities including related supplies and equipment and equipment repair, insurance, and school operation

utilities costs. The current budget proposes decreasing that account by \$13.1 million in order to fund an Education Turnaround Pilot Project. The Department's budget requests a decrease of \$13 million in the Indian School Equalization Program to fund a pilot project aimed at improving performance at the Bureau's lowest-performing schools. I appreciate the Bureau's efforts toward helping those schools who need it most, but around the country, some schools are so strapped that they are using Indian School Equalization Program funds to keep the lights on, pay for fuel for buses so students can get to school, and keep the heat on.

**Question 2:** What type of consultation with tribal governments did the Bureau conduct regarding this pilot program, and are you concerned that by taking vital funds all schools, to benefit the few, you will actually harm student achievement at all schools?

**Response:** The Bureau of Indian Education (BIE) did not conduct specific consultations on this pilot program. However, a presentation about the concept was presented to the full meeting of the Tribal Interior Budget Council in May 2013. Tribal leaders have met with BIE and sent letters on occasion to voice their dismay concerning student achievement.

The current funding approach has produced only modest progress toward achieving this performance measure and the NCLB requirement. In 2012-2013, about 85 percent of schools were in School Improvement, Corrective Action or Restructuring, with only 31 percent making Adequate Yearly Progress. The President's FY 2014 Budget Request included \$2 million for an independent study of the BIE school system, including structural issues of the system as well as academic outcomes of the BIE schools.

The 2014 budget request for BIE reflects an attempt to concentrate all available resources and available funds—including ISEP, ISEP Supplemental funds, ESEA, and IDEA funds—in a school-wide budget that focuses on implementation of the selected turnaround model in a uniform manner to assist low performing schools to make progress in reaching AYP. To enable schools to be selected and managed throughout the funding period to insure fidelity of implementation and achievement of stated goals, recipients of Turnaround School funds will be required to use the Department of Education's School Improvement Grant (SIG) process as a model. Such attempts must be made in order to raise the overall student performance level of the BIE-funded school system as required by the NCLB.

Less money for schools not in the turnaround program does not automatically mean less effort by BIE. We believe that though the budgetary process schools will need to make priorities for their spending, staffing and the programs to be provided. Through improved planning and concentrated effort by schools, and with enhancements to BIE's system of support achieved through BIE's proposed organizational restructuring, the negative impact on schools will be difficult, but manageable.

#### **Economic Development**

Rates of poverty and unemployment remain disproportionately high in most tribal communities. Eight of the ten poorest counties in the United States can be found in Indian

**Country.** Factors inhibiting economic development include a lack of access to capital, regulatory barriers and many tribes' rural locations. However, programs across multiple federal agencies offer a variety of tools to help both individually-owned and tribal businesses. While there are many options available, all Departments featuring economic development in Indian Country proposed reductions in those programs. The rates of poverty and unemployment in Indian Country remain alarmingly high. However, the proposed budget reduces funding to economic development programs, such as the Indian Guaranteed Loan Program.

**Question 3: Does the Department of the Interior have a comprehensive plan on how to improve economic conditions in Indian Country?**

**Response:** The Department's plan to address Indian Country poverty consists of increasing access to capital for tribal and Indian owned businesses through the Indian Affairs Loan Guaranty Program. However, other programs that it has relied upon in the past to achieve progress for Native economies have been eliminated in the FY 2014 budget request.

While the budget request for the Indian Guaranteed Loan Program Account subsidy activity will result in a net program reduction, the program will still be able to subsidize nearly \$73 million in loan guarantees, owing to a decrease in subsidy rates, computed annually by Program personnel and approved by OMB. These more favorable subsidy rates allow each appropriated dollar to go farther and reflect the careful underwriting and favorable loss record of the program.

At the same time, the Department will increase its collaboration with other Federal agencies, including the Federal Reserve Bank, the Small Business Administration (SBA), the U.S. Department of Treasury's CDFI program, and the U.S. Department of Agriculture (USDA), to provide tribal and Native businesses with more options for obtaining capital.

In the past, the effectiveness of these credit programs has been augmented by the Department's funding for feasibility studies, development of reservation-wide economic development plans, training to increase the capacity of tribal entrepreneurs and CEOs to compete more effectively in the marketplace, and training to link tribal good and services with potential private and public sector purchasers.

Feasibility studies play a critical role in convincing lenders that Indian business projects are credit worthy. Studies conducted by qualified, disinterested third parties that quantify expected costs and benefits, examine the current and anticipated market for a product or service, identify expected competitors and buyers, evaluate a project's timing, and anticipate cash flow and profitability satisfy the due-diligence standards of most lenders. The Department has funded 65 feasibility studies since 2007, including one that has resulted in the development this year of a 400-acre industrial park for the Citizen Potawatomi Tribe and its operation of the first tribal rail line in the U.S., a 66-mile railway that will connect the greater Oklahoma City area with the rural southeastern quarter of Oklahoma starting in 2014.



#### Contract Support Costs and legislative recommendation

**Background:** Tribes are able to contract or compact with the Department of the Interior or the Indian Health Service to take over the operation of programs that were previously administered by Interior or the Indian Health Service. When Tribes assume control of these functions of the federal government, tribes have continuously not received the full amount of funds to operate and administer these programs, known as contract support costs.

Several lawsuits have been filed by tribes to recover funds spent to administer these programs. In the most recent decision, *Ramiah*, the Supreme Court held that the government must pay each tribe's contract support costs in full. In *Ramiah*, the Court did note, however, that although Congress mandates agencies to enter into self-determination contracts with tribes, Congress has also failed to provide sufficient funding for the agencies to cover all of the contract support costs owed to tribal contractors. The Court made it clear that it is up to Congress to address the Indian Self-Determination and Education Assistance Act mandate by amending the law, or by fully funding this program. To fully fund this program at the Indian Health Service would require \$615 million (the fiscal year 2014 request was \$477 million).

The Administration has proposed for both the Department of the Interior and the Indian Health Service that Congress provide specific line item appropriations for each self-determination contract or self-governance agreement.

**Question 4:** Given that the proposed budget does not request enough funding to cover the shortfall, how does appropriating each contract in a line item solve the issue of underpayment, and what has the Administration heard through consultation with tribes regarding this plan?

**Response:** Given the financial estimate, tough choices must be made with respect to Departmental programs. One such decision involves the need to balance funding for contract support costs with funding for direct programming and other tribal priorities within constrained resources. This interim solution is consistent with one of the remedies identified in the Supreme Court's *Ramiah* decision. We believe that this interim solution leads to a mutually beneficial long-term solution by working with Congress and consulting with Indian tribes.

The Department of the Interior provided the contract-by-contract CSC table to the Congressional appropriations committees on June 14, 2013. The table and the accompanying congressional transmittal letters can be found at the following Department website:  
<http://www.doi.gov/budget/index.cfm>.

In addition to providing the contract-by-contract CSC to the Congress, the Assistant Secretary for Indian Affairs reached out to Tribes in a June 14, 2013 Tribal Leader letter regarding the CSC list. It requested that tribal leaders submit any technical correction(s) to the BIA by July 29, 2013. In addition, the BIA held a CSC consultation session at the National Congress of American Indian conference in Reno, NV on June 25, 2013. The Department is pursuing the

broader goal of developing a longer-term solution through consultation with Tribes, as well as streamlining and simplifying the contract support costs process, which is considered by many as overly complex and cumbersome to both Tribes and the Federal government. Department of the Interior officials will be available to hear tribal leaders' views on this issue.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN BARRASSO TO  
HON. KEVIN WASHBURN

**Management of Indian Education**

In a December, 2011, memo to Secretary Salazar, the Director of the Bureau of Indian Education (BIE), Keith Moore, states that the "major challenges facing the BIE cannot be overcome ... until basic structure and governance issues are addressed and resolved."

A 2012 Bureau of Indian Affairs commissioned study known as the "Bronner Report" evaluated the administrative structure for the BIE and the BIA. The Bronner Report found that personnel within Indian Affairs do not communicate or coordinate effectively. The study made several recommendations, including that Indian Affairs adopt a more decentralized organizational approach with more shared responsibility, new policies and procedures, and increased communication.

On February 27, 2013, the Government Accountability Office testified on its Report No. GAO-13-342T, before the House Appropriations Committee, Subcommittee on Interior, Environment and Related Agencies that management and communication issues between Indian Affairs offices may have a negative effect on student achievement at BIE schools.

The President's FY 2014 Request includes \$2 million for an independent study of the BIE school system, including "structural issues of the system," as well as the academic outcomes of the BIE schools.

**Question 5:** Given that there are other published reports, including the "Bronner Report," that have evaluated the BIE system, please explain why this \$2 million study is necessary.

**Response:** The \$2.0 million is to conduct a formal, independent evaluation of the Bureau of Indian Education (BIE) school system, focusing on both structural issues of the system and the outcomes achieved by BIE schools. The evaluation will also assess the funding flexibility given to Tribes related to BIE funding.

**Question 6:** What will this study evaluate that is different from past reports and what information do you anticipate it will provide that the other studies have not?

**Response:** Other studies have concentrated on specific issues instead of looking at the total picture -- running a school system that has BIE operated and Tribally-operated schools. Previous studies, such as the 1999 NAPA management study of the Bureau of Indian Affairs, recommended that BIE have control of its administrative support services, as well as the Office of Justice Services.

**Question 7:** What is your office currently doing, if anything, to address the management and communication problems that are reported to be hindering the BIE's performance and ability to service its students?

**Response:** The AS-IA is currently analyzing how basic administrative support services are provided to the BIA, BIE, and the Office of Justice Services. Temporary service level agreements may be used until a more permanent analysis is completed. By giving more direct supervision to these three organizations over the administrative support systems, such communication problems will decrease. As indicated in previous responses, we are also analyzing the management structure of the BIE to determine whether that structure continues to be appropriate to allow it to meet its responsibilities, as those have changed over the years.

**Question 8: How does the FY 2014 Budget Request reflect a departmental plan to address these problems, or does it? Please be specific.**

**Response:** The President's FY 2014 Budget Request included \$2 million for an independent study of the BIE school system, including structural issues of the system as well as academic outcomes of the BIE schools.

The 2014 budget request for BIE reflects an attempt to concentrate all available resources and available funds—including ISEP, ISEP Supplemental funds, ESEA, and IDEA funds—in a school-wide budget that focuses on implementation of the selected turnaround model in a uniform manner to assist low performing schools to make progress in reaching AYP. To enable schools to be selected and managed throughout the funding period to insure fidelity of implementation and achievement of stated goals, recipients of Turnaround School funds will be required to use the Department of Education's School Improvement Grant (SIG) process as a model. Such attempts must be made in order to raise the overall student performance level of the BIE-funded school system as required by the NCLB.

**Question 9: Has the BIE implemented a plan to implement the findings in the GAO testimony?**

**Response:** The GAO recently issued its final report. As GAO reported, we concurred with each of the GAO's recommendations. Before the report was complete, we had begun efforts to address some of the issues that the GAO identified. The report's main recommendations were addressed to Indian Affairs and not just the BIE or the BIA. Indian Affairs may not have the expertise to develop plans to correct deficiencies and will need outside help from the Department.

#### **Indian School Construction**

There have been several reports, including two recent Department of the Interior Office of Inspector General reports, documenting the need for improvements in BIE school facilities and construction.

All the Committee's oversight hearing on April 24, 2013, entitled, *The President's Fiscal Year 2014 Budget for Tribal Programs*, you testified that one justification for eliminating replacement school construction funding is that due to budget constraints there are currently more buildings than can be properly maintained. You further testified that the Department should not build more buildings if it cannot take care of existing ones.

**Question 10: What evaluation has the BIA and the BIE conducted to determine whether maintaining current educational structures is more economically feasible than building new schools?**

**Response:** A discrete evaluation of whether maintaining current educational structures is more economically feasible than building new schools has not been performed. Indian Affairs performs regular condition assessments for educational assets as part of its ongoing facilities management program (FMP). These cyclical and ongoing assessments are performed every three years to provide an overview of the physical school campus and to calculate the facilities condition index as good, fair or poor. This process allows Indian Affairs to view its entire portfolio of education assets, assess ongoing maintenance of educational assets and update the current replacement value for those assets. The Facilities Condition Index (FCI) for each facility is updated on an ongoing basis through the use of the Facilities Management and Information System.

Ongoing assessment provides Indian Affairs with the ability to regularly compare the feasibility of maintaining and improving an asset versus replacement construction. If deferred maintenance costs exceed 66% of the replacement value, based on the FCI and identified deferred maintenance as maintained by the location in the Facilities Management Information System, then the school is considered for full replacement or component replacement instead of minor repair, when funds become available. The full and proper use of maintenance funds provides for appropriate maintenance for the anticipated life-cycle of an asset. As part of the construction consideration/process, the asset is identified for demolition or made available for excess. Thus, new school buildings replace existing space. This type of comprehensive assessment is a component in the school replacement and renovation ranking process under the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee proposed ranking process, currently under review.

**Question 11: What were the findings and results of the evaluation?**

**Response:** The condition assessments provide a comprehensive facility report for each school location. The results of these assessments are populated into IA's Facilities Management Information System database and provide current information for the planning and execution of asset management. Recent condition assessments showed 86 facilities in "good" condition, 53 facilities in "fair" condition, and 43 facilities in "poor" condition.

**Question 12: How did the safety of the students and faculty factor into that evaluation?**

**Response:** Identification and abatement of life safety deficiencies are a major component of the Facility Condition Index (FCI) assessments. Safety issues resulting from physical conditions or infrastructure is addressed either through the operations and maintenance program which requires schools to maintain assets consistent with industry standards and which serves to prevent safety deficiencies; the DSRM annual inspections designed to identify safety abatement issues and allows for the use of improvement and repair funds for such purpose; and the Emergency program for corrections of emergency deficiencies affecting life and safety. Life and

safety issues receive priority funding either through the improvement and repair program or emergency supplemental program.

#### **Indian School Turnaround Pilot Program**

The FY 2014 Budget Justification includes a proposed \$16.5 million reduction in funding for the Indian School Equalization Program (ISEP) in order to fund a pilot program modeled after the Department of Education's Turnaround School Program. As you know, the ISEP funds constitute the primary funding for educational programs for Indian students at BIE elementary and secondary schools. According to the Department's budget briefing with Committee staff, these ISEP funds would be reduced for all schools, including those who are maintaining average or higher achievement, to fund this pilot program. The proposed reduction in ISEP funds would translate into an estimated decrease of approximately \$180 per Weighted Student Unit at each school.

**Question 13: Can you explain more fully the Department's justification for decreasing ISEP funds at all BIE schools, even those that have been able to use their ISEP funds effectively and maintain higher levels of academic achievement?**

**Response:** The Secretary's initiative to advance American Indian education through self-determination recognizes the strategic role of education in the long-term health and vitality of American Indian communities, and is a vital component of the broader initiative to improve American Indian communities. Increasing the academic achievement of students in BIE-funded schools continues to be a critical component of the initiative to improve American Indian communities. The primary performance measure for BIE, as stated in the DOI Strategic Plan, and as required by the No Child Left Behind Act of 2001 (NCLB), is for all BIE-funded schools to make Adequate Yearly Progress (AYP) in student achievement by 2014.

The current funding approach has produced only modest progress toward achieving this performance measure and the NCLB requirement. In 2012-2013, about 85 percent of schools were in School Improvement, Corrective Action or Restructuring, with only 31 percent making AYP. The President's FY 2014 Budget Request included \$2 million for an independent study of the BIE school system, including structural issues of the system as well as academic outcomes of the BIE schools. This study will be conducted by the Assistant Secretary – Indian Affairs.

The 2014 budget request for BIE reflects an attempt to concentrate all available resources and available funds—including ISEP, ISEP Supplemental funds, ESEA, and IDEA funds—in a school-wide budget that focuses on implementation of the selected turnaround model in a uniform manner to assist low performing schools to make progress in reaching AYP. To enable schools to be selected and managed throughout the funding period to insure fidelity of implementation and achievement of stated goals, recipients of Turnaround School funds will be required to use the Department of Education's School Improvement Grant (SIG) process as a model. Such attempts must be made in order to raise the overall student performance level of the BIE-funded school system as required by the NCLB.

Less money for schools not in the turnaround program does not automatically mean less effort by BIE. We believe that though the budgetary process schools will need to make priorities for their spending, staffing and the programs to be provided. Through improved planning and concentrated effort by schools, and with enhancements to BIE's system of support achieved through BIE's proposed organizational restructuring, the negative impact on schools will be difficult, but manageable.

**Question 14: Since ISEP funding is the primary funding for basic education programs at BIE schools, how does the Department propose to ensure that academic achievement at those schools not chosen to participate in the pilot program will not be negatively affected by a decrease in the ISEP funds?**

**Response:** As noted in the response to the previous question, the President's FY 2014 Budget Request included \$2 million for an independent study of the BIE school system, including structural issues of the system as well as academic outcomes of the BIE schools. In 2012-2013, about 85 percent of schools were in School Improvement, Corrective Action or Restructuring. Less money for schools not in the turnaround program does not automatically mean less effort. We believe that though the budgetary process schools will need to make priorities for spending and staffing. This may not be a negative event as planning and staffing can address the key functions for schools to succeed.

**Question 15: What evaluation, evidence, or information does the Department have that the Turnaround School program will increase academic achievement at BIE schools?**

**Response:** School turnarounds are possible, but they take a concerted effort with daring, consistent and stable leadership at the helm and persistent, achievement-oriented collaboration among staff. For turnaround efforts to succeed, nothing is more important than making sure that the leaders and teachers who are selected for these challenging roles have the capacity and the will to make a turnaround happen, as well as school board and tribal council support. A realistic approach would include key components identified by researchers: carefully determining the starting place with the most promise and building the skills and knowledge of those responsible for student learning. It would also, from the beginning, seriously engage teachers and the community in setting goals and putting them into practice. And it would acknowledge the importance of resources and patience. Replacing staff or redefining their roles may be necessary, but only if they lack the competencies or desire for a school turnaround.

**Question 16: Has the Turnaround School program ever been tested in BIE schools? If it has, please describe the test(s) and results.**

**Response:** Yes, the BIE New Mexico Navajo North Education Line Office (Shiprock) tested the program. In 2006, there were only one of ten schools making Adequate Yearly Progress (AYP) and that one school was Navajo Prep. In five short years after implementation of the program, 50 percent of the schools achieved AYP. In comparison, the neighboring 18 Central Consolidated Schools serve predominantly Navajo students in San Juan County had no school make AYP. Farmington Public Schools, the area's most affluent public school system, also had

no school make AYP. In fact, of the 63 public, private, and BIE schools in San Juan County, New Mexico, the BIE schools from the Shiprock Office were the only schools to make AYP.

Shiprock has schools in three states, Utah, Arizona, and New Mexico. The schools that have made AYP for at least two consecutive years were provided extra support in reading and math through the BIE's System of Support. School performance for all ten BIE schools has higher reading and math achievement than any other school system on the Navajo reservation.

#### **Law Enforcement**

According to recent information from the BIA, in the third year of operation, the High Priority Performance (HPPG) pilot program has reduced violent crime by 56 percent on the Wind River Indian Reservation. This downward trend in crime rates reflects persistent efforts by law enforcement personnel to fight crimes and develop community relations. However, that continued diligence may be disrupted by the difficulties in retaining law enforcement personnel, in part due to the lack of housing.

**Question 17: What is the estimate of total unmet housing needs for law enforcement officers on the Wind River Indian Reservation?**

**Response:** The availability of employee housing is a significant factor in the success of ongoing recruitment efforts of the Bureau of Indian Affairs, Office of Justice Services. Our inability to recruit police officers could negatively impact our ability to effectively provide proactive law enforcement services. Regular repair or replacement of existing quarters meets the vital need for employee housing at locations that are typically in remote areas where private-sector housing is limited or nonexistent. Housing units are necessarily located close to the community and law enforcement or detention facilities to ensure a timely response to a variety of emergency situations by correctional and law enforcement officers.

For this reason, the Indian Affairs (IA) FY 2014 President's request includes \$3.5 million for employee housing needs of public safety and justice personnel. In addition to maintaining existing housing units at remote detention and law enforcement locations, the FY 2014 requested funding will enable IA to proceed with new housing construction plans at Turtle Mountain Detention Center, ND, Fort Totten Law Enforcement Center, ND, Uintah and Ouray Detention Center, UT, and Blackfeet Detention Center, MT.

**Question 18: What other barriers are there to recruiting and retaining qualified law enforcement officers on Indian reservations?**

**Response:** Other challenges to successful recruiting for OJS positions include primarily those related to the remoteness of a position's duty station or the extensive background screening required to hire law enforcement personnel.

The remoteness of many Indian reservations generally translates into a very small or non-existent local applicant pool from which to recruit. When combined with the unique background

screening and physical requirements of law enforcement in comparison to other professions, our ability to recruit locally for OJS positions becomes very difficult. As a result, nationwide recruitment efforts that include relocation of new hires continue to produce the best results for OJS. However, the remoteness of the duty station often produces other challenges to recruitment such as limited availability of jobs for potential recruits' family members and schools for their children.

The OJS has taken other actions to address longer term issues such as attrition and the efficiency of our hiring process. To counter the significant attrition rate historically prevalent in the law enforcement profession, the OJS places a strong emphasis on employee development and growing managers from within the organization to retain personnel. Also, continuous large scale nationwide recruitment requires precise coordination with our human resources function, so it was recently moved from Anadarko, Oklahoma to Reston, Virginia to improve interaction with OJS and productivity of recruiting and hiring.



RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO  
HON. KEVIN WASHBURN

**Question 19.** According to your FY 2014 budget justification document, the Department of Interior, Indian Affairs, has a New Tribes program which provides resources for regional and agency offices to service and support newly acknowledged tribal governments. These efforts are intended to provide tribes with resources to foster strong and stable tribal governments. Once a tribal government attains Federal recognition, IA formulates a recurring funding level by using the established tribal population. For tribes with a population of 1,700 members or less, a TPA funding level of \$160,000 would be recommended; tribes with populations of 1,701 to 3,000 members, a TPA funding level of \$320,000 would be recommended. Your budget justifications states further that for newly recognized tribes with more than 3,000 members, the funding level would be determined on a case-by-case basis.

Will you please provide historical data including IA requests and actual appropriations for each year in which New Tribes funding has been made available, and I would appreciate the inclusion of any tribal population numbers used to generate the funding?

**Response:** Attached is a history of New Tribes funding. Unfortunately, population membership totals for Tribes that received the New Tribes funding is not available.

**Question 20.** I understand that New Tribes funding is available for three fiscal years, but does it continue to flow only to regional and agency offices during the entire three-year period? When are TPA funds transferred from the New Tribes program into the tribe's base funding? Is New Tribes funding ever subject to the priorities of tribal leadership? Does the New Tribes TPA level form the basis of the TPA level that will be used for a tribal government in the future? If there is a variation from the last fiscal year of New Tribes TPA and the first year of Tribal TPA, what is the average dollar or percentage differential?

**Response:** New Tribes program funds support newly acknowledged tribes and tribal organizations by channeling a pre-determined amount of funding to New Tribes through tools like direct services or an ISDEAA agreement for a three-year period. This is the beginning of their recurring Tribal Priority Allocation funding to assist with the operation and carrying-out of nation-to-nation activities between them and the United States. The New Tribes funding, after three years, becomes their TPA base funding through the TPA budgeting process.

Under the TPA process, the BIA, in conjunction with Indian tribes, develops proposed budgets for selected programs under the Operation of Indian Programs budget component. The Indian tribes then identify program priorities and associated funding levels within their respective base funding amount. Their input is consolidated into the BIA's annual budget.

**Question 21.** Please explain how you integrate new Congressional mandates into the DOI budget formulation process. For example, if legislation to federally acknowledge a tribal government were to be enacted within the 1<sup>st</sup> quarter of the fiscal year, what is the earliest

quarter of that fiscal year or subsequent fiscal year that New Tribes funds would be requested by IA and/or implemented into the DOI budget process? If you apply a standard time frame or formula for such calculations, please provide a breakdown, by each quarter, which illustrates the time lag between enactment and budget implementation or impact.

**Response:** If Congress were to federally acknowledge a tribal government within the 1<sup>st</sup> quarter of fiscal year 2014, budget estimates would have already been submitted to the Department and the Office of Management and Budget for fiscal year 2015 by Indian Affairs. Therefore, Indian Affairs' first opportunity to request funding for the newly acknowledged tribe would be the fiscal year 2016 budget cycle. A sample timeline is included below:

	1st qtr. Oct-Dec 2013	2nd qtr. Jan-Mar 2014	3rd qtr. Apr-Jun 2014	4th qtr. Jul-Sep 2014	1st qtr. Oct-Dec 2014	2nd qtr. Jan-Mar 2015	3rd qtr. Apr-Jun 2015	4th qtr. Jul-Sep 2015	1st qtr. Oct-Dec 2015
FY 2014 Budget Cycle	Tribe A acknowledged	Tribe B acknowledged	Tribe C acknowledged	Tribe D acknowledged					
FY 2015 Budget Cycle	2015 budget already submitted to OMB								
FY 2016 Budget Cycle		Next budget planning session- 2016	Include request for Tribes A,B&C funding in 2016 budget submission to DOI	2016 budget request submitted to OMB	2016 President's budget preparation	2016 budget request submitted to Congress	→	→	Funds Enacted (unless under CR, then no new funds available)
FY 2017 Budget Cycle		Budget planning session- 2017	Include request for Tribe D funding in 2017 budget submission to DOI	2017 budget request submitted to OMB	2017 President's budget preparation	2017 budget request submitted to Congress	→	→	Funds Enacted (unless under CR, then no new funds available)

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO  
HON. KEVIN WASHBURN

**Question 22. What is the (a) total cost for completion and then (b) 10 years of operation and maintenance of Navajo Indian Irrigation Project?**

**Response:** As of FY-2012, \$666.2 Million has been appropriated by Congress and spent on the Project design and construction of the Navajo Indian Irrigation Project. The estimated cost to complete NIIP is an additional \$680.2 million. The irrigation project is being developed in eleven blocks, each block is approximately 10,000 acres. This cost assumes that the Gallegos Reservoir storage site is not required as stated in the 1995 Keller-Bliesner Report based on efficiencies achieved from the conversion from flood to sprinkler irrigation.

- o The estimated cost to complete Block 9 is \$94.6 million (based on March 16, 2011 BOR Construction Cost Estimate).
- o The estimated cost to complete Blocks 10 and 11 is \$374.1 million based on Memorandum from BOR dated May 29, 2013.

This cost estimate is based entirely on conceptual level information. Additional storage may be required in the system when Blocks 10 and 11 are constructed, but could most likely be handled by adding and/or including storage in the canals. This estimate does not include the potential mitigation costs for selenium impacts from the project if Blocks 10 and 11 are completed.

**Other Activities:**

The estimated costs for the following activities include:

- IG Audit Deficiencies - \$22.9 million
- Blocks 5 to 8 surface drain work - \$26.8 million
- Power Factor Corrections - \$10.5 million
- Deferred Maintenance - \$125 million
- "Other Miscellaneous Costs" - \$26.3 million, consisting of O&M during construction, Navajo Agricultural Products Industry (NAPI) Minor construction contracts, and technical assistance to BIA and NAPI projected to complete.

A summary of the estimated completion costs is shown in the following table:

***Summary of Estimated Completion Costs***

Navajo Indian Irrigation Project (NIIP)		
Activity	Cost (millions)	Notes
Cost to date	\$666.2	
Deferred Maintenance	\$125.0	
Cost to complete Block 9	\$94.6	
Cost to complete Blocks 10 and 11	\$374.1	

Address IG Audit Deficiencies	\$22.9	
Automation & Power Factor correction	\$10.5	
Blocks 5 to 8 surface drain work	\$26.8	
Other Miscellaneous Costs	\$26.3	
Total Estimated Remaining Cost	\$630.2	*Based on 2012 values

#### O&M Estimate

The O&M funding to provide for adequate maintenance of the project is estimated to be approximately \$13 million (2013 dollars) annually. Because of the current O&M funding shortfall, deferred maintenance is growing, and the lifespan of some of the equipment is potentially being reduced by running without adequate maintenance activities.

**Question 23. How would the administration's recommendation to appropriate contract support costs on a contract-by-contract basis resolve the issues by the Supreme Court's decision in *Salazar v. Ramah Navajo*.**

**Response:** Given the financial climate, tough choices must be made with respect to Departmental programs. One such decision involves the need to balance funding for contract support costs with funding for direct programming and other tribal priorities within constrained resources. This interim solution is consistent with one of the remedies identified in the Supreme Court's Ramah decision. We believe that this interim solution leads to a mutually beneficial long-term solution by working with Congress and consulting with Indian tribes.

The Department of the Interior provided the contract-by-contract CSC table to the Congressional appropriations committees on June 14, 2013. The table and the accompanying congressional transmittal letters can be found at the following Department website:  
<http://www.doi.gov/budget/index.cfm>.

In addition to providing the contract-by-contract CSC to the Congress, the Assistant Secretary - Indian Affairs reached out to Tribes in a June 14, 2013 Tribal Leader letter regarding the CSC list. It requested that tribal leaders submit any technical correction(s) to the BIA by July 29, 2013. In addition, the BIA held a CSC consultation session at the National Congress of American Indian conference in Reno, NV on June 25, 2013. The Department is pursuing the broader goal of developing a longer-term solution through consultation with Tribes, as well as streamlining and simplifying the contract support costs process, which is considered by many as overly complex and cumbersome to both Tribes and the Federal government. Department of the Interior officials will be available to hear tribal leaders views on this issue.

**Question 24. Mr. Washburn, the comparison of BIE school construction funding to DOD school funding is appalling. DOD operates 193 schools, and BIE operates 183 schools. In**

2010, DOD Education Agency announced a major effort to modernize 134 of its facilities before the end of the decade at a cost of \$3.7 billion. The DOD Education Agency has requested \$752.9 million for FY14 for school replacement. There is no corresponding plan for BIE schools and the administration proposed an elimination of BIE school replacement funds.

**Can you identify why there is such a large discrepancy in funding of these very similar federal educational systems?**

**Have you, and will you bring up this discrepancy with the OMB and the full administration?**

**Response:** Indian Affairs has endeavored to learn more about the DOD Education Agency's school construction initiative. However, we have not undertaken a full comparison between the Department of the Defense educational facilities funding levels, locations and considerations and the Indian Affairs educational facilities funding levels, locations and considerations. In February of 2010, Indian Affairs provided an estimate to Congress of \$1.3 billion to complete construction backlogs. It is not known how this figure would compare with the Department of Defense figure of \$3.7 billion for "modernization" efforts at its schools.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MIKE CRAPO TO  
HON. KEVIN WASHBURN

**Question 25. Chairman John Sirois of the Confederated Tribes of the Colville Reservation discussed S. 165, the Indian Trust Asset Reform Act of 2013, in his testimony. Does the Department have any preliminary views on this bill, specifically Title II, which would establish an Indian trust asset demonstration project?**

**Response:** The Office of the Assistant Secretary-Indian Affairs does not have any preliminary views on S. 165.

