

Red Lake Band of Chippewa Indians

Red Lake, MN 56671
Phone: 218-679-3341
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TESTIMONY OF THE HONORABLE FLOYD JOURDAIN, JR. CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS

Before the Senate Committee on Indian Affairs
Oversight Hearing on Tribal Self Governance and Pay Costs
September 20, 2006

Mr. Chairman, I thank you and the other distinguished members of the Committee for this opportunity to provide testimony on behalf of the Red Lake Band of Chippewa Indians. The focus of my testimony will be on the impacts upon Indian tribes of the inequitable and partial funding of uncontrollable fixed costs (particularly Pay Costs) to Indian Self Determination and Self Governance.

As you know, many Indian tribes have assumed, under the Indian Self-Determination Act ("ISDA"), the administration of core service programs and salaried positions previously carried out and filled by federal employees. As a matter of equity and fairness, the Congress regularly has encouraged the Administration to treat ISDA tribal employees the same as Bureau of Indian Affairs ("BIA") employees are treated with respect to pay cost increases and other fixed costs.

Without increased funds for fixed costs like pay cost adjustments, Indian tribes must either "absorb" pay cost increases by reducing their core program service delivery budgets or deny tribal employees the pay cost increases enjoyed by their federal colleagues. The result is an accumulating series of reductions in program service delivery year upon year. As the House Subcommittee on Interior Appropriations noted at page 6 of its FY 2005 Interior and Related Agencies report (House Rept. 108-542), "Absorption of costs associated with Federal pay increases ... and other unfunded fixed costs cannot continue indefinitely without further eroding core program capabilities. Over the past three years, ... Indian programs have absorbed over \$500 million in unfunded costs."

I now will discuss several ways in which tribes have been shortchanged in their pay cost allocations. Some of these are unique to tribes, resulting in tribes being even more severely affected than other federal agencies.

1. In FY 2003-2005, and again in FY 2007, the President requested that only a portion of pay costs be actually funded, resulting in a permanent pay cost reduction for all tribes.

The failure to fully fund fixed costs over the last several years has resulted in a real, \$1.2 billion cut to just the Department of Interior agencies. For tribes, these cuts have been particularly crippling, even exceeding the devastating cut to Tribal Priority Allocations (TPA) back in FY 1996. At Red Lake, we estimate these pay cost cuts have resulted in our core, recurring service funding levels being permanently reduced by \$600,000 - \$800,000 each year.

We believe it is much more difficult for tribes to absorb these cuts than for a large federal agency to absorb them. Salaries for tribal employees have quickly fallen far behind their federal counterparts. At Red Lake, we try to at least provide annual cost of living increases to our employees, but this must come from a reduction in core services. Step and grade increases, which federal employees are guaranteed, are the exception not the rule at Red Lake. As an example, we know our law enforcement and detention officers are paid less than BIA officers. As I speak, we are engaged in discussion with the BIA over this very issue. The BIA wants us to increase our officer salaries. We likewise want to increase our officer salaries. But this is an extremely difficult and frustrating process in light of the federal government's chronic failure to fully fund pay costs.

The House Interior Subcommittee language accompanying each of the last four Interior Appropriations bills was highly critical of the practice of the Administration requesting only partial pay cost increases, citing an inability of programs to absorb these uncontrollable costs leading to inevitable declines in services to the American people. The Subcommittee also "urged" the President to request full funding of uncontrollable costs (including pay costs) in all future budget submissions.

2. In FY 2006, the President requested, and Congress enacted, full pay cost funding. Nevertheless, when Interior distributed the appropriation, the Indian tribes received far less than full pay cost funding.

With the enactment of full fixed cost funding in the FY 2006 Interior Appropriations bill, we were hopeful we would see some relief from the pay cost cuts of previous years. To our dismay, when we received our pay cost allocation, we found it was less than 40% of our reported pay costs for FY 2006. The intent of Congress to fully fund these costs was thwarted by the BIA.

Only after many meetings with the BIA were we able to figure out how this happened. Red Lake submitted its FY 2006 pay cost worksheet in October of 2004 to then Assistant Secretary for Indian Affairs Dave Anderson. Included in our worksheet was \$7.5 million in eligible salaries from which our FY 2006 pay costs were to be calculated. That should have generated a pay cost allocation to the Tribe in FY 2006 of approximately \$262,500. Instead, BIA allocated only \$97,262 to the Tribe.

We knew \$97,262 was far less than we should have received. In FY 2000 for example, Red Lake received \$153,895 in pay costs, and this was before the Tribe's new detention facility opened with more than 30 FTEs, which were new positions eligible for additional pay costs in FY 2006. We have tried to get from the BIA the formulas they use in reporting and allocating pay costs, but they will not provide them to us. We know, however, what we timely reported to BIA was consistent with BIA's uniform reporting requirements as our pay costs for FY 2006. The \$262,500 we believe was owed the Tribe assumes a pay cost percentage increase of 3.5% for our FY 2006 \$7.5 million in payroll salaries.

When the Tribe inquired of BIA's Office of Self Governance (OSG) why Red Lake received such a small amount of the FY 2006 pay cost funds, we were told that some other tribes failed to submit any pay cost data to BIA for FY 2006, so BIA decided to take the full funding that the President requested based on reported pay cost data and that the Congress appropriated based on reported pay cost data, and instead distribute the pay cost funds to every tribe regardless of whether they had submitted pay cost data or not. That means the "full funding" of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA.

The Red Lake Band objected to BIA's redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different from the way they were requested and appropriated. The Tribe desperately needs our full amount of pay costs, based upon the pay cost information we diligently reported and supplied to the BIA for FY 2006, and which Congress subsequently enacted. Each year we are shortchanged in mandatory pay costs, and this loss is compounded annually because every year thereafter that money is missing from our recurring base budget.

3. In FY 2002, the OSG and BIA failed to include pay costs for Self Governance tribes in the President's budget, resulting in a permanent pay cost reduction for all tribes.

Each year, as part of the Interior budget process, tribes are required to report their pay cost data to the BIA. Prior to FY 2003, Self Governance tribes reported their data to OSG, who then supplied this data to the BIA. For FY 2002, Red Lake and other Self Governance tribes timely reported their pay cost data to OSG. But because OSG missed a deadline for submission of pay cost data to BIA, and because of apparent acrimony between BIA and OSG, the BIA did not include \$3,350,000 in Self Governance tribes' pay costs in the President's FY 2002 budget request.

Red Lake was the first tribe to learn of this egregious activity, and we took action. In July of 2001, we wrote to the Chairmen of the Senate and House Appropriations Committees, notified them of BIA's failure to include Self Governance tribes' pay costs in the President's FY 2002 budget request, and asked them to add back these funds. The House agreed to our request, and fully restored the \$3,350,000. The Senate failed to do

so. In the final FY 2002 Interior Appropriations bill, only one-half (\$1,675,000) of Self Governance tribes' \$3,350,000 in pay costs was restored.

To partially address this problem, the BIA pro-rated tribal pay costs in FY 2002, spreading the shortfall to all tribes, with the net effect that all tribes received only 75% of their legitimately due pay costs. No federal agencies were shorted in FY 2002, only tribes were shorted.

4. In FY 2003, and possibly other years, the BIA miscalculated Red Lake's share of pay costs, resulting in questions about BIA's pay cost allocation methodology.

Because of the unfair pay cost shortage in FY 2002 described above, Red Lake has scrutinized all subsequent pay cost allocations. Since that time, our annual allocations have dropped dramatically. Certainly part of the problem was the Administration's decision to request only partial funding of pay costs in FY 2003-2005. However, in FY 2003 we received only about 15% of the pay cost amount we estimated we should have received. We complained about this problem to the BIA for three years. Finally, this year the BIA admitted it miscalculated Red Lake's share of pay costs in FY 2003, and they did restore some of those funds.

The actions described above have caused us to question the BIA's ability to accurately account for scarce pay cost dollars. We believe there were errors in our pay cost allocations in FY 2005 and 2006 as well, but the BIA insists they only erred in FY 2003. In our FY 2006 Self Governance agreement, the BIA contractually agreed to provide the Tribe by April 1, 2006, a detailed analysis of pay cost allocations for FY 2002-2006. This was to include detail on methodology, to assist the Tribe in determining for ourselves the true story on pay cost allocations. As of today, the BIA has failed to honor their contractual obligations by providing the promised analysis.

Self Determination or Self Termination

This year marks Red Lake's 10th anniversary under Self Governance. But is there cause for celebration? Certainly there have been some good things that have come under Self Governance. We have gained increased flexibility, which has allowed us to shift program dollars to high priority areas. One example is Law Enforcement. Because of inadequate BIA Law Enforcement funding, Self Governance has enabled us to reprogram funds from other core service programs to cover our Law Enforcement annual shortfall of about \$500,000 (albeit at the expense of those other programs).

Self Governance has given us the means to undertake some bold initiatives. As an example, during our first year as a Self Governance tribe, Red Lake initiated an effort to rehabilitate its commercial fishing industry. The Red Lake commercial fishery was the largest and longest continuously operated freshwater fishery in America. And it was the only Indian fishery regulated by the Secretary of Interior. Due in part to the failure of the Secretary to manage the fishery according to sound biological principals, populations of walleye, the principal economic species, collapsed by 1996. Red Lake teamed up with the State of Minnesota and the BIA, and we restored Red Lake walleye populations to

record levels. This effort has been hailed as the largest freshwater fish species recovery in modern day America, and it was conducted in record time. This represents a true Self Governance success story.

Unfortunately, impediments to Self Governance have been severe, especially when it comes to funding for core programs. Prior to FY 1996, tribes enjoyed relatively stable funding for their TPA programs, and even saw occasional inflationary adjustments. But tribes have never recovered from the devastating, \$100 million cut to the TPA in FY 1996. That year, Red Lake saw an instant reduction of 16-18% to its core service programs including law enforcement, fire protection, social services, and natural resources. Recognizing the damage this caused, Congress provided a small, General Increase to the TPA in FY 1998. This was the last one we have seen.

During this, our 10th anniversary year as a Self Governance tribe, we find that the accumulation of 10 years of mandatory and targeted rescissions have now exceeded the TPA General Increase provided in FY 1998. This means we have gone backwards to where we were a decade ago, when the FY 1996 TPA cut was implemented. The only funding increase we could count on was pay costs. Therefore, our concern about pay cost shortfalls should be understood.

Self Governance and the Future

Currently, there is little financial incentive to encourage tribes newly contemplating Self Governance, or even for existing Self Governance tribes to maintain their status. Core service funding is less today than a decade ago, contract support has been chronically inadequate, and uncontrollable fixed costs have not been funded. It might seem easiest for some tribes to simply revert back to BIA Direct Service. At least, the BIA service providers would get their annual and step pay increases. But is that really in our best interest?

Instead of throwing in the towel, the Red Lake Band, and we believe other tribes, wish to continue on the Self Governance path. But to do so Mr. Chairman, we need your help. With regard to pay costs, there are several things that could be done.

Fixing the Pay Cost Problems

We ask the Committee to do the following:

1. Immediately engage the BIA about the process it used to collect and report FY 2006 pay cost data, to determine why tribes received such a small amount of pay costs in a year in which Congress enacted full fixed cost funding. A list of sample questions is attached to this testimony. Emphasis should also be placed on ensuring the BIA requests the full amount of FY 2008 pay costs tribes are eligible to receive. This emphasis is time critical as the Administration is in the final stages of preparing its FY 2008 request.
2. Request the Government Accountability Office (GAO) to investigate the methodology by which the BIA has distributed so-called "pay cost increases" within the "fixed-cost" FY 2006 accounts which the President's FY 2006 budget request described as "fully-

funded” and which the Congress funded as requested. This request should be designated as a high priority, as findings could have utility in shaping the FY 2008 appropriation. A sample letter to GAO is attached to this testimony.

3. Direct the BIA to provide the pay cost analysis to Red Lake, which it contractually agreed to do by April 1, 2006. The actual CY 2006 pay cost footnote language describing this analysis is attached to this testimony.

4. Communicate to the President and Appropriations Committees that, in FY 2008, nothing short of full fixed cost funding is acceptable. Although we appreciate the fact that Congress has asked the President to include full fixed cost funding in all future budget submissions, Congress needs to ensure this actually happens.

5. Conduct an oversight hearing, or request the GAO conduct an investigation, on the matter of pay for tribal workers under Self Determination contracts and Self Governance compacts. Although we are confident that such an investigation will reveal dramatic disparity in compensation between tribal workers and their federal counterparts, tribes have limited ability to conduct such an analysis on their own.

In closing Mr. Chairman, the failure to fully fund tribes’ uncontrollable costs (especially Pay Costs) during the last 5 fiscal years has caused serious and irreparable harm to tribal core service programs. Errors, omissions, and miscalculations on the part of the BIA have compounded this problem. These matters are clearly disincentives for tribes to continue participating in or to expand their participation in Self Governance.

On behalf of the Red Lake Band of Chippewa Indians, and tribes across the country, I thank you for asking me to testify today, and for your assistance in drawing attention to the matters I’ve presented.

I have attached several documents to this testimony which will support some of my statements today.

Miigwetch

Footnote to Red Lake's CY 2006 Funding Agreement, Prepared by the Tribe, BIA, and OSG, and Agreed to By All Parties.

Line Item: 638 Pay Costs

This amount to be determined by Congressional appropriation. The BIA will make every effort to treat Red Lake Tribal employees the same as all other Tribal and Federal employees for purposes of pay cost adjustments in FY 2006. The BIA and OSG agree to make every possible effort to recover for the Tribe all 638 Pay Cost shortages for FY 2003-2005, which were legitimately due to the Tribe, but which were not received because of Administration oversight and/or internal errors or omissions. Further, the BIA and OSG agree to provide to the Tribe by April 1, 2006, a detailed Pay Cost analysis for the years 2003-2006, showing what the Tribe was eligible to receive each year based upon Pay Cost data the Tribe provided, the actual amount received, and the shortfall or unfunded amount. This analysis will include Law Enforcement. The analysis will separately show the total amounts received each year for Self Governance tribes, contracting tribes, and BIA programs, as well as the total amounts the BIA was eligible to receive for these programs based upon data it compiled. The above information has been requested by the Tribe to verify whether Red Lake, other Self Governance tribes, contracting tribes, and BIA programs were treated the same way with regard to the distribution of Pay Costs for the years 2003-2006. It is noted that the Tribe has proposed the above footnote language be applied to CY 2002. The BIA Midwest Region Director is trying to get more Pay Cost information on CY 2002, and agrees to provide this information to the Tribe if it is available. The BIA agrees it failed to provide \$30,900 in base eligible Pay Costs to the Tribe in CY 2003. The BIA agrees to restore the full amount due, plus interest at the current Prompt Pay rate of 4.3%, to the Tribes CY 2006 AFA. The estimated restoration amounts are \$34,465 (2003), \$33,236 (2004), \$31,424 (2005), and \$29,651 (2006). The BIA further agrees these amounts shall be base transferred in CY 2006.

Sample Questions for BIA Regarding Pay Cost Data Collection, Reporting, and Allocation Procedures

1. Last year (FY 2006) the President requested, and the Congress fully funded, pay costs for tribal employees under P.L. 93-638 agreements at the same level as pay costs requested and provided for federal employees. Does the President's FY 2007 budget request fully-funded pay costs for such tribal employees at the same level as the pay costs it seeks for federal employees? If not, why not?
2. What dollar amount of fixed pay costs was requested in FY 2006? What amount is requested for FY 2007? Please explain what is the reason for any difference in these amounts.
3. After having timely and uniformly filed their pay cost data with BIA, some Indian tribes have reported that they nevertheless received less than 40% of the pay cost increases they were to receive for FY 2006. Are you aware of these complaints of inequitable distribution and if so, how will you resolve them?
4. Explain in detail what methodology was used by BIA to distribute the fully-funded pay cost increases in FY 2006?
5. Explain in detail the relationship between the pay cost data provided by tribes in response to the BIA data call for FY 2006, and the actual pay cost increase distribution decisions made for FY 2006.
6. If an Indian tribe failed to submit timely and uniform pay cost data in response to the BIA data call for FY 2006, did such an Indian tribe nevertheless receive pay cost increases in FY 2006? If so, what was the impact on the amount of pay cost increases received by an Indian tribe that did submit timely and uniform pay cost data?
7. Please provide the Committee with a report of the pay cost data the BIA has compiled for FY 2007, which data should reveal, region by region, the total amount of tribal salaries.
8. Detail the procedures BIA used to collect, report, and allocate pay costs for tribal and BIA employees for FY 2006. Include copies of actual memos, emails, worksheets, and other paperwork used to notify and collect the pay cost data.
9. Identify, by BIA Region, which tribes and BIA programs actually provided FY 2006 Pay Cost data, and which ones did not, if any. If some tribes and BIA programs did not submit FY 2006 Pay Cost data, describe any follow-up procedures BIA used to ensure due diligence in the collection and reporting of the Pay Cost data.

10. Identify which BIA Regions had Budget Officers vacant or non-existent at the time of the FY 2006 Pay Cost data call.
11. Describe in detail the process used to compile Pay Cost data received from tribes and BIA programs, and how the data was reported for the FY 2006 budget request.
12. Describe, and provide copies of, any instructions and directives from OMB and offices of the Department of the Interior on how FY 2006 Pay Cost requests were to be determined and reported.
13. Describe in detail the process BIA used to allocate FY 2006 Pay Costs received, to tribes and BIA programs. Include baseline statistics such as the total of salary data for tribes, the total of salary data for BIA programs, the respective totals of Pay Cost funds requested, the grand total of Pay Cost funds received, the total amount of Pay Cost funds allocated to tribes, and the total amount of Pay Cost funds allocated to BIA programs.
14. Of the total amount of FY 2006 Pay Cost funds the BIA received, what amount, if any, was provided to tribes and BIA programs which did not report FY 2006 Pay Cost data.
15. What procedures does BIA intend to implement for the FY 2008 budget process to ensure that Pay Cost data is fully, fairly, and accurately collected and reported for all tribes and BIA programs?
16. If the BIA failed to collect and report all eligible Pay Cost data for FY 2006 and FY 2007, does the BIA plan to collect the remaining amounts and request them in the FY 2008 budget request?
17. Is the BIA aware of any errors it made in the allocation of Pay Cost funds to any tribes and BIA programs during the last 5 fiscal years? If so, describe the errors found, how they were found, steps taken to check for additional errors, and steps taken to rectify the errors.

Attachment C

**DRAFT LETTER TO GENERAL ACCOUNTABILITY OFFICE (GAO) re BIA
FAILURE TO REQUEST ACCURATE TRIBAL PAY COSTS**

Hon. David M. Walker
Comptroller General
General Accountability Office
441 G St., NW
Washington, DC 20548

Dear General Walker:

As you know, many Indian tribes have assumed, under the Indian Self-Determination Act (“ISDA”), the administration of core service programs and salaried positions previously carried out and filled by federal employees. As a matter of equity and fairness, the Congress regularly has encouraged the Administration to treat ISDA tribal employees the same as Bureau of Indian Affairs (“BIA”) employees are treated with respect to pay cost increases and other fixed costs.

Without increased funds for fixed costs like pay cost adjustments, Indian tribes must either “absorb” pay cost increases by reducing their core program service delivery budgets or deny tribal employees the pay cost increases enjoyed by their federal colleagues. The result is an accumulating series of reductions in program service delivery year upon year. As the House Subcommittee on Interior Appropriations noted at page 6 of its FY 2005 Interior and Related Agencies report (House Rept. 108-542), “Absorption of costs associated with Federal pay increases ... and other unfunded fixed costs cannot continue indefinitely without further eroding core program capabilities. Over the past three years, ... Indian programs have absorbed over \$500 million in unfunded costs.”

In order for OMB and the Congress to provide pay cost increases, BIA must provide accurate and timely information on pay cost data. But there is evidence that in the past decade the BIA has failed to provide OMB and the Congress with accurate reports of the pay cost adjustment requirements of ISDA tribal programs, on par with those reported for federal programs, and that as a result, there has been a significant erosion in the funding of core tribal program capabilities.

Accordingly, the Committee requests that you investigate the methodology by which the BIA has distributed so-called “pay cost increases” within the “fixed-cost” FY 2006 accounts which the President’s FY 2006 budget request described as “fully-funded” and which the Congress funded as requested.

For example, there are reports from certain Indian tribes, including the Red Lake Band of Chippewa Indians, that tribes who timely and fully reported their FY 2006 salary pay cost

data to BIA subsequently were shortchanged by BIA when BIA distributed pay cost funds for FY 2006. Please investigate whether this was in fact the case, and if so, why.

It appears that this problem may have been caused by a BIA decision to use incomplete data for purposes of its FY 2006 budget request despite BIA's assertion that it was a fully funded request, and then a subsequent decision by BIA to add belatedly discovered or erroneously compiled need data or estimates of need data after the FY 2006 budget request was submitted and funded but before distribution.

In light of your findings as to the FY 2006 distribution, we ask that you examine the basis for and completeness of the President's FY 2007 budget request for pay cost increases for tribal employees. In order for this investigation to have some utility to the Congress in shaping the FY 2007 appropriation, we ask that you give this investigation your priority attention.

Please contact _____ at 202-224-2251 if you have any questions.

Sincerely,

John McCain
Chairman

Byron Dorgan
Vice Chairman

Attachment D

Various Documents Follow Which Provide Background in Support of Testimony

RED LAKE BAND of CHIPPEWA INDIANS



TRIBAL COUNCIL
Organized April 18, 1918
(Revised Constitution & By-Laws,
January 6, 1959)

OFFICERS:
BOBBY WHITEFEATHER, Chairman
JUDY ROY, Secretary
DAN KING, Treasurer

DISTRICT REPRESENTATIVES:
FABIAN COOK
DELORES LABLEY
JULIUS "TOADY" THUNDER
ALLEN PEMBERTON
LAWRENCE BEDEAU
HARLAN R. BEAULIEU
CLIFFORD C. HARDY
RUDY W. JOHNSON

ADVISORY COUNCIL:
7 HEREDITARY CHIEFS

CHIEF COUNCIL OF 1889
May dway gwa no nind
Nah-gaun-e-gwon-sbe
Mays co-co-waw-ay
Ahnah-me-ay-ge-shig
Nuw-ay tah-wowh
Nah-wah-quay-ge-shig

Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

DIVISION:

July 16, 2001

The Honorable Robert C. Byrd, Chairman
Committee on Appropriations
S-128 Capitol
Washington, D.C. 20510

Dear Chairman Byrd:

I request your assistance to provide \$3,350,000 for Self Governance Compacts Fixed Costs in the Tribal Priority Allocations (TPA) account of the final FY 2002 Interior Appropriations bill. Because of a technical oversight by the Department of Interior, these uncontrollable fixed costs were not included in the President's FY 2002 budget request to Congress. The House of Representatives included this amount in its version of the FY 2002 Interior Appropriations bill, but the Senate did not.

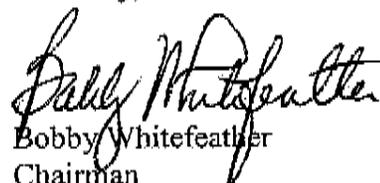
These fixed costs represent uncontrollable pay cost adjustments for self governance tribes. These costs were included for federal agencies and contracting tribes, but again, because of an oversight self governance tribes were left out of the FY 2002 budget request. The tribes had nothing to do with this oversight.

As it is, tribes generally must manage their TPA programs with fewer staff (at lower wages) and with fewer dollars than their state and federal counterparts. The inclusion of uncontrollable fixed costs is a requisite component of tribes' budgets, just as it is for federal agencies.

In conclusion, the omission of \$3,350,000 for Self Governance Compacts Fixed Costs in the TPA account of the FY 2002 Interior Appropriations bill was a technical oversight not of the tribes' making. The House of Representatives sought to correct this oversight when it included these funds in its version of the Interior bill. I ask that the final version of the FY 2002 Interior Appropriations bill include the requisite, and critically needed, \$3,350,000 for Self Governance Compacts Fixed Costs.

Thank you.

Sincerely,


Bobby Whitefeather
Chairman

Red Lake Band of Chippewa Indians

RED LAKE BAND

of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS

**OFFICERS:**

GEORGE KING, Chairman
 JUDY ROY, Secretary
 DARRELL G. SEKI, SR., Treasurer

DISTRICT REPRESENTATIVES:

CLIFFORD HARDY
 RUDY JOHNSON
 JULIUS "TOADY" THUNDER
 ALLEN PEMBERTON
 ROMAN "DUCKER" STATELY, JR.
 JIM WHITE
 WILLIAM "BILLY" GREENE
 RICHARD BARRETT, SR.

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

September 4, 2003

Honorable Terrence Virden
 Director
 Bureau of Indian Affairs
 1849 C Street NW
 Washington, D.C. 20240

RE: Urgent Request For Pay Cost Investigation

Dear Director Virden:

I am requesting your assistance to resolve a critical funding issue for the Red Lake Band of Chippewa Indians. We recently discovered that our CY 2003 Pay Cost funds (FFS Cost Code 39902) may not be increased above the \$31,000 received to date. We originally suspected this was a just a partial release of funds, with the remainder to be forthcoming. Now we suspect there is a serious problem.

At our CY 2004 Self Governance negotiations on August 4, 2003, we asked BIA Midwest Region Director Larry Morrin, and OSG Policy Analyst Ken Reinfeld, to determine why we were shorted in Pay Cost funding, prior to our finalizing our CY 2004 Agreement. To date, they have been unable to provide an answer.

To put things in perspective, recent Pay Cost allocations for Red Lake are as follows:

CY 2000	\$153,895
CY 2001	\$144,343
CY 2002	\$129,464
CY 2003	\$ 31,000

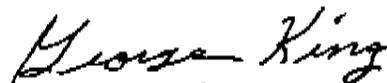
You will recall, because of a technical oversight by the Department of Interior (the tribes had nothing to do with this oversight), Pay Costs for Self Governance tribes were not included in the President's FY 2002 budget request to Congress. Congress only partially rectified this problem, with the result that the BIA gave us only 75% of what we should have received in CY 2002. For CY 2003, it appears we have received *only 20%* of what we are due.

Honorable Terrence Virden
September 4, 2003
Page 2

The Pay Cost funds received by the Band represent the *only* increase we receive for our TPA programs. As it is, we must manage our TPA programs with fewer staff (at lower wages) and with fewer dollars than our state and federal counterparts. The inclusion of full Pay Costs is absolutely vital.

I ask that you look into this matter immediately, and call me or Roger Head, Executive Administrator, as soon as possible. Thank you.

Sincerely,



George W. King
Chairman
Red Lake Band of Chippewa Indians

cc: Judy Roy, Secretary
Darrell Seki, Treasurer
Roger Head, Executive Administrator
Francis Brun, Tribal Administrator



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians Resolution #ABQ-03-005

TITLE: Tribal Pay Cost Shortages

EXECUTIVE COMMITTEE

PRESIDENT
Tex G. Hall
Mandan, Hidatsa, and Arikara Nation

FIRST VICE-PRESIDENT
Joe A. Garcia
*Ohkay Owingeh
(Pueblo of San Juan)*

RECORDING SECRETARY
Juana Majel
Pauma-Yuima Band of Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Edward K. Thomas
Tlingit and Haida Tribes

EASTERN OKLAHOMA
Jefferson Keel
Chickasaw Nation

GREAT PLAINS
Harold Frazier
Cheyenne River Sioux Tribe

MIDWEST
Norman Adams, Jr.
Bois Forte Band of Chippewa Indians

NORTHEAST
Kevin Seneca
Seneca Nation

NORTHWEST
Ernie Stensgar
Coeur d'Alene Tribe

PACIFIC
Leslie Lohse
Paskenta Band of Nomlaki Indians

ROCKY MOUNTAIN
Geri Small
Northern Cheyenne Tribe

SOUTHEAST
Eddie Tullis
Poarch Band of Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band Potawatomi Nation

SOUTHWEST
John F. Gonzales
San Ildefonso Pueblo

WESTERN
Arlan Melendez
Reno Sparks Indian Colony

EXECUTIVE DIRECTOR
Jacqueline Johnson
Tlingit

NCAI HEADQUARTERS
1301 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
202.466.7767
202.466.7797 fax
www.ncai.org

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, the largest component of the Bureau of Indian Affairs (BIA) budget, the Tribal Priority Allocations (TPA) account, provides direct funding for tribes to provide vital governmental services to Indian people, including law enforcement, justice, fire protection, education, social services, and resource management; and

WHEREAS, tribes are locked in a desperate struggle to protect the funding levels provided for these services, especially since the crippling, nearly \$100 million cut in the TPA in FY 1996, with only one minor, general increase in the TPA since that time (FY 1998), and with the result that each tribe's TPA funding is less today than it was a decade ago; and

WHEREAS, the only general increase tribes could count on each year was a cost of living increase, known as the 638 Pay Cost account, and which is similar to what the Administration and Congress provide for federal workers employed by federal agencies each year; and

WHEREAS, due to federal administrative oversight and through no fault of the tribes, tribes received only 75% of their 638 Pay Cost funding in FY 2002; and

WHEREAS, due to an Administration decision, tribes received only 15% of their 638 Pay Cost funding in FY 2003, and are slated to receive only a small portion of their 638 Pay Costs in FY 2004; and

WHEREAS, because there have been no general TPA increases (except the minor one in FY 1998), tribes cannot absorb this repeated loss of pay cost increases without drastically cutting already inferior services to Indian people; and

WHEREAS, Title 25 of the Federal Code of Regulations, Part 12, Section 34 mandates that a tribal government which assumes the federal functions of law enforcement must pay its tribal law enforcement officers at least the same salary as a BIA officer performing the same duties ("Any contract or compact with the BIA to provide law enforcement services for an Indian tribe must require a law enforcement officer to be paid at least the same salary as a BIA officer performing the same duties." 25 CFR 12.34); and

WHEREAS, it is grossly inequitable and irresponsible for federal agencies like the BIA and OMB to fail to request from or defend before Congress parity in pay cost funding between federal and tribal employees; and

WHEREAS, it is grossly inequitable and irresponsible for the federal government to withhold Pay Cost increases to tribal programs but provide Pay Cost increases to federally-administered programs while at the same time the federal regulations require tribes to meet pay parity requirements; and

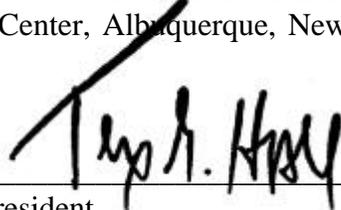
WHEREAS, the failure of the BIA, OMB and the Congress to ensure that Pay Cost parity between federal and tribal employees is protected seriously undermines the federal Indian policy that favors, pursuant to Public Law 93-638, as amended, the assumption by tribes of programs, functions, services and activities formerly carried out by federal employees.

NOW THEREFORE BE IT RESOLVED, that the NCAI does hereby strongly urge the Administration and Congress to immediately restore full 638 Pay Cost funding for tribes in FY 2004 and in future years, and to consider restoring 638 Pay Cost funding not received in FY 2002 and FY 2003 through a special appropriations equitable adjustment.

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

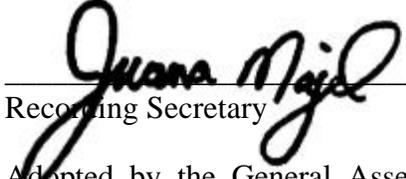
CERTIFICATION

The foregoing resolution was adopted at the 60th Annual Session of the National Congress of American Indians, held at the Albuquerque Convention Center, Albuquerque, New Mexico, on November 21, 2003 with a quorum present.



President

ATTEST:



Recording Secretary

Adopted by the General Assembly during 60th Annual Session of the National Congress of American Indians, held in Albuquerque, New Mexico, from November 17-21, 2003.



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

DEC 24 2003



Honorable George W. King
Chairman, Red Lake Band of Chippewa Indians
P.O. Box 550
Red Lake, Minnesota 56671

Dear Mr. King:

Thank you for your letter of September 4, 2003, expressing your concerns about the Fiscal Year 2003 Pay Cost funding allocations. We apologize for the delay of our response to you.

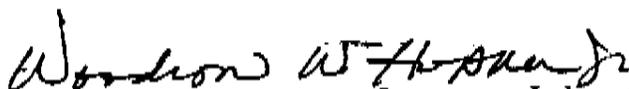
During Fiscal Year (FY) 2003, the Department received only 15 percent of the identified Pay Cost for both Federal and tribal employees. The portion of the Pay Cost not funded must be absorbed by the Federal Government or tribe for their respective employees. We assure you the Pay Cost shortfall was shared equally by the Bureau of Indian Affairs and tribal governments.

We know this created a hardship for your Tribe, as well as all tribes entitled to receive Pay Cost funding. However, we will continue to work through the Department of the Interior, Office of Management and Budget and Congress to ensure they are aware of the impact these funding shortfalls have on Native American communities.

We distributed the same share of pay cost funding, including allocations for Self-Governance Tribes. We were unable to request the total amount needed to fund the full cost of the FY 2003 pay raise to Federal or tribal employees. We received only 15 percent and had to absorb the remaining \$7.2M for federal pay costs and \$5.9M for the tribal pay costs.

If you have further questions please feel free to contact me at (202) 208-7163.

Sincerely,


ACTING Principal Deputy Assistant Secretary - Indian Affairs

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS



OFFICERS:
 FLOYD JOURDAIN, JR., Chairman
 JUDY ROY, Secretary
 DARRELL G. SEKI, SR., Treasurer

DISTRICT REPRESENTATIVES:
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ADVISORY COUNCIL:
 7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

October 7, 2004

Honorable Dave Anderson
 Assistant Secretary - Indian Affairs
 1849 C Street NW
 Washington, D.C. 20240

Dear Assistant Secretary Anderson:

I write to you for two purposes. The first is to transmit the Red Lake Band of Chippewa Indians FY 2004 Pay Cost data to be used in the FY 2006 budget process. The Office of Self Governance and Self Determination (OSG&SD) informed us that the BIA Central Office has a deadline of October 15, 2004 to receive all Pay Cost data by tribe and Region. We contacted BIA Midwest Region, who could provide us with no information on the subject, so there appears to be inadequate coordination with the Central office. In the past it has been the responsibility of the Regional Budget Officer to ensure Pay Cost data is submitted to Central Office on time. The problem appears to be that BIA Central Office made a decision not to fill the vacant Midwest Region Budget Officer position. This comes to the second purpose of this letter, which is to request you reverse the decision not to fill this key position. Concerns about this issue were raised by several regions at the most recent BIA Tribal Budget Advisory Council meeting.

Red Lake is particularly concerned about the Pay Cost issue. Pay Costs represent the only source of critical core service funding which receives an annual upward adjustment. Although these increases have themselves been sharply reduced the last three years, to preserve our ability to receive future adjustments it is essential that the Pay Cost data be compiled and submitted timely. At least one time (FY 2002 to be exact), tribes received only 75% of their Pay Cost funds specifically because the OSG&SD and BIA failed to meet their obligations to protect tribes interests.

The Regional Budget Officer plays a crucial role in ensuring tribes' receive all of the financial resources due them – a critical part of the Federal Indian trust responsibility. Meeting this trust responsibility requires substantial effort and focus at the Regional level, and includes but is not limited to budget preparation, justification and monitoring for several fiscal years at one time,

Honorable Dave Anderson
October 7, 2004
Page 2

and gathering and processing requisite, time-sensitive data from tribes including budget justifications, unmet needs, pay costs, and recently mandated increases in financial reporting to the Office of Management and Budget. The need to fill the Midwest Region Budget Officer position is clear. Thank you.

Sincerely,



Floyd Jourdain, Jr.
Chairman
Red Lake Band of Chippewa Indians

cc: Michael Olsen, Principal Deputy Assistant Secretary for Indian Affairs
Brian Pogue, BIA Director
Debbie Clark, BIA Chief Financial Officer
Terry Virden, BIA Midwest Region Director
Ken Reinfeld, Office of Self Governance and Self Determination

PAY COST WORKSHEET

Red Lake Band of Chippewa Indians CY 2006 Pay Cost Data

TPA BASE SALARIES (\$IN THOUSANDS)

PRGM CODE	PROGRAM TITLE	BASE SALARIES
39220	Other Aid to Tribal Govt.	51,042.00
392--	Consolid. Tribal Govt Prg (CTGP)	
39250	New Tribes	
39280	Tribal Courts	371,964.00
39270	Contract Support	1,440,636.00
	TRIBAL GOVT.	1,863,642.00

39310	Svcs to Children, Elderly & Fam	208,466.00
39320	ICWA	
39330	Welfare Assistance	38,815.00
39370	Housing Improvement Prg.	12,000.00
	HUMAN SERVICES	259,281.00

39110	Scholarships	82,345.00
39140	Johnson O'Malley	
39130	Adult Education	206,412.00
39120	TCCC's	
39190	Other, Education	
	EDUCATION	288,757.00

39430	Community Fire Protect.	202,887.00
	PUBLIC SAFETY & JUSTICE	202,887.00

39535	Job Placement & Training	
39510	Economic Development	51,796.00
39550	Road Maintenance	267,249.00
36730	Housing Development	60,989.00
	*COMMUNITY DEVELOPMENT	380,034.00

39605	Natural Resources, Gen	223,296.00
39610	Agriculture	
39630	Forestry	655,329.00
39640	Water Resources	72,098.00
39650	Wildlife/Parks	153,392.00
39660	Minerals/Mining	
	RESOURCES MANAGEMENT	1,104,115.00

PAY COST WORKSHEET

39710	Trusr Svcs., General	
39720	Other Rights Protection	
39770	Other Real Estate Svcs.	102,172.00
	Probate	
39740	Environ. Quality Svcs/.	
39750	ANILCA	
39760	ANCSA	
	TRUST SERVICES	102,172.00

39810	Executive Direction	47,500.00
39820	Admin. Services	78,052.00
39830	Safety Mgmt.	
	GENERAL ADMIN.	125,552.00
	****TOTAL TPA****	4,326,440.00

**NON TPA
OTHER-RECURRING**

PROGRAM TITLE	
ISEP (Formula Funds)	
ISEP (Program Adjustments)	
Early Childhood Development	
Student Transportation	
Institutionalized Disabled	
Facilities Operations	
Area/Agency Technical Support	
Operating Grants	
Technical Assistance	
Endowment Grants	
EDUCATION	

Irrigation O&M	
Western Washington (Boldt)	
Columbia River	
Klamath Conservation Program	
Great Lakes Area Res. Mgmt.	
US/Canada Pacific salmon	
Upper Columbia United Tribes	
Lake Roosevelt Management	
Fish Hatchery Operations	135,680.00
Fish Hatchery Maintenance	
Tribal Mgmt. Development Program	
RESOURCE MANAGEMENT	135,680.00
TOTAL - ORP	135,680.00

PAY COST WORKSHEET

NON-RECURRING: (\$IN THOUSANDS)

Noxious Weed Eradication	
Gila River Farms Project	
Forestry Development	277,019.00
Fire Preparedness	329,055.00
Waste Management Development	
Unresolved Hunting & Fishing Rights	
Minerals & Mining	
Endangered Species	
RESOURCE MANAGEMENT	606,074.00

Water Rights Negotiations/Litigation	
Real Estate Services	
Environmental Management	
Navaho/Hopi Settlement	
TRUST SERVICES	
TOTAL - NRP	606,074.00

SPECIAL PROGRAMS/POOLED OVERHEAD

Indian Police Academy	
Substance Abuse	
Law Enforcement Initiative	1,822,309.00
PUBLIC SAFETY & JUSTICE	1,822,309.00

United Tribes Technical College	
COMMUNITY DEVELOPMENT	

Facilities Operations	194,939.00
Facilities Maintenance	
GENERAL ADMINISTRATION	194,939.00
TOTAL PROGRAMS/POOLED	2,017,248.00

FEDERAL HIGHWAY TRUST FUND

93100	IRR PROGRAM	405,310.00
	TOTAL IRR	405,310.00

****TOTAL TPA****	4,326,440.00
TOTAL ORP	135,880.00
TOTAL NRP	606,074.00
TOTAL SPECIAL PRGM/POOL	2,017,248.00
TOTAL IRR	405,310.00

GRAND TOTAL	7,490,752.00
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**RESOLUTION OF THE BIA/TRIBAL BUDGET ADVISORY COUNCIL CALLING
FOR A PAY COST ANALYSIS AND REPORT AND REIMBURSEMENT TO TRIBES
FOR ANY PAY COST SHORTFALL**

WHEREAS, the BIA Budget Advisory Council was established in 1999 to facilitate tribal government participation in the planning of the BIA budget and includes two tribal representatives from each of the 12 BIA regions; and

WHEREAS, self-rule by American Indians and Alaska Natives within the United States as separate sovereign governments predates the formation of the United States and these governments are acknowledged to be separate sovereign governments in Article I, Section 8 of the United States constitution; and

WHEREAS, through treaties and other agreements, and in exchange for appropriating from American Indians and Alaska Natives for its use vast tracts of land and the resources of those lands, the United States has accepted certain fundamental trust obligations to American Indians and Alaska Natives, including providing health care, education, housing social welfare, law and order, transportation, and many other services to American Indians and Alaska Natives; and also has accepted the role of trustee and manager of resources owned in trust by the United States for the benefit of American Indians and Alaska Natives; and

WHEREAS, the Snyder Act, 25 U.S.C. Section 13, and other sections of law encodify these obligations to American Indians and Alaska Natives, and the Indian Reorganization Act of 1934, 25 U.S.C. Sections 450 et seq., requires the Secretary of the Interior to consult with tribal governments on Federal funding concerning programs for American Indians and Alaska Natives; and

WHEREAS, the largest component of the Bureau of Indian Affairs (BIA) budget, the Tribal Priority Allocations (TPA) account, provides direct funding for tribes to provide vital governmental services to Indian people, including law enforcement, justice, fire protection, education, social services, and resource management; and

WHEREAS, tribes are locked in a desperate struggle to protect the funding levels provided for these services, especially since the crippling, nearly \$100 million cut in the TPA in FY 1996, with only one minor, general increase in the TPA since that time (FY 1998), and with the result that each tribe's TPA funding is less today than it was a decade ago; and

WHEREAS, the only general increase tribes could count on each year was a cost of living increase, known as the 638 Pay Cost account, and which is similar to what the Administration and Congress provide for federal workers employed by federal agencies each year; and

WHEREAS, due to federal administrative oversight and through no fault of the tribes, tribes received only 75% of their 638 Pay Cost funding in FY 2002; and

WHEREAS, due to an Administration decision, tribes received only 15% of their 638 Pay Cost funding in FY 2003, and are slated to receive only a small portion of their 638 Pay Costs in FY 2004; and

WHEREAS, because there have been no general TPA increases (except the minor one in FY 1998), tribes cannot absorb this repeated loss of pay cost increases without drastically cutting already inferior services to Indian people; and

WHEREAS, Title 25 of the Federal Code of Regulations, Part 12, Section 34 mandates that a tribal government which assumes the federal functions of law enforcement must pay its tribal law enforcement officers at least the same salary as a BIA officer performing the same duties ("Any contract or compact with the BIA to provide law enforcement services for an Indian tribe must require a law enforcement officer to be paid at least the same salary as a BIA officer performing the same duties." 25 CFR 12.34); and

WHEREAS, it is grossly inequitable and irresponsible for federal agencies like the BIA and OMB to fail to request from or defend before Congress parity in pay cost funding between federal and tribal employees; and

WHEREAS, it is grossly inequitable and irresponsible for the federal government to withhold Pay Cost increases to tribal programs but provide Pay Cost increases to federally-administered programs while at the same time the federal regulations require tribes to meet pay parity requirements; and

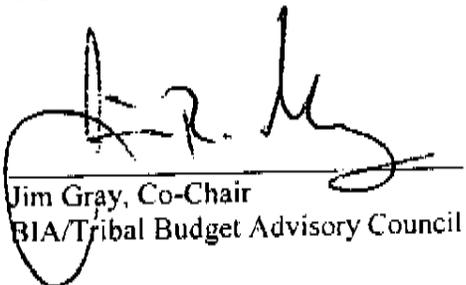
WHEREAS, the failure of the BIA, OMB and the Congress to ensure that Pay Cost parity between federal and tribal employees is protected seriously undermines the federal Indian policy that favors, pursuant to Public Law 93-638, as amended, the assumption by tribes of programs, functions, services and activities formerly carried out by federal employees.

NOW THEREFORE BE IT RESOLVED, that the Pay Cost analysis and report, in the format as proposed by the Red Lake Band of Chippewa Indians in its January 6, 2005 letter to Assistant Secretary Dave Anderson, be completed as soon as possible, and be distributed to the tribes.

THEREFORE BE IT FINALLY RESOLVED, if any tribe received less Pay Cost dollars in 2002 through 2005 than the percentage distribution to the BIA dictates, then the Bureau of Indian Affairs shall reimburse those tribes who were shorted.

CERTIFICATION

The foregoing resolution was adopted at a meeting of the BIA/Tribal Budget Advisory Council at San Marcos Resort in Chandler, Arizona on February 17, 2005 with a quorum present.



Jim Gray, Co-Chair
BIA/Tribal Budget Advisory Council



Tex G. Hall, Co-Chair
BIA/Tribal Budget Advisory Council

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS

**OFFICERS:**

FLOYD JOURDAIN, JR., Chairman
 JUDY ROY, Secretary
 DARRELL G. SEKI, SR., Treasurer

DISTRICT REPRESENTATIVES:

CLIFFORD HARDY
 GLENDA J. MARTIN
 JULIUS "TOADY" THUNDER
 ALLEN PEMBERTON
 DONALD E. DESJARLAIN
 DONALD J. "DUDIE" MAY
 WILLIAM "BILLY" GREENE
 RICHARD BARRETT, SR.

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

February 22, 2005

Debbie Clark
 Deputy Assistant Secretary for Budget
 Bureau of Indian Affairs
 1849 C Street NW
 Washington, D.C. 20240

Dear Debbie:

As you requested, attached is a letter dated December 24, 2003, from Acting Principal Deputy Assistant Secretary Woodrow Hopper. As we informed you at the budget meeting last Friday, Mr. Hopper stated in this letter that Red Lake received only 15% of its Pay Costs in FY 2003. This letter was in response to our letter to BIA Director Terry Virden dated September 4, 2003 (copy also attached). It should be clear from examining these two letters, that there is a major discrepancy in the Pay Cost figures we received in CY 2003, versus the percentages you spoke of at the meeting.

You indicated that upon receipt of Mr. Hopper's letter, you would investigate Red Lake's Pay Cost allocations to determine if Red Lake received less than it should have in FY 2002 - 2005, and what adjustments may be due. In conducting this investigation, please bear in mind that Red Lake is a calendar year tribe, and usually receives one Pay Cost allocation each year from the Office of Self Governance and Self Determination. Per the terms of our Self Governance Agreement, this allocation should represent the distribution for the calendar year.

As you investigate the Pay Cost discrepancies, I ask that you send me the following information as soon as possible (please fax to me at 218/679-3378):

- 1.) For each of the years FY 2002-2005, what was the actual percentage allocation of calculated Pay Costs that the BIA received, as well as the dollar amount;
- 2.) What is the exact formula the BIA used when calculating its Pay Cost requests for each of the years FY 2002-2005;

Debbie Clark
February 22, 2005
Page 2

3.) From the formulas and calculations identified in Item (2) above, what were the resultant dollar amounts for Pay Costs attributable to Red Lake *before* any reductions, for each of the years FY 2002-2005; and,

4.) What is the allocation methodology for Self Governance tribes like Red Lake, whose agreements are based on the calendar year.

I thank you in advance for your assistance with the above.

Sincerely,



Darrell Seki
Treasurer
Red Lake Tribal Council

cc: Chairman Floyd Jourdain, Jr.
Secretary Judy Roy
Red Lake Tribal Council District Representatives
Terry Virden, BIA Midwest Region Director
Bill Sinclair, Director of Self Governance and Self Determination

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS

**OFFICERS:**

FLOYD JOURDAIN, JR., Chairman
 JUDY ROY, Secretary
 DARRELL G SEKI, SR., Treasurer

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 RICHARD BARRETT, SR.

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

February 16, 2006

Honorable Conrad Burns, Chairman
 Honorable Byron Dorgan, Ranking Member
 Senate Appropriations Subcommittee on Interior and Related Agencies
 SD-131
 Washington, D.C. 20510

Re: Pay Costs in FY 2006 Interior Appropriations Act

Dear Chairman Burns and Ranking Member Dorgan:

Thank you for enacting in FY 2006, for the first time since FY 2002, full fixed cost funding including pay costs. We must inform you, however, that the BIA has once again thwarted your intention and paid the Red Lake Band of Chippewa Indians (the "Tribe") less than 40% of the Tribe's reported pay costs for FY 2006.

The Tribe submitted its FY 2006 pay cost worksheet in October of 2004 to then Assistant Secretary for Indian Affairs Dave Anderson. Included in our worksheet was \$7.5 million in eligible salaries from which our FY 2006 pay costs were to be calculated. That should have generated a pay cost allocation to the Tribe in FY 2006 of \$262,500. Instead, BIA allocated only \$97,262 to the Tribe.

We know \$97,262 is far less than we should have received. In FY 2000 for example, Red Lake received \$153,895 in Pay Costs, and this was before the Tribe's new detention facility opened with more than 30 FTEs, which were eligible for pay costs in FY 2006. We have tried to get from the BIA the formulas they use in reporting and allocating pay costs, but they will not provide them to us. We know, however, what we timely reported to BIA consistent with BIA's uniform reporting requirements as our pay costs for FY 2006. The \$262,500 we believe was owed the Tribe assumes a pay cost percentage increase of 3.5% for our FY 2006 \$7.5 million in payroll salaries.

When the Tribe inquired last week of BIA's Office of Self Governance why Red Lake received such a small amount of the FY 2006 Pay Cost funds, we were told that some other tribes failed to submit any Pay Cost data to BIA for FY 2006, so BIA decided to take the full funding that the President requested based on reported pay cost data and that the Congress appropriated based on reported pay cost data, and instead distribute the pay cost funds to every tribe regardless of whether they had submitted pay

Honorable Conrad Burns, Chairman
Honorable Byron Dorgan, Ranking Member
February 16, 2006
Page 2

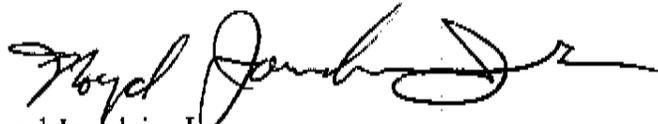
cost data or not. That means the "full funding" of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA.

The Red Lake Band objects to BIA's redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different than they were requested and appropriated. The Tribe desperately needs our full amount of pay costs, based upon the pay cost information we reported and supplied to the BIA, and which Congress subsequently enacted. We have already suffered serious and irreparable harm from pay cost shortfalls going back to FY 2002.

We know you are concerned about the damage caused when fixed costs are not fully funded. The Red Lake Band was diligent in supplying the requisite FY 2006 pay cost data to the BIA. We now ask for your assistance to ensure Red Lake gets our full amount of pay cost funding in FY 2006 and following years, consistent with the intent of Congress.

I thank you in advance for your assistance with my request.

Sincerely,



Floyd Jourdain, Jr.
Chairman
Red Lake Band of Chippewa Indians

Cc: Honorable Jim Cason, Associate Deputy Secretary
Honorable Norm Coleman, United States Senator
Honorable Mark Dayton, United States Senator
Honorable Collin Peterson, United States Representative
Honorable Richard Pombo, Chairman, House Committee on Resources
Honorable Nick Rahall, Ranking Member, House Committee on Resources
Honorable John McCain, Chairman, Senate Committee on Indian Affairs
Honorable Byron Dorgan, Vice-Chairman, Senate Committee on Indian Affairs

RED LAKE BAND
of CHIPPEWA INDIANS
RED LAKE NATION HEADQUARTERS

**OFFICERS:**

FLOYD JOURDAIN, JR., Chairman
 JUDY ROY, Secretary
 DARRELL G. SEKI, SR., Treasurer

DISTRICT REPRESENTATIVES:

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 RICHARD BARRETT, SR.

ADVISORY COUNCIL:

7 HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

February 16, 2006

Honorable Charles Taylor, Chairman
 Honorable Norman Dicks, Ranking Member
 House Subcommittee on Interior, Environment and Related Agencies
 B-308 Rayburn House Office Building
 Washington, D.C. 20515

Re: Pay Costs in FY 2006 Interior Appropriations Act

Dear Chairman Taylor and Ranking Member Dicks:

Thank you for enacting in FY 2006, for the first time since FY 2002, full fixed cost funding including pay costs. We must inform you, however, that the BIA has once again thwarted your intention and paid the Red Lake Band of Chippewa Indians (the "Tribe") less than 40% of the Tribe's reported pay costs for FY 2006.

The Tribe submitted its FY 2006 pay cost worksheet in October of 2004 to then Assistant Secretary for Indian Affairs Dave Anderson. Included in our worksheet was \$7.5 million in eligible salaries from which our FY 2006 pay costs were to be calculated. That should have generated a pay cost allocation to the Tribe in FY 2006 of \$262,500. Instead, BIA allocated only \$97,262 to the Tribe.

We know \$97,262 is far less than we should have received. In FY 2000 for example, Red Lake received \$153,895 in Pay Costs, and this was before the Tribe's new detention facility opened with more than 30 FTEs, which were eligible for pay costs in FY 2006. We have tried to get from the BIA the formulas they use in reporting and allocating pay costs, but they will not provide them to us. We know, however, what we timely reported to BIA consistent with BIA's uniform reporting requirements as our pay costs for FY 2006. The \$262,500 we believe was owed the Tribe assumes a pay cost percentage increase of 3.5% for our FY 2006 \$7.5 million in payroll salaries.

When the Tribe inquired last week of BIA's Office of Self Governance why Red Lake received such a small amount of the FY 2006 Pay Cost funds, we were told that some other tribes failed to submit any Pay Cost data to BIA for FY 2006, so BIA decided to take the full funding that the President requested based on reported pay cost data and that the Congress appropriated based on reported pay cost data, and instead distribute the pay cost funds to every tribe regardless of whether they had submitted pay

Honorable Charles Taylor, Chairman
Honorable Norman Dicks, Ranking Member
February 16, 2006
Page 2

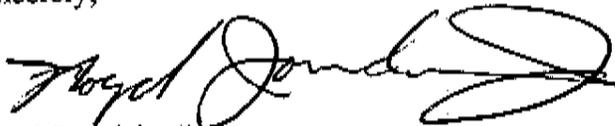
cost data or not. That means the "full funding" of reported pay costs of tribes like Red Lake was reduced, arbitrarily by BIA.

The Red Lake Band objects to BIA's redistribution of the pay cost increases appropriated by Congress. We do not believe BIA had authority to redistribute these funds in a manner different than they were requested and appropriated. The Tribe desperately needs our full amount of pay costs, based upon the pay cost information we reported and supplied to the BIA, and which Congress subsequently enacted. We have already suffered serious and irreparable harm from pay cost shortfalls going back to FY 2002.

We know, and greatly appreciate, the fact that in each of the last three Interior Appropriations bills, you expressed the Subcommittee's concerns about providing less than full fixed cost funding. The Red Lake Band was diligent in supplying the requisite FY 2006 pay cost data to the BIA. We now ask for your assistance to ensure Red Lake gets our full amount of pay cost funding in FY 2006 and following years, consistent with the intent of Congress.

I thank you in advance for your assistance with my request.

Sincerely,



Floyd Jourdain, Jr.
Chairman
Red Lake Band of Chippewa Indians

Cc: Honorable Jim Cason, Associate Deputy Secretary
Honorable Norm Coleman, United States Senator
Honorable Mark Dayton, United States Senator
Honorable Collin Peterson, United States Representative
Honorable Richard Pombo, Chairman, House Committee on Resources
Honorable Nick Rahall, Ranking Member, House Committee on Resources
Honorable John McCain, Chairman, Senate Committee on Indian Affairs
Honorable Byron Dorgan, Vice-Chairman, Senate Committee on Indian Affairs

RED LAKE BAND

of CHIPPEWA INDIANS

RED LAKE NATION HEADQUARTERS

**OFFICERS:**

FLOYD JOURDAIN, JR., Chairman
 JUDY ROY, Secretary
 DARRELL G. SEKI, SR., Treasurer

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 RICHARD BARRETT, SR.

ADVISORY COUNCIL:

HEREDITARY CHIEFS

PO Box 550, Red Lake, MN 56671

Phone 218-679-3341 • Fax 218-679-3378

TESTIMONY OF THE HONORABLE FLOYD JOURDAIN JR. CHAIRMAN, RED LAKE BAND OF CHIPPEWA INDIANS

Before the House Appropriations Subcommittee on Interior, Environment, and Related Agencies
 Regarding the FY 2006 BIA, IHS, and EPA Budgets, March 30, 2006

Mr. Chairman, I thank you and the other distinguished members of the Committee for this opportunity to provide testimony on behalf of the Red Lake Band of Chippewa Indians. On behalf of the people of Red Lake, who reside on our reservation in northern Minnesota, we respectfully submit that the budget appropriation process represents for us the major avenue through which the United States government fulfills its trust responsibility and honors its obligations to Indian tribes. We must depend on you to uphold the trust responsibility which forms the basis of the government to government relationship between our tribe and the federal government. The Red Lake Band of Chippewa Indians requests \$2.8 million in additional FY 2007 funding from the Department of Interior for Red Lake's programs.

Red Lake is a fairly large tribe with 10,000 members. Our 840,000 acre reservation is held in trust for the tribe by the United States. While it has been diminished in size, our reservation has never been broken apart or allotted to individuals. Nor has our reservation been subjected to the criminal or civil jurisdiction of the State of Minnesota. Thus, we have a large land area over which we exercise full governmental authority and control, in conjunction with the United States.

At the same time, due in part to our location far from centers of population and commerce, we have few jobs available on our reservation. While the unemployment rate in Minnesota is about 4%, ours remains at an outrageously high level of more than 50%. The lack of good roads, communications, and other necessary infrastructure continues to hold back economic development and job opportunities.

The President's FY 2007 budget request for Indian programs falls far short of what tribes throughout Indian Country actually need. It especially falls short for tribes, like Red Lake, who are located in remote areas far from major markets. The following testimony highlights some of the most critical needs of the Red Lake Band of Chippewa Indians in FY 2007.

Tribal Priority Allocations (TPA)

Tribal governments have suffered terrible and unprecedented erosion in federal funding for their critical core governmental services in the last decade. These services, including law enforcement, fire protection, courts, road maintenance, resource protection, and education and social services, affect the every day lives of people in Indian communities.

Tribes are locked in a desperate struggle to protect the funding levels provided for these services, especially since the crippling, nearly \$100 million cut in the TPA in FY 1996. Although the President's budget has occasionally requested an increase in the TPA, in fact, except for a few targeted exceptions, *none of these increases ever go to tribes' existing TPA programs* to offset inflation. Instead, these increases go to fund new tribes and for certain internal transfers and uncontrollable costs. There has been only one small General Increase in the TPA over the past decade – and that occurred in FY 1998.

Further exacerbating the situation, tribes' core service funding has been subjected to permanent, across-the-board reductions each year, as well as permanent, targeted reductions such

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as the FY 2004 reduction in tribal funding used to finance the BIA bureaucracy's Information Technology upgrades. Additional, steep TPA cuts are proposed in FY 2007 for BIA Welfare Assistance, Johnson O'Malley, Community Fire Protection, Roads Maintenance, and other BIA-funded programs. It has become a major task each year just to count up the number of ways the TPA is being cut. We strongly oppose these cuts and ask the Committee to restore them.

As a result of the above, tribes' core service funding is far less, in real terms, than a decade ago. Critical services continue to be eroded, seriously undermining our ability to provide minimal public safety, security, and well-being for people who already struggle to survive under some of the worst living standards in America. It may be the case that some federal agencies can absorb all of these cuts, but tribes like Red Lake cannot - we have reached the breaking point.

Let me provide an example of how real the funding crisis for basic services is at Red Lake. Below is a table showing TPA funding versus actual expenditures for just two of our critical service programs, Community Fire Protection and Tribal Courts.

	CY 2005 Actual TPA BIA Budget	CY 2005 Actual Expenditures	CY 2005 Actual Shortfall*	CY 2005 Unmet Need**	CY 2005 Total Need
Red Lake Program					
Fire Protection	\$42,500	\$374,448	(\$331,948)	\$599,979	\$931,927
Tribal Courts	\$246,900	\$579,341	(\$332,441)	\$765,000	\$1,097,441
Totals	\$289,400	\$953,789	(\$664,389)	\$1,440,762	\$2,045,488

* The actual shortfall, \$664,389 for just these two programs, had to be taken from other Tribal programs, sharply reducing services provided by those programs.

** The Unmet Need for Fire Protection is primarily to renovate two fire station buildings due to age and deterioration. The Unmet Need for Tribal Courts is primarily for additional staff to resolve a tremendous backlog of more than 1,000 cases.

The above example illustrates the damage caused by the cuts to the TPA. The only solution to this crisis is a General Increase in the TPA, to be distributed to all tribes. The increase should be no less than 5% (\$39 million) over the FY 2006 enacted level. This amount will not come close to replacing funds lost to inflation and budget cuts, but will provide a good start. We also concur with the Committee that the BIA's budget restructuring makes it difficult for tribes to track changes to the TPA, and we request better transparency in future budget submissions.

P.L. 93-638 Pay Costs

The failure to fully fund tribes' uncontrollable costs (especially Pay Costs) during the last 5 fiscal years has caused serious and irreparable harm to tribal core service programs. Due entirely to an error made by the Interior Department, tribes got only 75% of their Pay Costs in FY 2002. Due to an Administration decision, tribes received only about 30% of their Pay Cost funding in FY 2003-2005, and we're slated for yet another cut in FY 2007. When combined with the cuts to the TPA described above, our desperation should be understood. We greatly appreciate the Committee's concerns, expressed in each of the last three Interior Appropriations bills, about providing less than full fixed cost funding, and the Committee's urging the President to request full funding of uncontrollable costs in all future budget submissions.

Thank you for enacting in FY 2006, for the first time since FY 2002, full fixed cost funding including pay costs. We must inform you however, that the BIA has once again thwarted your intention and paid the Red Lake Band less than 40% of our reported pay costs for FY 2006. We understand the reason for this was that BIA failed to collect and report Pay Cost data from all tribes, in part due to a conscious decision of BIA not to fill several of its regional budget officer positions. The fact that BIA failed in its responsibility to completely report our Pay Cost needs in FY 2002, and now FY 2006 (and very possibly other years), is unacceptable.

Tribes have been dealt a double blow with regard to Pay Costs. First, we've been subjected to Testimony of Hon. Floyd Jourdain Jr. on President's Budget Request for FY 2007

partial funding of Pay Costs going back to FY 2002. Second, the BIA has failed to properly report the full amount of Pay Costs we were due. Red Lake has studied these Pay Cost shortages carefully, and we have briefed Committee staff about them. We ask your help to do the following: 1) Direct the BIA to immediately review the FY 2007 Pay Cost data it submitted, to determine if BIA yet again requested less Pay Cost funding for tribes than it should have; 2) Provide a specific earmark to Red Lake in the amount of \$165,238, representing the amount of FY 2006 Pay Costs we believe we were unjustly shorted; and 3) Provide full fixed cost funding in FY 2007, and tell the Administration that shorting fixed costs will no longer be tolerated.

Contract Support Costs

Contract Support Cost (CSC) funds are critical for tribes to successfully operate programs under self-determination policy. The Administration and Congress have historically underfunded tribes' CSC. The CSC account is presently funded at less than 90% of need. No other entity the federal government contracts with is shorted on its overhead costs. We support the President's decision to request an increase of \$19 million for contract support in FY 2007.

Health Services

The President's FY 2007 IHS request is \$4 billion, an increase of \$124 million over FY 2006. This includes anticipated offsets from insurance collections of \$678 million and diabetes grants of \$150 million, leaving a net request for budget authority of \$3.2 billion. This modest increase is in actual fact a painfully sharp funding cut in real dollars.

In just the last five years, the IHS service population has risen by about 11.5% (with at least 30,000 new patients each year), while medical costs have risen by about 15% each year. We're falling further and further behind, and this is reflected in diminished health and well-being of our people. I am sure you are familiar with some of the American Indian health statistics, such as our rates being the highest in the nation for cardiovascular disease, diabetes, tuberculosis, Sudden Infant Death Syndrome, obesity, and tobacco use. Our average life span is 6 years less than other Americans. Our infant mortality and unintentional death rates are two-times, teen suicide rate three-times, and alcoholism five-times that of the rest of America. These statistics can be directly tied to chronically inadequate federal funding.

Health care expenditures for Indian people are *far* below 50% of the per capita health care expenditure for mainstream America, and only 50% of per capita expenditures for *federal prisoners*. As the Administration and Congress continue to cut health services to Indian people by not providing funding levels even remotely in line with inflation, the rates of illness and death from disease will grow worse each year. The FY 2006 IHS "Needs Based Budget" is \$19.7 billion. We ask that the Committee reallocate funding priorities so as to significantly address this deficiency with substantial funding increases this year. In no case should the FY 2007 increase be less than the \$200 million. We strongly oppose the President's request to eliminate the Urban Indian Health Program. There was no justification provided for this request, and this program is critical for tribal members residing in urban areas. Finally, we ask for the Committee's support to reauthorize the Indian Healthcare Improvement Act.

Circle of Flight Program

The Circle of Flight Tribal Wetland & Waterfowl Enhancement Initiative, under the BIA's Other Recurring Programs category, was again eliminated by the President in his FY 2007 budget request. The Circle of Flight has been one of Interior's top trust resource programs for 15 years. Elimination of the Circle of Flight would cripple Great Lakes tribes' ability to continue successful partnerships which have benefited a diverse array of wildlife and associated habitats. We greatly appreciate the Committee's recognition of the importance of the Circle of Flight by restoring funding in FY 2003-06. We again ask that you restore this program to the BIA's FY 2007 budget to at least the FY 2006 level of \$600,000, and to consider providing the FY 2007

requested amount of \$1.1 million.

Housing Improvement Program (HIP)

Housing is one of the most basic needs of every American. Funding for BIA's HIP program is terribly inadequate and has remained flat at about \$19 million each year. Red Lake recently submitted its 2003 HIP Work Plan Report to the BIA documenting 188 families in need of housing upgrades or replacement, for which the BIA is responsible to assist with. The total need documented for just BIA's share of housing repair and new housing at Red Lake was \$1.2 million, yet Red Lake received less than \$1,000 in each of the last two years from HIP. We ask the Committee for a specific earmark of \$1.2 million for Red Lake in FY 2007, and that the BIA HIP budget be increased to at least \$32 million.

Law Enforcement and Community Fire Protection

The President's FY 2007 budget for Indian Country Law Enforcement requested \$8.1 million for repair of dilapidated detention facilities, \$2.7 million for new detention facility operations, and \$1.8 million for high crime areas. While we support these increases, they do not begin to address Law Enforcement base shortfalls, which grow worse each year due to inflation, annual rescissions, and Pay Cost cuts. On top of this, most COPS grants, which provided critical sworn officer positions, have expired or will expire by the end of this year. At the same time, crime rates in Indian Country are rising, drug problems have become epidemic, tribes have increased homeland security responsibilities, and court case backlogs are monumental. Tribes simply do not have the resources, at current levels, to combat these problems.

Law enforcement expenditures at Red Lake in FY 2005 were about \$2.1 million, with BIA funding levels at about \$1.6 million. The shortfall of about \$.5 million had to be taken from other programs. It's been difficult for us to hire and keep good cops on the street because funding shortages prevent us from being able to offer competitive wages. We request additional law enforcement funding of \$500,000 in FY 2007 to make up this shortfall.

We are very concerned about the President's FY 2007 intent to eliminate funding for Community Fire Protection. Our tribe is solely responsible for fighting fires on our reservation and protecting peoples' lives, *on an annual BIA funded budget of \$42,500*. I cited above, the huge disparity between BIA funding and actual expenditures for Community Fire Protection at Red Lake. We ask the Committee for a specific earmark for Red Lake in FY 2007 of \$900,000.

EPA Programs

Water, wetlands, and the fish and wildlife which rely on them are precious to us. Red Lake is home to the sixth largest natural, freshwater lake in the United States and it is truly a national treasure. Red Lake is larger even than Lake Champlain, which as you know temporarily held the title of the "6th Great Lake" a few years ago. Two programs which are critical in our efforts to protect the environment at Red Lake are the Indian General Assistance program (GAP) and Section 106 Pollution Control grants (Section 106). The President's FY 2007 budget continues a \$4.5 million cut to GAP begun in FY 2006, despite an Adequate PART rating. We ask that you fund GAP in FY 2007 at no less than the FY 2005 enacted level of \$62 million. The President's request for FY 2007 Section 106 grants is \$5.5 million over the FY 2006 level. However, the amount allocated to tribes like Red Lake has sharply decreased. The reason is each year more tribes become eligible for and receive this funding, but the tribal allocation formula stays the same. Thus fewer dollars go to tribes to conduct pollution control activities. We ask that in FY 2007, you include language recommending no less than 15% of the Section 106 funds be made available to tribes.

Thank you for allowing me to present, for the record, some of the most immediate needs of the Red Lake Band of Chippewa Indians in FY 2007, and for your consideration of these needs.

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