

**UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS**

**OVERSIGHT HEARING on
Tribal Programs and Initiatives Proposed in the
President's Fiscal Year 2011 Budget**

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Written testimony of the
NATIONAL CONGRESS OF AMERICAN INDIANS

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NATIONAL CONGRESS OF AMERICAN INDIANS

February 25, 2010

On behalf of the National Congress of American Indians, thank you for the opportunity to provide our views on tribal programs and initiatives proposed in the President's FY 2011 budget. Last year, for FY 2010, Congress enacted historic increases to important programs that are essential to tribes, especially during this time of economic recession. NCAI applauds the Administration's proposals for FY 2011 to continue to make investments in Indian health, tribal public safety, environmental protection programs, and self-determination contract support costs and administrative cost grants. NCAI looks forward to working with members of this Committee to strengthen investments in other areas, including in education, natural resources, housing, and energy development programs.

Indian Country is a critical player as the nation considers ways to promote jobs and work toward economic recovery. When tribes have the necessary tools to exercise their inherent right of self-government, the results include strides toward improving the health and social and economic well-being of Indian Country, non-Native citizens residing on reservations, and off-reservation residents of neighboring communities. While NCAI and tribal leaders are encouraged to see requested increases for priority programs at the Bureau of Indian Affairs, Indian Health Service, Department of Justice, and other agencies, it is important to note that core tribal governmental services have suffered severe underfunding for decades. The federal funding that supports the provision of services to Indian communities in every relevant program area—from education and public safety to the environment, infrastructure, and health care—lags behind the average for the rest of the United States. For tribes to join the rest of the nation in working towards economic recovery, the FY 2011 budget must build on the investments enacted in FY 2010. The considerable fluctuations in federal funding that support tribal governments and Indian programs have prevented tribes—for more than three decades—from taking full advantage of the Indian Self-Determination and Education Assistance Act.ⁱ

NCAI has developed recommendations for many areas of the federal budget in concert with tribal leaders, agency budget advisory councils, and our sister organizations. NCAI requests that the *FY 2011 Indian Country Budget Request* document be made a part of the recordⁱⁱ. Tribal leaders have identified the following areas for meaningful federal investment in Indian Country: public safety and justice, health care, education, economic development, and natural resources. NCAI would like to emphasize that, although tribal leaders have developed the above priority areas for FY 2011, the consistent underpinning of all of the funding recommendations in this testimony are tribal self-determination and self-governance. NCAI's support for areas of the federal budget that support self-determination and self-governance is uncompromising.

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Public Safety and Justice

Across the nation, tribal leaders have underscored the importance of public safety and justice in budget consultations over the years and emphasized the need for more resources. Today the inadequacy of public safety resources poses a direct threat to Native citizens and the future of Indian Country. NCAI is encouraged that the Administration and this Committee continue to support increases for tribal programs at the Department of Justice and Department of the Interior.

Department of Justice (DOJ)

The Department of Justice requested a total of \$448.8 million for public safety initiatives in tribal communities, \$256 million of which will fund tribal grants. This is a substantial increase over the DOJ's FY 2010 funding levels for tribal specific programs.

The Department proposes new bill language that would designate a 7% tribal set-aside from all discretionary Office of Justice Programs (OJP) programs (excluding the Public Safety Officers Benefits Program disability benefits and education assistance programs) for tribal criminal justice assistance. This 7% set-aside totals \$139.5 million, although the details of how these funds will be administered are yet to be determined. To offset this new policy, the Department is proposing 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, a tribal courts initiative, tribal alcohol and substance abuse reduction assistance, and tribal youth programs.

The Administration requests a total of \$67 million for tribes under the Community Oriented Policing Services (COPS) program to fund tribal law enforcement expenses. This total is made up of \$25 million for tribal law enforcement and \$42 million (7% of the program total) under the Universal Hiring Program for the hiring and training of new police officers.

An additional \$47.9 million will be funneled through the Office of Violence Against Women (OVW) and aimed at addressing the high victimization rates of American Indian and Alaska Native victims of domestic violence, sexual assault, dating violence, and stalking on tribal lands. Within these OVW funds, the President requested that \$500,000 be available for both a new Indian Country Sexual Assault Clearinghouse and for Regional Summits in Indian Country that would provide training on the prosecution of cases involving violence against Native women. The FY 2011 budget also increases the amount of money set aside for Analysis and Research on Violence Against Indian Women from \$1 to \$3 million.

In addition to \$23.8 million requested for the Federal Bureau of Investigations for Indian Country activities in FY 2011, as noted above, the budget request also proposes \$19 million for a reimbursable program through the Department of Interior to support 81 positions (including 45 agents) investigating violent crimes within Indian Country.

A new \$1.2 million is requested for the redesign and development of data collection programs for Indian Country by the Criminal Justice Statistics Program within the Bureau of Justice Statistics, Office of Justice Programs, and the Community Relations Service (CRS) is slated to receive an increase of \$176,000 in non-personnel funding to allow CRS to promote improved communication and partnership between law enforcement entities.

Finally, the Office of Tribal Justice has requested an extra \$584,000 over FY 2010 funds to hire an additional three attorneys and one program analyst to assist in fulfilling the DOJ's responsibilities to Indian Country.

The funding increases included in the DOJ's budget request are necessary to strengthen the law enforcement infrastructure on Indian lands. NCAI supports the DOJ budget requests for FY 2011.

The details of the amount that will be available for DOJ detention facilities is not clear as this testimony goes to print. The Administration and Congress provided a remarkable amount, \$225 million, under the American Recovery and Reinvestment Act (ARRA, Recovery Act) for DOJ facilities construction. The need for these resources in Indian Country, upwards of \$8.4 billion, dwarfs the amount provided even in ARRA funding. The amount provided for this line item has fluctuated over the last few years, with an average of about \$10 million provided each year. ***NCAI requests that the support provided for detention facilities is at least maintained at the FY 2010 level of \$10 million in FY 2011. A sustained commitment in FY 2011 is necessary to address the urgent need for this element of public safety.***

Department of the Interior (DOI)

The Administration has proposed an *Empowering Tribal Nations, Protecting Indian Country* initiative, in the FY 2011 request that builds on the congressional support realized in FY 2010 and provides an additional \$20 million in program funding over the FY 2010 enacted level. DOI will collaborate with the DOJ for additional FBI agents dedicated to protecting Indian lands. Of this increase, \$19 million will go to DOJ to fund additional agents. The FBI has primary jurisdiction over major crimes on more than 200 reservations with approximately 105 agents available to investigate crimes that occur in Indian Country. The budget also proposes an increase of \$1 million for detention center operations and maintenance for new facilities built with DOJ grants. ***NCAI supports these increases.***

Housing and Infrastructure

Department of Housing and Urban Development

NCAI and tribal leaders are very alarmed at the proposed decrease to the Native American Housing Block Grant (NAHBG) program, which constitutes one of the largest percent decreases proposed for any area of the President's FY 2011 federal budget that benefits Indian Country. The proposed level would cut the NAHBG program by 17 percent from the FY 2010 enacted level and 11 percent from the FY 2009 level.

The Administration's justification for not requesting the standard formula amount is that the program is operating at a high volume due to ARRA funding provided in FY 2009. However, the ARRA funding was intended to be over and above regular appropriations. The proposed reduction to the formula level comes at the same time that the President has requested a three-year freeze in domestic spending. One positive aspect of the ARRA NAHBG funding was that 50 percent was distributed by a grant process that allowed smaller tribes to be awarded sufficient funding to complete projects. The proposed reduction would impact smaller and poorer tribes in FY 2011. As Indian Country works towards putting our citizens back to work, the proposed FY 2011 cut would adversely affect the construction industry, which is one of the more stable industries with substantial employment in Indian Country.

NCAI would like to point out the inconsistency in the ARRA justification to cut the NAHBG formula funding in FY 2011. The Administration and Congress provided tremendous support to tribal programs through the Recovery Act to Native American housing and the Indian Health Service, but only dropped support for housing in the FY 2011 budget request. ***NCAI urges this Committee to work toward restoring the cut proposed for the NAHBG funding for FY 2011.***

Human Needs and Human Services

Indian Health Service

The requested increase for the Indian Health Service budget, a 9 percent increase over the FY 2010 enacted level, which itself was a 13 percent increase over the FY 2009 level, represents an ongoing commitment by the Administration to the trust responsibility to tribes. NCAI applauds the incredible support shown by the Administration, this Committee, and the Congress to address the funding needs of the Indian Health Service, which in FY2010 was still only funded at about 50 percent of need.

Department of Education and Bureau of Indian Education

A promising trend has emerged in the last two years whereby agencies are beginning to include tribes in new initiatives – such as in health care or environmental protection, but this is not the case for education programs. NCAI and tribal leaders appreciate the attention paid to the needs of Indian Country and would encourage the Department of Education to ensure that tribes are not excluded from important funding and policy initiatives. One example is the “Race to the Top” challenge. These funds will support grants to state and local education agencies to create incentives for local reform and innovations that lead to significant improvements in student achievement, high school graduation rates, and college enrollment. Schools operated under the Bureau of Indian Education (within DOI) are not eligible for these funds. ***NCAI urges that tribes are included in such initiatives going forward and that schools operated under the Bureau of Indian Education be eligible for these funds.***

The Administration proposed \$31.7 million in funding for Tribally Controlled Colleges and Universities in the Department of Education, a 5 percent increase from the FY 2010 enacted level. It also includes \$3.8 million to strengthen Native American-Serving Non-Tribal Institutions. ***NCAI supports these increases.***

Over the past decade, Indian education programs have, in general, received significant reductions in funding or been level-funded, translating into funding cuts for these programs due to inflation and other rising costs. If these cuts to Native education are not reversed, then Native children and Native communities, as well as future generations, will see even greater disparity in academic performance with the overall U.S. population.

Energy and Natural Resources

NCAI appreciates the efforts of Chairman Dorgan, Vice Chairman Barrasso, and this Committee to develop legislation to foster the responsible development of the vast potential of traditional and clean energy resources on tribal lands. In addition to energy resources on tribal lands, the health and maintenance of other natural resources – forestlands, water, fisheries, wildlife, and outdoor recreation – is vital to Native communities. We wish to offer the following comments with respect to proposed FY 2011 funding for various energy and natural resource programs.

Environmental Protection Agency (EPA)

The President’s FY 2011 budget request for the Environmental Protection Agency would establish a new focused Multimedia Tribal Implementation Grants program to support on-the-ground implementation of environmental protection on tribal lands. These grants, for which \$30 million is requested, are tailored to address an individual tribe’s most serious environmental needs. This new grant program will advance

negotiated environmental plans, measures, and results as agreed upon by tribes and EPA, thus ensuring that tribal environmental priorities are addressed to the fullest extent possible. An additional \$2.9 million is requested for tribal capacity building and implementation of this new grant program. ***NCAI supports this new initiative and the proposed FY 2011 levels for grants and implementation.***

The Multimedia Tribal Implementation Grants program will complement the environmental capacity developed under EPA's Indian Environmental General Assistance Program (GAP), for which the Administration requests an \$8.5 million increase, for a proposed FY 2011 level of \$71.4 million. This requested increase will assist tribal environmental programs that have been able to build capacity and mature to take on additional responsibilities. ***NCAI supports this requested increase.***

The Administration also requests a 0.5% increase – from 1.5% to up to 2% - for the existing tribal set-asides under both the Clean Water and Drinking Water State Revolving Funds. While overall funding for the tribal set-asides under the State Revolving Funds is proposed to decrease by \$2 million from the FY 2010 enacted level, overall funding for tribal water infrastructure through the State Revolving Funds tribal set-asides has increased from 3 to 6 fold since FY 2009, in addition to the \$90 million provided in Recovery Act funding. These funding increases are incremental improvements towards the overall \$1.2 billion needed to address the reality that over 12% of tribal homes lack access to safe drinking water and/or basic sanitation. ***NCAI supports the proposed percentage increase for the tribal set-asides under both the Clean Water and Drinking Water State Revolving Funds, and the Administration's proposal to allow tribes the same flexibility that states have to request that the EPA Administrator transfer funds between those accounts for tribal drinking water and wastewater projects.***

Bureau of Indian Affairs (BIA)

As part of the Department of the Interior's *New Energy Frontier* initiative, the FY 2011 budget request for Indian Affairs includes \$2.5 million for energy projects, of which \$1 million is for grants to tribes for renewable energy resource development, and \$1.5 million is for conventional energy resource development on the Fort Berthold Reservation. The budget also includes \$200,000 for the BIA-tribal collaboration in the Landscape Conservation Cooperatives as part of the Interior Department's Climate Change Adaptation initiative. Given the potential for development of both conventional and renewable energy resources on tribal lands, and the drastic impacts that climate change have in Indian and Alaska Native communities, ***NCAI supports these requested increases, with hopes that such funding could be sustained and increased in future years.***

In addition to these proposed increases for energy resource development, the Indian Affairs budget request for natural resources programs proposes to provide recurring funding for several long-standing tribal natural resources programs, like the

Washington State Timber-Fish-Wildlife program, Circle of Flight, Lake Roosevelt management, and Upper Columbia United Tribes, which, in prior years' budget requests, were treated as "earmarks." While a number of natural resource programs - for irrigation, agriculture, endangered species, forestry, fish, wildlife and parks - are proposed to be level-funded, modest increases are proposed for several others, including Water Management, Planning and Pre-Development (\$500,000 increase), and Water Rights Negotiation/Litigation (\$1 million increase). ***NCAI also supports these requested increases, with hopes that such funding could be sustained and increased in future years,*** especially given level funding over a number of years for BIA natural resources programs.

Department of Energy (DOE)

Within the Department of Energy, Energy Efficiency and Renewable Energy Office, the budget request proposes \$10 million for Tribal Energy Activities. This amount is the same as the FY 2010 enacted level, after the program received a 40% increase (from \$6 million to \$10 million) between FY 2009 and FY 2010. Tribes recognize DOE's Tribal Energy Program as an effective program which provides a range of services related to tribal renewable energy development, as witnessed by the total of \$52 million in tribal funding requests for the \$6 million available in FY2009. ***NCAI supports the \$10 million requested for the Tribal Energy Program.***

No funding was requested for the Office of Indian Energy Policy and Programs, which will coordinate all tribal-related energy programs, in part because a director for that Office has not yet been appointed. ***Should that appointment be made, NCAI hopes Congress will consider providing \$10 million for this Office, so that some 75 tribal energy capacity-building projects could be initiated.***

Support for Tribal Governments

Contract Support Costs (CSC): The FY 2011 budget request includes important increases to the Indian Health Service (IHS) and Bureau of Indian Affairs (BIA) contract support costs line items. The FY 2010 Interior Appropriations Act included \$166 million for the BIA's contract support cost payments to tribes and \$398 million for IHS's contract support cost payments to tribes. These reflect unprecedented increases over the prior year amounts of \$18.7 million and \$116 million for BIA and IHS, respectively. All of these funds are paid directly to tribes and support tribal employment and the delivery of essential government functions.

Although the *FY 2011 Indian Affairs Budget Justifications* noted that the requested FY 2011 increase for BIA CSC would meet 94 percent of the FY 2011 need, that calculation was based upon the CSC 2007 need. In FY 2011, the requirement will be \$233.9 million, and the proposed funding would be \$187.5 million, which results in a shortfall of \$46.4 million and means that only 80 percent of BIA CSC would be funded under the FY 2011 request for BIA. For IHS, the funding request would

provide 81.9% of need for FY 2011. The IHS CSC requirement in FY2011 will be \$542.4 million and the funding from the Budget Request will be \$444.3 million, which results in a shortfall of \$98.1 million.

Education Tribal Grant Support Costs (Administrative Cost Grants): Schools operated by tribes/tribal school boards are entitled by law to receive an Administrative Cost Grant (ACG) for the administrative/indirect costs they incur when taking over a Bureau of Indian Education (BIE) school. Currently, 124 of the 183 BIE-funded schools (68 percent) are operated by tribes or tribal school boards and receive ACG funding. Tribal assumption of the operation of so many BIE-system schools is a major exercise of tribal sovereignty. While NCAI supports the budget request's increase of \$3 million, for a total of \$46.4 million, NCAI recommends a level of \$71.6 million. This amount would be comprised of \$69.6 million for ongoing grants/contracts, plus \$2 million for the first-time AC Grants Fund. This would be a \$28.6 million increase over the FY 2010 enacted level.

Tribal Priority Allocations (TPA): The FY 2011 budget proposes an increase of \$28 million in TPA, which is 3.4 percent above the FY 2010 enacted level. TPA is one of the most important funding areas for tribal governments. It covers such funding as scholarships and higher education, human services, economic development, and natural resource management. Since tribes have the flexibility to use TPA funds to meet the unique needs of their individual communities, these funds are the main resource for tribes to exercise their powers of self-governance.

NCAI would like request a general increase to TPA and BIA in general that takes into account inflation, pay costs, and population growth. As with other federal agencies, calculating mandatory cost increases is essential to maintaining the current level of services. These "mandatories" are unavoidable costs and include inflation, pay costs, and population growth. If these mandatory requirements are not funded, tribes have no choice but to cut services, which further reduces the quantity and quality of core governmental services available to Native people. While tribes appreciate President Obama's attention to providing long needed increases to contract support costs, we are greatly concerned that the Administration has proposed no pay cost adjustment in FY 2011. Instead, tribes must absorb 100% of these costs. Contract support cost increases have no bearing on pay costs – they are completely separate. Pay costs represent the only base funding increase provided for our core governmental service programs (with the sole exception of law enforcement).

As part of the TPA budget request, \$2.9 million is requested for Small and Needy Tribes. The purpose of the initiative is to provide small tribes with minimum TPA base funding to enable them to run viable tribal governments. Tribes qualify for this funding if they have a population of 1,700 or less, and less than \$160,000 in recurring TPA funds in the lower 48 states or \$200,000 in Alaska. Currently, there are a total of 114 tribes that receive less than the recommended \$160,000 and \$200,000 thresholds

in recurring TPA. The proposed FY 2011 funding will be used to bring 17 tribes in the lower 48 states back to the minimum threshold of \$160,000 and will bring 86 Alaska tribes up to \$190,000. ***NCAI supports this initiative, as it helps strengthen critical tribal governance infrastructure.***

DOI Trust Land Consolidation Fund and Indian Education Scholarship Holding Fund

Last December, the Departments of the Interior and Justice announced a \$3.4 billion settlement agreement with the plaintiffs in the *Cobell v. Salazar* class action trust accounting litigation. This settlement agreement is awaiting congressional action, and we are hopeful that action will be taken in advance of the February 28, 2010, deadline.

The FY 2011 budget request proposes, pursuant to the settlement agreement, to establish a new Trust Land Consolidation Fund for the buy-back and consolidation of fractional interests in trust or restricted land from individual Indian landowners, to be expended over a ten-year period of time from the date of final approval of the settlement agreement. Not more than \$60 million of the Trust Land Consolidation Fund would be authorized to be transferred to a new Indian Education Scholarship Holding Fund for higher education scholarships for American Indian and Alaska Native students attending post-secondary vocational schools and institutions of higher education. We urge the Committee, as you have previously advocated on the *Cobell* settlement to the Senate Budget Committee in its preparation of the FY 2008 budget resolution, to recommend that the budget resolution contain an allocation sufficient to accommodate these two newly-authorized Funds under the settlement agreement within the context of the FY 2011 budget.

ⁱ U.S. Commission on Civil Rights. (2003). *A Quiet Crisis: Federal Funding and Unmet Needs In Indian Country*

ⁱⁱ www.ncai.org/fileadmin/ncai_events/2010soin/NCAI_FY2011_Budget_Request.pdf